

Freedom to Read Foundation

REPORT TO COUNCIL

2010 Midwinter Meeting — Boston, Massachusetts

As President of the Freedom to Read Foundation, it is my privilege to report on the Foundation's activities since the 2009 Annual Conference:

Barbara M. Jones, Executive Director

I am delighted to introduce Barbara M. Jones as the new Executive Director of the Freedom to Read Foundation. She brings a rich background in library administration, scholarship, and intellectual freedom advocacy to this position. From 2003–2009, she was the Caleb T. Winchester University Librarian and Deans' Council Member at Wesleyan University in Middletown, CT. She held previous library directorships at Union College, the University of Northern Iowa, and the Fashion Institute of Technology (SUNY), as well as administrative positions at the University of Illinois at Urbana-Champaign, Minnesota Historical Society, New York University, and Teachers College Library, Columbia University.

She holds a Ph.D. in U.S. Legal History from the University of Minnesota/Twin Cities and also holds an M.A. in History, Archival Management, and Historical Editing from New York University; an M.L.S. from the Columbia University School of Library Service; an M.A.T. in English from Northwestern University; and a B.A. in English from the University of Illinois at Urbana-Champaign. She is a member of Phi Beta Kappa.

It is a particular pleasure to introduce Barbara, as she is one of our own. She brings twenty-five years of active engagement on intellectual freedom issues to her new position. She was a member of the ALA Intellectual Freedom Committee and has served as chair of the Intellectual Freedom Round Table. She was an ACRL Legislative Advocate and also has served on state Intellectual Freedom Committees in Iowa and Minnesota. In addition, she has served on the Freedom of Access to Information and Freedom of Expression (FAIFE) Standing Committee of IFLA, serving as Secretary to FAIFE from 2007–2009. As a FAIFE trainer and expert advisor, Barbara has developed curricula and training programs, and conducted workshops internationally. And crucially, she is an active supporter of the Freedom to Read Foundation, having served until her hiring as a Trustee and Treasurer of FTRF.

New Trustee John Horany

With Barbara's hiring, it became necessary to find someone to take up her work as a Trustee and Treasurer for FTRF. I am pleased to announce that John Horany, a Dallas attorney who is best known for his work vindicating the right to read in the Wichita Falls library censorship case, has accepted our invitation to serve out Barbara's term. John recently served a two-year term as an FTRF Trustee. He is a cooperating attorney with the ACLU of Texas and on the faculty of ALA's Lawyers for Libraries program.

Challenging the USA PATRIOT Act and NSL Authorities

For several years now, the Freedom to Read Foundation has supported legal challenges to the USA PATRIOT Act and the government's ability to use National Security Letters (NSLs) to conduct secret searches of some of our most private information. We supported the four Connecticut librarians who sought to set aside the NSL served on the Library Connection in Windsor, CT, and we continue to support John Doe and the ACLU, who are still engaged in their lawsuit, *John Doe and ACLU v. Holder* (formerly *John Doe and ACLU v. Mukasey*), challenging the constitutionality of the automatic gag order that accompanies every NSL.

Last summer, we were very happy to report that the Second Circuit Court of Appeals had upheld key parts of the federal district court decision in *John Doe and ACLU v. Holder* that struck down the National Security Letter statute as unconstitutional. As you may recall, the Second Circuit found the NSL statute unconstitutional to the extent that it imposed a gag order requirement on NSL recipients without requiring the government to obtain judicial review of the gag order. It also overturned the statutory provision that required courts reviewing the propriety of a gag order to treat the government's certification concerning the necessity for the gag order as conclusive. The Obama administration chose not to appeal the decision to the Supreme Court, and the Second Circuit subsequently returned the lawsuit to the district court so that the government could develop procedures consistent with the Second Circuit's decision.

Back at the district court, the government said the gag order should remain in force, since there were circumstances that required keeping the gag order in place. In support of its argument, it filed a classified brief and affidavit that was only seen by Judge Marrero as an *ex parte* filing. Based on the materials in that classified filing, Judge Marrero ruled that the government had demonstrated the necessity of keeping the existence of the NSL secret and ordered the gag order to remain in effect. He then ordered the case to be closed despite the ACLU's protests and its demand to be able to view the government's filings. The ACLU has filed a motion asking Judge Marrero to reconsider his decision, a motion that is rarely granted by the courts.

