As President of the Freedom to Read Foundation, it is my privilege to report on the Foundation’s activities since the 2016 Midwinter Meeting:

LITIGATION

First Amendment and Censorship: A core mission of the Freedom to Read Foundation is the defense of the fundamental right of the press to report on important issues and express opinions free from censorship. In pursuit of this mission, FTRF has recently joined amicus curiae briefs in two lawsuits intended to vindicate the right to publish and report on vital matters of public interest.

The amicus brief in the first lawsuit, Tobinick v. Novella and Yale University, seeks to defend the freedom to publish critical commentary and engage in spirited debate. Tobinick, the plaintiff, is a medical doctor who provides Alzheimer's treatments that are off-label and not intended for such medical uses. Novella, the defendant, is a clinical neurologist and assistant professor at Yale University who is a frequent commentator on scientific and medical issues, often through his affiliation with the nonprofit New England Skeptical Society (NESS) and its website.

Dr. Novella criticized Tobinick’s off-label use of Embrel in a blog post that appeared on the NESS website. Tobinick then sued Novella, alleging that his comments constituted commercial speech in violation of the federal Lanham Act and California's unfair competition laws because, according to Tobinick, Novella’s comments were designed to secure clients for his medical practice.

Such claims represent a dangerous expansion of the commercial speech doctrine. That doctrine holds that commercial speech may be restricted or punished without offending the Constitution solely on the ground that it is false or misleading. But the mere fact that an article or opinion may appear on a site or in a publication that sells advertising or otherwise generates revenue, or that someone may subsequently consult with the author, does not make it commercial, nor do sales of a publication turn its articles and editorials into commercial speech. To adopt the view that Tobinick advances would inevitably increase the risk of adverse litigation and thus chill all manner of critical thought and expression and stifle important discussions about public health issues and other matters of public concern.

The trial court has granted summary judgment to Novella on Tobinick's claims, on the ground that the blog post was not commercial speech and thus was not actionable at law. Tobinick has appealed the trial court’s decision to the Eleventh Circuit Court of Appeals.
Consequently, FTRF has joined an amicus curiae brief in support of Dr. Novella that argues that Dr. Novella's blog post is not commercial speech but rather fully protected speech on a matter of public concern. The amicus brief was filed on May 27. Joining FTRF on the brief are the American Association of Publishers, American Booksellers Association, the Comic Book Legal Defense Fund, and the Media Coalition Foundation.

The second lawsuit, Animal Legal Defense Fund v. Wasden, also seeks to avert a looming threat to investigative journalism. The plaintiffs are challenging Idaho’s “ag-gag” law, one of several state laws designed to silence reporters and whistleblowers who reveal animal abuses and environmental threats on industrial farms.

The Idaho law creates the crime of “interference with agricultural production,” which includes the act of entering into an agricultural production facility that is not open to the public and, without the facility owner's express consent, or in the absence of a court order or other legal authorization, makes audio or video recordings of the conduct of an agricultural production facility's operations. The Idaho legislature adopted the law after Mercy for Animals, a Los Angeles-based animal rights’ group, released a video of workers at an Idaho dairy using a moving tractor to drag a cow on the floor by a chain attached to her neck and also showed workers repeatedly beating, kicking, and jumping on cows.

A plaintiff’s group led by the Animal Legal Defense Fund and comprised of animal rights groups, environmental protection groups, and the ACLU of Idaho, sued to overturn the law. The federal district court in Idaho granted the plaintiffs’ motion for summary judgment, ruling that several provisions of the “ag-gag” law, including the recording ban, are content-based restrictions on speech that do not comply with the First Amendment and are therefore unconstitutional. The court also held that the law also violates the Equal Protection clause of the Constitution. The defendants have now appealed that decision to the Ninth Circuit Court of Appeals.

The Freedom to Read Foundation has joined an amicus brief in support of the plaintiffs that argues that the law imposes content-based and viewpoint based restrictions on speech that are not narrowly tailored to address a compelling government interest and thus violate the First Amendment; that the law restricts access to information that the public has the right to have; and that the law criminalizes the dissemination of truthful information by journalists and whistleblowers. It further argues that corporate entities do not enjoy a right to privacy and that there are trespass laws already in place to protect from unlawful trespass. Joining FTRF on the brief is the Association of American Publishers. The brief will be filed in late July.

