



FREEDOM TO READ FOUNDATION NEWS

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Barbara M. Jones, Executive Director • Kent Oliver, President

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Building on a powerful legacy

By Barbara Jones, FTRF Executive Director

This is my first column as the new Executive Director of the Freedom to Read Foundation. Now that I am sitting in this office, the absence of Judith Krug is even more difficult to comprehend. She was mentor to so many of us, and every day in this complex job I respect her even more. I pledge to you my energy and commitment to continue this amazing foundation that she established 40 years ago.



For the past few weeks I have been signing letters of appreciation for your 2010 donations. It has been fun to look at names, to renew old friendships, and to thank those of you who have given faithfully—some for over 30 years. I also want to recognize our new members. We will do our best to make you 30-plus year members as well. I was touched by those libraries that renewed their memberships, despite their institutions' deep fiscal crises. These are unfortunately the times in which censorship increases, so we need your ongoing support.

One of my goals is to grow our membership and to extend it to newer librarians. We are therefore offering a free one-year membership to new library school graduates (see p. 2 for details). The Freedom to Read Foundation Board is considering other innovative ways to recruit new members and to increase our support by using social networking and other means. I know that many of you have creative ideas about this, so please let me know!

I am also interested that FTRF give members something in return for all your support. You receive this newsletter. If there are other things you would like to see us do, please let me know. We are currently looking at lecture series and new publishing opportunities.

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And, of course, we pledge to continue monitoring and anticipating legal challenges to free speech, consult with our legal counsel on such matters, work closely with our partners, and act to defend and advocate for freedom of expression. In these pages you'll see updates on many of the varied cases we are involved in. The work of defending access to information is ongoing, and I'm honored to be part of that work.

Supreme Court denies *certiorari* in Florida *Vamos a Cuba* case

On November 16, the Supreme Court denied the ACLU of Florida's petition for *certiorari* in the case challenging the removal of *Vamos a Cuba* from the Miami-Dade School District library shelves. The Eleventh Circuit's decision upholding the school board's removal of the book was thus upheld.

Although this is disappointing, 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*.

FCC Notice of Inquiry

On February 24, the Media Coalition, on behalf of its members including the Freedom to Read Foundation, submitted comments to the Federal Communications Commission (FCC) in response to that agency's Notice of Inquiry (NOI), "Empowering Parents and Protecting Children in an Evolving Media Landscape."

Initially posted in October, the NOI asked for comment on a wide variety of issues concerning minors and electronic media, including both benefits and risks. The Media Coalition's comments specifically addressed potential government regulation of speech that is among the possible outcomes of the FCC's efforts.

The Media Coalition's four main points were:

- Content-based regulation of speech is immediately suspect;
- Parental control tools must not be mandated by the government;
- Social science research does not support the premise that media causes social harms; and
- Regulation of commercial speech to encourage future social good is likely unconstitutional.

In its comments, the Media Coalition stated:

The suggestion in the NOI that the "media effects" on minors is a justification for restricting such content in all electronic media and in advertisements for content is misguided. The debate is mixed at best about the effect on minors of viewing or listening to depictions or descriptions of violence, sex or other content. Different researchers often look at the same data and reach very different conclusions. What is clear is that there is little correlation between the availability of such media content and actual crime statistics. It is important to remember, moreover, that minors have a First Amendment right to see and hear media except in very narrow instances. Any discussion of regulating content to protect minors must be considered in this context.

The NOI came on the heels of last year's Child Safe Viewing Act Report, in which the FCC examined parental control technologies for video and audio programming.

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Foundation on Twitter...



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Free memberships for LIS grads program extended

The Freedom to Read Foundation has extended its program offering free one-year memberships to students graduating from ALA-accredited MLS and MLIS programs and from school library media programs recognized by the American Association of School Librarians (AASL) that are part of an educational unit accredited by the National Council for Accreditation of Teacher Education (NCATE).

Students who graduate in 2010 can, within three months of their graduation, download a membership form at www.ftrf.org/graduates and mail, fax, or email it to the Freedom to Read Foundation.

As benefits of their membership, the graduates will receive the *Freedom to Read Foundation News*, be eligible to vote in the annual trustee election, and receive invitations to FTRF member receptions.

Slate for FTRF election

Twelve candidates for the Freedom to Read Foundation Board of Trustees have been slated for the 2010 election by the Nominating Committee, composed of Trustees Burton Joseph, Christine Jenkins, and Candace D. Morgan, Chair. There are five vacancies on the Board to be filled. Below is the list of candidates slated by the Nominating Committee.

