

# FREEDOM TO READ FOUNDATION NEWS

50 EAST HURON STREET, CHICAGO, ILLINOIS 60611 PHONE (312) 280-4226

www.ftrf.org • ftrf@ala.org • www.ftrf.org/ftrfnews.html

Judith F. Krug, Executive Director

John W. Berry, President

Vol. 30, No. 2

July 2005

## FTRF files suit against Utah Internet content law

On June 9, the Freedom to Read Foundation joined several Utah bookstores, artistic and informative Web sites, Internet service providers, and national trade associations in filing suit in federal court against Utah's new Internet content law.

The law has three primary components:

- 1) Utah Internet content providers must evaluate and rate their speech, at the risk of criminal punishment.
- 2) The Utah Attorney General must create a public registry of Internet sites worldwide containing "material harmful to minors"—speech that is unlawful to intentionally distribute to minors but that is constitutionally protected for adults.
- 3) It extends to the Internet existing criminal restrictions on distribution of "harmful" materials. Federal courts across the nation uniformly have found similar provisions unconstitutional under the Commerce Clause and the First Amendment.

The lawsuit also challenges a provision that may lead to the blocking of a significant number of innocent Web sites simply because they have the same Internet protocol addresses as targeted sites.

The name of the case is The King's English v. Shurtleff. Joining FTRF as plaintiffs are The King's English, Inc.; Sam Weller's Zion Bookstore; Nathan Florence; W. Andrew McCullough; Computer Solutions International, Inc.; Mountain Wireless Utah, LLC; the Sexual Health Network, Inc., Utah Progressive Network Education Fund, Inc.; the American Booksellers Foundation for Free Expression (ABFFE); the American Civil Liberties Union of Utah; the Association of American Publishers (AAP); the Comic

Book Legal Defense Fund (CBLDF); and the Publishers Marketing Association.

### Inside this issue of *FTRF News*...

- FTRF election results, p. 2
- Festschrift in honor of Gordon Conable, p. 2
- Roll of Honor Award to David Cohen, p. 2-3
- *King & King* sparks censorship legislation, p. 4-5

## FTRF submits brief in anonymous speech case

The Freedom to Read Foundation joined Public Citizen and several other organizations in filing an *amicus* brief on June 11 supporting the right to read anonymously in Forensic Advisors, Inc. v. Matrixx Initiatives, Inc. The case is a challenge to a subpoena seeking to discover the names of persons subscribing to a newsletter published by Forensic Advisors, Inc., an independent financial research firm that analyzes the financial statements and other filings of publicly traded companies and provides this information to investors and creditors. In August 2003, the firm issued a report on Matrixx Initiatives, Inc., the maker of Zicam cold remedy zinc products.

Matrixx Initiatives filed a lawsuit in Arizona, alleging that certain anonymous Internet message board posters had defamed the company. As part of that lawsuit, Matrixx served a subpoena on Forensic Advisors, seeking a list of the subscribers and the names of news sources, claiming that a subscriber or a source could be the anonymous posters.

Forensic Advisors filed a motion to quash the subpoena with the Maryland courts, but lost its initial motion. It is now appealing that decision to the Maryland Court of Special Appeals. Other organizations joining FTRF's brief are ABFFE, AAP, the Electronic Frontier Foundation, Electronic Privacy

Information Center, the ACLU of the National Capital Area, and the Reporters Committee for Freedom of the Press.

## FTRF election results

In the April election, six Trustees were elected to the Freedom to Read Foundation Board:

**John W. Berry** (re-elected)

NILRC: Network of Illinois Learning Resources in  
Community Colleges  
River Forest, IL

**Therese Bigelow**

Kansas City Public Library  
Kansas City, MO

**Jonathan Bloom** (re-elected)

Weil, Gotshal & Manges  
New York, NY

**Anne Heanue** (re-elected)

Alexandria, VA

**James G. Neal**

Columbia University  
New York, NY

**Judith Platt**

Association of American Publishers  
Washington, DC

The newly elected Trustees join the following members to form the FTRF Board for 2005–2006:

Francis J. Buckley, Jr.

