

Freedom to Read Foundation
REPORT TO COUNCIL
2011 Midwinter Meeting — San Diego, California

As President of the Freedom to Read Foundation, it is my privilege to report on the Foundation's activities since the 2010 Annual Conference:

FTRF and the Future

Over the past forty years, the Freedom to Read Foundation has marked many successes as the ALA's First Amendment legal defense arm, including the 1997 landmark Supreme Court decision that secured full First Amendment protection for materials published via the Internet. In 2009, the FTRF Board of Trustees celebrated those achievements while transitioning its leadership to a new Executive Director.

In 2010, the FTRF Board of Trustees resolved to examine the Foundation's past and envision its future in order to assure another successful forty years. To accomplish this, trustees met for a one-day retreat on October 5, facilitated by Dan Wiseman of Wiseman Consulting. Over the course of the day, our conversations ranged from a group analysis of FTRF's strengths, weaknesses, opportunities and threats, to an exercise designed to elicit our hopes and dreams for FTRF's future achievements. We identified priorities and strategies for fundraising, membership recruitment and engagement, litigation, education and public awareness, collaboration, and FTRF's governance and organizational capacity. The board continued the discussion at this meeting and we expect a full report to be available for the 2011 Annual Conference.

New Treasurer / Trustee

This fall, we celebrated with FTRF Treasurer Susan Hildreth when President Barack Obama nominated her to lead the Institute for Museum and Library Services. She was confirmed last month, at which time she tendered her resignation from the FTRF Board.

I am pleased to announce that at this meeting, the Trustees voted Chris Finan to fulfill her term on the board and elected current Trustee Robert P. Doyle to complete her term as Treasurer (both through the 2011 Annual Conference). Chris, a past FTRF Trustee, is the president of the American Booksellers Foundation for Free Expression (ABFFE) and one of the foremost figures of the free speech community. We are pleased to welcome him back to the fold!

Defending the Freedom to Read

During our retreat, the FTRF Board listed as our preeminent "strength" FTRF's long history of protecting the right to read in our courts of law. I am particularly pleased to be able to report two new legal victories for the freedom to read since we last met in Washington, D.C.

Our first victory came on September 20 in the case of *Powell's Books v. Kroger*, a lawsuit challenging two new “harmful to minors” statutes passed by the Oregon legislature. FTRF and its co-plaintiffs, including seven Oregon bookstores, ABFFE, the Association of American Publishers (AAP), the Comic Book Legal Defense Fund, the Oregon ACLU, Planned Parenthood, the Cascades AIDS Project, and FTRF Board Member Candace Morgan, filed the lawsuit in part because the law relied on a non-standard legal definition of sexually explicit material that potentially swept up books, pamphlets, websites, and other materials that would otherwise be constitutionally protected for minors.

The Ninth Circuit confirmed FTRF’s concerns when it ruled both laws unconstitutional on grounds of overbreadth. Stating that both statutes “sweep up a host of material entitled to constitutional protection, ranging from standard sexual education materials to novels for children and young adults by Judy Blume,” the court held that Oregon’s statutes criminalize the distribution of far more material than hardcore pornography or material that is obscene to minors, and that the statutes are not subject to a limiting construction that would make them constitutional.

A second lawsuit, filed against the State of Alaska, challenges a newly-adopted Alaska statute that criminalizes the distribution of certain material to minors under the age of 16 either on the Internet or in person, such as in a library or a bookstore. Under the new law, a crime is committed if the material distributed fits within the law’s definition of “harmful to minors,” and is distributed to a 16 year old or a person the distributor believes is under 16 years of age; it is not a defense to argue that the person was not actually younger than 16.

FTRF filed a lawsuit to challenge the Alaska statute, joined by the Alaska Library Association, several local booksellers, the ACLU of Alaska, and AAP and ABFFE. Remarkably, the district court granted our motion for a preliminary injunction on October 20 without requiring oral argument, holding that the statute chills free speech and that there is a strong likelihood that the plaintiffs will succeed in overturning the law when the case is tried before the court. On November 17 the court issued an order clarifying that the statute cannot be enforced during the pendency of the case.

Banned Books Week and Judith Krug Fund

The Judith Krug Fund, created from money donated to FTRF in memory of its founding Executive Director, funds projects and programs that embody Judith’s lifelong devotion to educating librarians, library workers, and the public about the importance of intellectual freedom.

I am very pleased to report that the first grants made from the Judith Krug Fund underwrote Banned Books Week celebrations in seven different communities in 2010. The Iowa City Public Library won the largest grant—\$2,500—for its Carol Spaziani Intellectual Freedom Festival, which took place during Banned Books Week. The festival included a “Rolling Read-Out” as part of the University of Iowa’s Homecoming Parade. Other grantees included the ACLU of Pennsylvania; Cansius College of Buffalo, NY; the East Branch of the Dayton, Ohio Metro Library; the Santa Monica, California Public Library; the Takoma Park, Maryland Public Library; and St. Catharine College in Kentucky. Information about the 2011 Judith Krug Fund Banned Books Week grants will be available in the coming months.

In addition to the Banned Books Week grants, the Judith Krug Fund also plans to fund online intellectual freedom education opportunities for LIS students. FTRF staff attended last week's ALISE meeting and met several LIS educators who were excited to work in concert with FTRF in developing this program. If you or any of your colleagues are interested in participating in this effort, please contact FTRF Executive Director Barbara Jones at bjones@ala.org.

Developing Issues

Our Board spent a significant amount of time at this meeting discussing issues identified by our Developing Issues Committee as items of concern and that might inform future litigation. These include the recent WikiLeaks controversy, e-books and privacy, and issues raised by new laws regulating obscenity and recent obscenity prosecutions. The Board asked FTRF General Counsel Theresa Chmara to identify the issues associated with e-book privacy and libraries and report her findings back to the FTRF Board. In addition, Executive Director Barbara Jones discussed the issues raised by Common Sense Media's use of emoticons and other shortcuts to rate literature for youth.

Free Membership Offer for LIS Graduates

Based on the success of last year's offer of free memberships to recent LIS graduates, FTRF has renewed its offer of a year's free membership in the Foundation for 2010–2011 graduates of LIS programs. If you are faculty member, administrator, or student at an ALA-accredited library school or a school library media program recognized by AASL, please help us spread the word at your institution about this offer (as well as FTRF's special \$10 membership rates for those who are still students).

I encourage you to join these new librarians by becoming a full personal member of the Freedom to Read Foundation. Membership in the Freedom to Read Foundation supports the important work of defending our 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 right to read freely. We also hope you will encourage your libraries and institutions to become organizational members of FTRF. 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