President Reports to ALA Council

The president of the Freedom to Read Foundation reports to the Council of the American Library Association at each of its semi-annual meetings. President Darling submitted the following report to the Council in Chicago on July 21, 1976. It has been edited slightly for publication here.

The Board of Trustees of the Freedom to Read Foundation met in Chicago on Friday, July 16. Four major items on its agenda need to be reported to you today.

Since 1972 Mr. Allain and I have been describing our slow progress in the case of Moore v. Younger, our suit in California to attempt to have that state's "harmful matter" statute declared unconstitutional, or to secure an exemption for librarians. I am happy to report to you that this case is drawing to a close.

More than a year ago I reported that a judge of the Los Angeles Superior Court had given the opinion that librarians were exempt from criminal liability under the California harmful matter statute, our first real victory in this case. Unfortunately, his opinion was not published, and was binding only in Los Angeles County, forcing us to appeal to the California Court of Appeal, Second District. In a hearing on a motion to dismiss the appeal filed by California Attorney General Evelle Younger, the judges of the appellate court declared in a published opinion that we had received all of the relief to which we were entitled through the Superior Court decision, which we now interpret to have been made binding throughout California. As far as court action is concerned, therefore, Moore v. Younger has been successfully completed.

There remains only to secure the opinion of the California attorney general that he now construes libraries, librarians, and library employees to be exempt from the liabilities of the harmful matter statute. The attorney general declined to render an opinion requested by Gilbert W. McNamee, president of the California Library Association. We await his reply to a letter from California State Librarian Ethel Crockett, and hope

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Smith v. U.S.

High Court to Review 'Community Standards' Case

May federal attorneys prosecute the intrastate dissemination of "obscenity" in states which have removed anti-obscenity statutes from their books? If so, what "local community standard" does the federal jury employ? These two questions—posed by the Freedom to Read Foundation—will be addressed by the U.S. Supreme Court in its coming term.

The problem of federal prosecutions in states which have decriminalized so-called obscenity arose last winter when the U.S. Court of Appeals for the Eighth Circuit upheld the conviction of Iowan Jerry Lee Smith, who was tried in federal court for violation of U.S. statutes prohibiting "obscene" matter in the mails. Smith had mailed materials from his Des Moines firm to an Iowa address used by postal inspectors.

The appellate court in effect ruled that the explicit decision of the Iowa legislature to permit the distribution of sexually explicit fare to Iowa adults did not affect federal prosecutions. The appeals panel said that federal jurors could draw upon "inborn" and "often undefinable" standards.

After the decision of the appeals panel was handed down, the Foundation supported Smith's appeal to the Supreme Court, which granted a writ of certiorari on June 21.

Petition for Writ

In its brief in support of the petition for a writ of certiorari, the Foundation argued that Smith was convicted under unconstitutionally vague law.

"The subjective whim of individual jurors as to the governing 'community standard' concerning what is 'obscene' is unascertainable in advance of the verdict. Indeed, appellate review of the jury's verdict is effectively precluded as the 'community standard' applied may never be known. Such an approach is obviously subject to arbitrary enforcement and application and of necessity must chill the exercise of protected First Amendment rights."

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Five Trustees Elected

In the election concluded last June, the members of the Foundation selected Neil H. Adelman, Dale B. Canelas, Eli M. Oboler, Sophie C. Silberberg, and Helen W. Tuttle to serve on the Board of Trustees for the term 1976-78.

Adelman, an attorney and member of the Chicago law firm of DeVoe, Shadur & Krupp, will be serving his first term on the Board. Like his fellow Trustee William Lucas, he is a member of the First Amendment Lawyers Association.

Canelas, assistant director for public services at Stanford University libraries, was a member of the Board in 1970 as a representative of the Social Responsibilities Round Table of the American Library Association and was first elected to the Board in 1974. She is a member of the Council of the American Library Association.

Oboler, long one of the American Library Association's most outspoken advocates of intellectual freedom in library service, served on the Board from 1971 to 1975. Author of The Fear of the Word, published by Scarecrow Press, and numerous articles on intellectual freedom which have appeared in library periodicals, Oboler was the recipient of the 1976 Robert B. Downs Award for outstanding contributions to intellectual freedom in libraries. He has served as university librarian at Idaho State University since 1949.

