

FREEDOM TO READ FOUNDATION NEWS

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Sandra Cisneros to give benefit reading at January FTRF event

Acclaimed San Antonio author Sandra Cisneros will be reading from her works at a fundraiser for the Freedom to Read Foundation on Sunday, January 22, 2006, at the San Antonio Public Library Central Branch. Cisneros, whose works include the novels *Caramelo* and *The House on Mango Street*, short stories, poetry, and a children's book *Hairs/Pelitos*, also will be signing books. All proceeds from the sale of her books will go to the Freedom to Read Foundation.

The suggested donation to attend the event is \$25. Space is limited. The library is located at 600 Soledad.

Refreshments will be provided. The event is in conjunction with the American Library Association Midwinter Meeting, and is sponsored in part by Random House. For more information on the reading, visit www.ftrf.org.

For information on how to RSVP and make your donation, see page 6.

Connecticut librarian files suit against receipt of NSL

The Freedom to Read Foundation has filed an *amicus curiae* brief in the case of *John Doe v. Gonzales*, in which a Connecticut librarian (and American Library Association member) has filed suit against the Federal Government after being served with a National Security Letter (NSL) that sought the names and other identifying information of every person who had used the library computer on a particular day. ACLU joined Doe in the suit, which seeks to quash the NSL and challenge the NSL statute as amended by Section 505 of the USA PATRIOT Act; the plaintiffs also seek, on First Amendment grounds, to enjoin enforcement of the gag order that accompanies an NSL.

The FTRF brief, filed with the American Library Association, American Booksellers Foundation for Free Expression, and Association of American Publishers, argues that the NSL statute chills constitutionally protected speech by giving unchecked power to law enforcement authorities to access confidential records, and threatens the right to communicate anonymously. It was filed in the Second Circuit Court of Appeals after a Connecticut District Court judge issued an injunction in

September against enforcement of the NSL statute; the government appealed that ruling.

The case is the first in which a library or librarian has challenged the receipt of an NSL. Under Section 505, John Doe (like any recipient of an NSL) is bound by a gag order prohibiting him from discussing or even acknowledging the NSL. Speculation as to the identity of Doe has been published in several mainstream newspapers, but is still officially under gag order. Doe and the ACLU filed an emergency application with the U.S. Supreme Court to remove the gag order, but on October 7, Justice Ruth Bader Ginsburg denied the application. FTRF and its fellow *amici* filed a second brief in support of Doe's application.

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CT librarian fights NSL

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Oral arguments were heard by a three-judge panel of the Second Circuit on November 2. The case is on an expedited schedule; a decision is pending.

Recently, the faculty of the University of Illinois–Urbana Champaign Graduate School of Library & Information Science announced it had named Doe and his unidentified employer as the recipients of the Robert B. Downs Award for 2005. The award is presented annually during the ALA Midwinter Meeting. Because accepting the award might mean a violation of the gag order, the award will be accepted by a third party in San Antonio on January 21, 2006.

Illinois video game statute overturned

The Entertainment Software Association and Video Software Dealers Association filed a lawsuit on July 25, 2005, seeking to enjoin enforcement of a new Illinois law limiting the sale and rental of violent computer and video games to minors. In addition, retailers would be directed to post in-store signs informing customers about the ESRB rating system everywhere games are displayed, at the points of sale, and at information desks. Violations of the act would have been classified as criminal offenses.

On December 2, U.S. District Judge Matthew Kennelly permanently enjoined enforcement of the law. In his decision, he said the state had “come nowhere near” demonstrating constitutionality under the *Brandenburg* test. That test was established to determine when protected expression may be regulated based on the belief that it will lead to illegal activity. Under *Brandenburg*, the prohibited expression must be directed to inciting lawlessness and be likely to incite such lawlessness. The court found that the state did not meet the *Brandenburg* tests; in fact, the evidence it presented supporting its contention that violent video games lead at all to violence was inconclusive at best.

In response to Illinois’ argument that the state had an interest in “preventing developmental or psychological harm to minors,” the judge quoted Justice Jackson:

The priceless heritage of our society is the unrestricted constitutional right of each member to think as he will. Thought control is a copyright of totalitarianism, and we have no claim to it. It is not the function of our Government to keep the citizen from falling into error; it is the function of the citizen to keep the Government from falling into error.

American Communications Assn. v. Douds, 339 U.S. 382, 442-443 (1950) (Jackson, J., concurring in part and dissenting in part).

Judge Kennelly held that

[t]hese concerns apply to minors just as they apply to adults. If controlling access to allegedly “dangerous” speech is important in promoting the positive psychological development of children, in our society that role is properly accorded to parents and families, not the State.

Kennelly relied in good part on the rulings of other courts that have struck down similar laws in St. Louis, Indianapolis, and Washington State. Illinois officials have claimed they plan to appeal. The Freedom to Read Foundation was not a party to the Illinois case, but did join *amicus* briefs in the cases cited.

