

**Freedom to Read Foundation**

**REPORT TO COUNCIL**

**2019 Midwinter Meeting — Seattle, Washington**

As President of the Freedom to Read Foundation, it is my privilege to report on the Foundation’s activities since the 2018 Annual Conference:

**LITIGATION**

This fall, the Freedom to Read Foundation agreed to participate as an *amicus curiae* in two new lawsuits raising important First Amendment issues.

The first lawsuit, *Ex Parte Jones*, challenges a criminal statute enacted by the Texas legislature that purports to address “revenge porn.” The statute bars disclosure of nude images without the consent of the person depicted in the image. However, the law is written so broadly that it could be used to prosecute the distribution of images that are artistic, newsworthy or educational, such as the image of Phan Thi Kim Phuc, the “Napalm Girl” from the Vietnam War. Under the current version of the law, a librarian who loans out a book containing the image of Ms. Phuc without obtaining her written permission could be arrested and prosecuted in criminal court.

The plaintiffs in the lawsuit have challenged the law on the grounds that it is overly broad and would ban First Amendment protected materials. The Texas intermediate appellate court ruling on the case agreed with the plaintiffs, and issued a decision finding the law unconstitutional. That decision is now on appeal before the Texas Court of Criminal Appeals.

FTRF has joined an *amicus* brief with the Media Coalition, American Booksellers Association, Association of Alternative Newsmedia, Association of American Publishers and the National Press Photographers Association to argue that the statute does not meet the strict scrutiny standard established by the Supreme Court, because it makes no exception for materials that are newsworthy, historic, artistic or educational and does not have an intent or knowledge requirement. The case was submitted to the Texas Court of Criminal Appeals on November 28, 2018, and a decision is pending.

The second lawsuit restarts FTRF's effort to establish a new legal standard that will allow reporters and citizens to pursue First Amendment civil rights claims against police and government bodies when they are arrested while exercising their First Amendment rights to speak, observe, and report at public events, demonstrations, and crime scenes. As you may recall, FTRF filed *amicus curiae* briefs in two earlier cases that urged the courts to adopt this standard. Both cases — *Lozman v. the City of Riviera Beach* and

*Higginbotham v. City of New York* — were resolved by the courts on different grounds than the plaintiffs' First Amendment claims and did not reach this important question.

*Nieves v. Bartlett* represents another opportunity to raise this issue before the Supreme Court. The plaintiff, Russell Bartlett, was arrested at an outdoor festival by Alaska State Troopers and charged with disorderly conduct and resisting arrest. He filed a lawsuit against the Troopers, alleging that he was arrested because he had earlier refused to speak to one of the Troopers and because he challenged their attempt to question a minor about possible public drunkenness without the presence of the minor's parents.

The Supreme Court has granted *certiorari* to address the question of whether the existence of probable cause precludes a First Amendment retaliatory arrest claim or whether the existence of probable cause should be a factor to be considered at trial. FTRF has joined an *amicus* brief with over thirty other organizations and media companies urging the Supreme Court to adopt a balancing test that would allow individuals and journalists to pursue a claim for retaliatory arrest even if probable cause for arrest is alleged by law enforcement. Oral arguments were heard on November 26, 2018.

## **DEVELOPING ISSUES**

The Foundation's Developing Issues Committee presented a report that identified several emerging issues that could prompt litigation to preserve the right to free speech, privacy, or access to information. The committee discussed the following issues:

- Big data and librarianship
- First Amendment and the press, focusing on news photographers
- Censorship of library research databases
- K-12 students' rights to freedom of expression, especially with social media
- Increasing infringement on prisoners' right of access to information by state and federal governments
- Content moderation at scale – algorithms and artificial intelligence

## **THE JUDITH F. KRUG MEMORIAL FUND**

The Judith F. Krug Memorial Fund supports projects and programs that carry on Judith Krug's lifelong mission to educate librarians and the public about the importance of defending the right to read and speak freely. Its programs include grants that support and underwrite Banned Books Week activities in libraries, schools, and community institutions across the country, as well as an educational initiative dedicated to supporting and improving intellectual freedom education for LIS professionals and students.

