

Freedom to Read Foundation

REPORT TO COUNCIL

2020 Midwinter Meeting — Philadelphia, Pennsylvania

As President of the Freedom to Read Foundation, it is my privilege to report on the foundation's activities since the 2019 Annual Conference:

50 YEARS AND A REFLECTION ON THE FUTURE

Even as the Freedom to Read Foundation takes time to observe and celebrate the fiftieth anniversary of its founding, FTRF's trustees are reflecting on the foundation's mission, its past, and its future. While the foundation's role as the First Amendment legal defense organization for libraries, librarians, and library users must remain core to its work and mission, FTRF's trustees see an urgent need to expand its mission beyond litigation and to find a means of distinguishing FTRF's mission and work from the good work done by the Office for Intellectual Freedom.

Fashioning a new role and expanded mission for the foundation requires careful consideration of the foundation's legal work defending the freedom to read; its advocacy on behalf of First Amendment rights and the right of library workers to acquire and provide materials that fulfill the information needs of their community; and its nascent initiatives that support Banned Books Week and educational opportunities for library science students and library workers. The trustees are also keenly aware of the need to thoughtfully consider, and work through, the intersection of intellectual freedom, free speech, social justice, and our commitment to equity, diversity, and inclusion. The foundation also needs to review and reconsider its approach to membership and member involvement.

To this end the Freedom to Read Foundation's trustees are planning a retreat in the spring to begin this work. It is the trustees' hope that we will be able to begin to fashion an organization that will defend, support, and advocate for the intellectual freedom of librarians and library users for another fifty years or more. I hope to bring news of this work to you at ALA's Annual Conference in Chicago.

CURRENT LITIGATION

It is often the case that pursuing litigation to defend First Amendment and privacy rights is a long game. Briefs are filed, arguments made, and then the parties must wait for the court's opinion. In one case that opinion might come in a few months. In another, it may take the court years to issue an opinion. Three of FTRF's current cases represent lawsuits where our work is complete and we are waiting for the court's decision.

The first, *United States v. Moulin*, is a defendant's appeal from a criminal prosecution. The issue before the Ninth Circuit Court of Appeals is whether one of the defendants should be granted a new trial because prosecutors failed to disclose that his prosecution relied on evidence gathered through the NSA's phone metadata surveillance program under Section 215 of the PATRIOT Act. FTRF's amicus brief argues that the government should not be permitted to engage in warrantless searches and seizures of phone metadata because that metadata reveals information about an individual's expressive and associational activities that should be protected by the First and Fourth Amendments. The case was argued in November 2016; we patiently wait for the court's decision.

The second, *PEN American Center v. Trump*, is a lawsuit alleging that President Trump violated the First Amendment by retaliating against members of the press who engaged in constitutionally protected speech critical of him or his administration. The PEN American Center seeks an injunction barring Trump from directing or ordering government officers or agencies to retaliate against any person or entity for publishing or speaking speech critical of him or his administration. The government filed a motion to dismiss, alleging that the plaintiff did not have associational or organizational standing to bring the lawsuit. FTRF joined an amicus brief written by counsel for the Reporters' Committee for Freedom of the Press that argues that PEN has plausibly alleged an injury-in-fact sufficient to demonstrate organizational standing. Again, we wait for the court's decision.

FTRF has filed supplemental briefs in *Ex Parte Jones*, a First Amendment challenge to a Texas criminal statute which is intended to bar the disclosure of nude images without consent of the person depicted. However, the law is written so broadly that it could be used to prosecute librarians, booksellers, publishers, and others for the distribution of images that are newsworthy or educational, such as the image of "Napalm Girl," from the Vietnam War. FTRF has filed an amicus brief that argues that the Texas statute violates the First Amendment because it fails strict scrutiny analysis and because the law could be used to prosecute mainstream material that is newsworthy, historic, artistic, or educational. The foundation's supplemental briefs respond to arguments made by the Texas Attorney General about FTRF's brief and an Illinois Supreme Court decision upholding Illinois' non-consensual images statute.

The parties litigating *Robinson v. Hunt County, Texas* settled the lawsuit after the Fifth Circuit Court of Appeals ruled in favor of plaintiff Deanna Robinson's First Amendment claims. Robinson sued the Sheriff's Office of Hunt County, Texas after she was banned from posting on the Facebook page maintained by the Hunt County Sheriff's Office. The Sheriff's Office banned her after she posted strong comments critical of the County Sheriff. However, other posters who expressed support for the Sheriff were not blocked and did not have their posting rights taken away. FTRF joined an amicus brief in support of Robinson. The brief argued that the Facebook page established by the Sheriff's Office was a designated public forum and that a government agency cannot enforce a ban or prior restraint against speech based on the viewpoint expressed by the person posting the comment.

