Freedom to Read Foundation News

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California Suit Remains in Federal Court

As this issue of the *FTRF News* goes to the printer, the Foundation-funded suit challenging California's "harmful matter" statute remains before the U.S. District Court. On September 17 a three-judge panel heard oral arguments on the question of abstention. In effect, the judges must now decide whether it is appropriate for a federal court to review the state statute before state courts have had an opportunity to consider it.

At this juncture the federal judges could hold that California courts should weigh the questions raised in the suit, thus giving the state judiciary an opportunity to remedy any defects they may find in the law. Or the federal court could proceed directly to the substantive question of the admissibility of the law under the U.S. Constitution.

The class-action suit charges that the California statute requires a form of censorship that does not come under judicial review. It also points out that legal minors are not a homogeneous group, and that matter "harmful" to a minor of five years may not be "harmful" to one who is sixteen.

The 1969 law defines "harmful matter" as:

> Matter, taken as a whole, the predominant appeal of which to the average person, applying contemporary standards, is to prurient interest, i.e., a shameful or morbid interest in nudity, sex, or excretion; and is matter which taken as a whole goes substantially beyond customary limits of candor in description or representation of such matters; and is matter which taken as a whole is utterly without redeeming social importance for minors

Defendant Evelle J. Younger, California's attorney general, maintains that such statutes were made permissible by a 1968 ruling of the U.S. Supreme Court, a ruling which upheld the constitutionality of a New York law that creates a dual standard, based on age, for judging obscenity.

Supreme Court Refuses to Reconsider

In predictable but regrettable action taken on October 9, the U.S. Supreme Court denied petitions asking for a rehearing of the issues left unresolved by its June 21, 1973 decisions on the limits of First Amendment protection for works with sexual content.

Last summer, after the new constitutional test for obscenity was handed down, the Freedom to Read Foundation filed a petition that raised a number of issues, including the question of the constitutionality of statutes that subject persons to criminal penalties for distributing works they cannot know are unprotected until a decision is made in the course of their criminal trials. The petition was filed in the name of the American Library Association, as *amicus curiae,* in support of the petition for rehearing filed by California bookseller Murray Kaplan. Kaplan's conviction for violating a California obscenity statute by selling an unillustrated book was upheld by the Court on June 21.

The order of the Court in denying the petitions was unembellished by comment: "The motion of the Association of American Publishers, Inc., et al., for leave to file a brief, as *amici curiae,* in support of rehearing is granted. The motion of the American Library Association for leave to file a brief, as *amicus curiae,* in support of rehearing, is granted. The motion of the Authors League of America for leave to file a brief, as *amicus curiae,* in support of rehearing, is granted. The petition for rehearing is denied."*

More distressing, however, was the action of the Court two weeks later. The Court reviewed the *Zap Comix* case and dismissed the appeal of Charles Kirkpatrick and Peter Dargis "for want of a substantial federal question." Dargis and Kirkpatrick had challenged the constitutionality of a New York statute that creates a presumption that the disseminator of obscene material knows the character and content of what he disseminates. The five-to-four decision of the Court fol-

(continued on page 2)

*The term *"amicus curiae"* means "friend of the court." Generally, "brief" means "legal memorandum." An *amicus curiae* brief is filed by an individual or organization other than the original parties to the case in question. The purpose of such a brief is to inform the court on some point at issue about which the *amicus* has expertise and which is not covered by the parties. However, an *amicus* does not become a party to the case, and generally permission must be obtained from the court and the parties before the *amicus* can file his brief.

From the Executive Director

It was with little surprise that we learned, on October 9, that the U.S. Supreme Court had denied the Foundation's petition for a rehearing of the June 21 decisions. The order, cited in this issue *(p. 1),* was brief and to the point; there was no discussion and no indication of the vote.

It should be noted that our petition was filed in full knowledge that the chances of the Court granting such a rehearing were slim indeed. Nevertheless, it was an action that both the Freedom to Read Foundation and the American Library Association believed vital. And it was not an exercise in futility. For one thing, there existed an outside possibility that at least one member of the Court might change his vote in light of the adverse effects of the decisions as described in the briefs of librarians and others involved in the communicative processes.

But there was a second, and now the far more important, reason for filing such a brief. Through our motion to the Supreme Court, we established our case and began to build our record. And it is on the basis of this case and this record that the fight will continue.

We had hoped that the Court would reconsider the whole question of "obscenity" and "pornography." This was not to be. Rather, the Court chose to "decentralize" the First Amendment and to say that the rights U.S. citizens enjoy under this article will now be dependent on geography. Making the First Amendment to the U.S. Constitution an absolute national standard will be a time-consuming, tedious and difficult task. Nevertheless, it is the goal to which we are committed and toward which we will continue to fight. The war must now be fought battle by battle, on each point, major or minor, affecting the First Amendment. It is to these battles and to this war that the Freedom to Read Foundation now dedicates itself.

