

# Freedom to Read Foundation

## REPORT TO COUNCIL

### 2020 Virtual Annual Meeting

As President of the Freedom to Read Foundation, it is my privilege to report on the Foundation's activities since the 2020 Midwinter Meeting:

#### FREE EXPRESSION IN A TIME OF CRISIS

In preparing this report on the Foundation's activities this spring, it feels like I became president of the Freedom to Read Foundation a lifetime ago. Our country has been through so much since January. First, we grappled as individuals and institutions with the ongoing pandemic, and then came the nationwide protests following the death of George Floyd and the outcry against police injustice and racial inequality.

Throughout it all, the Freedom to Read Foundation has supported our human right to speak out. Without our support for protests in the midst of stay-at-home orders, municipal governments would have gained legal authority to suppress the protests that came in the wake of the murders of Ahmaud Arbery, Breonna Taylor, and George Floyd. Our work with our allies in the civil liberties community have assured that everyone's voice is heard.

It is my strong belief that, in a social system steeped in white supremacy, patriarchy, homophobia, transphobia, and other bigotries, it is our right to freedom of expression that protects the rights of the marginalized. We would not be able to support #blacklivesmatter without freedom of expression; mayors, town councils, and boards across the country would be able to pick and choose which statements and actions they feel are appropriate, rather than upholding equal protection of the laws.

#### CURRENT LITIGATION

This spring, the Freedom to Read Foundation added two important free expression cases to its docket. Both lawsuits address challenging First Amendment controversies that could compromise the ability of libraries and library workers to acquire and make available books, images, and other materials to meet the information needs of their users.

FTRF has signed on to an amicus brief filed with the Ohio Supreme Court in the case of *Gibson Bros. Inc. v. Oberlin College, et al.* This lawsuit was filed by the owners of Gibson's Food Market following a public protest that occurred at Oberlin College in November 2016. The family that owns the market and bakery sued Oberlin College and its Dean of Students, alleging that they were defamed by a flyer distributed at the protest and a resolution passed by the Oberlin Student Senate that was posted in the

college's student center. A jury has found Oberlin College and the Dean guilty of defamation after the trial court instructed the jury that it could find the defendants liable on the basis of mere negligence in redistributing the materials. But Ohio Supreme Court precedent states that those who redistribute others' speech may only be held liable for defamation if there is a showing that the defendants acted with actual malice, a standard that requires a knowledge of falsity or a reckless disregard of the truth.

The case is important for libraries and any other entity that redistributes others' speech. A legal standard for defamation that only requires a showing of negligence, rather than actual malice, is problematic for libraries and library workers, who are not in a position to examine all the books and materials they lend to patrons to determine if the material is defamatory. The brief joined by FTRF urges the Ohio Supreme Court to find that a defamation claim against an entity that distributes others' speech can succeed only if the plaintiff demonstrates actual malice on the part of the defendant. Joining FTRF on the brief is the Reporters Committee for Freedom of the Press and a large number of free expression and civil liberties organizations.

FTRF has also joined an amicus brief in the case of *Bethany Austin v State of Illinois*. Austin is challenging her conviction under an Illinois statute that criminalizes the nonconsensual dissemination of private sexual images. She was charged and tried after she sought to contradict her ex-fiancé's account of their breakup by including texts and photos sent to her phone by her ex-fiancé in a letter to family members that included nude photos. The ex-fiancé learned about her correspondence to her family and had her prosecuted under the statute, which does not require a proof of malicious intent. The Illinois Supreme Court upheld her conviction, holding that the statute was a content-neutral time, place, and manner speech restriction only subject to intermediate scrutiny, instead of strict scrutiny, the standard that is usually applied to evaluate restrictions on speech.

Austin has asked the U.S. Supreme Court to review her conviction, on the grounds that the statute in question is an overly broad content-based speech restriction. Her petition for certiorari argues that the statute broadly criminalizes any sharing of private sexual images and does not require proof of malicious intent or knowledge that the subject did not consent. FTRF has joined with a number of free expression groups to file an amicus brief in support of Austin's petition, on the grounds that the Illinois Supreme Court erroneously held that the law is not a content-based restriction on speech subject to strict scrutiny. While FTRF, without question, supports laws that punish individuals who deliberately harass or intimidate another person by publishing their intimate photos without consent, it opposes those laws that are written so broadly that they can 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.