Chris Finan

Joel Hirschhorn

Deborah Jacobs

Candace Morgan

*Ex Officio*

Michael Gorman	ALA President
Leslie Burger	ALA President Elect
Kenton Oliver	IFC Chair
Keith Michael Fiels	ALA Executive Director

At the Annual Meeting in Chicago, Berry was re-elected President, Morgan was re-elected Vice President, and Jacobs was elected Treasurer. Bloom and Bigelow were named to the Executive Committee. Executive Director Judith Krug serves as Secretary of the Board.

Thanks to everyone who participated in this election,

both candidates and voters!

## Festschrift in honor of Gordon Conable

Friends and colleagues of the late Gordon Conable will be creating a festschrift in Gordon's memory, dedicated to the topic of intellectual freedom. Possible topics include (but are in no way limited to): The USA PATRIOT Act, privacy and technology, political influences and intellectual freedom, book censorship, the Universal Declaration of Human Rights, and key court decisions. All proceeds will be donated to the Gordon M. Conable Memorial Fund of the Freedom to Read Foundation. If you are interested in contributing, please contact Carrie Gardner, Catholic University of America, 244 Marist Hall, Washington, DC 20064. You can also call (717) 329-4159 or E-mail [carrieif@aol.com](mailto:carrieif@aol.com). Please include your name, a brief biography (wanted by the publisher) and the topic(s) of interest to you before September 1, 2005. Articles are due January 6, 2006.

## Roll of Honor Award presented to David Cohen

David Cohen, director of Friends of the Queens College Library and professor emeritus at Queens College, is the recipient of the 2005 Freedom to Read Foundation Roll of Honor Award. The award was presented at the ALA Annual Conference in Chicago during the Opening General Session. Sen. Barack Obama (D-IL), the keynote speaker, commended Cohen on his achievement during his speech.



*David Cohen receives Roll of Honor Award from ALA President Carol Brey-Casiano.*

Cohen's library career has spanned eight decades. His many contributions to the library community include serving as co-founder and coordinator of ALA's Ethnic Materials Information Exchange Task Force of the Social Responsibilities Round Table, the precursor to the Ethnic and Multicultural Information Exchange Round Table (EMIERT); trustee of the LeRoy C. Merritt Humanitarian Fund; co-founder of the Long Island Coalition Against Censorship; and charter member of the Freedom to Read Foundation. In 1986, he was awarded the SIRS Intellectual Freedom Award by the New York Library Association. In 1999, EMIERT created the David Cohen Multicultural Award, which "encourages and recognizes articles of significant new research and publication that increases understanding and promotes multiculturalism in libraries in North America." In 2004, the ALA Council saluted Cohen with a proclamation for his lifetime achievement in multiculturalism and intellectual freedom, and in celebration of his 95<sup>th</sup> birthday.

The text of the citation read:

Thank you, David Cohen, for decades of work to ensure that the world of knowledge is available to all. Your unflagging enthusiasm is contagious, and your understanding of the essential role of libraries is unsurpassed.

Thank you, David, for your belief in and support of the Freedom to Read Foundation from its inception in 1969. As a founding member, your support allowed FTRF to thrive in its earliest stages, and your continuing membership has been an integral component of the Foundation's ongoing successes.

Thank you, David, for your involvement—locally and nationally—in a wealth of activities that support the First Amendment: from co-founding the Long Island Coalition Against Censorship to your many speaking engagements and writings; from your involvement with the Intellectual Freedom Round Table to your memorable term as trustee (and greatest champion) of the LeRoy C. Merritt Humanitarian Fund.

Thank you, David, for your landmark work for multiculturalism in librarianship. You recognized long ago that libraries must be accessible to all members of our communities, and that all the information therein must also be accessible, in order for libraries to fulfill their missions.

Thank you, David Cohen, for inspiring generations of librarians and students at Queens College and elsewhere. Your twin passions for justice and

knowledge are as evident today as ever. Because of your untiring efforts, the Freedom to Read Foundation, American Library Association, and the First Amendment to the U.S. Constitution are stronger.

*John W. Berry*  
President

*Judith F. Krug*  
Executive Director

Chicago, Illinois  
June 2005

The Roll of Honor was established in 1987 to recognize and honor those individuals who have contributed substantially to FTRF through adherence to its principles and/or substantial monetary support.



