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Speaking freely : an oral history of the Freedom to Read Foundation

April Gage
San Jose State University

SPEAKING FREELY: AN ORAL HISTORY OF THE FREEDOM TO READ FOUNDATION

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APPROVED FOR THE SCHOOL OF
LIBRARY AND INFORMATION SCIENCE

Debra L. Hansen

Dr. Debra L. Hansen

C. James Schmidt

Dr. C. James Schmidt

Charlotte E Ford

Dr. Charlotte E. Ford

APPROVED FOR THE UNIVERSITY

Rhea L. Williamson 12/06/06

ABSTRACT

SPEAKING FREELY: AN ORAL HISTORY OF

THE FREEDOM TO READ FOUNDATION

by April Gage

This thesis presents an oral history of the Freedom to Read Foundation from its establishment in 1969 to the present. The bulk of the study consists of oral interviews with individuals who have played significant roles in the Foundation's history and devoted themselves to upholding ethical principles of the American Library Association that the Foundation has defended for nearly 40 years. These leading figures in librarianship, Judith Krug, C. James Schmidt, Zoia Horn, Theresa Chmara, and Candace Morgan, explain specific aspects and activities of the Foundation such as its legal actions in support of libraries' First Amendment right to provide access to information as well as the Foundation's structure, leadership, partners, and purpose. Further, the narrators discuss the various tenets of intellectual freedom that have guided the Foundation's work. To augment the oral history, the study also presents a historical overview which details the Foundation's origins, composition, activities, and legacy.

Dedication

For my husband, without whom I never would have realized this thesis,

my mother, who encouraged me to go to college, and

Dr. C. James Schmidt, who introduced me to the

concept of intellectual freedom.

Acknowledgments

I am deeply indebted to Debra Hansen for suggesting this project and teaching me about oral history, and for her guidance, her encouragement, and the incredible amount of time she took to review and criticize early drafts. The time and effort devoted by C. James Schmidt and Charlotte Ford to reviewing the manuscript and offering thoughtful advice and suggestions are also greatly appreciated. Finally, I would like to extend a hearty thank-you to narrators Judith Krug, C. James Schmidt, Zoia Horn, Theresa Chmara, and Candace Morgan for taking the time to participate in this project and for sharing their knowledge, insights, and wonderful stories.

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Introduction

Three major pillars of the American Library Association's (ALA's) intellectual freedom program are the Intellectual Freedom Committee (IFC), the Office for Intellectual Freedom (OIF) and the Freedom to Read Foundation (FTRF). If likened to a warrior, together these three groups comprise the program's head, heart, and sword. The IFC acts as a brain center by crafting policy recommendations and interpretations, helping define the ethics for which the profession stands and positioning it toward the battleground that lies ahead. The OIF, which is connected to the Association's various intellectual freedom entities, gives life to these policies by pumping information through the profession so that it understands the policies and possesses the tools it needs to implement them. When the ability to uphold these ethics becomes threatened, the FTRF strikes at the source of the danger by defending and promoting the profession's legal right to exercise its policies under the First Amendment.

No full history of the Freedom to Read Foundation has been written. This study is concerned with laying the groundwork for a complete history of the Freedom to Read Foundation. Toward this end, the thesis is presented as both narrative and oral history. The purpose of the narrative portion is to provide a historical overview that describes the FTRF's formation, composition, activities, and legacy. The oral history seeks to augment the narrative description and, more importantly, to channel some of the Foundation's soul, as represented by the voices of individuals who have devoted their lives to upholding the principles FTRF has sought to defend for nearly 40 years. Further, because the Foundation's identity and work cannot be disentangled from the policies it represents, the

oral history portion of this study is also concerned with exploring tenets of intellectual freedom.

Research Methodology

Several of the principal actors in the Foundation's history are alive, well and energetically engaged in the profession. Many, however, have retired or passed away, their recollections and unique insights undocumented. Through oral history accounts of the formation and activities of the Foundation, this thesis brings a perspective to the Foundation's history that has been absent from the historical record. Given the paucity of written accounts of the Foundation's history, an oral history approach suggested itself as an obvious way to augment a written record lacking in information about this important chapter of the library profession's history. Through the oral history method, it was possible to gather details that were never entered into official documents, fill in gaps where information was missing, find unexpected information, and gain insight into events or decisions through the aid of first-hand accounts of principal players. These oral histories have helped capture some of the intangible aspects of the Foundation by providing us with a sense of the spirit, character and beliefs of those who envisioned, built and led it. In the words of Donald A. Ritchie (2003), "By adding an ever wider range of voices to the story, oral history does not simplify the historical narrative but makes it more complex—and more interesting" (p. 13).

A collection of historical data about the Foundation was gathered from oral interviews with five carefully selected figures from its history. The method used for conducting oral histories, detailed below, is in accordance with the principles and

standards developed by the Oral History Association (OHA), as well as those further elucidated by Donald A. Ritchie, a past president of the OHA and associate historian in the U.S. Senate Historical Office.

Oral history, unlike journalists' interviews, family reminiscences or oral traditions, is created according to a professional code of ethics, standards, principles, and evaluation guidelines (Ritchie, 2003). Oral history does not include such things as randomly recorded conversations or monologues, wiretapping or other recordings made in secret, recorded speeches, or "other sound recordings that lack the dialogue between interviewer and interviewee" (Ritchie, 2003, p.19). Oral histories are collected according to a clearly defined process, which includes in-depth research preparation; a structured interview format; selection and usage of high quality recording equipment; a controlled setting for the recorded interview in which information is collected first-hand; observance of established processing techniques; knowledge and understanding of legal and ethical issues; and placement of the interview materials into a repository to allow for easy access (Sommers & Quinlan, 2002).

Oral history is valued internationally as a method of collecting historical information in both the private and public spheres. In the U.S. alone, archives housing oral history interviews, ranging from large government and university collections to small collections in local libraries, exist in every state and territory (Ritchie, 2003). Part of the value of oral history projects is that they capture the collective memories of men and women from all walks of life, from brilliant scientists and the highest-ranking politicians to life's anonymous folk and low-status laborers. By capturing the voices and

experiences of the range of the full human spectrum, and not simply focusing on the powerful and famous, this method has helped to democratize history, expand the human record, and add a complexity and richness that would otherwise be unavailable for us to use in our ongoing exploration of the past.

Background research

The performance of preliminary research is the initial preparatory step in conducting oral history interviews. According to standard practice, to generate an oral history of any value, interviewers must have expertise in the subject they plan to cover. It is necessary to start with extensive research of the topics to be covered and the individuals to be interviewed in the project in order to develop informed, meaningful questions that will serve to stimulate a substantive dialogue (Oral History Association [OHA], 2000). This preparation gives the interviewer the knowledge needed to tailor questions to an individual narrator's experiences, probe discussion topics more deeply, follow a narrator's train of thought if it happens to deviate from topics represented in the questions, and ask for clarification when details do not synch up with the existing historical record. Also, with this level of preparation, interviewers can adhere to the standard practice which obligates them to expand the dialogue beyond the interviewer's immediate purposes, for the benefit of other researchers (Ritchie, 2003).

In order to conduct meaningful interviews, it is recommended that at least ten hours of research be conducted for every hour spent interviewing (Ritchie, 2003). Preparation for the oral histories in this thesis exceeded that recommended amount by at least fourfold. The personal background of narrators was investigated, using sources

such as their curricula vitae, publications, speeches, organizational records and, where available, personal papers. Specific aspects of the Foundation and its development and how these aspects apply to individual narrators was also researched, using these last mentioned and other archival resources such as organizational records. In addition to providing the subject expertise necessary for preparing meaningful questions and conducting a good interview, the time spent studying the topics and narrators enabled spontaneous questioning and dialogue.

Narrator selection

A list of narrators, selected based on their level of appropriateness for the method as well as the purposes and objectives of the project, was discussed with and approved by the thesis advisor, Debra L. Hansen. Individuals involved with the Foundation were also consulted for their input during the selection process. As final selections were made, potential narrators were contacted by letter or email and invited to participate. Interviews were scheduled with narrators who agreed to participate by telephone or email (Sommers & Quinlan, 2002).

Not all prospective narrators were invited at the same time. According to recommended practice, a total number of hours, rather than a total number of narrators, was assigned to the project (Ritchie, 2003). Planning the project this way provided the flexibility to adjust the length of time and quantity of interviews with narrators on a case-by-case basis. Rather than being locked into a specific number of narrators, it was possible to devote extra time to certain individuals without exceeding the project budget.

It seems necessary to comment on the reasons why all but one of the narrators

selected were women. First, because a higher percentage of women than men fills the ranks of the profession, it seemed appropriate to reflect this reality when choosing witnesses for this history. Second, despite the fact that the inverse has been true in terms of the gender ratio of individuals peopling the highest positions in librarianship, a generous percentage of the Foundation's leadership positions have been occupied by women and the selection in this study reflects that reality.

Interview questions

Interview questions were designed to adhere to content guidelines provided by the OHA to contribute to the fulfillment of the objectives contained in the scope of the project and to avoid redundancy across narrators so that individual interviews "supplement[ed] one another in . . . content and focus" (OHA, 2000, Interview content guidelines, ¶ 1). In addition, questions were tailored to contribute to historical understanding of the subject; to add new information, "fill gaps in the record, and/or provide fresh insights and perspectives [and add] detail, richness, and flavor to the historical record" (¶ 2).

Interviews: Ethical and legal guidelines

First, and most important, narrators were treated with respect. The process was transparent, as narrators were informed of the goals and objectives of the study in advance and at the time of the interview, and made "fully aware of the different stages of the . . . project and the nature of their participation at each stage" (OHA, 2000, Ethical/legal guidelines, ¶ 1). They were "given the opportunity to respond to questions as freely as possible . . . [and were not] subjected to stereotyped assumptions based on race, ethnicity,

gender, class, or any other social/cultural characteristic" (¶ 1).

Narrators were given a full explanation of their rights, including their legal rights (e.g., copyright, Ritchie, 2003) and their right to decline to answer any question, terminate the interview entirely or seal parts of their record (OHA, 2000). After being provided with this information about the purpose of the interview and their rights during the session, informed consent was established in writing. Narrators were asked to sign a release form transferring control of the interview materials to the Center for Oral and Public History at California State University, Fullerton, the archival repository that administers San Jose State University's Library History Oral History Project, so that the repository may, for example, provide access to it for scholarly use or distribute it to other institutions (see Appendix G). As the interviewer, I also signed identical release forms. With the narrator's permission, additional documentation, including a biographical information form as well as any papers, information or photographs a narrator cared to share, was also collected (see Appendix G).

The Department of Health and Human Services (HHS) has determined that most oral history interviewing is excluded from institutional review board (IRB) oversight because HHS regulations for the protection of human subjects (at 45 CFR Part 46, Subpart A) are not applicable to the method. The OHA issued a policy statement in 2003 explaining the rationale for the exemption. The main reason given is that the regulatory definition of research as "a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to *generalizable* knowledge" (emphasis added, Ritchie & Shopes, 2003, ¶ 2) is inapplicable to the aims of the oral

history method. Rather, the OHA defines oral history as "a method of gathering and preserving historical information through recorded interviews with participants in past events and ways of life" (Ritchie & Shopes, 2003, ¶ 4). The method does not involve standardized survey instruments, population sampling practices, or anonymity. Instead, open-ended questions are asked and specific individuals with knowledge of the topic being studied are sought out and selected based on the *unique* contribution they can make: "An interview gives a unique perspective on the topic at hand; a series of interviews offer up not similar 'generalizable' information but a variety of particular perspectives on the topic" (Ritchie & Shopes, 2003, ¶ 6).

In 2004, Dr. Michael Carome, the Associate Director for Regulatory Affairs for the Office for Human Research Protection (OHRP), vigorously re-emphasized the agency's determination that oral history interviews do not require IRB oversight:

> Oral history interviewing activities, in general, are not designed to contribute to generalizable knowledge and therefore do not involve research as defined by Department of Health and Human Services (HHS) regulations at 45 CFR 46.102 (d) and do not need to be reviewed by an institutional review board (IRB). OHRP has tried consistently to confirm this concurrence [with the OHA policy statement on exclusion from review] whenever it receives inquiries about this matter from representatives of IRBs or other institutional officers. (Shopes & Ritchie, 2004, ¶ 2)

Although these are solid reasons why the interviews conducted for this thesis would not require IRB oversight, according to school policy it was necessary to submit a lengthy request for exemption to the San José State University's IRB. The board granted exemption for this oral history project, with the one contingency that all narrators sign an informed consent form (see Appendix G).

Interviews: Site selection and equipment

Interviews were conducted one-on-one in a quiet area away from distractions that could have compromised the recording quality or the narrator's ability to concentrate. At the start of each recording, the name of the interviewer and narrator, date, purpose of the interview, and a short biographical statement about the narrator was given. By adding this detail, identifying information about the interview topic and participants became part of the interview record within the sound file, independent of any forms or paperwork. Effort was made to limit individual sessions to 1_ to 2 hours, to avoid the interviewer or narrator becoming fatigued, but some interviews exceeded the limit.

Most sound recordings were captured digitally with a high quality recorder and external microphone (Kovlos, 2005; Sommers & Quinlan, 2002), which was tested regularly to ensure proper functioning. When possible, a backup recorder was also used to guard against lost recordings due to equipment failure or user error. Sound recordings have remained intact—content therein was not altered or omitted.

Follow-up interviews

It is preferable to give narrators a chance to digest a session before following up on discussion threads. Also, because narrators often remember important details after a session, among other reasons, more than one interview was conducted when possible. Unless many unasked questions that were planned for the first interview remained, it was necessary to conduct additional research in preparation for subsequent interviews. The full process outlined here was repeated for all follow-up interviews.

Processing

Converting the interviews from to oral to written form is a multi-phase process, which includes transcribing the interviews, and then reviewing and editing the transcripts. It is important to note that there is no standard practice when it comes to editing oral history transcripts. However, there is wide agreement that interview transcripts should only be edited to the extent necessary to make the oral communication intelligible to readers. As Ritchie (2003) states:

> Editing and rearranging interviews for clarification and cutting away tangential material are appropriate so long as the original meaning is retained. The goal is to sharpen the focus without putting words in the interviewee's mouth or altering the essence of what was said. (p. 128-129).

Considering that oral history transcripts are edited to varying degrees in a variety of ways, a full explanation of how the oral histories were processed for this thesis is presented here.

The total duration of all of the recorded interviews was nearly 19 hours. A verbatim transcript was produced for all interviews but one, bringing the total transcribed amount of interview time to just over 16 hours. (Because the duration of two interviews with Candace Morgan, which totaled nearly 300 minutes, exceeded the amount of time budgeted for them, only one of them was transcribed for this thesis.) Producing written transcripts from the recorded interviews was a painstaking, multi-phase process which required the cooperation of the narrators. Once an initial transcription of a recording was typed out, the text was reviewed for punctuation, and facts such as names and dates were verified. Any corrections were enclosed in brackets to offset them from the actual

dialogue. Additional data, such as full names of persons and places—as appropriate for the time period—were included in brackets (e.g., "Al [Senator Albert Arnold Gore Jr.] told me . . ."). Also, questions about information in the transcript for the narrator to review and clarify were enclosed in brackets.

Care was taken throughout the transcription and review process to retain as much of the dialogue as possible in its original form. However, oral communication is very different from written communication. Dialogue happens in real time. A speaker has no opportunity to erase, cut and paste, or review and edit what she has said before the recording device or her interlocutor has received the oral transmission. As a result, oral communications have an informal flow to them. In the middle of a thought we may rethink what we wanted to say or how we wanted to say it. Also, we finish each other's thoughts or leave ideas unsaid because we can see from looking into the eyes of our interlocutor that they understand what we mean. It seems much easier for our brains to process and understand dialogue when we hear it spoken than to parse the herky-jerky nature of the spoken word when it is set down as text. For this reason, the transcripts are not an exact record of the conversations captured in the sound recordings. They are modified so that a *reader* as opposed to a *listener* can easily absorb their meaning. Small edits, such as changing verb tenses, replacing articles or other minor insertions to help the reader parse a sentence, were not enclosed in brackets. However, in the interest of honesty, any substantive edits, such as those which changed the meaning of a thought or supplemented one, were enclosed in brackets to offset them from the recorded dialogue. Also, any significant removals of text were noted by placing the word "removed" in

brackets. According to common practice, the thesis advisor recommended removing the brackets from these last such editorial insertions. I decided to keep many of them, however, out of a sincere interest in retaining, as much as possible, the meaning of the dialogue in the transcript as it was expressed in the recording. If a bracketed item was too disruptive to the flow of the text, I removed it.

From the same motive of honesty, initial versions of the verbatim transcripts included all false starts. A false start is an unfinished thought or an aborted attempt to articulate a thought. It is an utterance that dangles before a complete thought, frustrating the flow of a transcript and defying punctuation in such a way that it is typically terminated by an em-dash or removed altogether. For example, an utterance might be transcribed in one of two ways:

A. When I was young—wait, no, not when I was— Well, I guess I was a— It wasn't until I was a teenager that I ate my first plum.

B. It wasn't until I was a teenager that I ate my first plum.

As a result of editorial suggestions from narrators and my thesis advisor during the review process, many more false starts were removed than originally intended. As can be seen in the example above, these types of omissions make the text digestible without compromising the meaning of a given thought. Further, I excluded most crutch words (e.g., the frequent repetition of "um" before statements or connecting several sentences together with "and" or "so"). Finally, nonverbal communication such as laughter or gestures is indicated in parentheses—for example, "(laughs)," "(coughs)" or "(hits table with palm of hand)." Inaudible portions are indicated by the word "inaudible" in

parentheses.

Once an initial transcript was produced, it was audit edited for accuracy, a process which consisted of replaying the recording while reading along, to ensure that the oral record matched the newly typed transcript. Before mailing it to a narrator for his or her edits, the transcript was then re-read in full at least one more time to ensure that the text was understandable and appropriately punctuated. A printout of each verbatim transcript, a letter with instructions for proofing, and a stamped return envelope were mailed to each narrator. Narrators had the right to make corrections and edit out content, and were encouraged to provide commentary if desired. Narrators were also asked to initial the bottom of each page of the transcript to indicate that they had reviewed the entire document.

Upon receipt of a reviewed transcript, I then incorporated the narrator's edits into the document. Content changes were enclosed in brackets or additional content, such as commentary on a topic, was reconciled. After that point, I reviewed the transcript again and then passed it to my thesis advisor, who marked any suggestions that might make it easier to read. Many of these suggestions were incorporated, after which I reviewed each transcript a final time. Ultimately, copies of final transcripts and the marked-up versions will be delivered to the Center for Oral and Public History, where the edited version will be available for access. Prior to delivering them, the transcripts will each be indexed, a step which was not completed for this thesis.

Follow-up with narrators

Copies of this thesis, the audio recordings of their interviews and any other items

they may have loaned to me for the project will be mailed to the narrators.

Record-keeping procedures and transfer to a repository

An interview log with details of each interview was kept, which included the following: name of the narrator, length of session, date, time, verification that forms were completed, and information about any restrictions the narrator may have placed on access. Files kept for each interview included copies of correspondence with narrators, release forms, the biographical information form, research notes and source materials.

According to standard practice, all interview recordings and accompanying materials will be deposited in an archival repository (Ritchie, 2003). Deposited materials will comply with the requirements of the repository, such as the appropriate document formatting guidelines, file formats, and documentation. All will be accessible to researchers and the public.

Literature Review

At the time the initial literature review was performed, neither a narrative nor an oral history of the Freedom to Read Foundation had been uncovered, and just one brief magazine article specifically devoted to the Foundation's history (Teepen, 2004) and brief historical sketches in books such as the *Intellectual Freedom Manual* (Office for Intellectual Freedom [OIF], 1996, 2002, 2006) had been located. (Later, brief historical backgrounders and a draft historical overview of the Foundation up to the 1980s were also found.) Thus, it was determined that a thesis focused on the Foundation's history would make a meaningful contribution to the body of literature about the library profession. It seemed that such a work would provide insight into the Foundation as well

as its sister organization, the American Library Association, most notably the other components of the ALA's intellectual freedom program such as the Office for Intellectual Freedom. Considering the Foundation's focus on First Amendment law and its alliances with civil rights organizations such as the American Civil Liberties Union (ACLU), it also seemed likely that the work might prove to be of value beyond the narrow scope of library literature.

Investigation into the Foundation included an examination of subject areas ranging from the overall historical context from which it emerged, to specific actors involved in its formation and governance, to details about its specific activities. Publications about American history from the 1960s to the 1970s that discuss civil rights and free speech provided information about the general historical context out of which the Foundation emerged. A cursory review of publications connecting librarianship with major historical events in American history (e.g., the McCarthy era and civil rights and free speech movements) provided the background for key ALA policies that the Foundation would defend. Discussions of intellectual freedom themes in books and articles mainly from the 1960s and 1970s explained how intellectual freedom emerged as one of the most important issues in librarianship, and helped to frame conflicts over intellectual freedom issues that occurred within the ALA. These last resources shed light on how the Foundation's mission was defined and debated. Books and articles about intellectual freedom in general, from a broad range of time periods, as well as specific ALA intellectual freedom policies and supporting documentation, provided the philosophical subtext behind the Foundation's mission and the specific policies it

defends. Writings about the Foundation gave details about its formation and activities both in general and in connection with the actions of the ALA. Books and articles about legal concepts and the U.S. Constitution provided another basis for understanding the practical and philosophical core of the Foundation's work. These resources, combined with analyses of significant First Amendment cases—as well as the actual cases themselves—showed how the Foundation's work has impacted the First Amendment as it applies to and affects information exchanged in libraries and elsewhere. The Foundation's own publications described its involvement in the cases, its own structure, governance and dealings in greater detail.

Information about intellectual freedom in general and in the context of major historical milestones in the U.S. that have shaped the librarianship profession's attitudes and policies on the subject exists in plentiful supply. Industry journal and newsletter articles about intellectual freedom issues ranging from sophisticated rationales to short opinion pieces are readily available. From the late 1960s to early 1970s, practically every issue of the ALA Intellectual Freedom Committee's *Newsletter on Intellectual Freedom* (IFC, 1966-1979) includes multiple articles on the subject, and journals such as *Library Journal*, *Library Trends* and *American Libraries* contain numerous news and opinion pieces having to do with intellectual freedom (e.g., Asheim, 1953; Berninghausen, 1979; Gaines, 1970). Further, many books contain information about intellectual freedom and the library profession in general (Busha, 1977; Downs, 1960; Height & Grannis, 1978; Orne, 1971). In addition, works such as Milton's *Areopagitica* (1664) and others (Lippman, 1920; Mill, 1869; Radcliffe, 1961) offer profound philosophical discussions of

the right to read in a free society. The *Intellectual Freedom Manual* produced by the ALA Office for Intellectual Freedom (1996, 2002, 2006) contains detailed information about intellectual freedom in general and more specifically in terms of ALA policy development, and places unfolding issues in the historical context of major U.S. events such as the McCarthy era, civil rights, free speech and anti-war movements. Other books offer perspective on the chilling effect the McCarthy era had on libraries (Berninghausen, 1975; Robbins, 2000).

The core of the Freedom to Read Foundation's mission is to defend ALA policy set forth in the Library Bill of Rights. ALA's Web site offers numerous policy resources, including content found in the *Intellectual Freedom Manual*: the Library Bill of Rights (American Library Association [ALA], 2005g), interpretations of the Library Bill of Rights (ALA, 2005d), and intellectual freedom toolkits (ALA, 2005c). Some of these intellectual freedom policy resources were created as a result of insights gained from cases in which the FTRF was involved, such as the guidelines for creating library patron behavior and usage policy, which were born out of *Kreimer v. Bureau of Police for Morristown* (1992, ALA, 2005b), and the *Libraries and the Internet Toolkit* (ALA, 2005e) formed as a result of the Children's Internet Protection Act (CIPA) case, *United States v. ALA* (2003).

The Freedom to Read Foundation took shape in the midst of a conflict-ridden reorganization of the ALA in the late 1960s, which impacted planning of the scope and purpose of the Foundation's activities. Among the issues debated at this time were whether the Association should take a stand on or remain neutral to socio-political issues not

immediately connected to the realm of library business, such as the Vietnam War, and whether the ALA should provide greater support and assistance to members and expand the scope of support beyond intellectual freedom to other issues, such as individuals' rights to personal expression (e.g., wearing a beard). Samek's *Intellectual Freedom and Social Responsibility in American Librarianship, 1967-1974* (2001) provides a detailed historical account of social activism in the ALA at this time. Additional insights and details about the debate between social responsibility versus neutrality in librarianship are available in other books (Berninghausen, 1975; Moon, 1993) and in articles in the professional literature (e.g., Alfred & Curley, 1970a; Berninghausen, 1972, 1979; Castagna, 1971; Raymond, 1979; Shields, Burke, & McCormick, 1970). Notably, there is an account of the debate from multiple perspectives in a *Library Journal* issue devoted to the subject titled "Social Responsibility and the Library Bill of Rights: The Berninghausen Debate" (Armitage, Bendix, Byam, Curley, DeJohn, & Doiron, et al., 1973).

Writings about the Foundation found in library journals and parts of books can be pieced together to form a picture of the Foundation's activities. Issues of newsletters and library journals that include reportage on ALA meetings are a good source of information about the Foundation's elections, resolutions and other business. Resources from 1969-1979 contain valuable information about the establishment and early development of the Foundation (Alfred & Curley, 1970; Berry, 1969; Castagna, 1970; Dix, 1969; IFC 1968-1971; Merritt, 1969a, 1969b, 1970a, 1979b; Krug, 1969; Krug & Harvey, 1970, 1971a, 1971b, 1971c, 1971d, 1971e; Shields & Burke, 1970; Shields, Burke, & McCormick, 1970; Teepen 2004; Wagman, 1963). Resources such as editions of the ALA's

Intellectual Freedom Manual also contain short historical accounts, and the Foundation is mentioned in other contexts in the library literature (e.g., Castagna, 1971; Moon, 1993; OIF, 1996, 2002, 2006; Samek, 2001).

The Foundation's own publications describe its structure, governance and dealings. For example, the latest bylaws can be found on the Foundation's Web site (Freedom to Read Foundation [FTRF], 2005a). Information related to specific Foundation court actions, including timelines of significant cases in which the Foundation has participated, can be found on the Web sites of the FTRF and its partners (FTRF, 2005c; Media Coalition, 2006), in FTRF newsletters, some of which include edited versions of the FTRF's reports to the ALA Council (FTRF, 1977, 1978, 1989-2005), legal texts (Tedford, 1997), and in the cases themselves (see list of cases in the References section), which can be found using databases such as FindLaw and LexisNexis®.

Information pertaining to the First Amendment and the Constitution in general, as well as its application to libraries, is available in sources such as the U.S. Constitution itself (United States, 2002), legal studies of the First Amendment (Kalven, 1988; Tedford, 1997) and documentary overviews of the U.S. Constitution (Rhodehamel, 1987; Rhodehamel, Rohde & Von Blum, 1991) as well as articles presenting First Amendment case histories (ALA, 2005h; Corn-Revere, 2006; McMasters, 2006; Mullally, 2006; Silver 2003) and Web sites devoted to the First Amendment or law in general (First Amendment Center, 2006; Legal Information Institute, 2006; OYEZ, U.S. Supreme Court multimedia, 2006).

It was not possible to turn to one or even a few historical sources to learn about the origin, establishment and activities of the Freedom to Read Foundation. It was necessary to consult numerous publications and archival records, and talk to many people to construct a narrative of the FTRF's history. It was only when the scattered bits of details, dates, milestones and recollections were gathered, processed and placed in context that a more complete picture of the Foundation took shape.

Research

As a result of the limited information in published primary and secondary literature, it was necessary to access other resources, which are not reflected in the Literature Review above. These include: records from the American Library Association Archives at the University of Illinois at Urbana-Champaign (e.g., meeting minutes, correspondence, newsletters and unpublished manuscripts) and private personal papers. The bulk of the archival material gathered from the ALA Archives was from the following record groups: 02 Executive Board and Executive Director, 06 Intellectual Freedom Office, 18 Headquarters Library, 49 Social Responsibilities Round Table (SRRT), 69 Intellectual Freedom Committee, 97 Personal Members. In addition to these archival resources, books, articles, court documents, Congressional hearing transcripts and private personal papers formed the basis of research into the individuals interviewed.

In order to formulate a clear picture of the Foundation's activities in linear progression, it was necessary to examine the American Library Association Archive's collection of Freedom to Read Foundation Executive and Trustee Board meeting minutes and agendas (which contained, in the form of attachments, correspondence, audit reports

and other data) from 1969 through 2004, placing heavy emphasis on records from the 1970s. These last items provided detailed information about the Foundation's specific actions, finances, membership levels and cases, as well as roles of principal actors in the organization's early days, including FTRF staff and trustees, and detailed information about the LeRoy C. Merritt Humanitarian Fund. They also provided insight into the Activities Committee on New Directions for ALA (ACONDA) committees and reports, and Social Responsibilities Round Table, which informed debates about intellectual freedom in the ALA. Records from the 1980s primarily supplied information about how the Foundation pursued cases in America's schools, notably *Board of Education, Island Trees School District v. Pico* (1982), and developed alliances with the ACLU chapters during that time. Records from the 1980s also included detailed information about the Foundation's search for new legal representation, which resulted in Bruce Ennis joining the Foundation as General Counsel. Records from the 1990s supplied information about cases in which the Foundation participated, such as *Kreimer v. Bureau of Police for Morristown* (1992). A few records from the 2000s served as general orientation points for FTRF actions in the beginning of the decade.

Some earlier archival records from the 1960s, such as ALA Executive Board minutes, OIF memos and reports, and correspondence between OIF and ALA and between ALA's Executive Director and OIF and others (e.g., attorneys), provided valuable information about developments leading up to the formation of the FTRF and OIF.

Archival resources were also instrumental in researching individual narrators. Agendas and minutes, for example, provided insights into specific items of business that

narrators handled. In addition to these, scores of articles, speeches, books, Web sites, court cases, congressional hearings and other resources were consulted to prepare interview questions. Narrators' own works, such as articles, books and speeches, were consulted to learn about their backgrounds and professional activities and to understand their views about intellectual freedom and librarianship. Further, narrators' own testimony, as found in news interviews, congressional hearings and court documents, provided additional insight into their beliefs, personalities and professional endeavors on high-visibility issues.

A bibliography of materials reviewed in preparation for interviews is not included here, mainly because the interviews for this thesis covered a broad spectrum of topics from hundreds of sources. The provision of such additional documentation would exceed what is necessary for this study and would make an already long thesis document too unwieldy.

Organization of Content

The body of this thesis is broken into chapters: a narrative history, oral history interviews, and a conclusion. Each section is detailed below.

Chapter 1: History of the Freedom to Read Foundation

This chapter presents a brief narrative history of the Foundation, spanning from the planning phase for its establishment to the present (1960s-2006). This summary of the Foundation's identity, mission, formation, structure, and activities provides a context for the individual oral history accounts that follow, which comprise the bulk of the document.

Chapters 2-6: Oral histories

This section is comprised of five oral history chapters. Each is prefaced with biographical information about the narrator, followed by an edited transcript of the interview(s). The introductory material acquaints the reader with the narrators by providing biographical information, summarizing their role in the Foundation, and highlighting points of discussion in their interviews. Narrators invited to participate are leadership figures, such as officers and legal counsel, who represent vital functions of the Foundation. The testimony of these individuals provides first-hand accounts of the Foundation's past and its significance to libraries, Americans, and the law. Narrators are as follows:

1. Judith F. Krug - A founder of the FTRF; Executive Director and Secretary of the Foundation since it was established; Director of the ALA Office for Intellectual Freedom since it was established.
2. C. James Schmidt - A past President, Treasurer and board member of the FTRF.
3. Zoia Horn - A past board member of the FTRF and an early recipient of a grant from the LeRoy C. Merritt Humanitarian Fund.
4. Theresa A. Chmara - Legal counsel for Jenner & Block, the firm representing the Foundation, and protégé of the longtime legal counsel for the Foundation, Bruce Ennis (now deceased).
5. Candace D. Morgan - A former President of the Foundation and Chair of the ALA Intellectual Freedom Committee.

Chapter 7: Conclusion

This chapter provides an assessment of the project, including a discussion of insights gained about the Foundation, points to areas for further research and evaluates the success of the oral history methodology in increasing our awareness and understanding of the Foundation and the principles for which it stands.

Appendices

There are eight appendices which contain supporting information for the study. The first two, A and B, contain documents which form the basis of the Foundation's policy, the First Amendment to the United States Constitution and the American Library Association's Library Bill of Rights. The next four, C, D, E and F, provide additional information about the Foundation, including a list of Freedom to Read Foundation Presidents and Trustees from 1969 to 1979, a list of all of the Freedom to Read Foundation's Roll of Honor Award Winners, the Freedom to Read Foundation's own timeline of significant actions from 1969 to 2004, and the latest version of the Foundation's constitution and bylaws. The final two appendices, G and H, provide information about the oral history process and include copies of the informed consent and legal release forms and details about interview dates and durations.