### **Banned Books Week**

This past fall, the Krug Memorial Fund awarded grants to support Banned Books Week observances held by six different libraries and community organizations. The grantees and a description of their events are listed below:

- **Handley Regional Library, Winchester, VA.** Library staff hosted an "Edible Banned Books Festival," where professional and amateur bakers created a banned book cake masterpiece. Local patrons and community partners voted for noteworthy banned book delicacies and bid on their favorite cakes to then take home. All money raised was donated to Literacy Volunteers of the Winchester Area.
- **Independence Public Library, Independence, KS.** The library sponsored three local events: a community-wide mural competition with a concept of the freedom to read; a debate between the local community college and high school debate teams about censorship; and "Rock the Block: I'm with the Banned," a community-wide street celebration celebrating the freedom to read.
- **James F. Byrnes High School, Duncan, SC.** The school sponsored a program, "Some Rights Reserved: South Carolina Speaks Out," with students and staff highlighting book challenges that have occurred in South Carolina and censorship issues that have arisen in the fields of science, technology, engineering, and mathematics.
- **Moreno Valley High School Book Club, Moreno Valley, CA.** The high school sponsored several Banned Books Week activities, including a banned book "cartmobile," a jailbird photo booth app, a hands-on trivia game, Banned Book Week crafts and an informal book discussion. This was their first Banned Book Week/Freedom to Read event.
- **Suffolk Public Library, Suffolk, VA.** Through the library's "Banning Books Silencing Stories: Alt Rebels" program, library staff, patrons, and community members of all ages were given the opportunity to explore and focus on banned books as seen through the lens of an alternative universe scenario where books are banned, and ideas are dangerous.
- **Winston-Salem State University, Winston-Salem, NC.** The university highlighted books banned across the state of North Carolina in libraries and in prison systems. Interactive week-long activities focused on the 2018 Banned Books Week theme "Banning Books Silences Stories."

## LIS and Professional Education

The Krug Fund continues to support FTRF's successful LIS professional education collaborations with the University of Illinois' School of Information Science and the San Jose State University School of Information. FTRF Educational Consultant Joyce Hagen-McIntosh provides direct assistance to professors Emily Knox, Beth Wrenn-Estes, and Carrie Gardner as they teach courses on intellectual freedom and censorship, while the Krug Fund provides scholarships to students who wish to attend these classes.

This year, Georgia Westbrook, a library and information science student at the Syracuse University iSchool is the recipient of the spring 2019 Freedom to Read Foundation scholarship. Westbrook will receive half the tuition for the San Jose State University School of Information (SJSU iSchool) course "Intellectual Freedom and Young Adults." The course, led by instructor Beth Wrenn-Estes, will focus on intellectual freedom issues with youth, the value of youth literature to enhance individuals' lives, the ethics of intellectual freedom, the psychology of censorship and how to combat it, and how to defend materials for youth.

We thank the University of Illinois and San Jose State University for partnering with FTRF to assure that high-quality intellectual freedom curricula and training remains available to LIS students preparing for their professional careers.

## **50<sup>th</sup> ANNIVERSARY CELEBRATION**

### **Reading Dangerously: 50 Years of the Freedom to Read Foundation**

This year the Freedom to Read Foundation celebrates its 50<sup>th</sup> anniversary with two signature initiatives. First, FTRF will publish a retrospective book that will include the organization's oral history, excerpts from challenged books, interviews with challenged authors and testimonials. The book will be offered through a crowdfunding campaign this spring. The second initiative is a reception and celebration to be held at ALA's Annual Conference on Saturday, June 22, 2019 from 6 - 8 pm. The event will feature authors and activists offering readings and reflections on intellectual freedom. Tickets are available now through the Annual Meeting website, and we will be offering many opportunities to support the book and the event. We hope many of you will join us celebrating the foundation, its work, and its future.

## **FTRF MEMBERSHIP**

Membership in the Freedom to Read Foundation supports the important work of defending our First Amendment freedoms and helps to build our organizational capacity so that we can continue to pursue our litigation, education, and public awareness programs. By joining the Freedom to Read Foundation, you amplify your support for intellectual freedom and your advocacy on behalf of free expression and the freedom to read freely. Your organizations can also join the Freedom to Read Foundation as organizational members.

Please send a check (\$50.00+ for personal members, \$100.00+ for organizations, and \$10.00+ for students) to:

Freedom to Read Foundation  
50 E. Huron Street  
Chicago, IL 60611

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

Respectfully submitted,

Charles Brownstein, President  
Freedom to Read Foundation