## Workplace giving reminder

The Freedom to Read Foundation is pleased to have been named one of "The Best Charities in America" as certified by Independent Charities of America. Remember to designate FTRF as your charity during your upcoming workplace giving campaign! Contact FTRF with any questions.

## Support FTRF with "Libraries matter" wristbands



Defend your right to read and show your support for libraries everywhere with a "Libraries Matter" wristband. These colorful wristbands will be offered in the Fall 2005 World Almanac Education catalog as a free gift for orders between \$50-\$125. For every wristband given out, World Almanac will donate \$1 to the Freedom to Read Foundation. The wristbands also were offered at the World Almanac booths at the ALA conference in Chicago and will be at the American Association of School Librarians conference in Pittsburgh. For every wristband sold at these shows, World Almanac will match the dollar price and donate a total of \$2 per wristband to FTRF.

World Almanac is committed to upholding the values and rights all librarians, and is proud to be able to offer these wristbands to remind everyone of the importance of libraries in promoting intellectual freedom and that libraries really do matter. To request a catalogue, visit [www.wae.cc](http://www.wae.cc) or call (800) 321-1147.

## Updates

### Yahoo! chief cleared in France

On April 6, 2005, the French appeals courts dismissed all charges against Yahoo! CEO Timothy Koogle in the criminal case that is parallel to the U.S. civil case the Freedom to Read Foundation has been involved in. For a full description of the history of Yahoo! v. La Ligue Contre Le Racisme et L'Antisemitisme (LICRA), see the FTRF Report to the ALA Council on page 6.

### Victory in South Carolina

On May 9, 2005, a federal district court in South Carolina granted the plaintiffs' request for summary judgment in the case of Southeast Booksellers Association v. McMasters. The decision effectively overturns the state's "harmful to minors" Internet content law by declaring it unconstitutional. FTRF was not a party to this suit.

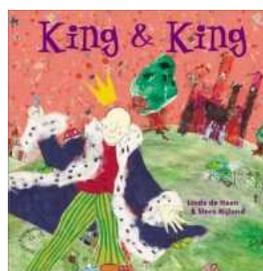
## Other News

### King & King sparks censorship legislation

Using the children's book *King & King* as a rallying point, legislators in at least three states and a U.S. Congressman have introduced bills intended to restrict the freedom to read.

In Oklahoma, State Representative Sally Kern (R-Oklahoma City) introduced a resolution asking libraries in the state to "confine homosexually themed books and other age-inappropriate material to areas exclusively for adult access and distribution." The resolution passed 81-3 on May 9, and Kern presented it to a meeting of

the Oklahoma City's library board on May 16. While it does not have the force of law, Kern threatened to cut a state library appropriation by several hundred thousand dollars if the two library districts in the state that had *King & King* in their collections didn't restrict access to the book. The Oklahoma City board decided to stay with their current policy, but the library district in Tulsa moved the book and several others to a special "parenting" section, which had been planned before the resolution. In June, the state House voted to increase funding for libraries by \$400,000—just under half of the \$841,000 sought by the state Department of Libraries—and the chairman of the committee said more action would be taken on the issue next year.



In Louisiana, State Representative A.G. Crowe (R-Slidell) introduced a similar non-binding resolution "to urge and request public libraries to confine books containing the theme of homosexuality and other materials that are age

inappropriate for children to areas designated exclusively for adult access and distribution." The bill was amended to change the language to "certain books and other materials" but failed in committee. Rep. Crowe said he was inspired to draft the bill after a constituent complained about the availability of *King & King* in the children's section of his library. On June 7, Crowe re-introduced the bill, using the "certain books" language but no action was taken; the legislative session ended June 23.

In December 2004, Alabama State Representative Gerard Allen (R-Tuscaloosa) introduced a bill that would deny funding and the use of public facilities to "any state agency, public school, public library, or public college or university for the purchase, production, or promotion of printed or electronic materials or activities that, directly or indirectly, sanction, recognize, foster, or promote a lifestyle or actions prohibited by the sodomy and sexual misconduct laws of the state of Alabama." The bill, which had no additional sponsors, was later amended to exempt public and college libraries, as well as "classics" such as Shakespeare (although the term was undefined). It died in committee without a vote.

