



Freedom to Read Foundation News

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Ruling on 'Harmful Matter' Law Appealed

Acting in response to a January decision of the trustees, attorneys for the Foundation took steps in May toward appealing the most recent decision in *Moore v. Younger*, handed down January 13 by California Superior Court Judge Robert P. Schifferman. The Superior Court ruling declared that public and school librarians are exempt from the provisions of the California "harmful matter" statute.

Because the jurisdiction of Judge Schifferman's court is limited to Los Angeles County, and because his ruling did not touch upon the basic question of the constitutionality of the 1969 law, the trustees voted to appeal the decision should California Attorney General Evelle J. Younger refuse to do so. When Younger failed to appeal before the May deadline for further action, the Foundation filed a notice of appeal with the Appellate Court of California, Second Judicial District.

The California law and similar laws in many other states prohibit the dissemination of so-called harmful matter to legal minors, usually persons aged seventeen and under. The guidelines which supposedly define "harmful matter" are impossible to apply to the dissemination of communicative materials in that they must encompass—in order to have any significance at all—many materials which are constitutionally protected when distributed to adults.

The Foundation will argue before the state appeals court that such laws are unconstitutional because they require librarians and other distributors of communicative materials to impose *sub rosa* systems of censorship in order to escape criminal prosecution. The principal difficulty with such censorship lies in the fact that it easily escapes judicial review, which the U.S. Supreme Court has repeatedly said is constitutionally required.

Award Will Support Appeal in California

The Intellectual Freedom Committee and the Intellectual Freedom Round Table of the American Library Association were the 1975 winners of the \$12,000 J. Morris Jones-World Book Encyclopedia-ALA Goals

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Supreme Court Declines Review of CIA Censorship Case

On June 30, the U.S. Supreme Court refused for a second time to review the holding of the U.S. Court of Appeals for the Fourth Circuit which permitted the Central Intelligence Agency to censor Victor Marchetti and John Marks' *The CIA and the Cult of Intelligence*. In their appeal to the high federal bench, the authors and their publisher, Alfred A. Knopf, Inc., hoped to bring an end to what they alleged was prior restraint.

In their second—and not unexpectedly futile—request to the Supreme Court, the authors and Knopf were supported by the Freedom to Read Foundation, the Association of American Publishers, and the American Booksellers Association. It was argued that in focusing on the question of whether the censored items were properly classified, and whether judicial review of classification would be appropriate, the appeals court ignored the basic objection to the CIA deletions, namely, the long-standing presumption against the constitutionality of any form of prior restraint.

"Two hundred years ago," the Foundation said in its *amicus* brief, "Blackstone declared that the liberty of the press consisted in laying no prior restraint upon publications. Although the theory that the First Amendment was intended solely to outlaw prior restraint was long ago laid to rest, the basic prohibition against such restraint has never been repudiated."

In other decisions handed down at the end of its 1974-75 term, the Supreme Court:

- Set aside a three-judge panel's declaration that California's obscenity statute was unconstitutional. In an opinion written by Justice Byron R. White and concurred in by Chief Justice Burger and Justices Blackmun, Powell, and Rehnquist, the Court said the lower tribunal should not have ruled on the merits of the case because proceedings before a state criminal court gave the state courts jurisdiction. (*Hicks v. Miranda*, no. 74-156.)

- Invalidated a Jacksonville, Florida ordinance which made it a punishable offense for a drive-in theater to exhibit films containing nudity on a screen

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Four Trustees Elected

Elected in the 1975 balloting to fill four vacancies on the Foundation Board of Trustees were Richard L. Darling, Leslie Fiedler, William M. Lucas Jr., and R. Kathleen Molz.

Darling, who last year was elected to succeed Alex P. Allain in the presidency, will serve his second term as an elected trustee. Dean of Columbia University's School of Library Service, Darling previously sat on the Board by virtue of his position as chairman of the ALA Intellectual Freedom Committee.

Fiedler, who will be serving his first term, is chairman of the Department of English at the State University of New York, Buffalo. He is the author of many essays on the American novel.

Lucas, a noted First Amendment attorney and a member of the First Amendment Lawyers Association, is another newcomer to the Board of Trustees. He practices law in New Orleans and is a partner in the firm of Dufour, Levy, Marx, Lucas and Osborne.

