Virtue & Virtuality

Conference Proceedings of Virtue and Virtuality: Gender, Law, and Cyberspace

April 20-21, 1996

With the exponential growth of the Internet, the media has focused particular attention on a range of constitutional, moral, and political dilemmas raised by growing and proliferating practices of virtual sex. A controversial and contested study of pornography on the net became the cover story in a national newsmagazine; Congress passed the Communications Decency Act, a bill which would greatly limit the electronic availability of sexually explicit materials; newspapers ran stories about teenagers seduced by adults in on-line chat rooms. At the same time, increasing numbers of people are using the new information technologies to participate in virtual communities or to challenge traditional notions of self and identity. This conference offered the chance to go beyond the headlines, and to reflect on the complex interface that is emerging between cyberspace, the legal system, and contemporary issues of gender, sexuality and identity.

Although a certain amount of academic attention has been paid to each *pair* of terms at issue in this conference (gender and law, law and cyberspace, and gender and cyberspace), until this conference, this *triplet* of concerns has received little sustained reflection. This conference was organized, in part, to spur legal scholars to think about the implications of cyberspace for questions of gender and identity, and to provide an opportunity for those who work on cyberspace from a cultural perspective to think critically about the legal and regulatory issues. Participants included legal academics, cultural studies and communications scholars, and members of the computer science community.

Participants' bios and talk abstracts are included. Some of the talks have transcripts. Conference materials may be downloaded and/or excerpted as long as they are properly attributed.

This conference is cosponsored by the MIT Program in Women's Studies, and the offices of the Deans of Humanities and Social Science and Engineering.

cyber law

Saturday, April 20, 10-12:30pm

Amy Bruckman
"Democracy" in Cyberspace: Lessons from a Failed Political Experiment

L. Jean Camp
Bedrooms, Bar Rooms, and Boardrooms in Cyberspace

Ethan Katsh
Out of Context: Gender and Dispute Resolution in Cyberspace

Jennifer Mnookin
Bodies, Rest and Motion: Law and Identity in Virtual Spaces

sex & cyber speech

Saturday, April 20, 2:30-5pm

Larry Lessig
Zoning Porn and People in Cyberspace

Eben Moglen
Beyond the Bounds of Decency: Children, Sex, Violence, and the Law

Howard Schweber
And Then the Railroad Came:
Law, Pornography, and the Regulation of Cyberspace

Ellen Spertus
Social and Technical Means for Fighting Online Harassment

cyber bodies

Sunday, April 21, 10-Noon

Julian Dibbell
My Dinner with Catherine MacKinnon
(And Other Hazards of Theorizing Virtual Rape)

Jeffrey Fisher
Feminist Cybermaterialism: Gender and the Body in Cyberspace

Leslie Shade
The Digital Woman

cyber talk

Sunday, April 21, 1:30-3pm

Sherry Turkle
Gender Trouble on the Internet

Anne Branscomb
A response to Sherry Turke

Evelyn Fox Keller
A response to Sherry Turkle

Please send your questions or comments to womens-studies@mit.edu.
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Alphabetical List of Speakers with Bios and Abstracts

Anne Branscomb (Harvard)

Anne Branscomb is a legal scholar in the Harvard University Program on Information Resources Policy analyzing the impact of information technology on developments in the law. A specialist in computer and communications law, she is the author of *Who Owns Information?,* editor of *Toward a Law of Global Communications Networks* and author of numerous articles in both popular and professional journals regarding broadcasting, cable television, telecommunications policy, and online communications.

Amy Bruckman (Media Lab, MIT)

From November 1993 to September 1994 a virtual community called MediaMOO which was founded by Amy Bruckman experimented with "democratic" government. A body of councilors was elected. Their responsibilities and the extent of their authority were not clearly defined, but were left to them for discussion. The result was a year of increasingly bitter arguments with no real benefit to the community, and the experiment was eventually dismantled.

The issues at hand were ultimately trivial, so the question arises: why were the arguments so impassioned and bitter? A number of lessons with broader applicability can be drawn. The experiment was a learning experience for everyone involved, forcing us to confront the naivete of our own political ideas. In this talk Bruckman will examine some of the popular rhetoric about democracy online, drawing lessons from MediaMOO's failed political experiment.

Amy Bruckman is a doctoral candidate at the Media Lab at MIT, where she does research on virtual communities. She is the founder of MediaMOO (a MUD designed to be a professional community for media researchers), and MOOSE Crossing (A MUD designed to be a constructionist learning environment for kids.) MOOSE Crossing includes a new programming language, MOOSE, designed to make it easier for kids to learn to program. Amy received her master's degree from the Media Lab's Interactive Cinema Group in 1991, and her bachelors in physics from Harvard University in 1987.

L. Jean Camp (Carnegie Mellon)

Much of the debate on the content on the Internet has focused on the classification of various services into traditional media types. There has been particular focus on bulletin boards, i.e. BBS and UUCP services. There is no consensus on the appropriate media classification because there is none. The technology of electronic communications has confused legal theorists into attempting to inappropriately apply those rules set for machine-assisted communication.

In fact, the appropriate analog is not different mediums but rather different spaces. One reason Net denizens call it cyberspace is that the various attributes applicable to defining different spaces. Camp will include examples using UUCP and HTTP to illustrate this point. She proposes a new theory for Internet content control which

included the recognition that both public, political debates and private, protected spaces exist on the Internet using the same services.

She briefly discusses the implications for women and feminists. Since feminists have had particular interests in creating both safe spaces for women and open forums for taboo topics, the uniform application of inappropriate media types creates a particular threat. She illustrates this point with recent national cases.

Finally, using events at Carnegie Mellon University, she will show in more detail how the attempts to fit media types to Internet services has created an incentive for actions which harm speech rights, particularly those of women. Specifically, she will show how the University has chosen both to censor speech with sexual and political content, and simultaneously refused to create of allow safe spaces for women and gay students on the basis of media arguments.

Jean Camp is finishing her dissertation in Engineering & Public Policy at Carnegie Mellon. In her work she seeks to provide technical solutions to social conflicts, particularly the fundamental conflict between privacy and auditing in information systems. Her work is motivated by an interest in electronic civil liberties.

Julian Dibbell (Village Voice)

Taking seriously the problematic notion of MUD-mediated "virtual rape" can get a person into some very interesting varieties of hot water -- as Dibbell can and will attest from personal experience. On the one hand, the Internet's legions of free-speech fetishists see red when they see you suggesting that cyberspace can weaken the line between speech and action. On the other, support from those who would weaken the role of free-speech principles in civil society isn't comforting either. Is it possible to walk a middle path between the two camps? Must virtual rape (and other forms of online harassment) really be thought of as either a poor joke or a true crime? This talk makes a last-ditch appeal for the preservation of cyberspace as a conceptual demilitarized zone -- a permanently liminal stage wherein the real and the imagined meet on equal terms.

Julian Dibbell is the author of the forthcoming *My Tiny Life: Memoirs of a Virtual World*, to be published by Henry Holt in 1997. He has written about the people and politics of cyberspace (as well as other aspects of contemporary culture) for *The Village Voice, Spin, Details, The New York Times*, and other publications, and is currently a contributing writer for *Time* magazine.

Jeffrey Fisher (Ohio Wesleyan University)

This paper will examine an apparent pattern of feminist concern--both in fiction and in theory--not only for gender in cyberspace, but for the virtual body itself. Feminists generally emphasize the continuity of sensuality, the body, and gender in the cyborg, which they contrast to the masculine view of cyberspaces as disembodied, transcendent, immaterial, "pure." A notable exception to this pattern is Donna Haraway, whose "Cyborg Manifesto" opens up the problematic of this essay: is it possible to transcend gender in cyberspace? Various theories of "cyberdemocracy" presume so, but their "level playing field" threatens to simply replicate "meat-based" gender bias. The difficulty is trying to conceive a gender-free social space from within a gendered space. The response is generally the deployment of utopian, even quasi-religious, discourse. This paper

critiques these approaches and endeavors to suggest possible avenues for further exploration.

Jeffrey Fisher teaches in the Humanities Department at Ohio Wesleyan University. Formally trained at Yale University as a medievalist, Fisher also writes and teaches on science fiction and information age culture. He is currently investigating the religious character of the discourse of cyberspace.

Ethan Katsh (UMass Amherst)

Cyberspace represents a new arena for both the creation conflict and the resolution of conflict. It is an arena in which much looks familiar and it is tempting to try to import the dispute resolution practices and processes of the physical world into cyberspace. Gender presents an interesting starting place for assessing how online dispute resolution "places" should be designed and employed in an environment where appearance can be changed by modifying code and where physical elements of the legal process may be missing.

Ethan Katsh (Katsh@legal.umass.edu) is Professor of Legal Studies at the University of Massachusetts at Amherst. He is a graduate of the Yale Law School. His main area of expertise is law and computer technology and he is the author of two books on the subject, *Law in a Digital World* (Oxford University Press, 1995) and *The Electronic Media and the Transformation of Law* (Oxford University Press, 1989). He serves as one of the initial group of virtual magistrates of the Cyberspace Law Institute's Virtual Magistrate Project and is founder and director of the soon to be in operation Online Ombuds Office. He developed the UMass Internet Law Hypercourse and serves on the Board of Editors of the electronic law journal, *Journal of Online Law*. In October 1995, Professor Katsh moderated CourtTV's online Cyberschool course for non-lawyers.

Evelyn Fox Keller (Science, Technology, & Society, MIT)

Evelyn Fox Keller received her PH.D. in theoretical physics at Harvard University, worked for a number of years at the interface of physics and biology, and is now Professor of History and Philosophy of Science in the Program in Science, Technology and Society at MIT. She is the author of *A Feeling for the Organism: The Life and Work of Barbara McClintock*; *Reflections on Gender and Science*; *Secrets of Life, Secrets of Death: Essays on Language, Gender and Science*; and, most recently, *Refiguring Life: Metaphors of Twentieth Century Biology* (Columbia Univ. Press, 1995). Her current research is on the history of developmental biology.

Larry Lessig (University of Chicago Law School)

Cyberspace as it is essentially unzoned--borders are not boundaries; the architecture is designed to facilitate crossing the full range of the net. Most recent regulation of the net aims at changing that--it aims at increasing effective zoning on the net. That, for example, is the aim of the Computer Decency Act of 1996, as well as other legislative initiatives. This paper first considers whether these efforts at zoning will be considered constitutional; it then examines just how zoning will change the possibilities for individual and social plasticity on the net.

Larry Lessig is Professor of Law at the University of Chicago. He received his J.D. from Yale in 1989, and held clerkships with Judge Richard Posner of the 7th Circuit

Court of Appeals and Justice Antonin Scalia of the Supreme Court. His scholarship focuses on constitutional law as well as the law of cyberspace, and he has taught courses in the law of cyberspace at both Yale Law School and the University of Chicago Law School. Check out his seminar, Cyberspace Law for Nonlawyers.

Jennifer Mnookin (Science, Technology, & Society, MIT)

This paper will look at the emergence of a legal system in LambdaMOO, one of the most popular and populated virtual communities on the 'net. In particular, this paper will focus on questions of accountability and enforcement, and the particular challenges arising within a virtual legal system in which the juridical power has no authority over the physical body. Mnookin will look closely at those techniques used within LambdaMOO to make virtual citizens accountable for their actions, and examine the extent to which these techniques are attempts to generate fixed, stable identities within a virtual sphere.

Jennifer Mnookin is a Ph.D. candidate in the Program in Science, Technology and Society at MIT. Her dissertation focuses on technological and visual evidence in the American courtroom in the nineteenth and twentieth centuries. She received her bachelor's degree from Harvard in 1988 and her J.D. from Yale Law School in 1995.

Eben Moglen (Columbia University)

Generational, familial, and other psychosocial boundaries are in the process of dissolution, as the network fundamentally alters social relations more rapidly than at any time in Western experience. Moglen will attempt to describe in my remarks a series of interconnected contemporary attempts to use legal means to reassert those boundaries, including attempts to punish intergenerational power transfer, and to reestablish the increasingly perilous borders separating fantasy from social experience. All is not quiet on the western front, and a mixture of technological and legal considerations suggests to him that it never will be quiet there again. Though no one over the age of 11 is likely to be entirely pleased--unless Bill Gates contemplates a merger with Al Goldstein and Oliver Stone--we'd better give up on regulating the future, and he shall attempt to explain why.

Eben Moglen is Professor of Law and Legal History at Columbia Law School. He received both his J.D. and his Ph.D. in History from Yale. He clerked for Judge Edward Weinfield of the Southern District of New York and for Justice Thurgood Marshall of the Supreme Court. He has written and spoken on topics ranging from colonial legal history to the effects of the new information technologies on scholarship.

Howard Schweber (Cornell)

The 1996 Telecommunications Act (or whatever version of it remains by the time this conference goes forward!) is based on the analytical frameworks established in two key cases: Miller and Pacifica. Some of the difficulties inherent in the application of these standards to "cyberspace" are demonstrated in the 6th Circuit's treatment of the judicial and community standards issues in the Amateur Action case, as well as in the preliminary ruling of the federal judge reviewing the constitutionality of the Act (the paper will, of course, include treatments of legal developments between now and April on this score).

In response, Schweber will suggest two things: first that "cyberspace" needs to be treated as three distinct spheres of telecommunications for these purposes (e-mail, subscription communications such as bulletin boards, and the Web); second, that where direct analogical extrapolations of existing First Amendment principles are inadequate, a version of voluntary content ratings is the "best" approach, both in terms of the likely alternatives and in terms of affirmative arguments of social policy and technological feasibility. Finally, he will point out the peculiar reconfiguration that occurs when critical race and gender perspectives on free speech issues involved in the promulgation of pornography are brought to bear on the question of regulating cyberspace.

Howard Schweber studied philosophy and history at the University of Pennsylvania and received his J.D. from the University of Washington in 1989. He practiced law for five years, both as a commercial litigator and a prosecutor. He has an M.A. in History from the University of Chicago and is presently a graduate student in Cornell University's Department of Government, where his research focuses on the development of American private law. At Cornell, he has taught courses on constitutional issues of free speech.

Leslie Shade (McGill)

In her paper, Shade will address how -- and whether -- national public policy statements on access to the information infrastructure have addressed questions concerning gender equity. The paper will particularly emphasize the Canadian situation, although the United States will be discussed as well. Recommendations for further study to ensure a more equitable stake for women will also be addressed.

Leslie Regan Shade is a doctoral candidate at McGi ll University's graduate program in communications where she is completing a dissertation entitled *Gender and Community in the Social Constitution of Computer Networks*. She has written and spoken widely on the social and policy issues surrounding new communication technologies and works as a consultant in the research and design of networked information.

Ellen Spertus (University of Washington/MIT AI Lab)

Reports of online harassment of women have caused concern to many and have led some to advocate government control over the Internet. This paper describes social and technical--rather than legal--defenses already used by women online or that will soon be available. These include blacklists, explicit reputations, secure authentication, private or moderated mailing lists, programs for filtering messages based on their contents or sender, and public replies to harassers.

Ellen Spertus is a doctoral candidate in computer science at MIT and a visiting scholar at University of Washington, specializing in information retrieval. She is also webmaster for an anti-rape organization that is challenging the Communications Decency Act, which threatens its website.

Sherry Turkle (Science, Technology, & Society, MIT)

This talk looks at online life as an evocative context for self-reflection on the social construction of gender that can facilitate significant personal change.

Born in New York City, Sherry Turkle did her undergraduate work at Radcliffe college, studied with the Committee on Social Thought at the University of Chicago, and received a joint doctorate in Sociology and Personality Psychology from Harvard University in 1976. She is now a professor in Science, Technology, and Society at MIT. She is a graduate and affiliate member of the Boston Psychoanalytic Society and a licensed clinical psychologist. She is the author of *Psychoanalytic Politics; Jacques Lacan and Freud's French Revolution* and *The Second Self: Computers and the Human Spirit*. Her most recent research is on the psychology of computer-mediated communication, including role playing on MUDs. This work is reported in *Life on the Screen: Identity in the Age of the Internet.*

"Democracy" in Cyberspace:
Lessons from a Failed Political Experiment
Speaker: Amy Bruckman (Media Lab, MIT)

Good morning. Welcome everybody. My name is Amy Bruckman and I do research on technology and education. You are here for my first and last rendition of this talk on more political issues; it is not my field of expertise. But when Jennifer [Mnookin] told me about this conference, I thought it would be an interesting opportunity to reflect back on some complex and, on the whole, painful events which took place a couple years ago. I want you all, just for starters, to think about the "D" word. What is democracy? Think about it a little bit. See if you can come up with a definition in your mind. I'll come back to this again at the end of the talk because I think this question is central to the events that took place.

I am going to talk about an experiment in the democratic control of a virtual community called MediaMOO--an experiment that failed--and why it failed. Democratic control of communities on-line is very different from using the on-line environment to connect with real world politics. I will be talking about the former, not the latter. I think they are very different and should not be confused.

So what is MediaMOO? MediaMOO is a text-based virtual reality environment or MUD on the Internet designed to be a professional community for media researchers. We have about 1,000 members from 30 countries and we have been open since January 1993. In most of these environments, most MUDs on the net, people are anonymous. On MediaMOO, people are identified by their real name and a description of their research interests. You can find out what kind of work someone is doing and strike up a conversation saying, "Oh, really? You do work on cyberspace and law? Fabulous! Tell me about it." While most MUDs are populated by undergraduates who should be doing their homework, MediaMOO is, hopefully--we try at least--populated by a group of people with a shared intellectual interest--in this case, the study of media. It is a bit like an endless reception for a conference like this one, where you can meet people like the people in this room and talk with them about issues of common interest.

We tried an experiment on MediaMOO from November 1993 to September 1994 with democratic control of the community--whatever "democratic" means, which we will come back to again. There are some incidental factors as to why this went wrong and there are some broader lessons. Obviously, for the purposes of today, I will try to talk about the broader lessons and not the incidental factors.