And Congressman Walter Jones (R-NC) introduced a bill that would withhold federal education funds from

states that don't require all public elementary schools to institute "parental advisory committees" of 5 to 15 members to review all materials coming into school libraries or classrooms. The bill, which has no cosponsors, was moved to the House Subcommittee on Education Reform. Jones' stated impetus for his bill was the controversy earlier this year over *King & King* in a Wilmington, N.C., elementary school library.

*King & King*, by Dutch authors Linda de Haan and Stern Nijland, ranked #8 on the list of most frequently challenged books in 2004, as compiled by ALA's Office for Intellectual Freedom.

## Report to Council

### 2005 Annual Conference Chicago, Illinois

*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 2005 Annual Conference in Chicago.*

As President of the Freedom to Read Foundation, I am pleased to report on the Foundation's activities since the 2005 Midwinter Meeting:

#### REMEMBERING GORDON CONABLE

Last January, as ALA's Midwinter Meeting drew to a close, the friends and colleagues of Gordon Conable came together to remember this remarkable man, who served seven terms as President of the Freedom to Read Foundation before his untimely death last winter. At the gathering, we remembered Gordon's wit, his leadership, and his commitment to his profession and its core values. His students and fellow ALA members recalled how he served as a teacher and mentor; his colleagues told of his heroism during the controversy sparked by the Monroe County Library's acquisition of Madonna's book *Sex*. Others remembered his devotion to family and his acts of friendship and generosity.

Gordon's wife, Irene, a longtime member of the Freedom to Read Foundation, asked that a memorial fund be established in Gordon's name to advance the causes he worked for so passionately. Today, I am pleased to report that, to date, the Gordon M. Conable

Memorial Fund has received 58 donations totaling \$8,830 to support the Foundation's work on behalf of intellectual freedom. If you would like to donate to the Conable Fund, send a check payable to the Freedom to Read Foundation, 50 E. Huron St., Chicago, IL 60611, or donate online at <http://www.ftrf.org> or by phone at (800) 545-2433 x4226. Please indicate that your gift is in honor of Gordon Conable.

Finally, a festschrift is being created in honor of Gordon's passion and energy in support of intellectual freedom. [See p. 3 for details]

#### DEFENDING OUR FREEDOM TO READ: STATE INTERNET CONTENT LAWS

We best pay tribute to Gordon Conable by carrying on his fight to preserve and protect our right to freely read and access ideas and information, whether printed or published online.

Our latest lawsuit, a challenge to the new Utah Internet law, continues our efforts to assure that everyone is free to decide for themselves what they will read and view while browsing the vast marketplace of ideas that makes up the World Wide Web. [See [The King's English v. Shurtleff](#), p. 1]

The Utah lawsuit does not stand alone. The Freedom to Read Foundation is a plaintiff in other lawsuits challenging state laws that criminalize the distribution of Internet content deemed "harmful to minors."

[Shipley, Inc. v. Long](#) (formerly [Shipley, Inc. v. Huckabee](#)): I am pleased to report that Arkansas has decided not to appeal the decision of U.S. District Court Judge G. Thomas Eisele. Last November, Judge Eisele ruled that the recent amendments made to the Arkansas "harmful to minors" laws were unconstitutional. His decision is now final.

[ACLU v. Goddard](#) (formerly [ACLU v. Napolitano](#)): As in the Arkansas case, the state of Arizona has decided not to appeal the decision of the federal District Court that permanently enjoined enforcement of the Arizona "harmful to minors" Internet content law on the grounds it violated rights protected by the First Amendment. The state settled all claims filed by the plaintiffs and withdrew its appeal, marking a successful conclusion to the case.

**ABFFE v. Petro** (formerly ABFFE v. Taft): FTRF joined with several other plaintiffs to file this lawsuit to challenge Ohio's updated "harmful to juveniles" law that affects both print and Internet content. On September 27, 2004, the District Court sustained in part and overruled in part both parties' motions for summary judgment. The parties are now awaiting an expanded opinion explaining the court's judgment.

**Southeast Booksellers Association v. McMasters** (formerly Southeast Booksellers Association v. Condon): [See p. 4]

### OTHER FIRST AMENDMENT LITIGATION

FTRF also participates in litigation that vindicates general First Amendment principles. An example of this type of action is a new lawsuit, **Lyle v. Warner Brothers Television Productions**, a court case filed by a writers' assistant for the *Friends* television show. She claims that the writers' banter and sexual jokes subjected her to a hostile work environment during writers' conferences, even though none of the banter or jokes was directed at her. An intermediate California appellate court ruled that unless the production company can show the conversations were "necessary" to the creative process, the comments could support a hostile work environment claim.