Chapter 1. Historical Overview: The Birth of a Foundation

Introduction

> *The First Amendment . . . is instrumental in a democracy to ensuring the widest dissemination of competing views. . . . Secondly, the First Amendment serves as a safety valve by allowing people to express hostility toward government without resorting to actual violence. [FTRF General Counsel Bruce Ennis telling a reporter what motivates him]. (Hudson, 1998, ¶ 3)*

As its name suggests, defending the right to read is at the heart of the Freedom to Read Foundation's mission. This right, which is fundamental to any democracy, is implied in the First Amendment to the Constitution of the United States, and grants individuals the freedom to express their ideas without interference from the government. The freedom to read is implied in this amendment because, in order to enable the free exchange of ideas, the guarantee must run both ways: not only must Americans have the right to express themselves, they must be permitted to learn about the ideas expressed by others. When the flow of human knowledge is suppressed and individuals can neither express their own thoughts nor decide for themselves whether the ideas and opinions of others are false or dangerous, they are blocked from discovering truth on their own terms. There are two injustices that follow from there: one is a threat to a fundamental individual liberty and the other is a threat to truth itself. As Milton (1644) expressed in his protest[1] against England's Licensing Order of 1643:

> And though all the winds of doctrine were let loose to play upon the earth, so Truth be in the field, we do injuriously, by licensing and prohibiting, to misdoubt her strength. Let her and Falsehood grapple; who ever knew Truth put to the worse, in a free and open encounter? Her confuting is the best and surest suppressing. (p. 26)

The profession's guidance in this area also speaks of the primacy of the freedom

of information, for the sake of individual, community and society, and for the sake of truth itself. Endorsed by a young Freedom to Read Foundation, as well as librarians, publishers, booksellers, the ACLU and numerous other organizations, the 1972 version of American Library Association's Freedom to Read statement says, in part:

> The freedom to read is essential to our democracy. It is continuously under attack. . . . We are deeply concerned about these attempts at suppression. Most such attempts rest on a denial of the fundamental premise of democracy: that the ordinary citizen, by exercising his critical judgment, will accept the good and reject the bad. The censors, public and private, assume that they should determine what is good and what is bad for their fellow-citizens. . . . Now as always in our history, books are among our greatest instruments of freedom. . . . We believe that free communication is essential to the preservation of a free society and a creative culture. We believe that these pressures towards conformity present the danger of limiting the range and variety of inquiry and expression on which our democracy and our culture depend. We believe that every American community must jealously guard the freedom to publish and to circulate, in order to preserve its own freedom to read. We believe that publishers and librarians have a profound responsibility to give validity to that freedom to read by making it possible for the readers to choose freely from a variety of offerings.
>
> The freedom to read is guaranteed by the Constitution. Those with faith in free people will stand firm on these constitutional guarantees of essential rights and will exercise the responsibilities that accompany these rights. (OIF, 2006, p. 231-233)

The Freedom to Read Foundation was established in 1969 to guard against threats to society's ability to access ideas through libraries and thus to help preserve individuals' right to receive information, cultivate knowledge and discover their own truths. To accomplish this, the overarching mission of the Foundation is to protect and defend American society's First Amendment rights and come to the assistance of librarians and others who face adverse consequences of their support for intellectual freedom. Through its many efforts to create legal precedents in support of these rights, the Foundation has striven to give teeth—the power of law—to the intellectual freedoms declared in the

Library Bill of Rights. As the Foundation (2006a) states:

> The First Amendment to the United States Constitution guarantees all individuals the right to express their ideas without governmental interference, and to read and listen to the ideas of others. The Freedom to Read Foundation was established to promote and defend this right; to foster libraries as institutions wherein every individual's First Amendment freedoms are fulfilled; and to support the right of libraries to include in their collections and make available any work which they may legally acquire. (¶ 1)

The Formation of ALA's Intellectual Freedom Program

> *For something is happening with ALA. The same sort of thing is going on in other educational, professional, and scholarly bodies, reflecting a pervasive unrest in our society. (Dix, 1969, p. 900)*

The Freedom to Read Foundation is one of several components that make up the ALA's intellectual freedom program. Other components include the Intellectual Freedom Committee, Office for Intellectual Freedom, Intellectual Freedom Round Table, Intellectual Freedom Action Network and the LeRoy C. Merritt Humanitarian Fund. Established in 1940 as the ALA's intellectual freedom policy body, ALA's Intellectual Freedom Committee was the first of these to form. Over the next 15 years the IFC drafted many of the major policies that guide the profession today. By the end of the 1940s, the committee had developed a substantial body of knowledge about issues pertaining to censorship in the United States and, by 1948, it had helped finalize the Library Bill of Rights. (The Library Bill of Rights, adopted in 1948, was modeled after *The Library's Bill of Rights*, a document written by Forrest Spaulding in 1938 and later revised and approved by the ALA council in 1939 [Office for Intellectual Freedom, 2002].)

Before proceeding to a more detailed account of specific circumstances

surrounding the Foundation's establishment, it is useful to provide a retrospective summary of historical developments and issues that form the larger historical context. The late 1940s to middle 1950s saw the development of the Cold War, marked by an intense national paranoia that communist ideology could spread throughout the United States like a disease. The ALA's list of evils to combat grew during this time to include new threats to the intellectual freedom of librarians and citizens, such as loyalty oaths, loyalty programs, and suppression of library materials suspected as "communist propaganda." According to Berninghausen (1975), during the McCarthy years (1949-1953), the IFC began to persuade librarians that they had to respond to political issues affecting access to information in libraries: "As the radical right grew bolder and more insistent on censorship, librarians began to understand that the values of free inquiry, free scholarship, and free dissemination of ideas actually could be, and might be, lost" (p. 107-108). The Committee drafted and approved the Freedom to Read Statement in 1953 and the School Library Bill of Rights two years later, in 1955.

The civil rights movement, which can be considered to have emerged in the middle 1950s after the Supreme Court's landmark ruling in *Brown v. Board of Education of Topeka* (1954) abolishing the "separate but equal" doctrine (Hampton & Fayer, 1990), also raised intellectual freedom issues for the library profession and stimulated policy changes. In the late 1950s, the ALA's Special Committee on Civil Liberties conducted a study about segregation, which led to the committee's successful recommendation that the ALA adopt a new policy on that issue. In 1961, the ALA Council approved Article V of the Library Bill of Rights: "The rights of an individual to the use of a library should

not be denied or abridged because of his race, religion, national origins or political views" (OIF, 2002, p. 10). (By 1967, "age" and "social views" were added and today Article V states: "A person's right to use a library should not be denied or abridged because of origin, age, background, or views" [OIF, 2002, p. 57].)

For some in the profession, the state of intellectual freedom in the middle 1960s was "deceptively comfortable . . . [and] most librarians looked forward to the 1970s with optimism, hoping for a favorable climate for intellectual freedom" (OIF, 2002, p. 213). But by the late 1960s, factors such as the country's deep divisions and riots over the Vietnam War, the assassinations of Dr. Martin Luther King Jr. and Robert Kennedy, and the election of conservative Richard Nixon to the presidency fueled the call for action in the profession. The atmosphere that facilitated progress in the areas of civil rights, human rights, and First Amendment rights such as freedom of expression was not sustainable in a country that was undergoing such dramatic internecine turmoil. What began to happen was that "the 'permissive' atmosphere collided with demands for law and order. . . . [and] supports for intellectual freedom in the society at large were weakened" (OIF, 2002, p. 214). The country's movement to the right of the political spectrum did not bode well for the future of intellectual freedom. Berninghausen (1975), former Director of the Graduate School of Library Science at the University of Minnesota, pointed out:

> The 1968 and 1972 elections of a president hostile to education, the press, and to libraries, as well as to civil liberties generally, seriously diminished support for the nation's liberal institutions and harmed intellectual freedom in them. For example, the four Nixon appointees to the United States Supreme Court agreed one hundred percent on cases involving obscenity, reversing a long trend of

earlier, more liberal courts. (p. 29-30)

At this juncture in the late 1960s, the ALA launched a massive reassessment of itself, which ultimately included expanding the intellectual freedom program, and retooling policy in order to address emerging challenges to information access in libraries and to provide support for embattled librarians. In late 1967 the Office for Intellectual Freedom was established, followed two years later by the Freedom to Read Foundation, and in the year after that the Freedom to Read Statement was tailored to meet the challenges of the coming decade (OIF, 2002).

Although there was broad agreement that the ALA was ripe for change ("It is clear that many members feel a need for change in ALA" [Dix, 1969, p. 900]), the profession certainly did not think or act in unison. Deep disagreements simmered between young and old librarians, and between the professional elite and the rank and file, over how the ALA should define itself—its mission and purpose, and where it should invest its money and energy. This would come to a point of crisis with respect to highly charged issues of intellectual freedom.

A Look inside the Intellectual Freedom Debate: Neutrality v. Social Responsibility

> *At this point in time, the American Library Association must strongly reaffirm its belief in the principle of Intellectual Freedom, it must spell out in unmistakeable [sic] terms the implications of translating principle into practice . . . it must spare no effort or reasonable cost in defending librarians who are attacked for supporting—or for practicing—Intellectual Freedom. The integrity of our libraries and of our library association, as well as the survival of this fundamental principle, are at stake. (Alfred & Curley, 1970a, p. 1)*

At the 1969 Atlantic City Conference, when the Activities Committee on New Directions for ALA's (ACONDA's) Interim Report was discussed in open hearings, a

majority of the people present considered intellectual freedom to be the Association's most important priority (Merritt, 1970b, p. 15). When the final report was presented at the Detroit Conference in 1970, membership officially placed intellectual freedom at the top of the list of priorities for the ALA when it passed ACONDA Recommendation 2, which resolved that: "The Association's highest current priorities be recognized and officially established as: social responsibilities; manpower; intellectual freedom; legislation; planning; research and development; democratization and reorganization" (Shields, Burke, & McCormick, 1970, p. 671). However, although the majority called for a strong intellectual freedom program, the ALA membership was embroiled in disagreements about the nature and scope of intellectual freedom, a debate that would rage for years. In a report to the Council which addressed some of the issues, Edwin Castagna (1970) stated:

> The place of intellectual freedom in ALA is one of our most urgent problems. . . . Controversy is boiling in the ALA. One has only to look around and listen to observe that our controversies have aroused powerful emotions. Intellectual Freedom is one of the issues which most quickly generates heat. (p. 70)

Among the issues at stake were ideological differences about ALA's mission and purpose. One side was in favor of maintaining the status quo and held the position that librarians were neutral custodians of information on all sides of issues, and their purpose was to provide information to library users upon request. Labeled the "professionalists" by Geoffrey Dunbar (Samek, 2001, p. 84), they argued that the ALA should only take a stand on issues that directly affected libraries and librarianship, such as impediments to access, and saw the library as "a source of ideas, not a promoter of them" (Alfred, Curley,

Doms, Hinchliff, Kaser, Lorenz, et al., 1970, p. 29).

On the other side were proponents of views expressed by the Social Responsibilities Round Table (SRRT), who defined the profession's responsibility in terms of "the relationships that librarians and libraries have to non-library problems that relate to the social welfare of our society" (Alfred, et al., 1970, p. 29). They thought the ALA ought to address social and political issues and were in favor of taking a stand on such issues as the U.S. involvement in the Vietnam War, because they believed it impacted library service. For example, they preferred to see tax revenues applied to libraries instead of war. The group was also interested in getting alternative press into libraries because they believed that the information in libraries was not, in fact, neutral, but largely represented mainstream values. As Betty-Carol Sellen (1973) pointed out: "It is the traditional library establishment, not those who advocate the concept of social responsibility, which has in practice supported 'orthodoxy'—be it political, sexual, radical, life style, or what have you" (Armitage, et al., p. 27).

The professionalists believed that taking on issues that fell outside the narrow purview of librarianship would destroy the ALA and intellectual freedom in librarianship. As David Berninghausen (1975) explained:

> If librarians and the public were to accept the view that libraries *should* choose sides on current public issues, libraries would become "libraries of opinion," . . . [and] they could then no longer be expected to provide free access to all points of view. . . . The concept of an advocacy library is antithetical to the concept of a library which provides information on all sides of all subjects for all citizens. (p. 127)

Advocates for social responsibility responded to Berninghausen's stance with a

litany of counterarguments. They asserted that the ALA was an organization, not a library, which had "taken stands on social questions for decades"; that intellectual freedom and social responsibility were not antithetical concepts, with issues such as racial injustice having profoundly negative effects on staffing, service and collection development; and that the practice of building collections based on social responsibility was not exclusionary to traditional books but resulted in greater inclusiveness and balance in them (Samek, 2001, p. 129). As Jane Robbins (1973) said, "The library is not an institution which exists removed from our increasingly interdependent and politicized world. The professionals who control America's information institutions . . . cannot retreat into those institutions and ignore the larger society" (Armitage, et al., p. 29).

The 1970 Chair of the IFC, Edwin Castagna, expressed concern about taking a turn toward broader social and political activism. In a 1970 report to the ALA Council on behalf of the Committee, he stated that it had "serious doubts about moving away from clearly defined censorship and intellectual freedom cases to an open-ended involvement in any problem outside the librarian's professional responsibilities. We are the American *Library* Association, not the American Civil Liberties Union" (Castagna, 1970, p. 70). But the SRRT and others such as Eli Oboler (1973), a former IFC member who moved in ALA's elite circles (and who became involved in the FTRF as charter member and Vice President), countered this stance:

> Surely the library profession showed its deep concern with social responsibility during both World War I and World War II. . . . Anyone looking back at the library literature of this period will find there was almost universal agreement that only one side of the matter of cooperation with the government should be shown, and it would be a little difficult to find anything but advocacy on the part of the

> library press and also of the library profession during those years. (Armitage, et al., p. 30)

It was against the backdrop of this larger debate over ALA's identity that the Foundation emerged. Points of contention specific to FTRF regarding its role within the library profession and with respect to ALA are discussed later, following a review of specific historical developments which led to the official birth of the Foundation.

The Long Road to Forming the OIF and FTRF: Laying the Groundwork

> *Librarians will defend the freedom to read in far greater numbers if they know that their stands will be supported legally, financially and morally by the prestigious American Library Association. Most censorship attempts are tactically amateurish, irrational, and even illegal, and they will collapse when confronted by a determined resistance. But the response must be immediate and unwavering. ALA backing must be made evident before, not merely after, the librarian has been fired or politically outmaneuvered. (Alfred & Curley, 1970a, p. 1)*

As early as 1938, embattled librarian Philip Keeney of the Progressive Librarians Council[2] suggested that the ALA create a support fund (Robbins, 1996). Keeney, who was fired from his job as University Librarian at Montana State University, had received support from the ACLU and American Association of University Professors but not from ALA, because the Association had not earmarked any funds for such a purpose:

> Of the major groups from whom Keeney sought aid, the American Library Association proved the least receptive, even though the association's executive board had voted in 1936 to investigate dismissals that appeared to be unjustified. ALA officers insisted that they could not perform their duty because they hadn't given any funds for the purpose. (McReynolds, 1990-1991, ¶ 13)

Again, in January 1963, Frederick H. Wagman (1963), then director of the University of Michigan Libraries in Ann Arbor and ALA President-elect, emphasized the importance of supporting librarians "engaged in the struggle to defend intellectual

freedom and the Library Bill of Rights" (p. 41). Although he commended the IFC for its work, he called for an organized method for supporting such librarians in the form of a "defense fund for legal assistance to any librarian involved in a local struggle because he tries to carry out our policies" (p. 41-42). He envisioned the IFC having the authority to distribute monies from this fund to librarians in need, without having to go through the channels of "the administrative machinery of the national organization" to gain approval (p. 42). Wagman also proposed that the ALA partner with the ACLU on a national and state level to investigate incidents and provide legal counsel, assuming the ACLU agreed that action was justified. The director of the ACLU at the time had told Wagman that he was open to partnering with ALA and Wagman, believing that there was not enough money in the general funds of ALA, saw an alliance with the ACLU as an opportunity to help finance efforts (ALA Executive Board minutes, May 1963).

Wagman's call to action set the slow bureaucratic machinery of ALA in motion, thus initiating the process of setting up what would become the Office for Intellectual Freedom and Freedom to Read Foundation. The process would not come to full fruition for six more years. In a meeting in May of 1963, ALA Executive Board members who discussed Wagman's proposal cautioned against partnering with the ACLU for three major reasons: (a) they worried that, because the ACLU's scope was broader than ALA's, members might not understand the connection, (b) they wanted to work independently of other organizations, and (c) they wanted to be able to work with parties who had an unfavorable view of the ACLU. As one board member, Cushman (May 1963), said, "I do think we need to tread warrily [sic] with a group of this sort" (ALA Executive Board

minutes, p. 1). As a result, the possibility of partnering with the ACLU was tabled, but the IFC asked the ALA Executive Board to provide legal advice and assistance for implementing intellectual freedom policies (Merritt, 1963) and set up the Subcommittee to Review the Recommendations of the ALA Committee on Intellectual Freedom to investigate the possibility of forming an office to provide direct, practical support for intellectual freedom fighters.

On September 12, 1963, the IFC's review committee submitted its report to the Chairman of the IFC, Archie L. McNeal. The report's recommendations included finding "legal talent" (McNeal, Memorandum to the ALA Executive Board, October 1, 1963) among the ranks of trustees throughout the U.S. and building a network of advisors to provide either direct service or referrals; establishing a staff at ALA headquarters to develop and maintain this service, and to provide advice and assistance; and asking ALA to provide $75,000 over three years to develop and staff the program and to set up a legal defense fund. The committee outlined five objectives for the office, which would evolve into the charges of two entities, the OIF and the FTRF: (a) gathering information about encroachments on intellectual freedom, (b) coordinating the efforts of the network of advisors and supplying them with information, (c) giving advice and counsel concerning intellectual freedom issues to any librarian, library or trustee upon request, (d) reporting to ALA and (e) performing a feasibility study of the program during the three-year period and recommending a permanent program (McNeal, Memorandum to the ALA Executive Board, October 1, 1963). By October 1963, the IFC's review committee completed its investigation and presented its report to the ALA Executive Board.

By ALA's Midwinter Meeting in 1965, the IFC submitted a proposal to the ALA Executive Board to set up an office dedicated to supporting the Library Bill of Rights (Clift, Memorandum to Castagna, February 16, 1965). The proposal included hiring a full-time attorney to provide libraries with counseling service, preparing amicus briefs, and increasing ALA dues by two dollars to pay for the program. (Later, this last point became quite controversial among the ALA membership.) In response, the Executive Board voted to set up a committee to study the proposal.

In March of that year, ALA Executive Director David Clift asked attorney Joseph B. Fleming, from the law firm of Kirkland, Ellis, Hodson, Chaffetz and Masters, to review the IFC's proposal. He specifically requested a risk assessment concerning ALA's tax-exempt status. In his response, Fleming (March 26, 1965) concluded that using funds for supporting legal defense in intellectual freedom matters would put the ALA's tax-exempt status at risk (letter to David H. Clift). The issue of ALA's tax-exempt status would, in fact, come up again and again. It became a point of contention which stalled the SRRT's formation and was presented as a justification for FTRF's establishment as a separate legal entity from ALA. If, for example, actions of an entity within ALA were judged to violate the IRS exemption requirement under section 501 (c) (3), which stipulates that an organization, as a major part of its activities, cannot try to influence legislation or participate in political campaign activity in support of or against political candidates, then ALA's tax-exempt status would be in jeopardy.

On April 9, 1965, an ALA Council review committee appointed by Clift discussed the proposal and supporting documents, including the lawyer's letter. In its

written report submitted later that month, the review committee stated that it "was unanimous in the strong feeling that the legal advice given to Mr. Clift by the Association's attorneys was inadequate and incomplete" (Committee to Review the Recommendations of the ALA Committee on Intellectual Freedom Report [CRRIFC Report], April 27, 1965, p. 4). The committee thought that the attorney's "letter contained neither a full exploration of the problems nor the citation of pertinent cases and does not seem to square with the experience of other non-profit organizations which provide legal protection services for their members" (p. 4). In addition, the committee was concerned about the proposed dues increase and thought that more information was needed about the demand for and expense of the program. It strongly recommended that the ALA membership be given a chance to weigh in on the issue. The committee also recommended that the proposed program handle all tenure cases, whether or not they were associated with intellectual freedom.

Clearly dealing with new issues and unknowns, the Executive Board discussed the IFC's recommendations and the committee's findings, and groped its way toward a clearer understanding of what was needed to set up an intellectual freedom office with a legal defense capability. At that time, the Board seemed unconcerned about the tax-exempt status issue and noted that the attorney's response was typical of one whose job it is to look for possible problems. It was concerned about costs in connection to staffing, legal fees and the core mandate for the office. It seems they determined that, to control expenses initially, the new office would not be able to go into court too often, would have to keep a narrow focus, and would be supported only by one staff member and an

attorney on retainer. In the midst of hashing out issues, the board considered sending the proposal back to the IFC for further clarification but was loath to slow down the process. As Wagman (May 2, 1965) stated, "I'm heartily against turning this back [to OIF]. They come in regularly with proposals to us and we keep going back" (ALA Executive Board minutes, p. 8). Thus, they pushed forward and, using the available information, estimated operating costs of $24,000 which would include one staff member and 100 hours of legal advice for the first year of operation. In thinking about the type of person needed to staff the position, Clift (May 2, 1965) noted, "We would want a person . . . with many contacts, who goes to the field and to do that you must be pretty good" (ALA Executive Board minutes, p. 8-9). The Board agreed to submit a report with their decisions and the IFC's recommendations to ALA Council.

Through the rest of 1965 and 1966, the process of establishing the office slowly progressed. Funding was secured, and the IFC drafted and reviewed a job description for the staff member, and looked into legal fees. At that time, hiring a competent lawyer with whom ALA was familiar would cost about $50 per hour (ALA Executive Board minutes, May 2, 1965), perhaps less for ALA. Or, it would cost about $12,000 per year for retaining a full-time legal counsel, assuming that counsel were young and had only about three years of experience (Martha Boaz, letter to David H. Clift, July 27, 1965).

Finally, on December 1, 1967, the Office for Intellectual Freedom was established and Judith Krug appointed as its Director. In a February 1968 article appearing in *ALA Bulletin*, Krug (1968) reported that the main task of OIF was to implement ALA policy "and make it a living concept for all librarians and all libraries in the United States" (p.

123), but made no direct mention of legal support for embattled librarians. Instead, the article discussed three major functions: communication, analysis and education.

In his address to the Council at the 1968 ALA Annual Conference in Kansas City, IFC Chairman Ervin Gaines proposed a resolution for the Committee to investigate a support fund for librarians suffering negative consequences of their defense of intellectual freedom. Echoing the membership's increasing frustration with the ALA, he asserted that the organization did not provide an adequate support structure for these librarians, but rather that "the Association has, in effect, cut its members adrift and let them survive as best they could" (Samek, 2001, p. 50). Gaines's motion was accepted and applauded. By the end of the conference, the IFC was charged with two tasks that led to the Freedom to Read Foundation's formation: to research how the spirit of the Library Bill of Rights could be preserved, and to carry out a study of the feasibility and legality of establishing a legal support fund (Merritt, 1969b). In its investigations, the IFC considered forming a fund to support librarians who suffered harsh consequences as a result of their defense of intellectual freedom and a "program of action to be used in regard to institutions violating the spirit of the Library Bill of Rights" (Krug, 1969, p. 23). After the IFC performed a survey of similar organizations and consulted with legal counsel, the fund and program of action were deemed legal and feasible.

The Committee incorporated these findings into a proposal for a "Program of Action in Support of the Library Bill of Rights" which was presented at the 1969 Annual Conference in Atlantic City and approved by ALA Council (Merritt, 1969b, p. 75). Prior to presenting the proposal at the conference, the Committee held an informational session

about "the legislative framework in which intellectual freedom, especially the freedom to read, currently functions . . . [in order to] provide information on the current situation and to clarify the aspects of legislation especially pertinent to the library situation" (Krug, 1969, p. 23). It was recognized that some sort of support fund would be "a necessary adjunct" to this framework (Merritt, 1969b, p. 75), so the ALA resolved to present a proposal for the Freedom to Read Foundation at the ALA Executive Board meeting that Fall. The stated function of the Foundation was to assist librarians under fire for their promotion of intellectual freedom. The proposal that took shape was for a non-profit organization modeled after the National Association for the Advancement of Colored People (NAACP) Legal Defense Fund and the American Civil Liberties Union Foundation (Samek, 2001).

A question-and-answer session about the IFC's proposed Program of Action in support of the Library Bill of Rights was contentious. Members such as those in the SRRT wanted the support fund incorporated as part of the ALA, not as a separate entity as proposed. There was heated argument about issues such as whether or not ALA's tax-exempt status would be endangered by incorporating such a support fund. Members were impatient for action, and those who had been working hard to establish the intellectual freedom support structure were in a tough position:

> Most of the questioners seemed to want faster action, more money and a support fund. Finally, an exasperated southerner rose to shout, "Let's face it, we've been waiting years for action in this area and you've been sitting on your cans!" A red-faced Oboler angrily replied, "I take personal umbrage at that!" and told of the long labor of the Committee . . . Unfortunately, most of the audience felt it was a baby step, too little and too late. (Berry, 1969, p. 2754)

The Freedom to Read Foundation Is Established

> *Mr. Clift first presented the charter of the corporation which was issued by the Secretary of State of the State of Illinois on November 20, 1969. Upon motion duly made, seconded and carried, the Board accepted the Articles of Incorporation as filed. (FTRF Board of Directors minutes, December 9, 1969, p. 1)*

In response to the ALA membership's hue and cry, work to establish the Foundation was expedited and the Foundation was formed in time to announce it at ALA's January, 1970 Midwinter Meeting in Chicago, Illinois. The proposal for the Freedom to Read Foundation was approved by ALA's Executive Board and the organization was incorporated on November 20, 1969 with tax-exempt status under Internal Revenue Service Code 1954, Section 501 (c) (3) (FTRF constitution and bylaws, December 9, 1969). A few days later, on December 9, the Foundation's first temporary board of directors held its initial meeting. Present were ALA Executive Director David H. Clift as Chairman, ALA attorney William D. North as Legal Counsel, and OIF Director Judith F. Krug as Secretary. According to the FTRF constitution and bylaws, ALA's OIF Director, Krug, was also named Executive Director of the Foundation, a dual role which served as a bridge between the two organizations. By the end of the month, on December 31, there was a total of $1,570 in the FTRF treasury, which was raised from eight individuals and two organizations, including $500 from LeRoy C. Merritt, $500 from a Unitarian church fund, and other donations ranging from $10 to $150 (FTRF Board of Trustees Minutes, January 17, 1970).

In its December 9 meeting, the Board reviewed and approved the articles of incorporation and the constitution and bylaws, which had been drafted by North with

assistance from Krug prior to the meeting. They also approved a list of 15 trustees selected by ALA's Executive Board who would serve until the first elections could be held in May, 1970 (FTRF Board of Directors minutes, December 9, 1969). Seven of the trustees were ex-officio by virtue of their ALA office, in accordance with the bylaws: (a) William S. Dix, ALA President and Princeton University Librarian, (b) Lillian Bradshaw, ALA President-elect and Dallas, Texas Public Library Director, (c) David H. Clift, ALA Executive Director, (d) Edwin Castagna, Chairman of the ALA Intellectual Freedom Committee and Director of the Enoch Pratt Free Library in Baltimore, Maryland, (e) Sophie Silverberg, Chairman of the Association for Library Trustees and Advocates (ALTA) Intellectual Freedom Committee, and affiliated with Rand McNally and Company in New York, (f) Julius R. Chitwood, President of the ALA Library Administration Division and affiliated with the Public Library and Northern Illinois Library System in Rockford, Illinois, and (g) Gerald B. Hubble, chairman of the ALA Junior Members Round Table and affiliated with Stephens College Library in Columbia, Missouri (FTRF Board of Directors minutes, December 9, 1969). The other eight appointees were: (a) Carrie C. Robinson, School Libraries Consultant with the State Department of Education in Montgomery, Alabama, (b) Robert B. Downs, Dean of Library Administration at the University of Illinois, (c) Alex P. Allain, Trustee of the St. Mary Parish Library in Franklin, Louisiana, (d) LeRoy C. Merritt, Dean of the School of Librarianship at the University of Oregon, (e) Jackie Eubanks, Reference Librarian at the Brooklyn College Library, (f) C. Lamar Wallis, Memphis, Tennessee Public Library Director, (g) Joseph H. Reason, Director of Howard University Libraries, and (h) Sanford

Cobb, Vice President, General Manager and Editor-in-Chief of Rand McNally's Trade Publishing Division (FTRF Board of Directors minutes, December 9, 1969).

The stated primary purpose of the Foundation was twofold: to serve as a mechanism for defending librarians and libraries that took a principled stand against violations of intellectual freedom, and to work with librarians to pursue opportunities to set legal precedents in support of the freedom to read. These objectives were originally manifested in the form of monetary grants for either personal or legal use and in the form of legal support, either by representing individuals or by producing amicus curiae briefs.[3] The Foundation's charter was stated in its articles of incorporation:

1. To promote and protect the freedom of speech and freedom of press as such freedoms are guaranteed by the Constitution and laws of the United States and as such freedoms necessarily involve the public right to hear what is spoken and to read what is written;

2. To promote the recognition and acceptance of libraries as repositories of the world's accumulated wisdom and knowledge and to protect the public right of access to such wisdom and knowledge;

3. To support the right of libraries to include in their collections and to make available to the public any creative work which they may legally acquire;

4. To supply legal counsel, which counsel may or may not be directly employed by the Foundation, and otherwise to provide to such libraries and librarians as are suffering legal injustices by reason of their defense of freedom of speech and freedom of press as guaranteed by law against efforts to subvert such freedoms through suppression or censorship to the extent such libraries and librarians may request such aid and require it on account of poverty or inability to obtain legal counsel without assistance. (Merritt, 1970a, p. 1)

The Foundation Is Announced; Debate Ensues

Accounts of the 1970 ALA Midwinter Meeting contrast Chicago's freezing temperature with the fiery debates that raged among the membership. As Samek (2001)

writes, those staying at the Sherman House Hotel were subjected to such frigid temperatures that "some became seriously ill" (p. 74), and FTRF Chairman Clift and the Rev. James Kortendick, from Catholic University, were literally "carted out on stretchers and taken to the hospital" (p. 74). In a newsletter about the meeting, the SRRT labeled the Foundation "the burning issue" (*Social Responsibilities Round Table [SRRT] Newsletter*, ca. January, 1970, p. 2). According to an Activities Committee on New Directions for ALA Intellectual Freedom Committee report, "a vigorous protest was delivered against the structure and performance" of the Foundation (Alfred, et al., 1970, p. 13), which was seen as "an inadequate response to the need for a major Association program in defense of Intellectual Freedom" (p. 13). Numerous criticisms about virtually every aspect of FTRF were raised: the process by which it was established, its relationship to ALA, its structure, its mandate and its priorities.

First, there was consternation about, not approbation for, the accelerated process by which FTRF was incorporated. To the Social Responsibilities Round Table, the Foundation's establishment was presented as a "fait accompli" (*SRRT Newsletter*, ca. January, 1970, p. 2). This group did not understand why members were denied the chance to review the constitution and bylaws in advance, and why the Executive Committee settled matters alone, without participation of the ALA Council. The process was condemned as undemocratic because neither the organization's major stakeholders—its members—nor Council—the body elected by members—were able to provide their input or participate in that final round of decision-making. The Foundation's response to these concerns was that "they had worked quickly because ALA

had been severely criticized in the past for its sluggish response to the wishes of membership" (*SRRT Newsletter*, ca. January, 1970, p. 2), and that a membership-wide referendum would be time-consuming and expensive (Marshall, 1979). SRRT members were not satisfied. They felt that the issue was so important they would have been willing to wait longer in order to have a voice in the matter, and that the cost of mailing a referendum to the membership was not prohibitive for ALA (Marshall, 1979).

FTRF's status as a separate legal entity from ALA was also at issue. Some thought that FTRF should have been part of ALA, partly to have a stronger intellectual freedom support structure, to provide members with more of a voice in Foundation business, and so that ALA membership dues money would go toward helping members on intellectual freedom issues instead of members having to pay separate dues for this benefit. Some felt that ALA "dues do not support worthwhile programs of action" in the first place (Alfred & Curley, 1970a, p. 2). The SRRT held that donations alone were not a sufficient revenue stream; for the Foundation to function adequately, it needed a "major portion of ALA budget" (Alfred & Curley, 1970a, p. 2).

