

chapter.eleven

truth, justice, and a
little bit of sex chat

courting trouble

The steps outside the Supreme Court, in Washington, DC, were slick with frozen, slushy rain, even though it was already late March of 1997—a time when cherry blossoms and spring temperatures usually brighten the nation's capital. From a wall of television cameras hastily set up under the gloomy, gray sky, the glare of spotlights illuminated the face of Bill Burrington, AOL's assistant general counsel, who stood before the crowd of soaked reporters and spectators like a man in a daze.

The Court had just heard the case that could make or break AOL, and the frantic months of preparation showed on Burrington's wan face. The single biggest threat to freedom of speech on the Internet—the Communications Decency Act (CDA) signed by President Bill Clinton a year before—had undergone its final challenge in a session that began at 10 A.M. on March 19, 1997. The day had finally come, the arguments were finished, and now Burrington had to make it through the final press conferences before taking a much-needed rest.

Reporters milled about, listening and taking notes as software makers, lawyers, antiporn activists, high schoolers, and anyone else with an opinion argued vigorously in tight little knots of people.

Off to one side, a group of teenagers organized by a local antiporn group stood chanting, "Children don't need this stuff! Enough is enough!" while carrying picket signs that read: "Child molesters are looking for victims on the Internet."

And in front of the biggest gaggle of television cameras and reporters, representatives of both sides of the argument were making their arguments to be shown on the six o'clock news nationwide.

One by one, supporters of the CDA stood before the phalanx of media to have their say. Donna Rice Hughes—already ensconced in history as Democratic Senator Gary Hart's love interest in the sex scandal that brought down his 1988 presidential bid—spoke of the need to protect children from smut, her conservative dress, sensible brunette hairdo, and serious demeanor in stark contrast to her former reputation as a party girl. Cathy Cleaver—a striking blonde attorney wearing wire-frame glasses and a bright red coat—spoke on behalf of the conservative Family Research Council. She praised the CDA for safeguarding children from the seamy side of the Internet.

Then it was Bill Burrington's turn to defend the online industry and AOL. With his boy-next-door good looks and unfailing politeness, he exuded the same clean-cut image as his opponents. His soft-spoken gentility carried over into an aw-shucks manner, making Burrington a great Washington anomaly: a lawyer who seemed like a guy you wouldn't mind knowing. A transplanted Midwesterner, Burrington, at age 35, seemed not a bit jaded by the cynicism that pervades the nation's capital. Arriving at the Supreme Court that morning, he had even felt a lump in his throat when he looked around and considered the historic decisions that had been made in the courtroom.

Today, history was once again being made, and he was right in the middle of it.

But at that moment, no enthusiasm showed on Burrington's face as he stood wearily by the side of Bruce Ennis, the experienced First Amendment attorney who had just argued the case against the CDA before the nine Justices. It had been a grueling year leading up to the Supreme Court arguments, and as the impromptu press conference continued under the sleet and rain, Burrington increasingly looked like a man at the end of his tether.

From the tightly packed huddle of onlookers came a shouted question. "AOL, can you protect children with your service?"

Burrington stepped to the microphones. "We have had parental control tools on AOL for over two years now," he began, stooping slightly under an umbrella, reciting one of AOL's main defenses against the CDA. "We can block access to. . ."

"No you can't! You can't!" shouted a woman suddenly, as she pushed her way in front of the cameras. Shaking her finger at Burrington, the woman ignored reporters' irritated pleadings to pipe down, and launched into an angry attack on the world's largest online service.

"It doesn't work," she yelled, drowning out Burrington's attempt to respond. "I know it won't work! I've used it!"

"Get out of the way!" shouted back an annoyed cameraman, while the gathering began to buzz. Reporters, including Nina Totenberg of National Public Radio, waited, hands on hips, for the woman to finish.

But Jodi Hoffman, representing a group called Restore America's Moral Pride, had come all the way from Florida for this argument, and she was not done yet. She impatiently pushed a strand of her long blonde hair out of her face and continued.

"You all keep saying there's no problem," she charged, finger wagging in accusation at Burrington. "Well, if there's no problem, then why was this law passed?"

Up in front of the microphones, Burrington paused. Ironically, this woman could not have said it any better.

Why, indeed?

As serious as AOL's access and pricing troubles were as 1996 ended and 1997 began, another, perhaps more dangerous, issue had been brewing since early February 1995, and indeed long before that—a problem that could do potentially irreparable harm not only to AOL but to the entire Internet industry.

It had begun when Democratic Senator Jim Exon, a veteran lawmaker from the heartland state of Nebraska, had become troubled by some of the racier content available over the Internet, and had decided that something needed to be done.

But the bill that Exon ultimately introduced, on February 1, 1995, set in motion angry accusations that his actions would kill the Internet, by severely chilling the free speech that had been its hallmark. The introduction of his Communications Decency Act marked the beginning of the greatest legal test for the new online industry, and perhaps most especially for its largest player—AOL.

In its final form, the CDA would criminalize "the transmission of any comment, request, suggestion, proposal, image or other communication which is obscene or indecent, knowing that the recipient of the communication is under 18 years of age."

In addition, it sought to penalize "whoever . . . uses interactive computer services to display in a manner available to a person under 18, any comment, request, suggestion, proposal, image or other communications that, in context, depicts or describes, in terms patently offensive as measured by contemporary community standards, sexual or excretory activities or organs."

The penalty: a fine of up to \$250,000 and up to two years in prison.

The thorny First Amendment conflicts caused by the controversial law were obvious. But, for a company like AOL, the law's vague language had implications that were perhaps even more troublesome from operational and financial standpoints.