The case is *Entertainment Software Association v. Blagojevich*.

California video game statute enjoined

On December 21, U.S. District Judge Ronald M. Whyte granted a preliminary injunction barring the enforcement of California’s law barring minors from accessing video games with violent content and requiring manufacturers to label such games as appropriate only for adults. The law is similar to those in other states, as mentioned in the article above. No such law has been upheld in court.

The case, *Video Software Dealers Association v. Schwarzenegger*, will now proceed to trial.

FTRF 2006 board election nominations accepted

Nominations are currently being accepted for the 2006 Freedom to Read Foundation Board of Trustees election. Five positions on the 2006-2007 FTRF Board of Trustees will be filled in the election to be held April 3-May 1, 2006. The persons elected will serve a two-year term, beginning at the close of the 2006 American Library Association Annual Conference, and continuing through the end of the 2008 Annual Conference. Trustees are required to attend two one-day meetings per year, which are held in conjunction with the ALA Annual Conferences and Midwinter Meetings.

Chairing the nominating committee is Therese Bigelow, Deputy Director of Branch Services, Kansas City Public Library, Kansas City, Missouri. The other committee members are Judith Platt, Director, Freedom to Read and Communications, Association of American Publishers, Washington, DC; and Candace Morgan of Portland, Oregon.

Only FTRF members are eligible to seek election to the Board. Nominations should be sent by January 31, 2006, to: Freedom to Read Foundation, Attn: Therese Bigelow, 50 E. Huron St., Chicago, IL 60611. You may also e-mail nominations to ft rf@ala.org. Alternatively, FTRF members may be slated for candidacy by petition by submitting 25 signatures of current FTRF members in support of the candidate. Names of petition candidates, and the required signatures to support each, must be received by the Executive Director of the Foundation no later than March 20, 2006.

Updates

Utah Attorney General files motion to dismiss in Internet blocking case

On December 7, Utah Attorney General Mark Shurtleff filed a motion in federal court to dismiss the suit against the new expansion to Internet content of the state's

"harmful to minors" law. The expansion contains provisions requiring the creation of an Adult Content Registry, a requirement that content providers evaluate and label content as "harmful to minors," and requirements that ISPs block Web sites listed on the Adult Content Registry. The lawsuit points out that the third provision 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 Freedom to Read Foundation is a plaintiff in the suit, *The King's English v. Shurtleff*. Other 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; the American Civil Liberties Union of Utah; the Association of American Publishers; the Comic Book Legal Defense Fund; and the Publishers Marketing Association.

Presidential Records Act case still alive: amended complaint filed

Plaintiffs have filed an amended complaint in *American Historical Association v. The National Archives and Records Administration*, a challenge to the legality of Executive Order No. 13233, which George W. Bush signed in 2001 to restrict access to presidential and vice-presidential records. The case had been dismissed in 2004 on standing and justiciability grounds. The Freedom to Read Foundation participated in this case earlier as *amicus curiae*; the amended complaint was filed November 30, 2005, and FTRF and fellow *amici* filed a revised version of the *amicus* brief the same day.

Executive Order No. 13233 was signed into law by President Bush on November 1, 2001. The order claims to establish procedures for implementing the Presidential Records Act of 1978 (PRA) but instead imposes restrictions that threaten the timely release of presidential and vice-presidential records in accordance with the PRA. Plaintiffs include the American Historical Association, the National

Security Archives, Public Citizen, and the Reporters Committee for Freedom of the Press.

Other News

Hawaii statute amended, library case dropped

A lawsuit seeking to overturn Hawaii's Act 50, or "squatter's law," was dismissed after the state legislature passed Act 212. Act 50 is a criminal trespass statute enacted by the state legislature that gives public officials broad powers to ban individuals from using public spaces such as beaches, streets, or sidewalks. The suit was filed by the Hawaii Civil Liberties Union after a security guard at the Hawaii State Library used Act 50 to bar the plaintiff from using the library for accessing sites like gayhawaii.com. After the Hawaii legislature passed Act 212, the parties settled their remaining issues and the suit was dismissed in November 2005. FTRF was not a participant in the lawsuit.

Banned Intellectual Freedom, Ethics hearings at 2006 Midwinter Meeting

During the 2006 Midwinter Meeting in San Antonio, the ALA Intellectual Freedom Committee (IFC) is sponsoring two open hearings on Saturday, January 21, in the Henry B. Gonzales Convention Center, Room 217C. The first hearing, from 1:30 to 3:30 p.m., is on the IFC's draft "Guidelines for Implementing RFID Technologies in Libraries." The second hearing, from 4:00 p.m. to 6:00 p.m., is on IFC's draft "Q&A on Labels and Rating Systems."