FTRF continues to monitor Maya Arce, et al. v. Diane Douglas, et al (formerly Arce v. Huppenthal). The lawsuit, filed by teachers and students in the Tucson Unified School District (TUSD) against the Arizona Superintendent of Public Instruction and other state officials, challenges the constitutionality of an Arizona statute prohibiting the use of class materials or books that encourage the overthrow of the government, “promote resentment toward a race or class of people,” are “designed primarily for pupils of a particular ethnic group,” or “advocate ethnic solidarity instead of the treatment of pupils as individuals.” The plaintiffs filed the lawsuit after TUSD was forced to cease its Mexican-American Studies program and remove books from its classrooms.

As I reported last year, the student plaintiffs appealed the district court decision upholding the law to Ninth Circuit Court of Appeals. FTRF filed an amicus curiae brief with that court in support of the plaintiffs' First Amendment claims. The Ninth Circuit subsequently issued an opinion that upheld
some portions of the lower court's decision while reversing the district court’s grant of summary judgment for defendants on plaintiffs’ equal protection claim and their First Amendment viewpoint discrimination claim. The Ninth Circuit remanded those claims to the district court for a new trial.

The case is now back at the district court and the parties have completed fact discovery and submitted their expert reports for trial. Depositions of the experts have to be completed and the parties will report their status to the district court by the end of July. At that time, the parties expect the judge to set a trial date for the fall. FTRF stands ready to assist the plaintiffs as they pursue their claims before the district court.

**Privacy and Surveillance:** FTRF also continues to monitor the proceedings in United States v. Moalin, a lawsuit pending before the Ninth Circuit Court of Appeals that challenges the U.S. government's practice of seizing citizens' phone metadata without a warrant. FTRF joined in an amicus curiae brief that argues that the government should not be permitted to engage in warrantless searches and seizures of phone metadata because that metadata reveals information about an individual’s expressive and associational activities that should be protected by both the First and Fourth Amendments of the Constitution. The amicus brief also challenges existing Supreme Court precedent holding that when individuals voluntarily provide such data to third parties like phone companies, they lose their Fourth Amendment expectation of privacy in that data. The brief asserts that, given the realities of the digital age that require individuals to entrust their metadata and content to third party communications companies, this doctrine should be set aside and the government required to obtain a warrant whenever it seeks to access metadata that reveals information about a user's associations and expressive activities. The court has not yet set a date for oral argument; the parties' final briefs are due to be filed in mid-August.

**DEVELOPING ISSUES**

Members of the Foundation’s Developing Issues committee reported on two important developing issues that raise significant Constitutional issues for libraries. Committee chair Em Claire Knowles first discussed the committee’s concerns about discriminatory transgender bathroom laws and legislation and the need to support efforts to oppose or overturn such laws to assure equal, fair, and equitable treatment for library staff and library users. She then discussed the committee’s concerns about the fear and chilling effect posed by the threat of gun violence in libraries and the wider society as well as the current ban on the use of federal funds for research on gun violence that is contrary to the provision of relevant information to the public. FTRF will continue to track and follow these issues.

**THE JUDITH F. KRUG MEMORIAL FUND**

The Judith F. Krug Memorial Fund, established by Judith’s family, friends, colleagues, and admirers, supports projects and programs that assure that her passion to educate both librarians and the public about the First Amendment and the importance of defending the right to read and speak freely.

On June 16, FTRF announced the recipients of this year’s grants to support their events celebrating Banned Books Week this fall. The six grantees for 2016 are:

- Daniel F. Cracchiolo Law Library, University of Arizona, Tucson, Arizona
- Kimbel Library and Bryan Information Commons, Conway, South Carolina
The grantees’ proposals for 2016, the seventh year of Krug Fund grants, feature programs addressing the policy and legal disputes over the dismantling of Tucson Unified School District’s (TUSD) Mexican-American Studies (MAS) program, including a screening of Precious Knowledge, a film documenting the MAS program and the ban, as well as a panel discussion of Arce v. Douglas, the lawsuit challenging the ban; a “Roast Marshmallows, Not Books” event; the mock arrest of teachers that requires students to read them out of jail and a coffee house event celebrating banned poetry; a banned authors’ book signing featuring Minnesota authors from diverse cultural and ethnic backgrounds who have had their books banned or challenged; a series of Banned Book Week events co-sponsored with the Rosa Parks Museum, including Read Outs, art exhibits, a movie night, displays, and a lecture on intellectual freedom and censorship; and a “Busted! Banned Books” event and summer reading challenge to educate young people about the history of banned books and censorship, done in partnership with the Topanga Community Police Station.

