



Freedom to Read Foundation News

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Petition for Three-Judge Court Granted!

A critical hurdle has been passed in the California class-action suit funded by the Foundation. On March 12, United States District Judge Harry Pregerson ordered that a three-judge panel be convened in accordance with the application of the plaintiffs in *Moore v. Younger*.

Denying the "motion to dismiss" filed by the defendant, California Attorney-General Evelle J. Younger, Judge Pregerson held that a genuine controversy was before the court and that a substantial constitutional problem had been raised.

One major issue that had to be resolved concerned the question of standing to sue. In deciding in favor of California librarians and library employees, Pregerson cited the recent decision of the United States Supreme Court on abortion laws (*Doe v. Bolton*). In *Bolton*, the Supreme Court held that physicians who were never prosecuted or even threatened with prosecution under extant abortion laws did have standing to bring suit against them. Thus the fact that no library employee has ever been threatened with prosecution under California's "harmful matter" statute could not be taken to mean that courts can dismiss librarians' complaints that the California law transforms them into unwilling censors.

The procedural question of abstention (whether it is proper for a federal court to review the state law at this time) will be the first matter before the three-judge panel. If that issue is decided in favor of the plaintiffs, then substantive matters will be considered by the court.

Some Noteworthy Contributions— and a Challenge

At its annual conference in December, the Colorado Library Association voted to contribute \$250 to the Foundation. The following resolution was unanimously adopted by the CLA membership at the conference:
Whereas, The Freedom to Read Foundation has filed suit in Federal District Court in California challeng-

(continued on page 2)

FTRF Election Slate

The Foundation's nominating committee, composed of Ervin J. Gaines, Evelyn Levy, and William D. Cunningham, chairman, has submitted the names of ten candidates for the forthcoming election to fill four vacancies on the Board of Trustees.

Additional persons may be nominated by petition. Petitions of nomination must include the signatures of twenty-five members of the Freedom to Read Foundation. Names of nominees and signed petitions should be sent to Mrs. Judith F. Krug, Executive Director, Freedom to Read Foundation, 50 E. Huron Street, Chicago, Illinois 60611, no later than *April 23*.

The *official ballot* will be mailed on May 1, 1973, to all persons holding membership in the Foundation as of May 1.

The Nominating Committee submitted the following slate of ten persons:

- Mr. Edmund Arnold, Director of the Library, Cornell College, Mount Vernon, Iowa.
- Mr. David Cohen, Librarian, Plainview-Old Bethpage Public Schools, Plainview, New York.
- Mr. Richard L. Darling, Dean, School of Library Service, Columbia University, New York, New York.
- Mr. James Harvey, Executive Secretary, Illinois Library Association, Chicago, Illinois.
- Mrs. Ophelia Irving, Assistant Director, Information Services Division, Department of Art, Culture and History, State Library, Raleigh, North Carolina.
- Mrs. Evelyn Levy, Regional Librarian, Enoch Pratt Free Library, Baltimore, Maryland.
- Mr. Eli M. Oboler, University Librarian, Idaho State University, Pocatello, Idaho.
- Mrs. Anne A. Sweat, Assistant Coordinator, Adult Services, Prince George's County Memorial Library, Hyattsville, Maryland.
- Mr. Richard L. Waters, Chief of the Central Library, Dallas Public Library, Dallas, Texas.
- Miss Jane Wilson, Chief Acquisitions Librarian, Roosevelt University, Chicago, Illinois.

(This is *not* a ballot.)

Contributions (continued from page 1)

ing [the state's] "Harmful Matter" Statute as it applies to librarians and other library staff in holding them liable for having in their collections materials deemed by some outside authority to be "harmful matter"; and

Whereas, This case is important to all librarians in that, if successful, it would establish legal precedent for some of the principles now stated in the Library Bill of Rights;

Now, therefore, be it resolved, That the Colorado Library Association in annual conference assembled at Colorado Springs, on December 7, 1972, demonstrate its support of this action by the Freedom to Read Foundation by contributing \$250 to the Foundation to help pay for legal expenses in their court action on behalf of intellectual freedom.

