



# Freedom to Read Foundation News

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## Suit Against the National Security Agency

At the 1984 Midwinter Meeting, the Freedom to Read Foundation Board of Trustees unanimously voted to support *Peterzell, et al. v. Faurer*, a suit challenging actions taken by the National Security Agency (NSA) against the George C. Marshall Library in Lexington, Va. The controversy arose in April, 1983, when two NSA representatives visited the Marshall Library, a private library open to the public, located on the campus of the Virginia Military Institute. The NSA agents stamped "secret" on some letters which were written by a former agency official but were never Government property. Library officials said the security agency instructed them to place those letters and many others without the secrecy stamp in a vault the library uses to house secret data.

Many of the letters were cited by James Bamford in his book, *The Puzzle Palace*, a highly critical account of the security agency's history and activities. Bamford's book accuses the agency of maintaining excessive secrecy and abusing its powers of electronic surveillance by spying on American citizens in the 1970s. The National Security Agency is responsible for devising and keeping secure codes used by the United States, breaking encryption systems used by foreign governments and monitoring worldwide communications.

The letters removed from open library shelves were written from 1942 to 1969 by William F. Friedman, a pioneer in cryptological (code-breaking) work in the United States and one of the security agency's top code breakers. They dealt primarily with personal matters, but contained some brief references to cryptologic work, including a 1957 project that the agency still considers highly sensitive. The letters were never subject to secrecy classification because they were part of Mr. Friedman's private papers. When Mr. Friedman died in 1969, he donated his private papers to the Marshall Library.

In the fall of 1983, Jay Peterzell, a research associate for the ACLU Foundation's National Security Project, requested to see several of the Friedman letters mentioned in Bamford's book. Peterzell was given the relevant files of correspondence, but specific letters were missing; in their place were notices that the documents had been withdrawn for security reasons. In some cases, entire folders had been withdrawn. For example, Mr. Friedman's correspondence with Boris C.W. Hagelin, a European manufacturer of cryptologic equipment, was

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## Get One! Win One!

Here it is—your chance to win a free copy of the new ALA publication—*Censorship Litigation and the Schools*. How do you do it? Simple—just get one new Foundation member. And both you and your recruit will receive a copy of *Censorship Litigation and the Schools*. The monograph records the proceedings of the January, 1981, Foundation-co-sponsored colloquium which developed a comprehensive assessment of the current status and future development of litigation challenging school book censorship. Each new Foundation member and sponsor will receive a copy of these proceedings for joining the FTRF.

If each of us recruits just 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!

## Foundation Joins in Challenge to Wichita Ordinance

On November 28, 1983, the Executive Committee of the Foundation approved participation in an *amicus curiae* brief filed with the U.S. Court of Appeals for the 10th Circuit which seeks to enjoin and have declared unconstitutional a Wichita, Kansas, "harmful to minors" ordinance. Specifically, the Wichita ordinance prohibits displaying materials harmful to minors when minors "as a part of the invited general public, will be exposed to view such material." The ordinance provides that such material is not displayed if it is "kept behind devices commonly known as 'blinder racks' so that the lower two-thirds of the material is not exposed to view."

The Wichita ordinance is similar in some respects to statutes in Pennsylvania and Georgia which the Foundation and many of the same plaintiffs in this case have successfully challenged in the courts (see *Freedom to Read Foundation News*, Volume 10, No. 1-2 and No. 3). The other plaintiffs in this litigation are the American Booksellers Association, the Association of American Publishers, the Council for Periodical Distributors Association, the International Periodical Distributors Association, Inc., the National Association of College

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### **NSA suit** (from p. 1)

missing from the collection. In place of the folder was a one-page notice stating that the material had been removed because it contained "security-classified information" and had been designated as "For Official Use Only" by the NSA.

The NSA's actions raise important legal and constitutional issues for libraries, namely, whether the NSA, acting without an express congressional directive, is authorized to order a private library to remove letters from the library's public collection and to reclassify those letters as classified documents, barring the public from access to them. Another issue raised is if the NSA is so authorized by any statutory or executive power (and the Foundation is unaware of such authority), do these actions by the NSA violate the First Amendment?

Since the NSA's actions directly threaten the integrity of library collections, the ACLU Foundation's National Security Project requested the Foundation's and the ALA's support in the litigation. In turn, the Foundation contacted the District of Columbia Library Association and the Virginia Library Association alerting them to the proposed litigation and requesting them to become co-plaintiffs in the case. The American Historical Association and the Organization of American Historians had previously announced their support of the litigation.

