1987 Slate Committee Nominates Twelve for Board of Trustees

Twelve candidates for the Freedom to Read Foundation's 1987 election have been slated by a committee composed of Trustees Neil Adelman, Judith Sessions, and Judith Farley, Chair.

Trustees to fill six (four scheduled and two new) vacancies on the Board of Trustees will be chosen from the following list of candidates:
- Pamela G. Bonnell, Library Manager, Plano Public Library System, Plano, Texas
- Judith Flum, Young Adult Services and Public Relations Coordinator, Alameda County Library, Hayward, California
- Roger L. Funk, Attorney, Greenberg, Glusker, Fields, Claman & Machtinger, Los Angeles, California
- E.J. Josey, Professor, School of Library and Information Science, University of Pittsburgh, Pittsburgh, Pennsylvania
- Jeanne Layton, Director, Davis County Library, Farmington, Utah
- Robert S. Peck, Staff Director, Commission on Public Understanding About the Law, American Bar Association, Chicago, Illinois
- Kay K. Runge, Director, Davenport Public Library, Davenport, Iowa
- Jean-Anne South, Library Associate III, Baltimore County Public Library, Towson, Maryland
- John C. Swan, Head Librarian, Crossett Library, Bennington College, Bennington, Vermont
- Nancy Zussy, Deputy State Librarian, Washington State Library, Olympia, Washington

According to Freedom to Read Foundation election rules, at least two and no more than three candidates must 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.

Nomination by Petition

Persons who wish to nominate candidates by petition should submit 25 signatures of current members of the

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Bruce Ennis Selected as New Legal Counsel

Bruce J. Ennis was selected by the Board of Trustees as the Freedom to Read Foundation's new permanent legal counsel. Mr. Ennis' impressive qualifications for this position include twenty years' experience litigating First Amendment cases (including five years as National Legal Director of the ACLU). Specifically, he served as lead counsel in the successful challenge to the Arkansas "creation sciences" law, as co-counsel in Board of Education v. Pico; as the representative of PROGRESSIVE magazine against the government's effort to restrain publication of an article on the workings of the H-bomb; and as representative of several plaintiffs, including the ALA, in American Council of the Blind v. Boorsin (a successful suit to restore Library of Congress funding for the braille edition of PLAYBOY). Mr. Ennis has also been involved in amicus curiae briefs in a number of cases of central importance for First Amendment concerns.

The Foundation's previous permanent legal counsel resigned in June 1986. Roger L. Funk served as interim counsel for the Foundation.

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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 17, 1987.

Current Trustees:


Trustees serving on the Board by virtue of their office in the American Library Association are: Judith Drescher, chair of the Intellectual Freedom Committee; Regina U. Minudri, ALA president; Margaret Chisholm, ALA president-elect; and Thomas J. Galvin, ALA executive director.

Report (from p. 1)

Wylie, in discussions on the House floor, explicitly connected the reduction in funds to his previously unsuccessful effort to get the library to drop production of the braille PLAYBOY. On August 28, 1986, U.S. District Court Judge Thomas F. Hogan ruled that the Library of Congress violated the First Amendment rights of blind people by eliminating braille editions of PLAYBOY magazine. Hogan stated that the Library of Congress' decision to halt publication was unconstitutional because "it was viewpoint-oriented." The government initially indicated its intention to appeal, but has recently withdrawn its appeal and the decision, therefore, stands.

In two other cases, we have victories — but they are being appealed by the government. Curiously, both cases involve films and their labeling by the federal government. Meese v. Keene concerns films coming into the U.S. from abroad and Bullfrog Films v. Wick concerns films being exported from the U.S. Meese v. Keene involves the use of provisions of the Foreign Agents Registration Act to label as "political propaganda" those foreign-produced films which present a pointed perspective on controversial issues. The films in question in this case were produced by the National Film Board of Canada and deal with acid rain — a topic about which the current administration is quite sensitive. In this particular instance, a legislator in California wished to air these films, but felt that he would be tainted by having been labeled "political propaganda" and that this tainting constituted a violation of his First Amendment rights. The California Supreme Court decided for the plaintiff and the government has appealed. The case is currently before the U.S. Supreme Court and the Foundation has filed an amicus curiae brief.