Two contributions were received from librarians in Texas. A check for \$200 was forwarded by the Texas Library Association, and \$50 was received from the Dallas County Library Association.

The Dallas County Library Association has extended a challenge to other local library associations, whether city, county, or state, to match their contribution to the Foundation and the protection of First Amendment rights for all citizens.

President's Report to the ALA Council

January, 1973

[At the 1970 Annual Conference in Detroit, the ALA Council requested the Freedom to Read Foundation to report at each Annual Conference and Midwinter Meeting of the American Library Association. Accordingly, the following report was submitted at the Washington, D.C., Midwinter Meeting. It has been edited for publication.]

A gentleman recently called the newspaper in Williamsburg, Va., to tell them that he wished to cancel his subscription. He no longer needed the newspaper—now that his dog was housebroken! I wish I could report that this man's view of the value of the newspaper were further removed than it is from the view of the present Supreme Court, which has ruled that the First Amendment does not afford a privilege to newsmen to protect their sources. As Mr. Justice Stewart said, the Court's "crabbed view of the First Amendment" reflects a disturbing insensitivity to the critical role of the press in a society of free men. I share Justice Stewart's concern over the erosion of our First Amendment rights.

Before I review the recent activities of the Foundation, I wish to stress, in this, the fifth-anniversary year of the establishment of the Office for Intellectual Freedom, the critical importance of the work of that office. Its clear and reasonable statements defining librarian-

ship in a free and open society are the springboard of the activities of the Foundation. The accomplishments reported below would not have been possible without the assistance of the Office for Intellectual Freedom.

One year ago I reported to this Council that the Board of Trustees of the Foundation had granted \$1,000 to support the appeal of the Circuit Court ban of *Slaughterhouse Five* from the Rochester, Mich. schools. Last June I reported that the Michigan Court of Appeals had ruled in favor of the Rochester Community School Board. In September the Board of Trustees received an expression of deepest appreciation from the Superintendent, and although legal costs far exceeded the amount we gave, \$130 not needed to support the appeal was returned to the Foundation.

In the same report that the Rochester case was first discussed, I stated that the Executive Committee had found it could not support litigation against the ban of *Down These Mean Streets* from New York City Community School District No. 25. I gave then the reasons for our refusal. The matter went to the Supreme Court, and on November 6, 1972, the court denied petitions for a writ of certiorari. Mr. Justice Douglas, however, wrote a strong dissent. Douglas said:

Actions of school boards are not immune from constitutional scrutiny. . . . The First Amendment is a preferred right and is of great importance in the schools. In *Tinker*, the Court held that the First Amendment can only be restricted in the schools when a disciplinary problem is raised. No such allegation is asserted here. What else can the school board now decide it does not like? How else will its sensibilities be offended? Are we sending children to school to be educated by the norms of the school board or are we educating our youth to shed the prejudices of the past, to explore all forms of thought, and to find solutions to our world's problems?

I submit that these are questions we must all ask ourselves.

There are at present eight cases of major importance to be decided by the Supreme Court during this term. I should point out that, if our resources had been greater during the last six months, we would have been able to file *amicus* briefs in *Miller v. United States* and *Kaplan v. The People of California*. In *Miller*, our interest lay in establishing that community standards on obscenity must be national standards. In *Kaplan*, we wanted to support the contention that the printed word enjoys unqualified protection under the First Amendment, and that the right to read is a private right deserving the protection of the Ninth and Fourteenth Amendments to the Constitution.

In recent months, the Foundation has received a number of requests for aid. At our meeting of January 27, 1973, the following actions were taken. We voted to give \$500 to the Pentagon Papers Fund in order to

[The] Question before the Court and you Gentlemen of the Jury, is not of small nor private Concern. It is not the Cause of the poor Printer, nor of New York alone, which you are now trying; No! It may in its Consequence, affect every Freeman that lives under a British Government on the main of America. It is the best Cause. It is the Cause of Liberty; and I make no Doubt but your upright Conduct, this Day, will not only entitle you to the Love and Esteem of your Fellow Citizens; but every Man who prefers Freedom to a Life of slavery will bless and honour you, as Men who have baffled the Attempt of Tyranny; and by an impartial and uncorrupt Verdict, have laid a Noble Foundation for securing to ourselves, our Posterity and our Neighbors, That, to which Nature and the Laws of our Country have given us a Right—the Liberty—both of exposing and opposing arbitrary Power by speaking and writing—Truth.