How would AOL—with its thousands of chat rooms and millions of postings on its message boards, in addition to offering users access to the sprawling World Wide Web—ever be able to monitor its service to ensure that no users under 18 could see anything indecent? And what exactly qualified as indecent, anyway? Did "contemporary community standards" mean that traditionally conservative communities such as Memphis, Tennessee, or Biloxi, Mississippi, could determine that materials posted on the Web from, say, New York or San Francisco were offensive?

And AOL had even actively explored opening its own porn connection. Though virtually no one outside the company knew it, during much of the long debate over the CDA, AOL was researching how it could make money off online porn. The company had never progressed beyond the research stage for the premium "adult

content" channel, but if even that news got out, AOL's stance as a family-friendly service would be severely damaged. And so would its ability to effectively fight legislation like the CDA.

For AOL, bigger issues than revenues were at stake. The CDA aimed at the very heart of the industry AOL had helped build. From the moment the bill was introduced, it would be fiercely debated by a sprawling cast of characters. They included the Christian Coalition's Ralph Reed, the American Civil Liberties Union, Donna Rice Hughes, Newt Gingrich, the Center for Democracy and Technology, and a collection of representatives from the online industry, including AOL's Bill Burrington.

From an idea in the head of a politician, through the tortuous byways of the U.S. Congress and onto the desk of President Clinton, the CDA would be challenged all the way to the Supreme Court. At the end of the process, the online industry would never look at itself in quite the same way again.

your chat room or mine?

In December 1991, in AOL's then-minuscule customer relations department at 8619 Westwood Center Drive, in Vienna, Virginia, historic Supreme Court battles were far from anyone's mind.

Though she ran the marketing department, Jean Villanueva also oversaw the company's relationship with its small number of users. Customer complaints, for the most part, were about billing snafus and glitchy software. The company, which had not yet gone public, had only about 150,000 subscribers and offered a service that only worked for Apple II, Macintosh, and DOS computer users. AOL was a minor company in a still-insignificant industry.

While working late one evening, Villanueva was jolted by a call from a reporter at KRON, the NBC affiliate in San Francisco. "I just wanted to give you a heads-up," he told her. "We're running a story about child pornography on AOL tonight."

Having never seen such a topic listed on the complaint sheets before, Villanueva was dumbfounded. "Let me call you back in 15 minutes," she told the reporter. She bolted out of her office to

consult with the customer service representatives who sat right outside her door.

This was definitely a "flash item" in the department. All telephones were turned off, and everyone gathered around Villanueva, who stood atop a folding chair she had dragged into the middle of the room.

"Have we had any calls from customers about child pornography?" she asked the reps.

"No," they all answered, they had not. There had been complaints of members' sending unsolicited mail, using sexually explicit language in chat rooms, and trading adult porn. In those cases, members were in trouble if they violated the company's "Terms of Service" (TOS), which prohibit members from impersonating others, harassing other members, and "facilitating the distribution of sexually explicit or other content which is deemed by AOL Inc. to be offensive." Members who were caught breaking the rules would be "TOS'd," in chat-room slang: tossed out of the chat room and allowed one more warning. If their actions were particularly offensive, they were kicked off of AOL.

But there was no record of any complaint about child pornography.

Baffled, Villanueva called the reporter back, and managed to learn that an AOL member had contacted the television station directly.

By now, it was getting late. Resolving to meet the problem head on, she got the member's name. She then asked the service reps if that particular member had ever called in about child porn—the answer was still no.

So Villanueva telephoned him that night.

The member told her that he had initially complained to the police, but they had done nothing. Frustrated by their inaction, he had decided to go to the press, even before contacting AOL. Villanueva asked the customer to e-mail her the offensive material (which he said had been sent to him by other AOL members). So he did.

Villanueva downloaded the files with a feeling of dread. Would it really be as bad as she feared?

It was.

She and other AOL officials—including Steve Case and chief technologist Marc Seriff—stared for a moment at the pictures of what Villanueva called “obviously really extreme child porn.” Villanueva shuddered. On the screen were photographs of young children having sex with other young children, with adults, and in large groups. It was horrifying to see—and even more so because it was coursing through the electronic veins of AOL.

Her shock had an element of willful naïveté. AOL, much like Prodigy and CompuServe, had become mini-cities in cyberspace, and now the seamy side of the community had inevitably surfaced. Villanueva, Case, and Seriff—the small coterie of executives who ran the company at that time—knew their next moves were critical.

The San Francisco television station had used the term “child porn ring” in its report on AOL; for an industry very much in its infancy, such words were poison. They might form consumers’ first and most lasting ideas about the online world. Because AOL’s big selling point was its “community” environment—a pleasant place to communicate electronically—AOL could not allow this depraved image to take hold. In addition, AOL was preparing to go public in the spring of 1992, and this kind of publicity would not play well on Wall Street.

But there were also questions of law; child porn is illegal in all fifty states. The pictures that had been sent to Villanueva needed to be reported to the proper authorities immediately, now that AOL knew about them. That same night, Villanueva called the Federal Bureau of Investigation.

Because the pictures had been sent to her and were now her property, Villanueva could turn over the offending e-mail without violating any member’s privacy. But the FBI would surely want more from AOL—member files, account information, the ability to trail people’s movements through the system.

This was a problem.

“We can’t panic,” Villanueva thought, knowing AOL would have to negotiate the tricky Scylla and Charybdis of this crisis—finding a way to stop the transmission of these vile pictures while also protecting the privacy of its members. In addition, as a small

company with limited financial and human resources, how much could AOL do to find smut in the huge flow of information cascading through the growing service?

Villanueva, Case, Seriff, and others met all weekend with lawyers from their outside counsel, pondering what to do and trying to create a workable policy. They decided to cooperate with authorities, but only those with proper court orders demanding information or action. They decided to investigate strong technological solutions that were not too invasive to members. And they wrote a letter to the AOL community warning about the problem.

the house that sex chat built

But the problem could not easily be fixed.