A few months later at the ALA Annual Conference in Detroit, during deliberations about the intellectual freedom portion of the ACONDA report recommendations, a group of librarians unsuccessfully moved to keep functions of the Foundation as part of ALA by expanding the charge of the OIF to include the provision of monetary support for librarians in need of relief as a result of their defense of either intellectual freedom or their right to freedom of expression. When the motion lost by 350 to 199, Black Caucus Chair E.J. Josey delivered a short, angry speech and led a walkout

of about 100 members.[4] Josey angrily accused the ALA of supplying librarians with empty rhetoric instead of real support:

> I am deeply grieved and saddened by this vote . . . this Association is not really interested in intellectual freedom in terms of real support for librarians who defend intellectual freedom. We believe that the Association in setting up a Freedom to Read Foundation . . . set up an autocratic organization with ex officio Board members from divisions of the ALA. . . . I ask all members of SRRT and other librarians to join me in a WALK OUT; to show that we will not stay in this type of Association. (Shields, Burke, & McCormick, 1970, p. 675-676)

Members of the SRRT thought ALA worried too much about tax-exempt status and that the Association should be willing to take risks to defend its members and policy base. They accused the ALA of being more concerned about money than about its members. They argued that if the Foundation was given tax-exempt status, then there was no reason why it couldn't have been formed within ALA (*SRRT Newsletter*, ca. January, 1970). ALA's attorney, William North, explained at length how the organization stood to lose its tax-exempt status and the FTRF responded that it was separate from ALA precisely so that it could take risks and possibly lose its tax-exempt status. The SRRT countered that the FTRF could function within the organization without risking that status and pointed out that the Foundation's mandate was to promote and protect First Amendment rights already guaranteed by the Constitution (Marshall, 1979; *SRRT Newsletter*, ca. January, 1970). In his discussion of the issue, Eric Moon (1993) observed:

> Once again . . . the dollar has been ALA's paramount interest. As each demand for concrete action has been made—notably the demand for a defense fund for librarians—the demand has been met early with the same argument: it cannot be done because it might injure ALA's tax-exempt status. Gone, apparently, is the memory of that final resounding sentence of the Freedom to Read Statement:

> "Freedom itself is a dangerous way of life, but it is ours." . . . It's a sad, funny, surrealist story—but it's clearly written on green paper. (p. 314)

The order of the items in the Foundation's charter was also criticized, and the argument put forth that legal support should be listed as its first, not last, priority, followed by (b) defense of librarians to select a wide array of materials for their collections, (c) promotion and protection of freedom of speech and press and (d) promotion and protection of access to the library as the repository for the world's knowledge. In response, the Foundation adjusted its priorities and made legal support for embattled librarians first (Merritt, 1970b).

The SRRT also complained that FTRF members were afforded little ability to influence Foundation business and, outside of voting for some of the trustees, had no way of shaping its philosophy (Marshall, 1979). They argued that the scope of the Foundation's mandate was too limited and should go far beyond the "freedom to read" and should defend the individual rights of librarians (extending to the defense of, for example, the librarian fired for "sporting a beard" [Alfred & Curley, 1970a, p. 2]), and should uphold the "moral health" of the Association (Alfred & Curley, 1970a, p. 2). The Foundation stated that it didn't want the board to be hijacked by extremists. According to Marshall (1979), Krug defended the Foundation's position stating that "one need not look far to find countless organizations which have been 'captured' and perverted" (p. 12). This explanation was vigorously criticized as being authoritarian and undemocratic and had the effect of causing some ALA members to turn their backs and resolve not to join:

> We cannot join a so-called "Freedom to Read Foundation" that is afraid our vote will lead to capture and perversion. We cannot support a "Freedom to Read

> Foundation" which promulgates a statement with so little faith in the democracy we are trying to preserve. (Marshall, 1979, p. 12)

The number of ex-officio members on the board and their ability to serve for limitless terms were matters of serious concern to the SRRT as well. The SRRT Intellectual Freedom Task Force disapproved of the composition of the board and passed a resolution recommending "that there be only one ex-officio member . . . the Chairman of the Intellectual Freedom Committee, and that all other members of the Board be elected" (*SRRT Newsletter*, ca. January, 1970, p. 3). Later, the Foundation responded to these concerns and removed some, but not all, of the ex-officio members from the board.

During the review of the Activities Committee on New Directions for ALA report at the Annual Conference in Detroit in June, 1970, membership passed recommendation 4c(2) regarding the new Foundation, which ultimately failed to lead to any action. (As mentioned above, the attempt to give the OIF a defense fund capacity failed to pass, resulting in the walkout led by E.J. Josey.) The recommendation was in favor of keeping the Foundation separate, with the option of bringing it into the ALA organization on the condition that it could be shown that its performance could be improved by doing so. Specifically, members voted to carefully evaluate the Foundation to see if it fulfilled the profession's needs for monetary assistance for legal and personal use in cases involving not only intellectual freedom but also "personal rights of freedom of expression or action" (Shields, Burke, & McCormick, 1970, p. 676). Further, the recommendation stated that if it could be shown that the FTRF would be more effective if it were part of ALA, then effort would be made toward that end. An SRRT member, Jackie Eubanks,

attempted to amend this recommendation with a stipulation that the Foundation should be permanently denied any ALA funds, but her amendment failed to pass (Shields, Burke, & McCormick, 1970). For the time, the membership wanted to give the Foundation a chance. As the editors for *American Libraries* explained:

> We have understood the cause for concern and criticism of the foundation by some of the members, but we feel that it is premature and short-sighted. We cannot resist pointing out that the hue and cry to defend intellectual freedom is at best sloganeering when it is still only an isolated concept. . . . If we are to defend intellectual freedom it would seem that first it must be established in the ethic and not as something that makes case histories. (Shields, Burke, & McCormick, 1970, p. 662)

Criticism of the Foundation appears to have been most severe in 1970 at the ALA Midwinter Meeting in Chicago and at Annual Conference in Detroit the following June. But, in the midst of the uproarious debate, the fledgling Foundation proceeded with the business of establishing its organizational structure, filling its ranks and honing its strategic vision for the future. Between December 1969 and the Detroit event in June 1970, the Foundation was established, announced and debated by the membership. The first members joined; the first set of trustees was appointed and then replaced by the appropriate number of elected members; officers and committees were established; the constitution and bylaws were considered and adjusted; and some of the operational mechanics were worked out and its priorities were put in order.

The Foundation's Organizational Structure and Membership

> *These certificates have been printed on parchment paper and will be a lasting symbol of the member's interest in preserving the rights of libraries and librarians. (Shields & Burke, 1970, p. 653)*

The first election of the Foundation's Board of Trustees was conducted by mail

from May 1 though June 1, 1970. Eligibility to vote was opened up to members of the Foundation, 83% of whom participated. The five candidates with the most votes were elected to serve two-year terms which would expire in 1972. The names of these first board members read like a list of first-ballot inductees to a librarian hall of fame: Everett T. Moore, William S. Dix, Alex P. Allain, Carrie Robinson, and Jean-Anne South. The next four candidates with the most votes were elected to serve for one-year terms, to expire in 1971: Kenneth Duchac, Ervin J. Gaines, Daniel Melcher, and Joseph H. Reason (Shields & Burke, 1970). Of special note was that the late LeRoy Merritt, who had passed away that year, tied Everett Moore for the most votes. The FTRF membership's gesture was viewed as "a tribute to his many achievements in the field of librarianship and intellectual freedom" (Shields & Burke, 1970, p. 653). Merritt had been the first recipient of the Robert B. Downs Intellectual Freedom Award and the first financial "benefactor" of the Foundation when he donated the $500 he received with the Downs award (Merritt, 1970a). He also had been Editor of the *Newsletter on Intellectual Freedom.*

At the Detroit Conference in June of 1970, the Foundation's board, newly-elected by the membership, was seated. The new board then elected officers from its ranks and appointed an Executive Committee. Officers included Alex P. Allain as President, Everett Moore as Vice President, Daniel Melcher as Treasurer. The Executive Committee included David Clift, Daniel Melcher, Everett Moore, Richard Waters and Alex Allain (Shields & Burke, 1970). Staff support included Judith Krug as Executive Director and Secretary and William North as General Counsel.

Although the Foundation was established as a separate, legally and financially

independent entity from the ALA, it was considered a sister organization and "integral part of the . . . Association" (Alfred & Curley, 1970a, p. 35). ALA officers were to fill some of its leadership positions, and the Foundation would work in concert with the OIF. As noted, it was determined that the Director of the OIF should also serve as the Executive Director of the Foundation, "for the 'defensive' responsibilities of the Foundation must be intimately coordinated with the 'offensive' educational responsibilities of the OIF" (Alfred & Curley, 1970a, p. 35). So it was that Judith Krug, who was the Director of the OIF, also became the Executive Director of the Foundation, positions she has continued to fill from the inception of both bodies up until the present.

As mentioned above, before the first election was held in May of 1970 and those officers took their places, trustees were designated by the ALA's Executive Board. The FTRF planned to have a board of 15 trustees, 8 of whom would be elected by the body of members and 7 of whom would hold office based on their position in the ALA (Merritt, 1970a). However, the protest over the inclusion of eight ex-officio members of the ALA on the board was heeded, and this plan was altered. During its first meeting, the new board increased the number of board members by adding one elected position and one ex-officio position, to be filled by the Coordinator of the Social Responsibilities Round Table (Merritt, 1970b). (In January 1973, the Foundation formed a subcommittee to consider criticisms about the Foundation, including the priorities and composition of the Board and by June, 1975, it voted to decrease the number of ex-officio positions to four [FTRF Board of Trustees minutes, June 27, 1975].) In its second meeting, the new trustees rearranged the Foundation's priorities, giving precedence to the provision of

personal assistance to librarians suffering adverse consequences of their support of intellectual freedom (Merritt, 1970b). Later, at the 1971 Dallas Meeting, the Board approved plans for the appointment of an advisory council to the Board (Krug & Harvey, 1971b).

Today, as indicated in the Foundation's bylaws, there are three tiers of leadership of the Foundation which are represented by a board of trustees, officers, and committees. The Foundation's business is managed by a board of 15 trustees, 11 of whom are elected by mail ballot by the Foundation's body of membership. The remaining four are the ex-officio trustees by virtue of holding the following specific ALA offices: President, President-Elect, Executive Director, and Chairperson of the Intellectual Freedom Committee. Elected members of the board serve a term of two years, while ALA office holders serve for the length of time they are in office. None of the trustees receives any salary or monetary compensation for their service. Finally, the board has an open meeting policy and liaisons from each ALA Division and Round Table are invited to attend and participate, but are not given the right to vote (FTRF, 2005a).

The Foundation's elected officers include a President, Vice President and Treasurer. These officers are selected once a year by a majority vote of the trustees. (The board can also elect other officers.) Both the Executive Director and Secretary offices are held by the Director of the Office for Intellectual Freedom (FTRF, 2005a).

The Foundation also forms committees, such as the Executive, Nominating and Awards Committees. The Executive Committee consists of the five board members, including the President, Vice President and Treasurer. As early as June, 1970, the

Foundation saw the need for this type of committee, which would be afforded additional authority to conduct certain business affairs, such as granting limited financial assistance without having to call a full board meeting (FTRF Executive Committee meeting papers, June 22, 1972). The Nominating Committee consists of three elected Trustees appointed by the President who, during each election cycle, help select a pool of candidates for the board and disseminate the final election slate to the body of membership (FTRF, 2005a). The Awards Committee handles arrangements for honoring individuals with the Foundation's Roll of Honor Award. Starting in 1987, this annual award has "recognize[d] and honor[ed] those individuals who have contributed substantially to the FTRF through adherence to its principles and/or substantial monetary support" (FTRF, 2006b, ¶ 1).

Anyone can join the Foundation as a member. There are seven categories of membership, each with a successively higher cost, which are, in order of least to most expensive: Student, Regular, Contributing, Sponsor, Organization, Patron, and Benefactor. Each category is determined by one's total contribution of yearly dues, gifts and/or grants, which range from less than $35 to $100,000 and over (FTRF, 2005a). When the Foundation was formed, charter members received certificates printed on parchment paper and dues ranged from $10 for Regular members to $500 and over for Benefactors (Merritt, 1970a; Shields & Burke, 1970).

Over the years, FTRF has struggled to get new members. According to FTRF reports, many ALA members do not realize that the Foundation is a separate entity with a separate membership structure and the Foundation has not succeeded in increasing members' awareness of this. At the time the Foundation filed its first lawsuit in middle of

1972, there were approximately 604 members (Allain, FTRF president's report to the ALA Council, June, 1972). At this time, Allain (June, 1972) made a bold appeal to ALA members to join the Foundation:

> Obviously, 604 members and a fund balance of only $17,982 is not much of an army and artillery with which to wage a war. Therefore, although my rhetoric may be blunt, I call now for each librarian to put his money where his mouth is. (FTRF president's report to the ALA Council, p. 4)

Two years later, in 1974, ALA agreed to include information about FTRF on its annual membership renewal form and the Foundation's ranks nearly doubled to almost 1,200 members (FTRF Board of Trustees minutes, January 19, 1974). A decade later, by May of 1984, levels had not yet exceeded 2,000: the Foundation's total membership was 1,706, 1,404 of whom were personal members (FTRF Board of Trustees minutes, June 1986). As of January, 1995 the numbers had dropped and there were 1,303 members (FTRF Board minutes attachment, 1995). Today, there are approximately 1,878 members (J. Kelley, personal communication, October 9, 2006).

First Actions

The first grants awarded by the Foundation were announced at the June, 1970 Conference in Detroit. Grants of $500 were given to two librarians, Joan Bodger and Ellis T. Hodgin, and $250 to bookstore owner Marshall E. Woodruff's defense fund (Shields & Burke, 1970a). Joan Bodger appealed to the Foundation after she was fired from her job in the Missouri State Library. She claimed that the library, state library commission and University of Missouri had violated parts of the Library Bill of Rights. At the root of this complex case was the University of Missouri's removal of specific

issues of *New Left Notes* and *The Movement* from the student union, and Bodger's letter to her local newspaper protesting the action. A subcommittee investigated the matter and produced a thorough report, based on which it was determined that "Mrs. Bodger had courageously defended the principles of intellectual freedom" (Berninghausen, 1975, p. 136). According to David Berninghausen (1975), who was part of the subcommittee, this was a landmark case because of the thorough process followed to establish and report on the facts. The report served purposes beyond establishing the facts of Bodger's case. It was printed in *American Libraries* as a form of censure to the Missouri State Library Commission and University of Missouri, and served as a way to educate ALA members about the case and the process (Berninghausen, 1975).

Ellis Hodgin required assistance when, in July 1969, he was fired from his job as the City Librarian in Martinsville, Virginia, just four days after he joined a lawsuit protesting a religious education class in the public school system his daughter attended (Krug & Harvey, 1971e). At this time the Foundation was yet unformed, so a group of librarians created the National Freedom Fund for Librarians (NFFL) to provide Hodgin with financial assistance.

The NFFL, though short-lived, served as a stopgap solution to the pressing need for a defense fund for the library profession. On October 5, 1969 it was incorporated as a non-profit organization "to support members of the library profession whose rights – civil, human and professional – have been violated in defense of intellectual freedom" (National Freedom Fund for Librarians [NFFL], News Release, October 5, 1969, p. 1). The creators of the NFFL agreed that, as soon as the ALA established a comparable

mechanism to support the profession, "the organization [would] be disbanded and the treasury and functions turned over to the ALA" (NFFL, News Release, October 5, 1969, p. 1). Later, in 1971, the NFFL disbanded and donated the balance of its treasury to the Merritt Fund (Berry, 1974).

The NFFL provided Hodgin, who was supporting his family and was in desperate need of some relief, with immediate support. At the end of 1969, the following upper-case call to action for Hodgin from the NFFL appeared in the ALA's *Newsletter on Intellectual Freedom*: "IF YOU ARE AS APPALLED AS WE ARE BY THE INACTION OF OUR PROFESSION ON THIS VITAL ISSUE, WE URGE YOU TO DEMONSTRATE YOUR CONCERN IN A CONCRETE MANNER. SEND A CONTRIBUTION TO NATIONAL FREEDOM FUND FOR LIBRARIANS" (Merritt, 1969a, p. 91). (Ultimately, the NFFL raised several thousand dollars for Hodgin [OIF, 2002]). In June 1970, the Freedom to Read Foundation awarded Hodgin an initial grant of $500. Again, in 1971, the Foundation gave Hodgin a second grant of $500 to assist with the preparation of his appeal for a writ of certiorari to the United States Supreme Court (Krug & Harvey, 1971e).

Marshall E. Woodruff, who owned the *Joint Possession*, a bookstore in College Park, Maryland, was convicted and sentenced to six months in jail and given a $1,000 fine for distributing an "obscene" issue of the *Washington Free Press*. At the time the Foundation awarded him the $250, Woodruff's case was in the Maryland court of appeals. The Executive Committee considered providing him with additional assistance in the form of another grant or an amicus brief, but did not follow through (Krug &

Harvey, 1970). The court of appeals overturned the prior conviction, ruling that the portion of the paper in question, a cartoon, was not obscene (Krug & Harvey, 1971d).

The Foundation's support of these three individuals was to some a step in the right direction, but to others it was too little in view of the many other professionals in need of aid. After initially commending the Foundation for awarding the three grants, the Bay Area chapter of the Social Responsibilities Round Table formally reprimanded it, resolving "that the Freedom to Read Foundation be urged to respond with more urgency and more support in the future, in view of its responsibility to provide active assistance to librarians and others who are under censorship attack" (Krug & Harvey, 1971a, p. 8).

Establishment of the LeRoy C. Merritt Humanitarian Fund

> *By unanimous approval of the Board, and with the consent of Mrs. Merritt, the LeRoy C. Merritt Humanitarian Fund was established as a special trust, to be used to provide immediate assistance in instances involving intellectual freedom, when there is not time to establish the facts of a situation. (Allain, FTRF president's report to the ALA Council, January 1971, p. 2)*

Foundation grants were envisioned to provide a safety net to intellectual freedom defenders who were not in a financial position to risk losing their jobs. In this way, librarians would be empowered to take a principled stand without jeopardizing their own or their family's security. However, reviewing requests for grants took time, and the Foundation had strict guidelines for providing assistance. Grants were only awarded when an intellectual freedom concern was at issue and where the facts of a case could be substantiated. Thus, the Foundation quickly realized that it had to establish a more flexible mechanism for providing short-term, immediate, emergency relief to librarians in need of financial assistance. At the Detroit Conference in June 1970, the Foundation's

Board of Trustees created a formal entity, the LeRoy Merritt Humanitarian Fund, to assume this function. In time for the Los Angeles Meeting in January 1971, the Foundation had prepared and executed the necessary legal documents for the Fund. On December 22, 1970, Merritt's widow, Mary Merritt, signed the trust agreement establishing the Fund and donated $500 to its first trustees, Alex P. Allain, Everett Moore, Daniel Melcher, Richard Waters and David Clift (LeRoy C. Merritt Humanitarian Fund [LCMHF], 1970). The stated purpose of the fund, according to the trust agreement, was:

> for the support, maintenance, medical care or welfare of such librarians as are in the trustees' opinion in a position of jeopardy with respect to their present employment as librarians or who have been discharged from any such employment because of their stand for the cause of intellectual freedom, including, but not by way of limitation, the promotion of freedom of the press, freedom of speech and the freedom of librarians to select items for their collections from all of the world's written and recorded information. (LCMHF, 1970, p. 1)

During this meeting, operating procedures were laid out: The FTRF Executive Committee would administer the Fund, according to a trust agreement, grants awarded to individuals would not normally exceed $500, and no more than one grant would be awarded to an individual from the Fund. A dual membership clause was added to the membership eligibility section of the Foundation's bylaws stating that those who donated at least $10 to the Fund were granted membership in the Foundation for the fiscal year in which they made a contribution. Also, it was noted that, under IRS regulations, contributions to the *Fund* were not tax deductible but contributions to the *Foundation* were (Krug & Harvey, 1971c). By May, 31, 1971, contributions to the Fund totaled

$2,390 (Allain, FTRF president's report to the ALA Council, June 1971).

Membership in the Merritt Fund remained low, with only fifty members just over three years after its establishment (LCMHF Board of Trustees minutes, July 4, 1974) and the Foundation was criticized for not spending more time and money promoting it. As Miriam Crawford noted in a November, 1971 Social Responsibilities Round Table Action Council report, the Foundation "was criticized for its failure to include information on the Leroy [sic] Merritt Humanitarian Fund, as a separate membership option, in its current high-priced promotion campaign. Individual protests on the omission are planned by several members" (p. 1).

At the Midwinter Meeting in January, 1974, trustees discussed the possibility of expanding the scope of the Merritt Fund beyond issues of intellectual freedom. Trustees sought approval from Mary Merritt, who considered that "it might be well to add to the concepts of intellectual freedom that there be concern for no discrimination on the basis of sex or race and that support be given when an individual suffers from such discrimination" (letter to Judith F. Krug, June 17, 1974, p. 1). In further elaboration, Merritt wrote that she would prefer to find a way to support "cooperation between sexes . . . promotion of better relations between races . . . giving encouragement to librarians who interpret concepts of intellectual freedom and encourage community cooperation . . . help build concepts as well as to repair when the process falls down" (p. 1). However, Merritt also expressed reservations about broadening the scope too much: "I am not too eager for the special fund to be used where there are personality clashes and where other due processes of law can be followed," and pointed out that a definition of

"humanitarian" ought to be set with specific goals (p. 1). On July 4, 1974, after discussing Mrs. Merritt's views, the Merritt Fund trustees voted to expand the scope of the Fund "to include—in addition to matters of intellectual freedom—discrimination on the basis of sex, sexual preference, race, color, creed, or place of national origin, and violations of employment rights" (LCMHF Board of Trustees minutes, July 4, 1974, p. 2).

The following day, the Foundation expressed concern that the Fund's decision to expand its charge was hasty and, realizing that the two entities now had different missions, "discussed the appropriateness of continuing the close affiliation of the Foundation and the Merritt Fund through dual membership provisions" (FTRF Board minutes, July 5, 1974, p. 4). Further, considering that donations to the Merritt Fund could be made for reasons having nothing to do with the FTRF's focus on intellectual freedom and that the Merritt Fund membership might wish to elect their own trustees, the FTRF voted to sever the dual-membership clause from its constitution and bylaws and considered "establishing the Merritt Fund as an independent agency" (p. 4). By January 17, 1975 a new, independent LeRoy C. Merritt Humanitarian Fund No. 2 was created[5] and the FTRF President, Richard L. Darling (January 22, 1975), wished it well:

> We hope that the . . . Fund, with its enlarged scope making it a broadly-based fund for humanitarian purposes, will continue to have your financial support, and that you will assist us in informing others of its existence and of its enlarged mandate. (FTRF President's report to the ALA Council, p. 5)

Foundation Partners

Over the years, the Foundation has established many partnerships with numerous state library associations, citizens groups, and organizations to strengthen its reach and its

effectiveness in the legal arena. Some of the organizations with which the Foundation has joined forces include the American Association of University Professors, American Booksellers Association, American Booksellers Foundation for Free Expression, American Civil Liberties Union, American Historical Association, American Society of Magazine Editors, American Society of Newspaper Editors, American Society of Magazine Photographers, Association of American Publishers, Center for Constitutional Rights, Center for Democracy and Technology, Council for Periodical Distributors Associations, Electronic Privacy Information Center, International Periodical Distributors Association, Magazine Publishers of America, Media Coalition, Motion Picture Association of America, National Association of Broadcasters, P.E.N. American Center, Playboy Enterprises, Inc., Poets and Writers, Inc., People for the American Way, Reporters Committee for Freedom of the Press, Satellite Broadcasting and Communications of America, Society of Professional Journalists, and Thomas Jefferson Center for Protection of Free Expression.

In 1973, Judith Krug helped co-found Media Coalition, "an association that defends the First Amendment right to produce and sell books, magazines, movies, recordings, videotapes and videogames, and defends the American public's First Amendment right to have access to the broadest possible range of opinion and entertainment" (Media Coalition, 2006, ¶ 1). Media Coalition, which "represents most of the booksellers, publishers, librarians, periodical distributors, recording and videogame manufacturers, and recording and video retailers in the United States" (¶ 2), is a major partner of the FTRF, which regularly provides it with grants to support its efforts. The

Media Coalition extensively researches proposed legislation in the federal, state and local legislative arenas that would impact material protected by the First Amendment. It then compiles regular reports about proposed legislation, distributes this information to its partners, and uses it to educate government officials. Further, the Media Coalition mounts legal challenges to laws impinging on the First Amendment rights of content producers and distributors.

Emerging Identity, 1969 to 1972

> *The Foundation will not simply defend, but must – and will – attack. (Allain, FTRF president's report to the ALA Council, June 1971, p. 1)*

It might easily be assumed that both offensive and defensive actions were a part of the library profession's history in fighting censorship and supporting the Library Bill of Rights, long before the Freedom to Read Foundation was established. However, the Foundation was responsible for launching the library profession's first move on offense. In his report to the ALA Council, FTRF President Alex Allain declared that the FTRF planned to take offensive as well as defensive action in support of the profession's ethics, and articulated the heart and soul of the Foundation's mission. Allain (June 1971) pointed out that the Library Bill of Rights represented the profession's interpretation of the First Amendment, but that it was merely a statement of principle and lacked the force of law (FTRF president's report to the ALA Council). The goal of the Foundation, then, was to "establish legal precedents, through case law, to make the LIBRARY BILL OF RIGHTS not only a statement of principle, but a principle grounded in law and protected and supported by the nation's judiciary system" (p. 1). To achieve this, Allain stressed

that it was imperative for the Foundation to operate on the offensive and challenge restrictive laws. Thus, the profession would have the force of law behind it when resisting pressure to compromise access to materials in library collections, and the Foundation's efforts would "lay the basis for a favorable functioning of intellectual freedom in libraries" (p. 1).

On May 5, 1972, the Foundation launched its first attack with the *Moore v. Younger* suit, a class action challenge to a 1969 California harmful matter statute (Penal Code sections 313 through 313.5). Because librarians were not specifically listed as being exempted, it was thought that, under the statute, librarians would be in criminal jeopardy if they knowingly distributed materials considered harmful to minors.[6] In its challenge, the Foundation attempted to get the statute declared unconstitutional both on its face (prima facie[7]) and as it applied to librarians. While unsuccessful on the former, the Foundation did ultimately secure a favorable ruling on the latter when California Superior Court Judge Robert P. Schifferman declared:

> It was the intention of the Legislature to provide librarians with exemption from application of the Harmful Matter Statute when acting in the discharge of their duties. [Further the court declared] alternatively that the availability and distribution of books at public and school libraries is necessarily always in furtherance of legitimate educational and scientific purposes . . . and accordingly, librarians are not subject to prosecution under the Harmful Matter Statute for distributing library materials to minors in the course and scope of their duties as librarians. (*Moore v. Younger*, 1976)

Dissatisfied with the ruling because it did not invalidate the statute and because of the limited reach of the court, the Foundation pressed on and filed an unsuccessful appeal in the California Court of Appeal, Second Appellate District. The panel of judges agreed

that "plaintiffs . . . have achieved all that they could expect as a result of their attack on the statute as librarians" (*Moore v. Younger*, 1976). While not a sweeping victory for the FTRF, it succeeded in securing a clear exemption for California librarians from the harmful matter statute. In addition, the library profession received accolades from the legal profession for its efforts. In his article for the *University of Cincinnati Law Review*, Professor Robert M. O'Neil stated that the "suit marked the end of an 'era of acquiescence' and commended the library profession for taking the initiative in protecting the legal rights of librarians and their patrons" (FRTF, Tenth anniversary program, 1979, p. 6).

This case would demonstrate the monumental task the small Freedom to Read Foundation had set out to accomplish. Litigation lasted for several years, tying up Foundation resources and drawing criticism from some ALA members who opposed the action. However, *Moore v. Younger* not only represented the first time the librarianship profession went on the offensive against censorship in a court of law, it was also the first time the Foundation entered into a lawsuit, the first suit to be fully funded by the Foundation, and the first action to directly establish legal precedent for principles in the Library Bill of Rights. The case can also be seen to signal the Foundation's identity that emerged from the fierce debate, and mark the first fulfillment of the Foundation's true reason for existing. The FTRF was not evolving into an organization that would use the law to defend individual librarians on a case-by-case basis, as so many had hoped. Instead, as Allain described it, the Freedom to Read Foundation chose a far more ambitious approach—to *change* the law and, further, establish the legal precedents by which future laws would be measured. These were heady times undergirded by hard

work, patience and optimism. In the decades following Allain's call to arms, the Foundation slowly grew, learned the ropes, developed a network of allies, attracted some of the most prestigious lawyers in the country, had its days in court and became a powerful force in the legal arena. With each decade, the Foundation took on a new area of focus. By the close of each decade, it had succeeded in changing the law in the area to which it had applied itself.

Foundation Business: The 1970s

In 1970 and 1971, the Foundation developed and planned its strategy for the coming decade. For the bulk of the 1970s, the FTRF planned to focus its efforts on obscenity laws and harmful matter statutes, also known as "variable obscenity" laws. This strategy of attack was not immediately articulated to the membership until after the Foundation had filed the *Moore v. Younger* lawsuit. According to then-President Alex Allain (June 1972), the Foundation did not want to jeopardize its plan or position:

> I described the latter half of 1971 as a period when the . . . Foundation was "building a base for future actions". I could not detail the nature of the "base" nor the "future action", because I did not wish to jeopardize the Foundation's plan or position. (FTRF president's report to the ALA Council, p. 1)

By June, 1972, the Foundation had reviewed U.S. harmful matter statutes and determined that 39 states had statutes similar to California's, and only 11 of those specifically exempted libraries from criminal prosecution. Further, the FTRF found that at least three states were "influenced by such statutes to change existing selection or circulation policies" (FTRF president's report to the ALA Council, June 1972, p. 3). In addition, the Foundation discovered that several states were in the process of revising

obscenity laws "to eliminate the requirement that a work be totally lacking in socially redeeming value to be deemed obscene" (p. 3). Thus, the groundwork was laid and the Foundation had its work cut out for the coming decade. With the exception of filing suit in *Moore v. Younger*, its actions in the 1970s were limited to the less costly actions of awarding grants and filing amicus curiae, or friend of the court, briefs, where it enjoyed numerous successes and endured some defeats. At this time, the Foundation was primarily represented by William D. North, who served as counsel for the Foundation from 1969 to 1980 (and later served as President from 1981 to 1984), with support from Alex P. Allain as special counsel starting in 1974.

As the Foundation made its debut in the courts, the Supreme Court was on the verge of redefining the legal test for obscenity from the old standards derived from the 1957 case, *Roth v. United States*, to a new one cobbled together from an array of 1973 cases including: *Miller v. California*, *Paris Adult Theatre I v. Slaton*, *Kaplan v. California*, *United States v. 12 200-Ft. Reels of Super 8mm*, and *United States v. Orito* (Tedford, 1997, p. 139). The bulk of the new test for determining whether something is obscene, called the "Miller Test," came out of the Supreme Court's decision in *Miller v. California* in 1973. The guidelines set forth in the case are as follows:

> The basic guidelines for the trier of fact must be: (a) whether "the average person, applying contemporary community standards" would find that the work, taken as a whole, appeals to the prurient interest . . . (b) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law, and (c) whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value. (*Miller v. California*, 1973)

The court used the other three cases to further interpret the Constitution in terms of

obscenity. The Freedom to Read Foundation was involved in one of those cases, *Kaplan v. California* (1973), which the Supreme Court used to further emphasize that states could use local standards, as opposed to one standard for all states, "to decide the matter of prurience, that limiting the sale of sexual materials to adults did not result in constitutional protection, and that government prosecutors need not call 'expert' witnesses to prove that the materials were obscene" (Tedford, 1997, p. 141). The court also used *Kaplan* to assert that no medium of expression was exempt from scrutiny: "Obscenity can . . . manifest itself in conduct, in the pictorial representation of conduct, or in the written and oral description of conduct" (p. 141).