To say we are disappointed with the outcome of this lawsuit would be an understatement. We have long argued that the government should not be able to silence an individual without providing an opportunity to evaluate and challenge the reasons for the gag order. A system which allows the government to justify its actions in secret serves neither justice nor democracy. FTRF will continue to support John Doe and the ACLU in their effort to preserve our civil liberties.

Preserving the Freedom to Read

Consistent with our name and purpose, the Freedom to Read Foundation works to preserve the right to read and receive ideas, free from government censure or censorship, by supporting and participating in a broad array of litigation intended to vindicate this fundamental constitutional right.

Among these lawsuits is *American Civil Liberties Union of Florida v. Miami-Dade School Board*, which challenged the Miami-Dade School Board's decision to remove from its classrooms and libraries all copies of the book *Vamos a Cuba* and its English-language companion book, *A Visit to Cuba*, on the grounds that the children's picture book did not accurately convey the harsh political realities of life in Cuba. The federal district court in Miami swiftly overturned the school board's decision on the grounds that the claimed inaccuracies were a pretext for imposing political orthodoxy on the school library.

As we reported this summer, the Eleventh Circuit Court of Appeals overturned that decision, ruling that the district court erred in finding that the book had been removed for political reasons, and that the book's factual inaccuracies justified the book's removal from Miami-Dade school libraries. The ACLU of Florida appealed this decision to the U.S. Supreme Court, arguing that the Eleventh Circuit panel reached its decision by revisiting the factual findings of the district court and reexamining the credibility of witnesses—matters traditionally left to the discretion of the trial court.

On November 16, the Supreme Court denied the petition for *certiorari*, upholding the Eleventh Circuit's decision. As a result, *Vamos a Cuba* is censored and the students of the Miami-Dade School District will not ever find the book in the school library.

Though this is very bad news, there is a silver lining. In reaching its decision, the Eleventh Circuit did not decide the issue of whether book censorship complaints should be decided under the standard enunciated in *Board of Education v. Pico*, nor did it decide whether school library books should be considered part of the curriculum. Instead, it conducted its own review of the factual evidence presented in the case under the *Pico* standard and simply reached a different conclusion about the Miami-Dade school board's motivations for removing *Vamos a Cuba* from its school libraries, thus preserving the legal standard set forth in *Pico*.

Protecting First Amendment Rights

In addition to its work defending the right to read, FTRF also participates in litigation that defends fundamental First Amendment free speech rights. That is why we chose to join an *amicus curiae* brief in support of former CIA agent Valerie Plame Wilson, who was prohibited by the CIA from including her pre-2000 dates of service in her published memoirs, even though those dates were included in an unclassified letter from the CIA published in the Congressional Record. At trial, the federal district court held that the CIA's prohibition on publication did not violate the First Amendment, and Plame Wilson appealed the decision to the Second Circuit Court of Appeals.

On November 12, the Second Circuit affirmed the district court, stating that classified information retains its classified status even if there is public disclosure of the information. It further held that the CIA can require Plame Wilson to keep her dates of service classified. Plame Wilson thus becomes the only person in the United States who cannot publish or discuss her dates of service with the CIA.

In a critical Supreme Court case, our participation as *amicus curiae* in *U.S. v. Stevens* is based on our opposition to any statute that chills free expression by creating new categories of unprotected speech. As you may recall, *U.S. v. Stevens* addresses a statute that criminalizes depictions of the killing, maiming, and torture of live animals—but not the act of animal cruelty itself. While the statute provides an exception for any depiction that has serious religious, political, scientific, educational, journalistic, historical, or artistic value, the determination of whether a work has “serious value” is left to a judge and jury, thereby leaving artists, photographers, journalists, and filmmakers uncertain about just what depictions of animal cruelty are illegal, thus chilling their speech out of fear of prosecution. Certainly they would not want to find themselves in the place of the defendant in this case (a pit bull enthusiast), who was convicted and sentenced to thirty-seven months in prison because his documentaries about pit bulls contained footage of pit bull dog fights.

FTRF joined in an *amicus* brief that argues that the statute unconstitutionally criminalizes depictions of violence that are protected under the First Amendment. The Supreme Court heard oral argument on October 6, 2009, and we anticipate a decision in the near future.

