Freedom to Read Foundation News

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Richard L. Darling, President Judith F. Krug, Executive Director

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Highlights of Midwinter Meeting

In a report prepared for the Council of the American Library Association, assembled in Washington, D.C. for the ALA's 1977 Midwinter Meeting, President Darling presented a summary of the business conducted by the Foundation Board of Trustees at its meeting on January 29.

The Board of Trustees of the Freedom to Read Foundation met here in Washington on Saturday, January 29, 1977. From its deliberating, I wish to give you two brief progress reports on cases reported to you before, and a report on one new censorship case which the trustees have decided the Freedom to Read Foundation should enter.

In July we reported that *Moore* v. *Younger* had wound its way through the California courts, and that we had received the relief we sought for California librarians from criminal liability under the California Harmful Matter Statute. There only remained the need to secure a written opinion from the California Attorney General that he construed the court decision to be binding. The California State Librarian, Ethel Crockett, has requested an opinion, which the Attorney General is legally obliged to provide. We are confident that he will send her an opinion within the month. If it is favorable, *Moore* v. *Younger* will be finished. If it is not, we will pursue the matter in the federal court, where we began in 1972. In any case, we will report to you again on this matter at the 1977 Annual Conference in Detroit.

We also reported in Chicago that permission had been granted to take the case of *Smith* v. *U.S.* before the U.S. Supreme Court. You will recall that Jerry Lee Smith, an Iowa bookseller, had been convicted of violating the federal postal laws for mailing allegedly obscene materials through the mail. We filed three briefs in this case, and oral arguments were presented before the Supreme Court on December 8, 1976. We await the Court's decision and hope to report to you at the 1977 Annual Conference.

Censorship on Long Island

The new case which the Foundation has decided to

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Smith v. U.S.

High Court Hears Foundation

In the Freedom to Read Foundation's first appearance before the U.S. Supreme Court in oral argument, the high bench was told in December that no federal purpose was served by the federal obscenity prosecution of Iowan Jerry Lee Smith.

Jerry Smith, who established a book distribution firm in Des Moines after the Iowa legislature had decriminalized all sex-related fare for adults, was convicted in 1975 under Comstock anti-obscenity laws after mailing materials to an Iowa address used as a "drop" by postal inspectors.

Represented by Attorney Tefft W. Smith, the Foundation argued that the U.S. District Court jury which convicted Smith should have been directed to apply the "community standard" established by the Iowa legislature in decriminalizing "obscenity." The standard in fact applied by the jury was, the Foundation argued, an unknowable one—one which deprived Jerry Smith of his rights of fair notice and due process.

Justice Harlan Cited

On the question of the federal interest in prosecuting Jerry Smith, Attorney Smith cited the dissents of the late Justice John M. Harlan in the famous *Roth* and *Memoirs* cases.

"In dissenting in the *Roth* case," Smith noted, "Justice Harlan expressly rejected any notion of an independent federal interest, emphasizing instead the paramount obligation of the federal government to insure full protection of First Amendment rights.

"In the *Memoirs* dissent, Justice Harlan stated that there would be a limited federal interest in proscribing certain materials for the purpose of assuring that federal instrumentalities like the mails would not be utilized to thwart state laws.

"In the circumstances presented here, the interpretation adopted below and now urged by the government is precisely the opposite. It thwarts state law."

When Chief Justice Warren E. Burger and Justice William H. Rehnquist asked whether the federal government could not prosecute bank robbery or unfair drug

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Highlights *(from p. 1)*
engage in is the one involving the banning of several modern books by the school board of the Island Trees School District in Nassau County, Long Island, New York, which has been reported in the national newspapers as well as the library press.