The battle over obscenity laws which the Foundation took up was, indeed, timely. Tedford (1977) points to reports in the ALA's *Newsletter on Intellectual Freedom* about attacks on adult movie theaters and bookstores, libraries, mainstream movies at this time. He states that, as a result of the Supreme Court's newly revised stance on obscenity:

> A new campaign of censorship was under way in America—a campaign that continues to the present day, and that targets a wide variety of forms of expression including art exhibits, museum exhibits, dramatic productions, sex education materials, music groups and their recordings, films and videos, and printed materials sold by newsstands. (p. 144)

From the 1970s until the present, the Foundation has supported various types of obscenity cases in numerous states, including: California, Colorado, Georgia, Indiana, Illinois, Iowa, Kansas, New York, Ohio, Pennsylvania, Tennessee, Texas, Virginia, and Washington. The numerous cases in which FTRF has participated in defense of First Amendment rights have involved questioning or attempting to clarify diverse issues, such as: aspects of the Miller Test (e.g., *Smith v. United States* from 1975 to 1977, *Lo-Ji Sales*

v. New York in 1979, *Penthouse v. McAuliffe* from 1979-1981, and *Pope v. Illinois* in 1986); laws restricting the sale and distribution of films (*Jenkins v. Georgia* in 1974, a grant given to Harry Reems legal defense fund in 1976, and *Vance v. Universal Amusement Co.* in 1979); actions restricting public display of sexually-explicit material (*American Booksellers Association v. Rendell* in 1981, *M.S. News Co. v. Casado* in 1983 and *Playboy v. Deters* in 1995); controlling adult theaters and bookstores through zoning and licensing (*FW/PBS, Inc. v. City of Dallas* in 1989, *City News and Novelty v. City of Waukesha* in 2000, *City of Los Angeles v. Alameda Books, Inc.* in 2001 and *City of Littleton, Colorado v. Z.J. Gifts* in 2004); laws restricting the distribution of sexual education materials (*St. Martin's Press v. Carey* in 1978); limits on pornography as an offense against women (*American Booksellers Assn v. Hudnut* from 1984 to 1986); defining child pornography (*New York v. Ferber* in 1982, *Knox v. United States* from 1993 to 1994 and *United States v. X-Citement Video, Inc.*[8] in 1994); and state and local obscenity, public nuisance and harmful to minors statutes and laws (*American Booksellers Assn v. Leech* and *Spokane Arcades v. Ray* in 1978, *Maryland v. Macon* and *Brockett v. Spokane Arcades, Inc.* in 1984, *American Booksellers Assn v. Virginia* in 1987, *Davis-Kidd Booksellers, Inc. v. McWherter* from 1990 to 1992, *Tennessee v. Marshall* in 1990, *Finley v. National Endowment for the Arts* in 1998 and *Shipley v. Long* in 2003). (The cases mentioned here do not represent the shift of the battleground regarding obscenity and pornography to the Internet in the late 1990s and through the 2000s. Those cases are discussed later.)

The Foundation also acted on other issues besides obscenity and harmful matter in

the 1970s, some of which impacted access to information outside library walls. For example, in 1973, the Foundation awarded a grant to the Pentagon Papers Fund to help pay for the defense of Anthony J. Russo Jr. and Daniel Ellsberg, who were being prosecuted for their involvement in leaking a classified study about U.S. decision-making and policy in the Vietnam War (*New York Times Co. v. United States*). And, in 1979, the Foundation joined a friend of the court brief to the U.S. Court of Appeals for the Seventh Circuit, helping *The Progressive Magazine* successfully lift the government's permanent restriction of their right to publish an article[9] detailing the design of a hydrogen bomb (*U.S. v. Progressive, Inc.*).

From a legal standpoint, these last deserved the FTRF's attention because they represented issues that would impact library cases, given that both are instances of the government's use of prior restraint to block access to information on the pretext of protecting the country's national security interests. Although these cases involve magazines and newspapers and not libraries directly, in principle the public's ability to read what is written and hear what is said would have been impaired if the government had succeeded in restricting the information contained in them. Prior restraint amounts to suppressing speech before it actually occurs, which might also be thought of as the government quashing the ability of someone to express his or her particular point of view. In other words, the government placed a burden on communication in general—action that runs counter to the principles of librarianship. Since the 1970s, the Foundation has fought instances of prior restraint for national security reasons in cases that involved restricting material in publications about the Central Intelligence Agency in

1979 (*Knopf v. Colby*), cryptology from 1983 to 1985 (*ALA v. Faurer*), and U.S. income tax collection methods in 2003 (*United States v. Irwin Schiff, et al.*), blocking the export of documentary films from 1984 to 1988 (*Bullfrog Films, Inc. v. Wick*), requiring certain imported documentary films to be labeled as propaganda in 1987 (*Meese v. Keene*), restricting access to presidential papers from 2002 to 2006 (*American Historical Association v. National Archives and Records Administration*), withholding documents related to the implementation of Section 215 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT Act) in 2002 to 2003 (*ACLU v. Department of Justice*), and suppressing speech with USA PATRIOT Act gag order provisions on national security letter recipients from 2003 to 2006 (*Muslim Community Association of Ann Arbor v. Ashcroft*, *Doe v. Gonzales*).

In terms of some of its attacks on obscenity laws, the Foundation was attempting to chip away at and weaken a legally sanctioned form of prior restraint. Obscenity is illegal, so it does not enjoy any protection under the First Amendment. However, the process of defining just what makes speech or expression obscene is difficult if not impossible, as some would argue, just as it is difficult to define pornography, which is protected under the First Amendment. Frustration over defining obscenity is expressed in these often-repeated words uttered by Justice Potter Stewart in 1964: "I shall not today attempt further to define the kinds of material I understand to be embraced . . . but I know it when I see it." (Silver, 2003). By attacking the legal definition and application of obscenity, the Foundation has helped open up areas of previously legally restricted forms

of speech.

Foundation Business: The 1980s

Toward the end of the 1970s, the Foundation began to turn its attention toward one of the key battlegrounds of the following decade—censorship in America's schools. Although the Foundation was developing the capacity to do battle on many fronts, support for the freedom to read in high schools across the country became an important area of concern, as the 1980s saw a surge in challenges to materials in school libraries and media centers. To help stretch its limited resources further in this particular area, Judith Krug forged and strengthened alliances with the ACLU. As a result, cooperation with ACLU chapters around the nation appears to have blossomed in the 1980s.

Also in the 1980s, long-time General Counsel William North stepped down and was replaced by one of the nation's most influential First Amendment attorneys, Bruce Ennis, who served as General Counsel from 1985 until his death in 2000. Prior to representing FTRF, Ennis had served as National Legal Director for the American Civil Liberties Union for 5 years, from 1976 to 1981. In his career, Ennis worked before the U.S. Supreme Court in more than 250 cases, as counsel or friend of the court, including the aforementioned *U.S. v. Progressive, Inc.* (1979) and the Pentagon Papers case, *New York Times Co. v. United States* (1971, Hudson, 1998).

While the Foundation supported legal action in schools, the OIF, also in cooperation with the ACLU, pursued an educational campaign, and the IFC and American Association of School Librarians (AASL) worked to update policy. In 1967 the Library Bill of Rights had been amended to oppose age-based barriers to access to library

materials, an act that made the School Library Bill of Rights redundant, so in 1976 the AASL "withdrew the School Library Bill of Rights and endorsed the Library Bill of Rights" (OIF, 2006, p. 107). By the 1980s, as challenges to materials in school libraries mounted, a clear interpretation of the Library Bill of Rights "that spoke directly to the unique role of school libraries and media centers in the educational process" (OIF, 2006, p. 107) was needed. From 1985 to 1986, the IFC and AASL drafted an interpretation to help guide the selection process for school librarians according to intellectual freedom principles, and "Access to Resources and Services in the School Library Media Program" was adopted by ALA council at the 1986 Annual Conference in New York (OIF, 2006, p. 107).

The Foundation provided assistance, in the form of grants, legal advice and amicus curiae briefs, for school library cases in the states of Alabama, California, Florida, Indiana, Massachusetts, New York, Oklahoma, Vermont, and Washington. Spanning the late 1970s and 1980s, these cases were mounted in opposition of such issues as book and magazine removals (*Right to Read Defense Committee of Chelsea v. School Committee of Chelsea*, 1976; *Board of Education Island Trees School District v. Pico*, 1982; *Lamb v. Independent School District 719*, 1978; *Bicknell v. Vergennes Union High School Board of Directors*, 1980; *English v. Evergreen School District*, 1984 and *Faulkenberry v. Board of Education, Sallisaw Public Schools*, 1985); student press rights (*Robertson v. Special School District No. 1*, 1984; *Pagitt v. Independent School District No. 270*; 1985 and *Bystrom v. Fridley High School Independent School District No. 14*, 1987); and restrictions on materials selection for libraries and courses, including books and

textbooks (*Zykan v. Warsaw Community School Corp.*, 1980; *McCarthy v. Fletcher*, 1986; *Smith v. Board of Commissioners of Mobile County*, 1987 and *Virgil v. School Board of Columbia County*, 1989) and films (*Pratt v. Independent School District 831*, 1982). Other school cases in which the Foundation fought included restrictions on student speech (*Fraser v. Bethel School District No. 403*, 1986) and on the rights of others to speak to students in schools (*Stark v. Special School District No. 1*, 1983; *Stark v. Independent School District No. 179*, 1983 and *Stark v. Osseo School District*, 1983). In some of these cases, the Foundation awarded several grants to help defray legal expenses of ACLU chapters in Indiana, New York and Vermont and, on at least six occasions, Minnesota.

To provide a small amount of legal context, the 1969 *Tinker v. Des Moines Independent Community School District* case opened the door for subsequent cases dealing with First Amendment rights in schools. As legal scholar Thomas Tedford (1997) explains, in the *Tinker* decision, "the U.S. Supreme Court announced that the First Amendment is 'available' to teachers and students in the school environment so long as the expression in question does not disrupt the educational process" (p. 312). *Tinker* provided an opening in this area and later the Foundation undertook to defend and expand protection for free speech and expression in the schools. But there is risk involved in trying to shape the law. A party can win and establish legal precedent on which to build further cases, or a party can lose and thus help build limits in the law which can hamper future efforts. Two cases in which the Foundation participated demonstrate both the rewards and pitfalls of trying to shape the law: *Bethel School District No. 403 v. Fraser*

(1986), which narrowed the rights opened up by *Tinker*, and *Pico v. Board of Education, Island Trees Union Free School District No. 26* (1982), which supported the rights given in *Tinker*.

The *Bethel* case was prompted by a high school student's speech nominating a friend for office in the student government at a school assembly. The whole speech "referred to the candidate in terms of sexual metaphor, employing such phrases as 'he's firm in his pants . . . his character is firm,' [and] 'a man who takes his point and pounds it in'" (*Bethel School District No. 403 v. Fraser*, 1986). Because the content of the student's speech was viewed as inappropriate, elicited a raucous response from some students and embarrassed others, and because a teacher felt it necessary to take time to discuss the speech with a class that day, the student was suspended according to the school's policy stating that "conduct which materially and substantially interferes with the educational process is prohibited, including the use of obscene, profane language or gestures" (*Bethel School District No. 403 v. Fraser*, 1986). At issue in the case was whether a school could punish a student for delivering a bawdy speech at a high school assembly or whether the student's speech was protected by the First Amendment. The district and appeals courts ruled in favor of the student and found that, in punishing him for the speech, the school violated the student's First and Fourteenth Amendment rights. The Supreme Court, however, reversed the lower court decisions and held that the student's rights were not violated. As Tedford (1997) points out, "in so ruling, the High Court made an exception to Tinker, announcing that 'vulgar and lewd speech' by students undermines 'the school's basic educational mission' and is not, therefore, protected by the First Amendment" (p.

312).

Whereas the *Bethel* case had a negative outcome for First Amendment protections in schools, the *Pico* case resulted in a significant victory. In fact, some consider it to be the most important decision to date in terms of school libraries and the First Amendment (Mullally, 2006). The *Pico* case was prompted when a local school board decided to remove several books from the district's high school and junior high school libraries against the advice of parents and school staff. The books removed from the high school library were: *Go Ask Alice*, by an anonymous author; *A Reader for Writers*, edited by Jerome Archer; *A Hero Ain't Nothin' but a Sandwich*, by Alice Childress; *Soul on Ice*, by Eldridge Cleaver; *Best Short Stories of Negro Writers*, edited by Langston Hughes; *The Fixer: A Novel*, by Bernard Malamud; *The Naked Ape: A Zoologist's Study of the Human Animal*, by Desmond Morris; *Down These Mean Streets*, by Piri Thomas; and *Slaughterhouse-Five*, by Kurt Vonnegut Jr. In defense of its action, the board described the books as being "'anti-American, anti-Christian, anti-[Semitic], and just plain filthy,' and concluded that . . . '[it] is our duty, our moral obligation, to protect the children in our schools from this moral danger as surely as from physical and medical dangers'" (*Pico v. Board of Education, Island Trees Union Free School District No. 26*, 1982).

At issue in the *Pico* case was whether the school board's removal of books from its school libraries, based on their content, had violated the students' rights under the First Amendment. Led by high school student Stephen Pico, students brought suit against the board in District court, and alleged that the board's removal of the books "because of offense to its social, political, and moral tastes—denied them their rights under the First

Amendment" (*Pico v. Board of Education, Island Trees Union Free School District No. 26*, 1982). The students lost the case. On appeal to the Second Circuit Court, the decision was reversed. The Supreme Court agreed to hear the case and, in a highly fractured plurality opinion, ruled in favor of the students, concluding that a school board "may not exercise arbitrary censorship over the holdings of a school library. Before removing a book *that is already on the shelves* of a school library . . . the board must give constitutionally sound reasons for its actions" (emphasis added, Tedford, 1997, p. 313). As Justice Blackmun (1982) stated in partial concurrence with the judgment, "School officials may not remove books for the purpose of restricting access to the political ideas or social perspectives discussed in them, when that action is motivated simply by the officials' disapproval of the ideas involved" (*Pico v. Board of Education, Island Trees Union Free School District No. 26*).

Foundation Business: The 1990s to the Present

In the 1990s, the Foundation tackled emerging issues having to do with content on the Internet and the role of the library as a type of public forum, in addition to continuing work on cases involving obscenity and pornography, book removals in school and other libraries, and other First Amendment issues in schools and society. Two landmark cases stand out as the most significant of the decade: *Kreimer v. Bureau of Police for Morristown*, which established the public library as a limited public forum in 1992, and *Reno v. ACLU*, in which the U.S. Supreme Court struck down the Communications Decency Act in a unanimous 9 to 0 vote in 1997.

In *Kreimer v. Bureau of Police for Morristown* (1992), a homeless man, Richard

Kreimer, was expelled from the Joint Free Public Library of Morristown, New Jersey, at least five times in 1989 for violating the library's policies for patron conduct. According to Kreimer, he used the library to read or sit in silent contemplation. According to the library, Kreimer's presence was disruptive and included following patrons, staring at them, talking loudly and possessing a powerfully unpleasant body odor. Feeling that his rights were trampled, Kreimer filed suit in district court claiming that the library's patron conduct policies were "facially invalid under the First Amendment, made applicable to the states by the Fourteenth Amendment, as well as under the due process and equal protection clauses of the Fourteenth Amendment, and similar provisions of the New Jersey Constitution" (*Kreimer v. Bureau of Police for Morristown*, 1992). At issue was if Kreimer's access to a public library could be constrained and, if so, whether the library's reasons for restricting his access were constitutionally valid. The district court sided with Kreimer and prohibited the library from enforcing its policies, so the library appealed. The court examined two main issues to decide: (a) whether the library constituted a public forum—such as a park or street corner where speech is heavily protected as opposed to private property, for example, where greater restrictions can be placed on speech—and, considering that, (b) if Kreimer's First Amendment right to access information in the library could be legally constrained in any way (e.g., time, place or manner). The higher court reversed the decision and held that even though the right to receive information is protected by the First Amendment, the library was a designated or, limited, public forum, and the rules governing patron access that it used to remove Kreimer were reasonable. As Chmara (2006) explains, the court said:

> Public libraries are quintessential public forums for *access to information*, but . . . the library has the right to establish reasonable rules governing library use and that the library's power to regulate patron behavior is not limited to cases of "actual disruption" . . . the library may regulate nonexpressive activity designed to promote safety or efficient access to materials. (OIF, p. 372)

Designated public forum status for public libraries is significant, in part, because it becomes difficult to legally enforce content-based restrictions in that sphere. As Chmara (2006) explains, once an entity gains this status, certain actions fall under strict scrutiny of the courts: "any content-based restrictions will be evaluated to determine if the government has a compelling interest for the restriction and whether the restriction is narrowly tailored to achieve that interest" (OIF, p. 371). Later, the Foundation would point to the library's public forum status in trying to overturn laws requiring the use of filtering software in libraries.

The *Kreimer* case prompted the ALA Intellectual Freedom Committee to craft new policy and generate awareness in the library profession about the importance of carefully articulating and applying patron behavior rules in light of constitutional standards. The IFC set to work immediately following the district court's 1991 decision and, by the 1993 Midwinter Meeting in Denver, Colorado, "adopted the final version of Guidelines for the Development of Policies and Procedures regarding User Behavior and Library Usage" (IFC, 2006, p. 286).

Reno v. ACLU (1997) was the first case to address First Amendment rights on the Internet, and the courts had to decide which legal standards would apply to speech in that medium. According to the Foundation's general counsel, Bruce Ennis, those endorsing looser standards for governmental control thought the standards used to review broadcast

media (e.g., television) should be applied to Internet speech, because those regulations "are not subject to the same level of scrutiny as, say, restrictions on print media" (Hudson, 1998, ¶ 8). Ennis disagreed, believing that stricter standards, such as those used for print media, were more appropriate for the medium. He "argued that the government should have to clear a very high hurdle when restricting speech on the Internet, [and] that there should be a very stringent standard of review" (¶ 9).

The case was prompted by the passage of the Communications Decency Act (CDA), one of seven parts of the Telecommunications Act of 1996 (PL 104-104, 110 Stat 56), which placed severe limits on the free flow of ideas on the Internet. The CDA caused considerable alarm because it sought to block individuals aged 18 or younger from accessing "indecent" material or "patently offensive" speech on the Internet by placing criminal sanctions on *all* content providers, from regular citizens to businesses. Contested provisions of the Act prohibited:

> (1) . . . the knowing transmission, by means of a telecommunications device, of "obscene or indecent" communications to any recipient under 18 years of age; and (2) . . . the knowing use of an interactive computer service to send to a specific person or persons under 18 years of age . . . or to display in a manner available to a person under 18 years of age . . . communications that, in context, depict or describe, in terms "patently offensive" as measured by contemporary community standards, sexual or excretory activities or organs. (*Reno v. ACLU*, 1997)

Criminal sanctions were severe: "Violators . . . face penalties including up to 2 years in prison for each violation" (*Reno v. ACLU*, 1997) "and / or fines up to $250,000" (OIF, 2006, p. 396). According to Krug (2006), the Act "put libraries and librarians at risk because the term 'indecent' was not defined . . . and, without a definition, librarians had no guidepost" (OIF, p. 396).

The same month that President Clinton signed the act into law (February 1996), two challenges, one led by the ALA and the other by the ACLU, were brought in the district court for the Eastern District of Pennsylvania on behalf of numerous interest groups besides the library profession, "including organizations and individuals who were involved with the computer or communications industries, the publication or posting of materials on the Internet, or citizen groups" (*Reno v. ACLU*, 1997). These two suits were consolidated into one, review was expedited, and the action was put on the fast track to the Supreme Court. This meant that, because of the importance of the case, it would go directly to the high court instead of first being heard at the appeals court level. The lower court ruled that the contested provisions of the CDA were unconstitutional and allowed enforcement of those to be blocked.

On appeal before the Supreme Court, the Foundation's lawyer, Ennis, opened his oral argument with the following points summarizing the problem with CDA and why its enforcement should be blocked:

> There are four reasons why the preliminary injunction should be affirmed. The CDA bans speech. It will not be effective. There are less-restrictive alternatives that would be much more effective. And the combination of an imprecise standard, coupled with the threat of severe criminal sanctions, will chill much speech that would not be indecent. (Cable News Network, 1997, p. 33-34)

The court was persuaded by Ennis's arguments and the Foundation was victorious. As a result, the Supreme Court unanimously affirmed the district court's decision and gave Internet speech the highest level of First Amendment protection.

In the wake of *Reno v. ACLU*, Congress, as well as the states, designed new laws aimed at restricting access to content on the Internet. State-level harmful-to-minors

Internet statutes similar to CDA, called "mini-CDAs," sprang up around the country but, armed with the favorable ruling in *Reno v. ACLU*, the Foundation was able to beat them back. The Foundation has supported challenges to these laws in many states across the country, including: New York (*ALA v. Pataki* in 1996)[10], New Mexico (*ACLU v. Johnson* in 1999), Virginia (*PSINet Inc. v. Chapman*, from 1999 to 2004), Michigan (*Cyberspace Communications v. Engler* in 1999), Arizona (*ACLU v. Goddard* in 2001), Vermont (*American Booksellers Foundation for Free Expression v. Dean* from 2001 to 2003), Ohio (*American Booksellers Foundation for Free Expression v. Petro* from 2002 to 2004) and Utah (*The King's English v. Shurtleff* from 2005 to 2006). During this period when the FTRF was mounting challenges to Internet, Theresa Chmara became the Foundation's General Counsel in 2000. Chmara would lead the charge in *United States v. ALA* (2003), which is one of the most significant cases involving a Federal Internet law.

The Foundation has assisted three major challenges to Federal laws related to computers or content on the Internet in addition to the Communications Decency Act of 1996: Child Pornography Prevention Act of 1996 (CPPA), the Child Online Protection Act of 1998 (COPA), and the Children's Internet Protection Act of 2000 (CIPA). The CPPA sought to extend the legal definition of child pornography in order to ban content such as computer-generated renditions of children engaged in sexual activity, or "virtual child pornography," even if its creation did not involve any minor children. This kind of content might "appear to depict minors but [was] produced by means other than using real children, as, for example, computer-generated images and images of adults who looked like minors" (*Ashcroft v. Free Speech Coalition*, 2002). Two cases addressed the

act, *United States v. Hilton* (1998) and *Ashcroft v. Free Speech Coalition* (2002). In the former, the U.S. Court of Appeals for the First Circuit found the provision of the Act constitutional but in *Ashcroft v. Free Speech Coalition* (2002), the Supreme Court declared that it violated the First Amendment for numerous reasons, including:

> (a) virtual child pornography, unlike real child pornography, was not intrinsically related to the sexual abuse of children, as the causal link between such virtual images and actual instances of child abuse was contingent and indirect; [and] (b) some works in the category of child pornography might possibly have significant literary or artistic value.

The COPA, also known as "Son of CDA" or "CDA II," was a revised version of the CDA, in which Congress sought to repair the defects in CDA found by the Supreme Court. Major differences in the laws include limiting the threat of criminal sanctions to commercial content providers instead of all Americans, lowering the age of restricted access from 18 to 17, and describing the type of speech it sought to restrict as harmful to minors, as opposed to "indecent" and "patently offensive"—vague terms which had no applicability to the law. Since 1998, the case over the COPA, now *Gonzales v. ACLU*, has not been resolved. In 1999, it was declared unconstitutional in the Philadelphia district court which blocked enforcement of the law, in 2000, the Third Circuit Court of Appeals affirmed the decision, and in 2002 the Supreme Court agreed that the law should not be enforced but sent the case back to the lower courts. In 2004 the Supreme Court reviewed the case a second time but remanded it to the lower courts again to determine whether "the law is the least restrictive means of protecting children from Internet pornography, or if internet filters or other technology can provide the same protections for children while maintaining the First Amendment rights of adults" (Media Coalition,

n.d., ¶ 1).

The CIPA mandated that libraries and schools adopt an Internet safety policy which incorporated the use of Internet filters on all computers to block "pornographic computer images" (*United States v. ALA*, 2003) in order to receive federal E-rate discounts and certain types of funding under the Library Services and Technology Act or the Elementary and Secondary Education Act (OIF, 2006). Unlike the CDA or COPA, this legislation did not seek to protect children from illegal or age-inappropriate content by threatening criminal penalties. Instead, the CIPA presented a "solution" and sought to compel schools and public libraries to comply with it by tying it to federal funding. The primary issue at stake in the challenge to this Act (*United States v. ALA*, 2003) was the efficacy of Internet filtering. The library profession opposed mandatory filtering mainly because the software lacked precision in filtering content. Librarians knew that the software either overblocks speech protected by the Constitution, which deprives library patrons of access to information they seek, or underblocks content that is not protected by the Constitution (i.e., child pornography and obscenity)[11] thus failing to shield patrons from illegal material. An additional issue was if all computers employed filtering software, adults would be denied access to content only restricted for children. Further, it was thought that decisions about how to handle Internet access should be made on a local level through policy shaped by individual communities to address their specific needs and concerns, and through educational programs that might address, for example, safety, privacy, and how to search or determine the authority of a given resource.

In 2002, the district court declared the CIPA unconstitutional in *United States v.*

ALA and blocked its enforcement. As with CDA, the appeals court level was bypassed and the case went directly to the Supreme Court, which did not accept the library profession's arguments and upheld the constitutionality of the Act. Some believe that the high court might have struck down CIPA but for the Solicitor General's last-minute introduction of the previously undeclared notion that filters could be disabled for adults upon request (OIF, 2006). Although the ruling was a blow for libraries,[12] the Foundation is determined to carry on the challenge to the CIPA on an "as-applied" basis.[13] In other words, as libraries and schools try to comply with the Act, constitutional issues revolving around access to legal content are bound to arise, considering the flaws with filtering software and foreseeable difficulties with disabling the software. As some of the narrators explain in their interviews below, someday, someone, somewhere will face an immovable barrier to the information they seek—information they might desperately need. When the opportunity presents itself, the Foundation will be there waiting to support a challenge to the rules of CIPA as they apply to the everyday realities of Internet access in schools and libraries.

ALA has formed new policy and developed substantial resources in response to laws affecting access to computerized information, as well as the many issues and questions surrounding the presence of this new medium in libraries. In January, 1996, the ALA Council adopted the new interpretation of policy, "Access to Electronic Information, Services, and Networks: An Interpretation of the Library Bill of Rights," and, in 1997, the IFC issued supporting materials for further clarification (OIF, 2002). The interpretation asserted that:

> Issues arising from the still-developing technology of computer-mediated information generation, distribution, and retrieval need to be approached and regularly reviewed from a context of constitutional principles and ALA policies so that fundamental and traditional tenets of librarianship are not swept away.
>
> Electronic information flows across boundaries and barriers despite attempts by individuals, governments, and private entities to channel or control it. Even so, many people, for reasons of technology, infrastructure, or socio-economic status do not have access to electronic information. (p. 80-81)

Policy was adjusted to address computerized information in consideration of such areas as user rights (e.g., Guidelines for the Development and Implementation of Policies, Regulations and Procedures Affecting Access to Library Materials, Services and Facilities; Free Access to Libraries for Minors; Access to Resources and Services in the School Library Media Program; and Access for Children and Young Adults to Nonprint Materials and Privacy: An Interpretation of the Library Bill of Rights), equity of access (e.g., 50.3 Free Access to Information; 53.1.14 Economic Barriers to Information Access; 60.1.1 Minority Concerns Policy Objectives; 61.1 Library Services for the Poor Policy Objectives; Economic Barriers to Information Access: An Interpretation of the Library Bill of Rights; and Resolution on Access to the Use of Libraries and Information by Individuals with Physical or Mental Impairment), and ethical obligations to provide information and access (e.g., 53.1.17, Resolution on the Use of Filtering Software in Libraries and Diversity in Collection Development, ALA, 2006i). Following this, the ALA produced the "Libraries and the Internet Toolkit." This rich resource addresses issues that surfaced in the wake of the Internet cases, such as information about the CIPA, help with Internet use policy formation, information about filters, and matter related to children's access (ALA, 2005e). Further, the ALA produced a CIPA resource,

which is devoted to helping libraries understand and comply with the Children's Internet Protection Act.

Of the many issues the Foundation has tackled in its history, a subset has had to do with punishing producers or consumers of violent content and restricting children's exposure to violence. The Foundation has helped with challenges to penalties against content thought to elicit violence (*Niemi v. National Broadcasting Co.* from 1977 to 1978, *Soldier of Fortune Magazine v. Braun* in 1992, *Rice v. Paladin Enterprises, Inc.* in 1997, and *Byers v. Edmondson* in 1998), laws regarding hate symbols (*R.A.V. v. City of St. Paul* in 1991 and *Yahoo! v. La Ligue Contre Le Racisme et L'Antisemitisme* in 2001), restricting minors' access to violent video games (e.g., *American Amusement Machine Association v. Kendrick* in 2000, *IDSA v. St. Louis County* from 2002 to 2003, and *Video Software Dealers Association v. Maleng* in 2004); and against an Ohio statute defining violence as harmful to minors, among other things, (*American Booksellers Foundation for Free Expression v. Petro* in 2002).

Current challenges: Post-9/11

In this decade, the Foundation has been faced with issues spawned, in part, by violence—namely, the attacks of September 11, 2001. In its response to these attacks, the U.S. government has pursued aggressive national security and defense measures supported by legislation such as the USA PATRIOT Act of 2001, which many critics claim have obstructed the free flow of ideas vital to the healthy functioning of a democratic society:

The United States is at risk of turning into a full-fledged surveillance society. The

> tremendous explosion in surveillance-enabling technologies, combined with the ongoing weakening in legal restraints that protect our privacy mean that we are drifting toward a surveillance society. (Miranda, A. S., as cited in ALA, 2006j)

In the context of these actions, coupled with policy swing by the current Bush administration toward less transparent government (reminiscent of the Nixon and Reagan administrations), access to information has been fettered, information providers and seekers harried, and the freedom of citizens to seek out information in libraries, bookstores, databases and the like has been chilled by concerns about privacy and confidentiality and fear of reprisal.

The issue of government spying in libraries is not a new one for the Foundation. As discussed below in the chapter about Zoia Horn, in the early 1970s, former Foundation board member Horn experienced issues related to the FBI using, in part, her library to spy on individuals opposed to the Vietnam War. While part of the Foundation, the LeRoy C. Merritt Humanitarian Fund awarded Horn a grant of $500 in support of her act of civil disobedience in refusing to testify in a trial related to the matter. In 1987, when the FBI Library Awareness Program was exposed, which is detailed below in the chapter about C. J. Schmidt, the Foundation considered challenging the FBI's activities in court. However, as former Foundation President C. James Schmidt explained at the time, the Foundation considered it too risky:

> To succeed in a lawsuit, we would have to sustain challenges to our standing and prove that the purpose of the FBI Library Awareness Program is to stifle or limit speech. The record as we now know it would make supporting this claim difficult. Second, strategically, if we were to file a lawsuit with a low prospect for success, we run the risk of establishing negative precedent on the issue of our standing to sue. We also risk undermining the credibility of the library profession's opposition to the FBI Library Awareness Program, because a

> government victory in court, even if only on standing rather than the merits, might be seen by the public as a judicial endorsement of the Program. (As cited in Foerstel, 1991, p. 122)

The ALA has developed policy in response to the chilling effect of government impositions on the flow of information in libraries, which it has grouped into the three categories of confidentiality, privacy and governmental intimidation. The "Policy on Confidentiality of Library Records" was adopted in 1970 following reports of U.S. Treasury agent requests for circulation records in public libraries in the states of Wisconsin, Ohio, California and Georgia (OIF, 2006). Following the passage of the USA PATRIOT Act, extensive guidelines to accompany this policy were expanded to help librarians "cope" with law enforcement requests. The policy's opening section paints a dire state of affairs:

> Increased visits to libraries by law enforcement agents . . . are raising considerable concern among the public and the library community. These visits are not only a result of the increased surveillance and investigation prompted by the events of September 11, 2001, and the subsequent passage of the USA PATRIOT Act . . . but also as a result of law enforcement officers investigating computer crimes, including e-mail threats and possible violations of the laws addressing online obscenity and child pornography. (OIF, 2006, p. 304)

ALA's "Policy on Governmental Intimidation," adopted in 1971, was drafted in part by Zoia Horn in response to FBI activities in and around the Bucknell University campus community and library where she worked. The "Policy Concerning Confidentiality of Personally Identifiable Information and Library Users" was prompted by the FBI Library Awareness Program and adopted by ALA Council in 1991 and is accompanied by guidelines developed in the wake of the USA PATRIOT Act (OIF, 2006) for librarians to develop a privacy policy toolkit for their libraries. Further, the ALA has adopted a spate

of resolutions in response to activities of the government under the Bush administration, including the "Resolution on the USA PATRIOT ACT and Related Measures that Infringe on the Rights of Library Users," the "Resolution Reaffirming the Principles of Intellectual Freedom in the Aftermath of Terrorist Attacks" and the "Resolution against Torture as a Violation of the American Library Association's Basic Values" (ALA, 2006l). And, the ALA maintains a Web page titled "Surveillance in America" with related links to news and information (ALA, 2006j).

When given the opportunity, the Foundation has supported parties in their attempts to block investigatory demands for customer records in book stores (*Tattered Cover Bookstore, Inc. v. City and County of Denver* in 2000 and *Borders Books v. United States Department of Justice* in 2000), and to prevent forcing a newsletter to release its list of subscribers (*Forensic Advisors, Inc. v. Matrixx Initiatives, Inc.* from 2005 to 2006) and, as mentioned above, has supported challenges against restricting access to presidential papers (*American Historical Association v. National Archives and Records Administration* from 2002 to 2006), against withholding documents related to the implementation of Section 215 of the USA PATRIOT Act in 2002 to 2003 (*ACLU v. Department of Justice*), and against suppressing speech with USA PATRIOT Act gag order provisions on national security letter recipients from 2003 to 2006 (*Muslim Community Association of Ann Arbor v. Ashcroft, Doe v. Gonzales*).