Why did we try a democratic experiment anyway? Well, that is my fault; it was probably my idea. I was particularly interested by what I saw as a fundamental failure of direct democracy on LambdaMOO. Now LambdaMOO is the largest MOO, which is a particular kind of MUD on the Internet, filled with 200 (or more) people logged on at any given time. There was, as some of you might have read in Julian Dibbell's wonderful article in the Village Voice, a kind of virtual rape on LambdaMOO, which led to one of the managers of the community (or wizard), to summarily cancel the account of the offender. This led the community to say, "Can the wizards just get rid of people? Is this wizard judge and jury? What's going on here?" This, in turn, led the founder of the community and author of the MOO software, Pavel Curtis from Xerox Park, to say, "You

know what? I think we need to get the wizards out of the business of having any kind of social control here. Let's have a direct democratic process to manage that from now on. The wizards will just be technical people who work in the background and stay out of these social issues." And one of the ongoing violently debated issues on LambdaMOO is to what extent are the wizards living up to that ethic of staying out of social affairs and to what extent is that possible.

On LambdaMOO, there is a system of petitions. If you get enough signatures on your petition, it becomes a ballot. If the ballot gets a two-thirds vote of the population, then it becomes a law. There is also an arbitration process, which was set up by a ballot, to handle disputes between people. There is a whole separate process involving an architecture review board which decides who gets more quota and what goes into public spaces. There are separate elections for those people [the architecture review board]. Quite an elaborate system has evolved. It is an elaborate system which, in my opinion, doesn't work particularly well.

Basically, it is a flame-fest; it is a horrendous flame-fest. I wanted to try to give you a feeling for what a horrendous flame-fest it was so what I did was pick a random message. I generated a random number between one and 1,000 and took one of the last 1,000 messages on the Social Issues mailing list on LambdaMOO. I picked this totally randomly--this is completely representative. I want to read you that message (I'll cut off some preface here):

> The larger issue here is about what type of society we shall have--elite rule by the political class or individual rights [This is starting off sounding kind of interesting. People are doing this in their spare time for fun]. It is sad and depressing to see someone respond to my post calling Idagi a fascist bitch by declaring that since she might soon become a wiz we should be nice to her. For those who hold such short-sighted views, when will you stand up for yourself? When *LambdaMOO Takes a New Direction* is taken away? When arbitrary wiz rule is imposed? Why do you want to suck up now? Such fools! In the future you will find yourself either slaves or recycled. Now is the time to demand a society based on the individual and not the self-appointed judges of those who are good or bad. All of which reminds me, the wizzes involved in the theft of Roy Cohn's program or bit -- you have about twenty-four hours to return it and issue an apology to Starsosh or I will be forced to file disputes for your violations with *LambdaMOO Takes a New Direction*.

As it turns out, this message is totally representative. People get called fascist bitches on Social Issues every day. Actually, that is relatively tame. So there is a problem. Here are people who are ostensibly working toward a shared goal and yet, in practice, it is just this horrendous flame-fest. The conversation is completely dominated by a few extremely vocal individuals who post at great length and if you wanted to respond to everything they said, it would take you all day. Sensible people stay clear of this process. I mean, who has time to mess with this? By definition, you have to be an idiot to mess with this because, if you weren't an idiot, you wouldn't be wasting your time reading stuff like this. So the whole political process is left to people who have nothing better to do than spend all of their free time in a flame-fest.

An additional problem, on another level, is that there is no broader vision. Because anyone can propose a petition or ballot, there is no one saying, "This is the direction we

want to go. Let's make our policy changes move with a vision--with a coherence." Everything just kind of wanders. One ballot undoes another ballot and Lord knows what it all means. So direct democracy on LambdaMOO, in my opinion, really doesn't work.

I thought it would be interesting to experiment with representative democracy [on MediaMOO]. In particular, network computer systems have the potential to try something new--a kind of immediate accountability to constituents where the system is representative. If your constituents don't like what you have done, you can be voted out of office in an hour. The voting system on MediaMOO had an update rate of once an hour.

This didn't work either. I did quite a bit of reading though the old mail archives before preparing this talk. I came across what I think to be quite a prescient post very early on in the archive. One of the members of the community was interested in participating when we first started this whole representative council business. He posted a position paper describing how he wanted to be a member of the council. Then, two days into this whole process, he posted back:

> Hi, again. After observing what has been happening on this MOO in the past few days--the campaigning, the power things, the joking and half-serious behavior toward candidature for the council, I have decided not even to attempt to run for it anymore. This has nothing to do with trying to sort out practicalities to make this MOO a more functional place anymore. The introductory post to this list by the candidates sound mostly like Clintonian or Bushian big politics [Remember, this was in 1993]. Somehow, I don't think I have a place in this and I have a suspicion that, in some cases, neither does the MOO.

Well, it took the rest of us a year to figure out he was absolutely right. I wish we had realized how prescient he was at the time.

I want to read you another post. We have the pleasure of actually having two of the MediaMOO counselors who participated in this experiment and devoted their sweat to it here today. Maybe they will have something to say during the question session. One of the counselors, Michael Day, did send me a letter which, with his permission, I am going to read. This is his view of what happened:

> As I think I said in Berkeley last month, the hard lesson I learned from the failed experiment was that in our attempt to be inclusive and democratic about the process, we opened ourselves up to the possibility of being dominated by people who had more time to devote to posting lots of words to the news groups. Since I work full time and have plenty of other projects besides the MediaMOO Council, I never seem to have the time to answer the volley of messages that came my way. I felt that answering the objections once, and answering them succinctly, should be enough. But there was a sense that--like dealing with a child who keeps asking, "Why?" every time you explain something--my responses would never be adequate because they did not measure up to the frequency and volume of words in the objecting posts. And, since many of us--my constituents and many of the fellow council members-- agreed, I felt that we had strength in numbers. The problem was that we did not have the time to be as vocal as the opposition nor did we believe that the advisory role of the council should be a time-consuming endeavor. In a way, it

felt like we were being out-shouted or bullied into submission. In my heart, I want to believe that consensus is possible and that all voices should be heard, but I found that consensus does not work unless members of the community hold a majority of values in common. I thought that MediaMOO had been founded on a principle of scholarly sharing and that one of its most unique qualities is that we all know each other's identities and addresses. I felt, and still feel, that we have the right to be different from anonymous MUDs and MOOs if we so choose, and that those not comfortable with this policy have the right to leave the community. Another observation: we have been without a council for quite awhile now and we seem to be doing okay. Granted, active membership is down a bit, but perhaps we never needed a council in the first place.

What kinds of issues did the council deal with? Unfortunately, one of the very first issues it had to deal with was a problem regarding what to do about an accusation by a member of the community that another member of the community was sexually harassing her. What made it even more horrendously complicated was that the victim was a member of the council and the victim didn't particularly feel like recusing herself from the process of debating what should happen . Although she did [recuse herself] to some extent, she was quite publicly vocal and had a degree of authority about the whole thing. So here is this fledgling group of people trying to work out a process for solving group decisions and the first thing they have to deal with is this horrendously complicated issue.

Another issue that was particularly divisive was the issue of admissions policy--who should we allow to be members of the community. My position has always been that MIT would not be MIT if everybody who wanted to come could come. And that the same goes for MediaMOO--that our having an admissions requirement is part of what makes the community special. But with the egalitarian flavor of the net, this does not go over easily. This is an incredibly controversial policy and people ended up arguing passionately about their views about equality and exclusivity. The discussion was tremendously productive if your goal was to reflect on these issues, but if your goal was to move the community forward in some fashion, it was tremendously time-consuming and divisive.

One of the big problems, first of all, was that I set up a voting system and said to the members of the council, "You guys can decide to change the voting system and I am not going to tell you how to decide things amongst yourselves. You are the council; you figure it out." That was a horrible mistake. There was one member of the council who insisted that it work on a consensus basis. If someone insists on consensus, then I guess it has to be consensus, because you would need a consensus to decide to use something other than consensus. You know what? Consensus works for Quakers. Quakers have shared values. Quakers have patience. They like to sit in silence. Quakers are nice people. They have goodwill towards one another. All of those things were missing on MediaMOO. Consensus works for the Media Lab faculty, interestingly enough, for a completely different reason. It works for the Media Lab faculty because, boy, if you piss these other people off, they can make your life miserable. There is a very high level of accountability amongst faculty members. Shared values, patience, goodwill, mutual accountability--all of these things are what makes consensus process work. All of these things were one-hundred percent lacking in this experiment. So that was one reason. Another issue was simply the time constraints. As Michael Day's message said, these

people have real lives. Democracy takes time; the consensus process takes exponentially more time. Working out even insignificant issues seemed to take forever.

Now, I have to say here, I would be remiss in this presentation if I didn't mention that a big part of the problem--a lot of the fault--lies with me. I didn't know what I was doing. I just thought it would be kind of cool. I'm not a politician and I'm never giving this talk again. This is the one and only time. This is not my field of research.

Another one of the issues relates to control. I never entirely gave up control to the council. And, I don't think it would have been possible for me to do so because they weren't willing to accept it. But then there was this back-and-forth about who's really in control. People were throwing around accusations and my participation in the process was problematic. Now, all I did was, if people were talking about issue X, I might have posted a public message saying, "Well, gee, this is just my opinion, and the council is really in control, but, you know, I think about X that maybe this..." But just my voicing any opinion whatsoever was tremendously damaging because, as the founder of the community, I needed to just get out of it entirely. Even voicing a "this-is-just-my-opinion" kind of an opinion had a tremendous weight.

Also, I had a much greater commitment to the community than to the political experiment. The point of this community wasn't to pursue political issues. So, I wasn't willing to let the whole thing go down the tubes in the name of the political experiment because, to me, the political experiment was a kind-of-interesting little feature of the community, but not the core of it. I needed to maintain the basic integrity of MediaMOO as an experiment on different issues which I think are much more interesting and much more important.

Finally, you can't really have a democratic system unless the members of the community really own the machine. Unless the participants actually owned it, there were just some power factors that couldn't be gotten around. Anyway, those are incidental factors. I don't think they are of profound relevance, but I think I would be remiss in not mentioning them.

Maybe one of the most fascinating issues in all of this was why was there such lack of goodwill. Everybody on the council was absolutely at each other's throats. Members of the community were at each other's throats. We were debating totally trivial issues and tearing each other's eyes out about it. Why was there such a tremendous lack of goodwill? I think there are a number of issues.

One of them is that some people just have a problem with authority. They were transferring their general feelings of hostility towards the council members who were now new symbols of authority. So, if you have a teenage down-with-the-establishment kind of mentality, down-with-the-council is a pretty good outlet for that.

Second, as I mentioned before, this issue of exclusivity ties into a lot of people's most deeply held, and in my opinion, most naive values about pluralism and when it is and when it is not appropriate.

I think there was a degree of transference, not just about people's feelings toward authority, but about people's feelings about their general lives. I think someone's dog died or they hated their job or they hated their spouse and it was just a lot easier to yell at people through this political process and express their personal feelings of anger through that channel than to deal with the fact that the truth is that they hate their lives. The

political process on MediaMOO became a safe place to have an outlet for a lot of anxiety with very few consequences.

And, of course, also relevant was the classic thing everybody talks about in on-line discourse: the lack of body language and expression and tone of voice played a tremendous role in it. It is really easy to forget that there is human being who means well on the other side of that computer terminal and to assume, instead, that it is the devil incarnate.

Bill Moyer (a sixties community organizer type, not Bill Moyers, the journalist) makes the interesting point that pathologically divisive people are indistinguishable from agents provocateurs. He has found this from his experience working in the Civil Rights movement and the Anti-Nuclear movement. I think we had our fair share of problems with people who fit that description.

That probably relates directly to the issues of transference that I was discussing. The content of a lot of the posts was not the issue, it was the tone and also the sheer volume of some people's contributions. If one person has all day to post at tremendous length about a particular issue, as Michael Day wrote in his message, you can't sit there and respond to every point because you have a real job and you have a real life. And yet how can you leave it unanswered when all of these horrible things have just been said?

After this whole thing was over, I found that that a professor at Brandeis, Carmen Sirianni, had mailed me a paper called "Learning Pluralism." It sat on my floor in a big pile with all of my other unread stuff. I read it about a year later on the beach and my jaw just dropped because I think, in a lot of ways, we were reinventing the wheel. Sirianni's paper is about people's attempt to use a kind of consensus-based process in the Civil Rights and Women's movements and about the kinds of social problems that emerge in groups. For instance, one of the things he focuses on is the issue that there is no such thing as a leaderless group. Very often assuming that you have no leader means that you end up with a de facto leader and, in some ways, it is more pernicious to have leaders that no one can name. Very often, the people who end up in control are the people who just have more time to commit. I think these issues have cropped up in a variety of movements and not just in this particular instance.

We eventually did dismantle the experiment. It had ended up becoming "all pain, no gain" and I think fundamentally there was too little at stake. We started all of this because we were interested in experimenting with political processes (because I was interested-- maybe I inflicted it on everyone else). The point is that the issues we were addressing were fundamentally trivial. Not that many people really cared that much. Maybe if the issues were of greater importance people would have contributed more; people would have invested more. There was just too little at stake. They say there are two things you don't want to see the making of--laws and sausages. Democratic process is tremendously messy in how it proceeds and even messier when the people doing it don't quite know what they are doing. We do have one remnant of it--a membership advisory committee persists on MediaMOO which advises me on who to admit to the community and who not to. I did say that it was all pain and no gain and, at the time that we dismantled the experiment--about a year after it started, in 1994--I certainly felt that way. In retrospect, I think it was a tremendous learning experience for a lot of people who participated, particularly a learning experience (and this brings me back to where I started) about politics and democracy.

Let me return to the "D" word. What is democracy? Well, I'll tell you one thing: it is not one thing. It is a broad term for a collection of strategies, and just because you are one or aren't one--whatever that means--doesn't mean that your society is good or just. A lot of the passionate arguments that went forth in this whole political process were arguing that this isn't a democracy--implying somehow that if it were, everything would be wonderful. I mean, come on! Look around the real world, folks. I think people's concept of what democracy is and what it means to be one is tremendously vague. I think we all stopped in third grade and that is a failure of our educational system. And I think through this process, we all--I, certainly, and, I hope, other people--learned a tremendous amount about what democracy really is and how group processes really work. But I definitely would not do it again.

I just want to thank my advisor, Mitch Resnick, Pavel Curtis who wrote the MOO software, the former councilors who put up with so much nonsense, and the people of MediaMOO who put up with equal amounts of nonsense.

Out of Context: Dispute Resolution in Cyberspace
Speaker: Ethan Katsh (UMass Amherst)

I have spent the last few minutes struggling a bit to figure out how my talk might follow consistently from what you have just heard. I was having some trouble for a while, but, as these things happen, one or two ideas did occur to me. I think what the previous speakers were talking about, if I can place their thoughts into one sentence, was the difficulty of moving institutions and processes and ideas that we are familiar with into the virtual world. There are many kinds of spaces in the on-line world and many kinds of environments and the move from the familiar to the unfamiliar is not an easy one.

I have been involved over the last few months with a couple of on-line projects that may end up being failures, but I think experimentation and trying to design such institutions is really one of the important things we can become involved in these days. The two institutions I'm talking about--which I may not talk about in detail--are, first, the virtual magistrate project, mainly a project to arbitrate disputes and second, something called the Online OmbudsOffice, which has not yet really formally begun--although we actually handled one interesting case. That is largely a project to mediate disputes that arise out of online activities. My framework for thinking about how you move dispute-resolving institutions from one environment to another may become clear if I relay a story told by the anthropologist Edward Hall about an experience that took place a couple of decades ago when he was on a research trip to Japan.

Hall returned to his hotel room one day and found, when he opened the door, while it was the room he had been living in, someone else's belongings were there. Hall took this in for a few moments, all the time feeling uncomfortable, worrying that someone would appear and accuse him of being in someone else's room. So he went down to the desk where he was told that his room and his belongings had been moved. He was given a new key, went up to his new room, and found that all of his possessions had been laid out for him in just about the same way he had left them in the first room. There was a marked resemblance to the room and the arrangement and yet he felt that there was something different as well. Hall, as an anthropologist, understood that what was important about his experience went beyond the placement of the artifacts in his new space. He realized that he was not only in an unfamiliar physical space but that this space was in a culture and environment that he didn't understand completely. He wasn't confident any longer about what he could expect or what he could assume. Whose space was this, for example, and might he be moved again?

Hall realized that the new environment bore a physical resemblance to what was familiar to him, but he also recognized that due to some strong cultural forces, his role as a tourist or guest or renter had changed. Long-held assumptions about hotels no longer seemed to be valid and he became aware that his relationship with the hotel was different from what he assumed it would be. What was his, what was shared, what belonged to others, what rights he had -- all of these were no longer as clear as they had been before. But Hall adapted to his new space and came to terms with it. He eventually left Tokyo, where this hotel had been, and moved to Kyoto. Then he writes: "There we were fortunate enough to stay in a wonderful little country inn on the side of a hill overlooking the town. Kyoto is much more traditional and less industrialized than Tokyo. After we had been there about a week and had thoroughly settled into our new Japanese

surroundings, we returned one night to be met at the door by an apologetic manager who was stammering something. Well, I knew immediately that we had been moved, so I said. 'You had to move us. Please don't let this bother you because we understand. Just show us to our new rooms and it will be all right.' Our interpreter, however, explained as we started to go through our door, that weren't in that hotel any longer, but had been moved to another hotel. Again, what a blow! Without warning. We wondered what the new hotel would be like. And with our descent into the town, our hearts sank further. Finally, when we could descend no more, the taxi took off into a part of the city we had not seen before. No Europeans here. The streets got narrower and narrower until we turned into a side street that could barely accommodate the tiny Japanese taxi into which we were squeezed. Clearly, this was a hotel of another class. I found that, by then, I was getting a little paranoid--which is easy enough to do in a foreign land--and said to myself, 'They must think we are very low status people, indeed, to treat us this way.' As it turned out, the neighborhood, in fact the whole district, showed us an entirely different side of life from what we had seen before--much more interesting and authentic. True, we did have some communication problems because no one was used to dealing with foreigners. But few of them were serious."

