As President of the Freedom to Read Foundation, it is my privilege to report on the Foundation’s activities since the 2017 Midwinter Meeting:

**THE 20TH ANNIVERSARY OF THE INTERNET'S "LEGAL BIRTH CERTIFICATE"**

Today, June 26, 2017, marks the twentieth anniversary of one of the signal legal achievements of the Freedom to Read Foundation and the American Library Association: the unanimous Supreme Court decision striking down the Communications Decency Act (“CDA”). The court's opinion in *Reno v. ACLU* established two principles: first, that speech on the Internet is entitled to the highest level of First Amendment protection, identical to the First Amendment protections provided to books and newspapers; and second, that the government could not suppress speech that adults have a constitutional right to receive and speak to one another in order to deny minors access to speech that might possibly be harmful to minors. As Bruce Ennis, the legal counsel for FTRF and the ALA observed, the court's opinion was nothing less than "the legal birth certificate for the Internet."

The Court's conclusion that "the vast democratic fora of the Internet" merits full constitutional protection has meant that libraries can make content available on the Internet knowing that their digital materials enjoy the same constitutional protections that apply to the books on their shelves, and that their patrons have a right to freely and fully access online content.

**CURRENT LITIGATION**

It is my distinct pleasure to report that FTRF's litigation efforts have resulted in a series of legal victories that vindicate an array of First Amendment rights, including the right to speak, the right to publish, and the right to receive information.

The first of these victories is the Supreme Court's decision in *Packingham v. North Carolina*, handed down just last week on June 19, 2017. The lawsuit challenged a North Carolina law that makes it a felony for any person on the State's registry of former sex offenders to access a wide array of websites, including Facebook, YouTube, and the New York Times, simply because those sites also permit minors under the age of 18 to have accounts on those sites. Under the law, the government need not prove that the accused had contact with, or gathered information about, a minor; the accused can be punished for simply engaging in an activity fully protected by the First Amendment – accessing a website. The plaintiff, Lester Packingham, a registered sex offender, was arrested and convicted for posting on Facebook to thank God for having a traffic ticket dismissed.

Concluding that the statute swept too broadly, FTRF joined over 30 other individuals and civil liberties organizations in filing an *amicus curiae* brief in support of fundamental First Amendment principles.
The brief argued that the North Carolina statute violated the First Amendment by severely restricting the right to read and access information that is constitutionally protected.

The Supreme Court agreed. Justice Anthony Kennedy, writing on behalf of a unanimous court, held that “to foreclose access to social media altogether is to prevent the user from engaging in the legitimate exercise of First Amendment rights.” Expressing concern that the law barred sex offenders from accessing the principal online resources for knowing current events, checking ads for employment, speaking and listening in the modern public square, and otherwise exploring human thought and knowledge, Kennedy held that North Carolina's law must be overturned because it stifles “lawful speech as the means to suppress unlawful speech.”

A second lawsuit, Tobinick v. Novella, also ended successfully this past February. In that case, Tobinick, a dermatologist, sought damages from Dr. Steven Novella, a Yale professor of neurology, after Novella published a blog post criticizing Tobinick’s off-label use of a drug to treat Alzheimer's Disease. Tobinick argued that because Novella's blog includes advertising, Novella's blog post is a form of commercial speech subject to federal and state unfair competition claims under the Lanham Act. But if a blog post with advertising is "commercial speech," then every book, newspaper and magazine that contains advertising or is offered for purchase would be subject to a threat of litigation, effectively chilling the commercial publication of both news and opinion.

FTRF joined an amicus brief in support of Dr. Novella that argues that the Lanham Act only applies to commercial speech and that Novella’s blog post is no more commercial speech than articles in the New York Times (which are for-profit but nevertheless not commercial speech). On February 15, 2017, the Eleventh Circuit Court of Appeals ruled in favor of Dr. Novella, holding that Dr. Novella's critique was clearly educational discourse on a matter of public concern entitled to the full protection of the First Amendment.