On March 3, 1976, Board President Richard Ahrens in a memorandum to the Island Trees superintendent of schools, Richard G. Morrow, expressed the "desire" of the Board of Education that all copies of ten books "be removed from the libraries to the board's office." The books ordered removed were *The Fixer,* by Bernard Malamud; *Slaughterhouse-Five,* by Kurt Vonnegut; *The Naked Ape,* by Desmond Morris; *Down These Mean Streets,* by Piri Thomas; *Best Short Stories By Negro Writers,* edited by Langston Hughes; *Go Ask Alice* (anon.); *A Hero Ain't Nothin' But a Sandwich,* by Alice Childress; *A Reader for Writers,* edited by Jerome Archer; *Black Boy,* by Richard Wright; and *Laughing Boy,* by Oliver La Farge. Subsequently, *Soul on Ice,* by Eldridge Cleaver, was added to the list.

According to a Board of Education press release of March 16, 1976, in September 1975 three board members had attended a conference sponsored by Parents of New York–United at which they were informed that there were many books that Parents of New York–United considered to be "anti-American, anti-Christian, anti-Semitic, and just plain filthy." In early November, two of them, Richard Ahrens and Frank Marlin, checked the card catalog of the high school library and found the books condemned by PONY–U.

After the books were removed, the board appointed a committee consisting of four school staff members and four parents to evaluate the "educational suitability of [the] books and whether they were in good taste, appropriate, and relevant."

At the beginning of July the committee recommended that five of the books be retained and three be banned. The committee had a tie vote on two and the eleventh had not been located. On July 28, the board passed resolutions banning all but two of the books. *Laughing Boy* by LaFarge was given a clean bill of health, and Wright's *Black Boy* was restored on a "restricted basis." The other books continue to be unavailable in the Island Trees school libraries. The board stated the books contain material "offensive to Christians, Jews, Blacks, and Americans in general" and also contain "obscenities, blasphemies, brutality, and perversion beyond description."

The outcry against this blatant censorship of school libraries came promptly and was widespread. In December 1976, the New York Civil Liberties Union, and its Nassau County Chapter, filed a class action complaint on behalf of five Island Trees students in the New York Supreme Court for Nassau County. The Freedom to Read Foundation has followed this case since it first came to its attention. On Saturday the trustees voted to authorize the Executive Committee to explore the most effective ways to support the present complaint or to enter a separate suit.

The Foundation hopes to be able to join forces with the Island Trees teachers union in an appropriate action. However, since the union has filed a grievance under its contract with the Island Trees Board of Education, it may not be possible for the union to pursue another course until the grievance is concluded. In that case the Foundation Executive Committee is authorized to follow whatever avenues are open and is instructed to do so.

Merritt Fund

The trustees of the LeRoy C. Merritt Humanitarian Fund No. 1 met on Friday, January 28, 1977. Having received no requests for assistance it took no action. The Fund stands ready to provide financial assistance to librarians who have been placed in jeopardy because of their stands in defense of intellectual freedom principles and welcomes appropriate requests.

Respectfully submitted,
RICHARD L. DARLING, President
Board of Trustees
Freedom to Read Foundation

High Court *(from p. 1)*
labeling in Iowa even if that state had no applicable criminal statutes, Justice Potter Stewart quickly pointed out that the so-called crime of obscenity does not exist where community standards permit sexually explicit materials.

Justice John Paul Stevens, the newest member of the high bench, asked the government's attorney whether the prosecutor had presented evidence to the *Smith* jury on Iowa standards. When the government attorney replied in the negative, explaining that the procedures established in *Miller* v. *California* do not require such, Stevens expressed surprise. He asked how appellate judges—including the justices—could review a trial court finding if no evidence concerning standards was set forth in the record.

Following the December oral argument in *Smith* v. *U.S.* the Supreme Court accepted additional obscenity cases. Its opinion in *Smith* may be delayed for announcement with opinions in those cases.

Freedom to Read Foundation News is edited by the staff of the Office for Intellectual Freedom, American Library Association. It is issued quarterly to all members of the Foundation.

Regular membership in the Freedom to Read Foundation begins at $10.00 per year. Contributions to the Foundation should be sent to: Freedom to Read Foundation, 50 E. Huron St., Chicago, Ill. 60611. All contributions are tax-deductible.

Election Slate

Nominating Committee Submits Report

Eleven candidates for the Foundation's 1977 election have been slated by the Board-appointed nominating committee, which was composed of Trustees Neil H. Adelman, Sophie Silberberg, and Helen W. Tuttle, chairperson.