—Andrew Hamilton, in defense of John Peter Zenger

affirm our support of the public's right to know, its right to hear what is spoken and to read what is written. The Board also voted to give the Executive Committee stand-by authority to file an *amicus* brief in defense of the "social value" tests, should the Supreme Court be asked by New Jersey officials to review the question of the constitutionality of the state's revised obscenity statute.

I have saved until last my report on the California suit. This case has taken most of our energy and resources—and rightly so. Our initial complaint against the Attorney General of California was filed on May 5, 1972. On July 31, after two extensions of the time in which to file a response, the Attorney General responded with a motion to dismiss our complaint and a challenge to our right to sue in federal court. The substantive portion of the Attorney General's argument was based on the Supreme Court's decision in *Ginsberg v. New York*—the decision which established the notion of "variable obscenity." We argue that passive, non-commercial distribution of matter which is only arguably "harmful" is constitutionally protected.

Oral arguments were held in U. S. District Court on Monday, January 22. The points discussed by the attorneys were procedural and jurisdictional in nature. The principal question now is the standing of librarians to sue in federal court when there has been no prosecution of librarians under the act. It is on this question that Federal District Judge Harry Pregerson must rule,

and he has asked that additional memoranda be filed by February 2. We have prepared our memorandum and it has been filed. We are confident of our position under the law.

I should report that the Foundation is not alone in its activities in the field of intellectual freedom. Those who *oppose* freedom of the mind have been active, too. Recently, the Law Enforcement Assistance Administration of the U. S. Department of Justice awarded \$250,000 to California Lutheran College to establish a legal data center to help in the campaign against allegedly obscene materials. Several well-endowed foundations now support community groups in their efforts to censor collections in public and school libraries. It cannot be said too often that the price of freedom is eternal vigilance. Freedom must not be lost by default, complacency, or lack of action. The defeat of Proposition 18 in California shows what can be done when people understand the threat and stand together against it.

Before I close, permit me to say once more, if there is any absolute right, it is the right to freedom of the mind. Censorship is purely and simply thought-control. He who controls the mind ultimately controls the whole man. As Mr. Justice Marshall has said, "Our whole constitutional heritage rebels at the thought of giving government the power to control men's minds. . . . [The state] cannot constitutionally premise legislation on the desirability of controlling a person's private thoughts."

There is no lack of will on the part of the Foundation; financial limitations alone are holding us back. Clearly, the effort must be shared by *all* librarians. Statements, resolutions, and resounding words are helpful, but it is still true that action speaks louder than words. It is action that the Foundation will take. Give us the means. Help us free librarians from coercion through threat of criminal prosecution; help us defend the public's right to read. Please join with us on behalf of intellectual freedom.

Respectfully submitted,
ALEX P. ALLAIN
President

Footnote to the Bodger Case

The 1971 fall issue of *FTRF News* reported that the case of Joan Bodger was closed. Miss Bodger, who was one of the first recipients of assistance from the Foundation "for hardship incurred in her support and defense of the principles and spirit of the *Library Bill of Rights*," was fired from the Missouri State Library because of her letter to the *Columbia Tribune* protesting, among other things, suppression of *Free Press Underground* at the University of Missouri.

On March 19, 1973, the United States Supreme Court ordered the reinstatement of graduate student Barbara S. Papish, who was dismissed from the University of Missouri for distributing an issue of *Free Press Underground* which contained alleged obscenities.