In the second case, Bullfrog Films v. Wick, U.S. District Court Judge A. Wallace Tashima ruled that the U.S. Information Agency violated the First and Fifth Amendments to the Constitution by using guidelines that were vague and unenforceable in deciding which documentary films were to receive "Certificates of Educational Character." These certificates exempt U.S. produced films distributed abroad from many import duties and red tape requirements of foreign governments. Lack of such certificates can effectively eliminate circulation of such limited-audience films.

The plaintiffs in this case, ten filmmakers from four production companies, charged that the USIA used the regulations to censor opinions that were at odds with those of President Reagan's administration, and that the agency's refusal to grant the export certificates "chilled" their right to make and distribute films that "present a point of view that is considered unfavorable" by the government.

Judge Tashima agreed, saying that "These regulations are not merely flexible, they are boundless" and put the agency "in the position of determining what is the 'truth' about America, politically and otherwise. This, above all else, the First Amendment forbids." The government is appealing the ruling. The Foundation voted to contribute $3,000 to the Center for Constitutional Rights toward legal fees in the appeal.

The Foundation also approved the donation of $500 to the Minnesota Civil Liberties Union Foundation to help defray legal expenses in the case of Bystrom et al. v. Fridley High School, et al. — affectionately known as "Fridley II" — a case involving the suspension of three high school students for publishing and distributing an underground student newspaper that the assistant principal
appropriately timed. During the 1991-92 academic year, the United States Information Agency (USIA) censored several films and categories of films. The USIA's criterion was that films contained "a cause, or conversely, when they seem to attack a particular persuasion."

Among the rejected films, the agency said, is one that leaves the impression "that the U.S. has been the aggressor" in the Nicaraguan conflict and another that offers a picture of drug use and pregnancy among American teenagers that could be "misunderstood by foreign audiences."

At the same time, however, the agency approved a film that played down the role of industrial polluters in the formation of acid rain while detailing the natural causes of the phenomenon, and another that argued women should "submit" to the wills of their husbands.

Judge Tashima said the regulations that allowed the agency such wide discretion were "a broad invitation to subjective or discriminatory enforcement that the Constitution forbids." In a 41-page ruling, he said the regulations were vague and unenforceable. They were "inherently incapable of objective application" and, in some instances, "hopelessly unclear."

The Board also voted to contribute $500 to the Minnesota Civil Liberties Union to help defray court costs in *MCLU v. Fridley School District* (known as Fridley 11). In this case, three high school students were suspended in

**CHALLENGES OF THE FUTURE**

At its meeting, the Board unanimously voted to change its Bylaws to increase the number of elected Trustees from nine to eleven. This action is a strong and clear message that the Board is committed to open communication and more involvement by its membership.

A final action taken by the Foundation Board was required by the resignation of its legal counsel. The opportunity to reevaluate the expectations of the Foundation toward its legal counsel was a unique and important process. Areas focused on by the Board in its rigorous questioning of firms making presentations included:

- Commitment to First Amendment issues
- Understanding of and strength in dealing with First Amendment issues
- Ability to respond effectively and expeditiously
- And a willingness to do all of this within the Foundation's limited budget.

I am exceptionally pleased to report that the firm of Ennis, Friedman & Bersoff was selected with Bruce J. Ennis to serve as the Foundation legal counsel. The Foundation feels exceptionally fortunate to have secured such counsel. (See story on p. 2.)

In closing, I would like to thank the thirteen members of the Board and the twenty-seven ALA liaison representatives for their support, involvement and advice. In an age of disinformation and the Aryan Brotherhood, they are truly committed to keeping the fragile dream alive.

J. Dennis Day, President
Freedom to Read Foundation
January 19, 1987
June 1986, by the assistant principal for publishing and distributing a non-school sponsored paper which the assistant principal said contained an article that could “incite students to submit to acts of vandalism against teachers,” and which contained lewd and vulgar language. This case is known as Fridley II because in January 1985, four students (some of them the same individuals) who had printed and distributed a non-school sponsored paper were called separately into the principal’s office where they were told that, in order to return to school, they were required to bring their parents into discuss the contents of the newspaper. The principal objected to the “gutter language” and “controversial ideas” in the paper. The MCLU filed a complaint and in March 1986, a U.S. District Court judge found Fridley High School’s policy on distribution of non-school sponsored literature unconstitutional, in violation of the First Amendment.

The school district has appealed the decision in Fridley II, and the MCLU has filed an amended complaint in Fridley II.