Silberberg, director of advertising and promotion of children's books at Thomas Y. Crowell, was appointed to the Foundation's first Board of Trustees as a representative of the American Library Trustees Association. She has served as chairperson of ALTA's committee on intellectual freedom and is a charter member of the Foundation.

Tuttle, assistant university librarian for preparations at Princeton University, was first elected to the Board in 1974. Long active in the American Library Association, she is a member of both the ALA Council and the ALA Executive Board.

Other members of the current Board are Richard L. Darling, dean of the school of library service at Columbia University; Leslie Fiedler, chairperson of the department of English at the State University of New York at Buffalo; Clara S. Jones, director of the Detroit Public Library and ALA president; William M. Lucas Jr., attorney at law, New Orleans; Florence McMullin, chairperson of the ALA Intellectual Freedom Committee; R. Kathleen Molz, professor at the school of library service, Columbia University; Eric Moon, president of Scarecrow Press and ALA president-elect; and Robert Wedgeworth, ALA executive director.

Defending Your Right to Say It

In June the U.S. Supreme Court upheld the constitutionality of a Detroit zoning ordinance which differentiates between motion picture theaters which exhibit so-called adult fare and those which do not. Writing for the Court, the newest justice, John Paul Stevens, reasoned:

"[I]t is manifest that society's interest in protecting [sexually explicit] expression is of a wholly different, and lesser, magnitude than the interest in untrammelled political debate that inspired Voltaire's immortal comment . . . . [F]ew of us would march our sons and daughters off to war to preserve the citizen's right to see 'Specified Sexual Activities' exhibited in the theaters of our choice."

Justice Stevens' remark brought a stinging rebuke from Justice Potter Stewart, whose dissent was joined by Justices William Brennan, Thurgood Marshall, and Harry Blackmun:

"By refusing to invalidate Detroit's ordinance the Court rides roughshod over cardinal principles of First Amendment law, which require that time, place and manner regulations that affect protected expression be content-neutral except in the limited context of a captive or juvenile audience. In place of these principles the Court invokes a concept wholly alien to the First Amendment. Since 'few of us would march our sons and daughters off to war to preserve the citizen's right to see 'Specified Sexual Activities' exhibited in the theaters of our choice,' the Court implies that these films are not entitled to the full protection of the Constitution. This stands 'Voltaire's immortal comment' on its head. For if the guarantees of the First Amendment were reserved for expression that more than a 'few of us' would take up arms to defend, then the right of free expression would be defined and circumscribed by current popular opinion. The guarantees of the Bill of Rights were designed to protect against precisely such majoritarian limitations on individual liberty."

High Court Review (from p. 1)

The Foundation brief also noted that the trial court judge refused to permit questioning of prospective jurors concerning their knowledge of "contemporary community standards."

Briefs setting forth full arguments on behalf of Smith—including an amicus brief in the names of the American Library Association and the Iowa Library Association—were scheduled for filing with the Court in September.
Get One! Win One!

The Foundation’s latest membership promotion campaign offers you a chance to win a free copy of Leon Jaworski’s book on the prosecution of the Watergate scandal, The Right and the Power.

If each of us recruits one new member, we can double our ranks. Two thousand new members—a fantastic achievement! All that is required from each of us is a little effort—a telephone call, a note to a colleague or a word to a friend.

Let’s do it!—JFK

Committees Appointed

At the annual meeting of the Board of Trustees in July, President Darling appointed three members of the Board to the 1976-77 Nominating Committee. Asked to serve were Neil H. Adelman, Sophie C. Silberberg, and Helen W. Tuttle, chairperson.

Suggestions for nominations should be sent to:
Helen W. Tuttle
Princeton University Library
Princeton, New Jersey 08540

Names of possible candidates should be submitted to the committee before January 14, 1977.

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.”

Executive Committee Elected

At the close of the meeting, the Board of Trustees elected officers for 1976-77. President Darling and Vice President R. Kathleen Molz were reelected, and Helen Tuttle was elected treasurer. The Executive Committee of the Board will consist of these officers and Trustees William Lucas and Robert Wedgeworth.

The Foundation Bylaws state that it is the responsibility of the Executive Committee to conduct the affairs of the Foundation between the semi-annual meetings of the Board.