Molz, who previously served on the Board by virtue of her chairmanship of the ALA Intellectual Freedom Committee, rejoins the ranks of the elected trustees. Now working for her doctorate at Columbia University, she has been active in many areas of librarianship, having served as editor of the *Wilson Library Bulletin* and as Planning Officer in the U.S. Office of Education.

President Reports

to the ALA Council

In accordance with a standing request from the ALA Council, President Richard L. Darling reported to the ALA's governing body during the association's 1975 annual conference in San Francisco. His July 2 review of actions taken by the Foundation included a summary of continuing litigation and a report on the planned change in the structure of the Board of Trustees.

In explaining recent steps in *Moore v. Younger* (see report in this issue), President Darling stated that it was the hope of the Foundation, in its action in the California appeals courts, to win a ruling on the constitutionality of the California "harmful matter" law in a court with state-wide jurisdiction.

Commenting on actions in the federal courts, President Darling called attention to the U.S. Supreme Court's June 30 decision not to review an appeals court ruling which in effect upheld Central Intelligence Agency censorship of *The CIA and the Cult of Intelligence*.

The report to the ALA Council also noted that the Foundation would attempt to supplement the efforts of the ALA to win changes in Senate Bill 1, the proposed comprehensive revision of the federal criminal code.

Trustees Vote to

Reduce Their Number

In a closing chapter of the Board of Trustees' long discussion of ways in which to keep itself manageable in size while accommodating the need of the American Library Association to be fairly represented in Foundation deliberations, the Board voted at its annual meeting to restrict *ex officio* (i.e., ALA) seats to those persons who represent ALA as a whole.

The problem of allotting seats to some ALA units while denying representation to others—e.g., the Intellectual Freedom Round Table—has been under study since 1973, when the Board appointed a special committee to make recommendations concerning the pattern of ALA representation.

The vote of the Board, taken June 27, will result in the abolition of seats currently occupied by representatives of four ALA units: the American Library Trustee Association, the Library Administration Division, the Junior Members Round Table, and the Social Responsibilities Round Table. Those ALA representatives who will remain on the Board are the ALA president, president-elect, executive director, and Intellectual Freedom Committee chairperson.

In taking these steps, which will be voted on again next winter when formal bylaws changes are presented to the trustees, the Board in effect implemented the basic change in its structure which was recommended by the special committee.

It is anticipated that the change will take effect in August 1976, and simultaneously, the Board will invite all ALA units to send representatives to its meetings. Although these representatives will not have the right to vote, they will be accorded all other privileges of trustees.

Gifts Received from

MLA, IFRT, and BPM

This summer the Freedom to Read Foundation was the recipient of special gifts from three organizations of librarians, all of which announced their donations at the American Library Association's 94th Annual Conference in San Francisco.

For the second year, the Maryland Library Association contributed funds raised through the sale of special items promoting intellectual freedom in libraries. This last year MLA sold buttons and bumper stickers, one

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with the legend, "Nothing Risky, Nothing Gained." The result was \$400 for the Foundation.

For the second time, the members of the ALA Intellectual Freedom Round Table voted to donate part of the round table's dues income to the Foundation. This year's contribution from IFRT was \$500.

At its meeting immediately prior to the ALA conference, Beta Phi Mu, the national honorary for librarians, voted to cooperate with the Foundation in increasing the participation of librarians in FTRF activities, and to donate \$100 to the Foundation's general funds.

Nominating Committee Appointed

Three trustees were appointed by President Darling to serve on the committee to select candidates for the 1976 election to fill vacancies on the Board of Trustees. Named to the Nominating Committee were Stanley Fleishman, Jean-Anne South, and Frances C. Dean, chairperson.

Suggestions for nominations should be sent to:

Mrs. Frances C. Dean, Chairperson
 FTRF Nominating Committee
 Department of Educational Media and Technology
 Montgomery County Public Schools
 Rockville, Maryland 20850

Names of possible candidates should be submitted to the committee before January 15, 1976.

According to the Foundation 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."

Membership Promotion Time!

Fall begins membership promotion time for the Foundation. While we can and do use mailing lists from cooperating organizations, you, the members, are our best source of names of new Foundation supporters.

Please send us the names and addresses of five colleagues who should belong to the Foundation. We'll take it from there!

We're counting on your help. Thanks!—JFK

Supreme Court (from p. 1)

visible from a public street. Justice Lewis F. Powell Jr., writing for himself and Justices Douglas, Brennan, Stewart, Marshall, and Blackmun, said the law represented an infringement of First Amendment rights. (*Erznoznik v. City of Jacksonville*, no. 73-1942.)