In light of the case's significance, at its January 5 meeting, the FTRF Board of Trustees unanimously adopted the following resolution:

VOTED, That the Freedom to Read Foundation (1) commits itself to support the case of *Peterzell, et al. v. Faurer*, and (2) that the FTRF resolves to reimburse any expenses incurred in the suit by the District of Columbia Library Association (DCLA) and the Virginia Library Association (VLA) as co-plaintiffs, and furthermore (3) that the Freedom to Read Foundation requests the American Library Association (ALA) to become a co-plaintiff in the litigation with the understanding that the Foundation will also reimburse the ALA for any expenses incurred as a co-plaintiff.

The Foundation also made an initial grant of \$2,500 in support of the case.

During the Midwinter Meeting, the ALA Executive Board unanimously voted that the ALA become a plaintiff in the case. Following Midwinter, the executive boards of the District of Columbia Library Association and the Virginia Library Association took similar action.

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### **Wichita ordinance** (from p. 1)

Stores, Inc., and the Kansas Civil Liberties Union. The *amicus curiae* filed by the Foundation argues that by prohibiting placement, in establishments to which minors are admitted, of constitutionally protected non-obscene materials, the ordinance has the practical effect of prohibiting display, and therefore restricting distribution and sales of such material to adults. Further, the new ordinance, by encouraging store owners effectively to hide books and magazines from the eyes of minors, deprives those juveniles of their First Amendment rights to view constitutionally protected material. Moreover, the complaint argues, the ordinance is unconstitutionally vague in failing to define key terms which render "compliance virtually impossible to measure."

At their January 5th meeting, the Foundation trustees noted the continued proliferation of "minors display" statutes and pledged continued support in fighting these laws through the courts.

### **1984 Slate**

#### **Committee Nominates Twelve for Board of Trustees**

Twelve candidates for the Freedom to Read Foundation's 1984 election have been slated by a committee composed of Trustees Dorothy Broderick, Ella G. Yates and Russell Shank, chair.

Trustees to fill five scheduled vacancies on the Board of Trustees will be chosen from the following slate of candidates:

- Pamela G. Bonnell, Library Manager, Plano Public Library System, Plano, Texas
- Lee B. Brawner, Director of the Metropolitan Library System, Oklahoma City, Oklahoma, and current FTRF Board member.
- Barbara Bryant, Vice President, Phoenix Films Inc., New York, New York
- J. Dennis Day, Director of the Salt Lake City Public Library, Salt Lake City, Utah
- Shirley Fitzgibbons, Assistant Professor, School of Library and Information Science, Indiana University, Bloomington, Indiana
- Elliot Goldstein, President, Social Issues Resources Series, Inc., Boca Raton, Florida
- Martha B. Gould, Assistant Director, Washoe County Library, Reno, Nevada
- Alice Ihrig, Director Civic/Cultural Programs, Moraine Valley College, Palos Hills, Illinois
- Lois P. Mills, Documents and Legal Reference Librarian, Western Illinois University Library, Macomb, Illinois, and member, ALA Intellectual Freedom Committee
- Judith A. Sessions, Assistant University Librarian, George Washington University, Washington, D.C.
- Russell Shank, University Librarian, University of California, Los Angeles, and current FTRF Board member
- Renee Swartz, Chair of the Monmouth County Library Commission and Member of the New Jersey State Library Advisory Council, Rumson, New Jersey

According to Freedom to Read Foundation elections rules, at least two candidates, but no more than three, are to be nominated for each vacancy on the Board.

Ballots will be mailed on May 1 to all persons holding paid membership in the Foundation on that date.

### **Nominations by Petition**

Persons who wish to *nominate a candidate by petition* should submit twenty-five signatures of current members of the Foundation in support of each candidate. Names of petition candidates, statements of consent from the candidates, and the required signatures to support each must be received by the executive director of the Foundation no later than April 2, 1984.

### **Current Trustees**

Elected Trustees currently serving on the Foundation Board are: William D. North (1984), Lee B. Brawner (1984), Dorothy M. Broderick (1985), David M. Jones (1985), Burton Joseph (1984), Henry R. Kaufman (1985), Peter Scales (1984), Russell Shank (1984), and Ella Gaines Yates (1985).

Trustees serving on the Board by virtue of their office in the American Library Association are J. Dennis Day, chair of the Intellectual Freedom Committee; E.J. Josey, ALA President-elect; Brooke E. Sheldon, ALA President; and Robert Wedgeworth, ALA executive director.