“Advertising, however tasteless and excessive it sometimes may seem, is nonetheless dissemination of information as to who is producing and selling what product, for what reason, and at what price. So long as we preserve a predominantly free enterprise economy, the allocation of our resources in large measure will be made through numerous private economic decisions. It is a matter of public interest that those decisions, in the aggregate, be intelligent and well informed. To this end, the free flow of commercial information is indispensable. And if it is indispensable to the proper allocation of resources in a free enterprise system, it is also indispensable to the formation of intelligent opinions as to how that system ought to be regulated or altered. Therefore, even if the First Amendment were thought to be primarily an instrument to enlighten public decisionmaking in a democracy, we could not say that the free flow of information does not serve that goal.”

—Justice Harry Blackmun, writing for the Supreme Court in Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, in which the Court decided, in May, that the advertisement of prescription drug prices is constitutionally protected.

Freedom to Read Foundation

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Members are entitled to vote in elections of trustees to the Board, and to receive the FTRF NEWS plus material pertaining to special issues.

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Invite a colleague to join today.
Contributions are tax-deductible.

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President Reports (from p. 1)

we will soon have a satisfactory opinion which will end the matter.

Smith v. U.S.

I reported at Midwinter that the Foundation had filed an amicus brief in the U.S. Court of Appeals for the Eighth Circuit in the case of Smith v. U.S., which was heard before a three-judge panel on January 28. As we suspected it would be, the decision was unfavorable.

Jerry Lee Smith, as you will recall, is an Iowa publisher and bookseller who was convicted in the Federal District Court for violating provisions of the federal postal law prohibiting the mailing of obscene materials. Smith had mailed his publication only within Iowa, which had repealed all portions of its obscenity laws pertaining to adults. Since Iowa, therefore, had declared that no materials distributed to adults within Iowa were legally obscene, the prosecution appeared to be applying a national standard for obscenity in apparent violation of the 1973 Miller decision of the U.S. Supreme Court. The case seemed to offer the possibility, through appeal, of seeking reconsideration and correction of the contradictions of the Miller decision.

Despite the unfavorable decision of the three-judge panel, the possibility of securing a rehearing of the issues and problems posed by Miller encouraged the Foundation to proceed with an appeal to the U.S. Supreme Court. Smith, however, lacked the funds for an appeal. Recognizing the significance of Smith v. U.S., the Foundation decided to finance his appeal.

We filed a petition for a writ of certiorari in the U.S. Supreme Court on April 10, 1976. Despite the Court's reluctance and refusal to accept many recent obscenity cases, the Court granted certiorari, and will hear Smith v. U.S. The briefs, both Smith's and an amicus brief in the names of the American Library Association and the Iowa Library Association, have been scheduled for filing on August 5, though it is likely we will request an extension. While we cannot predict the outcome, we at least will be able to present our arguments to the Supreme Court.

'Deep Throat' Conspiracy

The Foundation, in May, received a request from lawyers for Harry Reems that we file an amicus brief in Reems' appeal of his recent conviction. Harry Reems, the leading male actor in the motion picture Deep Throat, was convicted in federal court in Memphis, Tennessee, along with eleven other defendants, on a charge of conspiring to transport an obscene movie across state lines, although the evidence indicates that Reems' involvement consisted only of a one-day acting job, for which he was paid $100. Mr. Reems has not yet been sentenced nor has an appeal been filed, although it most certainly will.

This case appears to raise some of the same issues that the Smith case does, but until an appeal is prepared, we cannot determine what its basis will be. The Board of Trustees has granted authority, if the legal arguments are appropriate, to join in an amicus brief with other interested organizations, and to share the cost. The Board of Trustees also voted to award a grant of $500 to the Harry Reems legal defense fund.

The trustees have been requested, from time to time, to hold a public information meeting for Foundation members and other interested persons. Last Friday, they voted to schedule such a meeting at the 1979 Annual Conference, and to seek ALA Executive Board approval for a program slot at the appropriate time. That year, 1979, will be the Foundation's tenth anniversary and seems a particularly good time for a recapitulation and evaluation of its contributions. The staff will begin preliminary plans in the very near future.

I am happy to report that the Foundation now has more than 1700 members. We are grateful for your support.

Respectfully submitted,

RICHARD L. DARLING, President
Freedom to Read Foundation