Once again Hall understood that what was causing him difficulty was not only the physical inconvenience of being moved, but his surprise and concern over what it meant that he had been moved. Any new space, he realized, was not simply a physical location, but a cultural environment with embedded norms and values. Ultimately, he learned that being moved did not have the same significance that being moved might have in this country. Hotel space in the two countries looked the same, but it was governed by different conventions and values. Indeed, far from according him a low status, he learned that the hotel managers who moved him were treating him quite respectfully. He writes, "The fact that I was moved was tangible evidence that I was treated as a family member. A relationship in which one can afford to be relaxed and informal and not stand on ceremony."

I think one lesson that Hall's experience suggests, a lesson that I think we should know, is that we can't simply move what is familiar to us to a new environment and expect it to operate in the same way somewhere else. This is, I think, particularly true of the law, which is a very complex phenomenon indeed. The law serves various purposes. Not simply the dispute resolution function which I'll outline in a minute, but many other purposes such as creating a stable environment, a predictable environment, an environment in which there are standards so that you might know what is permitted tomorrow and what might not be permitted.

Let me focus a bit on the dispute resolution side of the law. I think one thing that is clear is that even in the physical world, the legal system is not our primary means for settling disputes. The law gets a lot of publicity. Some of you may wonder about that statement and others of you may think it is obvious. Even conflict resolution professionals make distinctions among words like "problems," "grievances," "complaints," "disputes," "cases." Lay people generally use those terms almost synonymously, but conflict resolution professionals think about "problems" as things we all have; "grievances" as something more focused; "claims" or "complaints" as something even more focused; "disputes" as something really focused; and a "case" as something that may end up in court. In other words, problems become grievances,

grievances become complaints, complaints become disputes, disputes become cases. Obviously, there are more problems than there are cases. You can think of all of these as forming a pyramid -- and you can see that lots of things are resolved in a variety of ways before things are handled legalistically.

My second point is that the legal system is really not very good at settling disputes, assuming that you look at it from the perspective of the parties involved in the dispute and that you are referring to litigation or some other adversary model of settling disputes. It is not simply that litigation is costly and time consuming. More importantly, it is adversarial--nasty things get said in the process. This means that relationships are unlikely to get better over the course of litigation. If you care about how the parties feel about each other afterwards--if that is the kind of dispute you are involved in--then the adversarial model makes very little sense. If the people are going to have to relate to each other after some kind of resolution is reached in this particular dispute, then you are going to want to look for some alternative means for settling problems. In this country, the court system has given a lot of attention to what is called alternative dispute resolution over the last fifteen years, not really for this reason but mainly for cost reasons. We have a variety of mechanisms that are used these days to settle disputes. One of the issues that comes to my mind when I see a particularly legalistic mode of dispute resolution being imposed in a news group or a MOO or some kind of virtual space is, why are we doing it that way? Why do we even expect that it is going to work this way? Why do we expect that any one particular process is going to work? We have all kinds of strategies for dealing with problems, disputes, complaints and the like. In general, we have a broad array of strategies at our disposal. But we don't yet have such a broad array of strategies at our disposal in cyberspace. I think there is a need for having a broad array of strategies available because cyberspace is not a harmonious place. I think that is fairly obvious. And cyberspace is going to become an increasingly disputatious space. There are a variety of reasons for that. But as most of you -- or all of you -- probably know, we are really at a very early stage of the development of this space. All of us probably know many people who don't have a clue as to some of the things we are talking about here, people who think that MOO is what cows say, not an online space. Then we do know other people who live with this stuff day by day, hour by hour, minute by minute. So I think that as the numbers increase, the kinds of interactions that occur online are going to increase.

I think the way Jean Camp outlined some of the spaces in cyberspace in her talk makes it clear that what we are familiar with in cyberspace and what has existed up until now are largely means for publishing and distributing information. We are very familiar with cyberspace as a publishing space and most of disputes arising out of cyberspace that have been getting a lot of media attention are those kinds of disputes that arise when your activity involves the distribution of information. So we are focused on First Amendment disputes, we are focused on obscenity and pornography, we are focused on copyright, and we are focused a little bit on privacy. These are information-related disputes. But what happens when the virtual--and the range of activities we engage in within cyberspace--broadens? What happens when we gamble in cyberspace, or bank in cyberspace, or shop in cyberspace, or, most clearly, spend a lot of money in cyberspace? That really hasn't yet happened, but it almost certainly will. I think we are going to have a lot of disputes. I think there are, however, some aspects to the environment that lend themselves to dispute

resolution. What is interesting to me about this space is that while it lends itself to conflict, it also lends itself to dispute resolution.

This is a space in which everything is information. We are able to find things out about people. We may be able, if we are skillful, to deal with on-line disputes in ways that they can't be dealt with in the real world, where there may be physical barriers to obtaining information. Where things may be locked away that in this environment are not locked away.

One interesting thing about dispute resolution, if you look at it as a broad array of strategies, is that there seems to be a gender-neutral quality to most of what are called alternative approaches. If one thinks about law and lawyers, one can at least argue that there is a patriarchal history there. Perhaps if one looks at the legal profession sociologically, one can say that although there has been considerable change over the last thirty years, it remains male-dominated profession. But if one looks at who is involved in alternative dispute resolution, one sees something different. It is hard to know exactly why that is so. But one of the things that I think is interesting about the movement of institutions into cyberspace is whether all of the baggage associated with these institutions in the physical world will get moved as well. You may find that there are high percentages of women mediators or women ombudspersons in the physical world because that is low-paying and low-status job. Or you may find that these are people for whom this type of approach is appealing. There is something about law that involves the application of authority and power and it will be interesting to see whether we move the same styles of dispute resolution to cyberspace or whether we develop new strategies which don't depend so much on the application of power and authority.

Since I have just five more minutes, I'd like to tell you about the first case handled by the Online OmbudsOffice. It is a case that was instructive to me because I didn't know where we were going to get cases from for this pilot project, and I wasn't even sure how we were going to handle cases. What I did was make sure we had volunteers with experience as ombudspeople in the physical world. One of the people who is participating in this project is Mary Rowe who is the ombudsperson here at MIT and who some of you may know. We paired the ombudspeople up with technical people because we felt that the solution might sometimes lie in the expertise and perspective of the ombudsperson, but other times, it might lie in the perspective and expertise of the person who is familiar with the network. The very first dispute we got was from a person who had been involved in a dispute arising out of a usenet news group. He had gotten into a not uncommon disagreement with somebody; I'll call the person who complained to us the complainant and the other person the respondent. The complainant had called somebody a name, and he had been called a name back. The complainant had found this all disagreeable, nothing unusual here, except the complainant had seen the respondent's phone number in his posting and the complainant called up the respondent and complained that this was unseemly. The respondent at that point hung up on him and found out who the complaint's employer was and sent a fax to the employer saying, "your employee is threatening me; he is harassing me; and he is misusing the computer resources that you are providing him because on the job he is using these resources when he should be working at whatever it is you do. You should fire him."

So this is a dispute that arose out of online activity, but it soon moved over into the real world. The complainant filed a complaint with us and the technical person assigned

to the case asked the online ombudsperson, "Well, would you like some more information about the respondent, and the complainant too? I can find out who these people are." And the ombudsperson, not extremely aware of the what the network provides, thought about that--because one strategy might be that you don't want to start out with a lot of information. You start by sending a note to the other party because the process depends upon both parties agreeing to talk. If the respondent is not willing to talk, then that is really the end of it. But the ombudsperson said, "Yes, find out something for me about these people." I think she thought that maybe they are crazy, maybe they are . . . well, she didn't know what to think. So the technical person did this, and looked up these people in AltaVista and DejaNews, where you can look up usenet postings. And he found out that the respondent has done this before. Actually, he has done this about 100 times before. He found out that the respondent is a well known character on many usenet groups. He found out that there exists such a thing as the "kook of the month" on usenet and that this particular respondent was elected kook of the month in January 1996 by the largest vote ever given to a kook of the month. Well, you can look him up if you want. He was the January 1996 Kook of the Month.

Before we knew this, we had always thought we would send respondents a message, and if they didn't want to participate, as will probably happen more often than not, that's the end of it. But it turns out that one of the things about this particular kook of the month is, that if you send him an e-mail message, you get back a message saying he is not there, and telling you that his machine is not working--it is some kind of pro forma message. But that just is not true. His machine is working, he is there, he sees your message, he takes your message and then he finds out who your employer is and then he sends your employer this fax saying that you are misusing computer resources and you should be fired. Once we learned this, there was no reason to send him another message and let him derive some pleasure from sending messages to the people who run our machines. But I suppose that the main point I want to make is that this information is valuable information to the complainant. It is information that provides a certain context for the problems the complainant is encountering. The person's employer may never have heard of usenet so it may make no difference to him that the kook of the month was involved in sending messages to ninety other employers around the United States or foreign countries saying similar things. Or maybe this will lead the employer to realize that despite the message, he shouldn't worry about his employee. Or maybe the employer will wonder why the employee is associating with this kook of the month and believe there is something strange about him. One of the other pieces of information we discovered through our searches was that our complainant does seem to be misusing computer resources. He seems to live on usenet news groups. But should the employer know this?

What this all suggests is that the network has information in it that can be exploited and obtained and that we have to figure out what this environment is all about. It is not simply the same environment we are familiar with. Time and space operate on different dimensions. It certainly may look familiar, and it may at times be very familiar, and we may at times want to do what Jean Camp suggests and analogize the rules that exist in familiar places into this new space. But then there are other situations where that may not work. The point is that this is a complicated environment and we may need to wait, think, and experiment with a variety of ways to bring in the familiar and try to adapt it to these new spaces.

Bodies, Rest & Motion: Law and Identity in LambdaMOO
Speaker: Jennifer L. Mnookin (MIT)

In Kafka's short story "The Penal Colony", transgressions against the law are punished by a machine that inscribes law onto a transgressor's body. Each time it is used, this machine is fitted with a pattern, a script consisting of the words of the law that the transgressor has violated. The sentence is carried out by the literal inscription of a sentence onto the flesh of the transgressor. When a servant is condemned for insolence to his higher-ups, needle by quivering needle the machine pokes onto his body the script "Honor thy superiors." A condemned man is not told in advance the words of the sentence that he will suffer; he reads it upon his body, "decipher[ing] it with his wounds."

In Kafka's gruesome tale, law operates upon the body; law is written upon the flesh with blood as ink. And, in this parable, this exquisite torture generates enlightenment, understanding. Kafka writes, "But how quiet [the condemned] man grows at just about the sixth hour [of the machine's operation]! Enlightenment comes to the most dull-witted. It begins around the eyes. From there it radiates. A moment that might tempt one to get under the [machine] oneself. Nothing more happens than that the man begins to understand the inscription, he purses his mouth as if he were listening." The pain of the sentence forces the condemned to listen to the sentence, and this leads to an understanding of the law and his own relation to this law. It is as if the man will "decipher with his wounds" not only the legal script, "Honor thy superiors," but a second script as well: "Know thyself." The machinery of law, then, in Kafka's parable, produces subjects who feel the force of law upon their bodies. Through this force, come to know themselves as subjects who stand before the law, as those subject to the law.

Kafka's story, then, suggests two related and intertwined sets of connections, one between law and violence upon the body; and the other between law and the creation of the juridical subject. Echoes of this first connection between law and violence can be found in many other places as well. Legal scholar Robert Cover, for example, emphasizes "Legal interpretation is either played out on the field of pain and death or it is something less (or more) than law." The point here is that law must be able to be enforced, and enforcement necessarily carries with it the possibility of the use of force.

Most of the time, to be sure, the legal system has no need to resort to physical force. But at least as a last resort the force of law must be a force that acts upon the body. As Michel Foucault puts it, "systems of punishment are . . .situated in a certain 'political economy' of the body: even if they do not make use of violent or bloody punishment . . . it is always the body that is at issue -- the body and its forces, their utility and their docility, their distribution and their submission." {Foucault 1979: 25}

Kafka's parable also gestures toward the connection between law and subjectivity, or law and identity. In the story, the punished man is supposed to understand his sentence, to know that it is just. The operation of law presumes a subject who can legitimately be subject to the law, an autonomous subject capable of making choices, a subject for whom acting or not acting is a matter of will. That is, law presupposes accountability, or perhaps produces it through jurisdiction over the body. Accountability in turn presupposes a solid, centered understanding of what it is to a be a person, what it means to be a self. In this understanding of selfhood, a self has both agency and coherence. That is, selves are supposed to be unified, singular, and bounded by the body. One body equals one self

equals one subject under the law. To see how fundamentally these presuppositions undergird our modern conception of law, imagine today trying to put a farm animal on trial for murder, as was sometimes done in the middle ages. Similarly, our complex net of rules governing competency are based on the notion that only singular, accountable selves may properly be subject to the law. Some argue that this understanding of self and identity is natural, that sane, adult people simply are conscious, coherent, accountable subjects. Much psychoanalytic theory, by contrast, would suggest that people are never wholly conscious, coherent, or singular.

Still other theorists, such as Nietzsche or Foucault for example, would argue that it is the system of law itself -- with its emphasis on accountability for past actions or its mechanisms for regulation and control -- that has produced the unified, accountable, subject bounded by the body. By this view, the coherent, accountable subject grounds the legal system, legitimates it, but is at one and the same time constructed by it, and indeed is no more than its fictitious foundation. But regardless of whether this notion of a singular identity and accountable self is natural, fictional, or juridically produced, it certainly seems presumed by the legal system as we know it.

Theorists of cyberspace, however, have suggested that this new realm promises -- or threatens -- to rupture this set of relations between law, bodies, and identities. Insofar as cyberspace is viewed as disembodied, it raises questions about how law can be enforced within it. What will ground the force of law in a non-corporeal realm, a world without bodies? Moreover, a number of recent commentaries about cyberspace have celebrated the possibilities cyberspace offers for multiple, fragmented identities and a decentered understanding of the self. If law as we know it presumes a centered, unified self, what happens when a virtual society attempts to impose accountability on its participants? We might well surmise that virtual spaces will require a dramatic rethinking of the nature of the legal subject, and that the relations among the body, identity and law simply cannot hold in the distributed, disembodied strata of cyberspace.

To explore this set of questions, I turn now to LambdaMOO, a virtual community accessible to anyone with an internet. And looking at LambdaMOO reveals something that might surprise some theorists of cyberspace: rather than radically reconfiguring the relations between law, identity and the body, this virtual space seems to replicate them. Moreover, the inhabitants of this virtual space have created a community which emphasizes the accountability of its participants, even at the expense of multiplicity.

LambdaMOO is one of several hundred text-based virtual realities available via the internet. These virtual spaces are generally known as MUDs -- multi-user dungeons or multi-user dimensions. MUDS are real-time, interactive conferencing programs based on physical, spatial metaphors. Participants socialize with one another, explore the virtual universe, and expand it themselves by using an object-oriented programming language to build new objects and places for use within LambdaMOO. At any given time, hundreds of characters are logged on at once, talking, programming, flirting and fighting -- LambdaMOO is a virtual community. I'm going to presume that most of those in this audience are at least passingly familiar with MOOs, and MUDs, so I won't waste time going into any further descriptive detail. It is important to understand, however, that participants in the MOO are literally building their own universe room by room. At the same time, they are building their own social structure, as well as their own legal system. It also must be noted that within LambdaMOO, participants can create their own

identities. They choose a name, a description and a gender -- and there are several choices above and beyond the conventional male and female. It is up to each participant to decide who or what she wants to be. A Lambda identity and a real-world identity need not correspond.

At its outset, LambdaMOO was an oligarchy without any formal system for resolving controversies or establishing rules. In early 1993, Pavel Curtis, a researcher at Xerox Parc who founded LambdaMOO, wrote a memo to the MOO community telling them that the social structure was about to be transformed. In what Curtis hoped would be "the last socio-technical decision imposed on LambdaMOO by wizardly fiat," the oligarchs instituted a petition system, a process through which the players in LambdaMOO could enact legislation for themselves.

This petitions process has brought about a flourishing, though contentious, fledgling democracy. And using this petitions process, LambdaMOO denizens have established a system of dispute resolution. This system of binding arbitration is staffed by volunteers, characters who have been members of the community for at least four months. Every member of LambdaMOO is bound by this system. Any player can initiate a dispute against any other individual player, although the player calling for the dispute must have experienced an actual injury, interpreted broadly. Arbitrators hear both sides, collect information and present their decisions to the community. Decisions are reviewed by the other arbitrators and if more arbitrators vote against the decision than uphold it, it is overturned and the process begins again.

Arbitrators have a broad array of remedies. They may according to the rules governing arbitrators, "call for almost any action within the MOO." They may take away any of the players' possessions or reduce their powers. They may ban either party from the MOO for a period of time, or even order the most extreme of punishments: "toading," LambdaMOO's name for the virtual death penalty. Indeed, there are only two significant limits on the power of arbitrators: (1) they may only take action that affects the parties to the dispute. They cannot propose a punishment that would infringe the rights of other players, or enact a new law as the result of the arbitration; and (2) their proposed actions must take place within LambdaMOO itself and cannot require any real-life activity Two of the most significant areas of contention and debate within LambdaMOO are: (1) the nature of property rights within the MOO; and (2) the tension between free speech and protection from unwanted speech.

Although the arbitrators' powers are broad, the Lambda legal system has no access to the body; law cannot be enforced through an implicit or explicit threat of corporeal harm or imprisonment. After all, there are no bodies within LambdaMOO; it is a world of words, a society of text. A LambdaMOO character, might, of course, suffer LambdaMOO's virtual equivalent of the death penalty -- but the embodied human being who plays that character will obviously not suffer any physical harm as a result. In his history of sexuality, Foucault wrote, "The law cannot help but be armed, and its arm, par excellence, is death . . . the law always refers to the sword." {Foucault 1978: 144} If we accept Foucault's claim that legal enforcement requires the threat of force, the threat of harm to one's body, to what extent does law in LambdaMOO face problems of enforcement?