A third victory was achieved in the case of Noah Gonzalez, et al., v. Diane Douglas, et al. (formerly Arce v. Douglas). The lawsuit, filed by students in the Tucson Unified School District (TUSD) to challenge the constitutionality of the Arizona statute that forced TUSD to cease its Mexican-American Studies program and remove certain books from its classrooms, is back in the trial court after the Ninth Circuit Court of Appeals remanded the case for a new trial on the plaintiffs' equal protection and First Amendment claims. Earlier this year, the defendant state and its officials asked the trial court to dismiss the students' First Amendment claim, arguing that because the state's justification for the statute was to eliminate racism, a legitimate pedagogical objective, the state could require TUSD to halt the program and remove books from the classroom. The students argued that the statute was actually enacted for narrowly political, partisan, and racist reasons, and that the state's claimed justification was false, and offered to cover up its true motives. Relying on the Supreme Court’s decision in Board of Education v. Pico, the court agreed with the students that such pretext can support a First Amendment claim and ruled that the students had the right to have a trial to establish that the Arizona statute was enacted with impermissible motivations. The trial is scheduled to start on June 26, 2017.

NEW LITIGATION

FTRF has joined an amicus curiae brief filed in the case of Higginbotham v. City of New York, a lawsuit filed by Doug Higginbotham, a photojournalist who was arrested while shooting video of a 2011 Occupy demonstration in New York City from his vantage point on top of a phone booth. He was
arrested and charged with disorderly conduct, and the charges were later dismissed. Higginbotham subsequently filed his lawsuit, alleging that he was arrested in retaliation for exercising his First Amendment right to record police activity in a public space.

The defendant police officers moved to dismiss Higginbotham's First Amendment claim, arguing, in part, that Higginbotham’s action of recording their activity was not “expressive conduct.” The trial court disagreed, holding that the First Amendment protects the right to record police officers performing their duties in a public space, subject to reasonable time, place and manner restrictions. Nonetheless, the judge granted the defendants' motion for summary judgment on other grounds, and dismissed Higginbotham’s claims. Higginbotham has appealed that decision to the Second Circuit Court of Appeals.

The Second Circuit Court of Appeals is only circuit court of appeals that has not ruled that the public has a First Amendment right to record the actions of police and other government employees when they are at work and in public. FTRF has joined an amicus curiae brief written by attorneys for the National Press Photographers Association urging the Second Circuit to expressly recognize that journalists have a First Amendment right to record police activity in public. The brief does not take a position on the facts of the case.

DEVELOPING ISSUES

Members of the Foundation’s Developing Issues committee reported on several important developing issues that raise significant Constitutional issues for libraries. These include:

- the disappearance of online government information and publications under the new administration;
- the new administration's repeal of the FCC broadband privacy rules and its effort to repeal net neutrality;
- the privatization of essential government functions;
- "fake news" displacing facts and truthful reporting;
- open carry and guns in libraries;
- efforts in the states to criminalize and punish public protest.

STRATEGIC PLANNING

Since 2012, the trustees of the Freedom to Read Foundation have engaged in a deliberative process to develop and advance a strategic plan for FTRF that would allow FTRF to achieve its goal of enlarging its role as a national leader in the defense of the freedom to read, speak, and publish. The plan requires the Board of Trustees to evaluate and revise the plan on a periodic basis. During our meeting here in Chicago, the trustees began that process of review and evaluation, examining the plan's objectives to confirm that they are the goals the Foundation should pursue for the next few years. The trustees plan to complete the review process in Denver during the next Midwinter Meeting.

THE JUDITH F. KRUG MEMORIAL FUND

Established by the family, friends, and colleagues of Judith F. Krug, the Judith F. Krug Memorial Fund supports projects and programs that carry on Judith's mission to educate both librarians and the public about the First Amendment and the importance of defending the right to read and speak freely.
Banned Books Week Grants

On June 20, FTRF announced the recipients of the 2017 Krug Fund Banned Books Week grants, which provide financial support and guidance to libraries, schools, and community organizations planning Banned Books Week celebrations. The seven grantees for 2017 are:

- Tolowa Dee-ni’ Nation, Smith River, California
- Rutgers University Libraries, New Brunswick, New Jersey
- Carrol County Library, Huntingdon, Tennessee
- The University of Northern Florida’s Thomas G. Carpenter Library, Jacksonville, Florida
- Alhambra Civic Center Library, Alhambra, California.
- Thorntown Public Library, Thorntown, Indiana
- City Lit Theater Company, Chicago, Illinois

Each of the grantees are planning unique observances for Banned Books Week. The proposals include a collaboration with a local school of visual arts that will provide students with an opportunity to explore the ideas of intellectual freedom, censorship and banned books through the creation of original art; a town square event featuring local citizens portraying characters from popular banned books; a Banned Books Story Hour and parade float that will be featured during the community's annual festival; and month-long series of events focused on graphic novel censorship. We look forward to sharing the grantees' photos, videos, and written reports with the FTRF community. To learn more about the grantees and their events, please visit www.ftrf.org/?Krug_BBW.