The only sour notes in this otherwise pleasing conclusion to Papish's case were the dissents of Chief Justice Warren E. Burger and Justice William H. Rehnquist. Burger said that a university is "an arena for the discussion of ideas," but he added that it is also "an institution where individuals learn to express themselves in acceptable civil terms." Rehnquist stated that taxpayers' objections to such activities could lead to a decline in the support of public universities. They may "doubt the game is worth the candle," Rehnquist said.

Highlights of the January

Board Meeting

The Board of Trustees of the Foundation met in Washington, D.C., on January 27. In addition to reviewing the California suit and other items that have been before the Board, action was taken on several matters of concern.

Testimony on Shield Laws and FCC Regulations

The Board authorized the submission of testimony to appropriate committees of Congress supporting shield laws to protect the traditional privilege of the newsman to conceal the identities of his sources. Similar authority was granted to submit a statement on legislation proposed by Clay T. Whitehead of the White House Office of Telecommunications Policy. Whitehead, who said that FCC license holders will be held responsible for

presenting "balanced" newscasts, has prepared a bill that would, if adopted, change FCC licensing regulations.

Contribution to Pentagon Papers Fund

In response to a request that the Foundation support the legal defense of Daniel Ellsberg and Anthony J. Russo, Jr., the Board of Trustees voted unanimously to contribute \$500 and issued a statement explaining the position of the Foundation:

Whereas, Wide open and robust discussion of public issues is central to self-government and basic to the existence of constitutional democracy; and

Whereas, Daniel Ellsberg and Anthony J. Russo, Jr., have contributed to the open and robust discussion of the Vietnam war by making the Pentagon Papers available to the press and the public; and

Whereas, The Freedom to Read Foundation strongly supports the right of the public to be informed, to hear what is spoken and to read what is written, which is crucial to the governing powers of the people; and

Whereas, The prosecution of Daniel Ellsberg and Anthony J. Russo, Jr., by the U. S. Department of Justice creates fear and has a chilling effect on the future actions of those who might consider exposing possible governmental errors or mistakes, exposure which is necessary and proper under our constitutional regime;

Now, therefore, be it resolved, That the Freedom to Read Foundation declare its opposition to the prosecution of Daniel Ellsberg and Anthony J. Russo, Jr., by the U. S. Department of Justice and further declare its financial and moral support for Ellsberg and Russo.

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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As this issue of the FREEDOM TO READ FOUNDATION NEWS reports, the Board of Trustees at its Midwinter Meeting voted to prepare a statement expressing the Foundation's support of newsmen's "shield laws" and to submit it to the appropriate Congressional committees. The statement below was submitted to Representative Robert W. Kastenmeier, Chairman of Subcommittee No. 3 of the House Committee on the Judiciary, on March 27, 1973.

Statement of the FREEDOM TO READ FOUNDATION
on
Newsmen's Privilege Legislation
for
Subcommittee No. 3
House Committee on the Judiciary

March 27, 1973

The Freedom to Read Foundation is devoted to promoting freedom of speech and the press through fostering the recognition that libraries are the repositories of the world's knowledge and supplying legal counsel to those who might suffer injustice in defending those freedoms. The Foundation supports the enactment of effective legislation to assure that journalists will not be required by judicial or other authorities to reveal any information received while acting as a journalist, or to disclose the source of any information while so acting. The Foundation considers such legislation necessary in order to protect the right of citizens to know, a right which stems directly from the First Amendment.

Role of the Freedom to Read Foundation

The Freedom to Read Foundation was established as an independent corporation in November, 1969. It works in cooperation with the American Library Association's program to support and defend the principles of intellectual freedom - principles which form the foundation of library service in the United States.

Library Service in the United States

Library service in the United States is based upon the First Amendment. The Library Bill of Rights, the American Library Association's basic policy statement, sets forth the Association's interpretation of the First Amendment as it pertains to library service. The Library Bill of Rights states that it is the responsibility of library service to provide books and other materials representing all points of view presenting the problems and issues of our times. It further states that libraries should cooperate with all persons and groups concerned with resisting abridgment of free expression and free access to ideas.