The company, in an effort to provide a unique service for its members, had created an almost perfect environment for such fetid fare to flourish. With its anonymous screen names, easy attachment of graphical files, and many unmonitored chat rooms—which were already developing into one of AOL’s biggest draws—AOL was especially well suited to the needs of porn traders. They could slip anonymously in and out of the ether, seeking out fellow porn lovers without a trace.

This architecture was designed into the entire AOL system, which encouraged multiple screen names without requiring that users identify themselves. This unique setup differentiated AOL from competitors and created a more unrestrained place to visit.

Anonymity made things interesting in the AOL chat rooms, which had three separate categories. First, there are the AOL-designed rooms, sponsored by the company, with thematic names like “the breakfast club,” “fiber and needle art,” “thirtysomething,” and “born-again onliners.” Any member could browse the list of rooms and join chat in progress.

Second, there were public member-created rooms. Any AOL member could create his or her own topic for a chat room, which then could accommodate up to 23 users at a time. The member-created chat rooms—with names like “married and flirting,”

"submissive men," "firemen m4m," and "crossdressers2,"—were also listed for all members to browse through and freely enter.

Third, there were private member-created chat rooms, which AOL members could create for themselves and their friends—or anyone they chose to invite. These private chat rooms were unique in several ways. Unlike the public rooms, which were all listed by name so that any AOL member could decide to "enter" one and chat, the private rooms were not listed. A member had to already know the name of the room in order to find it—a perfect way to keep out unwanted guests.

In one other, more important way, the private chat rooms were different. Whereas the public rooms were patrolled by AOL's volunteer "guides," who acted as chaperones of sorts, to ensure that members behave, the private chat rooms had no guides and, therefore, virtually anything was fair game. What was to stop a group of men from forming a private AOL chat room specifically to trade pornographic pictures—or worse, child pornography? The answer: Nothing. The only way a private chat room could be checked out or shut down was if someone made a complaint—and when the only people who are in a chat room have been specifically invited there, the chances of a complaint are pretty slim.

Not surprisingly, AOL's private chat room service—a service with no equivalent on either CompuServe or Prodigy—was a popular place to trade porn of all kinds. The company had pledged to cooperate with authorities when criminal activity was discovered (it could trace its users if need be), but many felt that AOL's efforts were reactive rather than proactive. Because it refused to police its private chat rooms, the company gained a reputation of being "soft" on pornographers and pedophiles.

The online service had made that decision quite intentionally. AOL, the executives decided, would not restrict the privileges of the many because of the transgressions of a few. A judgment was made: Privacy meant privacy, even if people were going to use the service for unsavory purposes.

"A lot of people thought we gave a wink and a nod to that kind of behavior," said Villanueva. "But we never did. We just

made a decision that the members' privacy was the most important thing."

In meeting after meeting—for the debate never seemed to end at AOL—company officials used the same reasoning. AOL was like a common communications carrier, not directly responsible for what was being carried if they did not know what it was. People use the telephone to plot criminal acts all the time, the AOL mantra went, but that doesn't mean all telephone calls should be screened.

Steve Case had compared the problem to that of another high-flying company. "Federal Express knows that things are going out in their packages that they don't like—drugs, or laundered money, for example," he said. But that doesn't mean they stop sending packages, or insist on inspecting every single one. Privacy issues—and cost—prohibit that approach.

But that argument is oversimplified. Online services represent an entirely new medium, unlike any other. Telephones, for example, are largely made up of specific point-to-point conversations. Although there are occasionally random prank or harassing phone calls, a child placing a telephone call is in no danger of having a pedophile break into a conversation to make a lewd proposition.

In a chat room or with e-mail, a person is much more exposed. It is much easier to become a target—especially when the person doing the harassing can stay anonymous. In chat rooms, one wanders randomly and meet hundreds of people. Online chat room conversations are less like telephone conversations than they are like hotel lobbies—a word AOL uses for its chat anterooms—but with a key difference. In an actual hotel lobby, a visitor can *see* a creep who's lurking around. And most people know better than to talk to strangers.

On AOL, with its homey graphics and wholesome community image, it was easy to be lulled into a false sense of security that the service was protecting against undesirables. And the TOS staff, however well intentioned, was frequently inadequate for the task at hand.

The controversy came down to a simple question: Was it commendable or irresponsible to protect users' privacy to such a degree?

The only real alternative to the problem was to shut down the unmonitored rooms, ramp up guides in the public rooms, and perhaps even screen e-mail. And these were not options, since they were at the sweet spot of AOL's business in terms of attracting members and garnering hourly fees. Chat, for example, represented one-quarter of all member hours online throughout much of AOL's history.

It's difficult to gauge exactly how much of AOL's early revenues came from sex chat and the downloading of porn photos. An October 1996 article in *Rolling Stone* estimated that, assuming half of all AOL's chat was sexually oriented, by spring of 1996 the company was raking in up to \$7 million every month from sex chat alone. Steve Case, in the same article, estimated that less than half of all chat was sex-related.

Before the shift to flat-rate pricing in the fall of 1996, AOL was realizing substantial revenues from users who would spend upward of 100 hours a month online, usually in the chat rooms. The hourly fees added up quickly; some users regularly paid bills of more than \$300 per month.

Clearly, chilling chat room speech and spending more on monitoring would mean chilling revenues.

And perhaps more importantly for a small company like AOL, the bawdy chat rooms drew members. AOL's privacy policy in the chat rooms, according to some industry observers, was one of the main reasons the company was able to steamroller Prodigy.

"That's why AOL has eight million members and Prodigy had faded to a shadow of its former self," said a high-ranking executive at Prodigy, who watched in fascination and dismay through the early 1990s as AOL began its climb.