Since its founding in 1969, the Freedom to Read Foundation has initiated or joined over 130 different cases in defense of the library profession's legal right to exercise its policies under the First Amendment. After a period of intense early debate

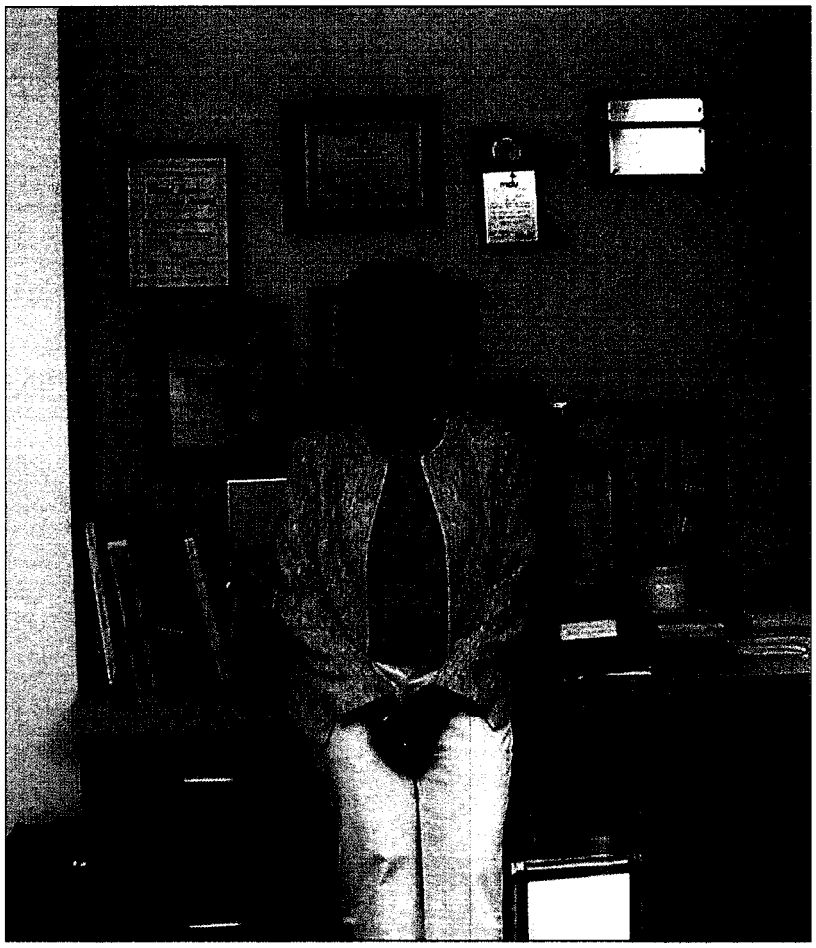
about its proper role within the field of librarianship, the Foundation has remained focused on its goal of defending the freedom to read on the broadest societal level, through precedent-setting legal action. Major areas that it has tackled through the courts during the three and a half decades of its existence have included federal and state obscenity laws and harmful matter statutes restricting access to information in print and via the Internet; censorship in schools and libraries, such as book removals; the government's use of prior restraint to obstruct access to news, government documents, and documentary films; and various activities undermining information seekers' sense of privacy and confidentiality.

With each decade, new technologies and changing social and political circumstances have engendered new challenges, the Internet being a prominent example of the former and post-9/11 fears about national security an example of the latter. While the FTRF has been forced to adjust to varying circumstances over the years, it has remained constant in its defense of the core principles of librarianship. The Library Bill of Rights stands uncompromised and fortified. And, while urgent threats to information access have arisen with shifts in the nation's socio-political climate, the FTRF has never allowed itself or its principles to become secondary to any political party or program, as evinced by the fact that it has never lost its tax-exempt status. The FTRF has, then, remained true to its name in defending a freedom that is, in itself, universal, unchanging, and non-partisan in its appeal and import.

The following chapters present principal actors in the Freedom to Read Foundation's history: Judith F. Krug, C. James Schmidt, Zoia Horn, Theresa A. Chmara

and Candace D. Morgan. It is their testimony which imbues the accumulation of details provided in this narrative with substance and meaning. And, it is in their words that the true story of the Foundation emerges.

Chapter 2: Judith F. Krug



Introduction

> *Who in their wildest dreams would have thought that the careful steps that we were taking would stand us in good stead 40 years later?" (Krug interview with Gage, May 24, 2006)*

Judith F. Krug was born in Pittsburgh, Pennsylvania, in 1940. She grew up there and remained in her parents' home when she attended the University of Pittsburgh, where she received her B.A. in political theory. In an amusing story, Krug recalls how her plans to pursue advanced degrees in political theory were thwarted when the University of

Pittsburgh University Librarian, Lorena Garloch, and her parents intervened—an episode that forever changed the trajectory of her career. Instead, prompted by Garloch, Krug applied for and received a scholarship to the Library School of the University of Chicago, where she earned her M.A. in 1964. After working as a librarian for a short time, Krug came to ALA headquarters in 1965, where she has remained ever since.

There are many "firsts" for Krug of importance to the history of the Foundation. In 1967, she was appointed to be the first Director of the newly formed Office for Intellectual Freedom. In 1969, she was appointed to be the first Executive Director and Secretary of the new legal defense fund, the Freedom to Read Foundation. She was designated Secretary of the LeRoy C. Merritt Humanitarian Fund on its establishment in 1970. In 1973, she helped form the Foundation's valued partner organization Media Coalition. In 1974, she authored and introduced the *Intellectual Freedom Manual*, which is now in its seventh edition. She was responsible for launching ALA's Banned Books Week, which is now approaching its 25th anniversary. She formed the Foundation's Lawyers for Libraries Institute in 1997 and its companion program, Law for Librarians, which was funded with a grant from the Ford Foundation in 2005.

Along with this list of firsts, which is by no means exhaustive, are also noteworthy "onlys." For nearly 40 years, Krug has occupied the position of being the only Director of OIF, the only Executive Director and Secretary of FTRF, and the only Secretary of the Merritt Fund. Further, Krug's career is impressive, when reviewed from the perspective of her network, which might be considered in terms of "everys." For four decades, she has worked with every Foundation board and legal defense team, every one

of ALA's executive directors, presidents, and IFC chairs, and every ALA counsel and council (not to mention the numerous individuals in the ALA divisions). She has worked with every chair of every state Intellectual Freedom Committee for the last 40 years. Also consider the other components of her network outside of the ALA, such as individuals and organizations in the legal profession, the publishing world, and advocacy groups such as the American Civil Liberties Union, the People for the American Way and the Center for Democracy and Technology—many of which have included her on their boards as a chair or member. She has rubbed elbows with Supreme Court justices, high-ranking politicians such as Senator Edward M. Kennedy, and literary celebrities such as Salman Rushdie. Indeed, Krug's network does not stop there, because her work extends beyond the borders of the United States and into an international sphere.

Krug's interviews took place in her office at ALA headquarters, amidst a riotous mass of awards, cards, photos, books, mail, and stacks of documents awaiting her review. The ebb and flow of business matters flooding her desk alone over the course of three days of interviews revealed but a fraction of the daily demands of her office. Krug, who possesses a healthy sense of humor, punctuated her memories with jokes and amusing stories. Although irreverent at times, her recollections turned intensely serious during moments when she discussed such issues as policy, the First Amendment or her work ethic.

In these interviews, Krug discusses the early days of the Foundation, and shares memories of some of the individuals largely responsible for its establishment: former ALA Executive Director, David H. Clift; former FTRF President and Special Counsel,

Alex P. Allain; and former ALA General Counsel, and FTRF President and Counsel William D. North. She remembers, as a young woman, learning the ropes of ALA and establishing OIF and FTRF, some of the legends of the library profession with whom she had the opportunity to work—men such as such as Frederick H. Wagman, William S. Dix, Archie McNeal, LeRoy C. Merritt, and Eli Oboler. "They were larger than life to me" (Krug interview with Gage, May 24, 2006).

Krug provides numerous insights into how the Foundation is administered and the function of her role as staff for the FTRF and IFC. She describes the FTRF and OIF's mission and structure, and points out how they fit into the ALA's mission. She explains the way the Foundation operates and conducts its business, with its members, board, legal team, the ALA and its network of allies. She discusses when and why the Foundation will take a case, and how such decisions are made, as well as how alliances have been formed for specific cases such as the Communications Decency Act case (*Reno v. ACLU*, 1997). She offers numerous connections between diverse issues relating to the freedom of speech, expression and religion, and examples of the FTRF's and OIF's work in areas such as book challenges and the Campaign for Reader Privacy. Also, Krug talks about money. She discusses the Foundation's income and expenditures, fundraising activities, and the value of quid pro quo.

For her hard work and dedication to the cause of intellectual freedom, numerous honors have been given to Krug, including the Harry Kalven Freedom of Expression Award in 1976, the Robert B. Downs Intellectual Freedom Award in 1978, the Foundation's own Roll of Honor Award in 1995, and the Joseph P. Lippincott Award in

1998. In 2005, she was awarded an honorary Ph.D. from the University of Illinois at Urbana-Champaign, which was the first honorary degree ever recommended jointly by the library staff and the library school of that university.

> In the end, what we do every single day strengthens the constitutional republic in ways that people cannot even begin to imagine. . . . You just have to keep fighting to make sure information—regardless of whether you love it, or hate it, or agree with it, or disagree with it—as long as it's information, it has to be available and it has to be accessible to every citizen who needs it or wants it. (Krug interview with Gage, May 26, 2006)

Three interviews with Judith F. Krug follow.

Interview with Judith F. Krug, May 24, 2006.

Location: Freedom to Read Foundation offices at the American Library Association headquarters in Chicago, Illinois.

Duration: 115 minutes.

April Gage:

This is an interview with Judith F. Krug. The interview is being conducted at the Freedom to Read Foundation offices on May 24, 2006, in Chicago, Illinois. The interviewer is April Gage, a student at the San José State University School of Library and Information Science. Today we will be talking about Ms. Krug's role in the history of the Freedom to Read Foundation.

Ms. Krug, for nearly 40 years you have been a national leader in the area of intellectual freedom. You helped found the Freedom to Read Foundation and have served as its Executive Director and Secretary since its inception in 1969, and have directed the American Library Association's Office for Intellectual Freedom since its establishment in 1967. You have served on the boards of several organizations, including the Center for Democracy and Technology, the Internet Education Foundation, and the Media Coalition. You have been granted numerous honors, including the Joseph P. Lippincott Award, Robert B. Downs Intellectual Freedom Award, Harry Kalven Freedom of Expression Award, and an honorary doctorate from the University of Illinois at Urbana-Champaign.

Before we dive into the history of the foundation I'd like to ask you a few questions about your background. Where and when were you born?

Judith F. Krug:

I was born in Pittsburgh, Pennsylvania, in 1940.

G: Did you grow up in Pennsylvania?

K: Yes, I grew up in Pittsburgh and spent my entire youth there, I went to the University of Pittsburgh for my undergraduate degree, and then I came to Chicago, and I'm still here.

G: (chuckles) When you were at the University of Pittsburgh you studied political theory?

K: Yes, I did.

G: What did you take from your study of political theory?

K: What did I take from it?

G: What did you take with you from that?

K: I think the complexities of politics; the fact that (pause) things are not as they always seem on the surface; [and] the fact that you really can make from politics what you want to. It was just a wonderful grounding for what I do now.

G: It definitely seems to compliment what you do now.

K: Yes, and I think I became interested in the kind of work that I do now because of my political theory background. This was not exactly the life that I had anticipated living, quite honestly. But, you take opportunities when they arise and you run with them.

G: So what caused you to make the switch from going toward political theory to going to library school?

K: Well, it was very interesting because I had every intention of getting my master's and Ph.D. in political theory. In fact, I had applied [for] and received scholarships, fellowships, to some very fine schools. I went through the University of Pittsburgh in three years. I was [in] the initial class that went on Edward [H.] Litchfield's trimester program. Edward Litchfield was the Chancellor of the University of Pittsburgh and was relatively new when I went to Pitt for my freshman year. After I did my freshman year as a regular year with two semesters, the next year Dr. Litchfield introduced trimester, which was a program whereby we did a year and a half in a year.

G: Wow.

K: So I went to school year round for all intents and purposes. We actually had three or four weeks off in August but that was it, and then you started again at the beginning of September. The first trimester was over in December, the second trimester started at right after new year's. We were over in April, had a week off, and then went for summer trimester, which was over at the end of July, beginning of August. So I did my last three years at Pitt in two years.

Now, during the Christmas holiday between my junior and senior years, my parents went to a dinner party and my mother happened to be seated next to Lorena Garloch, who at that time was the University Librarian at Pitt.

G: Ah ha.

K: Miss Garloch—I called her Lorena. In those days I guess she was Dr. Garloch and I remember her as Miss Garloch. Of course, then when I became a colleague she was Lorena (chuckles).

G: (chuckles)

K: Lorena, as she always did, was bemoaning the fact that there was a dearth of wonderful young librarians coming up. Apparently she was going on and on and on, and my mother, being my mother, said, I have a wonderful candidate for you.

G: No!

K: She came home and—of course I was living at home; I was going to Pitt—and she said, I think you should be a librarian. I looked at her like she was out of her mind. She let the subject drop; my mother was very smart.

The following trimester I'm sitting in a history class—now you know what history classes are like—I mean, there must have been 200 people in that class. A young student walked in and handed the professor a note and he looks at the class and starts laughing. He says, Judy Fingeret, you're to go to the library and see Miss Garloch as soon as you're done here. Then he made some statement like, What, did you try to steal a library book? You know, some rather silly comment. I was mortified, of course, (laughing) as anyone would be in those circumstances. So I dutifully took myself off to the university librarian's office. I walked in there and she says, Sit down and sign this. I sort of looked at her like, Excuse me? She says, Your mother said that you were going to be a librarian. This is your application for the University of Chicago which, of course, is the best library school. It's all filled out, just sign it.

G: Did you sign it?

K: Eventually. (laughs)

G: Not that day?

K: Not that day. (laughs) But I did eventually sign it. The next time she called me in she said, This is your application for a scholarship, sign it.

G: (laughs) No!

K: So that I signed. I did get the scholarship and I did get accepted to Chicago. The rest is pretty much history. So I came to Chicago, and I got off the plane, and I looked around and I said, I hate it here, there's no hills. Because Pittsburgh is in the Appalachian mountains, and it's hilly and it's beautiful. Here I was in this flat, flat land.

G: (chuckles)

K: There was water but, you know, who needed water to be happy? I didn't. It was really interesting. I lived on the University of Chicago campus. I lived in International House [of Chicago] which was an experience in itself. It was terrific.

G: I bet.

K: It was wonderful. So, I went through Chicago in one year. It's a two-year course, or it was a two-year course when they had a library school; my library school was closed. I did it in one year by going full time.

G: You were in a hurry.

K: Yes, I'm not sure why I was in such a hurry but I was in a hurry. Well, I do know why I was in a hurry, because I had every intention of going to Columbia or Duke [University] and starting my political theory career. The reason I went [to Chicago] was [that] it was a sop to my parents because—

G: Were they funding your education?

K: No, I had a fellowship.

G: Oh right, right.

K: No. My dad was very concerned that I wouldn't be able to support myself. I mean, we're talking [about] a long time ago. Women were not exactly where they are

today. He said, You know that I want you to have a career that you can fall back on. Of course, I'd been running a stable while I was in college. I had run a stable during the summer and taught kids horseback riding and so on. I do a lot of those kinds of things. I looked at him and said, See these hands Dad? They shovel shit.

G: (laughs)

K: He didn't like that and so he got very upset at his eldest child, very upset. [As] part of my making peace I said, okay, I will go. I will get my master's in library science and then I'm going back to political theory. And he said, Fine. You won't get a degree in education so this is the next best thing.

G: So then you did graduate but you didn't go to Duke and get your—

K: Well, a funny thing happened on the way to my comprehensives [comprehensive exams]. A friend of mine who lived across the hall from me in International House introduced me to this guy.

G: Uh, oh.

K: His name was Herb [Herbert] Krug. (pause) She had actually given him my name months before but it took him a while to get around to calling me. And when he—

G: Was he shy and that's why, or—

K: No, that's another story.

G: Ah ha.

K: Not for this oral history.

(laughter)

K: That's another story. (pause) He called me and, I forget why, but we made a date. Our first date was the night I took comprehensives, the night of the day I took comprehensives, my comps.

G: No pressure.

K: Pardon? Yes, exactly. Well I couldn't see him before because I was busy studying. So, that was the night and after I got out of my comps I just thought, Uh, the last thing I want to do is to go out with a new guy and smile all night (crosses eyes in different directions), forget it. So I was just going to blow him off.

G: (chuckles)

K: When I got back he had called so many times that I felt badly. So, I decided to call him back at least, and I did. He said, It's okay, we'll make it an early night and, you know, we'll do this and do that and I said okay. So we went out and, I really liked him, so we went out the next night, we went out the night after that, and fourteen months later we got married.

(laughter)

K: So, what am I going to tell you?

G: (laughs)

K: So I had all of August—I was still in Chicago [and] I wasn't going back to Pitt until I think October one. So I had time to, you know, to just take it easy for a little while. So I was dating Herb this whole time and I had this degree whereby I could always get a job.

G: Anywhere.

K: So, I don't have to go back to Pitt. So I called Lorena and I told her, and she was very upset. She was so wonderful—I mean, just a wonderful, wonderful woman. I said, you know, I just can't do it. So I didn't and I stayed in Chicago and that was it.

G: Had Lorena wanted you to work for her?

K: Yes, I was going back to Pitt.

G: So that's the whole reason, I mean she—

K: I was going back to Pitt. I didn't, I stayed here.

G: (chuckles) Then you worked in a couple of different areas. You were a head cataloger.

K: Well, I started off at John Crerar [Library]. That's where I went right after I got my degree. I worked there for about two years and then I went to Northwestern University Dental School where I was the head cataloger. That's the big joke; I was the only cataloger.

G: Oh.

K: In fact, I was one of only two professionals. I think one morning and one afternoon a week I did the circ [circulation] desk, [and] I typed my own catalog

cards. I mean, it was really very interesting.

G: (chuckles)

K: And, [I] did reference when Minnie Orfanos wasn't around. She was the head librarian but she did all the reference. I sat there and I cataloged single pieces of paper. And when there was nothing left to catalog—nothing—I said, I need another job. So I called my dean of students from the University of Chicago, Graduate Library School, who was Ruth Strout, and I said, I'm ready to move on. She said, Well, there's a job at ALA headquarters.

G: Aha.

K: My friend is head of the unit. It was in the Office of Research and Development, and they were looking for a research analyst. I interviewed and I got the job, and so I came to ALA Headquarters.

G: And that's all she wrote.

K: (laughing) Forty-one years later I'm still here. They can't get rid of me, no matter how hard they try!

G: (laughs) So that was your first job with ALA. That position marked your—

K: That was 1965.

G: 1965.

K: [I] came to work on March 25, 1965.

G: You remember the date.

K: Yes, it's amazing, I do remember that date.

G: So that was your last job [in a traditional library setting]. This was the beginning of a brand new chapter.

K: Of the real world, yes. ALA was totally new. I had a friend—he was a good friend and I liked him very much—a very highly placed librarian who kept saying over the next ten years, You have to get out of that organization; there's no career for you at ALA.

G: Ha!

K: So I said, Thank you so much for your concern. Let me look. But I was having

such a good time at ALA, I didn't do much looking. I really did have a good time. When I was in ORD, the Office for Research and Development, I learned the ALA ropes.

G: What does that mean?

K: Office for Research and Development. Well, I learned the policies.

G: The politics?

K: [And] the politics. [I] learned how to get things done. You know, it's a learning process and you have to go through it no matter where you are.

G: What sorts of things did you work on as a research analyst?

K: I actually did two things that I'm really rather proud of. I established a research clearinghouse and, for the first time, we knew who was doing what kind of research, where it was being done, who was funding it, whether it was going to be valuable, whether it was just messing around. It really was terrific and I went all over the country and I talked to people who were doing research and had this great—well, I was going to say a database but it wasn't. It was all manual because there weren't such things as databases in those days, at least not at ALA headquarters. So somebody called and said, I'm thinking of doing research in such-and-such an area, and I could say, Oh, well so-and-so is doing research in that area. We find out about that kind of information now on the Internet.

G: Sure.

K: Or, we find it out through our publications because we're so much more sophisticated and our publications reflect this. Our means of communication are more sophisticated but, 40 years ago, they weren't all that sophisticated. So it was really an eye opener and it was wonderful. It was just an incredible learning experience and [I] met people that I still know and I'll see people and I'll go, Oh my God, I haven't seen you for 35 years. It's really interesting.

Then, about September 1967, David Clift called me down to his office.

G: Was he your boss, as an analyst?

K: No.

G: Okay.

K: David Clift was the Executive Director of ALA.

G: He was.

K: A fabulous man. He was the last Renaissance man that I know. That I knew.

G: Really?

K: He was wonderful, I adored him. [He was] just an absolutely fabulous person. David called me down—It was Mr. Clift in those days.

G: Aha.

K: He said, I have a job. Well, there's more to that story. In August of that year, my boss who was Forrest Carhart came into my office. Well, I should also tell you that, not only did I head the Library Research Clearinghouse but I also was working on research proposals. I was working on helping to write them. I was also looking for money to fund them. And for every three proposals I worked on, we found money for two.

G: That's a good record.

K: It is a good record. You need that background because when Forrest walked into my office, he said, You know what we're going to do? We're going to hire a *real* research person and pay *him* twenty-five thousand dollars a year. I was earning eight [thousand].

G: Oh!

K: It was 40 years ago. I got so angry. I mean I was really, really angry. I didn't say anything and when he left my office, I picked up the phone and called an ex-ALA employee, whom I really, really liked, who was then the librarian at J. Walter Thompson advertising agency. I said, I have to get out of here. I told him what happened and he says, Well, come and interview for me, I'd hire you in a minute. So I did.

G: You did.

K: I got back from the interview and I went down to lunch and ate with my regular group of people that I always ate with, one of whom was David Clift's administrative assistant [Miriam Hornback]. She said, Where were you? I said, I was on an interview. She said, Are you leaving? I said, You're damn right I'm leaving.

G: (laughs)

K: She said, Why? And I told her. I got back to my office and not five minutes—ten minutes after I sat down, the phone rang and it was David Clift. He said, I want you to come down.

G: So he knew your value.

K: I went down and he said, I hear you're looking for a job. I said, Yes I am. He said, Why? And I told him too. He said, I don't want you to leave. We need people like you in this building, in this Association. How would you like the Office for Intellectual Freedom? I looked at him and said, The office for what?

G: (laughs)

K: There was this long pause. (laughs) I think David was having second thoughts. He goes, Office for Intellectual Freedom. He said, Haven't you heard of the Library Bill of Rights? I said, Oh yes, Dr. [Leon] Carnovsky held that up one day after the bell rang and said, You have to know about this. That was my introduction to the Library Bill of Rights. Anyhow, we started talking about it and I said, I have to think about it. So I went home and, I forget if it was a Wednesday or a Thursday, something like this, but whatever it was, I took a couple days and I thought about it and on Monday morning I went back and I said to David, I already have one child and I fully intend to have at least one more, and if you're looking for someone to sit behind a desk from 8:30 to 4:30 every day then I'm not the person you want, because I can't guarantee that that's what's going to happen. He looked at me and he said, Mrs. Krug, I'm offering you an opportunity, I'm offering you a challenge. I don't care where you do it or when you do it, I just want it done superbly.

G: Oooh!

K: I looked at him and I said, Mr. Clift, you just hired yourself a director. And that was it.

G: This is interesting, because without [your] having gone to lunch with that woman, he never would have known. Do you think that he would have offered you the job whether or not he knew you were leaving?

K: I don't know. I really don't. You know, that's an interesting question and I had never really thought about it. But, forty years later I think back and I think, ten minutes after Miriam told David that I was going out on an interview he has me down there offering me a job? He didn't sit there and think about it for ten minutes and decide. I think—

G: He had you in mind.

K: Now that you ask the question, would he have? We'll never know. Is there a possibility? Definitely. I don't think you make that kind of decision in that way—in a snap. I think that you think about it—particularly remembering David—he thought things through before he jumped.

G: Did he?

K: Oh yes.

G: So was he prepared to look spontaneous but he had made up his mind and waited for his moment?

K: April, I can't answer that. I can't answer it. He died 38 years ago. How could I? But, you don't call a staff member down and offer them a job if you haven't thought about it. Not a job of this magnitude. Well, it wasn't this magnitude in that day—those days. He just said, The only thing I want is for you to make the Library Bill of Rights meaningful. I just looked at him and said, (laughing) Is that the only thing you want? Or, some less than respectful comment like that. Oh sure.

G: So you probably ran right out and found that Library Bill of Rights.

K: It's been a hell of a ride, I'll tell you, to make it meaningful.

G: I'm sure. Did your work on the clearinghouse of information for all of these researchers—did you just take that model and apply that to finding out about [and] organizing the intellectual freedom efforts?

K: Not really. I just think that some of the stuff that I did for the library research clearinghouse certainly translated into what goes on in this office, even to this day. You know, you collect information a certain way. You need your sources and you need your contacts and you need people feeding you information. We have the database in the Office for Intellectual Freedom of challenged and banned books.

G: Right.

K: You know, that's the kind of information you collect the same way you would collect information about research. The problem is, if people don't report what's going on, I don't know about it.

G: Sure, sure.

K: I don't have a lot of the sources when you're looking for the kind of research that's going on. If you can't go to the principle investigator or to someone involved,

you go to the funding source and look at their list of grants made this year or in the last couple years or so on. There's no list of individuals who have attempted to remove materials from libraries, except the one we do.

G: Right.

K: So, in fact, before you came in, I had an interview with a reporter because we have yet another book challenge of—well the number keeps changing. It was seven books this woman wanted removed from a high school A.P. [advanced placement] reading list, A.P. for 17 and 18-year olds. [She] wants to remove *Slaughterhouse-Five*, [Kurt] Vonnegut's *Slaughterhouse-Five* [and] Toni Morrison's *Beloved* because they have dirty words. I'm just going, come on. I mean, and the kids in the A.P. class are 17 and 18. Wake up! Anyhow, sorry, first it was seven books, and then it went to eight yesterday, and then nine today. But, it is a big brouhaha *here* but we have these kinds of things going on all over the country. [It's] probably not seven or eight or nine at a crack, but certainly one, maybe two. But if the librarians can handle them, they don't call me and if they remove the materials without putting up a fight, they *definitely* don't call me because they're not going to tell me they have violated our major professional ethic.

G: Right. So, for whatever reason I had thought that you were a member of the Committee on Intellectual Freedom before this job.

K: No, no, no, no, no.

G: When did you join the Committee?

K: I didn't.

G: You never joined the Committee?

K: I have never been on the Intellectual Freedom Committee. I'm staff to the Intellectual Freedom Committee. You see, when I came here [ALA headquarters] I was only two years out of library school. The truth is, the only reason I was a member of ALA was because the University of Chicago joined ALA for all of its graduates, which is very interesting. Of course there were only thirteen of us.

G: Oh.

K: It wasn't exactly a huge class.

G: No.

K: That's one of the reasons Chicago closed, because they were graduating 12, 13, 14, 15 students. I mean 15 was a huge class. Well, there's no academic institution in the country that can graduate that number of students and maintain solvency—doesn't happen.

G: At that level, no (inaudible).

K: Well, even 40 years ago they can't, they couldn't do it.

G: No. (pause) Backing up just a second, is there anything else you would like to say about David Clift?

K: (pauses smiling) He'll come up again.

G: I know he will.

K: Yes, there's other things about him. He was just—I guess one of the things I loved about David was that he had such confidence in his decisions. I'm talking about offering me the job and then *being there* if I needed him, and staying out of my way if I didn't need him. He was an amazing man. There are so few people like that. But he taught me how to be an administer—(jokes) an administer—an administrator. And that's the way I do it. I like my staff here during working hours, because our phones never stop ringing and I don't want to have to be solely responsible for all of the professional advice given. But, by and large, I just want you to do your job *superbly* and I'm not too particular about when it gets done or where it gets done. It turns out that most people are comfortable working in an office like this, particularly when we have a collegial setting, and you have other people to bounce ideas off of, and you have other people to interact with. I think that's very important and I think that the quality of the work product is reflected in both the collegiality and in the closeness of my staff and the fact that we all like each other.

G: That's helpful.

K: When you get up in the morning, you don't dread going to work. You look forward to going to work. And that isn't true everywhere. Maybe it's only me that looks forward to going to work (laughs) and I'm just superimposing on my staff those feelings.

G: (laughs) So you, yes. (pause) I wanted to move toward a little bit of [the] background of the formation of the Office for Intellectual Freedom and the Freedom to Read Foundation. You would've been in school [but] the idea wasn't new. In 1962, Frederick Wagman, who was the then president-elect for ALA, gave a speech and talked about wanting to form a defense fund for librarians who

were involved in local struggles, and got in trouble for trying to carry out ALA's policies [that are] embodied in the Library Bill of Rights. He saw the Intellectual Freedom Committee [as] having the authority at that point to distribute money to these people. He also had been talking with someone at the ACLU [the Director of the American Civil Liberties Union] and had considered partnering with the ACLU on a national level, to save money and control costs. So, do you think that he was responding to the desires of the membership at that time or that the membership latched onto that idea as a response to his speech—him pushing it out there? Or, do you think that members in the ALA sort of solidified their expectations later?

K: Well, first of all, Fred Wagman was a giant among men. I look back on some of these people like Fred Wagman, like Archie McNeal; these are the people who were ending their careers when I was just coming in. They were larger than life to me. One of the joys of being at ALA headquarters at the age that I became a staff member—and a staff member had some degree of stature—was that I got to know these fabulous people. And Fred was one of them. He was just terrific. But I don't think that the idea of a defense fund came from the membership at that point.

G: Okay.

K: I think Fred had been listening to a man by the name of Alex Allain who just about that time had begun his crusade for an intellectual freedom defense fund. Fred was the kind of person who knew a good idea when he heard it.

(laughter) And he latched onto it.

But it wasn't until two years later that this really began to grow legs.

G: To really solidify.

K: The idea began to grow legs, and it was the result of not only what Fred had been saying, but Alex was still out there pushing the idea of a legal defense fund. So, there were a lot of forces that were beginning to coalesce. At every opportunity, [Alex] would stand up and say, We're never going to solve the problems of this profession. Alex was a lawyer, but he was Chairman of his board of trustees in Jeanerette, Louisiana, for years and years and years.

G: And he was the first president of the Foundation—

K: Exactly.

G: And also the special counsel after that.

K: Yes.

G: So he's the one that—

K: I think Alex and Bill North probably had more to do with the way in which the Foundation developed than any other two. And, of course, David was there to back me up when I needed it.

G: I wondered what his role was like.

K: And I was there to do the work.

(laughter)

G: So David was maybe your biggest ally, would you say, or you had many, many?

K: Oh, April, I've had lots of allies over the years. But David was there. He was steady, he was smart, he had contacts. I remember when the [ALA Executive] Board *finally* gave us approval—this was again, Alex. Alex got a hold of Bill Dix who was our president when the Freedom to Read Foundation was established by the Executive Board. Alex talked to Bill—and he was another one of these giants. He was Director of the Princeton University Libraries; Fred was at the University of Michigan. How do I remember this stuff? (laughs)

G: I was just wondering that myself. Of all the thousands of people.

K: I know thousands of people. Bill was not a librarian, he didn't have the degree. But, you know, some of our best librarians—Ervin Gaines didn't have a degree in librarianship, if you can believe. [He was] a fabulous librarian—Minneapolis Public [Library], Cleveland Public [Library]. I mean, it's just amazing. You think back on these people who were so instrumental in this whole process. Eli Oboler, Librarian of Idaho State University in Pocatello. Those are the people who gave us our ability to do what we had to do, because they were *there*, they *wanted* this done. They talked it up, they had the stature, they had the respect, they had the positions. I mean, I knew that when I brought something forward I was going to have huge numbers of people agreeing because 1) they were involved in the development, 2) because we were all working toward the same goal, 3) because it was so important to this profession and, when we thought about it, it was important to the Constitutional Republic.

G: Yes.

K: Without the First Amendment, we can't govern ourselves. So it all goes back to the Constitutional Republic—protecting the Republic and protecting the

Constitution which is the glue that holds us together. None of us could, in our wildest imaginations, think about today's world, where you have the Attorney General of the United States, where you have the President of the United States acting, in my opinion, totally illegally by twisting the words of the law to make it appear that what they're doing is totally lawful. It's an abomination. When we were doing this all these years ago, who in their wildest dreams would have thought that the careful steps that we were *taking* would stand us in good stead 40 years later? I sure didn't.

G: There was a long planning period to get it off the ground, but yes.

K: Oh, some of the things we went through were unbelievable. I remember in 1965 there was an intellectual freedom pre-conference and one of the recommendations was that intellectual freedom needed an office. That became the basis for the Office for Intellectual Freedom, which was established on December 1, 1967. The first thing that I did was to begin what is now our database of challenges. It was the logical thing to do, and then to develop an ability to assist people when they ran into difficulties. But as we developed this ability to help people, I began to see the kinds of things that we *needed* to do in order to make it a total program of support, which is how I talk about it now. There were several parts that we put in, the Leroy C. Merritt Humanitarian Fund, although that came—

G: That ended up splitting and becoming a thing of its own when they wanted a broader focus.

