



Freedom to Read Foundation News

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President's Report to the ALA Council June, 1972

Reporting to Council during the Midwinter Meeting [see *Freedom to Read Foundation News*, Winter 1972], I described the latter half of 1971 as a period when the Freedom to Read Foundation was "building a base for future actions." I could not detail the nature of the "base" nor the "future action," because I did not wish to jeopardize the Foundation's plans or position. Today, I am pleased to say, there is no longer a need to be circumspect.

As most of you probably know by now, the base was firmly laid, and on May 5, 1972 the action was taken. On that date, a lawsuit—funded entirely by the Freedom to Read Foundation—was filed in federal district court in California to challenge the California Harmful Matter Statute as it applies to librarians and library employees. Because the background of the lawsuit was published in the June issue of *American Libraries* and in the Spring issue of *Freedom to Read Foundation News*, I will not repeat the full details of the suit at this time. I will say, however, that the California lawsuit is, for several reasons, the most significant action of the Foundation's brief history.

First, to our knowledge, the suit marks the first time that librarians and library employees have joined together to take the offensive in the courts against repressive legislation which subjects librarians to prosecution for, in effect, performing their professional duties. The overall result of the statute is to produce a chilling effect on the First Amendment rights of librarians and the public, including minors, and on the free distribution of even constitutionally protected writings and other materials. The obligation that the statute imposes on librarians is an unconstitutional form of prior restraint. In order to comply with the statute, librarians are required to practice censorship and make an evaluation as to whether any given work is "harmful matter." When the evaluation is made and that matter removed by the librarian, the act of re-

moval is a complete restraint upon circulation of the material, all without proper constitutionally mandated safeguards and without the benefit of any prior judicial determination as to whether the work is "harmful matter." We have, therefore, asked the federal court to declare the California Harmful Matter Statute unconstitutional and void for vagueness and overbreadth as it applies to librarians and library employees as a class. We have also asked that the statute be found unconstitutional because it violates the First and Fourteenth Amendments of the U.S. Constitution.

A second reason for the significance of the suit is that, if successful, it will establish legal precedent for some of the principles now enunciated in the *Library Bill of Rights*. This is a monumental step because, in the past, the *Library Bill of Rights* has been little more than a paper policy. As has been pointed out many times before, its clearly stated principles of intellectual freedom have provided guidance for all kinds of libraries over the years, but never has the document carried the weight of the law. Its articulate, comprehensive and realistic statement of policies—to the extent they can be implemented—can and will promote freedom of inquiry. But the *Library Bill of Rights*, in and of itself, has no more legal significance than the Ten Commandments or the Sermon on the Mount. I stress the past legal irrelevance of the *Library Bill of Rights* not to denigrate it, but in order to emphasize the immense task that confronts the Foundation, and, indeed, the entire library profession. With the California suit before us as a symbol of what we can do, working in consort, we must now press forward to continue the offensive.

Presently, thirty-nine states have statutes similar to the California Harmful Matter Statute, or so-called "variable obscenity" laws. Only eleven of these specifically exempt libraries from the scope of prosecution under the statutes. In at least three states of which we are aware, libraries have been influenced by such statutes to change existing selection or circulation policies. In addition, many states are currently considering revisions of their obscenity statutes to eliminate the requirement that a work be totally lacking in socially redeeming value to be deemed obscene.

Each of these developments dramatically underscores the necessity for continued, vigorous action by the Foundation. But, as the Foundation's plan for giving legal recognition to the *Library Bill of Rights* unfurls, one aspect of the battle stands out more clearly than any other: this must be an effort shared by all librarians who cherish intellectual freedom. Only with the support of the entire profession can the Foundation succeed. It is somewhat discouraging to report that total membership in the Foundation as of May 31st was only 604. The total amount of contributions from January 1st through May 31st was \$1,808.00. This does not, of course, include contributions to the LeRoy C. Merritt Humanitarian Fund which totalled \$715.00. The Foundation's cash on hand on May 31st was \$17,982.00. Obviously, 604 members and a fund balance of only \$17,982.00 is not much of an army and artillery with which to wage a war. Therefore, although my rhetoric may be blunt, I call now for each librarian to put his money where his mouth is. We've had a plethora of words—words about intellectual freedom, words about the *Library Bill of Rights*, and words about what the Foundation can and cannot do. On May 5th, the Foundation entered into an action with serious implications for all librarians. Although I don't often find the occasion to quote Jerry Rubin, today his imperative seems appropriate: *Do It!* Give to the Freedom to Read Foundation, whether it be \$10.00 or \$10,000.00, but do it—so that our offensive does not flounder. While the Foundation may be leading the attack, the battle is not for the sake of the Foundation, but for the whole of librarianship.

Over the past six months, we have been singularly absorbed in the California suit. We have, however, been involved on another front—also aimed at obtaining a legal decision favorable to intellectual freedom. In March, the appeal of a Circuit Court ban of Kurt Vonnegut's *Slaughterhouse Five* from public schools in Rochester, Michigan was filed in the Michigan Supreme Court. The Foundation provided \$1,000.00 to help finance the appeal. In April, the case was argued before three judges of the Michigan Supreme Court. The decision of the court was rendered on June 12th, and the court found in favor of the Rochester Community School Board, thus allowing the book to be returned to the curriculum.