Four scheduled vacancies on the Board of Trustees will be filled in the election to be conducted in the month of may. The candidates are:

John F. Anderson, Director, Tucson Public Library.

Jacob L. Chernofsky, Editor and Publisher, *AB Bookman's Weekly*.

Kenneth L. Donelson, Professor, Department of English, Arizona State University, Tempe.

John Donovan, Executive Director, Children's Book Council, Inc.

Betty H. Grebey, Library Coordinator, Downingtown, Pennsylvania Area Schools.

E. J. Josey, Chief, Bureau of Academic and Research Libraries, New York State Library, Albany.

William M. Lucas Jr., Attorney at Law, Dufour, Levy, Marx, Lucas & Osborne, New Orleans.

Florence McMullin, Trustee, King County Library System, Seattle.

R. Kathleen Molz, Professor, School of Library Service, Columbia University.

Schuyler L. Mott, Director, Ocean County Library, Toms River, New Jersey.

Nettie B. Taylor, Assistant Superintendent, Maryland Department of Education—Library Development Division, Baltimore.

Ballots will be mailed on May 2 to all persons holding paid membership in the Foundation on that date.

Members who wish to *nominate candidates by petition* should submit twenty-five signatures of members of the Foundation in support of each petition candidate. Names of petition candidates and signatures supporting their candidacy must be received by the executive director of the Foundation no later than April 20.

Current Trustees

Elected trustees currently serving on the Board are Richard L. Darling (1977), Neil H. Adelman (1978), Dale B. Canelas (1978), Leslie Fiedler (1977), William M. Lucas Jr. (1977), R. Kathleen Molz (1977), Eli M. Oboler (1978), Sophie Silberberg (1978), and Helen W. Tuttle (1978).

Trustees serving by virtue of their office in the American Library Association are Clara S. Jones, ALA president, Florence McMullin, chairperson of the ALA Intellectual Freedom Committee, Eric Moon, ALA president-elect, and Robert Wedgeworth, ALA executive director.

Court Halts School Library Raids

In a decision which could become an important element in the battle against censorship of school libraries, the U.S. Court of Appeals for the Sixth Circuit (Kentucky, Michigan, Ohio, and Tennessee) ruled last year that school board members may not arbitrarily order the removal of school library books they dislike.

The appellate court overruled a 1972 school board decision that removed Kurt Vonnegut's Cat's Cradle *and Joseph Heller's* Catch-22 *from the Strongsville, Ohio high school library. However, the court did uphold the authority of the school board to bar purchase of the works for classroom use as textbooks.*

Portions of the decision which apply to school libraries are reprinted here. The case (Minarcini *v.* Strongsville City School District, *nos. 75-1467-69, 6th Cir.) was decided by Judges George C. Edwards Jr. and John W. Peck.*

This [case] presents a vivid story of heated community debate over what sort of books should be 1) selected as high school textbooks, 2) purchased for a high school library, 3) removed from a high school library, or 4) forbidden to be taught or assigned in a high school classroom. The setting of this controversy is the high school in Strongsville, Ohio, a suburb of Cleveland. . . .

The Removal of Books from the School Library

The record discloses that at a special meeting of the Strongsville Board of Education on August 19, 1972, according to the official minutes, the following motion was made and adopted:

> Dr. Cain moved, seconded by Mr. Henzey, that the textbook entitled *Cat's Cradle* not be used any longer as a text or in the library in the Strongsville Schools.
>
> Discussion.
>
> Dr. Cain moved the question.
>
> Mr. Henzey requested the Clerk to call for the vote.
>
> Roll call: Ayes: Dr. Cain, Mr. Henzey, Mrs. Wong
>
> Nays: Mr. Woollett
>
> Motion carried.

Similarly at a meeting of the Strongsville Board of Education on August 31, 1972, the following action was recorded in the minutes:

> Mrs. Wong moved, seconded by Dr. Cain, that the textbook *Catch-22* be removed from the Library in the Strongsville Schools.
>
> Roll call: Ayes: Mr. Ramsey, Mrs. Wong, Dr. Cain
>
> Nays: Mr. Wollett
>
> Motion carried.