Prodigy, the number two online service in 1991, had so far stayed out of the chat phenomenon altogether. In an effort to keep adult-oriented material away from its younger members, Prodigy created the so-called "Frank Discussions" message boards for adult topics, complete with a "wall" designed to keep underage users out via credit card checks.

Within just two months, however, the idea of having adult-oriented message boards was deemed too racy by Prodigy's straitlaced

corporate parents, IBM and Sears. In its efforts to remain "family-friendly," the company junked "Frank Discussions" and continued to resist setting up chat rooms on its service—a decision that locked it out of the lucrative per-hour chat income that was beginning to fill AOL's coffers and increase its member base.

Prodigy execs even ordered that every single message received from members for posting on the service's message boards had to be checked first for any inappropriate content. This unwieldy, time-consuming policy frustrated Prodigy's customers and inhibited the service's growth. Across the electronic divide, AOL's message boards were a virtual free-for-all.

In the midst of one of its many controversies over its practice of meddling in its users' activities, Prodigy communications director Geoffrey Moore made no apologies for attempting to bar "uninhibited, titillating conversations" from the service.

"We make no apology for pursuing a value system that reflects the culture of millions of American families we aspire to serve," he wrote in a *New York Times* column. "Some people confuse private messages with public editorial features . . . editorial discretion . . . does not limit speech in any Constitutional sense."

Moore even suggested that those interested in such fare could use other services. The obvious choice was AOL, which soon became known in online circles and in the media as "The House that Sex Chat Built."

As AOL grew, through 1992 and 1993, racy publicity—which would, at first glance, seem to be a public relations nightmare—didn't always hurt the company. AOL was finally in the news, and it was seen as a hot, hip place to be. That was no small advantage for a tiny company intent on establishing its brand name. Whatever the context, AOL was being mentioned alongside industry heavyweights CompuServe and Prodigy.

The hype was heating up but, for the huge majority of Americans, the Internet sex debate was still the province of the technological elite. In the early 1990s, very few Americans were online; it was mostly tech-heads and journalists debating a rather abstract issue. Average America might find the issue titillating, but it had nothing to fear from online perversion.

Then, in May 1993, a tousle-haired ten-year-old boy named George ("Junior") Burdyski, Jr. was reported missing from his home in suburban Maryland. The disappearance of this average kid in an average suburb caused ripples of alarm in the local press. Then, while investigating Junior's disappearance, police detectives made a discovery linking the case to the world of cyberporn.

During the search for the boy, they happened upon a man in nearby Hyattsville named James Kowalski, who was never implicated in the crime. When they learned that Junior had been coming over to Kowalski's house to play with his computer in the weeks before the disappearance, detectives searched Kowalski's home and computer files in the hope of finding some clue to Junior's fate.

What they found instead were nude and obscene photos of kids, as well as writings by Kowalski—who was an AOL member—bragging about his sexual exploits with children.

The blend of child porn, kidnapping, and computers was incendiary. Sexual perversion had reached out an electronic hand to grab Middle America by the throat.

Although neither Kowalski nor another man arrested, Stephen Leak, was successfully linked to the disappearance of Junior Burdyski, both were convicted and jailed on charges of child abuse and pornography. Junior has never been found.

Now, the mainstream media were hooked. The online world was trumpeted in story after story as a frightening, lawless place—a happy harbor for digital deviants. In chat rooms and message boards, wherever one looked, naughty, raunchy, or downright disgusting behavior was going on—at least that's what the news stories argued. Proponents of the Internet began to fear that the hype surrounding sex online was drowning out the positive aspects of the industry.

Throughout 1993 and 1994, reporters eagerly rooted out examples of the worst antisocial behavior online. And not only was child porn an issue, but stalking, harassment, and murder were as well. "Online" and "Internet"—and, by extension, AOL—began to connote a haven for perverts and stalkers rather than a promising virtual world of discovery.

indecent proposal

In this atmosphere in the fall of 1994, Senator Jim Exon first began floating his ideas about Internet "decency" in the 103rd Congress. The Exon legend holds that the senator was watching his grandchildren playing games on the computer one day and decided then and there that he needed to find a way to protect them from online smut. But the senator claims that no one thing inspired him to propose the bill. He had simply heard and read enough, and decided something needed to be done.

Exon was proud of the fact that he had been around and active in the earlier days of the Internet, when it was used as a government tool for the transfer of military information.

"I knew all about the information superhighway," said Exon. "It's the most important tool for the dissemination of information since the printing press. I've been a very big supporter of it."

Yet many saw Exon as a Luddite meddling in an area he knew nothing about. He was held in disregard by many in the online world, who were unconvinced of his technological knowledge of and concern for the new industry. The bill was, some thought, a reactionary slap at the new medium for the purpose of garnering headlines—besides being a poorly drafted piece of legislation.

"It had all the right ingredients—porn, children, cyberspace—all the issues that make for great debates," said one AOL official, echoing a common opinion at the time. "And all this coming from Exon, this old hayseed from the Great Plains."

The first legislation Exon proposed never made it to the floor of Congress, dying quietly when the session expired. But the signal had gone out that the online industry had a problem that was bigger and more concrete than mere public perception.

Robert Butler, outside counsel for Prodigy, was the first to act. When he got wind of the proposed legislation, he recognized quickly the potential danger for the online industry. Representatives of AOL, Prodigy, CompuServe, and MSN were invited to a meeting at Butler's office at the powerful communications law firm of Wiley, Rein & Fielding, in downtown Washington, in late 1994.

One of those in attendance was William W. Burrington, a young lawyer for a Washington-based trade group, the Interactive Services Association.

Bill Burrington had come a long way from his roots in Elm Grove, Wisconsin, a wealthy suburb of Milwaukee. The son of a father who was a printing industry executive and a mother who set aside her high school teaching career to raise her two children, Burrington had lived the kind of all-American life typically immortalized in *Reader's Digest* anecdotes.

