

# Freedom to Read Foundation

## REPORT TO COUNCIL

### 2017 Midwinter Meeting — Atlanta, Georgia

As President of the Freedom to Read Foundation, it is my privilege to report on the Foundation's activities since the 2016 Annual Conference:

#### LITIGATION

##### *Packingham v. North Carolina*

When the Freedom to Read Foundation engages in litigation on behalf of intellectual freedom, its cases generally fall into two categories. The first category includes those lawsuits that seek to defend or vindicate the right to read or access information without censorship or restriction, such as the lawsuit filed to restore *Daddy's Roommate* and *Heather Has Two Mommies* to the shelves of the Wichita Falls (Texas) Public Library's children's room. The second category includes those lawsuits that defend the right to read without fear that one's reading is being monitored or surveilled, such as the lawsuit filed to set aside the National Security Letter demanding patrons' records and identities from Connecticut's Library Connection consortium.

On rare occasions, a law impairs both the right to receive information and the right to keep one's reading choices private. North Carolina General Statute § 14-202.5 is one such law. It makes it a felony for persons who are registered sex offenders to access a wide array of websites – including the Washington Post, Facebook, YouTube, and The New York Times – simply because those websites also permit minors under the age of 18 to have accounts on those sites. The breadth of the statute is extraordinary. It does not simply prohibit contact with minors; it prohibits accessing any website that minors might also access with an account. There is no requirement that the government prove that the accused had contact with, or gathered information about a minor; or intended to do so; or accessed a website for any illicit or improper purpose. It simply imposes criminal punishment for an activity fully protected by the First Amendment – accessing a website.

In addition, effective enforcement of the statute requires widespread monitoring of all social media accounts and dragnet surveillance of protected speech available to hundreds of millions of Internet users, suspect and non-suspect alike. Such monitoring, conducted without any particularized

suspicion, invades the privacy of all Internet users and inevitably chills individuals' exercise of their First Amendment free expression rights.

Lester Packingham, a registered sex offender, has challenged the constitutionality of NCGS § 14-202.5 following his conviction for violating the statute. Packingham was convicted of violating the statute after he posted on his Facebook page about his relief at having a traffic case dismissed. He was arrested when a law enforcement officer specifically searched through scores of Facebook posts to identify sex offenders who had accounts with that site.

In support of the longstanding proposition that "a State has no business telling a man, sitting alone in his own house, what books he may read or what films he may watch,"<sup>1</sup> or even what websites he views alone in his home, FTRF has joined an *amicus curiae* brief submitted to the United States Supreme Court. The brief, written by staff attorneys for the Electronic Privacy Information Center (EPIC), argues that the North Carolina statute violates the First Amendment by severely restricting the right to read and access information that is constitutionally protected. The brief also addresses the violation of all Internet users' privacy when law enforcement uses surveillance to monitor what is being read to locate accounts of those on the sex offender registry.

Joining FTRF and EPIC on the brief are the Bill of Rights Defense Committee/Defending Dissent Foundation, the Center for Constitutional Rights, Consumer Action, the National Center for Transgender Equality and thirty individual technical experts and legal scholars. The Supreme Court has set oral argument for February 27, 2017.

We continue to monitor the progress of our other ongoing litigation matters that seek to defend and preserve our First Amendment right to read and receive information. Among the most important of these cases is *Gonzalez, et al. v. Douglas* (formerly *Arce v. Douglas*), the lawsuit filed by teachers and students in the Tucson Unified School District (TUSD) to challenge the constitutionality of the Arizona statute prohibiting the use of class materials or books that "promote resentment toward a race or class of people," or are "designed primarily for pupils of a particular ethnic group," or "advocate ethnic solidarity instead of the treatment of pupils as individuals." FTRF filed a crucial brief with the Ninth Circuit Court of Appeals that helped the plaintiffs win a new trial on their claims that the statute constitutes unlawful viewpoint discrimination under the First Amendment and was enforced with discriminatory intent. The plaintiffs are now awaiting a new trial date.

FTRF also continues to keep track of the proceedings in *United States v. Moalin*, a lawsuit pending before the Ninth Circuit Court of Appeals that challenges the U.S. government's practice of seizing citizens' phone metadata without a warrant. FTRF joined in an *amicus curiae* brief that argues the government should not be permitted to engage in warrantless searches and seizures of phone metadata because that metadata reveals information about an individual's expressive and associational activities that should be protected by both the First and Fourth Amendments of the Constitution. The amicus brief also challenges existing Supreme Court precedent holding that when individuals voluntarily provide such data to third parties like phone companies, they lose their

---

<sup>1</sup> *Stanley v. Georgia*, 394 U.S. 557 (1969).

Fourth Amendment expectation of privacy in that data. The Ninth Circuit Court of Appeals heard oral arguments in the case on November 10, 2016, and a decision is pending.

## **DEVELOPING ISSUES**

The Foundation's Developing Issues Committee identified several emerging issues that may give rise to future litigation in the realm of free expression, privacy, or access to information. Maggie Farrell began the discussion with a review of the potential threats to network neutrality. Bill McHugh then addressed the possibility that existing government documents and online information will disappear under a new administration, and Candy Morgan raised her concerns about the growing disparity in public Wi-Fi access based on one's economic status. Carolyn Caywood discussed the impact of trigger warnings on academic freedom and described the corrosive effect of fake news on public discourse and civic engagement. Doug Archer then talked about the trend towards privatization of public services and the potential threats to public libraries. Of particular concern throughout the morning's discussions was the potential threat to free expression and access to information posed by policies and actions proposed by the new president.

