

# Freedom to Read Foundation

## REPORT TO COUNCIL

### 2011 Annual Conference — New Orleans, Louisiana

As President of the Freedom to Read Foundation, it is my privilege to report on the Foundation's activities since the 2011 Midwinter Meeting:

#### **FACING THE FUTURE**

At the Midwinter Meeting in San Diego, the FTRF Board of Trustees began to set new priorities for the Freedom to Read Foundation, with the goal of firmly establishing FTRF as the premier legal advocate for intellectual freedom in libraries. The trustees took a number of concrete steps toward that goal here in New Orleans, identifying key action areas and approving elements of a strategic plan that will secure FTRF's financial future, expand its membership, and make it possible for FTRF to take the lead in litigation that protects the right to access information. We look forward to concluding the strategic planning process at the 2012 Midwinter Meeting in Dallas.

#### **DEFENDING THE FREEDOM TO READ**

The Freedom to Read Foundation's core mission remains the vindication of the public's right to hear what is spoken and to read what is written, no matter how the message is communicated to the public. Laws that aim to restrict publication of constitutionally protected materials—such as state laws that criminalize the distribution of legal materials deemed “harmful to minors” over the Internet—fall squarely within that mission. FTRF is currently participating as a plaintiff in two different lawsuits that are intended to ensure our freedom to read information published via the Internet without restriction or government interference.

The first lawsuit, *Florence v. Shurtleff*, is a long-standing challenge to Utah's “harmful to minors” statute that would impair access to lawful Internet content and allow the state's attorney general to create an Adult Content Registry that could sweep in any site the attorney general deems unacceptable. For several months, counsel for the Freedom to Read Foundation sought to reach an agreement with the Utah attorney general that would restrict application of the “harmful to minors” law to those individuals who have one-on-one contact with a viewer and who subsequently disseminate “harmful to minors” materials to that viewer when the individual knows or believes the viewer is a minor. These negotiations failed, and FTRF and its co-plaintiffs filed a motion for summary judgment on June 8, 2011.

The second lawsuit, *ABFFE, et al. v. Burns*, challenges Alaska's newly adopted "harmful to minors" statute that criminalizes the distribution of certain material to minors under the age of 16. Under the new law, a crime is committed if the material distributed fits within the law's definition of "harmful to minors" and is distributed to a person under 16 years of age or to a person the distributor believes is under 16 years of age.

As I reported earlier, the federal district court hearing the lawsuit issued a preliminary injunction in October 2010, forbidding enforcement of the Alaska statute during the pendency of the lawsuit. Subsequently, FTRF and its co-plaintiffs filed a motion for summary judgment that sought a final declaration that the law violated the First Amendment. The state attorney general responded by filing both a cross-motion for summary judgment and a motion asking that the lawsuit be certified to the Alaska Supreme Court for an interpretation of the statute. On June 8, 2011, the Alaska Supreme Court declined the request for certification. The case will now return to the district court for a decision on the motions for summary judgment filed by both parties.

The Foundation continues to monitor with interest *Sarah Bradburn et al v. North Central Library District*, a suit filed by the ACLU of Washington against the North Central Library District on behalf of three library patrons and the Second Amendment Foundation. The suit alleges that the library violated the plaintiffs' First Amendment rights by refusing to disable Internet filters at the request of adult patrons, consistent with standards established in the opinion rendered by the U.S. Supreme Court in the Children's Internet Protection Act case. The Washington State Supreme Court ruled that the North Central Library System policy and actions did not violate the state constitution. We are currently awaiting a decision from the district court judge, who will decide whether the library's policy and actions violates the U.S. Constitution.

Finally, like many other First Amendment organizations, we are anxiously waiting for the Supreme Court's decision in *Brown v. Entertainment Merchants Association* (formerly *Schwarzenegger v. Entertainment Merchants Association*). FTRF joined an *amicus* brief in support of EMA arguing that there are no exceptions to First Amendment protection for depictions or descriptions of violence. The brief also took the position that California's statute is content-based, subjective, and relies on an extremely broad and unconstitutionally vague definition of violence. The implications for library material content and access to currently constitutionally protected information, should the Supreme Court decide in California's favor, are significant. The last scheduled day for decisions from the Supreme Court this term is June 27, 2011; we will make a full report on the decision at the Midwinter Meeting in Dallas.