FTRF joined with ABFFE, AAP, CBLDF, and the Publishers Marketing Association to file an *amicus* brief in support of the show's producers. The brief asks the California Supreme Court to overturn the decision on the grounds that the "creative necessity" test eliminates the First Amendment protections that bar government intrusions into the creative and editorial process.

FTRF also is a participant in other legal actions seeking to protect and defend intellectual freedom and the First Amendment:

**Gonzales v. American Civil Liberties Union** (formerly ACLU v. Reno): After the Supreme Court upheld the injunction barring enforcement of the Children's Online Protection Act (COPA) last June, it returned the lawsuit to the District Court in Philadelphia for a trial to determine whether COPA's "harmful to minors" restrictions are the least restrictive means of achieving the government's goal of protecting children from seeing sexually explicit materials online. Discovery is beginning in the case, and a trial date is set for June 2006.

**Kaczynski v. United States of America**: FTRF has joined with the Society of American Archivists to file an *amicus curiae* brief asking the Ninth Circuit Court of Appeals to reverse a lower court's decision allowing the government to withhold public access to the original writings of Ted Kaczynski, who pled guilty to the "Unabomber" crimes. Kaczynski is hoping to donate his journals and other writings to the University of Michigan if the lawsuit is successful. The Ninth Circuit heard oral arguments on June 16, 2005, and we are awaiting a decision.

**Chiras v. Miller**: FTRF is supporting author Daniel Chiras and a group of students and parents who are challenging the Texas State Board of Education's decision to reject Chiras' textbook, *Environmental Science: Creating a Sustainable Future* because it believed the textbook was "anti-Christian" and "anti-free enterprise." The District Court dismissed the group's lawsuit, ruling that the school board can reject a textbook if they disagree with the author's viewpoint if such "viewpoint discrimination" is "reasonably related to legitimate pedagogical concerns." Plaintiffs appealed the decision to the Fifth Circuit Court of Appeals, and FTRF joined with ABFFE and the National Coalition Against Censorship to file an *amicus curiae* brief supporting the plaintiffs. Oral arguments before the Fifth Circuit are now scheduled for July 7, 2005.

**Yahoo!, Inc. v. La Ligue Contra Le Racisme et L'Antisemitisme** remains pending before the Ninth Circuit Court of Appeals. It is an ongoing case involving monetary penalties and criminal sanctions imposed by the courts in France against Yahoo! for allowing Nazi-related book excerpts and auction items to be posted to its U.S. Web sites. Such postings violate French law but are fully protected speech under the First Amendment to the U.S. Constitution. Two French groups, La Ligue Contre Le Racisme et L'Antisemitisme and the French Union of Jewish Students, initiated the legal action against Yahoo! in France and won the initial lawsuit. Afterwards, Yahoo! filed suit in the United States to obtain a ruling on the validity of the French court's order in light of its users' First Amendment rights.

After the District Court judge ruled that the First Amendment barred any enforcement of the French court's order in the United States, the two French groups filed an appeal before the Ninth Circuit Court

of Appeals. A three-judge panel reversed the lower court on the grounds that the District Court lacked jurisdiction over the French parties, but the full court granted review *en banc* and allowed the parties a rehearing before the court. The parties are now awaiting a decision. FTRF has been an *amicus* in this action and joined in an *amicus curiae* brief supporting Yahoo!'s petition for rehearing or rehearing *en banc*.

**FCC petition for reconsideration:** FTRF joined with several other First Amendment and free expression organizations to file a petition before the Federal Communications Commission that asks the FCC to reconsider and reverse its decision to impose penalties on NBC for airing allegedly indecent comments made by the singer Bono during the 2003 Golden Globe awards. The petition also urges the FCC to set aside new rules imposing more stringent punishment on broadcasters for indecency. The petition remains pending.