Roll of Honor Established
At the suggestion of President J. Dennis Day, the Board of Trustees voted to establish a Roll of Honor as a means for recognizing those who have been active in and may have put their positions on the line in the defense of intellectual freedom. It is anticipated that two names could be added annually; these need not be current cases. The intent of the Roll is two-fold: to bring to the library community the stories of these persons; and to widen the visibility and underscore the importance of intellectual freedom issues. An ad hoc committee, chaired by Pamela Bonnell, was established to develop criteria.

Bylaws Changes
The Board unanimously voted to change its Bylaws to increase the number of elected Trustees from nine to eleven, and to establish a procedure by which the Board may vote, by mail, electronic system, or conference telephone, during the interval between meetings of the Board of Trustees.

Other Cases — New
In 1985, the Virginia legislature passed a statute that banned the display, in a manner whereby juveniles may examine or peruse them, of materials depicting nudity, sexual conduct or sadomasochistic abuse, materials that, even if not obscene, would be “harmful to juveniles.” In that same year, a U.S. District Judge declared the statute unconstitutional because it would have the effect of limiting general public access to constitutionally protected materials. On appeal by Virginia, that ruling was upheld in 1986 by the 4th Circuit Court of Appeals. The Commonwealth has appealed that decision also, and the U.S. Supreme Court has agreed to hear the case.

The Freedom to Read Foundation will enter the litigation as an amicus curiae. The case is considered vital for several reasons. The most immediate is the existence in a number of other states of similar laws, some of which have been declared constitutional in other courts. The longer term reason for the Foundation’s entering into this case, however, is the belief that the Supreme Court’s ruling in this instance will be the precedent for minors’ access to printed materials for the next generation.

The case at hand, together with People of the State of New York v. Paul Ira Ferber (1982) and FCC v. Pacifica Foundation (1978), could very well form a triumvirate of Supreme Court decisions controlling the rights of minors to access to materials—printed, performed, or broadcast. In the Ferber case, the Supreme Court upheld a New York law that bans the promotion, distribution, or production of pictures, films, dances or plays showing children under 16 engaged in sexual acts or lewd exhibitions. Justice Byron R. White, in the Court’s decision, said that the general guidelines set out by the Court (in Miller v. California) for judging obscenity were inadequate for controlling child pornography and that, thus, the New York law (and those of other states) might be used to censor materials for children that were not legally obscene for adults. White, speaking for the Court, justified this result by arguing that the materials in question do more than offend, that their very production exploits and injures the children involved and leads to their abuse.

In the Pacifica case, the infamous “dirty words” over the radio incident, the Supreme Court sustained an FCC declaratory order (placed in the licensee’s file for such subsequent use as the FCC would be empowered to make of it—license revocation, nonrenewal, or imposition of monetary forfeiture) against the midafternoon broadcast of a satiric commercial record. The background of the case is that in 1973, WBAI, an independent radio station in New York City, was broadcasting a program about the changes taking place in the American language. It was announced that comedian George Carlin would deliver a twelve-minute monologue dealing with seven words never before used on radio or TV. The station advised listeners to shut off the radio or tune to another station if they thought they might find the language offensive. A man and his young son heard Carlin’s routine. The father complained to the FCC, which investigated and reprimanded WBAI for broadcasting “indecent language,” and, especially, for broadcasting the program in the afternoon, when children would very likely be among the listeners. The decision of the Court rested on the theory that the time (mid-afternoon), the place (homes and automobiles with very young children momentarily captured by the unexpected radio intrusion), and the manner (the repetitious use of the terms) generated a sufficiently imminent offense to the sensibilities of this partly involuntary audience that the FCC restriction, on “profane,” “indecent,” or “vulgar” broadcasting, as narrowly confined to the precise facts was not invalid as applied.

Other Cases — Update
The federal government has dropped its appeal of the decision in American Council of the Blind v. Boorstin. The case concerns the cessation of production by the Library of Congress of the braille edition of Playboy. U.S. District Court Judge Thomas F. Hogan ruled, in August, 1986, that LC’s decision to halt publication was unconstitutional because “it was viewpoint-oriented,” and that it violated the First Amendment rights of blind people. LC resumed publication of the braille edition of Playboy with the January 1987 issue. Missed issues will not be published, but subscriptions will be extended.