Candidates for Freedom to Read Foundation Board, 2010–2012

J. Douglas (Doug) Archer, University of Notre Dame, Notre Dame, IN

Carol Brey-Casiano, El Paso Public Library, El Paso, TX

Carrie Gardner, Kutztown University, Kutztown, PA

John K. Horany, John K. Horany, P.C., Dallas, TX

Pamela R. Klipsch, Jefferson County Library, High Ridge, MO

Herbert Krug, Herbert Krug & Assoc., Evanston, IL

Mary Minow, LibraryLaw.com, Cupertino, CA

Jim Neal, Columbia University, New York, NY

Kent Oliver, Stark County District Library, Canton, OH

Judith Platt, Association of American Publishers, Washington, DC

Lucille C. Thomas, Brooklyn Public Library, Brooklyn, NY

Patty Wong, Yolo County Library, Woodland, CA

According to Foundation election rules, at least two, and no more than three, candidates must be nominated for each vacancy on the Board. Trustees are elected to two-year terms.

Ballots will be mailed April 1 to all persons holding paid memberships in the Foundation as of that date. To join or renew your membership, call (800) 545-2433 x4226 or visit <http://www.ftrf.org/joinftrf>.

West Bend Library receives 2009 Downs Award

The West Bend Community Memorial Library in West Bend, Wisconsin, was the recipient of the 2009 Robert B. Downs Intellectual Freedom Award given by the faculty of the Graduate School of Library and Information Science (GSLIS) at the University of Illinois at Urbana-Champaign.

Accepting the award, which was presented at the 2010 ALA Midwinter Meeting in Boston, were library director Michael Tyree, young adult librarian Kristin Pekoll, and Board of Trustees president Barbara Deters. The ABC-CLIO publishing company provided the honorarium.

FTRF Trustee Christine Jenkins, who is a GSLIS associate professor and director of the Center for Children's Books, said in the press release announcing the award, "The West Bend librarians, library board, and

library supporters demonstrated the strong and steadfast advocacy on behalf of intellectual freedom that is the focus of the Downs Award. Despite the enormous media attention that the controversy received, they were unwavering in their support of the public library's responsibility to provide a diverse collection to serve *all* community members."



From left: Tom Fitzgerald, ABC-CLIO; Barbara Deters, West Bend Library Board of Trustees President; Michael Tyree, West Bend Library Director; Kristin Pekoll, West Bend Young Adult Librarian; Tim Lum, ABC-CLIO; and Linda Smith, Associate Dean, GSLIS. Photo courtesy of Terry Weech.

The Downs Award was established in 1969 by the GSLIS faculty to honor Robert Downs, a champion of intellectual freedom. The deadline for nominations for 2010 is October 1. Letters of nomination and documentation about the nominee should be emailed to unsworth@uiuc.edu (please cc. weech@uiuc.edu).

Applications open for Conable Scholarship to 2010 ALA Conference

The Freedom to Read Foundation has opened applications for the 2010 Gordon M. Conable Conference Scholarship, which will enable a library school student or new professional to attend the 2010 American Library Association Annual Conference. The goal of the Gordon M. Conable Conference Scholarship is to advance two principles that Conable held dear: intellectual freedom and mentorship. The 2010 ALA Annual Conference will be held June 24–29 in Washington, DC.

The scholarship provides for conference registration, transportation, housing for six nights, and six days per diem. In return, the recipient will be expected to attend various FTRF and other intellectual freedom meetings and programs at conference, consult with a mentor/board member, and present a report about their experiences. The 2010 Conable Scholarship recipient also will attend the LeRoy C. Merritt Humanitarian Fund's 40th Anniversary Gala, scheduled for Monday, June 28 at the Folger Shakespeare Library.

The deadline for submitting an application for the 2010 Conable Scholarship is Friday, April 16; the award will be announced in May.

Students currently enrolled in a library and information studies degree program and new professionals (those who have worked in librarianship for three years or less) are eligible to receive the Conable Scholarship. Those interested must submit an application that includes two references and an essay detailing their interest in intellectual freedom issues. Applicants also are asked to attach a résumé. If the recipient is already registered for ALA's Annual Conference, he or she will have the conference fee refunded.