The short answer is that most of the time it does not. For most members of the Lambda community, the available forms of punishment are quite sufficient. If a player

has invested significant social capital in her persona, whatever punishment is imposed on the persona will be felt by the typist as punishment. And the ultimate Lambda punishment of toading would be understood by an involved, invested player as exile: the community's statement that she was not welcome within it. In a sense, Lambdalaw's inability to reach the body, to enforce itself by force, is unnecessary because these participants themselves have made the connection between persona and person. By taking LambdaMOO and their persona seriously, they make Lambdalaw into a serious regulatory mechanism. These participants in LambdaMOO, are, in the Foucauldian sense, disciplined members of the community.

Of course, the problem is that it is not these invested members of the community who generally flout the norms of the community. And the difficult aspect of enforcement in LambdaMOO is the design of a meaningful punishment for players who are not invested in LambdaMOO, players who may even be virtual sociopaths. It is in these cases that the inability of LambdaLaw to reach the corporeal body becomes a significant limit. A reprimand won't matter to someone who doesn't care about the community doing the reprimanding. And the problem with exile and annihilation is that it is only the character, not the player, who is banished or killed. If a character is toaded, no one from her email address will be allowed to register a new character with the system. But people can change their email addresses; indeed many people have multiple email addresses at multiple sites The point is that if you can only punish the character and not the typist, the persona and not the person, the punishment may be doubly ineffective: it may fail to deter unwanted behavior, and it may also fail to eliminate the problem-person -- and hence the problem -- from the community. In a too-literal version of the return of the repressed, the virtual delinquent may repeatedly take on a new persona and engage in the same old behavior. The difficulty here, is: How can the legal system hold an anonymous persona accountable for her actions? The persona can be punished, but a persona that does not take the community seriously may be like a cloud: solid-seeming, but impossible to grab hold of. Without recourse to the body, to the person typing words upon a keyboard, how can LambdaLaw be enforceable and social order maintained?

This difficulty is not merely a theoretical abstraction. For example, in a dispute involving frequent and ongoing verbal harassment of numerous characters, it became clear that the perpetrator had already been punished for similar behavior several times before. This player continuously insulted numerous players in public spaces, and "moved" their characters against their will to unpleasant places within the MOO. As a result of a dispute brought against this player, an arbitrator called for the player's temporary banishment -- this is referred to as "newting" in LambdaMOO -- for a period of 120 days. Moreover, the site from which the harasser logged on was locked -- that is, no one at all was allowed to connect from that location.

Nonetheless, soon thereafter, and well before the 120 day period was up, a new dispute was brought against a different player, one engaging in very similar behavior. This time, the player was toaded -- banished from the MOO for once and for all. But before much time had passed, a dispute was initiated against yet another player for activities that bore a suspiciously strong resemblance to those of the newted persona and those of the toaded one. In the course of this third arbitration, the harasser indeed confessed to controlling all three of the persona.

Escaping punishment in this manner is clearly against the law in LambdaMOO. When a character is punished, the rules governing arbitration in LambdaMOO explicitly state that the punishment is supposed to apply to all players controlled by the typist. But how could a player who violated this rule be punished? Whatever was done to the persona du jour would make little difference if the player could simply create a new character and repeat her actions. The arbitrator in this third case struggled with this problem, and finally decided that the only way punishment could be effective was by linking the persona to the person, albeit tenuously. The arbitrator's proposed punishment was to reveal the perpetrator's site information, all of the locations from which she had connected to the MOO. The arbitrator did not intend to reveal the perpetrator's actual email address, but suggested that yet another repeat performance might warrant doing so. The arbitrator explained,

Previous @newting and @toading has not gotten through to this person. . . . It is obviously very easy for @newted and @toaded players to acquire more characters and continue their abusive behavior. Something more needs to be done to make the record absolutely clear that this kind of behavior does not belong at LambdaMOO. It victimizes new people and guests. It destroys the atmosphere for everyone who isn't willing to deafen themselves. . . . Enough is enough.

The arbitrator proposed to make the character accountable for her actions by revealing information pertaining to the person controlling the LambdaMOO character. While not entailing the use of actual force upon the physical body, this proposed punishment was an effort to link virtual law to real bodies. It tried to deal with the problem of enforcement by refusing any claim of a radical separation between persona and person. This, is of course, the stance taken by those MOOs -- such as MediaMOO -- that require participants to reveal their real-life identities to fellow MOO-ers as a condition of participation. But on LambdaMOO, the proposal to reveal site information was greeted with a good deal of hostility. As one commentator put it,

Real life and Moo should not be intertwined. Just as the Moo can have no jurisdiction over RL events, neither should it influence one's life outside of the Moo. If this portion of the proposal is implemented, a severe betrayal of trust shall have been perpetrated, and . . . many of us . . . shall consider the potential risk of remaining in this community to be too high . . . . Privacy was promised, and should be respected.

In the end, the arbitrators voted to overturn the proposal, and a new punishment was crafted that did not reveal any real-life information about the harrasser.

This case illustrates the difficulty of enforcing Lambda law against those who are not invested enough in the community to care about their character's reputation. This enforcement problem has a double aspect. On the one hand, it illustrates the difficulty of using law as a deterrence when the range of punitive measures are not viewed by law-breakers as sufficiently grave. Reputational punishments will not deter someone who cares little for her reputation. This difficulty is, of course, present outside of LambdaMOO as well -- we can see it in suicide bombers and traffic violators alike. The second aspect of the enforcement problem in LambdaMOO has to do with the inability of Lambda law to punish the body, or even to reach the physical person in any significant way. Outside of cyberspace, the law may invariably, as a last resort, take custody of ones' body. Robert Cover has written, "Legal interpretation is a practical activity designed to generate credible threats and actual deeds of violence in an effective way." In Cover's

view, law's violence and law's efficacy are closely tied together. And in LambdaMOO, we can see how law's inability to use force against the body limits its effectiveness. It is not simply a matter of inadequate deterrence --in the harassment case detailed previously and in other cases like it, Lambdalaw was wholly unable to stop the perpetrator. The harasser could be reborn time and time again, and by changing persona like a shapeshifter, escape laws' sentences. This particular case occurred about 18 months ago, and was far from unique -- but it illustrates the more general problem of constructing accountability within virtual spaces. Accountability and multiplicity seem to be deeply at odds.

Recent commentators on cyberspace have repeatedly emphasized the ways in which virtual spaces allow participants to play with multiple identities and refracted selves. For example, in the recent books published by Allucquere Rosanne Stone and Sherry Turkle, both authors focus on how new information and communications technologies are transforming our understandings of what it means to be human. Both authors see virtual spaces as places that denaturalize our notion of identity and challenge the idea of a 'root' identity, a solid core at the center of a self. In Stone's words, "the nets are spaces of transformation, identity factories in which bodies are meaning machines." In Turkle's words, "The Internet has become a significant social laboratory for experimenting with the constructions and reconstructions of self that characterize postmodern life," allowing people to "cycle through" many selves and multiple identities.

MUDs and MOOs, places like LambdaMOO, are for both authors key locations for these experiments in multiple and fragmented identities. When Turkle describes the nature of identity within MUDS, she writes "MUDS imply difference, multiplicity, heterogeneity and fragmentation." Stone writes, "The cyborg, the multiple personality . . . Gibson's cyberspace cowboy all suggest a radical rewriting in the technosocial space . . . of the bounded individual as the standard social unit and validated social actant." Both Stone and Turkle are drawn to multiple personality disorder as a metaphor for thinking about multiple identities in cyberspace, and as a vivid challenge to the traditional equation of "one body, one self." And though neither author is naively utopian about the possibilities inherent in cyberspace, both celebrate the emergence of virtual spaces and societies as sites within which identities can be rewritten in a more fluid ink.

This multiplicity and fragmentation, this possibility of cycling through multiple selves, however, is precisely what makes it difficult to hold characters accountable for their actions within LambdaMOO. As we saw in the case above, if one character was punished, she could simply decide to become somebody else, somebody new. Like a fugitive who puts on a new identity in an effort to flee from justice, the character could simply sign up for a new character and begin with a clean slate. In the real world, it is in part the unerasable traces of our body -- our physical description, our fingerprints, our blood, our dna -- that makes evading accountability so difficult. In the real world, the construction of these identifiers has served to make complete transmutation of identity impossible -- one's body and dna will give one away. In LambdaMOO, there are no easy methods for establishing whether multiple persona "belong" to the same person. If someone evades punishment by recreating herself with a new character and a new description registered to a new email address, there are no corporeal traces to show that this new character belongs to the same body as the punished one.

Now, as some of you will have noticed, requiring players to register an email address in order to receive a character is, itself, an attempt to connect the persona and the person, to link the MOO character to the embodied person whose creation it is. It is an imperfect mechanism, to be sure, as anyone with multiple email addresses can register multiple characters, each to a different address. But the residents of LambdaMOO have developed this registration requirement, as well as a number of other measures, in order to, increase the accountability of MOO characters for their actions within the MOO. However, these same mechanisms have another consequence as well: they make identity within LambdaMOO less fragmented, less multiple, and less diffuse. Indeed, these new mechanisms, as well, perhaps, as the very concept of Lambdalaw, tend to replicate and perpetuate a modernist conception of identity and subjectivity within the virtual environs. In the interest of securing the accountability of participants for their actions within the MOO, the residents of LambdaMOO have taken a number of institutional steps that clearly limit multiplicity. It would be fair to say that if multiplicity and accountability are incompatible, the participants in this particular corner of the virtual universe, anyway, have decided that accountability trumps.

Very briefly, I will sketch out what some of these accountability-increasing mechanisms have been, and how one of their consequences has been to reify a modernist conception of identity. First and perhaps foremost, a rule has been established that limits participants' ability to create multiple characters. Though it may be difficult to ferret out, secretly creating multiple characters is forbidden as "an administrative abuse of the system." Moreover, the creation of secondary characters is officially discouraged; as a matter of Lambda policy "it is recommended that there be only one LambdaMOO character per person on LambdaMOO, and one person per LambdaMOO character." A player may create a secondary character registered to the same email address as her primary character, but this secondary character's rights and powers are sharply curtailed. This secondary character, for example, is not allowed to vote, nor to receive database quota independently of the primary character. Moreover, any punishment received by the primary character through the dispute resolution system will be applied to the secondary characters as well.

The rationale for punishing all of a player's characters if any one is punished is, in the words of the arbitration help file, "Disputes are between typists, not between characters." This claim is tantamount to the denial of the multiplicity of identity. It means that when there is a dispute in LambdaMOO, it is understood to be a dispute between the two embodied human beings rather than a dispute between their respective persona. Once this is assumed, it follows directly that it should be the typist who is punished, not merely the character. But if one took multiplicity of identity seriously, it would not be nearly so obvious that "disputes are between typists" rather than characters. It is not difficult to imagine the virtual equivalent of Jekyl and Hyde -- two persona belonging to the same person, only one of which engaged in contentious behavior. As a logical matter, therefore, it is not at all obvious why all of the persona should incur the punishment received by one. But as a practical matter, were punishment not distributed among all of one's persona, a person could easily use a second persona to elide punishment. Hence the rule within LambdaMOO -- a rule that increases accountability at the expense of multiplicity.

Another set of ballots passed by the LambdaMOO population that have the effect of increasing the accountability of participants consists of population-control measures designed to prevent the total LambdaMOO population from expanding its size. One recently-passed measure legally mandates a zero-population growth rate. The explicit reasons for this measure are to prevent the size of the LambdaMOO database from increasing too rapidly, and to reduce the lag time, the irritating processing delay experienced by participants. What this means, in practice, is that new characters can be created only at the speed that old characters are reaped and eliminated. But even though the purpose of this measure was not to increase accountability, it has that effect by raising the cost of entry into LambdaMOO. No longer can one ask for a new character and receive it immediately; in fact, the wait list is currently eight weeks long. Therefore, if a character is toaded or newted, she cannot simply acquire a new character, no matter how many email addresses or sites she has access to, she'll have to wait 8 long weeks for a character. She can, granted, log on as a guest at any time, but, as a result of yet another measure designed to increase accountability, guests can be kicked off by experienced players if they are misbehaving.

As a whole, these measures do make the Lambda populace increasingly accountable for their actions. Email addresses are required to register. A long waiting list means that Lambda residency cannot be immediately re-attained once lost. Disruptive guests can be summarily booted off the system by experienced player, and multiple persona are both discouraged and strictly limited. More generally, the dispute resolution process explicitly views disputes as occurring between typists rather than characters.

While all of these measures help to make Lambdalaw enforceable, they also reflect a conception of identity as singular and whole. Lambdalaw explicitly targets the person, not the persona, as if a person with multiple MOO persona is not distributed or fragmented, but simply using a set of alibis Indeed, a ballot enacted into law within LambdaMOO states explicitly "No character may in any way exploit the use of multiple characters to beat the system." But increasing accountability has restricted the possibilities for thriving multiple persona and distributed, fragmented on-line selves.

Granted, the possibilities for multiplicity have not entirely disappeared. People can create characters on multiple MOOs, and thus distribute themselves among many virtual spaces rather than within one. Moreover, even within LambdaMOO, people can rewrite their descriptions, rename their characters, and even gender-swap. But each character is assigned a database number, and no matter how one's on-line presentation changes, this number remains both fixed and visible. Striving for accountability, then, has diminished the possibilities for multiplicity, but not dissolved them altogether.

What, in the end, can this brief inquiry into identity and accountability in LambdaLaw tell us? First, it is interesting in itself that a formal legal system and mechanisms for dispute resolution have emerged at all within this virtual space. Indeed, the emergence of Lambdalaw challenges any understanding of cyberspace or virtual communities as a lawless frontier. Moreover, this inquiry into LambdaMOO suggests that cyberspace is neither ontologically nor inevitably a space in which identity becomes diffuse, distributed and fragmented. Rather, this virtual space replicates the modernist conception of identity that undergirds the legal system in the real world. In their quest to ensure participants' accountability, their attempts to create enforceable law in a world without bodies, participants in LambdaMOO have reproduced a conception of agency that insists, at least

for the purposes of law-enforcement, that identity is coherent rather than fragmented, bounded rather than multiple. In this virtual space, the residents of LambdaMOO have reinscribed both law and identity onto the physical body. We might say that LambdaMOO reverses the relations we saw at the outset of this paper in Kafka's short story. In that story, identity was produced by the operation of law upon the body. In LambdaMOO, law is produced by locating identity within the body.

It is possible that law and the modern legal subject are necessarily bounded together. That is, it is possible that accountability simply necessitates a conception of identity as coherent and of agency as located within the bounded body. This would certainly be a plausible conclusion to draw from the replication of these traditional relations within a virtual community. But an equally plausible conclusion, in my view, would emphasize that the reinscriptions within LambdaMOO of the relations between accountability and identity, may themselves be contingent. It is just possible that these reinscriptions are due, not to the inevitability of grounding accountability in embodied identity, but to a failure of the collective imagination. Perhaps the participants in LambdaMOO simply haven't yet thought their way to an alternative conception. In this case, perhaps virtual spaces can be laboratories for alternative conceptions of accountability. Perhaps someday, in LambdaMOO or someplace like it, the relations among the body, identity, and legal accountability will be not reinscribed but rewritten. Accountability and multiplicity may both be desirable -- and they may even be reconcilable -- but thus far neither the theorists of cyberspace nor its inhabitants have figured out how to have both at once.

Zoning Porn and People in Cyberspace
Speaker: Larry Lessig (University of Chicago Law School)

Before the revolution, the Czar in Russia had a system of internal passports and the people hated it. The passports marked the state from which you came and they determined where you could go and with whom you could associate. They were badges that granted you access or barred you from having access. They determined the places in Russia that Russians could come to know. The Bolsheviks promised to change all that. They promised to abolish the system of internal passports and, soon into their rise into power, they did exactly that. Russians were free to travel where they wished. Where they could travel was not determined by some document they were required to carry with them. No doubt other restrictions remained, but the abolishment of the passport had meaning for the Russians and the meaning was freedom. A decade and a half later, Stalin, faced with the prospect of starving peasants flooding the city looking for food, brought back the internal passport. Peasants were tied to their rural land--a restriction that remained through the 1870s--and the Russians, generally, were once again restricted in where they could go. And where they could go was determined by what was written on their card.

Cyberspace today is in the era of the Bolsheviks. What defines it is the same kind of freedom that the abolishment of the internal passport meant. It is today a place where people can cross without limit, where borders are not boundaries, where the essence of the architecture of cyberspace is open. Cyberspace is that place where zoning doesn't yet exist. The only place, save perhaps stretches of Greenland, where one can live without the constraints of zoning, without the limits of a system of internal passports. But, like all revolutions, this revolution too is changing. Cyberspace is changing. My sense is that in a time far less than a decade and a half, this flash of freedom that now defines cyberspace will pass as the flash of freedom in Bolshevik Russia did; that, in a very short period of time, cyberspace will become a place defined by the internal passport. It will become, that is, zoned in the sense that real space is now zoned.

My aim in the next few minutes is to describe what this notion of zoning means and make it a bit more compelling--this argument--that a zoned universe is the universe of cyberspace, or what cyberspace will become. I don't want to argue that zoning is necessarily a bad thing, I just think we should think more clearly about what sort of thing it is. More importantly, we should be clear about the choices that can be made about the architecture of cyberspace. There is no natural evolution here. Cyberspace is something we build. Who knows how much of the real world is socially constructed? But, one thing is certain, cyberspace is socially constructed.

I said that cyberspace is unzoned, but will be zoned quite soon. Zoning in the sense that I mean can be described either abstractly or by example. Let me start by examples and then make the point more generally. There is first zoning in the obvious sense. A factory cannot be built in a residential neighborhood. That because the neighborhood is zoned to exclude factories. A sex toy shop can't be located within Wellesley because Wellesley is zoned to exclude toy shops but not pet stores. These are examples of zoning in the most obvious sense, and the history of zoning in this most obvious sense in America is quite appalling. Before the 1950s, zoning in this sense was used intentionally to create racially segregated neighborhoods. It was a tool used by local governments to

construct neighborhoods segregated by wealth as well. Not that these maligned purposes necessarily go with zoning; they just have. Not that they would go with zoning in cyberspace; they just might.