Growing up in Elm Grove, young Bill had been imbued with the Republicanism that was common in hard-working, middle-class America. He was a quintessential overachiever, the kind of kid who is golden from the moment he steps onto the Pee-wee league football field or dons a Boy Scout neckerchief. The unflagging idealism that Burrington would later bring to the CDA debates, he guessed, had its genesis in the happy, settled childhood he was privileged to enjoy.

His idealistic urges were particularly stoked by an event that Burrington still recalls without a trace of self-consciousness. When Burrington was about 13, President Gerald Ford came to town. As the youngest Eagle Scout in the history of Wisconsin, Burrington had been chosen to make a presentation to the president. In preparation for the big event, he decided to write President Ford a personal letter.

"Dear Mr. President," the letter began. "You and I have a lot in common. We're both left-handed, we both played center on our football teams, we're both Eagle Scouts." Burrington slipped the letter to the President during his formal presentation, excited to have a chance to communicate personally with such an important man.

Two months later, Burrington's father came in from the mailbox, calling for Bill. There was an envelope from the White House; inside were a picture and a handwritten note from the President. The note praised Burrington for his achievements as a scout, and encouraged him to get into public service.

He was hooked. Before he even finished high school, Burrington would go to work on a congressional campaign—the unsuccessful 1978 bid of Republican Sue Shannon.

Burrington's Republican leanings changed over the years. Toward the end of his college years at Lawrence University, in Appleton,

Wisconsin, his rock-solid conservative beliefs began to shift in response to the liberalism that is common on American college campuses. But his devotion to the political process itself never flagged. He earned a law degree at Marquette University, volunteered and worked for a number of political campaigns, and finally accepted a position, in July 1989, as general counsel for Representative Jim Moody (Democrat, Wisconsin).

He moved to Washington, intending to get some Hill experience and then return to Wisconsin to run for Moody's seat himself. But after a few years of working on the Hill, he began to see the life of a congressional representative in a different light. The endless rounds of fundraising and schmoozing seemed to him a thankless, joyless job.

When his work for Moody ended, Burrington instead turned to communications law, taking a position at Miller & Holbrooke, a Washington-based boutique law firm. He stayed only two years, then worked as executive director at the National Association for Interactive Services (NAIS), the trade group of the 800- and 900-telephone number industries. After that, he opened his own law firm, taking on clients such as the Interactive Services Association.

At NAIS, Burrington saw firsthand how the actions of a few—in this case, the "dial-a-porn" 900-number telephone services—could ruin an industry for the many.

"What do you think of when you hear the words, '900 number'?" said Burrington. "You think of sex lines . . . there were a whole range of other services offered, but sex is all anyone thinks about." An entire industry had been tainted because an issue had been allowed to get out of hand.

Exon's idea for a CDA brought Burrington a dizzying sense of "Here we go again." He knew that porn often drives new media, because the porn industry is always looking for new methods of distribution. And, true to form, it was one of the first problem issues to surface in the online world. Burrington knew that the industry needed to learn some lessons fast.

"If the industry did not take it seriously up front," Burrington said, "they would start to become defined by it." So, at the meeting in Butler's office, he recounted his experience with the 900-number

industry, and warned the group to be aware of how quickly public perception could shift.

Everyone gathered knew the Exon bill would be back. And because other political forces were at work in 1994, its return would bring worse trouble than they had expected.

In the late fall, Washington's political zeitgeist took a massive shift to the right. In the November elections, both Houses of Congress were captured from the Democrats by the Republican Party. Newt Gingrich became Speaker of the House, "family values" became the watchword of the land, and the "Republican Revolution" was unleashed.

It was a good time to be against the licentious excesses of the Internet.

During that fall, Bill Burrington began interviewing for a position on AOL's legal team. For months, Burrington, hoping to get some free-lance work from AOL, had tried to schedule a meeting with Ellen Kirsh, AOL's general counsel. But she and her legal team—made up, incredibly enough, of only her and two other lawyers—were always swamped.

When they finally met for lunch at the American Café near AOL headquarters, Kirsh quickly proposed another idea—Burrington should come on board to help AOL in the legislative arena. Despite the obvious importance to the company of emerging legislation, the overextended AOL legal team had no one working full-time on it.

A quick series of meetings was arranged. Burrington was interviewed by Steve Case, Ted Leonsis, Len Leader, and Jean Villanueva, and was soon hired as AOL's point man on the Hill. AOL needed help there—fast.

On January 31, 1995, the day before his official start date at AOL's Vienna offices, Burrington joined a meeting of online industry representatives from all the major providers—AOL, CompuServe, Prodigy, and the about-to-be-launched Microsoft Network—as well as representatives from the fledgling Center for Democracy and Technology (CDT), a First Amendment group.

He had not officially started his new position at AOL, and nothing concrete had been proposed in the Senate, but Burrington knew that a conflict was unavoidable.

"We'd better get ready for a storm," he told the group.

Within hours, during Bill Burrington's first day on the job at AOL, Senator Exon reintroduced the CDA, this time to a more receptive audience: the Republican-controlled 104th Congress.

Although not a computer expert, Exon felt passionately about curbing pornography online. The headlines brought him a degree of fame (some would say, notoriety), but participants on both sides of the debate believed he genuinely wanted to tailor a bill that would protect children without infringing too much on freedom of speech.

He wanted—implausibly—to placate those on both sides of the debate—from the American Civil Liberties Union to the Christian Coalition. He also did not want to pass a law that later would be struck down. "I was not interested in an exercise in futility," the senator would say later. "I wanted to pass a law that would stand up under constitutional scrutiny."

Over the next couple of months, as they fine-tuned the bill, the senator and his staff took suggestions from a range of sources. Burrington waded right in, despite a split opinion on tactics in the anti-CDA camp.