Supreme Court *(continued from p. 1)*

lowed the pattern established in its previous term; Justices Brennan, Stewart, Marshall and Douglas dissented.

Obscenity Cases Sent Down

In other five-to-four actions in October, the Court sent back to lower courts eight cases involving convictions for possession or sale of obscene materials, cases to be reexamined in light of the guidelines established in *Miller* v. *California;* and affirmed a decision upholding a California search and seizure law as used in seizing obscene materials.

In dissent to one of the obscenity decisions, Justice William O. Douglas said, "Every author, every bookseller, every movie exhibitor and perhaps every librarian is now at the mercy of the local police force's conception of what appeals to 'prurient interest' or is 'patently offensive'."

"The standards can vary from town to town and day to day in unpredictable fashion," Douglas continued. "How can an author or bookseller or librarian know whether the community deems his books acceptable until after the jury renders its verdict?"

Freedom of Speech and Press

In the area of free speech, the Court refused to set aside a lower court ruling in a case involving the dismissal of a Nevada school teacher because of his personal views on education. The teacher, Alvin R. Mineholdt, was dismissed from his job because, among other things, he had told his own children, at home, that he did not believe in compulsory schooling. Justices Douglas and Marshall dissented. Douglas asked whether a teacher must "keep his views secret from his children, lest they adopt them."

In another ruling the Court let stand a lower court holding that the Federal Communications Commission can require broadcasters to ascertain the meaning of song lyrics and judge their suitability for broadcast. The case arose when the FCC issued a directive ordering stations to censor songs with lyrics "tending to promote or glorify the use of illegal drugs." The challenge to the ruling was filed by a group of broadcasters led by the Yale Broadcasting Company, operator of Yale University's FM station.

In a case involving freedom of the press, the Court refused to review contempt citations against two Louisiana newsmen who printed court testimony in violation of a federal judge's order. Reporters Larry Dickinson of the *Baton Rouge State-Times* and Gibbs Adams of the *Baton Rouge Morning Advocate* were forbidden by U.S. District Judge W. Gordon West to publish any testimony given in an open court hearing held in November, 1971. The U.S. Court of Appeals upheld the citations, and said that in disobeying the judge's admittedly unconstitutional order, the reporters must suffer the consequences.

Thus the Court's seeming lack of concern and apparent reluctance extends across the entire range of activities ostensibly protected by the First Amendment. However, the Court's attitude at this point—particularly with regard to the question of obscenity—clearly does not mean that it can escape indefinitely the basic issues raised in some of the challenges turned down during October.

The next regularly scheduled meeting of the FTRF Board of Trustees (January 1974, in Chicago) will be devoted to a discussion of appropriate legal strategy as some of the problems of the *Miller* era begin to take form.

David H. Clift

1907-1973

During the struggles of its birth, the Freedom to Read Foundation was especially blessed in having David H. Clift as its adviser and friend. In his official capacity as Executive Director of the American Library Association, he was a member of the Foundation's Board of Trustees, but he viewed this as anything but a perfunctory assignment. David Clift was committed to the purposes of the Foundation as he had been fully committed to the principles of intellectual freedom during his entire tenure as ALA's Executive Director. He helped greatly in the formulation of the Foundation's objective "to defend the principles of free speech and press and to support librarians who suffer legal injustices because of their support of these principles."

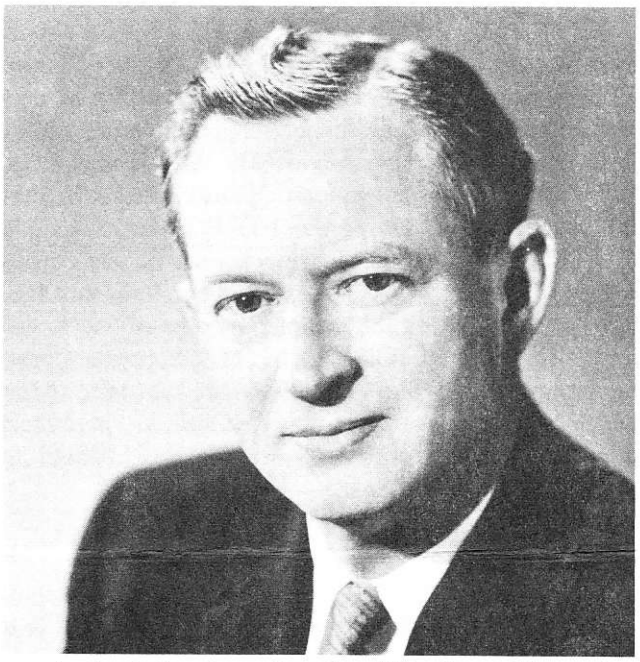
In the McCarthy era, when libraries had to justify their very reason for existence, and librarians were put on their mettle to demonstrate whether they intended to live by the principles of the *Library Bill of Rights* or merely pay lip service to them, he provided the guidance and practical assistance that were sorely needed if librarians were to demonstrate a real commitment to the idea of free libraries and free access to books and ideas.