In other action related to the Foundation, in March the Trustees of the LeRoy C. Merritt Humanitarian Fund granted \$500.00 to Zoia Horn.

A slate of sixteen candidates for the 1972 election, held May 1-June 1, was presented by the Nominating Committee, composed of Kathleen Molz and Eli M. Oboler, Chairman. Five vacancies on the Board of Trustees were filled in the election. Elected are: William Cunningham, Stanley Fleishman, Everett T. Moore, Mrs. Carrie C. Robinson and Alex P. Allain. Due to the resignation of an elected Trustee from the

Board, Evelyn Levy was proposed and unanimously approved by the remaining elected Trustees to fulfill the vacated position as provided for in the By-laws.

Completing this report to the ALA Council, I wish to say once more that the Freedom to Read Foundation has proved what it is capable of doing. Now it's up to each of you. We need your verbal and moral support, but even more, we need your personal contributions. If you believe in the work of the Foundation, join with us on behalf of intellectual freedom and librarianship. Do it today.

Respectfully submitted,
ALEX P. ALLAIN, *President*

Executive Committee Confirmed

On June 23, 1972, the Board confirmed the appointments of the following trustees to the 1972-73 Executive Committee: Stanley Fleishman, Everett T. Moore, Richard L. Waters, Joslyn N. Williams and Alex P. Allain, chairman.

Mr. Fleishman, serving his first term as an elected trustee, is a Los Angeles attorney noted for his involvement in First Amendment cases. He was recently called a "censorship specialist" when he represented Greenleaf Classics and others in a suit involving the *Illustrated Presidential Report of the Commission on Obscenity and Pornography*.

Mr. Moore, serving his second elected term as a trustee, is Assistant Librarian at the University of California (Los Angeles) Library. Well known for his contributions to the literature on intellectual freedom, Mr. Moore is Vice President of the Foundation, as well as a personal plaintiff in the Foundation-funded lawsuit filed in California on May 5, 1972.

Richard L. Waters, a past chairperson of the ALA Junior Members Round Table (JMRT), is serving his third term as JMRT's representative on the Board of Trustees. Mr. Waters is Chief, Central Library, for the Dallas Public Library and has been a member of the FTRF Executive Committee since 1970.

Joslyn N. Williams, serving his first term as the SRRT representative on the Board of Trustees, is an employee in the U.S. Copyright Office in the Library of Congress. Mr. Williams is also president of the American Federation of Government Employees, Local 1826.

Alex P. Allain, President of the Foundation, has chaired the Louisiana Library Association Intellectual Freedom Committee and the American Library Trustee Association Intellectual Freedom Subcommittee, as well as serving three full terms as a member of the ALA Intellectual Freedom Committee. Mr. Allain is serving his second term as an elected trustee of the Foundation.

Chicago Meeting

Board of Trustees

Highlights

The Board of Trustees of the Freedom to Read Foundation met for eight hours on June 23 in Chicago. Several matters now in progress were reported and the board explored some new areas for future action.

California Class Action

President Allain gave a complete progress report on the status of the lawsuit filed on May 5, 1972 and totally funded by the Foundation. Mr. Allain explained that the defendants were granted a thirty-day extension to answer the complaint. [Upon request, a second extension was granted, allowing the state Attorney General until July 31 to respond; in early August, the Foundation received a copy of the defendants' response.] Mr. Allain expressed hope that the California suit will provide a basis for challenging similar legislation in other states. He stressed the need for continued and increased financial support from librarians and concerned citizens to allow the Foundation to pursue its plans.

Down These Mean Streets Appeal

Executive Director Mrs. Judith F. Krug reported that the ban on Piri Thomas' *Down These Mean Streets* from Community School District #25 in Queens, N.Y. was upheld by the Circuit Court of Appeals. The banning had been challenged through the courts by the New York Civil Liberties Union. Originally, the Freedom to Read Foundation declined to support the suit and because of doubt as to which issues will be favorably, would establish a legal precedent for the "right" of parents to determine curriculum and library materials, and—conversely—to decide which materials should *not* be used in schools. After Mrs. Krug's report, the board discussed filing an *amicus curiae* brief if the case is appealed to the U.S. Supreme Court. Because of the financial commitment to the California suit and because of doubt as to which issues will be appealed, the board decided to follow the progress of the suit but to reserve judgment on future action.

Beacon Press Controversy

The board reviewed the status of Beacon Press' challenge to federal agents seeking access to its financial records from the period surrounding its publication of the Senator Gravel version of the *Pentagon Papers*. At the time of the board's deliberations, the case was before the U.S. Supreme Court to determine the limits

of Gravel's Senatorial immunity. Consequently, the board authorized the Executive Committee to take any action it deems necessary, in light of future developments. [On Thursday, June 29, the Supreme Court ruled that immunity does not extend beyond Senator Gravel himself. Beacon Press has announced its intention to fight the case as far as possible on First Amendment grounds.]