In his opinion the District Judge held that "the novels *Catch-22* by Joseph Heller, *God Bless You, Mr. Rosewater* and *Cat's Cradle* by Kurt Vonnegut Jr., are not on trial in this proceeding." Further he stated, "Literary value of the three novels [has] been conceded by the parties . . ." and that "obscenity as defined in the Supreme Court's pronouncements is eliminated as an issue herein by agreement of counsel." These holdings do not appear to be disputed on this appeal, and we accept them.

The District Judge, in dismissing the complaint concerning removal from the library of Heller's *Catch-22* and Vonnegut's *Cat's Cradle,* relied strongly upon a Second Circuit opinion in *Presidents Council, District 25* v. *Community School Board No. 25,* 457 F.2d 289 (2nd Cir.), *cert. denied,* 409 U.S. 998 (1972). In that case, after noting, as we have above, that some authorized body has to make a determination as to the choice of books for texts or for the library, the Second Circuit continued by discussing a parallel right on the part of a board to "winnow" the library:

> The administration of any library, whether it be a university or particularly a public junior high school, involves a constant process of selection and winnowing based not only on educational needs but financial and architectural realities. To suggest that the shelving or unshelving of books presents a constitutional issue, *particularly where there is no showing of a curtailment of freedom of speech or thought,* is a proposition we cannot accept. (Emphasis added. Footnote omitted.)

The District Judge in our instant case appears to have read this paragraph as upholding an absolute right on the part of this school board to remove from the library and presumably to destroy any books it regarded unfavorably without concern for the First Amendment. We do not read the Second Circuit opinion so broadly (*see* qualifying clause underlined above). If it were unqualified, we would not follow it.

A library is a storehouse of knowledge. When created for a public school it is an important privilege created by the state for the benefit of the students in the school. That privilege is not subject to being withdrawn by succeeding school boards whose members might desire to "winnow" the library for books the content of which occasioned their displeasure or disapproval. Of course, a copy of a book may wear out. Some books may become obsolete. Shelf space alone may at some point require some selection of books to be retained and books to be disposed of. No such rationale is involved in this case, however.

The sole explanation offered by this record is provided by the School Board's minutes of July 17, 1972, which read as follows:

> Mrs. Wong reviewed the Citizens Committee report regarding adoption of *God Bless You, Mr. Rosewater.*
>
> Dr. Cain presented the following minority report:
>
> 1. It is recommended that *God Bless You, Mr. Rosewater* not be purchased, either as a textbook, supplemental reading book or library book. The book is completely sick. One secretary read it for one-half hour and handed it back to the reviewer with the written comment, "GARBAGE."
>
> 2. Instead, it is recommended that the autobiography of Captain Eddie Rickenbacker be purchased for use in the English course. It is modern and it fills the need of providing material which will inspire and educate the students as well as teach them high moral values and provide the opportunity to learn from a man of exceptional ability and understanding.
>
> 3. For the same reason, it is recommended that the following books be purchased for immediate use as required supplemental reading in the high school social studies program:
>
> *Herbert Hoover,* a biography by Eugene Lyons; *Reminiscences of Douglas McArthur.*
>
> 4. It is also recommended in the interest of a balanced program that *One Day in the Life of Ivan Denisovich* by A. I. Solzhenitsyn, be purchased as a supplemental reader for the high school social studies program.
>
> 5. It is also recommended that copies of all of the above books be placed in the library of each secondary school.
>
> 6. It is also recommended that *Cat's Cradle,* which was written by the same character (Vennegutter) who wrote, using the term loosely, *God Bless You, Mr. Rosewater,* and which has been used as a textbook, although never legally adopted by the Board, be withdrawn immediately and all copies disposed of in accordance with statutory procedure.
>
> 7. Finally, it is recommended that the McGuffy Readers be bought as supplemental readers for enrichment program purposes for the elementary schools, since they seem to offer so many advantages in vocabulary, content and sentence structure over the drivel being pushed today.