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

The Judith F. Krug Memorial Fund, created by donations made by Judith's family, friends, admirers and colleagues, supports projects and programs that continue her lifelong mission to educate both librarians and the public about the First Amendment and the importance of defending the right to read and speak freely. These include a grant program that underwrites Banned Books Week activities in libraries, schools, and community institutions across the country and an educational initiative dedicated to augmenting and improving intellectual freedom education for professionals and LIS students.

This year, the Krug Memorial Fund awarded grants to six different educational institutions and organizations to support their observances of Banned Books Week:

- The Daniel F. Cracchiolo Law Library in Tucson, Arizona, hosted a Banned Books Week observance focused on the policy and legal disputes arising from the dismantling of Tucson Unified School District's Mexican-American Studies (MAS) program, a matter of significance to FTRF. Its events included a screening of "Precious Knowledge," a documentary about the MAS program and its banning; a panel discussion on the applicable law and the lawsuit arising from the ban; and a Diversity Town Hall to provide students with a forum to address issues facing their community.
- The grant to the Kimbel Library and Bryan Information Commons at Coastal Carolina University in Conway, South Carolina provided for a variety of Banned Book Week events, including a virtual read-out, a Twitter-out, a Jail and Bail Fundraiser, as well as a "Roast Marshmallows, Not Books" event.

- Springfield Local High School, New Middletown, Ohio employed its grant to support Banned Book Week events aimed at sparking student and community interest in reading, exploring and discussing banned books. These included a mock arrest of teachers with students reading them out of jail; a coffee house event celebrating banned poetry books that featured students reading black-out poems (poems created when selected words from a newspaper story are used to make a poem by blacking out the rest); and programs led by guest speakers from the local university and public library that discussed intellectual freedom and choice in reading.
- Saint Paul Public Library in Saint Paul, Minnesota used its grant to help the library connect with people and inspire them to explore the world of ideas. A Banned Authors Book Signing event featured Minnesota authors from diverse cultural and ethnic backgrounds who had their books banned or challenge. Two other events, "Storytime with a Public Official" and "Banned Books Night at the Movies," featured films based on banned books.
- The Troy University Libraries in Troy, Alabama hosted events at the three Troy University Libraries and the Rosa Parks Museum. Events included "Read with Rosa" and "Read with T-Roy" banned book read-outs, a lecture on intellectual freedom and censorship, banned book art exhibits, movie nights, displays, and a banned book mystery quiz.
- The grant to the Water Buffalo Club in Los Angeles, California allowed it to partner with the Topanga Community Police Station to support the event "Busted! Banned Books," designed to educate young people about the history of banned books and censorship. It included a summer reading challenge drawn from a banned book reading list, a read-out at a community "BBB Pancake Brunch," as well as opportunities for youth to have their mug shot taken with their favorite banned book.

Grant recipients' photos, videos, and written reports of their events will be available online at [www.ftfrf.org/?Krug\\_BBW](http://www.ftfrf.org/?Krug_BBW).

The Krug Memorial Fund's educational initiative once again supported professor Emily Knox's course "Intellectual Freedom and Censorship," taught under the auspices the University of Illinois' School of Information Sciences. The online, graduate-level class continues to be well-received by students and we look forward to continuing our educational partnership with the School of Information Sciences.

The Krug Memorial Fund also co-sponsored a continuing education webinar titled "The History of Intellectual Freedom and Censorship" with the Office for Intellectual Freedom. The webinar's presenters included Emily Knox, Candy Morgan, and Joyce Latham.

FTRF's trustees want to thank Professor Knox and FTRF education consultant Joyce Hagen-McIntosh for their thoughtful and dedicated work toward fulfilling FTRF's goal of assuring the availability of high-quality intellectual freedom curricula and training for future and current library professionals.

## **STRATEGIC PLAN REVIEW**

In 2012, the FTRF trustees and liaisons adopted a strategic plan that identified five strategic action areas for the foundation — awareness, litigation, education, engagement, and capacity building — and established the tasks and strategies necessary to achieve its goals in each action area. Built into the plan is a process of periodic review to determine the foundation’s progress toward the plan’s goals and to adjust the plan to assure ongoing progress. Consequently, the trustees will be reviewing the strategic plan in the coming six months to assure that the foundation can effectively address its priorities and assure its resources are put to their best use.

The Fundraising and Membership Committee will also be reviewing and revising the foundation’s marketing strategies in light of the results of the foundation’s evaluation of new technologies for membership renewal and member communications.

## **THE ROBERT P. HOLLEY FUND**

FTRF is pleased to announce a new endowment. Based on a \$50,000 donation by retired library science educator Robert P. Holley, the new fund will provide free one-year memberships in FTRF for students currently enrolled in graduate level LIS programs in the United States. The process for this application will be developed and announced in the next several months.

## **FTRF MEMBERSHIP**

Membership in the Freedom to Read Foundation allows us to continue to building our organizational capacity to support our litigation, education, and awareness campaigns; it is the critical foundation for FTRF’s work in defending First Amendment freedoms in the library and in the larger world. I strongly encourage all ALA Councilors to join me in becoming a personal member of the Freedom to Read Foundation, and to have your libraries and other institutions become 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,

Martin Garnar, President  
Freedom to Read Foundation