But, the sense in which I mean zoning here is broader than this narrow sense. For there is also zoning when a black male feels that he cannot enter a white neighborhood. There is zoning when a person enters a restaurant without a tie and must put on a tie. Or when a woman walks past a construction site when the workers are on a lunch break. These zonings are zonings created through social construction rather than law. They are discriminations that turn upon various features of the individuals zoned. They define where she may go, or where he may go, comfortably. They reveal the contours of the space within which one can move freely. Again, I don't mean to suggest that all of this is bad, whether legal or social. Morality is a kind of zoning in this sense. If we shun the adulterer or confront a liar, these are efforts in enforcing zoning regulations--here moral zoning regulations. So long as we do not have problem with the underlying morality that these zonings constitute, there is nothing at all wrong with their enforcement. The point about zoning is not that barriers or borders are bad; the point about zoning is just to recognize them as barriers or borders and to justify the lines that they draw. Whether in the construct of law or the construct of social norms, our responsibility in any case is to understand how they function and to understand the social responsibility that goes with them functioning like that.

I said that cyberspace is a place that is now unzoned. Of course, it is not wholly unzoned. AOL, of course, requires a password. Some FTP sites don't allow anonymous users. But it is at least relatively unzoned. The Web allows me to cross into a world of systems without the slightest concern about who I am or about what beliefs or associations I have. Usenet is quite unconcerned about whether in fact I am a believer when I contribute to alt.christianity newsgroups. Massively powerful search engines are designed to allow me to cross into spaces I could never find on my own. A search engine does not look at how I am dressed before it recommends a restaurant; it doesn't check the color of my skin before it suggests a place I might visit. As it is just now, cyberspace is that one place where who I am really counts for very little. That one place where I am just a citizen or a comrade, if you will, treated with all of the respect or with none of the respect that this sort of citizenship allows. It is this feature of cyberspace as it is now that panics those who haven't been here. It panics them because deep down--frightening as this notion might be--I am afraid that we might all be German. The natural state of humanity may just be bovinity. We yearn for that peaceful and predictable and heavenly place where things are as they are supposed to be. And the Net is not that.

The panic, the panics, the panicked give us this: I'm on a panel in a few weeks about the Internet, sponsored by the ACLU, to discuss the First Amendment. The panel has some First Amendment scholars, it has some First Amendment lawyers, it has Christy Heffner-- I'm not sure of her relationship to the First Amendment. It also has a panel member who is described as "a mother of three who is concerned about the Internet." Now what is the world in which a mother of three who is concerned about the Internet is a place where First Amendment discussion can go on?

The fact is that the panicked have the votes and, more importantly, the interests of the panicked are also the interests of commerce. Commerce as well wants a predictable place. It wants a world it can understand and navigate and control. Risk and uncertainty

cost money. So the panicked and commercial have joined forces in this battle over what the space of cyberspace will look like. And they are quite quickly coming to prevail. They prevail because we all have this vision now of cyberspace as wild and unregulated even though many of us, of course, think it is not that. We have this sense of it as a place without boundaries and, however much some of us might love the idea of that kind of space, we yield to the claims of the sensible. "A mother of three who is concerned about the Internet" is our own Bolshevik worker and we yield to her demands.

Let me give three examples of this yielding: The first is the most famous and the most obvious example of zoning among the three. This is Bavaria's threat to CompuServe and others to prosecute CompuServe for its carrying of Usenet groups which are too explicitly sexual. Cyberactivists panicked at this threat because the first response of CompuServe was to remove the newsgroups from their service worldwide. The fear was that one nation was controlling speech for the world, and that the level of free speech would then be set by the most conservative jurisdictions in the most conservative nations. But, of course, CompuServe did not remove the Usenet groups permanently. It removed them temporarily while it rewrote its software to allow it to discriminate on the basis of national origin. When the new software was complete, the Usenet groups were installed, but now users carried a new internal passport. When they logged on to the system, if their passport said Germany, they got access to one set of material. If their passport said the United States, they got access to a different set of material. Compuserve had effectively zoned Usenet for their users. This zoning technology could be easily extended to other content-based discriminations. For example, when Singapore filed suit against CompuServe for carrying seditious newsgroups attacking the Singapore government, CompuServe could just as easily have excluded these groups as well from Singapore users. CompuServe is not unique in this ability. Indeed, it is a general feature of all the major online services today.

My second example of zoning is also quite familiar, although I think its nature has been obscured by the current battle that rages about its constitutionality. It is the Communications Decency Act of 1996--an unbelievably clumsy statute, the constitutionality of which is currently being challenged before a three-judge panel in Philadelphia. Most understand this to be a statute designed to eliminate "indecency" from the Net. The statute makes it a felony to publish indecent material in the Net or, alternatively, patently offensive material on the Net, to children, defined as eighteen-year-olds or under. Most of us shudder to think what this kind of regulation might present: what does "indecent" mean here? Are gay rights discussion groups indecent? Are rape crisis web pages indecent? However, I don't read the statute as being so much concerned with eliminating indecency on the Net. Indeed, I understand it to be about zoning.

One consideration that suggests that the Communications Decency Act is really about zoning is the amazing defenses that the statute permits. Suppose that one can be hanged for making indecent material available to minors. If one implements a screening device that is reasonably effective in preventing minors from gaining access to the indecent material, one has a defense against such prosecution. More importantly, if one, in good faith, attempts to implement such a device then one cannot be prosecuted for a violation under this statute, whether or not the device succeeds. What these two defenses mean is that the publisher of "indecent" material on the Net has an easy way out of liability.

Namely, if one wants to continue to publish such material, one need only implement a screening device; a zoning device; something to check the user's internal passport before allowing the user to enter. As long as one does this, one may continue to publish without violating the statute.

Whether this statute will be considered constitutional is a different question. It is my sense that if the court reads "indecently" extremely narrowly, to include only what the framers of the statute plainly intended, which was pornography, then the statute may be upheld. It may be upheld because what the statute does is simply recreate in cyberspace the world that we live in already in real space. In real space, social conventions and sometimes the law already zone minors from most indecent material; not perfectly, and not obsessively, but well enough. If this how the CDA is understood, then it is possible that it will face no special barrier. If so, the implementation of the CDA will, like CompuServe's response to Bavaria, further the zoning of the Net.

My third example is perhaps the least easily seen as an effort to zone the Net. It is the battle that is now brewing over the government's white paper on intellectual property. The problem is this: the main holders of copyright in America today--television and movie producers--are panicked about the ease with which their copyrights can be violated on the Net. Usenet, for example, has been described as the location where the single largest cache of copyright violations exists. What these rights holders want is a better system for protecting their rights. The law proposed in the white paper aims to do just this. It involves a number of changes to the existing copyright law that would have the effect of securing better legal protection on the Net for copyright holders. But the white paper proposes to do something more than just securing better legal protections. What the white paper also suggests is better legal support for technological protections of copyright interests on the Net. These systems of technological protection are devices that will make it impossible, or extremely difficult, to violate the rights of copyright holders. Systems of encryption, stenography, and network metering are all technologies that can make it extremely difficult to use copyrighted material except as the owner wants you to use it.

The significance of this is the effectiveness of these technologies. The protection of property interest is a function both of the law and of the technological constraints on invading a property interest. We have laws tailored to protect against theft of automobiles. We don't have laws tailored to protect against the theft of skyscrapers. Skyscrapers pretty much take care of themselves. So, too, will intellectual property on the Net quite soon take care of itself. Quite soon, we will be in a world where the protections for intellectual property on the Net will become, in a sense, not the laws protections, but privatized. Technologies will control access, not the law. To the extent that the law now guarantees certain access to copyrighted material, the owners not withstanding, this the law calls fair use. But the technologies of tomorrow will not guarantee that access. There is no fair use right that the homeless have to NBC studios, nor will there be a fair use right that the poor have to Time Warner's news database. This movement to a system of technological protection for cyberspace is a movement to a world where property is properly zoned in cyberspace. It is a movement to a world where your access to a place again depends on who you are and what you can pay. It is a movement to the world that we live in already all the time in real space. It is cyberspace mirroring real space.

I want to suggest that each of these examples are indicators of where cyberspace is moving. Each describes a movement to a zoned space, to a space where access depends

upon the passport. Imagine search engines, for example, that look at the file that Netscape keeps of the places that you have been--e.g. cookies.text--and then decide which pages to show you, depending on where you have been. The space then becomes a place that replicates the real world zoning, but with one critically important difference. However bad, however extensive, zoning in the real world may be, it is still quite imperfect: the technology of its regulation is crude. Sure, there are forces that might make it difficult for me to enter certain neighborhoods, but I can choose to ignore them. These are social forces and, though powerful and often quite efficient, they sometimes don't work. They are imperfect. They leave gaps open which allow individuals to undermine these zonings. There is room to struggle or argue or act against the structures that these zonings import. There is room to construct a different zoned space. Usually, we obey these zonings. But there will always be those who don't, in the real world. And it is they who secure the possibility of change. We depend upon these gaps in the real world. They are the stuff of social plasticity.

But cyberspace, once perfectly zoned, will not be like that. The technologies of regulation that will soon emerge in cyberspace are not imperfect in the same way. The technologies of regulation in cyberspace are software, and one does not argue with software. Hackers do, but there are not enough hackers in the world. The rest of us typically obey. When a web page denies us access because it surmises that our income isn't high enough to waste band width; or when our search engine tilts the news it selects for us on the basis of what our politics are; when, in short, the software instantiates its own form of zoning, we don't then choose whether to obey it or not. We have no choice. Cyberspace, perfectly zoned, will be a place of perfect technologies of "justice". It will be a place where zoning discriminates efficiently and effectively, where the only plasticity is the plasticity built into its design. Cyberspace will come to have technologies of regulation that Stalin could only dream of. It will achieve a kind of control that no system of regulation has ever before realized. This, I suggest, is the place cyberspace could become. This is the place it will become if we don't think about what cyberspace can become.

I want to suggest the relevance of these considerations to the focus of this conference. I think, in our revelry about the revolution, we are too quick to forget the nature of what we have learned about how this space functions for real people in the real world. For, if we have learned anything about the power of this space, we have learned the power that this space provides to those without power in the real world. "You don't understand what this space is," a friend of mine wrote. She is a mother of three who works at home, raising those three. "What this space means to me," she says, "you have to understand. Here is a place where my voice is not the voice of a mother, or a woman, or an attractive woman, or a married woman. Here is the only place I have ever known where I can speak and my words are heard as your words are heard all the time. You have always lived your life in a different world. Your words have always had authority given to them, not so much by what you say, but by who you are and the world around you. But here," she says, "I can take that authority if I take a name, a different name, a name like yours. I can escape the burden of the name I must carry in real space. Cyberspace is that place that frees me from who I am in the real world and you can't understand that power." If we have learned anything about this space it is what it gives those who are denied power in

other spaces--what it gives to the voice of women or the improperly dressed or the aged or the stutterer.

But, the power of cyberspace is more than the power of voice it can give, it is the experience it gives to those who could never have such experience in real space. To the shy, to the unattractive, to the repulsive, and to the married, this space gives the only opportunity for intimacy. It offers the first chance these people have, or the last chance they have, to speak passionately or erotically with another. This is a part of life that some of us are quick to assume that we all know and share. But it is a part of life that many, too many, never know. And this is what this space gives them. As it is, cyberspace is a location of this freedom, which comes from the power that individuals have to control who they will be when they go there. It is a freedom that comes from individual plasticity. It is also the world of the MOOs. And, in the world of the MOOs, it is the freedom that comes from social or collective plasticity. This is the real power of the space now. It is what defines it as a radically different place from what the real world is now.

By contrasting cyberspace just now with what it might become, I don't mean to suggest that the evolution that I have threatened is the evolution we must accept. We can't just look to determinism to free us from this responsibility. My point instead is that there is room to ask the question how the beauty of the space that we see now can be preserved. For there is not just one architecture that cyberspace could take on. There are many. What we must focus on is how the choices we are allowing about zoning may undercut the possibilities of plasticity that the space now allows. What this means, in practical terms, is that we need to identify what it is about this space that gives it its power now and focus on preserving that in the architecture that develops. If this gem [cyberspace] has an essence it is that it gives the individual absolute control over who he or she will be and what the world will know about him or her. This is what Ethan Katsh and Ann Branscomb call privacy. But I call it identity. What the cyberspace gives is a property right over identity. It gives individuals the power to control their identities. It is this power that makes the space so immensely valuable. We must understand how to preserve the control individuals have over their identities if cyberspace is to be preserved as it is right now.

It is not a power we possess in the real world. The Supreme Court notwithstanding, we don't have a right to speak anonymously in the real world. It is a federal crime to get a second social security number; without a social security number there is no way to get credit. No way to get credit means there is no way to get access to many of the places that people would want to speak if they wanted to speak anonymously. If we are to preserve what is special about this space we must understand the nature of the power of this privacy, or identity. We must understand it and protect it because, if we don't, this space will become a replication of the real world--with all of its discriminations and all of its barriers. It will become a replication, but worse. For in a terrifying Foucoultian way this space will regulate, or can regulate, with a panoptic power far greater than anything the real world has been able to achieve. It is a choice whether we allow that to happen and a choice that we have begun to make right now. Thank you.

Beyond the Bounds of Decency:
Children, Sex, Violence, and the Law
Speaker: Eben Moglen (Columbia University)

I want to begin with two jokes, one of which isn't even going to be funny anymore. Both of them are captions to cartoons, but the ideas that they contain are so familiar now, you will make up the cartoons. Caption number one says: "On the Internet nobody knows you are a dog." Caption number two says: "Honey, I forgot how to disable the v-chip." "I don't know, ask the kids." I'm interested in the historical sociology of information technologies and how they affect the law. In that sense, I have been here before. We invented printing once and we changed everything in unpredictable ways. I know we can't predict the future and so what Larry [Lessig in Zoning Porn and People in Cyberspace] has to say about imagining dystopic futures and utopic futures is right, but we are only imagining. I do want to call out what I think are the forces that are in play--in secular time, in decades, or centuries long time--about all this, which means I am not going to wind up, I'm afraid, with the sort of call to action--"it's happening now"--which I so much admire in Larry's remarks.

Communications technologies exist to eliminate boundaries or borders. When they are successful, that is their effect. From human spoken language at whatever distant moment in the past to the mass production of print and the distribution of information as an industrial commodity--or now the creation of something which provides almost synaptic links between human beings regardless of their displacements in space or time. The technical tendency to eliminate boundaries in successful communication technologies is, at this level of generality, always in tension with law because law creates boundaries. Both juridical boundaries around places and also the boundaries between the forbidden and the permitted, between the acceptable and the unacceptable, between legitimate profit and unacceptable extortion, and the like. Moreover, the process of legal decision making is the process of perceiving boundaries where they did not previously exist; drawing distinctions, we say; reconciling cases, we say--in that Common Law mind set which Ms. Camp was talking about this morning [see L. Jean Camps's Bedrooms, Bar Rooms, and Boardrooms in Cyberspace]. Zoning is a form of the legal assertion of boundaries and what Larry is saying is that law will successfully assert boundaries in cyberspace if we don't look out. The technology dissolves boundaries. If successful it will eliminate boundaries drawn by law of the past and subvert law of the future. I don't know how to predict the outcome of such social processes. Not in the small and not in the large. But, at any rate, I think it is helpful to figure out what boundaries are presently under pressure-- and the jokes are about that.

One enormously important boundary under pressure which we have not previously marked out today is the boundary between the young and the mature. And, in that sense, I fully understand why a mother of three concerned about the Internet belongs on a panel about the First Amendment [see Larry Lessig's Zoning Porn and People in Cyberspace]. She is concerned about the reassertion of generational control. The speed of the technological change and its associated social changes in this culture is accomplishing a very rare event in human social life. It is accomplishing an enormous transition of power

from adults to the young in a temporarily reversible sort of way. That is the point of caption number two in joke number two, but it is more than just that caption.

It is interesting, I think, that even when I appear to in the role of a lawyer worrying about problems rather different than the boundary of generational control, it meets me. I spent a lot of time in the last eighteen months worrying about a program called PGB and a character called Phil Zimmerman who made it. And that consisted of a lot of work spent trying to head off a criminal investigation that would have prosecuted Phil Zimmerman for making an encryption program self-described as "for the masses." I thought most of people interested in enforcing the export controls against Phil Zimmerman were going to be people worried about nuclear terrorism. It was remarkable to me how early in each conversation nuclear terrorism gave way to pedophilia, which I was repeatedly accused of supporting by providing legal assistance to the manufacturer of do-it-yourself strong encryption. The problem was that children would have secrets that they would share with bad adults or perhaps even with one another. The problem wasn't nuclear terrorism in most conversations. Not because nuclear terrorism is less important than pedophilia, even to the speakers, but because nuclear terrorism didn't raise panic--to adopt Larry's word which I entirely agree with--in the same way that pedophilia did. Nuclear terrorism is a thing that people deal with by repression, as everybody from Robert J. Lifton to Jonathan Schell have been pointing out for a long time. It is not so easy to deal with the problem: "it's ten o'clock, do you know where your children are?" by repression. And, in that sense, the movement of power in the culture from adults to children was far scarier and required a more complete and immediate social zoning response than the problem of national security.

Both sets of boundaries were being dissolved. I thought I was going to be involved in the legal defense of somebody whose crime was the exportation of illegal technology and whose act of export was giving that technology to a domestic citizen who posted it on the Net. Because, from the government's point of view, the "border" had gone. No known or identifiable foreigner had gotten any technology and no act attributable to my client had occurred which crossed a national border. But, from the government's point of view, the border had ceased to exist. That is, it had ceased to exist when it was convenient to the prosecutorial theory of the government.