K: Well, something like that (laughs).

G: (laughing) At least that's what the record says.

K: Yes, well, yes. They wanted to deal with discrimination also and we did not believe that that was our goal. You know, very often, discriminatory actions can be interpreted as involving intellectual freedom principles but (pause) you have to be careful with interpretations. I think that the Foundation Board's feeling, and certainly my feeling, was that we had a *huge* mouthful that we were trying to chew and we honestly didn't need anything else, nor could we accommodate anything else. I'm still the Lone Ranger in this office at that point. So, it's like, Help! It's enough already guys!

G: Just to back up for a second—the Intellectual Freedom Committee had been sort of going through proposals—proposal after proposal—for this intellectual freedom office [and] defense fund idea, and just sort of turning it through and through and through, starting from 1963 until things happened in 1967.

K: For ALA that's not a long time. (laughs)

G: I was going to ask, is this somewhat apropos of—what did he [Wagman] call it? The slow machinery of ALA. Was it an example of all of the gates something has to pass?

K: Well look, ALA was established in 1776 [1876] so what, we're 130 years old now? Yes, we're 130 years old. So we're almost 90 years old at that point and our machinery reflected it. Actually, we're over 90 years old.

G: (laughs)

K: Our machinery was pretty damn rusty.

G: And this is why the whole new directions for ALA was coming about at the same time. (laughs)

K: ACONDA [Activities Committee on New Directions for ALA] and ANACONDA [Ad Hoc Council Committee on ACONDA].

G: Who came up with ANACONDA?

K: Well it's (laughs) Another Committee on New Directions for ALA. You see the first is A Committee on New Directions for ALA and that is Another Committee on New Directions. Some of us thought that was pretty clever, actually (laughs). ACONDA and ANACONDA. Oh God, what fun we had in those days. We don't have half as much fun anymore, actually. Or maybe we just have different kinds of fun.

G: (laughs)

K: The younger generation—and I sometimes talk to my contemporaries and say, The younger generation has no sense of humor.

(laughter)

We had a lot more fun. Gordon Conable used to take great exception to that comment. (laughs)

G: Oh really?

K: He'd say, I'm younger. I'd say, (laughing) Honey, you're five years younger, stop making yourself out to be a young blood, you're not. Oh, I miss Gordon.

G: Gordon Conable. (pause)

K: Yes, he was a real loss to this profession when he died. Anyhow. (pause)

G: That must have been a blow.

K: Yes. A big one. Okay, where was I? Oh, okay, we're back in the sixties.

G: We're back in the sixties with the slow machinery of ALA.

K: Yes, well, so you know '62 was Fred Wagman's inaugural address and then '65 was the pre-conference. One of the recommendations was to establish the office [Office for Intellectual Freedom], and in '67 the office was established.

G: Right, right.

K: (pause) Then as I started to put it together, I said that there were holes.

G: Right.

K: And so, you know, the Merritt Fund filled one hole, but before even the Merritt Fund, we saw a need for a legal defense fund and that's when the whole thing started seriously to be considered.

G: From what I've read, it looks like that was kind of planned for your office to do.

K: Yes.

G: As you started getting into your work, did you see [that] there's no way these things were going to connect properly? How did you come to figure out and decide that these needed to be separate areas?

K: There were two reasons. Two reasons. First, as I said, ALA was over 90 years old and our machinery was very rusty and reflected the age of its establishment. When you're dealing with legal matters, you can't always wait for the machinery of ALA to grind its way through the issue. We'd never get anything done. I think we were lucky in that the board—the ALA Executive Board—recognized that argument. The other reason—excuse me, I must say that in today's world, if we need a quick decision out of the ALA Executive Board, we can get it.

G: Aha, okay.

K: Because, the procedures have been streamlined when they need to be streamlined. It just took us a while to get there.

G: Okay.

K: The other reason that we split it off from ALA was ALA's tax-exempt status.

G: Right, right.

K: There was real concern. You see, when you have a 501 (c) (3) organization, which is the tax status of both ALA and the Freedom to Read Foundation.

G: Right.

K: But, when you are dealing with 501 (c) (3), there are things that you can do and there are things that you cannot do. In between is a grey area. For the Freedom to Read Foundation to lose its tax-exempt status, it is not the end of the world.

G: No. One of the arguments was that the Foundation could risk that.

K: Exactly.

G: And that the organization [ALA] was not willing to [be] put at risk.

K: Well, it—

G: There was criticism for ALA because they weren't—

K: Except that ALA, even in those days, was a twenty-million-dollar organization; we were one hundred thousand dollars. The risk for us was almost nonexistent. Today, ALA is a fifty-million-dollar-a-year organization. That's our budget annually—fifty million dollars. Do you know what the Foundation's is? Two hundred thousand [dollars]. So it, it's a different world. And if I stray, or if the Foundation strays into that area that is *darker* rather than lighter, we have something to lose but we're going to continue to exist. If that happened to ALA, you're talking about *a lot of money*.

G: Really. Yes. This is something that people did not wrap their minds around at the time? They said, Oh it's not that much money; it doesn't matter?

K: They didn't want to, April. They didn't want to. There's a group of people who want—and there's always a group of people who want ALA to do whatever it is *they* want ALA to do. And (pause) you know, its full steam ahead, the consequences be damned. I can't work like that. I can't operate like that when there's a viable alternative. To me, the tax-exempt status of the American Library Association was very important because ALA speaks for the profession of librarianship. It is the thing that builds the profession. The Freedom to Read Foundation defends the basic principles. But the profession doesn't grow because of the Freedom to Read Foundation. We keep it *intact* but we don't grow it. ALA is where you grow it. This is where you develop who we are and what we are. The Foundation is on the back end. We protect what ALA has already

decided. As Bill North said, Jude, if we lose our 501 (c) (3) status, the Freedom to Read Foundation will go out of business and we will set up a new foundation, real fast and real simple.

G: That was the contingency plan?

K: Because, what do we have?

G: Well you're defending the Constitution, so—

K: But, 35, 40 years ago we didn't even have that kind of reputation. We didn't. There wasn't anything that meant we couldn't move on and do the same thing we were doing because our core membership would've just moved with us. You don't have a hundred-year history; you have a four- or five-year history, and there's a difference. Our principles don't have to change, our goals don't have to change, what we're doing, who is staffing it, where our money is—nothing's going to change. What's going to change? The name? We can lose the name. There was nothing invested in the name 40 years ago. *Today*, it might be a different question, because today we have a great deal invested in the Freedom to Read Foundation—*name*. But, in today's world we don't have to worry about that, yet. And yet, (sigh) I can't imagine this board or any board that I have had up until now giving up principle to defend the name.

G: How would the Foundation risk its 501 (c) (3) status? I mean—

K: You apply for it.

G: Risk.

K: Oh at risk.

G: Yes, how would it? What sort of thing would the Foundation have to do to? I mean, what were your concerns then about what the risks were with this new foundation that you were creating?

K: Only x amount of our money. First of all you have to have certain—you have to have soft money. There's certain kinds of money you can't accept. You can't lobby. You can't do a lot of things that, for instance, other organizations which are 501 (c) (4) or 501 (c) (6), which are trade union kinds of organizations, can do. The Publishers Association [Association of American Publishers?] can do things that I can't do. They just ran a fund raiser for Bernie Sanders who is the Vermont (pause).

G: The congressman who is working on the [USA] PATRIOT Act stuff.

K: Yes. That was fabulous. You see, they did a fundraiser for Bernie and they called me and they called Emily Sheketoff, who is the director of our [ALA] Washington, [DC] office and said, Do you want to join us? I said, We can't. We're 501 (c) (3), I can't do this. And it was like, Oh right, I forgot. *I didn't.* You know, forget that noise. Can I contribute? As Judith Krug, of course I can, and I did. But can ALA put its name on this? No. It's as simple as that. There might be a case that our lawyer would say, Doesn't really fit within the parameters of what you're set up to do. We don't fight discrimination cases unless there's First Amendment overtones. I mean there's all these issues out there that many of our people would love to get involved in but we can go only so far and no further. And as long as I'm the Executive Director, we're going to maintain that line. Now someone else may feel we have to push a little harder. We have so damn many things on our plate right now. (laughs) I don't think we have to push to find anything; we're sort of drowning on a daily basis. But 40 years ago, the issues were different, I mean they were (pause).

G: You were really zeroing in on obscenity and harmful matter statutes.

K: Exactly. Exactly.

G: Now you're doing that in a different arena, on the Internet. But it's different.

K: Well, yes, but that's only one part of what we're doing, I mean, we're doing so many other things. We were involved in a Texas case where Daniel Chiras wrote a textbook, an environmental text book [*Environmental Science: Creating a Sustainable Future*], and the Texas Board of Education refused to adopt it.

G: Right.

K: The Texas Board said it was anti-free enterprise and something else, and so we supported Chiras when he went to court. We lost. It's as simple as that. We lost. We don't lose a lot of cases but we do lose some. We just did the agenda for [the ALA] Annual Conference and it's not as heavy as it usually is. I'm not sure why that is except that I think there's a bit of concern about the two new appointees to the Supreme Court, and I think that we're in a shakedown period. I think there will be more First Amendment cases coming down the pike. I think that this whole excuse of, We have to do this, that, and the other thing to protect the people from terrorists might be getting a little stale finally and I think there's going to be some lawsuits in that regard. The fact that John Doe is going to be talking, our John Doe—

G: That is so interesting.

K: Our Connecticut John Doe is going to be talking. [He] is going to be identified

and talking. It is going to be very, very interesting. There are things that have gone on in that case—the whole thing is under seal—

G: Right, right.

K: That never in your wildest imaginings could you think were going on. We do know who some of the John Does are. (pause)

G: Outside of the Connecticut library [group] these are the Internet service providers?

K: We know all that stuff. But we also know who John Doe— There's a lot of people in John Doe and we know who they are. Or at least we know some of them. And, I've talked to them because I set up a program for [the] ALA (laughs) conference.

G: And you wanted to know. (laughs)

K: Well, I did before. We saw all the depositions. We saw the depositions and I'm reading this deposition and it's going, I'm Chair of the Intellectual Freedom Committee of the Connecticut Library Association. Duuuh. I know every person who has been a chair of every state committee for the last 40 years.

G: Right.

K: *That* was a no-brainer. (laughs) God, these people are idiots. And then, of course, by process of elimination you figure out who the other ones are. I'm not sure if we know them all but we certainly know several.

G: The kind of program that you put on at an ALA conference has really changed. I remember reading about a skit.

K: Wait a minute. What kind of program?

G: The Office for Intellectual Freedom, I think, just before it was established, introduced the three part program [Program of Action in Support of the Library Bill of Rights].

K: Right.

G: And this is before the Foundation was officially established and apparently it was really interesting. You gave colorful sessions, including a skit. I think it was just to educate people in a fun way about some of the issues—intellectual freedom issues. I thought, They just don't do that anymore, do they?

K: Well, actually, the Ethics Committee used skits for many years—some of them dealt with intellectual freedom issues—and we just gave that up two years ago, only because the current committee wants to— They are looking at the code of ethics and thinking about whether or not it needs to be reviewed or revised. So they are gathering information to see if this is a possibility.

[removed]

(Stopped recording for a few minutes.)

G: So, I wanted to read you a quote by Alex.

K: Alex.

G: Is that how you pronounced his name, "Alec"?

K: "Alec."

G: Allain. When he was president, in his report to the ALA council he said, "The foundation will not simply defend, but must and will attack." [From Alex Allain's June, 1971 Freedom to Read Foundation President's Report to ALA Council.] I took it for granted that both offensive and defensive action were part of the library profession's legacy in fighting censorship, and supporting the Library Bill of Rights. It never occurred to me that there was a starting point, and that that starting point was with the Freedom to Read Foundation, until I began to learn more about the Foundation and the *Moore v. Younger* suit [1976]. That apparently represented the first time the profession went on the offensive.

K: Legally it is. But, don't forget that we didn't have a legal capability until 1969. So it's not surprising that it wasn't until the seventies that we actually geared up to go into court; it also meant that we needed a case.

G: Right.

K: You need a case in order to have a legal action that's going to be meaningful and move the profession ahead. Our concern is not just filing legal actions. It's moving the profession ahead, solidifying our gains, making the First Amendment more secure, making sure that the principles that we—I don't want to get as dramatic as to say live and die by—but on which the profession is based, have some substance behind them so that you're not running into court at the drop of a hat. So, first you have to have a case, then you have to have plaintiffs, which is an extremely difficult situation, because individuals who sign on are basically setting themselves up to—

G: A long—

K: Well, not only long—to be shot at.

G: Oh.

K: Not, not *literally* but, you know—euphorically—not even that.

(laughter)

These people become targets for a lot of the crazies out there, for the ultra conservatives, even for our people who are disgusted, dismayed, annoyed, angry: You're not moving fast enough, You're not being mean enough, You're choosing the wrong issues, I mean, name it. Instead of saying, Wow! Isn't that great? Here's one little thing that they're doing.

You see, the problem, April, that we've run into constantly is that when the government acts it whacks off *big* pieces of the First Amendment. Just open the newspaper today. When we go into court to try to repair the damage we end up putting a sliver back. It's the story of every group in this country that deals with what I consider to be the issues that are on the correct side, that are important, because the government is our enemy. It's not only Washington, it's state and local. I mean, if you look at the cases we're in, we're rarely defendants. We're usually on the offensive. And who are we fighting? We're fighting local ordinances, we're fighting local governments, we're fighting local school systems. We fought the *Harry Potter* case in someplace in Cedarville, Arkansas, a couple of years ago. It was a slam dunk, we won big, but it's the school system acting like idiots. The school board is going, Oh, well, we didn't read that book. We're involved in a case here in Illinois—School District 214, which is somewhere on the northwest side of the city. A woman wants to ban seven books—yesterday she added one, today she added one—so we're talking nine books. *Slaughterhouse-Five* by Kurt Vonnegut?

G: Can we go back to the Pico case [*Board of Education, Island Trees School District v. Pico,* 1982]? (chuckles)

K: If we have to go into court, this is our precedent. She is very concerned that we should be giving our children better literature. Better literature than *Beloved*? I gave an interview this morning to NPR [National Public Radio] and this young reporter goes, Well she only wants to give the kids the best education they can. I said, Excuse me? *Slaughterhouse-Five* by Kurt Vonnegut? Toni Morrison's *Beloved*? You know, you might not like what they're talking about, because they are talking about war. Now, *What they Carried* [*The Things They Carried* by Tim O'Brien] is another one. This is what the guys who were in Vietnam were

carrying to remind them of home. It's wonderful. *Slaughterhouse-Five*? It's about war. *Beloved*? It's about war. Not about guns and bullets, but it's about growing up in a hostile world. Oh you're offended? Gee, I'm sorry. Our educational system attempts to prepare our youth to meet the realities that they are going to find when they are 18 and older. You don't want your kid to read it? Fine, talk to the school, they'll give you an alternate selection. But you keep your hands off of my kid's. And that's what you're doing—you're making a decision for my kids, and you know what, girl? You're not smart enough. That's what I can't say on NPR.

G: (laughs)

K: But I think it. I mean, who in the hell does she think she is telling me what my kids can read? So there. If you say to other parents, Do you want *her* to decide what *your* children are going to have access to? And if they say yes then you think, [There are] another two who shouldn't be having children because they're not capable. I'm just itching to say something like that one of these days but naturally, naturally I can't.

G: (laughs) You can say whatever you want in your oral history.

K: Oh, in this I can. But, you know, this is going to be around a lot longer than I am. I mean, fifty years from now somebody is going to listen to this and say, She was crazy.

(laughter)

K: And she's probably right. (laughs) Anyway.

G: So, going on the offense, okay. I was under the impression that there were some heavy discussions and that this was a big decision to go on the offense. It was just a natural? Everyone was using the language, legal defense fund, so there was still that defense but—

K: Basically we're a defense organization. But when you have a case, you go on the offense. We're always looking for good cases, always looking for good cases. They don't come by very often so, in the end, you really have to develop your own. You need the case, you need the plaintiffs, you need the money to do that. We've been extremely lucky over the years in our legal defense—in our legal assistance, in our lawyers—incredibly lucky. Going back, all the way back to Bill North, who was brilliant and had— (pause)

G: I wanted to ask you about him.

K: Major, major influence on how we developed. Bill was a lot more conservative and is a lot more conservative than I am, and we sort of balanced each other.

G: Oh, interesting.

K: He is conservative and goes by the book. I am far less conservative and I would prefer cutting corners occasionally, and he wouldn't let me. Thank heavens because, when you're dealing in law, those are the things you can't do. You play it straight and narrow. But, we made a really good team. When Bill left private practice, his successors were really terrific. Then, the board decided to find new council and they chose Bruce Ennis.

G: Bruce Ennis.

K: Who was probably one of the top five First Amendment lawyers in the country. Absolutely brilliant, just wonderful.

G: I actually found his letter. You invited him and you invited some lawyers, and I saw his response letter. I looked at the other response letters sitting next to it and I thought, Did it take you— Even though one of the respondents, he had been in the Foundation, his name escapes me at the moment.

K: Henry Kaufman.

G: Exactly. Did you just look at it and go, Okay, people are coming in and they are going to give their presentations. But Bruce Ennis, did he just blow you away from the letter alone?

K: Well, I knew him.

G: Oh, you already knew him.

K: I knew all these people.

G: That's how they got invitations, I suppose.

K: I knew them. You see, I've been working in this area a long time. I knew these people, I knew what we were looking for. Where did you get a hold of those letters? From Jim [Schmidt]?

G: They're in the archives. I went to the ALA archives.

K: Oh.

G: Yes.

K: That's so interesting. I'd forgotten I put them in the archives. (pause) You know, I have been trained in First Amendment law by some of the best lawyers in the country and the one thing that they all said—Bill, Bruce—We want to be creative because it's the only area of the law we can be creative in. You see, the First Amendment is not set in cement and most areas of the law are.

G: Okay.

K: This is one area of the law where there is still flexibility, where really good arguments will carry the day. And, so what we need to be is creative. It's just a pleasure to work with these people. I said to Bruce at one point—I remember I suggested that we needed to be involved in a case and he was not happy about that. He said, This is not a good case for us to be involved in. Even if we win it is not going to be good law, and he went on. I sat down and wrote him a letter that said, in effect, there's lots of reasons we go into a case. We go into a case because we have to solidify our gains; we go into a case because it supports and defends the profession's values; we go into a case because *we need to be there*, because, who we are and what we are *demands* that our name be on this case. That was my argument—that we have to be in this case because we might make bad law a little better for us if we get our two cents worth in, because this case is so important to the library profession that our name has to be there. I don't remember the specific case at this point but it was pretty early in Bruce's tenure with the Foundation. He never forgot that. He would always say, Is this a case you feel *strongly* about being involved in?

G: (laughs)

K: And, I would either say yes or no. We had a wonderful working relationship. It was (sigh) a pretty awful day when he died. Pretty awful.

G: I wondered about that.

K: He had leukemia.

G: Yes, I know.

K: Then he had a bone marrow transplant—that worked. He was on Cape Cod recuperating, he was coming back to work in three weeks, got a cold—

G: No.

K: And died.

G: No.

K: He had no immune system left.

G: Because of the transplant, and the— Oh, no.

K: And it hadn't redeveloped.

G: No.

K: He just—

G: Oh, where were you when you, when you heard?

K: Sitting right here.

G: You were sitting—

K: Theresa called me. (Opens desk drawer.)

G: Theresa called you?

K: Theresa Chmara.

G: Right.

K: The young woman who—

G: Yes, right, she was his protégé.

K: She's— (looking through items in desk drawer) I had wonderful—I had a set of wonderful pictures of Bruce, what did I do with them? (pause) I wouldn't give them—ah (opens an envelope and removes snapshots).

G: Pictures of Bruce. From everything that I've heard and read, he was just a brilliant, wonderful, special man. (pause)

K: Did you ever see Gordon [Conable]?

G: I've seen pictures of Gordon but I never got to meet him.

K: Oh, okay. There he is. I thought these were my pictures of Bruce, but they're not.

G: He looks like such an animated, happy, happy person (looking at photograph of Gordon Conable).

K: Fabulous, absolutely fabulous.

G: That's a great picture.

K: Yes, we were at an award dinner one night. (looking through desk drawer) I wonder if I gave it to (pause). I bet you I did. I'll have to get them back. I think I gave them to— (pause)

G: (Looking at pictures) That's a great picture, you should scan these.

K: Leonard Kniffel of *American Libraries*. You know Candy.

G: I've never met her, I've only—

K: That's Candy (passes over a photograph of Candace Morgan).

G: (Looks at photo) So she doesn't go by Candace, only formally?

K: You know that one (passes over a photograph of C. James Schmidt).

G: Who is this? Oh no! (laughs) Good one of Schmidt.

K: Yes. These are from our 30th anniversary [FTRF and OIF] and that's Ben Franklin talking to Jim (points to a man dressed as Benjamin Franklin in the photograph with C. James Schmidt). It was in Philadelphia. Fun, fun, fun.

G: Oh, those are good. Those are really good.

K: Fun times.

G: He [C. James Schmidt] loaned me his anniversary program, for reference.

K: (laughs) Well, good, he should. Alright, I will have to get those pictures of Bruce back. I can't believe I gave them to Leonard. (Puts photographs away and closes desk) Judith!

G: You should get those scanned.

K: Yes. (pause) Okay, let us move ahead, we're getting off, off point.

G: (laughs) Okay, that's okay. So, we could go back to just a couple more details about *Moore v. Younger* [1976]. The Foundation, before the 1970s, decided that the primary focus, it seems, was going to be— You were going to go after harmful matter statutes and you were going to focus mainly—not for everything—on obscenity. Someone's office was in charge of finding all the legislation on state obscenity laws for all the fifty states. Was that you? Did you have to do that?

K: No, that is Media Coalition and we still do that because so much revolves around obscenity. I remember when harmful to minors came down and well, actually, it wasn't harmful to minors then. The first thing that came down was variable obscenity. And Bill North and I looked at each other and said, Oh my God. This is the worst thing that could've happened—pales in significance against what's going on today. I mean, variable obscenity became harmful to minors in every state of the union, except Oregon. I think it's Oregon, I may be wrong.

G: Okay.

K: But, other than that, every state of the union has a harmful to minors statute, none of which have ever been used because it's impossible to apply it. You have to have a definition that is applicable to the real world and there's no harmful to minors statute that has an applicable definition. Harmful to minors? How old is the minor? This has been litigated; it was litigated in Virginia and, what the Virginia Supreme Court decided was that material is legal if it would not harm the oldest possible minor. If the oldest minor that would have access to the material would not be harmed *by* it, it is okay for all minors.

G: That's not bad.

K: It's the best of all possible worlds because what it says is that as long as any piece of material is not harmful for anyone 17 years and 364 days old, it's okay for everyone. In *effect*, it nullified the whole harmful to minors concept. Now, it is the Virginia Supreme Court, so other state supreme courts can ignore it if they want to but it is used as precedent all over the country. Now, we still talk about harmful to minors—that's one of the things that is illegal but the truth is, April, with that case under our belts, and that was a Media Coalition case—God bless Media Coalition.

G: (laughs)

K: Love 'em! Love 'em! You see Media—

G: Well you better start loving yourself too because you are part of Media Coalition.

K: Hey, listen I was a founder of it. But it shows, once again, that there is strength in numbers because we have been able to do through Media Coalition what we could never *begin* to do alone, because we're working with a whole group of people, all of whom supply money. I think my dues for Media Coalition a year is something like twenty-two thousand dollars.

G: Whoa. You're a corporate member?

K: Yes, but that's nothing.

G: That's right, so you founded Media Coalition.

K: I was one of the founders.

G: Okay.

K: Susan Clark was our first executive director. We'd have a meeting with all of the members, then Susan and I would talk, then we'd go shopping.

G: (laughs)

K: She is the only female executive director the Media Coalition has ever had. David Horowitz is our current director—I'm not going shopping with him! I said, David, the way you look at every meeting, I don't want to go shopping with you. I adore him, he is wonderful, just absolutely wonderful—perfect for Media Coalition but he is as funny as can be. Anyhow, the publishers, the booksellers, the librarians—we're the "usual suspects." We do a lot together. You have people like Playboy [Enterprises, Inc.] contribut[ing] substantially, although they are not on the letterhead. The video people are involved. There are a lot of people involved. We're trying to get the Internet people involved because that's—

G: I was going to ask. Do you have—

K: That's where the battle is today.

G: Right.

K: So, we're slow but sure. I think Verizon contributes. You know, here ten thousand [dollars] there ten thousand. But I refuse to raise money for anything but the Freedom to Read Foundation. And, Media Coalition and [the] Center for Democracy and Technology (laughs).

G: So.

K: You see, I end up asking the same people for the money. Yes, go ahead.

G: (pause) Earlier on, you decided not to communicate that you were going to go after this *Moore v. Younger* [1976] suit. Alex [Allain] announced it pretty shortly after the decision was made but he was worried about giving strategy away or saying anything too soon because you would be giving something away. I just wondered, what could be given away by mentioning that you might enter into a suit? I mean, in terms of selecting your battle grounds and trying to pick your test

cases—why do you have to keep [a pending suit] to your vest?

K: If you look at our communications over the years you'll find that they're short, sweet and to the point, and give away very little in terms of legal strategy. The problem is that when you're dealing with smart people on the other side and they know what your strategy is, they run you up one wall and down the other wall, and it becomes extremely expensive. That's the problem. The more they know about the strategy, the more they can counteract the strategy, which means that the more witnesses you need, the more arguments you need, the more of everything you need. It's money. In the end, it's money.

I have a wonderful relationship with Jenner & Block—very productive for both of us. I only pay x amount of dollars a year and then it becomes pro bono. Now, on the other hand, they were our legal team for the Communications Decency Act litigation [*Reno v. ACLU*, 1997] and for CIPA [Children's Internet Protection Act, *United States v. ALA,* 2003] and the Communications Decency Act brought them one point two million and CIPA was one point eight million. So the fact that I get back something for our legal defense—they're not losing anything. Over the years, they have been very fair, despite what some people say. But, I'm the one that works with them and I have great confidence and great trust in that firm. They do Lawyers for Libraries for me and never have charged me a cent. I pay their expenses—their airfare—to wherever we're going and their hotel but I'm not charged for their time. That is—

G: Wow.

K: A huge benefit, because I'm talking about lawyers that are in the eight hundred dollar an *hour* bracket. These are all Supreme Court lawyers.

G: That's the cream of the crop.

K: Yes it is. We've done eight of these all over the country and we've done Law for Librarians. The scale balances. I keep telling them I'm their favorite client so be good to me.

G: Well, there's a level of prestige that they get from working with the Foundation, wouldn't you say?

K: Yes. It's not only a level of prestige, they use it as a recruiting tool.

G: Do they really?

K: Oh yes, oh yes. I mean, they have guaranteed First Amendment work in the Freedom to Read Foundation.

G: Oh, true, true. Of course.

K: Absolutely.

G: Of course.

K: There is no law student, worth his or her salt, who doesn't want to get their hands on the First Amendment. It's fun, it's glamorous, it's creative and they— If you could hear this—the Freedom to Read Foundation is one of our clients, you'll get to do First Amendment work if you're good enough. It's hilarious, I mean, it's wonderful. So, you know, I'm happy to work with Theresa [Chmara]. I'm happy to have these kids try their wings out, as long as Theresa goes over it afterwards.

(laughter)

And, she does.

G: She does?

K: She's fabulous, absolutely fabulous—just unbelievable. Little, wee woman, small, small bones, short, very attractive, flyaway hair—I mean lots of it, not flyaway. I call her hair flyaway (points to a photograph of her granddaughter Rachael). Because, no matter—just Rachey, not Hanney (points to her granddaughter Hannah in the same photograph) is very— She wears her hair in a pony tail now. But this one [Rachael], her hair is always in her face, always in her face. I say, Rachael, what are we going to do with your flyaway hair? She says, Oh Grandma.

G: (laughs)

K: That's Theresa, her hair isn't in her face but she has a lot of hair. She's fabulous. When she stands up, she makes the law understandable because she's not trying to impress anyone.

G: She understands it.

K: She's a partner in Jenner & Block. She's the first part-time person who ever was made partner.

G: Really?

K: And Bruce went to bat for her and I went to bat for her because she is *great.*

[removed]

G: Did she get her wings on the Freedom to Read Foundation?

K: Pardon?

G: Did she get her wings, her legal wings, you know, wasn't she Bruce Ennis's protégé?

K: She was Bruce Ennis's protégé. She used to come with him and then, every once in a while, he couldn't be there and he would send her in his place. When he got sick, then she just took over. She and Dan Mach used to share the Foundation. That was a big loss for us. Dan [went to the ACLU]. The ACLU has just established a religion section [in their Washington office] and Dan is chief legal counsel. So he left—

G: Jenner & Block to go to ACLU.

K: Jenner to go to ACLU.

G: Opposite of what Bruce did. Didn't Bruce start [at ACLU]?

K: Right, yes.

G: Yes.

K: Well, and the thing that was, when Bruce was at ACLU, Ruth Bader Ginsburg was at ACLU.

G: Oh, that would've been—oh my.

K: Yes.

G: That's right.

K: The first time we went to the Supreme Court and Bruce was arguing, he said, Come on Judith I want you to meet Ruth. So I got to meet Ruth Bader Ginsburg. Well, I'll tell you another funny story. I was very active with the American Bar Association for many years when Bob Peck was on staff there. We were at a dinner one night, and at the next table was Justice [Antonin] Scalia. And I couldn't resist. I went over to his table and I introduced myself to him and his wife. He looks at my name tag and he said, Oh, American Library Association, *I'm* not your favorite person, *am I*?

G: (laughs)

K: I just sort of smiled and his wife said, Don't pay any attention to him, one of our

daughters is a librarian.

G: No!

K: They have nine children. And, I said oh—I didn't even think—I said, Oh, is she a member of ALA? Mrs. Scalia says, I don't know if she— I mean, what mother knows what their daughter belongs to? Dumb question, Judith. She said, I don't know if she's a member of ALA but she refers to herself as a *professional* librarian.

G: Good for her.

K: Yes, and I looked at her and said, She's a member of ALA.

(laughter)

It was absolutely delightful, and I ended up talking to Mrs. Scalia and didn't spend much time with the justice.

G: Any funny hand gestures [From Justice Scalia]?

K: No, but you want to hear something funnier? Mike Bamberger—if you've looked into the Media Coalition, Michael Bamberger of Sonnenschein Nath & Rosenthal is our legal counsel and has been since its beginning—he and Nino [Antonin] Scalia were roommates in law school.

G: Hmmmm.

K: Yes. (laughs) Okay. We run in a lot of heady circles around here.

G: You're not kidding.

K: I'm looking at Mike and I'm going, You must be kidding. He says, No, and I said, I'm surprised you didn't kill each other. (laughs) He says, Yes, there was that too.

G: You don't get to pick your roommates.

K: It's really funny. This is my list of things to do before you get here tomorrow.

G: Okay.

K: Okay.

G: Well.

K: I have to tell you, we have not undertaken many cases on our own. *Moore v. Younger* [1976], there were a couple others. CIPA was a big one. CDA.

G: CDA.

K: Communications Decency Act. I'm sort of jumping ahead but I started to tell this. I said that Bruce was our counsel, Jenner & Block was our counsel for CDA. Jerry Berman of the Center for Democracy and Technology called me about getting involved in the Communications Decency Act.

G: Okay.

K: Jerry and I were acquaintances in those days. It was sort of interesting because Jerry was not highly regarded by my colleagues, by librarians.

G: Oh. Why not?

K: Many people do not trust him; I can understand why. And, he's abrasive. He sort of pushes aside the obstacles when he has a goal in mind, which makes him my kind of person. I love him. I mean, (laughs) we get along like a house on fire.

G: (laughs)

K: We are very good friends now. Jerry called me and he said, I need ALA as a plaintiff in the case against the Communications Decency Act. I said, Okay, let's talk about this. What do I get out of it? He says, You get a victory.

G: That wasn't good enough for you?

K: I said, What else do I get out of it? He said, What else do you want? I said, I want to be lead plaintiff and I want my lawyer to be the lawyer of record. There was this long pause and he said, Well, we have a lot of other plaintiffs, I don't know if they're going to buy it. And I said, If you have that many plaintiffs, you don't need us.

G: (laughs)

K: But if you want us, those are our requirements—lead plaintiff, and my legal team are the lawyers of record.

G: Didn't it come down to it, before the end there, that it was between Bruce and an ACLU lawyer who was going to get to argue the final piece?

K: That was CIPA.

G: That was CIPA, okay. (inaudible) Well, it's easy to mix them up. Okay CDA, Communications Decency Act.

K: This is the Communications Decency Act and this was our first Internet case. In 1996, we filed suit on this. This conversation is going on, on a Sunday morning, okay.

G: He called you on a Sunday morning to ask you this?