Theodore Waller said it well in the July-August 1972 issue of *American Libraries,* the Festschrift to David Clift, when he spoke of his leadership in the work of the Joint ALA-ABPC (American Book Publishers Council) Committee on Reading Development, which framed the 1953 *Freedom to Read Statement.* Ted Waller reminded us that it was David Clift who provided ever thoughtful and practical guidance to this group of clear-eyed, strong-minded, extraordinarily able leaders of the library-book community, when, in his typically quiet but forceful way, he held them to their objective of putting together the document that has been vital in stating our belief in intellectual freedom. The statement as finally hammered out after lengthy deliberations was described by the *New York Times* as a "major state paper."

"It had come at precisely the right moment," wrote Dan Lacy in the same issue of *American Libraries,* "and around the country it provided the nucleus around which the traditional American devotion to freedom could crystallize and form anew."

The *Freedom to Read Statement* is credited with influencing President Eisenhower's plea, shortly after its issuance, when he said to his Dartmouth Commencement audience, "Don't join the bookburners."

Those of us who worked with David Clift in some of the myriad of activities and programs of the ALA recall his kindness, his gentle way of working with



people in trying to solve the difficult problems that almost overwhelmed the Association, particularly in the late sixties. He was indeed a man of integrity, but he was never stiff-necked. His sense of humor never failed him, but he did not allow it to hurt others. He was our strongest friend and ally, as he was to so many librarians whose hopes and aims he helped to realize.

The Freedom to Read Foundation's debt to David Clift is great, and he contributed incalculably to our ultimate well-being.

It is fitting, then, that Mrs. Clift has invited all who wish to honor his memory to make contributions to the Foundation.—*Everett T. Moore, FTRF Vice-President.*

Again, Slaughterhouse-Five

A teacher in South Carolina has posted a $2,000 bond on a charge of distributing obscene matter to a minor. The teacher, Gary Black, assigned Kurt Vonnegut's *Slaughterhouse-Five* to his high school English class. A spokesman for Sheriff Don D. Hill of Chesterfield County refused to reveal who signed the arrest warrant, and officials at Mr. Black's school declined to make any comment. *(New York Times,* October 30).

In 1971 the Foundation helped finance the Rochester (Mich.) Community School District's appeal of a circuit court order removing the Vonnegut novel from Rochester classrooms. The Michigan Court of Appeals reversed the circuit court's ban, holding that "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."

Big Jump in Membership

During the period of July 1 through October 31 new FTRF memberships totalled over 430. These new members represent a dramatic increase of nearly seventy-five percent over the August 31, 1972 membership.

This recent increase in participation reflects in part the accelerated efforts of the FTRF Board to gain a broader base of support during a time in our constitutional history when First Amendment freedoms face new threats. During the summer months of 1973, following the June 21 rulings of the U.S. Supreme Court, invitations to join the Foundation were sent to all ALA personal members and to many publishers, periodical distributors, and others interested in the freedom to read.

Report of the Auditors

The increase in FTRF memberships was accompanied by a jump in income. Receipts for the year ended August 31, 1973 were nearly $7,000 greater than those of the previous year.

The following report of the auditors summarizes FTRF cash receipts and expenditures for the year ended August 31, 1973:

Receipts		
Memberships received	$15,727	
Contributions received	2,187	
Interest on savings account	880	
Reimbursement of Prior Grant	132	
Total		$18,926
Expenditures		
Grants authorized and disbursed	$ 500	
Legal fees	10,197	
Meeting expenses	180	
Filing fees	3	
Accounting fees	615	
Printing and duplicating	2,400	
Stationery	164	
Postage	176	
Travel	474	
Publications	40	
Total		14,749
Excess of receipts over expenditures		$ 4,177
Total fund balance		$18,053

The following is the report for the LeRoy C. Merritt Humanitarian Fund:

Fund balance, September 1, 1972	$1,365	
Add: Donations and Memberships for the year ended August 31, 1973	835	
Balance		$2,200

Nominating Committee Appointed

A nominating committee to slate candidates for the 1974 election to fill vacancies on the FTRF Board of Trustees has been appointed by President Alex P. Allain. Named to serve were Richard L. Darling, Dean, School of Library Service, Columbia University; Everett T. Moore, Associate University Librarian, University of California at Los Angeles; and Jane Wilson, Chief Acquisitions Librarian, Roosevelt University.

Five Trustees are to be selected in the election scheduled for May, 1974. Nominations should be sent to:

Mr. Richard L. Darling, Chairman
Nominating Committee
Freedom to Read Foundation
560 Riverside Drive, Apt. 3-J
New York, New York 10027

Names of possible candidates should be in the committee's hands by January 15, 1974.

According to FTRF Bylaws, the nominating committee "shall submit to the membership for election the names of not less than two nor more than three candidates for each position on the Board to be filled."

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First Class Mail

Freedom to Read Foundation News is prepared by the staff of the ALA Office for Intellectual Freedom.
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