Some civil rights purists, such as the Electronic Frontier Foundation (EFF) and the CDT, believed that even negotiating with Exon's side was a bad tactic. Why fight to make the bill as fair and unrestrictive as possible? Let them pass a blatantly unconstitutional, anti-free-speech bill, went the reasoning; it will then be overturned by the courts later.

For Burrington, that tack was impossible; AOL didn't have the luxury of assuming a bad bill wouldn't stand up. In his more progressive bones, he believed the CDA was the wrong approach, but his effort to shape the bill was part of his trying to protect his company, not a question of theory or ideology. If the CDA were to become law, AOL might have to restructure major parts of its business; Burrington had no choice but to sit down with the drafters of the bill and try to influence the language as best he could.

Some argued that AOL's willingness to negotiate with Exon gave the CDA a legitimacy it might not otherwise have had. CDT head Jerry Berman described a disheartening meeting he and his colleague, Daniel Weitzner, had with Exon's counsel and

the key drafter of the CDA, Chris McLean, one afternoon in February. Berman had made the trip to Capitol Hill to present McLean with a letter signed by dozens of organizations and companies opposed to the CDA. Standing in Exon's office, McLean opened the letter with a flourish and quickly scanned down to the signatories to see who claimed to be against the bill.

Then, pen in hand, he began ticking off the names of companies that had already sent someone to begin negotiations on the bill's language. He put neat check marks next to AOL, Prodigy, CompuServe, and on down the list, until only the civil liberties organizations were left.

"These are the people who have come by to work with us already," he told Berman, indicating the check marks.

The message was clear: Why withdraw the bill when so much of the opposition was ready to sit at the table and negotiate the language?

It was a classic divide-and-conquer strategy. Berman left Exon's office that day feeling that knives had been unsheathed in the battle over the CDA.

Considering the threat to AOL if the CDA were to become law, Burrington, the newly minted director of public policy, was granted an astonishing amount of leeway to decide AOL's tactics. AOL's top brass were aware of the CDA and the problems it presented, but there was so much else to worry about in the still-struggling company that Burrington was basically left to deal with the issue as he saw fit.

He negotiated with the Senate staffers, dealt with the press, and networked with attorneys for the other online services. He sent regular memos and updates to AOL's executives, but he rarely received guidance—or any response at all. For all intents and purposes, AOL was entrusting its legislative affairs entirely to Burrington.

"People [inside the company] were very much aware," said Burrington. "But, to my surprise, I was able to work this thing in a manner that I thought was best."

The industry had long put its bet on parental control software, which blocks material containing key words—such as "sex" and "breast"—as the solution to protecting kids using the Internet.

All the major online services—including AOL—provided parental control software to all members, free of charge. Though the software was often buggy—blocking sites with words such as "Sussex" and "Essex" when asked to block the word "sex," for example—the industry still maintained that such software was a far more reasonable way to keep objectionable material away from kids. If parents were given the power to control what their children saw online, went the industry's argument, then the CDA would simply be unnecessary.

In the meantime, the CDA was moving through legislative channels, forcing some troublesome issues.

Could online services realistically keep under-18 users from seeing anything deemed indecent?

And a thornier question: Should they even have to?

How was "indecent" defined in the online world anyway? Was it like the world of broadcasting, where even certain curse-words are off-limits during daylight hours? Or should the Internet be regulated more like the print world, with its almost-anything-goes latitude? Was online like print or like broadcast?

The problem was, it was neither. It was a completely new medium, about which the vast majority of Americans knew little, and for which new rules would have to be written.

In March 1995, after spending nearly two months negotiating with civil liberties groups and representatives of the online industry, Exon submitted a reworded version of the bill. Antiporn activists were aghast: the new bill had added defenses that would remove all liability from online service providers. Under the new wording, companies like AOL wouldn't be held responsible for content they didn't produce themselves.

Exon had, in the opinion of longtime antiporn activist Bruce Taylor, been "hoodwinked." And the antiporn forces were determined to do something about it.

chapter twelve

supreme courting

enough is too much

A trio of conservative activists quickly set to work on the increasingly controversial bill: Bruce Taylor, head of the National Law Center for Children and Families; Cathy Cleaver, of the Family Research Council; and Donna Rice Hughes, director of communications for Enough Is Enough, an antipornography organization.

Taylor, Cleaver, and Hughes were poles apart in their levels of experience in dealing with the issue. Taylor, a straight-talking, sardonic attorney, had worked on antiporn issues since 1973, when he was a law student. His entire career had been devoted to fighting pornographers, and he had taken on some of the most notorious. In his Fairfax, Virginia, office, Taylor displays a framed courtroom sketch of himself arguing in front of the U.S. Supreme Court. The case: *Hustler* pornmeister Larry Flynt versus the State of Ohio.

Cleaver, too, was a veteran in the antiporn wars, having worked for the National Law Center before moving to the right-wing Family Research Council. A sharp-tongued lawyer, Cleaver was a natural in front of the camera, and she was a favorite among news reporters looking for colorful quotes.

Hughes, on the other hand, had first gained fame in a more unconventional way: She was the love interest of then-presidential hopeful Gary Hart in 1988, when she was still known as Donna Rice. After taunting the media with a challenge to find evidence of his philandering, Hart had been caught with the South Carolina-born model, thereby propelling his candidacy into oblivion and Rice into the history books.

America had gotten its first glimpse of Donna Rice in the now-infamous photo showing the blonde ex-cheerleader sitting primly on Hart's lap next to the "Monkey Business" pleasure boat. That photo, which was invariably coupled with newspaper accounts playing up the "bimbo angle," had led most Americans to believe that Rice—who had graduated Phi Beta Kappa in biology at the University of South Carolina—was a lightweight. Stung by the charges in the press, she dropped out of the public eye after what she now refers to as "the scandal," and reassessed where her life was leading.