To apply for the Gordon M. Conable Conference Scholarship, visit www.ftrf.org. For more information, please contact Jonathan Kelley at (800) 545-2433, ext. 4226 or jokelley@ala.org.

Gordon Conable was a California librarian and intellectual freedom champion who served several terms as FTRF President. Gordon's unexpected death in 2005 inspired his wife, Irene, and the FTRF Board to create the Conable Scholarship.

Other News

Notes: Morgan receives civil liberties award: FTRF trustee Candace Morgan received the ACLU Foundation of Oregon's E. B. McNaughton Civil Liberties Award at a Liberty Dinner celebration in Portland on March 6. The award is for "a long record and outstanding contribution to civil liberties and civil rights." Morgan was cited for her work with ALA and the Freedom to Read Foundation, with special commendation for her work to reconnect ACLU of Oregon's with Banned Books Week, "creating the only statewide effort in the nation that brings together

libraries, bookstores, and nonprofits to educate people on the freedom to read." ... **Celebrate Choose Privacy Week this May:** The first-ever Choose Privacy Week will take place May 2-8, 2010. This ongoing initiative of ALA's Office for Intellectual Freedom invites people into a national conversation about privacy rights in a digital age. The campaign gives individuals the resources to think critically and make more informed choices about their privacy. Visit www.privacyrevolution.org to learn how you can get involved.

Updates

Congress extends sections of PATRIOT Act for one year

On February 26, 2010, Congress voted to extend for one year provisions of the USA PATRIOT Act that were to sunset on February 28. The move was disappointing to those who wanted amendments passed that would address some of the significant civil liberties concerns in the PATRIOT Act. At the same time, however, the one-year extension is preferable to permanently adopting the PATRIOT Act. ALA's Washington Office expects a renewed push for the reforms that the library and book communities have been advocating for over the past years.

Ohio Supreme Court gives narrow interpretation to state mini-CDA

On January 27, the Ohio Supreme Court ruled that the state's Internet "harmful to minors" bill should be interpreted narrowly, unanimously stating that it was intended to apply only to person-to-person communication, rather than publicly accessible chat rooms or other public online communication. The ruling came in response to two questions posed by the Sixth Circuit Court of Appeals, which has been considering the law. The trial court had enjoined the law in 2004, saying it was overbroad and not narrowly tailored to achieve the compelling interest of protecting minors from internet pedophiles. In the appeal, the state attorney general said the law's scope was limited to personally directed communication. FTRF is a plaintiff in this case, which now goes back to the Sixth Circuit.

Second Circuit: Plame employment dates can remain classified

On November 12, the Second Circuit Court of Appeals affirmed a district court decision to allow the CIA to prohibit Valerie Plame Wilson from divulging the dates of her employment with the agency in her memoirs. The appellate court ruled that classified information retains its classified status even if there is public disclosure of the information.

The Freedom to Read Foundation joined an *amicus curiae* brief in support of Plame Wilson, whose suit noted that the dates in question 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.

With the ruling, Plame Wilson becomes the only person in the United States who cannot publish or discuss her dates of service with the CIA.

Report to Council

2010 Midwinter Meeting Boston, MA

The Freedom to Read Foundation reports to the ALA Council at each Annual Conference and Midwinter Meeting. The following is an edited version of the report presented at the 2010 Midwinter Meeting in Boston. The full version can be found at www.ftrf.org.

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 (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 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 FAIFE (Freedom of Access to Information and Freedom of Expression) IFLA Standing Committee, 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 FTRF, having served until her hiring as a Trustee and Treasurer of the Freedom to Read Foundation.

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. John Horany, a Dallas attorney who is best known 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. *[See p. 1 for more on this case.]*

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. *[See p. 5 for more on this case.]*

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 Nominating Committee to expand the diversity of nominees for election.

FTRF Authors Event

On January 17, 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 US and beyond, and 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 (since August 2009) graduates 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 freely. 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

Freedom to Read Foundation News (ISSN 0046-5038) is issued quarterly to all members of FTRF. Regular membership in the Freedom to Read Foundation begins at \$35.00 per year for individuals and \$100.00 for organizations. Student membership is \$10.00. Contributions to FTRF should be sent to: Freedom to Read Foundation, 50 E. Huron St., Chicago, IL 60611. You also can contribute by phone at (800) 545-2433 x4226 or at www.ftrf.org/joinftrf. All contributions are tax-deductible.

The Freedom to Read Foundation is a First Amendment legal organization affiliated with the American Library Association.