As with past years, recipients will provide FTRF with photos, videos, and written reports of their events. For more information, please visit www.ftrf.org/?Krug_BBW.

In 2016, the fund continued to support its joint education initiative with the University of Illinois Graduate School of Library and Information Science (GSLIS). Professor Emily Knox again taught “Intellectual Freedom and Censorship,” under the auspices of GSLIS). The online, graduate-level class continues to be well-received by students and we look forward to continuing our educational partnership. In addition, FTRF co-sponsored a well-received webinar on "Intellectual Freedom and Minors" given by FTRF General Counsel Theresa Chmara and young adult author Chris Crutcher.

I want to thank Professor Knox and FTRF education consultant Joyce Hagen-McIntosh for all of their thoughtful and dedicated work towards fulfilling FTRF’s goal of assuring the availability of intellectual freedom curricula and training for LIS students and professionals.

2016 ROLL OF HONOR AWARD RECIPIENTS HELEN ADAMS, NANCY KRANICH, AND FRANK LoMONTE

It is my pleasure and privilege to introduce this year’s recipients of the 2016 Freedom to Read Foundation Roll of Honor Award, Helen Adams, Nancy Kranich, and Frank LoMonte.

Helen Adams, a former FTRF trustee, is a school librarian, educator, and past president of the AASL who has taught intellectual freedom and ethics to graduate library science students for over a decade. She has served on the Intellectual Freedom Committee and its Privacy Subcommittee and continues to provide leadership, training, and information about intellectual freedom to school librarians.

Nancy Kranich, past president of the American Library Association and a former trustee of the Freedom to Read Foundation, teaches intellectual freedom, information policy and community engagement at the Rutgers University School of Communication and Information and serves as
Rutgers' special projects librarian. While president of the ALA, Kranich was instrumental in spearheading ALA’s and FTRF's effort to overturn the Children’s Internet Protection Act and has served as chair and member of the Intellectual Freedom Committee.

Frank LoMonte is executive director of Student Press Law Center where, for almost two decades, he has led the Student Press Law Center's vigorous defense of the first amendment rights of student journalists. Formerly an award winning political columnist and investigative reporter in Georgia and Florida, LoMonte is a magna cum laude graduate of the University of Georgia School of Law whose First Amendment and media-law articles have been widely published in the legal and educational press.

We are delighted that we were able to celebrate their accomplishments at this meeting.

**2016 CONABLE CONFERENCE SCHOLARSHIP**

I am also pleased to announce that FTRF has named Katie Chamberlain Kritikos as the recipient of the 2016 Gordon M. Conable Conference Scholarship. Kritikos is a current doctoral student at the University of Wisconsin-Milwaukee School of Information Studies. She received a Master of Library and Information Science degree from the University of Illinois at Urbana-Champaign and a Juris Doctor (J.D.) degree from the University of Illinois School of Law in Champaign, Illinois. She is currently a research assistant at the Center for Policy Research at the University of Wisconsin in Milwaukee. This is the first time in its nine-year history that the Conable Scholarship has been awarded to a doctoral student. The Conable Scholarship committee was particularly impressed by Kritikos' long-term commitment to intellectual freedom and her research focus on important areas of intellectual freedom, privacy, and ethics and their information policy implications.

**FTRF MEMBERSHIP**

Membership in the Freedom to Read Foundation provides a great opportunity to support the important work of defending First Amendment freedoms, both in the library and in the larger world. Your support for intellectual freedom is amplified when you join with FTRF’s members to advocate for free expression and the freedom to read freely. I strongly encourage all ALA Councilors to join me in becoming a personal member of the Freedom to Read Foundation, and ask that you please consider inviting your organization or your institution to join FTRF as an organizational member. Please send a check ($35.00+ for personal members, $100.00+ for organizations, and $10.00+ for students) to:

Freedom to Read Foundation  
50 E. Huron Street  
Chicago, IL  60611

Alternatively, you can join or renew your membership by calling (800) 545-2433, ext. 4226, or online at [www.ftrf.org](http://www.ftrf.org).
THANKS AND FAREWELL

This is my last report as the President of the Freedom to Read Foundation. I would like to thank the officers, members and staff of the Freedom to Read Foundation for supporting me as a Trustee and President. I want to also recognize the dedication and commitment of the FTRF members and staff to fostering and promoting the mission of the foundation. I will always remember my time serving the Foundation as a high point in my career.

Respectfully submitted,

Julius C. Jefferson, Jr.
President, Freedom to Read Foundation