K: There's never any rest. When you're doing good, there's no rest. There's no money and there's no rest (laughs). No, that's the way I operate—if you need me, I'm there. I do it with my colleagues and I do it when it's important. Sunday night, he had to negotiate with our third major (pause) person who was Bill Burrington of AOL [America Online]. So, he had to call Bill. Sunday night he calls me back and he says, You've got it. You're lead plaintiff and Bruce Ennis is lead lawyer. I said, I'll clear it with ALA tomorrow and I'll talk to you. I came in and I talked to the Executive Director and I told him what was going on. I said, It's going to cost us some money but we have AOL, Microsoft, Yahoo!—no, we didn't have Yahoo!—I don't even think there was a Yahoo! six, ten years ago. We did have Microsoft, we had AOL.

G: There was Yahoo! before AOL [AOL was founded several years before Yahoo!]

K: There was?

G: Yes.

K: Alright, well we had Yahoo! and we had another one that went out of business. I can't remember. I know we had four ISPs. I have to look at the case.

G: Yes, I can look it up. [AOL, CompuServe, MSN, and Prodigy.]

K: So naturally, the first thing is, What's it going to cost? I said, Well, the Foundation will put in a sizeable amount and, of course, everybody else is going to and so on and so forth. Anyhow, the end result was that for every dollar the Foundation put in ALA put in two. And then I went out and raised money from my friends—the publishers and the booksellers, and everybody contributed something. It was five thousand, it was ten thousand, it was fifteen thousand. The library community, and friends, raised almost six hundred thousand dollars. Then the ISPs and the other assorted people raised the rest. Our bill was one point two million.

It was an unbelievable case. We got the decision the day the Freedom to Read Foundation was meeting, in June, in San Francisco. We were in

session—the board was—

G: (inaudible)

K: Pardon?

G: Go ahead.

K: Bruce Ennis and I were on the phone with John Morris who was still at Jenner & Block in those days, he is now at CDT [Center for Democracy and Technology]. We're a very small, a very small cadre of people. We just keep moving around, *except me*. Jerry Berman keeps saying, When are you coming to work for me? I'm like, Are you out of your damn mind?

G: (laughs)

K: Hey, I'm Chairman of the Board of CDT these days. (laughs) Anyhow, we're on the phone [and] John is on the lawn of the Supreme Court. It is the first Internet case that the court handed down and they handed it down over the Internet. And so (laughing), he's on the lawn and, as the case comes over his computer, he's reading it to us—Bruce and I are on the telephone in San Francisco. And, of course, it's three hours earlier in San Francisco, thank God, because we're getting this at like eight o'clock in the morning and then we got the decision. Or maybe it was nine o'clock in the morning [when] we got the decision. Oh April, you can't believe. We celebrated. At one o'clock in San Francisco that day, we had an open-air press conference. We had hundreds of people there. It was fabulous. Those are the pictures that I couldn't find; they're all of the press conference.

G: Oh no.

K: It was absolutely fabulous. In the ALA council meeting the next day, Tuesday, we had champagne.

G: (laughs)

K: It was wonderful. It was such fun. And, Bruce said, This is the birth certificate for the Internet. It was fabulous. It was just fabulous. Fun, fun, fun. Several years later, we had CIPA come down. We didn't exactly have a celebration because we lost that one six to three.

G: Right, right. There's the caveat in CIPA from Justice [Anthony M.] Kennedy. Has the Foundation ever tried to pursue a test case on that?

K: Yes, but you need a case.

G: You have to get really good circumstances.

K: Exactly. There's a possibility because the people who need this information the most are the ones who are getting screwed: the elderly, the sick, the immigrants—

G: The poor.

K: The poor, the people who do not speak English well because it is their second language, but most importantly, the kids. Ninety-six or ninety-seven percent of the schools use filters which means that they can't do their schoolwork, because the stuff that they need is being filtered out.

G: Over filtering, right, right.

K: Yes. It's crazy. Oh dear, there's still work to be done.

G: (laughs)

K: The crazies are still out there, thank God. Who keeps telling me, Wouldn't it be wonderful if there were no attempted censorship of books? I'm going, You don't like your job, honey? Get rid of it. I love mine so keep your hands off of it.

(laughter)

It drives me nuts. We wouldn't have any fun if we didn't have any censorship; we wouldn't have anything to talk about.

G: I think it would be a dark day.

K: Yes. Yes, because you know the society we'd have? We'd have a Chinese society, we'd have a Singapore society, where *this* is legal and *that* is not and you don't cross the line. (rights a small microphone that was on its side) I keep flipping this thing.

G: That's okay.

K: All right, we might have time for one more question and then I have to go call the *Chicago Tribune*.

G: Okay. Well, I think that's probably a good place to stop.

K: Okay.

G: Yes.

K: That's good.

G: Champagne and CDA, yes.

END OF INTERVIEW

Interview with Judith F. Krug, May 25, 2006.

Location: Freedom to Read Foundation offices at the American Library Association headquarters in Chicago, Illinois.

Duration: 95 minutes.

April Gage:

This is an interview with Judith F. Krug. The interview is being conducted at the Freedom to Read Foundation offices on May 25, 2006, in Chicago, Illinois. The interviewer is April Gage, a student at the San José State University School of Library and Information Science. Today we will be talking about Ms. Krug's role in the history of the Freedom to Read Foundation.

There's something about you that people might have a hard time understanding and, for the record, I think it's important to get your explanation. You used to have sex on your desk.

Judith F. Krug:

(laughs)

G: And, now you have sex on your credenza. Why advertise this and why the switch to the credenza?

K: Oh, that's a ringer (laughs). There's a long story behind that little note that my superb staff has hung on my office door. Quite a few years ago, Madonna published a book called *Sex*, which contains various poses of Madonna both dressed and undressed and in various stages in between those two situations that raised a lot of questions and a lot of controversy within the library profession. Our position was that 800,000 copies were published, every one of which went like a hot cake. I thought, and so did a few—very few—of our colleagues, that this should be in libraries, particularly as the controversy over the book began to grow and people really, really wanted to get their hands on it. Many librarians of course did not buy it because of the rather blatant photographs of Madonna undressed. I went out and bought two copies. One is still in the Mylar cover and as of today's date I'm holding it because some day it's going to be worth a really

lot of money. I figure I can fund the Office for Intellectual Freedom with the proceeds at least for a short period of time. I have some other things that are tucked away in the files like the original six issues of *Screw* magazine, which I also think are going to be extremely valuable one of these days. We have little things like that I have just, I was going to say, absconded with over the years, but actually I got most of them by quite legitimate means—most of them, at least.

In any case, every year at ALA headquarters we have a holiday party. It used to be a Christmas party, then it became a holiday party, and now it's the Winter Event. Every year we do an ad book, you know, buy ads and say hello to your fellow staff members and the proceeds go to fund the ALA Staff Association. Traditionally, I generally hand the money for a full page ad to my staff and say, Okay, I'll pay for the ad, you guys create it. One year, I gave them the money and went on vacation. When I came back—sitting in the middle of my desk was the holiday booklet open to our ad, which said, "Judy Krug has sex on her desk" and signed by the entire OIF [Office for Intellectual Freedom] staff. Of course this created a *substantial* buzz of excitement at ALA Headquarters and when the rest of the staff saw the ad my wonderful co-workers up here invited them all up—to watch.

G: (laughs)

K: Yes. So I get back from vacation and my office is just loaded with people, all of whom were waiting to see *Sex* on my desk. I pointed out that *Sex* was on my desk and that they could look at it any time they wanted to. But, over the years, I've had to move *Sex* off my desk and onto the credenza and that's where it resides today. Therefore, the note on my door has changed from, "Judy Krug has sex on her desk" to "Judith Krug has sex on her credenza." Every once in a while, particularly when foreign visitors are around, Michael Dowling who heads our international relations program sort of looks at me and says, Are you sure you don't want to take that down until the foreigners leave? I assure him that I don't, because it is an integral part of the Office for Intellectual Freedom. That's the story of *Sex* on my desk.

(laughter)

K: You had to ask, you got it.

G: I had to ask. When I saw the sign from a distance at first I thought it said, "Now she has sex on her credentials."

K: (laughs)

G: And I thought, what does that mean? (laughs)

K: Well, maybe that's next, who knows? Oh dear.

G: Okay, now the record is set.

K: Moving on to less serious matters.

G: I'm going to guess that there is no typical day in the life of Judith Krug, but I wonder if you could just give me a day in the life of Judith Krug.

K: (pause) Well, the emails come in at a rate of, over the course of a day, at approximately 200. Many of these are for—or I shouldn't say many—I would say some of these are for Viagra. I get a lot of Viagra ads. I get quite a few organ enhancement ads and you can think about what organ they want enhanced.

G: (laughs)

K: But most of them are very serious emails. Many of them actually are from out-of-the-mainstream newspapers, which is one of the ways in which we stay up with what's going on in this country since the mainstream press is not reporting, in my opinion, the news that it should be reporting, nor are they reporting it in the depth that they should be reporting it. We get a lot of our news from out-of-the-mainstream press. Not the crazies but things like *truthout*, which is a reader-funded news organization. Some of the wired magazines, you know, *Wired* and things like that, which tend to report from a different perspective and, certainly from, in my opinion, more depth. We get a lot of articles from foreign press because in many ways the foreign press is reporting on what goes on in this country much, much better than what our own press is reporting. So, that comprises a lot of what goes on.

Then, the phones keep ringing and ringing and ringing. Interesting, interesting questions come up—questions across the spectrum about challenged materials, about ethical issues, about legal issues. Just yesterday, or actually two days ago, we learned quite late in the evening that the gag order had been lifted from the Connecticut librarians who had received a national security letter, and were precluded from speaking about what they had received and why and so on. This was lifted and so I was called on the QT and I was told that this is information for me. I was not to share it with anyone until the press conference was held. The press conference was to be held on Thursday, May 25. Except, late last night that was changed and now it is going to be held next Tuesday. I haven't been able to get back to my own, my very own Deep Throat, to find out why it has been changed but I guess the government got cold feet once again. However, we were absolutely delighted when it was lifted because when the FBI withdrew the national security letter we knew the gag would be lifted. They withdrew the NSL in April and we figured that by the time we went to the [ALA]

Annual Conference in New Orleans that the gag would have been lifted, despite the FBI's comment when they lifted the— When they withdrew their subpoena they said, Of course we can't release the names of the John Doe because there's still some loose ends to clear up. We figured that, you know, eight to ten weeks they'd have some time to clear up the loose ends.

So I called the President of the American Library Association who, this year, is Michael Gorman and said, Gee, wouldn't it be neat if we had a program entitled "Meet John Doe"? Well, actually I said wouldn't it be— Michael came up with the title of "Meet John Doe" but I said, Wouldn't this be a neat program if you could have a dialogue with John Doe. He thought it was a really good idea and so we scheduled this program, probably in the only two hour time slot he had available in his entire conference schedule. But, we only needed two hours so that was just fine. Then we proceeded to hold our breath in the hopes that the darn gag order would be lifted and yesterday it was.

We've had such interesting, interesting questions around here. I got a call earlier this week from a man who was very concerned because the homeless are hanging out in his library. This library happens to be right across the street from a shelter but the shelter doesn't open until 7:00 at night. The homeless start gathering at 3:00 in the afternoon and, since there's no place to go except the street or the library, they're coming to the library in droves, and, in this librarian's words, doing unspeakable things in our bathrooms. I said, Do you know that they're doing unspeakable things? He says, Well, I don't really know that but that's hearsay and that's what we think is going on. You know, it's a problem. So we talked through the problem; I mean he can't send these people out of the library.

G: No.

K: But, there have to be some solutions and we talked about potential solutions, one of which I thought would be to ask some of the major civic organizations in the community to come in and talk to the libraries—people, the upper, not the whole staff, but the director and some of his assistants—and try to work out an accommodation so that the library isn't handling these people on its own for four to five hours every day and *precluding* the normal user base to come in because the normal user base is frightened, is intimidated, or they can't stand the smell, or they just don't want their kids around these people. I mean, these are legitimate reasons. But for the librarian to try to shoulder this all by himself, in my opinion, is foolish. So we talked through some of the possible alternate ways of dealing with it. These are the kinds of questions that I deal with every single day.

G: You have resources. I'm thinking of the *Kreimer v. Morristown* case [*Kreimer v.*

Bureau of Police for Morristown, 1992] (inaudible) homeless, you created some resources (inaudible).

K: Yes, we have resources but in this case the kinds of resources that are needed is someplace else for these people to go. I don't have those kinds of resources.

G: Right, exactly.

K: I mean, the *Kreimer* case gave us—or Kreimer. My counsel pronounces it Kreimer (cry-mer) and I say Kreimer (cray-mer). Anyhow, the *Kreimer* case said that these people have a right to be in the library and I agree, but there has to be some kind of an accommodation so that the people who always use the library and who legitimately should be able to use it can also feel comfortable during the period of time when the reading room is basically taken over by the homeless. So there's no problem as far as I can tell with going to local civic leaders and organizations and saying, I need some help; let me hear what you have to say or what suggestions you have to make. I do a lot of that kind of thing.

I've said this to my staff more times than I want to think of, that what I really am, sometimes, is a switching engineer. As the trains come out of the round house you put them on the right track by throwing the right switch. I bring people together with other people who they can work with to solve problems, who can give good advice, who might take some of the burden. It's a switching operation. You know, who can help this person, how can they be helped, do we have what they need? Does somebody else have it?

G: It sounds like you do counseling as well.

K: Oh, I do a lot of counseling. I find it extremely exciting. I had somebody call me—this was a while ago—and it was the head of a library and he was upset because one of his librarians insisted on wearing pants in the library. Personally, I don't see anything wrong with that, I think that's an acceptable form of dress, but for some reason it bothered him. So we talked about the issue and I said, You know, say that this librarian was doing children's story hour and she sat on the floor. Wouldn't pants be an acceptable mode of dress? And he said, Well, sure, I mean, you know, she has to maintain her modesty and so on, and so forth. And, I'm going, The problem with her not sitting on the floor but still wearing pants *is*? And there's this long pause and he goes, Oh, I see your point. I have to be uniform. I have to be consistent. And I said, Bingo! Yes. Sometimes when people call, they just need to talk through problems or issues with someone who understands—who understands perhaps not the problem per se but the *environment* in which this problem occurs, the principles that govern the operation of this institution. And that's me, and that's my staff.

I always have another librarian on staff so that when it's really strictly a library problem, we have the training and the background and the experience to deal with it. Now, the truth is that, over the years, even when my staff do not have library degrees, just by virtue of working in the office and the librarians taking the time to *explain* why we do things the way we do them, makes my staff certainly not degreed librarians but certainly makes them aware of and knowledgeable about certain principles of this profession. So, it's been working. But I have to tell you, every time there's a lull—this is another office joke—my staff goes, God forbid the phone shouldn't ring for five minutes because she'll use that time to develop another project.

G: (laughs)

K: And we're already dying because we're overworked and underpaid. Well, I say, they say they're overworked and I always put in and underpaid, of course.

(laughter)

But, we're all in the same boat. It is really exhilarating to work here in my opinion. Every time I turn around there's a new issue, there's a new problem, there's something new to figure out, there's different ways of looking at the same problem. At this point in my career, I have a lot of contacts which makes it much easier to accomplish a lot of the things that have to be done. For instance, (pause) a couple of weeks ago we had a situation in Kansas where the state legislature was toying with the idea— Well, what had happened—a little background, I started before the beginning. Several friends of library groups went to the state legislature and asked if the state legislature would pass a statute exempting book sale proceeds, library book sale proceeds from state sales tax. The state legislature considered this issue and went back to these library groups and said, We're really happy to do this, which you've asked, as long as you filter.

G: Oh.

K: So, well, they had this thing that they wanted every library—public and school—to filter their computers and voila! They had a bargaining chip with something the libraries wanted. And while you're at it, says the legislature, no young person under the age of 17, or maybe 18, should be permitted to check out any DVD or video with an R rating, not to mention NC-17. What they were doing was taking the Motion Picture Association of America rating code and making it part of public policy. The rule of thumb is you cannot take a privately-developed anything—and in this case a code—you can't take a code that is developed by a *private* organization or *private* institution and incorporate it into public policy. It's verboten; you can't do it. We have many legal actions that

have come to that conclusion. So, my first inclination was, we have a lot of opinions that say just that but when we looked at them, they were twenty years old. The fact that they are twenty years old is neither here nor there. I mean, this is a legal action; they haven't been superseded, it's fine. But, to be on the safe side, I called the Motion Picture Association of America, the number two in command whom I know well, number three in command whom I know well, and I said, Here's what's going on in Kansas. Van Stevenson said, Oh we took care of that. We did a memo, you're off the hook. I said, You didn't share the memo with me.

G: (chuckles)

K: He goes, expletive deleted. No, he didn't delete his expletive. He says, I told them to send it to you because I knew damn well you'd be calling me.

(laughter)

So, he emailed us the opinion which basically said, You can't do that and if you try, we're going to sue your butts off and we're going to win, because here's the legal precedent.

G: Yes.

K: Voila! The problem was solved. It's kind of nice to know that I have these kinds of working relationships that, quite honestly, I've worked very hard to establish and very hard to maintain, and it's meant from time to time a lot of work on our part because it's quid pro quo. It's, You rub my back and I'll rub your back. We were in court over an issue in New Mexico dealing with books but it was not really our issue, although some of our issues were peripherally involved. The lawyer called me, and I knew the lawyer well. He called and he said, I need somebody to testify. I suggested Carol Brey Cassiano.

G: Oh.

K: This was years before she became President of ALA.

G: Okay.

K: Apparently, she was unbelievable. After she testified this lawyer called me back and he said, Judith, I know your people are good but this woman blew us out of the water. She was fabulous, absolutely fabulous and boy, do I owe you. And I said, Boy, you really do but don't worry, I'll call you (laughing). But that happened to be an easy one; I just had to convince Carol she had to do it. But, it's nice to be able to do that, and it's nice to know that I'm dealing with a profession

where people are willing to do these things for you.

April, you're going to be in this profession and the thing that's going to become more and more clear as you get more and more involved in it is that people who are librarians are the most incredible bunch of people in the world—absolutely unbelievable. They're in this profession, by and large, because they really are committed to what we're doing. You sure as hell aren't in this profession for the huge money you're going to be making, because it isn't there and it's never going to be there. But what we're doing is *so* important. I think most of our colleagues know that. To work with a group like this constantly and to know that when you pick up the phone that there's going to be someone on the other end and 99 times out of 100 their reaction is going to be, What can I do to help? Just as when somebody calls here our reaction is, What can we do to help you? It is incredible, just incredible. So that's why many of us are still here, (laughs) because it's hard to break away from a profession where you're doing good. I mean, people ask me what I do and I say, I do good. My husband makes money, I do good. I love it. I've loved every minute of working in this profession.

G: (pause) I'd like to talk about the Office for Intellectual Freedom and the Foundation, and how your roles are so tightly intertwined. Do you ever disentangle them completely? I assume not. How does the Office for Intellectual Freedom provide critical support to the Foundation now?

K: Well, let me go back. I said yesterday that one of the things we were trying to do when we set up both the Freedom to Read Foundation and the LeRoy C. Merritt Humanitarian Fund, and, over the years, other kinds of mechanisms some of which are still extant and some of which are not. But, we were trying to develop a total program in defense and support of the First Amendment, and that's basically what we've done. The interesting thing is, yes, the OIF, the Office for Intellectual Freedom and the Freedom to Read Foundation are intertwined, but you have to look at the role each one plays. The Office for Intellectual Freedom is the policy-recommending body of the American Library Association in the area of intellectual freedom. We're not really. What we are is the secretariat to the Intellectual Freedom Committee, which is the policy-recommending body of the American Library Association. But, my role is to expedite what the Foundation— Or, what the IFC, what the committee, does. We do this by working so closely with them, with identifying trends, with guiding them in the right direction.

The problem in ALA and in every organization like ALA is that every one of our members has a full time job. Or, you know, 99 and 44 percent of our members have full time jobs which deserve or which receive their primary time,

effort, money, et cetera. The fact that they contribute so much to their profession is a boon for everyone in the profession. But my role— Every time I get a new Chair for any of my committees, I tell them, You're not doing scut work, that's not what I need you for. That's what I'm here for. I do the crap. The only thing I want from you is your head, your brains, your bodies at [ALA] Midwinter and Annual Conference, because if you aren't there, you're not doing your job. But you don't have to do the garbage work, I do that. You know, it's not the garbage work, it's the kind of work that keeps the committee going. It's doing the agenda, it's getting the exhibits, it's the mailings, it's the communications, it's—I mean, all this stuff has to get done. It's the scheduling. That's what we do, that's our responsibility. I don't need top rated librarians in this country to do what I [do]. To do reservations, that's crap. It is. That's how I work. We do the scut work and that's what I'm paid to do because my committee—and I don't care what committee you're talking about, whether it's the Foundation board, whether it's the Intellectual Freedom Committee, the Ethics Committee, the LeRoy C. Merritt Humanitarian trustees—I need these people to think, to create, to go to bat when I need them there. I don't need them making reservations, except their own flight reservations; I don't do that (laughs). That's this office. OIF is the secretariat to the Intellectual Freedom Committee—that's the policy-recommending body of ALA, for intellectual freedom.

The Freedom to Read Foundation is the last step in our total program of support and defense. When all else fails—and I do mean this, April—*when all else fails*, then we can go to court. You don't go to court willy nilly. You don't go to court first. You exhaust all other avenues before you even think about going to court, because it's risky, it's expensive, it's time consuming, and you don't take risks, and you don't blow money, and you don't waste your time unless you *have to*. I've had a string of incredible lawyers who have spent untold amounts of time helping me learn the law, understand the law, manipulate the law when it needs, when it is manipulatable. (pause) The one thing—the one thing (she said, sardonically). One of the many things that they pounded into my head is, going into court is the last resort. You think long and hard before you do it, which is why when I go to the Freedom to Read Foundation Board and say, We need to go into court, I never say, We need to go to court. I say, This is *why* we need to go into court.

G: Oh.

K: So that right there they know what the issues are and why we are going to operate the way we are operating. The Freedom to Read Foundation is the ALA First Amendment legal defense arm. ALA. When we go into court, we are going into court on the *basis* of an ALA policy. I am a crazy woman when it comes to policy and procedure. When I was teaching at Simmons, policy and procedure was where

I always started. It's the most important thing you can teach *any* librarian because every action that any librarian takes *must* be grounded in policy.

G: Hmmm.

K: I can't make it any clearer than that. You *must* have policy. That's where you stand, come hell or high water. So, when the Foundation goes to court, the first thing we look at is ALA policy. Where does this fit in? We have incredible policy and we have it because of these people who, over the years, have put themselves and their brains and their commitments and their effort on record. Alex Allain, one of the founders of the Freedom to Read Foundation, drummed it into my head: you can't just do this without a policy base. As I look back over the years of my chairs on IFC, my presidents of the Foundation, it's always the same thing—you have to have policy. Jim Schmidt, Dick Darling, Kathleen Moltz, these are the giants of this profession and they all [said], This how you do it right, and under my watch we're going to do it right. It's second nature to me now. You can't do this kind of stuff for 40 years and not have it become second nature.

When we started getting involved in radio frequency identification, RFID, the first thing we did—I worked with OITP, the Office for Information Technology Policy, which is part of the Washington office. Rick Weingarten is their Director now, although Rick is getting ready to retire. I gave him a lot of hell on that. I said, You're just going to go play golf, what a waste of time. He didn't think so because golf is an important part of his life, more important that doing good. Uh-huh (laughs). Rick and I just have a difference of opinion on what's important in life. Anyhow, the first thing we did was go to Council with a proposed policy. That's the first thing we did. Also, I should say that's the first thing I did. Rick looked at me and said, I'm the technology expert, you deal with policy.

(laughter)

So, we did the policy. We have a good, solid policy that gives us the leeway to do what we need to do for RFID. This is how you operate. It's second nature, if not first nature. So, to go back to your question—because as you know by this time, I never answer anything separately, or easily, or directly, there's always a story or seventeen. We can never totally sort out the Freedom to Read Foundation from the Office for Intellectual Freedom because the two are purposely intertwined. The Foundation is a sister organization to ALA, that's how we describe it. It is ALA's sister organization. It is the legal defense, the First Amendment legal defense arm of the Office for Intellectual Freedom but, more importantly, the American Library Association. We have an interlocking

board of directors, we in this case being the Freedom to Read Foundation. We have an interlocking staff, we being the Freedom to Read Foundation. Who do we interlock with? Staff interlocks with the Office for Intellectual Freedom, the board interlocks with the overall American Library Association. What are the interlocks? In terms of staff, the Director of OIF, in the Foundation's constitution, is the Executive Director of the Freedom to Read Foundation, period.

G: Yes.

K: His or her staff holds comparable positions in the Foundation and in OIF. We are not paid by the Freedom to Read Foundation, we are paid by the American Library Association. There is one, at this point, full-time employee for the Freedom to Read Foundation who is paid by the Freedom to Read Foundation.

As far as our interlocking board of directors, the people who serve as president of ALA, president-elect of ALA, executive director of ALA and the chair of the ALA Intellectual Freedom Committee are permanent voting members of the Freedom to Read Foundation board. They serve ex-officio with vote. Many people feel that ex-officio means without vote. That's not true. Ex-officio means by virtue of the office you hold.

G: Right.

K: That is with vote. They are full-fledged members of the board.

G: Now you and Bill North basically wrote the bylaws. Why didn't you give yourself a vote? Neither one of you had a vote, although you can, depending on how things get set up (inaudible).

K: Well, Bill had a vote when he was president of the Foundation, but legal counsel shouldn't have a vote, and staff shouldn't have a vote, and I feel strongly about that. You see, I grew up in non-profit work. I grew up at ALA. It's a non-profit organization and the Freedom to Read Foundation is a non-profit organization. So, we have set it up and we conduct ourselves in accordance with the best non-profit principles, and that means that you [staff] do not have a vote. You are staff or, as we lovingly refer to ourselves as "merestaff"—one word. So, it's just the way things are done. In many ways, April, people like me do not need a vote. The truth is, if you do your job right you have great influence over what's done and how it's done. So, whether or not I vote is meaningless. Even when the committee or the board takes an action that I might not totally agree with, my role is to implement that action.

G: Yes.

K: And, if I don't vote on it that's one less obstacle I have to overcome. So, it doesn't matter. I'm still going to do my job and there are other ways to influence the board.

G: (laughs)

K: Although I had, at one point, someone look at me and say, You really have to control your board better.

G: (laughs) What?

K: Your committee. We were talking about the Intellectual Freedom Committee and I said, Excuse me, I don't *control* the IFC. I work with them *collegially*. I respect them, and I admire them, and you know what? They respect me and admire me and I don't have to exercise control. We are colleagues and that's how we work. Well, you still have to control them better. No, they're doing what they think is right and I wouldn't *think* of trying to control them. I found the comment so interesting because the person who said it doesn't understand the difference between what she said and what I said.

G: Hmmm.

K: It is very interesting. But I guess it doesn't matter as long as I understand the difference (chuckles).

G: Maybe you can teach her the difference. Is there anything else you want to say? I'm sure we'll continue to talk about this, about this connectivity and—

K: There are some interesting things that have happened. (pause) You will note, if you go back over our cases, that most of the First Amendment endeavors in which the Freedom to Read Foundation [has] participate[d], they participate[d] on their own. I mean, it's the Freedom to Read Foundation. Every once in a while, you'll see that ALA gets involved and, if you look at the cases, it's CIPA, it's the CDA, Communication's Decency Act, CIPA being the Children's Internet Protection Act. ALA got involved in the *Gone with the Wind* case where it was written from a slave's point of view rather than Margaret Mitchell's point of view. It was a very important matter for a very short period of time. But we went into court in a big way, and ALA was involved because we needed some big guns. We needed *the* big gun. But, by and large, the only time I go to the American Library Association is when this issue both directly affects ALA principles and values, or the principles and values of the profession represented by ALA, when the issue, per se, is so vital to our continuing operation as a profession that we believe we need to bring in a plaintiff and reputation of the importance of the American Library Association. To give some perspective, at this particular point in time,

the Freedom to Read Foundation has maybe 2,500 members: the American Library Association has 65,000. So, the Freedom to Read Foundation operates on a two-hundred-and-fifty-dollar budget a year. The American Library Association operates on a fifty-million-dollar budget a year. So, we're talking peanuts and watermelon.

G: (laughs)

K: You know (laughing), you either eat peanuts or a great big watermelon.

G: (laughs)

K: I have some other analogies but that one will do. In short, we need the presence of ALA and, in my opinion, humble though it may not be—

G: (laughs)

K: I don't think that the Communications Decency Act litigation would have been won with a 9-0 vote of the United States Supreme Court without the American Library Association as a plaintiff, because all the other major plaintiffs were the ISPs [Internet Service Providers]. These are money grubbing commercial firms. We [ALA] brought—

G: Respectability.

K: An aura of respectability, of public good, of commitment. And that's why it was so important for the people who were putting together this legal action to bring in ALA, and that's why, in order to get ALA, they capitulated to my demands. What it is now? It's not quite ten years since we joined; the decision came down in '97. I think back on that very short period of time when we were negotiating.

G: (chuckles)

K: It's even truer today than it was then. Our presence in that case was so vitally important, I don't think that people fully realize it yet. Without the American Library Association, I will absolutely wager you anything, we never would've had a 9-0 decision—never. Of course, the people who think like I do agree with me.

(laughter)

G: I had another question to ask you about that and it just flew right out of my mind.

K: Well, it will come back, don't worry (laughs). I was thinking about this tape last night, and I'm thinking, It's probably going to be a little disjointed. (laughing) It's

not like dealing on, you know, on email where you can take paragraphs away. We can cut and splice but what a job that would be.

G: It's good. It's organic.

K: (laughs) Okay.

G: Okay. (pause) I wish I could just remember what that was. It will come back to me. The Office for Intellectual Freedom published the first *Intellectual Freedom Manual* in 19—

K: 73.

G: [19]73-74. It's now in its seventh edition.

K: Right.

G: The latest one just came out. I noticed it's not on your shelf.

K: No. It's right here (pats book, which is sitting on her desk and laughs).

G: Okay. I (inaudible) where's the purple one? (laughs)

K: I'm fond of telling people that this—the manual—the latest edition should be on your desk where you can grab it at a second's notice. So I keep it right here. The latest edition is always right here (pats book) so that I have it. I use it constantly. I know every word in there, but it's right there. Up on the top shelf (stands up and points to an *Intellectual Freedom Manual*). This is the first manual and there are very few of those available. There's one here and there's one in my house.

G: Oh.

K: And these are the others. This is two, three, four, five, six. The first one was a loose leaf.

G: I think I wondered about that because I think it's cataloged as that at the Library of Congress.

K: Could be.

G: Yes.

K: Loose leaf. The idea was that we would keep track of everyone that bought the *Intellectual Freedom Manual* and, as policies changed, we would send them the new material so that they could remove the old material and put in the new

material. That great idea lasted for at least three months.

G: Oh no.

K: When we sold out of the first run— The *Intellectual Freedom Manual* is a perennial best seller of ALA. It's really neat because when I say it's time for a new manual, they start salivating—"they" being ALA Editions, ALA's publishing arm, because intellectual freedom materials sell very well. Actually, I'm undertaking a new program—publishing program. I need my head examined.

G: (laughs)

K: But what else is new. The thing that is really interesting is that, I think the second edition came out (gets up to refer to the second edition)—I don't remember when the second edition came out (looks in book). 1983. (pause) We're talking almost ten years between the first edition and the second edition, and then the time period started getting shorter and shorter and shorter. This (points to the seventh edition) was published—well 2006 is the imprint date on here.

G: Yes.

K: It actually came out December 12, 2005 but the one before it was, I think, 2002. The sixth edition was 2002.

G: Right.

K: So much more has changed. I mean, it's changing so fast and we probably can't bring them out much faster, because every time we start talking about a new edition of the manual we review every policy—every intellectual freedom policy—review it, update it if it needs updating. I am very big on review of policy and when I deal with policy it's not only that you *need* policy, you *constantly* need to review it and keep it up-to-date and make sure that it is still good, given the changing environment in which we're living. Today's world is changing so fast, I mean it just flies. But this came out in December and we will probably start reviewing in another year, getting ready for the eighth edition.

G: So you don't think that this will end up online like an electronic version of the loose leaf (inaudible)

K: There's a lot of this online.

G: The interpretations—

K: All the interpretations—

G: (inaudible) You know more than I do what is all online.

K: There's huge amounts of stuff online. It's just that (pause), the problem with putting with this kind of material online—well, let me go back. Anything that we have eliminated from this edition—from the sixth edition that is not in the seventh edition—is online, everything. In theory, everything that we took out of the sixth edition from the fifth edition is also online but they really screwed me over. They changed all the URLs [uniform resource locators] so you can't get to them. I told publishing services a condition of their publishing the seventh edition is that the URLs will not change because the minute the URLs change the book is no good.

G: Permanent links, PURLs [permanent uniform resource locators], are what you need.