### **Other Midwinter News**

#### **Board Considering State of Washington School Library Case**

The American Civil Liberties Union of Washington Foundation requested the Freedom to Read Foundation's support in its lawsuit against the Evergreen School District in Clark County for the removal of over thirty books from school libraries. The suit, *Marian English, et al. v. Evergreen School District, et al.*, filed in Clark County Superior Court on behalf of students and parents, seeks injunctive and declaratory relief to require the return to the shelves of books that were removed in violation of constitutional and statutory provisions. The suit also seeks to prohibit the District's Instructional Materials Committee (IMC) from holding closed meetings in violation of the state Open Meetings Act.

The complaint cites six incidents beginning in 1982 in which the IMC arbitrarily approved book removals even though no complaint had been filed by a student, parent, or citizen. The books were removed without notice to students or parents, without opportunity for a hearing, and in direct violation of the school district's policies. As an example, in February of 1982, the IMC approved the removal of thirty-three books from the Covington Junior High School Library. The books were transferred to the high school library *en masse*, without a public hearing and without individual review of challenge. While the Board determined to support the case in principle, it nevertheless expressed concern that neither the Washington Library Association nor the Washington Library Media Association had taken any action in regard to the litigation. In view of this fact, the

Board determined to seek additional factual information and advice from the Washington Library Association and the Washington Library Media Association before approving a grant to the ACLU of Washington Foundation in support of *Marian English, et al. v. Evergreen School District, et al.*

### **Potential Litigation Against the United States Information Agency**

The Board also asked staff and legal counsel to continue exploring with the Center for Constitutional Rights possible litigation against the United States Information Agency (USIA). This action is being taken as a result of the Agency's policy of denying "Certificates of International Education Character" to American films judged as "misrepresentative" or liable to "misinterpretation by foreign audiences lacking adequate American points of reference." The certificates are significant because they exempt films from export duties. *The Killing Ground*, an Emmy Award-winning ABC News documentary on toxic waste, is an example of a film recently denied certification because experts at the Environmental Protection Agency argued that "the tone of *The Killing Ground* would mislead a foreign audience into believing that the American public needed arousing to the dangers of hazardous wastes. This is no longer the case." *Soldier Girls*, an in-depth study of female U.S. Army recruits undergoing basic training, is another example of a film recently denied certification by the USIA on the grounds that it was propaganda and contained sequences "which may lend themselves to being misunderstood or misinterpreted. . . ."

Since 1942, the USIA has been certifying American audiovisual materials as to their educational/informational nature. The program, however, was greatly expanded in October, 1966, when President Lyndon Johnson designated the USIA as the agency to carry out the provisions of the "Beirut Agreement of 1948." This agreement "facilitates the free flow of educational audiovisual materials between nations, by eliminating import duties, import licenses, special taxes, quantitative restrictions and other restraints and costs." To date, the Agency has granted over sixty-three thousand certificates. But the USIA also denied certificates to thirty films in 1979, twenty-seven in 1980, thirty-four in 1981, thirty-one in 1982, and thirty-three in 1983. The majority of the films denied certificates fall into one of three categories: blatant promotion of a specific product or service; offensive religious proselytizing; or political propagandizing, the latter raising the most serious questions.

As of this writing, the precise nature of the litigation proposed by the Center for Constitutional Rights remains unclear. Presumably, the suit will seek to change the USIA's criteria for denying certification, particularly for those films deemed "political propaganda." Equally unclear is the precise nature of the Foundation's commitment, but staff and counsel have been asked to explore various courses of action and to suggest an appropriate role.

## Dallas Discussion Meeting

Finally, the Foundation Board of Trustees asked that a meeting be arranged at the 1984 Annual Conference (Dallas) to inform Foundation and ALA members about the Foundation's operations and concerns. This

open discussion will be held on Friday, June 22, from 2:00 p.m. until 4:00 p.m. If you can't attend the Board of Trustees meeting on Thursday, June 21, we hope to see you at the Friday session.

## Freedom to Read Foundation

Student members	\$10.00 or more
Regular members	\$25.00 or more
Sponsors	\$50.00 or more
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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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## Ballots Coming!

This issue of *FTRF News* announces the slate for the 1984 election. Ballots will be mailed on May 1 to all Foundation members who have paid their 1984 dues by that date. If you have overlooked your 1984 contribution, please send your check today.