Under the settlement, the Sheriff's Office will pay Robinson's legal fees and, should it reopen its Facebook page, refrain from removing posts based on the viewpoint of the speaker. We are pleased that FTRF's brief helped the plaintiff vindicate her First Amendment rights.

EMERGING LEGAL ISSUES

During FTRF's Midwinter Meeting, General Counsel Theresa Chmara briefed the board on four emerging legal issues that are in the legislatures or in the courts:

- Lawsuits challenging prison regulations that deny or impair inmates' access to legal materials
- Legislation in Missouri and elsewhere that would allow librarians and educators to be criminally charged for providing sex-ed materials and materials with LGBTQ+ themes to minors
- The role of libraries as a public forum, and how public forum analysis governs the public library's procedures and policies concerning social media moderation and filming in the library by First Amendment "auditors"
- Litigation challenging states' BDS legislation

DEVELOPING ISSUES

Members of the foundation's Developing Issues Committee reported on several important issues that raise significant Constitutional or privacy issues for libraries and society at large and may eventually prompt litigation necessary to preserve free speech and privacy rights. The issues include:

- Challenges to classroom diversity libraries
- Controversial materials in school curricula
- Library meeting rooms and anti-trans activists
- Facial recognition software
- Privacy and artificial intelligence in libraries
- Algorithmic bias
- Michigan library privacy legislation

THE JUDITH F. KRUG MEMORIAL FUND

Established by the family, friends, and colleagues of Judith F. Krug, the Judith F. Krug Memorial Fund supports projects and programs that carry on Judith's mission to educate both librarians and the public about the First Amendment and the importance of defending the right to read and speak freely.

Banned Books Week Grants

This year, the Krug Memorial Fund awarded grants to support Banned Books Week observances held by five different schools and libraries. The Krug Fund Banned Books Week grants provide financial support and guidance to libraries, schools, and community organizations planning Banned Books Week celebrations, and are intended to assist libraries and schools that would otherwise not have the resources to do Banned Books Week events for their students or their communities. The grantees for 2019 are:

- Academy of the Sacred Heart - New Orleans, Louisiana
- Belen Public Library - Belen, New Mexico
- Oceanside Public Library - Oceanside, California
- Park University Library - Parkville, Missouri
- Worcester County Public Schools - Newark, Maryland

Each library or school was able to host robust Banned Books Week observances that emphasized the freedom to read and the celebration of diverse books. Among the events were community discussions exploring the experiences and perspectives of women around censorship; a Banned Books Week celebration with the theme of "Love is Love," focusing on challenged books featuring LGBTQIA+ characters, authors, and content; and a Banned Books Week-themed escape room with the goal of escaping censorship. We plan to share their photos, videos, and written reports soon on the foundation's website. To learn more about the grantees and their events, please visit www.ftrf.org/?Krug_BBW.

LIS and Professional Education

The Krug Fund continues to successfully partner with the University of Illinois' School of Information Science and the San Jose State University School of Information to support dedicated coursework on intellectual freedom in libraries. Professor Emily Knox teaches "Intellectual Freedom and Censorship" at the University of Illinois while Professors Beth Wrenn-Estes and Carrie Gardner teach courses on intellectual freedom for San Jose State. We thank the University of Illinois and San Jose State University for partnering with the Freedom to Read Foundation to assure that high-quality intellectual freedom curricula and training remains available to LIS students preparing for their professional careers.

FTRF supports these courses with the assistance of FTRF educational consultant Joyce Hagen-McIntosh. She identifies guest lecturers for the class, ensures the provision of course materials to

students, and provides additional consultation and assistance to each instructor whenever requested to do so.

The Krug Fund also awards scholarships to students wishing to attend the courses provided by the University of Illinois and San Jose State.

FTRF MEMBERSHIP

In a time when legislators and anti-pornography advocates are calling for the prosecution of librarians for providing their communities with constitutionally protected materials addressing diverse lives and concerns, your support for the Freedom to Read Foundation is a necessary and vital support for the foundation's efforts to defend First Amendment freedoms in the library, and in our country as a whole. I encourage all ALA Councilors and all ALA members to join me in becoming a personal member of the Freedom to Read Foundation. I also ask that you invite your institution or organization to join FTRF as an organizational member. Please send a check (\$50+ for personal members, \$100+ for organizations, \$35 for new professionals, and \$10+ 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.

Respectfully submitted,

Emily Knox
President, Freedom to Read Foundation