Aside from a final foray into modeling—including her photo shoot for "No Excuses" jeans—no one heard much from Donna Rice in the next several years. In her own words, "When the scandal happened, I realized how far I had gotten away from my beliefs. I came back to my faith, and sort of said, 'OK, God, use this for your glory.'"

In 1994, she was invited to come on board a northern Virginia-based antipornography group, Enough Is Enough. She enthusiastically accepted and, soon after, began to research the issue of online pornography. In May 1994, she married business executive Jack Hughes, and took his name.

Donna Rice Hughes's transformation was complete.

By most accounts, the efforts by Taylor, Cleaver, and Hughes were geared toward crafting a workable bill, even if that meant angering some allies of the bill, such as the more conservative Christian Coalition and the American Family Association. The latter wanted no concessions to what it called "the red-light district of the information superhighway." The more restrictive the bill, the better.

But Taylor, who characterized his role as "explain[ing] what effect certain language would have" rather than lobbying, said he

"didn't think the language needed to go that far. I wanted to give the industry a chance to do what it said it wanted to do"—protect children from pornography.

Yet Taylor didn't disguise how he felt about the industry. To him, AOL and other Internet service providers were "a new breed of pornographers."

In the old days, he felt, pornographers knew they were pornographers. "They operated on the fringes. Their attitude was, 'I don't care if you like me,'" he said. "Now they operate like accepted society."

The online services, said Taylor, would "sabotage the whole stupid Internet to protect a few dirty pictures. . . . I don't mind arguing about law and philosophy, but I don't want kids to suffer in the meantime."

With the influence of the trio, the bill moved back toward its more restrictive roots.

On the other side of the issue, the anti-CDA forces scrambled to organize. While the CDT corralled civil liberties groups, Burrington helped rally the other players in the industry, organizing weekly strategy meetings in law firms up and down Washington's K Street. Besides trying to influence the CDA language as it developed, the group took another tack—trying to initiate counterlegislation.

Their champion in the Senate was Patrick Leahy (Democrat, Vermont), one of the few senators who actually used the Internet regularly. He was sufficiently alarmed by the proposed CDA to take action of his own, and on April 7, 1995, he proposed a bill that would mandate a study by the Department of Justice on how to empower users to screen out unwanted material. "We must find ways to do this," said the senator when introducing the bill, "that do not invite invasions of privacy, lead to censorship of private online communications, and undercut important constitutional protections."

But the bill, like so many others, faded before making it to a vote.

The CDA had better chances, partly because it would be attached to the enormous steamroller of the 1996 telecommunications reform bill, and partly because the U.S. Congress has always loved to pass antipornography laws. Political slam dunks in terms

of positive press back home, most antiporn initiatives pass by overwhelmingly lopsided votes. So even before it came up for a vote in June, the CDA looked like a sure thing.

But a few things about the CDA gave its supporters cause to worry about its prospects for easy passage.

First, the fact that a computer user must proactively seek out such material was a powerful argument against the bill. If someone doesn't want to see dirty pictures, went the reasoning, he or she doesn't have to go to them.

Second, because child pornography was already illegal in every state and obscene material could not legally be transported across state lines, the online industry argued that these types of crimes, when committed online, were already covered under existing laws. AOL had already complied with existing antiobscenity laws when obscenity was discovered on the service, so why was another law necessary? And the new language—especially the word "indecent"—was vague, and prone to dangerous interpretation.

Perhaps more important, Burrington knew that the Senate was about to take the first slippery-slope step in restricting many other forms of communication online. Not only would photographs of sexual perversity be affected by the bill, he argued, but a wide range of other so-called "indecency" as well. That included conversations about sexual behavior, the use of the "seven dirty words"—even, theoretically, safe-sex information, photos of classical nude paintings, and the texts of books like *Ulysses* and *Lady Chatterley's Lover*.

Bruce Taylor and Donna Rice Hughes argued vehemently that the "indecency" standard didn't include these things. But the problem was, nobody could agree on just what "indecency" did include. And left to individual jurisdictions in states and counties across America, it was anyone's guess what a particular judge might rule.

Burrington knew that one overzealous prosecutor in some jurisdiction was enough to make trouble. "And who are they gonna go after?" he insisted. "The highest visibility, biggest media bang for the buck"—AOL.

Burrington and others in the industry obviously preferred having no CDA at all. But if there was going to be a bill, they believed a preferable, less restrictive standard could be used in the language.

Instead of banning "indecent" material online, they preferred the looser "harmful to minors" standard. Although Bruce Taylor and some others who supported the CDA argued that "harmful to minors" is no less restrictive than "indecent," Burrington and Berman felt strongly otherwise.

"'Indecency' is naughty words, the things your mother tells you not to say. Whether it has any redeeming social value is not considered," said Berman. "To ban 'indecent' is an extremely restrictive standard. 'Harmful to minors,' on the other hand, is soft-core porn on up, the kind of thing you put a brown-paper wrapper over in a convenience store."

If there had to be a CDA, argued Burrington, it should restrict only porn, not simple curse words and sexual innuendo.

These were some of the many points that Burrington hammered on as he knocked on doors of the Senate and buttonholed politicians, in an effort to scuttle the bill. Why was there a need to saddle the fledgling online industry with burdensome regulations that could kill it in its crib? It was a persuasive argument to make before Republicans, who were touting less government intervention in business.

The debate grew heated as the Senate vote neared. With both sides feeling as though the other side "just didn't get it," one participant in the debate—Donna Rice Hughes—had an idea.

With the help of Deen Kaplan, a computer-savvy fellow anti-porn activist, Hughes sought out the vilest examples of sexual deviancy and obscenity she could find online. She then downloaded lists of photo titles—with wording like "Sexy redhead eats shit like candy!" and "Schoolgirl fucks her sister's tiny shaved twat with a dildo!"—and bulletins from a BBS listing titles such as "Rape, torture, pussy nailed to a table!" Without including any pictures, she printed the lists and put them in a manila folder, to which she then attached a bright red "Warning" label.

