

Freedom to Read Foundation

REPORT TO COUNCIL

2013 Midwinter Meeting — Seattle, Washington

As President of the Freedom to Read Foundation, it is my privilege to report on the Foundation's activities since the 2012 Annual Conference:

CAROLYN FORSMAN

Last week, Carolyn Forsman, an intellectual freedom champion and a recipient of the Freedom to Read Foundation's Roll of Honor Award, died in New York City.

Carolyn began her professional life as a respected librarian and educator who fought tirelessly for social justice within and without the profession, including the library user's right to read freely. When she launched a successful second career as a jewelry designer, she merged her art with her political beliefs by using proceeds from her jewelry sales to support the work of FTRF. To this end, Carolyn became a familiar face (with a familiar purple hairdo) at ALA conferences, selling her fanciful and unique jewelry creations to raise funds for the benefit of the Foundation. Among her creations was the iconic "banned book bracelets," a perfect marriage of her beliefs and her artistic talent. Over the years she raised tens of thousands of dollars for FTRF, helping to build FTRF into the robust First Amendment legal defense organization it is today.

Carolyn was a graduate of Hunter College High School, New York University and the library school at the University of California at Berkeley. As a young librarian, Carolyn worked in youth services and reference while participating in the Congress for Change. She was an ALA Councilor and an early member of the IFRT Executive Board.

Carolyn then became a lecturer at the University of Maryland. In 1979, she founded her jewelry design business after leaving librarianship to, as she put it, "decide what I wanted to be when I grew up." In 2001, Carolyn was named to the Freedom to Read Foundation Roll of Honor.

We grieve her loss with her sister Barbara, her nieces Megan and Rebecca, and her nephew Jason. Contributions in Carolyn's memory may be directed to the Freedom to Read Foundation (www.ftrf.org) and the Cancer Research Institute (www.cancerresearch.org).

LITIGATION ACTIVITIES

The Freedom to Read Foundation's mission to defend free expression and open access to ideas is not limited solely to protecting the freedom to read in libraries and schools. Often, the Foundation initiates or joins lawsuits that are intended to vindicate broader First Amendment freedoms, with the understanding that such cases provide a deep and expansive foundation for the individual's right to read free from official censorship or interference.

One such case is *United States v. Alvarez*, a lawsuit that challenged the constitutionality of the Stolen Valor Act, a law that made it a federal crime to lie about having received military honors. It was certainly a difficult case - Alvarez, the defendant, was a pathological liar who did not scruple at telling falsehoods to achieve his ends. At a public meeting of the water district board in California to which he had just been elected, he told the crowd many false statements about his life, including the lie that he had been awarded the Congressional Medal of Honor. He was then charged and convicted of violating the Stolen Valor Act. After he was convicted, he challenged the law on First Amendment grounds, arguing that while his speech may have been a lie, it was entitled to First Amendment protection.

FTRF filed a friend of the court brief in support of Alvarez's claims before the U.S. Supreme Court. The brief did not defend Alvarez' lies, but instead challenged the government's assertion that mere falsehood was sufficient grounds to criminalize an individual's speech. FTRF argued that all speech is presumptively protected by the First Amendment, subject only to specific traditional historic exceptions for obscenity.

I am pleased to report that the Supreme Court agreed with our argument. Last summer, it issued a decision that overturned the Stolen Valor Act, holding that the law as written violates the First Amendment. Justice Kennedy eloquently summarized the court's holding:

The Nation well knows that one of the costs of the First Amendment is that it protects the speech we detest as well as the speech we embrace. Though few might find respondent's statements anything but contemptible, his right to make those statements is protected by the Constitution's guarantee of freedom of speech and expression. The Stolen Valor Act infringes upon speech protected by the First Amendment.

Even as it works to defend universal First Amendment principles, FTRF looks to its core mission by constantly monitoring book challenges and other attempts to infringe upon the library user's freedom to read.

Last fall, FTRF closely followed the news reports about requests to the Davis County, UT school board to remove all copies of *In Our Mothers' House* from school library shelves. The requests to remove the book complained that it "normalizes a lifestyle we don't agree with." The book, written by award-winning children's author Patricia Polacco, depicts a family headed by two mothers.

Despite a finding by the reconsideration committee that the book should be retained in the library, the school district ordered its librarians to remove all copies of the book from the open shelves at the district's elementary school libraries and to place them on restricted shelves that could only be accessed with written parental permission.

FTRF welcomed the news when the ACLU of Utah filed a lawsuit in November 2012 on behalf of two students in the school district and their mother. The complaint alleged that the "primary justification for removing the book from the shelves is that, by telling the story of children raised by same-sex parents, the book constitutes 'advocacy of homosexuality,' in purported violation of Utah's sex-education laws." The plaintiffs asked the court to issue an order requiring the school board to return the book to school library shelves without restrictions and prohibiting the school district from restricting access to books in the library on the grounds that the books contain "homosexual themes" or "advocacy of homosexuality."

FTRF consulted with the ACLU attorneys and provided expert advice regarding libraries and the intellectual freedom issues at stake in the lawsuit, resolving to support the plaintiffs and the ACLU until the case's conclusion. With the parties, we waited to read the school district's response to the lawsuit. But prior to answering the complaint, the Utah Attorney General's office—the counsel that had entered an appearance on behalf of the school district—informed the ACLU that the book would be returned to the open shelves. The book now has been returned to all school libraries, where it is available without restriction. The case remains pending as the ACLU engages in discussions with the school district regarding standards to be used in future challenges to library materials.

