

Freedom to Read Foundation REPORT TO COUNCIL 2013 Annual Conference — Chicago, Illinois

As President of the Freedom to Read Foundation, it is my privilege to report on the Foundation's activities since the 2013 Midwinter Meeting:

LITIGATION ACTIVITIES: LIBERATING LITERATURE

Throughout its history, the Freedom to Read Foundation has participated in or supported a number of important lawsuits seeking to preserve important First Amendment freedoms that did not directly involve the right to read freely in schools and libraries. Whether it was video games, depictions of animal cruelty, or lies about military honors, FTRF participated in these lawsuits because we believe that a First Amendment that is equally strong in all its parts is a certain bulwark against the censorship of words and ideas. But in truth, we feel FTRF is at its best when it is pursuing its core mission: defending the freedom to read in our libraries and schools.

The student's right to read is under particular threat these days. Whether it is fear of a particular book like *Persepolis* or a more generalized fear that students may learn to become independent thinkers, school and government officials are moving to suppress student access to books and materials in the curriculum that the officials find offensive or controversial.

The most infamous act of classroom censorship in recent history is the State of Arizona's closure of the Tucson Unified School District's (TUSD) Mexican American Studies (MAS) program pursuant to Arizona Revised Statute §15-112. §15-112 prohibits both public and charter schools from using class materials or books that "encourage the overthrow of the government," "promote resentment toward a race or class of people," are "designed primarily for pupils of a particular ethnic group," and "advocate ethnic solidarity instead of the treatment of pupils as individuals."

In June 2011, the State Superintendent of Instruction, John Huppenthal, declared that TUSD's MAS program was in violation of §15-112 and ordered the TUSD school board to close the program or pay a penalty amounting to 10% of TUSD's annual budget. As a result of Huppenthal's decree, the board eliminated the MAS program. In January 2012, all MAS teaching activities were suspended, the MAS curriculum was prohibited and books used in the courses were removed from classrooms, placed in boxes marked "banned," and put in storage.

A group of teachers and students sought to restore the MAS program by filing suit in federal district court against Superintendent Huppenthal and other state officials. Their complaint, *Acosta, et al. v. John Huppenthal, et al.*, asserted that §15-112 was overbroad, void for vagueness, and violated their rights to free speech, free association, and equal protection. The court quickly dismissed the teachers for lack of standing but then proceeded to consider the

students' claims. On March 8, 2013, the court issued an opinion largely upholding §15-112, holding that the courts owe "considerable deference" to the state's "authority to regulate public school education." While the court struck down one provision of §15-112 barring courses "designed primarily for pupils of a particular ethnic group," it rejected the argument that the other provisions of the statute violated the students' First Amendment rights and their right to equal protection under the law.

I am pleased to report that the Freedom to Read Foundation will be participating in an effort to overturn the district court's decision and restore the MAS program to the Tucson schools. The students have appealed the district court's decision to the Ninth Circuit Court of Appeals and FTRF will be taking the lead in writing and filing an *amicus curiae* brief in support of the student plaintiffs that will argue that §15-112 is unconstitutional. The brief is due in October 2013.

I am equally pleased to inform you that *A.W. et al v. Davis School District*, the lawsuit filed to challenge the decision by the Davis County, Utah School District to remove all copies of the children's picture book *In Our Mothers' House* from the district's library shelves, has reached a successful conclusion. If you recall, Davis County removed the book following a parent's complaint largely because it believed the book constituted "advocacy of homosexuality" in violation of Utah's sex education law. After reviewing the lawsuit with its legal counsel, the school district agreed to return *In Our Mothers' House* to the school library shelves while the parties negotiated a settlement.

In the settlement agreement, the school district agreed that it would not restrict access to *In Our Mothers' House* based on content, would not rely on the Utah sex education statute to restrict access to books on library shelves that were available for discretionary use by the students, and would pay the ACLU \$15,000 to cover attorneys' fees. While FTRF was not a participant in the case, FTRF consulted with the ACLU attorneys and provided expert advice regarding the intellectual freedom issues at stake in the case.

LITIGATION ACTIVITIES: DEFENDING THE RIGHT TO ACCESS THE INTERNET

FTRF also consulted in another recently settled lawsuit challenging a library's use of Internet filters to block access to sites favorably describing minority religions. Annika Hunter, the plaintiff in *Hunter v. City of Salem and the Board of Trustees, Salem Public Library*, alleged that the Salem (Mo.) Public Library and its board of trustees were unconstitutionally blocking access to websites discussing Wicca and other pagan beliefs by using filtering software that improperly classifies the sites as "occult" or "criminal." Her complaint also alleged that the library allowed access to such sites from a Christian viewpoint and that the library director refused requests to unblock specific sites.