Libraries constitute the only institution in the United States where the basic freedoms of information, guaranteed by the First Amendment, can be fulfilled for every citizen, regardless of his station. We are now concerned with

the denial of information at its very source, with the abridgment of the free flow of information into libraries and, through them, to every citizen.

Freedom of the Press in the United States

The importance of a free press to self-governing citizens of the United States has been well established. Throughout its history, freedom of the press has had many able and articulate spokesmen, but perhaps none has been more able or more articulate than Andrew Hamilton, who presented the case of John Peter Zenger, one of the first heroes of American journalism. In defense of Zenger, Hamilton said to the Court,

It is not the cause of the poor printer, nor of New York alone which you are now trying; no! it may, in its consequence, affect every free man that lives under British government of the main of America. It is the best cause. It is the cause of liberty; and I make no doubt that your upright conduct, this day, will not only entitle you to the love and esteem of your fellow citizens; but every man who prefers freedom to a life of slavery will bless and honor you, as men who have baffled the attempt of tyranny; and by an impartial and uncorrupt verdict, have laid a noble foundation for securing to ourselves, our posterity and our neighbors, that to which nature and the laws of our country have given us a right, the liberty - both of exposing and opposing arbitrary power by speaking and writing - Truth.

Unfortunately, the decision of the U. S. Supreme Court in Branzburg v. Hayes called into question the freedom of the press to oppose arbitrary power by writing truth. This decision is unsatisfactory in many respects. Moreover, as Justice Stewart pointed out in his dissent, the decision is sadly paradoxical, for through its effects it could deny to government the very information its authorities now seek through enforced testimony.

Protection of Journalistic Privilege

Given the nature of library service as herein defined, as the means whereby any citizen may fulfill the freedom of expression guaranteed by the First Amendment, and given the importance of a free press as an opponent of tyranny and as the natural ally of citizens under a regime of self-government, the Freedom to Read Foundation urges the Congress of the United States to enact legislation that would adequately protect what had been, before Branzburg, the traditional privilege of journalists.

In the view of the Foundation, such legislation must be sufficiently broad to protect not only journalists in the narrow sense, but also, e.g., authors of books; and to protect them from subpoenas issued not only by grand juries, but also by other bodies and agencies of government, whether federal or state. We therefore recommend that such legislation declare that no journalist or news medium shall be required by any judicial, executive, legislative, or administrative body of the United States or of any state, commonwealth, territory, possession, or trusteeship thereof, including, but not limited to, any court, grand jury, agency, department or commission, or by either house of Congress or any committee thereof, to disclose any information received or obtained while acting as a journalist or news medium, or to disclose the source of any

information received or obtained while acting as a journalist or news medium.

By "journalist" we mean anyone who is or has engaged in gathering, preparing, editing, analyzing, commenting on, writing, broadcasting, or processing information for a newspaper containing information that is published and distributed periodically, or for any magazine, radio station, television station, book or wire or news service that contains and/or distributes or transmits information, and any employee or agent thereof. By "news medium" we mean any newspaper containing information that is published and distributed periodically, any magazine, radio station, television station, book, wire service or news service that contains and/or distributes or transmits information. By "source" we mean any person, document, record, or animate or inanimate supplier of information. And by "information" we mean any written, oral, or pictorial news or other material of whatever sort, whether or not published, including, without limitation, notes of journalists relating thereto, tapes, recordings, films, photographs, and any and all such other materials in whatever form they may take.

Qualifications

Given the importance of the privilege that legislation embodying the above principles would serve to protect, the Freedom to Read Foundation urges that qualifications, if there are to be any, be both limited and well defined. Realizing the importance of fair and equitable administration of government and of justice, and recognizing that perilous circumstances may from time to time arise, the Freedom to Read Foundation believes that journalists should be required to disclose information or sources of information only after it has been shown by clear and convincing evidence in a court of law that all of the following criteria have been met: (1) there is probable cause to believe that the person from whom the information is sought has information which is clearly relevant to a specific probable violation of law; (2) the information sought cannot be obtained by any alternative means; and (3) there is compelling and overriding national interest in the information.