Finally, I would like to report on two lawsuits filed in the California state courts that challenged an "Outdoor Public Forum Policy" adopted by the Redding Public Library to regulate the distribution of leaflets at the library's entranceway and in its parking lot. The policy limited leafleting to a specific "free speech area," prohibited leafleting that solicited donations, banned leafleting of cars in the parking lot, and prohibited the use of coarse language and gestures. The library argued that the policy was necessary for public safety and to prevent harassment of library patrons.

Both the trial court and the appeals courts disagreed and issued orders overturning the library's policy. The final opinion issued by the appeals court upheld the trial court's determination that the public square in front of the library and the parking area constituted traditional public fora, rather than a limited public forum as the City of Redding claimed. The court concluded that the policies did not constitute reasonable time, place and manner restrictions, and with regard to the prohibition against "coarse" language, the court held that it was content-based, unconstitutionally vague, and did not pass the strict scrutiny test. With respect to leafleting in the parking lot, the appeals court did agree that the safety issues that the library had raised through an expert declaration from the city traffic operations manager constituted a reasonable justification for the prohibition against placing leaflets on car windshields.

FTRF was not a party to this lawsuit.

JUDITH F. KRUG MEMORIAL FUND

FTRF's founding executive director, Judith F. Krug, was passionate about the need to educate both librarians and the public about the First Amendment and the importance of defending the right to read and speak freely. The Judith F. Krug Memorial Fund, created by donations made by Judith's family, friends, colleagues, and admirers, funds projects and programs that assure that her life's work will continue far into the future.

Last summer, we reported that FTRF made eight \$1,000 grants to libraries, schools and other organizations in support of Banned Books Week activities via the Krug Fund. This past fall, the recipients of those grants used the funds to stage wonderfully diverse and creative programs and projects in celebration of Banned Books Week's 30th Anniversary. The projects included banned books talk by author Stephen Chbosky at the California Polytechnic State University; a Read-Out and "roadside wave" staged by the Simon Sanchez High School in Guam; a banned book flash mob at Lehigh University sponsored by Judith's Reading Room; and a "Battle of the Banned Books" competition sponsored by the Friends of the Talkeetna, Alaska Public Library despite flooding that forced the cancellation of its Book Festival.

By far the most viral of the projects funded by the Krug Fund was the Lawrence, Kansas Public Library's "Banned Book Trading Cards." Each day of Banned Books Week, the library gave away a new trading card depicting local artists' renditions of banned and challenged books with "statistics" about the challenges on the reverse of the card. A news story about the card was featured on the front page of the local paper and was distributed nationally by the Associated Press, reaching the Huffington Post. The library has since sold more than 500 sets of the trading cards around the country and internationally.

In addition to the Banned Books Week grants, the Judith F. Krug Fund is funding the development of various initiatives to provide intellectual freedom curricula and training for LIS students. This week, Barbara Jones and Jonathan Kelley met with members of ALISE to continue discussions about the best means of accomplishing this goal.

DEVELOPING ISSUES

The FTRF Developing Issues Committee provided information and led discussions about three emerging issues that could impact intellectual freedom in libraries and give rise to future litigation. The first issue discussed was the near universal use of Internet filters in school libraries and the impact the practice has on student learning outcomes. The second discussion considered claims raised by a Michigan lawsuit filed on behalf of students who claimed that their school district had failed to teach them to read in violation of their right to a public education. The third discussion considered the First Amendment and privacy issues raised by the decision of a Westchester County, NY newspaper to publish the names and addresses of all the gun permit owners in the region in the wake of the Newtown, CT tragedy.

Finally, in a special session, the FTRF Board discussed the intellectual freedom and privacy issues raised by libraries' move to e-books and the refusal of major publishers to sell e-books to public and school libraries. Pat Losinski, director of the Columbus, OH Metropolitan Library, and Kent Oliver, director of the Nashville Public Library and a past president of FTRF, presented their concerns about a growing "content divide" between those library users who can afford e-readers and tablets and those without the funds or resources to acquire e-books. Both urged the FTRF to become a voice and advocate for those library users who are being denied access to all the content available in our democratic society because of publishers' refusal to sell their most desirable materials to libraries.

STRATEGIC PLAN INITIATIVE

This past fall, FTRF took a major step forward in achieving portions of its new strategic plan when we launched our redesigned newsletter and website. The newsletter has a more readable and attractive graphic design and its content will be written to be more engaging. The new website features a clean, contemporary look and includes a gallery of FTRF's Roll of Honor winners, a detailed history of the Foundation, and incorporates FTRF's social media presence. In addition, the site integrates FTRF's member database. As a result, it is easier to become a member of the Foundation and FTRF members are able to update their contact information as well as renew their membership online. It's our hope that these new online tools will improve our members' experience and enhance FTRF's public outreach.

FTRF also is pursuing efforts to build our organizational capacity to achieve our litigation, education, and awareness building objectives and to increase our membership by reaching out to both librarians and the general public via social media, direct mail, and other avenues.

I want to thank John Chrastka of AssociaDirect and Jonathan Kelley, FTRF's program coordinator, for the hard work and long hours they put in (many of them uncompensated) to implement the redesigned newsletter and website and to increase FTRF's membership.

FTRF MEMBERSHIP

FTRF membership is the critical foundation for FTRF's work defending First Amendment freedoms in the library and in the larger world. I strongly encourage all ALA Councilors to join me in becoming a personal member of the Freedom to Read Foundation, and to have your libraries and other institutions become organizational members. Please visit www.ftrf.org and join today. Alternatively, you can call the FTRF office at (800) 545-2433 x4226 and join by phone, or send a check (\$35.00+ for personal members, \$100.00+ for organizations, \$10.00+ for students) to:

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Respectfully submitted,

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