After the district court refused to dismiss Ms. Hunter's lawsuit and ordered the case to trial to determine if the library director and library board violated Ms. Hunter's First Amendment rights by refusing to unblock websites discussing astrology and the Wiccan religion, the parties began to prepare for trial in April 2012. Subsequently, the parties agreed to enter into a consent judgment. On March 5, 2013, the district court approved the consent judgment, which ordered the Salem Public Library to stop blocking patrons' access to websites related to minority

religions that the library's web filters classified as "occult" or "criminal." The district court retained authority to enforce the judgment in the future.

THE JUDITH F. KRUG FUND AND BANNED BOOKS WEEK

FTRF's founding executive director, Judith F. Krug, was passionate about the need to educate both librarians and the public about the First Amendment and the importance of defending the right to read and speak freely. The Judith F. Krug Memorial Fund, which was created by donations made by Judith's family, friends, colleagues, and admirers, supports projects and programs that assure that her lifework will continue far into the future.

On June 5, the Freedom to Read Foundation, via the Judith F. Krug Memorial Fund, announced seven \$1,000 grants to libraries, schools, and other organizations in support of Banned Books Week events. Banned Books Week, which will take place Sept. 22–30, 2013, celebrates the freedom to access information, while drawing attention to the harms of censorship. 2013 marks the fourth year FTRF has awarded Krug Fund Banned Books Week grants.

Recipients of this year's grants are the Gadsden (Ala.) Public Library Foundation, Judith's Reading Room, the Kurt Vonnegut Memorial Library, the Livingston Parish (La.) Library, the Lockport (La.) Public Library, the School of Law and Social Justice (Atlanta), and the Yuma County (Ariz.) Library District.

In addition to the grants, FTRF also is providing the grant recipients with Banned Books Week merchandise, sold by the ALA Store. In exchange for the grant, recipients agree to provide FTRF with photos and video of their events. Videos and photos of past grant winners can be accessed at www.ftrf.org.

One of last year's winners, the Lawrence (Kan.) Public Library, used its grant to publish and distribute a series of Banned Books Week trading cards designed by local artists. The innovative campaign immediately won international recognition and collectors' demand for the cards continues. In April 2013, the Library Leadership & Management Association recognized Lawrence Public Library's outstanding public relations effort on behalf of Banned Books Week by selecting the Lawrence Public Library to receive its John Cotton Dana Award for outstanding library marketing. The award includes a plaque and a \$10,000 gift. A second series of cards is in the works for Lawrence Public Library's 2013 Banned Books Week observance.

THE JUDITH F. KRUG FUND AND INTELLECTUAL FREEDOM EDUCATION

In addition to the Banned Books Week grants, the Krug Fund is funding the development of an initiative to provide intellectual freedom curricula and training for Library and Information Science students. This spring, the FTRF Board hired Joyce McIntosh to move the Krug Fund intellectual freedom online education project from an idea into a reality. The project is designed to strengthen LIS students' understanding of the history, theory, and practical applications of intellectual freedom principles in librarianship.

Joyce is a librarian, consultant, and writer. She is the former Outreach and Assistive Technology Librarian at Elmhurst Public Library and continues to work there as a substitute librarian. For the past eight years, Joyce has led training sessions on the topics of intellectual freedom and privacy, and now enjoys leading a program titled “Privacy to Pornography: What Staff Need to Know.” She has served as a liaison from the Public Library Association to FTRF, and has done written articles for the Office for Intellectual Freedom on issues such as intellectual freedom best practices, privacy, and ethics. We are very excited to have her involved with this project.

DEVELOPING ISSUES

Our Developing Issues Committee provided information and led discussions about two emerging issues that could impact intellectual freedom in libraries and give rise to future litigation. The first discussion reviewed the recent revelations about the National Security Agency’s use of Section 215 of the PATRIOT Act and Section 702 of the FISA Amendment Act to conduct massive surveillance of U.S. citizens’ phone and Internet activities, and the impact on our First Amendment right to freely associate. The second discussion considered the threat posed to the freedom of the press and our right to freely access information by the Department of Justice’s attempts to charge journalists reporting on leaks and national security stories with violations of the Espionage Act.

“ONLY A GAME: WHY CENSORING NEW MEDIA WON’T STOP GUN VIOLENCE”

After the Newtown gun violence tragedy, the FTRF Board voted to provide financial support for a report issued by the Media Coalition that would respond to demands to censor media containing violent content. On June 24, the Media Coalition—of which FTRF is a member—issued the 13-page report, “Only a Game: Why Censoring New Media Won’t Stop Gun Violence.” The report represents an effort to educate the public, politicians, and interest groups on what scientific research really says about the impact of media violence on individuals. Among the report’s key findings:

- Crime statistics do not support the theory that media causes violence.
- Research into the effects of video games on aggression is contested and inconclusive. Much of it suffers from methodological deficiencies and provides insufficient data to prove a causal relationship.
- Government censorship of violent content is barred by the First Amendment for all types of media, but industry self-regulation works.