The same can be said about a whole variety of legal problems happening wherever you call cyberspace. Geographic borders have dissolved. The CompuServe situation is, again, an awfully good example. The primary problem was border dissolution and the primary strategy, which Larry calls "zoning"--I had a little technical problem with that, but it makes sense--was the reassertion of boundaries in the legal system. Now, whether those boundaries are technologically maintainable is a subject which would require the prediction of future technology and I don't know how to do that either. The number of hackers was an important variable in Larry's assertions. I have two things to say: there are more hackers in my judgment than there are in his, and more of them are twelve-year-olds than are forty-two-year-olds. And the behavior of twelve-year-olds with respect to social boundaries is different than the behavior of forty-two-year-olds. That will be true, I suspect--dare I say--as long as boys are boys, meaning as long as we expect growing human beings to test the limits of their environment all the time. Indeed, we regard it as part of the growing up of all human beings of both genders to test the boundaries of their environment, to transgress them, to test the growing power of the adult human being to

modify those boundaries, without being subject to some of the constraints of shame and conventionality which are part of the psychological process that Larry refers to as zoning.

It seems to me that the question of the zoning of cyberspace is now a question about the stability of the boundary between child and adult in the digital world. Admittedly, as this transitional generation ages and has its own children, technologically adept adults will face technologically adept children and the problem of the inability of the digital homeless to know where their children are will ease to some extent. But I don't think that in that the current panic can be asserted to go away. What I think lies behind the Communications Decency Act, in cultural terms, is here to stay, at least for some long while. And it is about the relationship between technological power and social power. It is about maintaining a world in which utterly conventional, utterly assumed attitudes about who has and who does not have power are under enormous leverage by a technology which equalizes in that way. We are about to cross one of the great unseen civil liberties boundaries in this society, which is that children don't have rights of various kinds. And the technology is pushing those sets of decisions upon us. Once again, to the point of tediousness, let me disclaim any ability to predict the outcome.

The Communications Decency Act is interesting to me because it shows that the sexuality of the young is the primary source of panic. But the sexuality of the young is linked to the problem of violence which is also addressed as a problem primarily of the young. And the problem of the relationship between violence and sexuality panics the culture in a variety of ways at the moment. It will do so even more when full motion video games that are fully realistic in their way of depicting events on the hand-held screen become available, as they will in the next product cycle. And fourteen-year-old boys in this culture may very well want something to hold in their hand on the bus to the school in the morning that amounts to a do-it-yourself snuff movie. And there will be a lot of cultural tension about that. There will be, I think, an uproar that makes the current concern about whether your sixteen-year-old might get a hold of alt.sex.stories look like not very much at all. Again, I don't want to predict the outcome of that, or even suggest that I myself have particularly strong feelings about it. I can imagine various cultural outcomes. When I look at a photograph of a Japanese subway train in the morning I see an awful lot of people doing that [viewing material that depicts graphic, sexualized violence]. At least they are doing it in a comic book form. Maybe that means it is much less offensive.

Yet it seems to me, in some respects, to be a matter of learning that our cultural expectations in the space are subject to very great reinterpretation under the force of technology. I was attracted by Ethan Katsh's point this morning about hotel room expectations in Japan [see Ethan Katsh's Out of Context: Gender and Dispute Resolution in Cyberspace]. It was attractive though dissonant for me; it casts the problem of cultural expectations in terms of the space. I think the cultural expectations here are not so much about space, though we are using that metaphor--that impacted, dead metaphor--of "cyberspace" so much it is hard for us to imagine that it is anything but a space we are talking about. I don't think it is about space. I do think it is about identity.

Let me refer to one other little legal contretemps we had--it came up this morning. It has to do with Jake Baker. It has to do with that alt.sex.stories submission that involved the rape/murder of an identifiable individual. Let me remind you that, at the time that that story was posted, the fellow who wrote it got into trouble because an alumnus of his

university in Moscow happened--just happened--to be reading alt.sex.stories and saw the domain on the address and complained that he, as an alumnus, had, I suppose, a reputational stake in the school and they were allowing bad things to happen. Only after a criminal investigation had begun and the putative defendant had been interrogated, did the woman mentioned discover any of these events of which she had, until that point, been unaware.

For me, the Baker incident is about the technology's ability to dissolve one final boundary between fantasy and reality in the culture. What happened was that, for far from the last time, but for among the first, a community found itself faced with the technology's ability to reveal to us what most of cultural and social life is designed to repress. Which is the hidden inner thoughts of the person sitting next to us. So much of our social machinery is designed us to prevent us from encountering the inner yearnings and musings of the Other. The person across from us in the subway train, the person next to us in the movie theater, the fellow student six rows back and four seats over. But this technology begins to eliminate the boundaries of convention. Again, upwards in generational terms rather than downwards. Beginning with the young and not with the old. The culture becomes wider in the sense that it became wider with the interpretation of dreams. As the world of the West came into mediated, remote contact with the true, or at least more truly described, inner lives of the citizens with whom we deal. That also is a panicking event--literally and appropriately a panicking event. It is the event, the gaining of access to the mind of the Other, which most of social technology is intended to protect us against. Panic is an utterly comprehensible, almost physiological response.

I don't propose for any of these reasons to support the Communications Decency Act. I propose, indeed, to do my best to sink it as many other people propose to sink it. I think it should be clear, however, that this is not merely a political dispute between the anarchists and the centralists. I do not think it is about Stalinization. I do not think we are living in a Bolshevik spring soon to be concluded. I think those are comparatively small events. They were about legitimate political questions in the future of the Russian empire. This, for reasons that Jennifer [Mnookin in Bodies, Rest and Motion: Law and Identity in Virtual Spaces] was offering this morning and with which I do mean to associate myself, is about the question what succeeds the modern identity [see Jennifer Mnookin's Bodies, Rest and Motion: Law and Identity in Virtual Spaces].

What is that modern identity that was being talked about? The identification between person and self. That is a creation of the world of print. That is a creation of the novel; of the history in mass produced narrative form. It replaced the world in which there was one person/one soul instead of one person/one self. The opening of our understanding of human nature from the soul to the self is the work of the technology of print. The work of the technology of network communication is the work of transcending that idea of the self to replace it with something which has, as one would expect, no name in English at the present time. And I am not surprised that Jennifer couldn't say what it was. Indeed, we can't say what it is. Our language does not yet reflect what it is. Perhaps I ought to say out of the mouth of a child you will be told. Perhaps I ought to say that the repressive machinery that used to keep us from knowing what we called that aspect of human existence is now being temporarily and very inadequately replaced by zoning.

I understand what is being said by the technology of surveillance, about the technology of social control, about the possibility that this movement in the human

personality can be aborted by governmental force. I don't believe it myself anymore than I believe that the changes in human personality brought about by print could have been indefinitely delayed by the processes of censorship which every *ancien regime* government in Europe employed from the late fifteenth century until whichever year it was in which their censorship broke down. I do think that we should expect changes in technology to shorten the periods in all of this. It took some three hundred years for censorship to disappear from most of the European West after the invention of printing; the end of the attempt of government to underwrite a picture of the soul and the state. I do not know what the long term pattern of this is--I can't predict. The speed of technological change suggests a similar change in the speed with which the intellectual property system dies or the new personality forms begin to develop, but I have no idea. I think it is relevant to say that in watching the Communications Decency Act, whatever its fate may be, and the further results of social panic, whatever they may be, we are really experiencing the birth pains of a new idea of what it means to be human. That we have to experience them. That there is no way to short circuit them. No way to know where they will wind up. No reason to suppose that despotism is eternal. No reason to suppose that tyranny is more adequate because it is more technologically sophisticated. All of this is going to last out our time--this contest, this furor, this adversary debate. What really is happening here happens after we are gone and is as profound a thing as has happened to humanity since the beginning of time. Thank you very much.

And Then the Railroad Came:
Law, Pornography, and the Regulation of Cyberspace
Speaker: Howard Schweber (Cornell)

"...as profound a thing as has happened to humanity since the beginning of time." [from Eben Moglen's Beyond the Bounds of Decency: Children, Sex, Violence, and the Law] That is a tough line to follow. I also think it is quite wrong, or at least I don't yet see any signs sufficient to persuade me that is the phenomenon with which we are faced at the moment. What I do see is reiteration of a very familiar myth--a particularly American myth--the myth of the frontier. Eben referred to this as technology that equalizes. That unfailingly put me in mind of one the great equalizers--a Colt six-shooter. I think there is great parallel to be drawn here. I want to start by reading out loud a little of what I have written and then go from there to respond directly to what we have heard.

Founding myths are often extremely important aspects of a community's historical consciousness. In the American West, one of the persistent founding myths is the idea of the frontier society--rambunctious, exciting, and free--that is corrupted by the arrival of the railroad. The sight of the great iron beasts implicitly declares the arrival of large scale industrial business and commerce into the preserve of the hard riding entrepreneurial cowboy. Gouts of black smoke and huge gashes in the landscape mark the impossibility of preserving the pristine wilderness in the face of the commercial onslaught. Most important of all, the railroad brings a new kind of settler...bent on building stores and churches and white picket fences and all the other feminized, civilized, gentle constructs that look just like the world around them, that they want to import and obtrude onto an unwilling frontier. When this particular founding myth is presented in cinematic format, poignancy is invariably provided by the persistence of old time frontiersmen. Unable to abandon their ideals in the face of onrushing progress they are ultimately crushed beneath its merciless wheels. There are various archetypes for these brave heroic relics of the pure and bygone era, but none is so persistent as the outlaw. When the railroad comes, the law is never far behind. The arrival of the law is the death knell of frontier virtue. The parallels between this particular mythos and the history of cyberspace are too obvious to go into and in some cases are the result of quite self-conscious appropriations--as in the Electronics Frontiers Foundation, for instance. This only slightly strained parallel, however, provides a convenient introduction to the consideration of the likely future of a character of legal authority in cyberspace.

Last month AT&T announced that anyone in America who wishes to pay $19.95 a month will be permitted to get, for that money, unlimited Internet access. There is one fact that has been referred to repeatedly--to put it within my own, somewhat strange, metaphor--it is that the railroad has come. And it is simply, if nothing else, irrelevant for us to query whether the pure state of freedom--whether it be characterized as anarchy or liberation of identity--will persist. It cannot persist. When there are 100,000 or 1,000,000 or 5,000,000 or 15,000,000 new users in cyberspace, of one thing you can be absolutely assured: the character of the political and social institutions that have come to be familiar with us will be changed irrevocably.

Partly for that reason, I am not persuaded by the notion that there is a fundamental shift in human identity going on. What I think is happening, however, is that there is

coming to be a fundamental shift in the character of human community. Incidentally, I asked for a word to describe this new emerging transcendent identity. Donna Haraway suggested "cyborgs." That is not a bad word for the purpose. Haraway's essay is famous for a number of things. One of the points about which it has been criticized is that, it has been argued, she did not pay enough attention to those who were left behind by this revolution. Those consciousnesses were not transformed. Those with egos which have not become transcendent. What happens to them? Part of the answer, at least I think, is that the future of cyberspace is going to look a lot more like the real world and a lot less like experimental utopia we have come to see. To talk about that I want to start by introducing something a little more grounded, a little less abstract, than some of the things we have been talking about, which is what the law actually says at present. Because the law works mimetically. To borrow a phrase from my friend Richard Ross, "the authority of jurisprudence is the authority of memory." And there is little question that when the railroad comes, what will be built are white picket fences, churches, and stores--or the equivalent thereof. It behooves us to ask what that will look like.

In the first place, we should all understand that the law makes a sharp distinction between the treatment of what is called "obscenity" and what is called "indecency." I won't go into the long version of this story but, at present, the law is that a state can make it a crime for you to buy an obscene book in a bookstore. The Federal government has made it a crime for you to mail an obscene book from California to New York. It is a crime to do so if the book is considered obscene either in California or in New York or in any jurisdiction through which it passes on the way. That is the current state of the law in the real world. That is the law that is coming to cyberspace.

The law of indecency is a little more complicated. Adults are required to turn their heads, metaphorically and literally, in public. The state may not prevent a drive-in movie theater from showing images of nude people. The state may not make it a crime to wear a jacket that says, "fuck the draft." In the face of these kinds of assaults, adults are required to turn away and not pay attention. Children, as we have heard, are far more strenuously protected; it is a crime to provide indecent material to children. The CDA [Communications Decency Act] takes this one step further. We had a discussion this morning in legal authority that was, shall we say, unclear on this point. But it is at least arguable that the CDA is the very first attempt to make a law that applies all of these criminalizing statutes to non-commercial transactions. This is remarkably important. All the proceeding body of law grew up around the idea of regulating what could be sold. This is the first law that attempts to regulate the ability of willing adults to communicate material to one another just 'cause they want to.

Let me back up for a minute and give you just a taste of the history of this legal development because I think it is necessary to make the analogy fly. Up to the 1970s, the idea of laws against obscenity was the idea of laws that protected the home against invasion. The key cases involved materials that were mailed that were not wanted; that intruded on the home and disrupted the environment of that private space. That was the justification. When broadcast media came around, that analogy was extended. Broadcast media was an invasive technology. It could invade the home and, therefore, not only obscenity, but even indecency, could be regulated in the broadcast media.

In the 1970s and 1980s, this moved to new levels and laws began to be made and upheld by the Supreme Court that it was permissible to make it a crime for a willing adult

to purchase pornography from a willing seller. The reason was that there had been a very, very profound shift from the notion that what was protected was the physical space of the home to the idea that words can hurt people. This is an idea that, with exception of the first presentation this morning, we haven't heard a lot about. The law recognizes today that words can hurt people in many different ways. One of the most important ways in which words can hurt people is by restricting people's ability to participate in something that is important. And if it is important enough--if society has a sufficiently great stake in ensuring that there is equal participation in that sphere--then the government may make a law, says the Constitution as it is currently interpreted. The very first question that we have to ask about cyberspace is whether this is an environment in which the collective social stake is sufficiently profound that the government has an interest in protecting people against what Mari Matsuda called "words that wound." I submit to you that it is. I submit to you that, just as we did not permit private clubs to maintain gender and race barriers on the grounds that they were private--when business was conducted there. Just as we recognize under Title 7, that a harassing environment can make it difficult; can diminish the ability of a woman to participate in the economics sphere of activity. So, too, we are obliged to at least give credence to the argument that the governments may recognize that the nature of discourse in cyberspace may be exclusionary. There may be a sufficiently strong interest in maintaining equal access to cyberspace to want to do something about that. This brings me to a point that, I can assure you, is a point of division conceptually between the way people who make laws--legislators--think and the way people who live in cyberspace think. That is the notion that our lives in cyberspace are utterly unconnected to the rest of our lives. I want to read you a brief excerpt from John Barlow's Declaration of the Independence of Cyberspace--copies of which are on a table outside if anybody wants to see it.

> Governments of the Industrial World, you weary giants of flesh and steel, I come from Cyberspace, the new home of Mind. On behalf of the future, I ask you of the past to leave us alone. You are not welcome among us. You have no sovereignty where we gather. ... Governments derive their just powers from the consent of the governed. You have neither solicited nor received ours. We did not invite you. You do not know us, nor do you know our world. Cyberspace does not lie within your borders. Do not think that you can build it, as though it were a public construction project. You cannot. It is an act of nature and it grows itself through our collective actions.

There is one other line in the declaration that I want to quote at this time in which Barlow declares, "We have no bodies." One of the points that was made in the discussion of MediaMoo this morning is that at the other end of every computer terminal there is a real person who lives in a real community who *does* have a body, and who is susceptible of injury by virtue of the words that they are exposed to and the effects they may have on their life. And the effects of those words carry over into real physical communities. It is, therefore, unpersuasive and ultimately facetious to urge to local governments, "you have no interest here," because they will respond, rightly, that what you do affects us here. So it is simply irrelevant to try to argue that government has no place in cyberspace so long as cyberspace is to have a place in the social lives of the people who are governed.

Now to fit this into the context of obscenity, I have to go back to the law for a minute. Because one of the other things that happened in the 1970s was that there was move away

from absolute definition of what is obscenity to a community standard's definition of what is obscenity--language, by now, which we all recognize. One thing I think is absolutely true that Eben said, I think technology and communication as they advance invariably break down existing models of community boundaries. The printing press did; the railroads certainly did; the telephone did; the fax machine has; and cyberspace certainly has, as well. But this is not an argument that we need a brand new kind of law about obscenity for cyberspace. But rather that the technology of cyberspace points up the extraordinary inadequacy of the definition of obscenity that currently governs our laws. Even in the 1970s cases, the idea of a community standard was based on the community that consisted of the state of California. At present, that is approximately 24 million people--something over ten percent of the population of the country. The idea of a single standard for a population that large is, at the outset, silly. It gets much sillier, of course, when you start applying it to cyberspace, where there is no inherent limit on the geographical size or the population that might be encompassed by a community. I think that argument is right. I think the attempt to simply translate the community standards argument to cyberspace by using existing political and geographically defined communities is wrong headed. But that raises the question of what *does* constitute a meaningful community *or* ought we to jettison those standards altogether in talking about obscenity. I would like to propose that it is a mistake to think about cyberspace as a singular entity in this context. In the case of United States v. Thomas (the famous Amateur Action case) one of the arguments that was made is that the users of cyberspace constitute a community of our own that has its own community standard. The argument wasn't accepted, and I have to think it is an unwinable argument, not because it is utterly wrong, but because, again, it attempts that cutoff, that division that says what happens in cyberspace has no affect in the real world. Even if that was true once it certainly isn't true now that the settlers are streaming in from the small towns.

It does have some, I think, purchase however--the argument of a separate community standard--when we speak the real time interactive, virtual communities MOOs, MUDs, MUSHes, and MUSEs (those are all the acronyms with which I am familiar). There, clearly, is something of an alternative community being created. And clearly there have been attempts, as we heard this morning, to create standards for it. There is some strength to the argument that this is a community of its own. If that argument is to be taken seriously, though in the law, there will be a trade-off and a very profound trade-off. The borders of those communities will have to become a lot more closed. The claim of a community standard is a kind of privacy claim. When I am in my home, in a place where I have a right to be, no one should intrude offensive material on me. When I am in the workplace--a place where I have a right to be--no one should be able to force offensive material on me in a way that limits my participation. When I am in community--a place where I a have a right to be--no one should bring in things that offend our standards. It is an autonomy claim and a privacy claim. But to make that claim, the entity making it has to be discreet and definable. Where there are a million visitors a day to a MOO, which may easily be the case in a year or two, when a MUD has a population of 10,000, of whom 6,000 spend no more than 10 percent of their time in that environment, then the claim to constitute a community is highly compromised. I can see, however, a version of that claim being made sensible and even persuasive under the existing legal standard.