Slaughterhouse Five Appeal

Mrs. Krug reported that on June 12, the Michigan Court of Appeals reversed an earlier Oakland County Circuit Court decision barring the use of Kurt Vonnegut's *Slaughterhouse Five* in Rochester, Mich. public schools. The Appeals Court ruled that the trial court overstepped its bounds when it ventured into the area of censorship. The court said, "The trial court . . . substituted its own judgment of what is 'right' and 'moral' for that of the students, the teacher, and the duly constituted school authority. Such action is resolutely forbidden by the Constitution."

Ellis Hodgin Appeal

The board received word that the U.S. Supreme Court had not yet taken any action on the appeal of Ellis Hodgin, formerly librarian at the Martinsville, Va., Public Library, who was fired shortly after he joined with other parents to file a suit challenging a religious education course at the school his daughter attended. The Foundation granted Mr. Hodgin \$550 in 1971 to perfect his appeal to the Supreme Court. [On June 29, the Supreme Court refused to hear Mr. Hodgin's appeal. At the same time, it reviewed the cases of Robert P. Sindermann and David Roth, which involved issues similar to those in Hodgin's. In a 5-to-3 decision on the *Roth* case the court ruled that a state-employed teacher has a right to a hearing prior to non-renewal of a contract if he can show that non-renewal seriously damaged "his standing and associations in his community." In the *Sindermann* case the court decided that such teachers have a right to a hearing if they were led to believe by local practice that they would be retained. For Mr. Hodgin, the decisions mean that all judicial recourse now is exhausted.]

Alex P. Allain Reelected

Alex P. Allain was unanimously elected to his third full term as President of the Board of Trustees on June 23, 1972.

Other officers elected for 1972-73 are: Vice President, Everett T. Moore; Treasurer, Richard L. Waters; and Secretary, Mrs. Judith F. Krug.

It's That Time Again

Although it's difficult to believe, another membership year for the Foundation came to an end on August 31, 1972. Renewal reminders have been mailed and will hopefully garner as high—and even higher—returns as in 1971. Because of the increased activities of the Foundation, particularly the California suit, continued and increased support is crucial. Besides its present commitments, the Foundation currently has under consideration three requests for financial assistance, totalling over \$5,000.00.

The fundraising efforts over the past membership year have been modestly successful, considering the expenditure on their behalf. While it is undeniably true that we must spend money—via promotion—to make money, it is difficult to channel large sums into membership promotion when the Foundation's base is so small and the demands on it continue to be so great. For that reason, we depend largely on the good will and generosity of our friends.

During the past year, for instance, a large number of state library association journals and the national library press, including *Library Journal* and *Wilson Library Bulletin*, contributed free advertising space for the Foundation. Some devoted an entire page to the free ad. The response to the request for free ad space was indeed gratifying. Not all the journals queried answered, but of those that did, only two declined: *American Libraries* and *Mississippi Library News*. The Foundation deeply appreciates the generosity of the editors and publishers who so willingly gave up precious space—an expensive commodity—to signify their support of the Foundation's efforts.

Also during the past year, Foundation trustees themselves have donated personal time and efforts to pro-

mote new members. Many compiled lists of names of friends to be queried about possible membership. Some came up with more than thirty names! Through the combined resources of the Office for Intellectual Freedom and the trustees' own facilities, well over a hundred letters were prepared, combined with enclosures, and sent out to the trustees' friends. Returns were very high, continue to come in, and well justify the effort. In case any other Foundation members care to send their own letters, we have samples on file and will gladly send them to you. Just let us know.

Surely the most successful membership campaign technique used to date was the solicitation called "Get One—Win One." We've used this device twice, to good effect. Initially, we asked FTRF members to submit names of friends who might like to join the Foundation. If any of the names submitted returned a membership check, upon receiving our information packet, both the new and the old member received a free copy of the *Report* of the Commission on Obscenity and Pornography. Later in the year, we were able to offer a choice between the *COP Report* and *Dr. Bowdler's Legacy*, by Noel Perrin. Our ability to attempt these two promotional efforts was greatly enhanced by the generosity of Bantam Books and Doubleday & Company, respectively the publishers of the *COP Report* and *Dr. Bowdler's Legacy*.

All told, though, Foundation membership has only crept along in 1971/72. Please help us to continue our efforts to fulfill the Foundation's purposes in 1972/73. If you have not yet renewed your own membership, we urge you to do so. If you have a friend who believes in the freedom to read, tell him about the Foundation. Support from all individuals, whatever their professions, is necessary to achieve the goals of the Freedom to Read Foundation.

Use this form

to get a friend to join the Freedom to Read Foundation today:

I would like to become an active member of the
FREEDOM TO READ FOUNDATION.

I understand that my annual dues of \$10.00 entitles me to vote in elections of trustees to the Board, and to receive the FTRF NEWS plus material pertaining to special issues.

- Check enclosed Bill me
- I want to do more. My check includes an additional contribution to the Foundation in the amount of \$_____.

Name: Miss Mr. Ms.
 Mrs. Mr. & Mrs.

Address: _____

City: _____

State _____ Zip _____

Telephone No.: Area Code _____

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