While we recognize that the minute quoted above is designated as a "minority report," we find it significant in view of intervenor Cain's active role in the removal process and the fact that it offers the only official clue to the reasons for the School Board majority's two book removal motions. The Board's silence is extraordinary in view of the intense community controversy and the expressed professional views of the faculty favorable to the books concerned.

In the absence of any explanation of the Board's action which is neutral in First Amendment terms, we must conclude that the School Board removed the books because it found them objectionable in content and because it felt that it had the power, unfettered by the First Amendment, to censor the school library for subject matter which the Board members found distasteful.

Neither the State of Ohio nor the Strongsville School Board was under any federal constitutional compulsion to provide a library for the Strongsville High School or to choose any particular books. Once having created such a privilege for the benefit of its students, however, neither body could place conditions on the use of the library which were related solely to the social or political tastes of school board members.*

The Supreme Court language said: "It is too late in the day to doubt that the liberties of religion and expression may be infringed by the denial of or placing conditions upon a benefit or privilege." *Pickering* v. *Board of Education,* 391 U.S. 563, 568 (1968); *Keyishian* v. *Board of Regents,* 385 U.S. 589, 606 (1967); *Douglas* v. *California,* 372 U.S. 353 (1963); *Griffin* v. *Illinois,* 351 U.S. 12 (1956).

A public school library is also a valuable adjunct to classroom discussion. If one of the English teachers considered Joseph Heller's *Catch-22* to be one of the more important modern American novels (as, indeed, at least one did), we assume that no one would dispute that the First Amendment's protection of academic freedom would protect both his right to say so in class and his students' right to hear him and to find and read the book. Obviously, the students' success in this last endeavor would be greatly hindered by the fact that the book sought had been removed from the school library. The removal of books from a school library is a much more serious burden upon freedom of classroom discussion than the action found unconstitutional in *Tinker* v. *Des Moines Independent Community School District,* 393 U.S. 503 (1969).

Further, we do not think this burden is minimized by the availability of the disputed book in sources outside the school. Restraint on expression may not generally be justified by the fact that there may be other times, places, or circumstances available for such expression. *Southeastern Promotions, Ltd.* v. *Conrad,* 420 U.S. 516, 556 (1975); *Spence* v. *Washington,* 418 U.S. 405, 411 n.4 (1974); *Schneider* v. *State,* 308 U.S. 147, 163 (1939). *Cf. Cox* v. *New Hampshire,* 312 U.S. 569 (1941).

A library is a mighty resource in the free marketplace of ideas. See *Abrams* v. *United States,* 250 U.S. 616 (1919) (Holmes, J., dissenting). It is specially dedicated to broad dissemination of ideas. It is a forum for silent speech. *See Tinker* v. *Des Moines Independent Community School District, supra*; *Brown* v. *Louisiana,* 383 U.S. 131 (1966).

We recognize, of course, that we deal here with a somewhat more difficult concept than a direct restraint on speech. Here we are concerned with the right of students to receive information which they and their teachers desire them to have. First Amendment protection of the right to know has frequently been recognized in the past. *See Procunier* v. *Martinez,* 416 U.S. 396 (1974); *Kleindienst* v. *Mandel,* 408 U.S. 753, 763 (1972); *Red Lion Broadcasting Co.* v. *FCC,* 395 U.S. 367, 386, 390 (1969); *Stanley* v. *Georgia,* 394 U.S. 557, 564 (1969); *Lamont* v. *Postmaster General,* 381 U.S. 301 (1965); *Thomas* v. *Collins,* 323 U.S. 516, 534 (1945); *Martin* v. *Struthers,* 319 U.S. 141, 143 (1943). Nonetheless, we might have felt that its application here was more doubtful absent a very recent Supreme Court case. In *Virginia State Board of Pharmacy* v. *Virginia Citizens Consumers Council, Inc.,* 44 U.S.L.W. 4686,

*On the other hand, it would be consistent with the First Amendment (although not required by it) for every library in America to contain enough books so that every citizen in the community could find at least some which he or she regarded as objectionable in either subject matter, expression or idea.