Hughes made dozens of the folders, all with the red warning label. Then, on July 6, 1995, she made a phone call that would set in motion one of the more sensational events of the CDA debate.

She called Chris McLean, Exon's legislative assistant and the key aide in crafting the bill. Enough Is Enough had planned a luncheon

presentation on Capitol Hill the next day, and Exon, along with fellow senators Bob Dole and Charles Grassley, was scheduled to speak.

"Make sure you're there on time to see my presentation tomorrow," Hughes told McLean. "There's something important that you need to see."

The next day, at the luncheon, Hughes gave a cue during her speech, and scores of well-dressed men and women seated at tables laden with coffee cups and half-finished lunches tore open the envelopes. A shocked silence fell over the room as the luncheon guests flipped numbly through pages filled with the foulest smut. In one swoop, Donna Rice Hughes had transformed the debate, for the luncheon guests, from the realm of the abstract to the very tangible. She wanted Senator Exon to do the same on the floor of the Senate.

"Until you show this to members of the Senate, they're not going to get it," Hughes said to McLean. "As long as people think we're talking about the kind of airbrush nudity you find in *Playboy*, they aren't going to respond."

Immediately after the luncheon, Deen Kaplan and Exon's staff went back to the senator's office to get online. Kaplan, apologizing beforehand for what he was about to do, showed the group some of the raunchiest photographs he could find online, including some of women having sex with a range of different animals.

The staffers were appalled, but they also realized that Hughes' idea was brilliant. This was the tool they needed to spur the Senate to action.

Just as Hughes had done earlier, the staffers downloaded the material, but this time they included pictures. Then one of them grabbed an ordinary blue binder to put the presentation in.

The infamous "blue book" was born. One week later, Exon would use all of its powerful shock value in the televised Senate debate.

Only a few days were remaining before the Senate vote in June. Burrington, Bob Butler, and others representing the industry continued to meet with Taylor, Cleaver, and the Senate staffers in an effort to once again reshape the CDA's language in their favor before the vote.

Despite their bitterly opposing viewpoints, the participants later recalled their meetings as having had a generally respectful tone. Burrington, whose company had perhaps the most to lose from passage of a strict CDA, was invariably described by participants as polite, even cordial. Until just before the Senate vote, during a meeting at Exon's office.

The meeting was going badly for Burrington, who felt that the pro-CDA side wasn't giving any leeway on changing the language. Even after hours of discussions, there was no budging, and the months of wrangling were coming to a head. Tempers were wearing thin as both sides tried to push their language into the bill.

Then Exon's chief of staff, George Pallas, decided to bring in the Senate chaplain, Lloyd John Ogilvie, to sit in on the meeting. Chaplain Ogilvie entered the room, said a prayer, then took a seat to listen to the proceedings.

For Burrington, this was too much. He flipped.

"I mean, I'm sitting in this conference room, and all around me is so much Nebraska football memorabilia, I feel like I'm sitting in a coach's office. Then they bring in the chaplain. It was so bizarre!," said Burrington. "He was brought in to remind us to 'Do the right thing.' . . . So much for separation of church and state."

According to Bruce Taylor, the chaplain's appearance at the meeting cast a "funny feeling" around the room. And that was no surprise, argued Taylor. "Why shouldn't they feel funny about having a chaplain watch them as they fight to keep porn free and available in cyberspace?"

Everybody clammed up, said Taylor, and the anti-CDA forces felt inhibited about how they talked in front of the chaplain. In his eyes, "That should have been a sign that something's wrong with your argument, if you have to change your language in front of a chaplain—or a nun, or a mother or whoever."

And Chaplain Ogilvie's role in the debate wasn't through. On June 12, two days before the vote on the CDA, he offered an unusual prayer in the Senate.

"Almighty God, Lord of all life," he began, "We praise you for the advancements in computerized communications that we enjoy

in our time. Sadly, however, there are those who are littering this information superhighway with obscene, indecent and destructive pornography."

The prayer continued in that vein, before shifting to a plea for God's guidance: "Give us wisdom to create regulations that will protect the innocent."

Two days later, Exon opened debate on the Senate floor.

Exon, wanting to ensure that no one had missed the message of Ogilvie's prayer, opened his remarks by quoting the prayer in its entirety. He then invited his colleagues to have a look at the contents of the blue book. The senators flocked by Exon's desk and into the cloakroom, where a copy of the book had also been put, to stare gape-mouthed at the photos.

To Leahy, the CDA's fiercest opponent, the whole exercise was farcical. Ninety percent of the members were not even aware of what the Internet was, he believed, "but when there were obscene and objectionable photographs, they seemed to go into the cloakroom over and over again."

The blue book was a powerful prop. "Of course, it was effective," Burrington said. "They just dug into the Net for the worst stuff, to give the Senators a backbone."

Instead, he thought, why not put together another binder of stuff that was neither obscene nor child porn, but that might be considered indecent under the CDA—things like safe-sex Web sites, or breast cancer awareness material? Perhaps that would educate the Senators to the real issue in the CDA debate.

✱ But the blue book was simple, shocking, and effective. In his high-handed political masterstroke, Exon had reduced the complicated issues to one statement: A vote for the CDA is a vote against sexual perversion. A vote against it is a tacit concession to pornographers.

The CDA passed the Senate overwhelmingly, 86-14. Leahy was crestfallen, especially at the reasoning given by a number of his colleagues for their pro-CDA votes. "Let the courts sort it out," they told him. "Why should we stick our necks out?"

"Even when it passed, several of the senators knew it was unconstitutional, but they told me, 'How can you vote against