Since nearly 300 U.S. libraries are using, or are deciding whether to use, RFID technology, it is imperative that ALA help to develop guidelines for implementing these technologies in libraries. More information on the hearing and the draft guidelines can be found at <http://www.ala.org/ala/oif/oifprograms/openhearings/relatedlinksabc/drafterfidguidelines.htm>.

Likewise, in conjunction with ALA's newly revised "Labels and Rating Systems," an Interpretation of the

Library Bill of Rights, the IFC believes it is important to provide a "Q&A on Labels and Rating Systems" for further guidance in these areas.

The IFC encourages ALA members to attend these open hearings to provide feedback for the final drafts.

Also at Midwinter, the Committee on Professional Ethics is sponsoring an open hearing to determine if the ALA Code of Ethics lives up to the challenges of the new millennium. Is the Code sufficient or does it need revision? Please come and share your thoughts on Saturday, January 21, 1:30-3:30 p.m., Room 008B of the Convention Center.

Books Bracelets on sale online and at 2006 Midwinter Meeting

To help raise awareness that books continue to be challenged, FTRF and ALA's Office for Intellectual Freedom are selling bracelets featuring the covers of frequently challenged books. To purchase a bracelet, visit <http://tinyurl.com/89wbx> or call (800) 545-2433 x4220. You can also buy them at the 2006 ALA Midwinter Meeting in San Antonio.

These bracelets were designed by jewelry designer Carolyn Forsman, a longtime supporter of the Freedom to Read Foundation and FTRF Roll of honor recipient. Forsman will be selling the bracelets, along with much more of her popular jewelry, at the 2006 ALA Midwinter Meeting (visit Booth #1473). Proceeds from Forsman's sales go to the Foundation.

Adult Bracelet (\$18 for one; \$15 each for two or more)



Each tile, or book cover, is 3/4" x 1"; the circumference of the bracelet is 6 3/8".

- *The Color Purple* by Alice Walker
- *Go Ask Alice* by Anonymous
- *To Kill a Mockingbird* by Harper Lee
- *Annie on my Mind* by Nancy Garden
- *Howl* by Allen Ginsberg
- *Alice's Adventures in Wonderland* by Lewis Carroll
- I Read Banned Books

Kids Bracelet (\$12 for one; \$10 each for two or more)



Each tile, or book cover, is 5/8" x 1/2"; the circumference of the bracelet is 5 1/2".

- *Annie on my Mind* by Nancy Garden

- *To Kill a Mockingbird* by Harper Lee
- *King & King* by Linda de Haan and Stern Nijland
- *Alice's Adventures in Wonderland* by Lewis Carroll
- *Blubber* by Judy Blume
- *Captain Underpants* by Dav Pilkey
- I Read Banned Books

PLEASE NOTE

- Order one of each bracelet for only \$25!
- “Adult” and “kids” signify size, although the kids-size bracelet features children’s and young adult titles, and the adult-size bracelet features adult titles.
- All proceeds support the programs of the Office for Intellectual Freedom and Freedom to Read Foundation.
- Bracelets ship for free!

“Radical Militant Librarian” buttons available from OIF

The ALA Office for Intellectual Freedom is selling buttons celebrating librarians’ role in defending key civil liberties in the United States. Proclaim your pride in being a “Radical Militant Librarian” (the term an FBI agent used in an internal email to describe information professionals who have questioned the USA PATRIOT Act’s intrusion into privacy rights)! The buttons are 2.5” in diameter.

“Radical Militant Librarian: Defending ACCESS, Defending PRIVACY, Defending FREEDOM” buttons will be available for sale at the American Library Association Midwinter Meeting store. You can also order from OIF directly by calling (800) 545-2433 x4220 or emailing oif@ala.org. Buttons are \$2.00 each for 1–10 buttons, \$1.50 each for 11–50 buttons, and \$1.25 each for 51+ buttons. Shipping is included.

Cisneros reading to benefit Freedom to Read Foundation

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DONATION INFORMATION

There are several ways you can make your donation:

- You may use the secure online donation form at www.ftrf.org to donate now. Please indicate "Donation (non membership)" in the drop-down menu, and in the comments section write "Sandra Cisneros Fundraiser."
- Give by phone! Call (800) 545-2433 x4226 and pay by Visa, MasterCard, or American Express.
- You also may write a check, payable to the Freedom to Read Foundation (memo line: Sandra Cisneros Fundraiser) and mail it to FTRF, 50 East Huron Street, Chicago, IL 60611.
- Donations (by cash, check, or credit card) also will be accepted at the event, depending on space.

RSVP

Space is limited, so RSVPs are strongly suggested. To RSVP, contact Jonathan Kelley at jokelley@ala.org or (800) 545-2433 x4226.