- Began to back away from its claim that commercial speech is not protected by the First Amendment. In a 7-2 opinion (Justices Rehnquist and White dissented), the court reversed a Virginia Supreme Court holding in a case involving advertisements for legal abortion services in New York. The federal court ruled that the high state court erred in assuming that advertising as such enjoys no constitutional protection. (*Bigelow v. Virginia*, no. 73-1309.)

- Declared that the Federal Aviation Administration's Systems Worthiness Analysis Reports on the operation and maintenance performance of commercial airlines are exempt from public disclosure under Exemption 3 of the Freedom of Information Act. (*FAA Administrator v. Robertson*, no. 74-450.)

Invite a friend to join today!

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Sponsors	\$50.00 or more	_____	
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<p><i>Members are entitled to vote in elections of trustees to the Board, and to receive the FTRF NEWS plus material pertaining to special issues.</i></p> <input type="checkbox"/> Check enclosed <input type="checkbox"/> New Amount \$ _____ <input type="checkbox"/> Renew		Address _____ City _____ State _____ Zip _____	
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Officers Elected

Immediately upon the completion of the annual meeting of the 1974-75 Board of Trustees, the 1975-76 Board was seated. Two officers were reelected, President Richard L. Darling and Treasurer Jean-Anne South, and newly elected Trustee R. Kathleen Molz was selected to serve as vice-president.

Other members of the 1975-76 Board are Mrs. Dale B. Canelas, Assistant Director for Public Services, Stanford University Libraries; Mrs. Frances C. Dean, Coordinator, Evaluation and Selection Division, Department of Educational Media and Technology, Montgomery County (Md.) Public Schools; Professor Leslie Fiedler, Chairman, Department of English, State University of New York at Buffalo; Stanley Fleishman, Attorney at Law, Los Angeles.

Also serving on the 1975-76 Board are Marilyn Hinshaw, Coordinator, Texas Trans-Pecos Library System; Mrs. Clara S. Jones, Director, Detroit Public Library; Arthur Kirschenbaum, Program Analyst, U.S. Office of Education; William M. Lucas Jr., Attorney at Law, New Orleans; Mrs. Allie Beth Martin, Director, Tulsa City-County Library System; Mrs. Florence McMullin, Trustee, King County Library System, Seattle; Betty Carol Sellen, Librarian, Circulation Division, Brooklyn College Library; Claude Settlemire, Director, Salem (Ore.) Public Library; Mrs. Helen W. Tuttle, Assistant Librarian for Preparations, Princeton University; and Robert Wedgeworth, Executive Director, American Library Association.

Those trustees who retired from the Board at the end of the 1974-75 term were Emanuel Dondy, Nancy Doyle, Edward G. Holley, Evelyn Levy, Eli M. Oboler, and Jane Wilson.

William D. North, attorney, will continue to serve as the Foundation's general counsel. Special counsel will be provided by Alex P. Allain, former Foundation president.

Executive Committee Appointed

In the periods between the semi-annual business meetings of the Foundation, it is the responsibility of the Executive Committee of the Board to conduct the Foundation's affairs. According to the Bylaws, the Executive Committee must consist of the Foundation president, who serves as chairman of the committee, two elected members of the Board, and two *ex officio* members who serve by virtue of their position in the American Library Association.

Appointed to serve on the Executive Committee were President Darling, Vice-President Molz, Treasurer South, Claude Settlemire, and Robert Wedgeworth.

Award (From p. 1)

Award. Presented at the inaugural luncheon which concluded the ALA's 1975 Annual Conference in San Francisco, the award will help support the appeal in *Moore v. Younger*.

The two ALA units sought the award because of the importance of the Foundation-initiated suit for the ALA intellectual freedom program. As the citation accompanying the award noted, the aim of the suit is "the establishment of legal precedent for protecting librarians from criminal prosecution by achieving recognition that U.S. libraries are primary First Amendment institutions through which citizens can have, as a matter of right, access to any work they desire."

The award, granted annually to ALA units to fund priority projects, was established in 1960 by the ALA and Field Enterprises Educational Corporation. J. Morris Jones, whom the award commemorates, was editor-in-chief of *World Book Encyclopedia* from 1940 until his death in 1962.

Freedom to Read Foundation
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