Finally, I am pleased to report a partial victory in the ongoing lawsuit *PEN American Center v. Trump*, which seeks to protect journalists from retaliation by President Trump or those government officers who work for him whenever they publish or speak speech critical of Trump or his Administration. FTRF was deeply concerned when the government filed a motion to dismiss the lawsuit, alleging that PEN America did not have associational or organizational standing to bring the

lawsuit, as FTRF itself relies on its associational or organizational standing to file lawsuits challenging First Amendment violations on behalf of its members. For this reason, FTRF signed an amicus brief that argued that PEN America had plausibly alleged an injury-in-fact sufficient to demonstrate organizational standing that would allow PEN to pursue legal action against the current administration. On March 25, the trial court ruled that PEN America could move forward with two of its claims related to the administration's attempt to deny press credentials and security clearances to journalists critical of the administration. We will continue to monitor this important lawsuit.

## **FIRST AMENDMENT AND FREE EXPRESSION ADVOCACY**

This past spring, FTRF joined a number of advocacy efforts that sought to vindicate or protect fundamental First Amendment rights and intellectual freedoms. These efforts ranged from comments submitted to the Department of Education in response to a proposed rulemaking regulating free speech on college and university campuses, to a joint letter protesting the removal of several classic novels from the high school English curriculum of the Matanuska-Susitna Borough School District in Alaska.

Most recently, FTRF joined with free expression and civil liberties allies to ask for the elimination of fees and charges for e-books in prisons during the pandemic; to defend the right to protest during the pandemic; and to protest a website's decision to remove a political cartoon critical of Donald Trump after the Trump Re-Election Campaign incorrectly claimed that the cartoon infringed upon its trademarks in the phrase "Make America Great Again."

We have also joined with our partners at the National Coalition Against Censorship and 48 other free expression and civil liberties groups to issue a statement urging protection of journalists who are under attack as they cover the national protest against police violence and racial inequality:

A free press is essential at a moment like this. Americans need to see what is happening in their streets. They want to know why people are protesting. Journalists must be free to report so the rest of us can feel the pain and anger of people who are tired of injustice. We strongly urge public officials to do everything in their power to protect journalists and demonstrators, including punishing police officers who have willfully violated First Amendment rights. Democracy depends on it.

## **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**

A major initiative of the Krug Fund is its support for local Banned Books Week celebrations in schools and libraries across the country. Each spring, the Krug Fund awards five to seven Banned Book Week grants that provide financial support and guidance to libraries, schools, and community organizations planning Banned Books Week celebrations. These grants assist libraries and schools that would otherwise not have the resources to do Banned Book Week events. The 2020 grantees will be announced in late June 2020. To learn about the 2020 grantees, please visit the FTRF website at [www.ftrf.org/?Krug\\_BBW](http://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. We thank FTRF educational consultant Joyce Hagen-McIntosh for her dedicated support for the course instructors and the students enrolled in these classes.

The Krug Fund also awards scholarships to students wishing to attend the courses provided by the University of Illinois and San Jose State. The 2020 scholarship recipients will be announced in late June. Information about the grantees will be available on the FTRF website.

## **CONTINUING PROFESSIONAL EDUCATION**

This spring, the FTRF Education Committee offered four continuing education webinars for FTRF members and library workers interested in enhancing their knowledge of intellectual freedom and First Amendment principles. The four webinars were created to respond to library workers' need for engaging and relevant online professional education opportunities during the COVID-19 pandemic. All webinars were complimentary for FTRF members and offered at a nominal fee to individuals and groups. The four webinars addressed diverse topics related to access, privacy, and intellectual freedom and were moderated by FTRF educational consultant Joyce Hagen-McIntosh. They included:

- "Reaching Students When Access to Technology is Out of Reach," with Angela Branyon, Assistant Professor at the University of West Georgia, Carrollton, GA; Bob Bocher, State E-rate and Broadband Support Team, Wisconsin Department of Public Instruction; and Erin Hollingsworth, District Librarian, North Slope Borough School District, Utqiagvik, Alaska

- "Intellectual Freedom and the Law: Social Media, First Amendment Audits, and the Library as a Public Forum," with Theresa Chmara, General Counsel for the Freedom to Read Foundation
- "The Challenge of Challenges: Strategies for Protecting Inclusion and Silencing Censors," with Martha Hickson, Librarian, North Hunterdon High School, Annandale, NJ and Leslie Edwards, Librarian, Voorhees High School, Glen Gardner, NJ
- "The Shifting Landscape of Challenges," with Valerie Nye, Library Director at the Santa Fe Community College; James Allen Davis, adult services librarian for the Central Branch of the Denver Public Library; Rhiannon Sorrell (Diné), instruction and digital services librarian at Diné College in Tsaile, Arizona; and Jennifer Stickles, library manager of the Salamanca (NY) Public Library

## **GORDON A. CONABLE CONFERENCE SCHOLARSHIPS**

The Conable Conference Scholarship honors the memory of Gordon Conable, a past president of the Freedom to Read Foundation, an ALA Councilor, and a tireless champion of intellectual freedom. The Conable Scholarship provides financial assistance to a new librarian or library student who shows a particular interest in intellectual freedom and wishes to attend the ALA Annual Conference. This year, we are pleased to be able to offer two scholarships, one for a LIS student and a second for a library worker who is in the early stages of their career. Due to the disruption caused by the COVID-19 pandemic, the scholarship will pay for each recipient's registration for the ALA Virtual Annual Event and provide sufficient financial assistance to each recipient so that they can attend the ALA Midwinter Meeting in Indianapolis. The 2020 recipients will be announced in late June. Information about the scholarship recipients will be available on the FTRF website.

Mentoring was an important undertaking for Gordon, and the FTRF Board of Trustees is pleased to be able to honor his memory through this significant work. If you would like to donate to the Conable Scholarship, please visit the FTRF website at [www.ftrf.org](http://www.ftrf.org).

## **2020 ROLL OF HONOR AWARD RECIPIENT KELLEY L. ALLEN**

I am pleased to announce that the 2020 FTRF Roll of Honor Award recipient is Kelley L. Allen, Director of Books at the gaming site HumbleBundle.com, based out of San Francisco. Humble Bundle is a new business model in which customers pay what they want for digital content with a portion of their payments earmarked for charity. To date, company-wide, Humble has raised over \$160 million for charity since their launch in 2010. As Director of Humble Books, Allen has launched hundreds of promotions with dozens of book and comics publishers, raising over \$10 million for charity in the process. In 2019 Kelley hosted a highly successful Humble Books fundraiser on behalf of the Freedom to Read Foundation and helped raise a significant amount of money for the Foundation.

Before her tenure at Humble Books, Kelley worked extensively in the field of e-books and book publishing. She has worked as the Director of New Media at Random House and as Director of Acquisition for the Sony eBook store. She holds her M.S. in Publishing from Pace University.

The FTRF Roll of Honor was established in 1987 to recognize and honor individuals who have contributed substantially to the foundation through adherence to its principles and/or substantial monetary support. For more information about the Roll of Honor and other FTRF grants, awards, and scholarships, visit [ftrf.org](http://ftrf.org).

## **FTRF MEMBERSHIP**

The work of the foundation continues even in the midst of social change. If you are not currently a member, I ask you to join us in our work to protect and defend the First Amendment to the Constitution and support the right of libraries to collect — and individuals to access — information.

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  
225 N. Michigan Ave., Suite 1300  
Chicago, Illinois 60601

Alternatively, you can join or renew your membership by calling (800) 545-2433, ext. 4226, or online at [www.ftrf.org](http://www.ftrf.org).

Respectfully submitted,

Emily Knox  
President, Freedom to Read Foundation