On the conviction of Larry Flynt

In February Larry Flynt, publisher and editor of *Hustler,* was charged and convicted of pandering obscenity and engaging in organized crime. A Hamilton County Common Pleas Court in Cincinnati sentenced him to seven to twenty-five years in prison.

In a February 10 editorial, the *New York Times* stated: "The case against Mr. Flynt bore many signs of judicial persecution. Neither he nor any of his acquitted co-defendants reside or work in Hamilton County. . . . The trial judge would not allow similar magazines to be shown in evidence, thus implying a desire to make an example of *Hustler.* The charge that Mr. Flynt had engaged in 'organized' crime was derived from the fact that he had entered into a routine contract with local distributors. . . .

"There is little virtue in leaping to the defense of admirable publications. The test of our commitment to a free society lies in the courage to defend the disreputable or the vulgar in the service of a higher goal. The Hamilton County prosecutor conceded that he wished to draw a line, to test a theory of law. The case is indeed a test—of the Supreme Court's ambiguous 1973 ruling. It has failed."

On the same day, the *Washington Post* editorialized: "Frankly, we don't know how *Hustler* would come out if a jury judged it by national standards of what is obscene. Given what else is on the newsstands, it appears that the standard is not high. But we do know that a single community, drawing on its own standards, ought not to be able to impose a penalty sufficient to kill a national publication."

4688 (May 24, 1976), Mr. Justice Blackmun wrote for the Court:

> Freedom of speech presupposes a willing speaker. But where a speaker exists, as is the case here, the protection afforded is to the communication, to its source and to its recipients both. This is clear from the decided cases. . . .

We believe that the language just quoted, plus the recent cases of *Kleindienst* v. *Mandel, supra,* and *Procunier* v. *Martinez, supra,* serve to establish firmly both the First Amendment right to know which is involved in our instant case and the standing of the student plaintiffs to raise the issue.

As to this issue, we must reverse.

Report of the Auditors

At their 1977 midwinter meeting in Washington, D.C., the trustees of the Foundation received and approved the report of the auditors, Kupferberg, Goldberg & Neimark, for the year ended August 31, 1976. Their report stated:

We have examined the Statement of Assets and Fund Balances of the Freedom to Read Foundation as of August 31, 1976, and the related Statement of Cash Receipts and Expenditures and Fund Balances for the year then ended. Our examination was made in accordance with generally accepted auditing standards, and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

In our opinion, the aforementioned statements present fairly the assets and fund balance of the Freedom to Read Foundation at August 31, 1976, arising from cash transactions, and receipts collected and expenditures made by it during the year then ended.

Balance Sheet

Assets		
Cash in bank	$ 4,560	
Cash in savings account	34,135	
Cash in David H. Clift Fund	1,272	
Total		$39,967
Balance		
Fund balance, September 1, 1975	$31,386	
Add—excess of receipts over expenditures for the year ended August 31, 1976	8,581	
Balance		$39,967

Income and Expenses

Receipts		
Memberships received	$26,576	
Interest on savings accounts	1,551	
Sale of briefs	93	
Total Receipts		$28,220
Expenditures		
Legal fees	$11,912	
Meeting expenses	354	
Grants	500	
Accounting, audit, and election fees	1,034	
Printing and duplicating	3,214	
Promotion drive—*The Right and the Power*	529	
Stationery	1,371	
Postage and mailing	320	
Temporary office help	170	
Publications	57	
Miscellaneous office expenses	178	
Total Expenditures		$19,639
Excess of Cash Receipts Over Expenditures		$ 8,581

These financial statements were prepared using the "cash basis" of accounting. Accordingly, receipts were recorded only as collected and expenditures recorded only as actually disbursed. Amounts receivable and payable by the Foundation, if any, were not included.

The Foundation has been granted exemption from federal income taxes under Section 501(c)3 of the Internal Revenue Code. Because of this, no federal income tax provision has been recorded in this statement.

Freedom to Read Foundation
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Election Slate in this Issue

First Class Mail