## **DEVELOPING ISSUES: E-BOOKS AND PRIVACY**

At its meetings, the FTRF Board of Trustees traditionally sets aside time to discuss emerging issues that raise concern from an intellectual freedom perspective. At the past few meetings, our discussions have focused on e-books, reader privacy, and the use of cloud computing for data storage and use.

It is clear that third-party vendors who provide access to e-books have the capability to track patron data and use information and to retain that information. The laws governing the sharing and disclosure of data held by third parties allow third-party vendors to adopt privacy policies

that may differ substantially from the privacy policy in place at the library, thereby permitting patron use information to be divulged by the third-party vendor in contravention of library policy and state law.

As ALA takes up the issue of e-books and libraries, the FTRF Board of Trustees strongly encourages Council, its committees, and its task forces to prioritize the protection of reader privacy in the e-book environment.

### **2011 ROLL OF HONOR AWARD RECIPIENT CHRISTOPHER M. FINAN**

It is my privilege to announce this year's FTRF Roll of Honor Award recipient, Christopher M. Finan, president of the American Booksellers Foundation for Free Expression (ABFFE). Chris, a longtime friend (and current trustee) of the Freedom to Read Foundation, is a member of the Media Coalition and a member and chair of the board of the National Coalition Against Censorship.

He has a distinguished career in both study and activism on behalf of the freedom to read. His work on behalf of free speech began in 1982 when he joined the Media Coalition as its coordinator. Finan then joined ABFFE in 1998 as its president, and since then has worked on a host of First Amendment issues, including federal, state, and local legislation and litigation. He has been particularly active in fighting state "harmful to minors" statutes and advocating the role of the bookseller as a partner with libraries, users, publishers, and all who produce, distribute, or use First Amendment protected materials. Finan has been a leader in the efforts to amend the USA PATRIOT Act. Recently he has worked with ALA and brought in new partners to expand the influence and scope of Banned Books Week nationwide.

Finan's book, *From the Palmer Raids to the Patriot Act: A History of the Fight for Free Speech in America* (Beacon, 2008), received the Intellectual Freedom Round Table's Eli M. Oboler Memorial Award in 2008.

### **2011 CONABLE CONFERENCE SCHOLARSHIP WINNER AUDREY BARBAKOFF**

I am also pleased to announce the winner of the 2011 Gordon M. Conable Conference Scholarship, Audrey Barbakoff, a reference librarian with the Milwaukee (Wisc.) Public Library. Per the terms of the scholarship, all of Audrey's travel and conference-related expenses were paid by the Foundation. Audrey has attended all FTRF activities at this conference, as well as several other intellectual freedom meetings and programs, and she will write a report on her experience for the Freedom to Read Foundation newsletter.

Barbakoff holds a B.F.A. from the University of Illinois at Urbana-Champaign and a Masters of Library and Information Science from the University of Washington, which she received in 2010. In her capacity at the Milwaukee Public Library, she provides reference and readers' advisory services; coordinates programs and displays; and blogs. She also coordinates the Teen Advisory Board and leads preschool story times. Barbakoff is a member of the Wisconsin Intellectual Freedom Round Table and recently had an article about the ethics of filtering

computers in public libraries published on the peer-reviewed website *In the Library with the Lead Pipe*. This is her first ALA Conference.

## **FTRF MEMBERSHIP**

As the Freedom to Read Foundation explores various alternatives for developing new membership as part of its strategic planning process, it continues a membership initiative that has introduced nearly 300 new librarians to the work of the Foundation. Since 2009, FTRF has offered free one-year memberships to graduating library school students, providing them with an opportunity to acquaint themselves with FTRF and its work defending both First Amendment freedoms and privacy rights. The program will continue for another year, during which we will intensify our focus on retaining these new members. More information on the program can be found at [www.ftrf.org/graduates](http://www.ftrf.org/graduates).

Other programs that help to expand FTRF's membership are the state chapter initiative, which aims to count every single state ALA chapter as an FTRF member, and FTRF's organizational membership campaign. These schemes broaden the Foundation's reach while insuring critical, necessary support for the Foundation's programs.

Your own membership in the Freedom to Read Foundation is needed to sustain FTRF's unique role as the defender of First Amendment rights in the library. Please consider joining (or rejoining) FTRF as a personal member, and please consider inviting you organization or your institution to join FTRF. A brand new membership brochure, available from the FTRF office, can help you extend these invitations. Or you can simply send a check (\$35.00+ 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/joinftrf](http://www.ftrf.org/joinftrf).

Respectfully submitted,  
Kent Oliver  
President, Freedom to Read Foundation