The second kind of environment I want to talk about are the variations of e-mail. I would include in this: e-mail, subscription lists, and bulletin boards. And, frankly, in the context of e-mail, it is not clear to me that we need a new legal standard at all. It is clear to me that the existing standard is paper thin. That the technology of bulletin boards, particularly in the Thomas case, demonstrates the paucity of that analysis. But, certainly, the fact that an e-mail message can be sent to a hundred people doesn't mean that there should be a greater privilege to spread libel or to harass someone or invade someone's privacy. In this context, it seems to me that existing law is really quite adequate. It may even be over-adequate. There is no reason not to rely on existing remedies for harassment, for intrusion, for invasion of privacy.

This now brings us to the question of what, then, is the fuss about the CDA and what does it do? The CDA, in the first place, is really not a statute about obscenity. It is a statute about indecency, as you have already heard. And it spreads its net very wide indeed, but with very well-defined defenses. It is a creation of a statute that, I think, is not wrong-headed, but is unbearably sloppy. It is sloppy for two reasons. In the first place, its definition of material that is proscribed incorporates elements of both obscene and indecent material. And remember, in the existing legal theory, those are completely separate categories. The CDA provides no basis whatsoever for knowing whether what one is doing is a crime or not in advance--which is a test for vagueness. A law is unconstitutional if you can't tell when you are violating it. In the second place, the statute, as it is written, is incomprehensible. It is almost literally the case that it is impossible to figure out, what conduct, in precise terms, is proscribed and punishable; what conduct is protected? The traditional view of the First Amendment is that you are allowed to walk right up to the border. The law ought not to have the effect of keeping you from doing something you have the right to do just because you are afraid of coming too close to crossing the line. That is the notion of the "chilling effect". This law clearly errs on that side. I think, in fact, that there is a very good chance that this law will be struck down. One has the impression reading the testimony in the third circuit at the present, that the US government is not trying very hard to win that case.

But that doesn't solve our problem, because our problem was the idea of freedom in cyberspace looks very much like the freedom for people who are strong to engage in the kind of discourse that may be intimidating or exclusionary or damaging to people who are less strong--however you want to idea that idea of strengths. In a conference that is devoted, in part, to the study of gender relations it ought not to come as news that many people have argued that this kind of inequality has genuine effects on the kind of society that it structures. Surely, as a parent--if not the mother of three--myself I am not wrong-headed to be alarmed at the notion of my five year old watching a homemade snuff film on the bus on the way to school. The two questions, then, that need to be resolved in some sensible way are: 1) what is the character of the speech that society has a sufficient, genuine interest in preventing the harm it causes to its justify regulation; and 2) if geography doesn't make sense [as a basis for defining a community], if, in fact, it never made sense, and virtual communities provide only a partial alternative basis for defining community standards, what is the solution?

And, now, to bring this address full circle, it seems to me that we do get back to the point of what communications technologies do. And Eben was exactly right. Telecommunications technologies break down physical boundaries that have previously

been used to define communities. I don't think that one can escape two propositions from the evolution of cyberspace. In the first place, if there is going to be a legal standard of something called obscenity, it is going to have to be a national standard. The idea that it can be a crime to send a message that is obscene if it passes through a relay station, a server located in a state in which that message, if it had been downloaded, would have been considered obscene, gets to the point of being simply silly. Then it is clearly a standard that cannot stand up in the face of the technological assault. I would argue that it can't reasonably stand up in the face of air mail, but so far it has.

The national standard has to be justified not in terms of how much freedom we are allowing, but in terms of the harm we are attempting to remedy and how great society's interest is in stopping it. And it will have to be characterized, it seems to me, in terms of an analysis of equal protection and equal participation. For a start, I would like to suggest a formulation as a way of thinking that was proposed by John Hart Ely in a different context where he suggested that the key distinguishing character between good and bad speech is speech which encourages participation and speech which discourages participation. Freedom to participate and the sense of being welcome to participate is the utopian aspect of cyberspace that *can* in fact survive after the railroad has come. Thank you.

Feminist Cybermaterialism: Gender and the Body in Cyberspace
Speaker: Jeffrey Fisher (Ohio Wesleyan University)

There are some interesting things in what Julian was just saying that relate directly to some of the things that I would like to say [see Julian Dibbell's My Dinner with Catherine MacKinnon], although I am not sure, at this point, to what extent we are going to come down together. But I think the notion of the radical ambiguity of cyberspace is, in many ways, precisely what I would like to try to get at in my talk.

It seems to me, especially listening yesterday, that there was a specter haunting this conference, and that was the specter Michel Foucault. And, not unlike Catherine MacKinnon's specter haunting Julian, we have something to deal with here as well, which is showing up in a lot of the theorization about bodies and cyberspace. Now, in what ways does Michel Foucault show up in this process? The first thing I always think of with Michel Foucault (and this comes up in a little bit of what Jennifer [Mnookin in Bodies Rest and Motion: Law and Identity in Virtual Spaces] was saying and also in what Julian was saying), is that power is everywhere and everywhere contested. We have seen that certainly to be true of cyberspace and of the relationship between cyberspace and the real world, whatever that is. But I also found it interesting that yesterday, when we were talking about the power of words and the power of language to actually hurt people, we really could have addressed Michel Foucault. And it was then that his ghost was the most silent and we did not, in fact, hear his chains rattling in the background.

It is that sort of relationship that I would like to try to talk about today--language and power and how this shows up in ideology. And that, for Foucault, this produces his understanding of hegemony--the way that concepts regulate our existence. And that, ultimately, this is productive in terms of cyberspace. That is, it is productive of various mythologies of cyberspace which I think we need to examine more carefully. So we have this relationship between hegemony and virtual ideologies. Arthur Kroker has talked about a sort of ideology of the virtual class, which then revivifies Marx for us, which is a specter haunting Foucault who he seems to have forgotten. At that point, then, we have a kind of Marxist materialist mythology of a dialectic. It is that dialectic between the body and cyberspace, between body and virtuality, or materiality and virtuality, that I am going to talk about--feminist mythologies and feminist ideologies of that relationship.

The first person I would like to consider is Anne Balsamo who, in fact, has just published a collection of her essays; Balsamo tries to give us a feminist mythology of cyberspace. She wants to talk about a feminist mythology of cyberspace in contrast, perhaps, to the one that Howard [Schweber in And Then the Railroad Came] was talking about yesterday--the frontier mythology, which we see as a very masculine space. In the process, she genders cyberspace. She does this in an article called, "Feminism for the Incurably Informed," in which she considers Pat Cadigan's novel *Sinners*. In Balsamo's analysis of the novel she talks about two male characters and two female characters. Her analysis of these characters is that the male characters tend to use cyberspace as a way to escape the loneliness of their bodies. The female characters use cyberspace as a way to connect with and communicate with other bodies. Balsamo says in her analysis of *Sinners*:

> Through its post-feminist portrayal of empowered female bodies who play off
> and against repressed or hysterical male bodies, *Sinners* offers an alternative

vision of technological embodiment that is consistent with a gendered history of technology where technology isn't the means of escape from or transcendence of the body, which is gendered male or masculine, but rather the means of communication and connection with other bodies, which is gendered feminine.

First, we have Balsamo's myth--a gendered analysis of cyberspace, which is gendered specifically in relation to the body and not to other sorts of analyses. Second, we have a negative gendering which is escape or transcendence, which is gendered masculine. And we have a positive gendering, which is connection and communication, which is a feminine gendering.

I would also like to talk about another example, which would work in Balsamo's favor in this analysis, which is from a novel called *Trouble and Her Friends* by Melissa Scott. Melissa Scott's novel is very similar in many respects to Gibson's analysis of cyberspace, with a total immersion into cyberspace. In Scott's novel, there is a technology called the brain worm which you hook into your brain which then produces a total body experience in cyberspace--tactile experience in cyberspace. This is something that, from the point of view of the main character in the novel, Trouble, is a feminine and feminist way of dealing with cyberspace. She says, "Too many men assumed that the Nets were exclusively their province and were startled and angry to find out that it wasn't. They were the same people who feared the brain worm. Feared the intensity of its sensations. Data translated not as words and images alone, but as the full range of feeling, the entire response of the body."

So once again, we have the feminist analysis of cyberspace which very clearly takes the point of view that the male in cyberspace is attempting to transcend the body whereas the female or the feminine is attempting to use the technology to bring the body into cyberspace and cyberspace to the body.

It is interesting to note, perhaps, that Trouble is not only a woman but also a lesbian, and her cadre consists of herself, her lover, and two gay males, as well as others. So there seems to be a question of heterosexuality, as well, that is involved with this. So I see these--the picture of Melissa Scott and the picture of Balsamo--as not the same, but complimentary rather than contradictory. The men cannot escape the bodies within the recapitulation of their bodies that Anne Balsamo would have us believe that Pat Cadigan is talking about and that Melissa Scott appears to be talking about. There is also the issue that Scott raises with the brain worm of the impenetrability of the body, which has become an issue now in postmodernist gender studies with the masculine fantasy of the impenetrability of the body; the brain worm seems to subvert or undermine that.

So we have, then, Anne Balsamo's own feminist cyberpunk myth that men fear and loathe their bodies. Technology, then, is seen as a means of escape from those bodies which they fear and loathe. Women, on the other hand, love their bodies--theirs and others--and technology, then, is used as a link to other bodies.

As far as Balsamo's analyses of masculine views of cyberspace, I am afraid that in many cases I have to agree with her. The examples of it are legion. Here I will cite a few. Leaving aside William Gibson, whose *Neuromancer* is familiar to many of you, some less familiar examples include two novels by Rudy Rucker, *Software* and *Wetware.* *Software* was published in 1982, two years before *Neuromancer*. The premise in *Software* is that self-evolved robots have developed a technology to upload consciousness into

computer data banks. The way that this works is that the body is dissected and all of the neuro-electrical impulses are translated into data, into digital information, which can then be stored. The consciousness--the personality--can be reconstructed thereby. So it is not just the brain, it is the whole body and the whole neuro-electrical system that is uploaded. There is also this pureeing of the brain, which we see in one episode in particular where the robots--boppers, as they are called--have sent robot missionaries back to Earth from the Moon where they kidnap bodies, slice open the brains, then suck out the information as the brain is pureed. So they can upload more and more consciousnesses by means of this process. And then, of course, you can upload or download these consciousnesses at will once they are in the data bank. You have separated yourself from your body and your body becomes a technology--whether it is a mechanical body or organic body. This is the notion of *Wetware*; our bodies as technologies which are our consciousnesses inhabit. Our identities, as Barlow says, have those bodies.

The second example I would like to consider is a French sociologist by the name of Pierre Levy who published a book a couple of years ago called *Une Anthropologie du Cyberspace*--which is an amusing title by itself. Pierre Levy's idea is ultimately the notion that cyberspace is a place which we can use to promote a radical, new notion of democracy. The way that this is to work is that we will all have virtual bodies in cyberspace, which he calls "corps angelique"--angelic bodies. He develops this whole metaphysics very explicitly using Averroes' religious analysis of Aristotle's cosmology. There is a very clear harking back to religious ideologies--in particular, medieval religious ideologies and cosmologies--to produce this notion of a psychosomatic individual from which the psycho part can be separated and inhabit cyberspace in its new virtual body with which it can interact with other virtual "angelic" bodies. They can make decisions and then return to the real world.

The third example, which I would just like to note, although in some ways it is the most interesting, is John Barlow's little manifesto "The Declaration of the Independence of Cyberspace," about which we heard a little yesterday. It contains a couple of good examples of the sort of thing that I am talking about. He starts out by saying, "Governments of the Industrial World, you weary giants of flesh and steel, I come from Cyberspace, the new home of Mind." The first thing that happens is that in industrialism we assimilate flesh and steel--the body is an industrial thing. But in cyberspace, we are post-industrial. We are virtual. He goes on to say, "Our identities have no bodies." But I wonder if what he means to suggest is that our identities aren't bodies. Is the question whether I have a body or is it a question of whether I am a body? The point here is that, for Barlow, we are not our bodies. We are something more. Something other. Something virtual, in fact. The mind, as he says. The mind which can inhabit a virtual space or cyberspace. He goes on finally to say, "We must declare our virtual selves immune to your sovereignty," here, think of Foucault again, "even as we continue to consent to your rule over our bodies."

Now, it took me a few minutes to try to place why this sounded so familiar. The reason is sounds to me, a medievalist, so familiar is that is recapitulates very nicely martyrial narratives from the 2nd and 3rd centuries. Render unto Caesar what is Caesar's. You can take my body, but you cannot have my soul. This is very much what is at stake, it seems to me, for Barlow, with this martyrial rhetoric and also what is at stake for Balsamo and for Melissa Scott to react to and to deal with.

While it seems to be true enough that the masculine ideology is one of escape or transcendence, as I have argued elsewhere, the return to the body in these narratives is a complicated one. In Gibson's novels, mostly we do return to our bodies from cyberspace, but there are a couple of counterexamples to that, particularly in the last novel of the cyberspace trilogy, *Mona Lisa Overdrive*, in which we have two interesting developments. The first is that one of the characters, and this is a key premise of the novel, is capable of jacking into cyberspace without a deck--without a computer. Imagine what that means for a second. If you want an example of a Donna Haraway cyborg, this is probably going to be it. The technology is no longer separate from the organic individual. She can move in and out of cyberspace regardless of where she is or what technology she has in front of her. The second development is that we have a character who transfers his entire consciousness into cyberspace. His body is dying; he manages to keep himself on ice and alive for a while until he can get his own little piece of cyberspace into which he transfers his consciousness. So we have two different versions of the cyborg--one that remains embodied, one who becomes completely disembodied. There is a return and then there is not a return.

In Rucker, once the consciousness is uploaded and stored in a data bank, it can be downloaded to any body. If necessary, you can update your body--you have body that wears out after a few years, you build a new one, and then you repeat the process. In Pierre Levy, again, there is still a sense of the material world. The question then is the power that the virtual world holds in the material world. For John Perry Barlow, I would have to think more about what that means, but it seems to me that the vision is one of transcendence and of escape without any notion of return.

Obviously there are problems with either of those possibilities, so what I would like to do at this point is to look at some of the feminist responses to that. In particular, I would like to look at Sandy Stone, who seems to sort of bring together a lot of the strands that I have been talking about. In particular, she brings this notion of disembodiment and re-embodiment into a feminist framework. First of all, there is her famous metaphor of moving into cyberspace as "putting on cyberspace," and that this, for her, is the masculine putting on the feminine. The masculine entering the feminine, for which she deploys the terminology "cyborg envy", which then recapitulates Freud, who also stands behind Foucault.

Secondly, there is a gendering of this space which is slightly different from the one that we see with Balsamo but, nevertheless, seems very clearly related--directly related--and dependent upon body. There is the notion of cyberspace as a liminal space, which is something that Julian had mentioned as well. This is something that seems to me is key to Sandy Stone's analysis of the situation, that cyberspace is a place that is neither here nor there. In fact, she uses the analogy of Mestizo communities--they are betwixt and between. We move in and out of cyberspace. And there are implications concerning responsibility to being in a liminal space such as this. As I recall, Sandy Stone is an anthropologist; the notion of liminal space was developed in anthropology, particularly out of Arnold van Gennep's rites of passage. The point of the liminal space in this analysis is precisely that people in liminal space have no responsibilities; they are beholden to no one. They are completely outside of society. But what happens is that, when they come back, they have a renewed appreciation for the order of the society in which they live. There is also the question of how liminal cyberspace really is. The

possibility of a permanently liminal culture is just something that Victor Turner talks about in *The Ritual Process*, which analyzes hippie culture in the '60s as precisely an attempt to create a permanent liminality that, of course, fails because liminality is, by definition, impermanent.

Finally, Sandy Stone is opposed, as Donna Haraway is, to the nature/technology dichotomy which she refers to as one of the industries of post-modern nostalgia--we won't go into that. But it seems to me then, that neither Anne Balsamo nor Sandy Stone actually give us cyborg bodies. In fact, what I believe they give us is a Hegelian mystical myth of cyberspace or an anthropological initiation rite view of cyberspace. Why do I think that? Well, it seems to be that what is operative in the whole process, both in Balsamo's analysis and in Sandy Stone's analysis, and appears in Melissa Scott's fiction, is that we move into virtual space and, once we have negated our bodies by moving into the virtual, we then negate the virtual again and sublate all of that back into our bodies. The whole success of the project is dependent upon our return to our bodies and the coherence and stability of our bodies as our identities, ultimately. That there is a typist behind that identity. That every time you go into cyberspace, you come back out into that identity. Cyberspace, in a way, operates as a liminal state, as a liminal passage, but it can't be more than that. Not within that framework. We have seen suggestions that cyberspace is more than that but, it seems to me, that it is very difficult for it to be more than that within that framework. Sandy Stone talks about it as a place for experiments. Experiments for all sorts of things--for exploring different genders (and why explore only the other gender? Why not several other genders?) or for exploring democracy. But, ultimately, all of those things are only experiments. All of those things are things that come back into the real world.

It seems to me that what Sandy Stone does is reinforce the naturalness of the body as opposed to the technology of the body. We'll come to that word "technology" again in a second. Secondly, she reinforces gender difference and thereby gender identity. In fact, both Balsamo and Sandy Stone, in their genderings of cyberspace and genderings of their relations to cyberspace, seem to reinforce gender identity and gender difference and, if you want to do that, then that is fine. I myself would not want to do that; I'm not sure that is the way we want to go. Of course, maybe it is not possible to do otherwise. But we are being theorists here--or I am. Thirdly, then, her analysis reinforces the nature/technology distinction which is, of course, something that she not only explicitly rejects, but is part of Haraway's framework for her analysis. The technology is experimental technology or liminal technology, but it is not us. The cyborg is not us. The cyborg becomes a term for the liminal state that we experience. That is the cyborg, not us. It is not ultimately our identity.