40th Anniversary Gala and Judith F. Krug Fund

This past summer, the Freedom to Read Foundation observed its 40th anniversary with a gala event that celebrated the life and achievements of the Foundation’s founding Executive Director, Judith F. Krug. The gala, which took place in the Art Institute of Chicago’s new Renzo Piano-designed Modern Wing, was an enormous success by every measure. I am very pleased to report that the revenues generated by the gala allowed FTRF to add over \$35,000 to its endowment, thereby helping to secure the Foundation’s future.

In addition to the gala, a substantial amount has been donated to the Freedom to Read Foundation in memory of Judith Krug. Over the last several weeks, the Executive Committee and Judith’s husband Herb have discussed how to use these funds, with the intent of establishing a project or program that would embody Judith’s lifelong devotion to educating librarians, library workers, and the public about the importance of intellectual freedom. The Board has decided to explore two of the proposed projects.

The first project would commission the creation of a book and lesson plan directed toward students and teachers with a focus on the importance of the freedom to read. As envisioned, the text and its accompanying lesson plans would tell the story of the First Amendment with a focus on the right to receive ideas and information, including book banning and efforts to stop it. The book would make the case for the importance of exercising the right to read freely as a foundation of a well-functioning democracy. The book would include her writings and speeches along with the FTRF mission statement.

The second project would launch a First Amendment lecture series that would incorporate webinars and similar interactive online technologies to reach students at library and information schools across the country. The lectures would feature acknowledged experts on advanced First Amendment issues related to libraries, publishing, the Internet, and the media, and would highlight FTRF's sponsorship and include Judith's name prominently in the title. As the event becomes established, additional components could be added, such as a juried competition of student papers regarding topics surrounding the First Amendment and libraries and staff development opportunities.

Diversity

At our meeting on Friday, FTRF's task force on diversity delivered a list of suggestions as to how the organization can increase its diversity. Among the recommendations were inviting ALA's ethnic caucuses to send liaisons to the Freedom to Read Foundation, and encouraging the FTRF Nominating Committee to expand the diversity of nominees for election.

FTRF Author Event

Last night (following the submission of this report), FTRF held its fifth annual author event. This year's event was held in conjunction with the Gay, Lesbian, Bisexual, and Transgendered Round Table's Midwinter Social and featured Michael Willhoite (*Daddy's Roommate*) and Lesléa Newman (*Heather Has Two Mommies*). Funds raised will benefit the Conable Scholarship Fund, which sponsors a library student or new professional to attend Annual Conference. Many thanks especially to the Harvard Medical School's Countway Library of Medicine for opening its doors at the last minute following a burst pipe at the original location.

Developing Issues

Our Developing Issues Committee identified issues that are of emerging concern from an intellectual freedom perspective, and that might inform future litigation. These are the Anti-Counterfeiting Trade Agreement, "national" community standards applying to obscenity and harmful-to-minors cases involving Internet and electronic communications, "cyberbullying" legislation, and the increasing occurrences of school districts policing students' off-campus postings on social networking sites. The religious defamation resolution at the United Nations sparked a discussion of how this could affect library collections in the U.S. and beyond, and it certainly warrants our considered attention.

LIS Graduates Free Membership Program

We are very pleased to announce that FTRF's offer of free memberships to recent graduates (since August 2009) of LIS programs has been very successful. Nearly 100 graduates applied for memberships, and the FTRF trustees agreed to extend the program for another year. If you are connected with an ALA-accredited library school or a school library media program recognized by AASL, please help us spread the word about this offer!

Membership in the Freedom to Read Foundation provides a great opportunity to support the important work of defending First Amendment freedoms, both in the library and in the larger world. Your support for intellectual freedom is amplified when you join with FTRF's members to advocate for free expression and the freedom to read. I strongly encourage all ALA Councilors to join me in becoming personal members of the Freedom to Read Foundation, and to have your institutions become organizational members. Please send a check (\$35 minimum dues for personal members, \$100 for organizations) to:

Freedom to Read Foundation
50 E. Huron Street
Chicago, IL 60611

Alternatively, you can join or renew your membership by calling (800) 545-2433, ext. 4226, or online at www.ftrf.org/joinftrf.

Respectfully submitted,

Kent Oliver
President, Freedom to Read Foundation