LIS and Professional Education

I want to recognize and thank Professor Emily Knox of the University of Illinois' School of Information Sciences, who continues to ably teach “Intellectual Freedom and Censorship,” under the auspices of the Krug Fund's joint education initiative with the School of Information Sciences. Her online, graduate-level course on intellectual freedom and privacy is highly rated and well-received by her students, and the leadership of the School of Information Sciences is interested in renewing our agreement for another three years. Drawing on Prof. Knox' success, we are now seeking to expand the reach of this initiative to other LIS programs.

Under the auspices of the Krug Fund, FTRF has also co-hosted continuing education webinars for library professionals. Two webinars were presented during the last six months. "Libraries in the Jim Crow South and A Conversation with One of the Tougaloo Nine," with speakers Cheryl Knott, Geraldine Hollis, Michael Crowell and Susan Brown took place on February 23, 2017, and "Do They Still Teach That in School? Ethics in LIS Curricula," with speaker Martin Garnar, was presented on May 25, 2017. These webinars are offered at no charge to members of the Foundation as a perk of FTRF membership.

None of these educational initiatives would have been possible without the dedication of FTRF's education consultant Joyce Hagen-McIntosh. Her thoughtful and caring work in support of FTRF's education programs assures that these intellectual freedom trainings remain available to LIS students and professionals.
2017 ROLL OF HONOR AWARD RECIPIENTS JOAN BERTIN, ROBERT HOLLEY AND MARTHA SPEAR

It is my pleasure and privilege to introduce this year’s recipients of the 2016 Freedom to Read Foundation Roll of Honor Award, Joan Bertin, Robert (Bob) Holley and Martha Spear.

Joan Bertin, who is retiring this year as the executive director of the National Coalition Against Censorship (NCAC), has advocated on behalf of First Amendment rights since 1997. During her tenure at NCAC, she launched the Kids’ Right to Read Project (KRRP), which offers support, education, and direct advocacy to people facing book challenges or bans in schools and libraries.

Robert (Bob) Holley is a recently retired professor of library science at Wayne State University and an active leader in the ALA’s intellectual freedom community. His spouse, Martha Spear, is also a longtime intellectual freedom fighter, working in the Michigan Association for Media in Education. In their wills, Holley and Spear have designated FTRF as a recipient of a several million-dollar bequest from their estates to support student memberships and FTRF’s litigation efforts. Bob is also a newly elected trustee of the FTRF. The foundation deeply appreciates the work Holley and Spear have already accomplished on behalf of intellectual freedom as well as their commitment to the future of the Freedom to Read Foundation.

We are delighted to celebrate their accomplishments and their steadfast devotion to intellectual freedom.

2017 CONABLE CONFERENCE SCHOLARSHIP

I am also pleased to announce that FTRF has named Kate Davis as the 2017 recipient of the Conable Conference Scholarship. Davis recently received her Master of Library and Information Science from the University of Denver, and received a Master of Education from the University of Florida after completing a Bachelor of Arts in English and History at Rutgers University. She looks forward to working as a solo librarian at a school in Nigeria after teaching in Denver, Colorado and the United Arab Emirates.

The scholarship committee was particularly impressed with Davis' graduate studies and internship work that demonstrated Davis’s commitment to intellectual freedom, teaching, and international librarianship and her enthusiasm for advancing key areas of the Foundation's work in advocacy and education.

The Conable Scholarship honors the memory of Gordon Conable, a past president of the Freedom to Read Foundation, an ALA Councilor, and a tireless champion of intellectual freedom. The Conable Scholarship provides financial assistance to a new librarian or library student who shows a particular interest in intellectual freedom and wishes to attend the ALA Annual Conference. Mentoring was an important undertaking for Gordon, and the board is pleased to be able to honor his memory in this way. If you would like to donate to the Conable Scholarship, please contact FTRF at ftrf@ala.org or (800) 545-2433 x4226.
FTRF MEMBERSHIP

Membership in the Freedom to Read Foundation is the critical foundation for FTRF’s work defending First Amendment freedoms 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 ($50+ for personal members, $100.00+ for organizations, $35 for new professionals 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.

Respectfully submitted,

Martin Garnar
President, Freedom to Read Foundation