The report concludes by reaffirming the Media Coalition’s statement addressing violence in the media, which affirms that censorship is not the answer to violence in society. FTRF is a signatory to the statement.

2013 ROLL OF HONOR RECIPIENTS JUDITH PLATT AND RUSS FEINGOLD

I am most pleased to announce that past FTRF president Judith Platt and former Wisconsin senator Russell Feingold have been named the recipients of the 2013 Freedom to Read Foundation Roll of Honor Awards.

Platt is the director of free expression advocacy for the Association of American Publishers (AAP). In her role at AAP, Platt has been a leader of numerous coalitions that work to strengthen free speech and privacy rights, including Banned Books Week, the Campaign for Reader Privacy, and the Media Coalition. First elected to the FTRF Board in 1999, Judy served as president from 2007–2009. She was elected to her sixth two-year term in 2012. The Roll of Honor recognizes her unstinting commitment to bringing together publishers and libraries on common issues—in particular opposition to censorship and the support of privacy rights.

I am sure that most of you are familiar with Russ Feingold, who served in the U.S. Senate from 1993–2011. In 2001, he was the only Senator to vote against the USA Patriot Act, based on his concerns for civil liberties. When the Act came up for reauthorization in 2005 and 2009, he led efforts to correct some of its most controversial elements, including trying to narrow the ability of the FBI to seek library, book store, and business records outside regular court channels. After leaving the Senate in 2011, Feingold formed Progressives United, a public education and advocacy organization founded in the wake of the Citizens United Supreme Court decision. By awarding Sen. Feingold the Roll of Honor Award, we honor his leadership by example in support of individuals' civil liberties.

Judith Platt received the Roll of Honor Award during this conference's Opening General Session. We are very pleased to add both Judith and Russ Feingold to the FTRF Roll of Honor.

2013 CONABLE CONFERENCE SCHOLARSHIP

I am also pleased to announce that FTRF has named Amanda Meeks as the sixth recipient of the Gordon M. Conable Conference Scholarship. Meeks received her Master of Library Science from Emporia State University in Portland, Ore., in 2012. She holds a B.S. in Art Education from Illinois State University Chicago. She has done extensive volunteer work with organizations such as the Q Center in Portland and, currently, with Chicago's innovative Read/Write Library, where she leads pop-up library initiatives and is launching a bicycle outreach program.

The scholarship committee was particularly impressed with Amanda's interest in connecting intellectual freedom to cutting-edge areas of library services. As libraries and librarians take on new challenges and continue to work to serve diverse communities, FTRF is excited to connect with motivated professionals like Amanda in ensuring that the values of intellectual freedom and privacy remain front and center.

The Conable Scholarship was created to honor the memory of former FTRF President Gordon Conable and to advance two principles that Conable held dear: intellectual freedom and mentorship. His unexpected death in 2005 inspired his wife, Irene Conable, and the FTRF Board to create the Conable Fund, which sponsors the Conable Scholarship. The funds provided by the Conable Scholarship provided the means for Ms. Meeks to attend this conference, and specifically the various FTRF and intellectual freedom meetings and programs here. She will have the opportunity to consult with professional mentors, and will also present an "ignite" session at the ALA Annual Conference on librarians who are stepping away from their day jobs in order to fill the role of community partners and allies. She will prepare a formal report about his activities and experiences after the conference concludes.

FTRF MEMBERSHIP

The Foundation continues to implement our multi-pronged strategic plan, which includes building our organizational capacity in order to support our litigation, education, and awareness campaigns. Membership in the Freedom to Read Foundation is the critical foundation for FTRF's work defending First Amendment freedoms in the library and in the larger world. As always, I strongly encourage all ALA Councilors to join me in becoming a personal member of the Freedom to Read Foundation, and to have your libraries and other institutions become organizational members. Please send a check (\$35.00+ for personal members, \$100.00+ for organizations, and \$10.00+ for students) 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.

NEW OFFICERS

At the organizing meeting for the 2013–2014 Board of Trustees, the incoming board elected **Julius Jefferson** as president, **Robert Doyle** as Vice President, and **Jim Neal** as Treasurer. **Mary Minow** and **Nancy Zimmerman** will serve as at-large members of the Executive Committee.

Respectfully submitted,

Candace Morgan
President, Freedom to Read Foundation