FTRF also is monitoring **The Center and Hernandez v. Lingle**, a lawsuit filed by the ACLU on behalf of a library user in Hawaii who was ejected from the library by a security guard for viewing the Web site "gayhawaii.com." The lawsuit seeks to overturn Act 50, a recently enacted trespass statute that authorizes public institutions like the library to ban individuals from using public spaces such as beaches, streets, or sidewalks. The parties have agreed to stay the lawsuit while the legislature considers a bill to repeal Act 50.

## THE USA PATRIOT ACT AND LIBRARY CONFIDENTIALITY

To ensure our right to read without a government official looking over our shoulder, FTRF has joined in the following legal actions to defend privacy and to oppose those portions of the USA PATRIOT Act that threaten the reader's right to privacy and confidentiality.

### **Forensic Advisors, Inc. v. Matrixx Initiatives, Inc.** [See p. 1]

FTRF also is an *amicus curiae* in a legal challenge to the National Security Letter authority contained in Section 505 of the PATRIOT Act, **John Doe and ACLU v. Gonzales** (formerly John Doe and ACLU v. Ashcroft). The trial of the case concluded with a judgment in favor of the anonymous plaintiff, an Internet Service provider (ISP) challenging an FBI-

issued National Security Letter (NSL) that ordered the ISP to turn over certain user records. Judge Marrero of the Southern District of New York ruled that because the NSL authority permits the FBI to compel the production of information without judicial review, it is unconstitutional.

The government has appealed his decision to the Second Circuit Court of Appeals. FTRF will continue to support the plaintiffs as *amicus curiae*, along with ALA and ABFFE. Briefs are being filed over the summer, with oral argument to take place after September 5.

We hope for similar success in **Muslim Community Association of Ann Arbor v. Gonzales** (formerly Muslim Community Association of Ann Arbor v. Ashcroft), the facial legal challenge to Section 215 of the USA PATRIOT Act, which amends the business records provision of the Foreign Intelligence Surveillance Act to permit FBI agents to obtain all types of records, including library records, without a showing of probable cause. The District Court heard oral arguments on the government's motion to dismiss the plaintiffs' complaint in December 2003. We are still awaiting a decision in the case.

## FUNDRAISING AND MEMBERSHIP

Challenges to the freedom to read are growing, and the Foundation is looking for ways to increase our membership and funds. Even after 37 years, many ALA members don't realize that the Freedom to Read Foundation has a separate membership structure from ALA (and is, in fact, a separate 501(c)(3) organization), and we are exploring ways to increase awareness of the Foundation. If you are not currently a member, please consider becoming one by sending a check to Freedom to Read Foundation, 50 E. Huron St., Chicago, IL 60611.

You may also join online at <http://www.ftrf.org/joinftrf> or by calling (800) 545-2433 x4226. If you are a member, please accept my sincere thanks for your continued support.

Respectfully submitted,

John W. Berry  
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. Contributions to the Foundation should be sent to: Freedom to Read Foundation, 50 E. Huron St., Chicago, IL 60611. You also can join by phone at (800) 545-2433 x4226 or online at [www.ftrf.org/joinftrf.html](http://www.ftrf.org/joinftrf.html). All contributions are tax-deductible.

American Library Association ♦ Office for Intellectual Freedom



## LAWYERS FOR LIBRARIES NORTHWEST REGIONAL TRAINING INSTITUTE

November 17, 2005 ♦ Seattle, WA  
Seattle Public Library

Lawyers for Libraries Northwest Regional Training Institute is the seventh in an ongoing series of Continuing Legal Education institutes intended to ensure that libraries throughout the United States will have access to committed, informed attorneys who can provide clear guidance and expertise when dealing with First Amendment issues. The topics to be addressed include:

- ♦ Privacy & confidentiality ♦
  - The USA PATRIOT Act ▪
    - ♦ Internet filtering ♦
- Challenges to library materials ▪
  - ♦ Minimizing liability ♦

These sessions—conducted by some of the preeminent attorneys in the field of library First Amendment law—provide a wonderful opportunity for **attorneys** and **trustees** to learn the laws, legal precedents, and practical strategies they need to help libraries. **Librarians** are welcome, but must be accompanied by an attorney.

Cost: \$395/person; \$745 for two

Visit [www.ala.org/lawyers](http://www.ala.org/lawyers), call (800) 545-2433 x4226, or e-mail [lawyers@ala.org](mailto:lawyers@ala.org) to register or for further details.