LOCATION

The San Antonio Public Library is located at 600 Soledad (210-207-2500). The library is bounded by Soledad St. to the west, Navarro St. to the north, Augusta St. to the east, and Giraud St. to the south. The

library is approximately one and a quarter miles from the Henry B. Gonzalez Convention Center (200 E. Market Street), and one block from the River Walk.

MORE ON CISNEROS

Sandra Cisneros (<http://www.sandracisneros.com>) was raised in Chicago and currently resides in San Antonio. In 1998, *The House on Mango Street* was the target of a challenge in a Massachusetts high school.

Understanding Public Forum analysis

Beginning with this issue of *FTRF News*, the editors periodically will include a glossary of legal terms related to the issues that arise in litigation in which FTRF participates. We begin our series with an explanation of the various types of public fora and the different levels of protection offered for free speech in each type of public forum.

A **traditional public forum** is a place held in trust for the public to use for expressive activities. Parks, sidewalks, and public squares are examples of traditional public fora, where persons are free to use the space to assemble, to speak, and to exchange opinion. In a traditional public forum, the government cannot ban or limit a person's right to speak, or his or her right of access, based upon the content of the person's speech. Any regulation of expressive conduct must be limited to the least restrictive method that is narrowly drawn in order to serve a compelling government interest.

Such regulations may only control the time, place, and manner of a person's speech and must be reasonable and non-discriminatory. For example, the government may restrict the use of loudspeakers at night. It is a rule applied without regard to the content of the speech or the identity of the speaker. It only regulates the means of speaking, and it serves the government's interest in preserving the peace at a time traditionally given over to quiet. Because the rule permits the speaker to use a loudspeaker during the day, the speaker's right of free expression under the First Amendment is assured.

A **designated, or non-traditional public forum** is a place not usually reserved for the public that is purposely set aside by the government for expressive activity. These can be of two types. The first is a **general public forum** that is set aside for all

expressive activity. The second is a **limited public forum**, which is a public forum created for a particular expressive activity by a part or all of the public. A limited public forum can be limited to specific kinds of expressive activities undertaken by particular persons. For example, courts have ruled that a library is a designated public forum for the receipt of information; a school is a limited public forum for its students.

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Regulation of speech in a designated public forum, whether general or limited, is subject to the same rules applicable to the traditional public forum, with a few additional rules. First, once the government opens a designated public forum, it may not close it in order to limit or ban speech. In a limited public forum, however, the government may restrict expressive activity to the specific activity for which the forum was created.

The **non-public forum** is government-owned or controlled property that is neither a traditional public forum nor a place set aside as a public forum. The government is free to impose any reasonable regulations to control or ban speech in these places, just as a private property owner may control speech activities on her property. Examples of non-public fora include military bases and jailhouses. In the case of the non-public forum, it is important to know that a person's actions cannot change a non-public forum to a public forum. Only purposeful action by the government to open a non-public forum to expressive activity can create a designated public forum. Thus, a person leafleting on a military base without permission does not create a public forum simply by undertaking an expressive activity usually protected in a traditional public forum.

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. All contributions are tax-deductible.

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

Free people read freely.®

Join the Freedom to Read Foundation or renew your membership *today!*

The Freedom to Read Foundation leads efforts to stop censorship wherever it arises. The Foundation works with librarians, authors, booksellers and civil libertarians to ensure that *you* decide what *you* want to read.

BY RENEWING YOUR FTRF MEMBERSHIP, YOU WILL CONTINUE TO:

- Help defend the First Amendment in the courts—including the U.S. Supreme Court
- Support librarians around the country besieged by attempts to restrict library materials and services
- Expand the freedom to read by offering legal and financial help in cases involving libraries and librarians, authors, publishers, and booksellers.
- Receive the quarterly *Freedom to Read Foundation News*, which includes articles and timely reports on censorship trends, current court cases, and more.

Complete the form below and mail it to:

Freedom to Read Foundation
50 East Huron Street
Chicago, IL 60611

You also can donate online at www.ftrf.org or fax your credit card donation to **312-280-4227**.

For more information, call **(800) 545-2433 x4226** or email ftrf@ala.org.

Thank you for your support!

Note: If you are unsure of your current membership status, please contact us at (800) 545-2433 x4226 or ftrf@ala.org.

Yes, I would like to be a NEW RENEWING member of the Freedom to Read Foundation.

I am contributing \$ _____

\$1000.00	\$500.00	\$100.00	\$50.00	\$35.00	\$10.00
Benefactor	Patron	Sponsor	Contributing Member	Regular Member	Student Member

My check is enclosed. My (*mark one*) Visa/MasterCard/American Express number is:
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NAME _____

ADDRESS _____ CITY _____

STATE _____ ZIP CODE _____ E-MAIL _____

Please make your check payable to Freedom to Read Foundation. Your membership is tax deductible.