My point regarding the Hegelian aspect of this analysis is that we have a dialectical relationship which then, for me, harks back to my invocation of Marx at the beginning of this talk. We have this dialectical relationship set up between the body and virtuality; between the body and cyberspace. At this point, I would like to quote Katherine Hayles who points out, being concerned about the dominance of cyberspace over the body, "Establishing a dialectic between actual and virtual objects, VR invites a hierarchy to be set up between them. And it is that hierarchy with which I am concerned." Katherine Hayles is concerned that the hierarchy is going to be of the virtual over the actual, which would be what we see in Pierre Levy or Rudy Rucker. Balsamo and Stone instead give us

a hierarchical dialectic which privileges the actual over the virtual. To that extent they reject a real notion of a cyborg body or cyborg existence.

So, finally, what I would like to do is to deal with what seems to be a metamyth, rather than a myth, which is Donna Haraway's notion of cyborg. It seems to me that Donna Haraway's notion of cyborg is a metamyth of post-humanism. For Haraway, cyborgs are bastards who transgress boundaries and are quite comfortable doing so. They do not recapitulate their existence back in a prior form. Balsamo raises a similar point in her analysis of Cadigan. One of the characters in *Sinners* points out that there are three species in this new cyberworld. There are the synthesizing--"sinners" is jargon for synthesizers, there are the synthesized, and there are the bastard offspring of both, which is artificial intelligence. Not a new cyborg human.

Haraway gives us cyborgs, bastard humans or bastard post-humans for whom the body itself is altered. For cyborgs, the body itself is no longer sacred, but it is not rejected either. The body is not transcended or left, out of hand. One of her favorite literary examples in this connection is Octavia Butler's *Xenogenesis* series. In *Xenogenesis* there is a main character named Lilith--which significantly harks back within Jewish folklore to Adam's first wife, who did some things that she not ought to do, including trafficking with demons. What happens in *Xenogenesis* is that there is nuclear holocaust which decimates the human race, and Lilith is going to repopulate the Earth with the help of aliens--the Oankali. In fact, this is how she conceives--with these aliens. She is concerned that her children are not going to be quite like her and, in fact, they are not. Donna Haraway's point in this analysis that the human body as such is not sacred for her.

Another narrative which seems to me to be similar and useful is Bruce Sterling's *Schismatrix* where we get both genetically and mechanically enhanced people. *Schismatrix* centers on a masculine picaresque hero, but the challenges are similar. There are similar corporeal transgressions, both genetically and mechanically. By the end of the story, human beings just are not the same. Though there is a cell of humans who refuse either mechanical or genetic enhancements, they are the few, the proud, and the about-to-be-left-behind.

It seems to me that Haraway's analysis gives us a Foucaultian recognition of the relationship between words and power. Concepts and power. She doesn't yet give us a myth, which is what Balsamo gives us. Or rather it is what Balsamo would have us believe Cadigan gives us and Melissa Scott gives us, and that Sandy Stone gives us. In fact, what Haraway gives us is a metamyth precisely because, for her, cyborgs disrupt hegemony but she avoids defining the nature of that disruption. She avoids endorsing particular forms of that disruption, as Pat Cadigan does. The relationship between the virtual and organic for her it is a much broader one within which it is precisely because of the possibility of a plethora of disruptions of that hegemony that there exists the opportunity to actually forge a cyborg consciousness. Thank you.

The Digital Woman
Speaker: Leslie Shade (McGill)

I am going to go from the theoretical to the quite practical right now, but first off, I would like to thank Ellen Spertus and Jennifer [Mnookin] for getting me here. It is always interesting to finally see what people look like after you have exchanged e-mail with them, although Ellen, of course, has a picture on her web site.

I would like to give a few introductory comments about Canada. I am a third generation Californian that has lived in Canada now for almost ten years and there are these subtle, yet big, differences between the two countries. First off, there is the geography and the population. The population of Canada is equivalent to that of California, but it is this huge country where something like 80 percent of Canadians live 100 miles from the US border. So issues such as cultural sovereignty and national identity are very, very important to Canadians. There is some sense that communitarian goals are very important and Canadians would see themselves more as a multicultural society, versus the US idea of a melting point. It is officially bilingual and it is not as violent. Small differences, but it shapes how the country has developed certain policies. I originally wrote a paper called "The Digital Woman" about public policy, and I have rewritten it slightly for this conference and it is now called "The Digital Woman, or Gender Equity in a Cold Climate."

What I would like to talk about is the equivalent to the US NII [National Information Infrastructure] debates and how policy has been formed in Canada. In Canada, they use the dreadful metaphor of the information highway. So, officially, everything is "information highway" instead of "information infrastructure." In Canada, the Information Highway Advisory Council, or IHAC, was established in 1994 with the mandate to make recommendations to the Minister of Industry on a national strategy to govern the evolution of Canada's advanced information and communications infrastructure respecting the overall social and economic goals of the country. So five working groups were established to cover broad areas of interest including social impact and access issues, Canadian content and culture, competitiveness and job creation, learning and training, research and development, applications and market development, and so on. Their aim was also to identify the three main objectives of the government with regard to their infrastructure strategy. One was the creation of jobs through innovation and investment. Another was the reinforcement of Canadian sovereignty and cultural identity. And the third was ensuring universal access at reasonable cost.

IHAC put out an overall issues paper similar to the NII agenda for action that came out here. The tenor of the issues paper was that implementation of this national information highway was of paramount concern so that Canadian businesses could remain internationally competitive and economic growth in new jobs would accrue to the society and so on and so forth--similar goals and visions to those that all countries have of building up information infrastructure. The final report was called "Connection, Community and Content: the Challenge of the Information Highway." It was released in September this year and called for a competitive, deregulated, market-driven environment. Its insistence on calling Canadian citizens "consumers" in this report grated on many of us that are active in public interest issues in Canada. The report itself was not without controversy; there was a minority report filed by Jean-Claude Parrot of the

Canadian Labor Congress reflecting his concerns on behalf of the Labor Movement and workers. It is interesting to note that the Canadian rhetoric on the information highway doesn't differ too much internationally from every other country. Everyone is gushing about this; everybody is very deterministic. They are very optimistic that there will only be positive effects that will accrue from this technology.

IHAC was chaired by the ex-principal of McGill University, David Johnson. He has written a book with his daughter about his experiences, which is quite dreadful. According to the book, he saw a law professor at McGill and was asked to chair this council and receive $400 a day, which he then gave as scholarship money to McGill, which I don't know if anyone has ever seen. In any case, he applauded the IHAC committee members for reflecting a wide range of knowledge and expertise as well as a broad perspective on linguistic, cultural, and regional issues. However, this really wasn't true. Many Canadians criticized the composition of the IHAC as being too representative of business and high-tech industries and the telecom and broadcasting and cable people. Social issues including equity, democratic participation, and social justice were felt to be dismissed by IHAC; it was estimated that only one percent of the interested public interest groups and individuals, labor organizations, trade associations, and private companies would be able to sit on the council. Later--just as in the US--pressure was put on to add people from the cultural industries and library community and education community, but they were just a handful of people.

In response to this, two of my friends started the Public-Information Highway Advisory Council. Two committed public interest volunteers, Marita Moll and Shawn Yerxa, set up a virtual lobby which was a mailing list for the creation of conversation and policy issues contrary to what IHAC was setting up. During a three-and-a-half-month period of time, there were over 500 participants with over 1700 messages posted.

Last year the Canadian Radio Telecommunications Commission, which is the regulatory body, set up public hearings on convergence. It was really quite wonderful because the public interest groups got to be the first on the agenda--there were two months of hearings--and this was what was covered (This is pulled from the *Ottawa Citizen*; the photograph accompanying the article shows Jocelyne C O'Hara, who was the head of Stentor, which is the consortium of telephone companies in Canada, and beneath the caption "Information Highway Headed for a Dead-end" there is a photograph of Shawn Yerxa.).

One of the public interest groups that became involved in Canada was called the Coalition for Public Information, or CPI, which was formed in November of 1993 to ensure that the developing information infrastructure serves the public interest, focuses on human communication, and provides universal access to information. CPI consists of over 300 organizations and individuals and public interest groups. They delineated a position paper called "Future Knowledge," a public policy framework advocating five primary principles, such as universal access and equity, freedom of expression, pluralism, intellectual freedom, the right to privacy, intellectual property and copyright, and employment and the quality of work. CPI is advocating a creation of a national access board to ensure that all Canadian citizens can have access to the technology and that public lanes and public spaces can be accommodated. Out of this came the sentiment that cyberspace is public space and that spectrum and bandwidth are in the public domain. This is a concern of the recently formed alliance for Connect to Canada, which is

ostensibly bringing together a lot of the public interest groups under one umbrella to go against what Stentor and other big power groups want to do.

So this idea of cyberspace is public space is a pervasive sentiment that a lot of us express up there in the information highway debates. I have been involved a lot working on issues to provide access and equity to this public space. Dale Spender, who recently a book called, Nattering on the Net, echoes a remark of many women when she writes that the glass ceiling may be preventing women from getting into the top levels of general management but it is also preventing them from getting into cyberspace in appreciable numbers. Yet this is where the new communities are being formed; this is where the new human values are being forged.

As we all know, there have been a lot of demographic studies conducted on how many women are using the Internet--it seems like every month there is another survey. There is John Quarterman's, Georgia Tech's survey on World Wide Web users--just a whole series of demographic studies. I am always skeptical about how you actually measure who uses the Net, but the point of the fact is that--depending on which survey you look at--there is a low of 2-10 percent of women actually using the network to a high of 40-60 percent. I am sure it is higher in other situations--universities and so on. It depends on what you are talking about when you are talking about where they are getting their access, whether it be commercial service providers, universities, work place, or community nets.

Interestingly enough, Canada has been one of the few countries that has actually addressed this issue of gender disparity to the information infrastructure and provided recommendations. As a member of the Coalition for Public Information, I was able to pass on some of my research. CPI put out a gender issues recommendation in "Future Knowledge." I recognize little paragraphs plucked conveniently out of work I have done, but that is fine; it is for a good cause. It says, "Women are still under-represented in almost every aspect of computer culture from programming to product design to use of the information infrastructure. We encourage the development of educational software and training material which is gender sensitive. ... We also recommend the development of online gender issue information services and the development of online harassment guidelines." The latter is kind of interesting. Of course, they don't have very much clout. They can say, "we've done this," and so on and official policy people in Ottawa will take notice of it, but it doesn't really go that far.

Now, coming out of that, one of the women who was actively involved in CPI was this marvelous woman named Liz Hoffman, who was an ombudsperson for the University of Toronto. She was on the committee of IHAC and pushed IHAC to also include some gender equity recommendations, which they did. I think it is quite remarkable that they have done this. However, they don't really say much, do they? If you look at the report, it just says, "Women's issues and concerns must be addressed. Some of these such as safety, privacy, and security could be largely addressed by early implementation of related recommendations. Women have to be able to use the information highway and contribute to the content carried. The government can raise the awareness of content and hardware providers and can also implement public awareness campaigns targeted to women." That is kind of interesting, but these are the recommendations and they don't say much.

Industry Canada, Human Resources Development Canada, and Statistics Canada-- these are all federal agencies--and other government departments should conduct and/or

support the research necessary to identify how gender, age, and other social factors create differences in participation. I do know that Statistics Canada is in the process of doing a similar study as was done here in the Commerce Department's "Falling Through the Net" survey. Human Resources Development Canada is currently getting rid of all of its employees and creating digitized job kiosks and so on. They are also laying off about 43,000 Federal civil servants over a period of a few years. Ottawa is practically a ghost town in some areas. They are also laying off about 12,000 Ontario public servants. This is a big travesty that is happening.

Recommendation 13.22: "Where differences in opportunity are identified, the federal government, with other stake holders, should develop an appropriate response to deal with these differences." Well, this is all kind of vague. At least it is officially down there. CPI has criticized IHAC's recommendations saying they are very weak--which they are-- and they do not address many of the issues CPI recommended. In about a week IHAC is supposed to release a report on how the interdepartmental agencies are going to address all of the recommendations that are in this report. I have a few phone calls in to a few people, but they won't return my phone calls because I want to know what they are actually going to do about the gender equity recommendations. My suspicion is: not much.

In the US, WITS (Women, Information Technology, and Scholarship), which is a group at the University of Illinois, Urbana-Champaign which includes Cheris Kramrae and other women there, has put out their own set of policy/gender equity issues that they think are important. I won't read them here but, they are encouraging individuals and organizations to submit their policy recommendations to their Gender and Technology Policy Quilt which is on their web site. Their big thing is to get people to promote awareness of policy recommendations to women and women's groups and national organizations involved in policy implementation.

Also, a document was drafted for the Fourth World Conference on Women held in Beijing as part of the NGO Communications Strategy Proposal which delineated a communications strategy to promote greater access to democratic communication by women internationally. One of the recommended actions states that "diverse media should be used to reach all women, including the use of computer networks and other alternative media." This particular proposal was prepared by the Association for Progressive Communications, the Agencia Latinoamericana de Informacion, the Centro de Estudios de la Mujer, International Women's Tribune Center, the Media Advocacy Group, and the World Association of Community Radio Broadcasters.

Recently, I was asked to do a contract by Status of Women Canada. Status of Women Canada is another of these federal agencies. They asked me to do a project to investigate the use of the Internet in women's organizations across Canada. I didn't realize that they have been trying to do this for a year and they are very slow to act on it. Indeed, it took about eight weeks to get the contract, which then I had to sign the day before the report was due because of fiscal year-end madness. But I didn't realize how big the project was and that many women were told that they wouldn't receive funding until this project was finished.

Specifically, the project I am working on now is to provide an overview of equity issues regarding computer networking for women so that federal agencies can know what is up. I need to provide a brief overview of technical issues and costs. I need to provide

an overview of funding possibilities for computer networking projects at provincial and federal levels and an inventory of various projects that are being done in Canada by women. I also need to ascertain what the differences are between how anglophone and francophone communities are using the technology. I am currently doing a very small survey of women's organizations through the Internet and through the telephone. One of the goals of this project is to ascertain the types of women's groups that are not connected to the Internet, any common funding requests, and the particular needs of francophone women.

With regard to funding prospects, what has happened is kind of alarming. Women's organizations that have sought funding for various information infrastructure projects have uniformly been frustrated by the lack of support given to their projects. Right now in Canada we are operating under what some would characterize as a very hostile climate of deficit reduction, slashing government support, and so forth. Governments wanting to save money and cut taxes so the wealthy can get wealthier and the poor can stay poor. Given this prevailing rhetoric of how the information highway is supposed to empower us, increase jobs, promote life-long learning--which is another big buzz word, and sustain and create cultural sovereignty, it is alarming that many Canadian women's organizations are having a very difficult time getting funding for their projects.

Women's groups wanted to get some funding from a project called ONIP, which is Ontario Network Infrastructure Program, to set up a province-wide women's network but were encouraged instead to align themselves with existing projects. One of these was something called E-Connections, which I was working on, which was to provide a feasibility study on e-mail access for non-profit groups. We argued a lot--a lot of the non-profits love to disagree--but we finally got all of the non-profits onside, submitted one joint proposal to ONIP, and got funding approval up to what is called treasury level. Then there was an election call and a very conservative premier--a Tory, which is equivalent to the Republicans here--was elected. He likes to play golf and doesn't believe that there should be things like day care and jobs and so forth. So he froze the whole program. That was very disappointing.

Several women's organizations who have recently applied for funding under what is Industry Canada's Community Access Program, which aims to give money for rural communities to get online to set up community access points, were turned down because women's organizations are considered special interest groups. Now, I know I am special and many women here know they are special, but this is something that is really quite amazing. I don't know if the nomenclature "special interest group" is used here as much. Basically, we would agree that they are charitable, non-profit, or voluntary organizations that exist to forward specialized interests or influence government policy. But special interest groups, particularly left-leaning and progressive special interest groups, have come under attack by the New Right as deserving particular scrutiny. So many women were very discouraged to realize that they couldn't receive funding, and we're still trying to straighten this out. It could be potentially embarrassing because other groups that could be special interest groups are not being singled out.

One particular and hopefully very forward-looking funding proposal was recently announced two weeks ago in British Columbia by the Ministry of Women's Equality. They want to give about $500,000 under their Provincial Electronic Highway Accord and its community Internet training program. This is to go to women's organizations, disabled

organizations, and to serve aboriginal peoples, immigrant invisible minorities, etc. The purpose is to train non-profit organizations in the use of the Internet technology, to teach them how to do HTML programming, to put up home pages, to pay for ISP services for a year, to help them purchase a modem. Just very mundane issues that otherwise we might take for granted. The other thing is to create network literacy programs and training programs and train-the-trainer programs. In other words, I am going to take one person in an organization, train this person, and they have to go off and train ten other people.

Another concern that women's organizations across Canada are expressing an interest in is contact. They want contact. They want to be able to communicate with other women's organizations so they want to have a vibrant community online to strengthen their ties to the groups they need to have access to. They want to be able to collaborate on national issues of concern dealing with economic equity, child care policies, work place reforms, job creation, anti-poverty strategies, and domestic violence legislation. They want to be able to discuss the impact of these technologies in their everyday lives; the effect of tele-work and what is happening with re-domestication of the technology into the home as jobs diminish and jobs become less of a real thing in the world.

To date, this whole process of developing Canadian information infrastructure policies has been conducted without broad-based citizen participation. Public interest activists in Canada are in strong agreement that, if Canada is to continue its goal of being an inclusive and vibrant society, then broader citizen participation at all levels--from the local, the municipal, the provincial, and the federal level--has to happen. We are also trying busily to create and find funding for public spaces and ensure that people who otherwise wouldn't have access to this technology do have access. And as one of my friends said regarding the capped funding and her disappointment at realizing that she was a special interest group--although she was very pleased to think she was a special person--she wrote to me and said, "Women's access is public access just like women's rights are human rights." That is what we are trying to do now up there. Thanks.