K: Yes. Permanently, I doubt that they are going to stay but, until the new edition comes out, at least this is going to be good. See, the sixth edition, by the time we brought this out, was worthless because so many of the URLs were gone. I was so frustrated, and I told them that if they couldn't live up to that I was going to take it to Neal-Schuman or somebody else.

G: (laughs)

K: That scared them (chuckles). Anyhow, things are changing so fast that we keep, I mean, we're already— We're going to council, we'll have new policies. The big policies that are in here that weren't in the sixth edition are all the ones dealing with privacy. We have RFID in here so I didn't have to wait until the eighth edition. You know, it's nip and tuck down to the wire to get in what we want to get in, and still meet our publishing deadlines.

G: Yes, I haven't done a thorough review of the manual but I needed to have it. I almost—

K: This thing is fabulous. It is so good.

G: It is. It really, really is. It's an excellent textbook for intellectual freedom classes.

K: I know, and when I was teaching at Simmons I used the manual as my text and I know Beverly Lynch uses it as hers. I assume Jim [Schmidt] uses it.

G: Yes, it's required.

K: It was really— What?

G: It's required reading.

K: Yes. Well, the funny thing is that Beverly called last fall and she said, When is the new manual going to be available, because I'm teaching in January. So I called publishing services and said, This is used as a text and UCLA really needs it and they need to know the publication date and I don't want to say December 15 if you're not going to have it out December 15. I had already met all of my deadlines—they had the manuscript and blah, blah, blah. They said, No, it's not going to be out December 15. I went, Oh shit! He said, December 12 is the publication date.

G: (laughs)

K: It was out December 12. It was, I mean, it was—we were like crazy up here. It was just such fun and I love the color this year.

G: Did you pick lavender on purpose?

K: Actually, I had nothing to do with this color, they picked it in publishing services. That's the first time we haven't picked our own color.

G: I wanted to ask you if there's a story behind the different colors you pick or if there's—

K: No. We just sit here and pick them out.

G: (inaudible)

K: I remember we picked yellow one year and publishing services came back and said, That's a putrid color.

(laughter)

G: Yellow was vetoed?

K: Yes, yellow was vetoed. I thought that this one might be green because we haven't used a green.

G: No, you have a lot of blue.

K: Yes, there's a lot of variations of blue but I love the lavender, I think it's really, really pretty.

G: Yes.

K: You know, when we talk about the eighth edition, we talk about what color it will be, not about content (laughs).

G: I know (laughs).

K: Well, listen, we deal with important things first in this office—no fooling around.

G: (laughs)

K: But this, wow, it's good. It's really good.

G: It's a lot thicker than the [previous edition]. They just get thicker and thicker.

K: Well, there's a story behind that. The sixth edition is 430 pages and they told me, No negotiation, this is not going to be any longer than the sixth edition. I said, yes, yes, yes, yes, yes. We were really very good and I got the copy ready, and I gave it to them and I said, It's a little longer. Well, it's 521 pages. I said, It's a little longer. So, they said, We'll cut. I said, You can suggest where to cut but I will make the final cuts. They came back and they said, You know what, it's really good, we're not going to cut it (laughs).

G: Hey.

K: So (pats book), it is good. Of course, I thought every one of them was good but this one is—this is pretty special.

G: You worked with Candace Morgan pretty heavily on this issue?

K: Yes. Candy was my editor on this one. You know, I've done the manual so many times, there comes a point where you can't keep doing these things. Several editions ago I started hiring an outside person to do a lot of the updating work that just, you know it's—

G: Time consuming.

K: I can't keep doing it. They all worked out wonderfully but Candy brought something special to this edition. She's a very interesting, incredibly bright and just wonderful person. Of course she's a dear friend so—

(laughter)

K: What am I going to tell you?

G: And Theresa [Chmara] contributed to this one as well, I know.

K: Well, Theresa contributed, has contributed since—she was in the sixth edition, too.

G: Was she? Oh, okay. So can you pick out a most important update of this newest one?

K: It's the intellectual freedom bible.

G: Yes.

K: It's as simple as that. My idea when we started doing this was to bring all of the intellectual freedom policies together in one place and to show how they applied to libraries. That was the intent, and that's what the first edition did, and it just has grown like Topsy. You know we took things out of this manual, out of this edition, put in others. You look at what's going on in the world and you say, Well this is important but it's not as important any more and we'll put it online. We took out the article on censors, because—

G: *What to Do When the Censor Comes*?

K: No. *What to Do When the Censor Comes* is still in there. Rob Boston of Americans United for Separation of Church and State did an article on a profile of a censor. I took it out of this one because we needed a different kind of article on the right of center. His article is on the Web now so you can get to it.

G: Okay, okay. Now, just going back to the fact that this is a great textbook for library schools, I wanted to ask you what your views on the state of library instruction in the area of intellectual freedom are.

K: Well, I am (pause), I'm not happy with the state of instruction that's coming out of the library schools in regard to any of our values. I do not believe that the schools are doing a good job in conveying the value system of this profession. Certainly I can talk a lot more about intellectual freedom because that is my area of expertise. But, for years the only, *only* course in intellectual freedom was the one that A. J. Anderson taught at Simmons. And when A. J. retired, they maintained the course but it was a summer course and not taught during the year. (pause) I don't know what to do about that because you can't tell the library schools what to teach. The Committee on Accreditation does not tell any school what they must teach. So, while we're very concerned, we in this case being the Intellectual Freedom Committee, and while some of our colleagues are concerned, intellectual freedom gets taught when one of those colleagues who is concerned ends up at a library school, like Jim Schmidt, like Beverly Lynch and, you know—

G: You.

K: Yes, but I'm not there anymore. I'm not teaching this summer. The course is being

taught but I am not teaching it. But, I am hard pressed to think of another academic, another graduate library school—accredited library school—that has an intellectual freedom course. Many of them will lecture on intellectual freedom. Many instructors contend that they don't need a course because it's worked into *every* course. That's easier said than done and I just, you know, I don't agree. It's as simple as that. But, I do have a lot of other things I have to keep track of so, you know, you pick your battles. I would like to go to the Committee on Accreditation but (pause) well, I don't think I will. I think the Intellectual Freedom Committee has to do that. I think that members have to talk to members and it's, it's such a fascinating—I mean, my having said that is so interesting because I am a colleague of every one of those people and yet, in that kind of a situation, I'm staff of the American Library Association. When we're dealing with another committee or with another organization, we use members. So, the chair of the committee—whatever goes out would go under, at this point, under his signature. Or, over his signature, he signs at the bottom not at the top.

G: (laughs)

K: It's just very interesting. It's the way of the non-profit world.

G: Okay, okay. (pause) I wanted to ask you a question that I asked Professor [Jim] Schmidt—kind of along the same lines. It's about learning policy, and understanding policy and then teaching policy. Ethical standpoints in the Library Bill of Rights took a long time to develop and they are a result of an iterative process spanning several decades. In your career—not just in the classroom at Simmons in the summertime—but in your career as an educator, sitting in front of Congress at a hearing, you need to be able to convey these, sometimes in a very short period of time. To me, it seems like [with] these ethics, you need time to digest them and mull them over, really sort of grapple with them. So, how do you handle conveying the truth in these views, especially when there's just little time to do so, like in a congressional hearing?

K: (pause) You develop what we are fond of calling around here, message points.

G: Okay.

K: And you hone them. I do a lot of this kind of work with our press officer. I have a whole set of message points here that we're going to use when the gag order is lifted on John Doe, the Connecticut librarian who by the way will be— There's many people included in John Doe, not just one as everybody was sure, because it doesn't say John Does, it only says one John Doe. Well, duuuuu. You do message points. You know your message points and you stick to your message points, and you can convey a lot of information in a really short period of time.

That's how you do it. You need to be able to know your subject well, you need to be able to condense. But it's a fascinating process. Even when I'm giving interviews, which I do regularly, you have to be able to focus in on the specifics and just go for it. Banned Books Week is a huge source of news stories for ALA, and for reading, and for banning books and so on. It's our—

G: You founded it in 1982.

K: Yes, this is our 25th year. But, it used to be that the newspapers would send their youngest reporters and it would take me *incredible* amounts of time just to make them understand that we're not censoring books! I mean, But it's Banned Books Week, don't you ban? Aren't these the books you banned?

G: No.

K: Can you read? Oh God, it drives me nuts. Anyhow, now—and I consider this to be recognition of our stature—they're not sending cub reporters anymore, they're sending real reporters and they're asking good questions and they're following through, but you keep going to message points.

G: Talking about being under the gun when trying to get your message across, an interview is an excellent example.

K: Well, you know, you have to do it, you have to do it quickly, you have to do it in an understandable way, without using jargon, without sounding flip. It's very interesting. It's a pain in the butt a lot of the time.

(laughter)

But it's very important. So, every time the phone rings—I mean, when we're getting ready for Banned Books Week it's like, Oh God, not again.

G: How many interviews do you do a week during that?

K: Pardon?

G: How many interviews would you say—

K: Well, it starts three weeks before and there is a whole series of stories leading up to the week and then there's a whole series that are done and held for publication during the week, and then there's post stories. So, we do maybe, anywhere from 100 to 150, 160 interviews over a three-week period.

G: Wow.

K: It's almost like, If I have to say that one more time.

G: (chuckles)

K: I'm going to slit my throat. Then, of course, you have to be very careful that you don't lose your spontaneity. I mean, you might be dying to say, Oh you stupid fool, I've just said this twenty-two times today! But you have to sound excited and interesting. I'm telling you, those three weeks are awful.

G: (chuckles)

K: I have a new staff member coming in on the 5th. I just have to get in here, get her up to speed because she's doing these interviews, I'm not.

G: (laughs)

K: The thought of me having to do those kinds of interviews is, Oh no, I can't do that anymore.

G: (laughs)

(short break)

G: Okay, we're back.

K: Okay.

G: That's on, we're ready to roll. So, I wanted to ask you some questions about the membership in the Foundation.

K: Okay.

G: According to the Foundation reports, a lot of the ALA members don't realize that the Foundation is a separate organization with a separate membership structure, and you guys are looking for ways to increase awareness.

K: Exactly.

G: Why do you think this is?

K: (pause) I don't think that people read quite as carefully or as much as we think librarians would read. The truth, April, is that we are inundated with information. When they wired this building and we got the Internet in here and we got our own LAN [local area network] they said, Oh this is going to make your life so much easier. Well, not only did it not make it easier, it's another full time job. So we

have the Internet, we have print publications, we have the radio, we have television, there's just so much going on around us. It goes back, somewhat, to an earlier question where you were talking about the interconnectivity of the Freedom to Read Foundation and the Office for Intellectual Freedom.

G: Right, right.

K: That's part of it. I mean, they say, Oh! Judith Krug, OIF, oh, another ALA thing, and it's not. But we just keep chipping away and the board gets involved. We have a fabulous fundraising committee and a fabulous membership committee and they're getting our board members to send out personal letters. I sort of laugh because our fundraising chair this year is Fran[cis] Buckley and Fran told me, jokingly, that when you become a friend of mine it costs you money. It costs you money, it's a constant, my hand is always out. Fran says, You're not the only one. He wrote to his friends about the LeRoy C. Merritt Humanitarian Fund because he was a trustee for three years. Now he's on the FTRF board, and he's writing to his friends about the Freedom to Read Foundation (chuckles). It's like, Okay, he says, I know exactly what you mean (laughs). I think that's it. It's not that they don't care because they certainly do. It's that, the information is there, they either have it sitting on their desk—as many people say, Oh, I've been meaning to do that. I said, You said that three years ago. I want your check, *now*.

G: You already answered my question of whether or not there was a connection between the amount of members and the amount of people who sign up for the Freedom to Read Foundation as a member, and their willingness to actively participate.

K: They'd love to. There are so few people who have turned us down when we say, Would you run for the board. I can count them on three fingers. People want to be involved. Even when they're not elected, they're still loyal, contributing, interested, concerned members.

G: I think I read somewhere—speaking of running for the board—that you mentioned to someone that you needed to run about three times to get it right.

K: Pamela Bonnell, Pamela Bonnell-Mihalis used to say that you have to run three times for the Freedom to Read Foundation board, to build name recognition, and the fourth time you're elected.

G: (laughs)

K: So, very often that happens, that people— You have to build name recognition. I keep trying to get the Nominating Committee to run people who are *new* people. They're not the Candy Morgans and they're not the Gordon Conables and they're

not the people who have been standing out for years and years in the intellectual freedom or the Freedom to Read Foundation realm, because we have a lot of members who would be wonderful on the board. It's just the problem of getting them elected. If a lawyer runs— I think there's only been one time that I remember a lawyer running and not being elected. Many of our members will look at the list of who is running and go, Well it's a legal defense arm, we need lawyers on there. So, once I realized that, I was very careful to make sure that the people the Nominating Committee was running were really good, committed, involved people because I knew they were going to be elected. We don't need people on that board who are never going to show up at the meetings. Like Nat Hentoff was elected but never showed up at a meeting.

G: (inaudible)

K: Well, what's the point of having a name on the board if he's never there?

G: Right.

K: There was somebody else who was elected, well-known—never showed up. You know, it's like, first you harassed me because you wanted to be on the board, so we ran you and you were elected, and you never came. Don't give me your crap. That's foolishness. I get really annoyed.

G: What is the fate of someone who does that, with Judith Krug?

K: Well, you know, I let them know that if you weren't going to participate, why did you run? Of course, once they're elected, unless they resign or die we can't fill that slot. That really bothers me.

G: Of course.

K: Because we don't have a huge board. To some people it's a big board. It's a 15 member board. That's not a really big board. We try. I mean, the board is a working board so that we have jobs to do. If we have a big hole, because one or two people aren't involved— The other problem is that the ex-officio trustees are not—except for the chair of— no, even him. The ex-officio trustees basically do not participate in the governance of the Foundation. They're not on committees, because they have not only those full time jobs that we've been talking about but they are also very important people within the American Library Association. So, except for Keith Fiels or except for the executive director whose job it is to be executive director of ALA, you're talking about the president—he or she is the president of ALA, and has a full time job, and serves on the FTRF board, and is always being pulled in 37 different directions. So you can't say, Well you're going to work on the fundraising committee. Now, depending on who the

president or the president-elect is, they do. I mean Leslie Burger, who is the incoming president of ALA—she'll be the 2006-2007 president—she is on a committee, because she thinks it's important and she happens to enjoy doing this work. So, great but, by and large, if they don't volunteer as Leslie did we don't put them on a committee. Enough is enough. When I have an elected trustee, as opposed to an ex-officio trustee, but an elected trustee who is elected, and never shows up for a meeting, we really get a hole in our ability to conduct the business of the Foundation. I get a little annoyed. See how proper I'm being? *Annoyed.*

G: (laughs) What's the communication flow like through the year?

K: A lot.

G: I mean, through the year. It's more than a year term for each member but are you on email with people weekly, monthly?

K: It's a lot. Okay, we do a couple of things. Number one (pause) the board members are on the OIF list, which is an information list. We just send out information to them. That's Don's [Don Wood] bailiwick. Jonathan [Kelley] communicates with the board probably at least once a week and usually twice a week, sending materials, keeping them up-to-date on our cases, who knows what. Its— (turns to computer and displays email inbox) This is Jonathan's—this is what I haven't—

G: What you haven't looked at yet.

K: And I've already eliminated a lot of the kinds of things that I call housekeeping things. I just go through my email and get those out of there. Anything that I give Jonathan to send to the board I get out of my email immediately, so there's probably twice as many things as that list that he has sent out. It's legal actions, it's updates, many of which I've already written so I don't need to keep those.

G: Right.

K: We communicate a lot. I really believe in that. I'm a stickler for getting out information and I really believe that the board is only as good as the information they receive. If you don't feed them information, then they can't talk about the Foundation in a realistic, in-depth, up-to-date point of view. They're no good; they're not doing their job as trustees. But, they can't do their job of trustees—as trustees—if I don't give them the information that says this is where the Foundation is, this is where we're going, this is how we're doing it. So, (sigh) there are a lot of people, April, who believe that information is power and the less information you send out the more powerful you are. (pause) I believe the first part of that, I don't believe the second part. My role, my professional ethic, is to bring information together with the people who need it or want it. If somebody

says to me, What does it mean to be a librarian? That's what I say to them. It means, that I spend my entire career bringing people together with the information they need and want. That's all I do. When I do that successfully, people are empowered to lead better lives, to be better business people, to be more—to be happier, to be more productive, to be a better citizen, to be a better governor, self governor. But it all is based on information.

G: Yes.

K: And as the librarian that's what I do. That's how I run the Foundation, and that's how I run OIF, and that's how I run the Ethics Committee. The more information they have, the better committee members they're going to be. You talk to some of the people who have served on a committee that I have been involved in and I will wager you that they would tell you that they are well versed in what the committee is doing, that I never ask them to do crap, that I take their commitment to this, to whatever they're doing seriously, I use their time wisely, because that's what I think the proper role of a staff member is. And if any of my friends don't give you that answer, I'm going to beat them up.

G: (laughs) Is there anything else—anything more you would like to say about the board?

K: Over the years we've had an absolutely incredible board. But, you know, the board has grown like the Foundation has grown. Partially it's because if you're on the governing body of a legal defense arm you need to know something about the law. So we have tried to teach them about the law and you just watch them grow. It's just a really interesting process [with] wonderful, wonderful people who step to the plate when we need them to, who contribute—recognizing that these are librarians—and they contribute every year substantially, individually. It's just, you know, it works. We are going to have to wrap this.

G: I was going to say, we [are] probably out of time. This is a great stopping point. So, why don't we? Yes.

K: Yes.

END OF INTERVIEW

Interview with Judith F. Krug, May 26, 2006.

Location: Freedom to Read Foundation offices at the American Library Association headquarters in Chicago, Illinois.

Duration: 113 minutes.

April Gage:

This is an interview with Judith F. Krug. The interview is being conducted at the Freedom to Read Foundation offices on May 26, 2006, in Chicago, Illinois. The interviewer is April Gage, a student at the San José State University School of Library and Information Science. Today we will be talking about Ms. Krug's role in the history of the Freedom to Read Foundation.

Judith, I'd like to resume our discussion about the Foundation membership for just a moment.

Judith F. Krug:

Okay.

G: I have one more question. I was looking over the very first batch of contributors to the Foundation and there was a [Mrs. William] Feinstein from Berkeley on the list. This is 40 years ago, but do you have any idea whether that was [Senator] Dianne Feinstein?

K: It might have been (laughs). Or it might be. I honestly don't know but it might be.

G: I think she might have been going to Cal [University of California, Berkeley] at that point. It could be an interesting piece of Freedom to Read Foundation trivia.

K: Yes, yes. It's interesting that you brought up our original contributors. When we set up the Foundation, David Clift said to me, Well, we have now announced our party. Now the question is, is anybody going to come? About three days after he said that, so it was three days after the announcement—it was probably four or five days after that, my memory is a little (chuckles) shaky from 40 years ago—I got a five-hundred-dollar check from LeRoy C. Merritt who was the first contributor to the Freedom to Read Foundation. I took it down and said to David, Well, somebody's coming to our party and he is coming in a big way.

G: (laughs)

K: I put the check under his nose. It was really interesting.

G: That was a surprise to you, to get that?

K: Well, it wasn't so much a surprise, I think the size of the check was a surprise. But it was exciting because what David had tried to do was, in effect, say, You know, if the members don't start pounding on your door saying please, please, please let me in, you can't be too disappointed. But the truth is that they did start coming in and they started coming in immediately. It was very, very exciting.

G: (pause) Okay, you analyze the issues and interact with librarians from every walk of life in America, in every state—not to mention all over the globe as you fly off to Japan today. What is your view on the state of intellectual freedom awareness and acceptance in the profession today as opposed to, say, the time the Foundation started in the late 1960s?

K: Are we talking about just this country?

G: We're going to just limit ourselves to America.

K: Okay. I think that when the Foundation started, which, of course, was only two years after OIF started.

G: Exactly.

K: Intellectual freedom, for those people who even knew the term, believed it to be an esoteric concept that had something but not a lot to do with their day to day existence and practice of librarianship. That has substantially changed and I take credit for a great deal of that—not for all of it. But, for being here, being available, making sure that the information *is* available and is gotten off of this desk. One of the things that I say constantly is that information doesn't do any good sitting on my desk. It has to get out to the profession. I think I said earlier that there are some people who believe that information should be kept close to their chests because that gives them a leg up and I, of course, don't believe that. I believe that the more information people have, the more capable they are of participating, contributing, being involved, and in fact, supporting their fellow librarians, their fellow citizens, this association, this office. So, our role is to get stuff out of here. Every once in a while I just have to say to my staff, Know what you're sending out. Just because you have access to it doesn't mean it automatically goes out because we have to be concerned about privacy.

G: Yes.

K: You still have to know what you're doing. I know this is going to sound like a

contradiction but I do not come from the school that says let it all hang out. There are some things that should not hang out.

G: (laughs)

K: That can be taken several ways (laughing) and I mean it in every way!

(laughter)

It's just some things. You just have to be sure about what you're saying, how you're saying it, when you're saying it. But information that comes across our desks—that's the kind of stuff that needs to get out of here. I think that we're pretty good at that.

There have been many things that have contributed to the fact that intellectual freedom is pretty much a household word in American librarianship. I think that one of the things is that we really went out to develop a total program for intellectual freedom for all librarians. I am fond of saying to librarians, You never have to fight a censorship battle alone—never. That's what we're here for. We're here to back you up, and we'll do it publicly or we'll do it on the Q.T. or under the table, as it were. It depends on the situation in your local community, because sometimes if people know that the Office for Intellectual Freedom of the American Library Association is involved, it's the kiss of death.

G: They back off?

K: There are many people, generally right wing, right of center, who do not think highly of either ALA or this office, or me particularly, or me by name. If those people are involved in an issue, I'm not going to stand out there publicly in front of my colleagues and say, Ha, ha, ha we're helping. I'm going to go underground and start feeding information to my colleagues, and to people who can help their fellow librarians.

Every case that comes to us, we look at what's the best way to handle this. But *because* we do and *because* we've been here for so many people, the backbone of American librarians has become stronger, and straighter, and tougher to crack. In many ways, we don't even have to get involved anymore in many of the incidents, because our people know that we're here and we're available at the—pick up a telephone, we're available. So it gives librarians a cachet, an ability—whatever you want to call it—to stand up and say, Come on, we will deal with whatever you throw. People will say, Well if you don't do this, I'm going to file a lawsuit. Now my reaction is, Bring it on honey, I can't wait. That's exactly what I want. We'll take you into court with the best First Amendment legal defense that you will ever see, because *those* are the people that work for the

Freedom to Read Foundation. We're here, and because of that, and because of the consistency, and a concern, and compassion, and commitment that have been exhibited by every member of this staff over every year of our existence, I think that librarians are in a much better shape—much better shape—to stand up for themselves, for their profession, but most importantly for the public they serve.

G: Now—

K: I can get carried away about that.

G: No.

K: (laughs) I think it's very important.

G: It really is, and librarians— I can't point to a starting date but now—in these times, in [the] beginning of this century, with this administration, the [USA] PATRIOT Act, and some of the threats to our civil liberties that have been surfacing—it seems that librarians have really risen in their influence and their visibility in the United States.

K: Oh, yes.

G: It almost seems like this profession is leading the rest of the country and showing them, Hey, remember, this is our democracy.

K: You know, it's interesting that—not only that you brought this up but the language that you are using. When the [USA] PATRIOT Act was signed, we got a copy here and we started reading it. I'm almost embarrassed to admit it took me three months to read it and to understand what I was reading, or (laughing) at least to pick out those parts that are going to affect us. Some people say, Well, it took you until January before you started speaking out about the [USA] PATRIOT Act. I said, Did you try to read it?

(laughter)

It took me a while to understand what the law said and then it was like, Oh my God, we have to do something. I think that in many ways your statement was absolutely right. Last July 29—July 29, 2005—I think that's the date, Senator Dick Durbin [Senator Richard J. Durbin], from the great state of Illinois, our senior senator whom I am very fond—of whom I am very fond—put a statement in the *Congressional Record* where he said that without the American Library Association and the librarians of this country, this Congress *never* would've given the USA PATRIOT Act the hearing that it is and has been receiving.

G: Wow.

K: It was because we took on Section 215, and Section 216, and Section 505, which relates to National Security Letters, and some of the other issues that we dealt with—not to the degree that we dealt with Section 215 and Section 505, but *certainly* we dealt with them. We raised the awareness of the American public and we forced Congress to seriously look at what we were saying. I sit back and, while we didn't get anything near what we wanted in this reauthorization, we did get some things. I mean, they wanted to pass every one of the 16 sections that had not been permanently passed. They wanted them passed pro forma. Section 215 not only wasn't passed, but when it looked like it wasn't going to be passed, the administration said, Well, okay, we will review it in ten years. We came back and said, No, we want it eliminated. They came back and said, Well, seven years. We said, No, we want it eliminated. They said, Four years and we're not budging. And, that's what Congress passed. But four years from ten? It's a giant step. You look at some of the other things that are little but they are advances, and we have another chance in four years. We're going to be working through the next four years to get that damn Section 215 repealed and off the books, because the truth is, we don't need it. (taps her desk to emphasize each word) There are laws on the books already that do exactly what Section 215 does vis-à-vis libraries and library records. (laughs)

G: (inaudible)

K: So, when I read Dick Durbin's statement that he put in the *Congressional Record* I said, Wow! One of the things that we did—we ran a transit campaign in Chicago.

G: Okay.

K: The campaign ran, in theory, from June 15 to July 15 [2005] on the blue line and the red line of the Chicago Transit Authority, CTA, which is the elevated train. The blue line is the line that comes in—in and out of the loop from O'Hare International Airport.

G: Oh, okay.

K: The red line is the main train north and south. It runs right along the lake, all the way north and all the way south. And, of course, the ridership is five million monthly on the red line and three million on the blue line, particularly in the summer. This was running during Taste of Chicago; it was running during the ALA conference in 2005. Actually, I can show you what the ad [advertisement] looks like. It was fabulous. But some of these are still up.

G: They are?

K: Yes, I know. Not all of them, we had a couple hundred up but they don't take them down until there's something to replace them.

G: I see.

K: So when you take the blue line out to O'Hare today, you be sure and check and see it you see one of these. (Judith displays the poster for the Campaign for Reader Privacy. On the poster, a sinister-looking cartoon man wearing a fedora and trench coat is peering furtively to one side. The message "Is someone reading over your shoulder?" appears.) Anyhow, these were so fabulous.

G: I have that bookmark!

K: Yes, yes, there were bookmarks.

G: Professor [C. James] Schmidt gave us all a bookmark.

(laughter)

K: So, I mean I just—

G: That's great.

K: Yes, isn't that, isn't that good?

G: Oh, that's great.

K: I was very excited about this. "Is someone reading over *your* shoulder?" Anyhow, ALA had never done anything like that before. It was really successful and, the truth is, it's not all that expensive. So, you know, it's a couple thousand dollars.

G: That's it?

K: Yes, and particularly when they leave it up for almost a year, that's a real bang for your buck.

G: It is.

K: It was a great campaign. We did the Campaign for Reader Privacy with the American Booksellers Association and the American Booksellers Foundation for Free Expression, the Association for American Publishers, PEN American Center, ALA and, of course FTRF. Everybody paid for certain parts. OIF, the

Office for Intellectual Freedom, paid for the transit campaign, mainly because I just wanted to get it up and I didn't have time to talk to everybody else. Somebody else put up the Web site—all kinds of things were going on.

As I said earlier—one day earlier in this marathon interview—we work very closely with the publishers, and the booksellers, and this whole Campaign for Reader Privacy, which was our public campaign against the [USA] PATRIOT Act, was a really prime example of the importance of building these kinds of partnerships, that there is strength in numbers and it's—every time we do something where we all come together, "we" in this case being the publishers, the librarians, the booksellers or the "usual suspects" as we call ourselves, *us*, usual suspects, we realize how potent we are. I mean, we're talking about the major—every major publisher in the United States belongs to AAP [Association of American Publishers]. Every independent bookseller worth his or her salt belongs to ABA [American Booksellers Association]. We bring in, peripherally, the chains because the chains don't want to be left out, the chains being—

G: What are the—

K: Barnes & Noble—

G: Oh, okay.

K: You see, they are not members of the American Booksellers Association. So it's really a wonderful situation and the people that we work with—it's nice because we all like each other, we work well together. If a dumb idea comes up we're not afraid to say, Oh, for crying out loud, use your head. We're librarians, you can't do something like that. (laughs) We work well together and it's really fun.

You want to hear something even funnier? The president of the American Booksellers Foundation for Free Expression right now is Chris Finan. He is on the Freedom to Read Foundation board. The head of the publisher's Freedom to Read Committee, which is the counterpart of the ALA Intellectual Freedom Committee—the head of that, their staff—is Judy Platt. She's on the FTRF board. So it's a very small community and we work very well together. It's great fun.

G: I did have a question—building on the sense of community, going backwards to, well let me find the (looks in notes). I think, going backwards to—when did this start—

K: When did what start?

G: Oh, okay, actually, in March of 1963, this is before the Foundation was ever formed and the ALA Executive Board was talking about the Foundation, and they

were talking about the ACLU [American Civil Liberties Union] because [Frederick H.] Wagman had that idea of—

K: *A* foundation, not *the* Foundation.

G: Not this one, *a* [foundation], exactly. It really morphed into something completely different along the way. Everybody kept changing their mind about what they wanted it to be. But some of the people, in the board meeting minutes, were saying that they— There was hesitation to partner with the ACLU way back then. One reason was that they wanted to be able to work with libraries, and organizations that had an unfavorable view of the ACLU (telephone rings) and they also wanted to go it alone. They wanted (telephone rings) the ALA to—

K: Sorry.

G: It's okay. They wanted to be able to work with libraries and organizations that had an unfavorable view of the ACLU and they wanted the ALA to be able to go it alone. This seems to be a totally, totally different mindset from what you are talking about. I was wondering, when you first started, do you know what the pros and cons of working with the ACLU would have been in, say in 1963?

K: I honestly can't answer that. I didn't even come to the American Library Association until March of 1965.

G: I know.

K: Quite honestly, in 1963, my knowledge of and interest in the American Library Association—well my knowledge about ALA was probably a little more than my interest in it. So, I just have absolutely no idea what was going on. It wasn't affecting me in those days. I was busy getting married, actually. I wasn't worried about ALA (laughs).

It's interesting though, because there has been—not so much from my perspective (coughs) but from the profession's perspective—almost a hate-love relationship with ACLU over the years. I work closely with ACLU. We're in court right now as joint plaintiffs in two cases dealing with the USA PATRIOT Act. ACLU is the lead in each case but they called us and wanted ALA. Well, actually, they wanted FTRF with them and we are. It is FTRF and not ALA that is involved in these cases. Yet, there are many of our people, many of our librarians (pause) in certain states, where if you are partnering with ACLU they will have nothing to do with you. That's the long and the short of it. ACLU is not popular in those states. Of course, the ACLU has a presence in those states but many of the librarians just don't want to be known as partners with ACLU. In their local communities, this would not do them any good.

Sometimes I find such attitudes less than helpful. On the other hand, I am not going to sit here and tell my colleagues what their local political situation is, because the truth, April, is I don't know. I rely on them to tell *me* what their local political situation is, and if they tell me that ACLU partnership is not going to do them any good, then I have to believe them. Many of these same people, but not all of them, are saying, It's bad enough they know we are involved with or active in, or members of the American Library Association. We don't need the added burden of knowing that we are ACLU devotees.

G: That was going to be my next question.

K: This is a very interesting period of time we are working in, where ALA as ALA has been demonized in a way that I never remember us being demonized in the past. When I'm being flip about the whole thing I will say, This is one of the member benefits that the American Library Association gives you. You can blame all the bad stuff on ALA and come out being pure. You know, Oh, you don't want that book. Well, we have to follow—not that ALA tells us that we have to have specific books—but we have to select books according to policy and procedure, and under our policy, which ALA made us adopt—

G: (chuckles)

K: Yes. We have to have these kinds of materials because we have to represent that point of view. I mean, sometimes it gets a little complicated but you can blame it on ALA and come out looking pretty good. It's a fascinating world when a professional association is blamed because some parent can't raise his or her kids appropriately. And the kid is getting into material that is age-inappropriate. Well, I say, talk to your child. And you want to know the reaction? Oh, well they don't listen to me. Honey, you have a bigger problem and you know what, your demonizing ALA isn't going to solve that problem.

G: (laughs)

K: It's amazing what things come out of some people's mouths. You sit there and go, Well, if my kid didn't listen to me I certainly would not announce it on a radio show, which is where that happened—where it happens on occasion.

(long pause)

G: Can—

K: I have to tell you one more thing.

G: Okay.

K: The Freedom to Read Foundation does not have the same reputation as ALA. Partially it's because we are so much smaller and partially it's because we do not get involved in local issues unless they are *legal* issues.

G: Okay.

K: So, we are looked at as being a different kind of animal than the American Library Association. The ALA pervades every library.

G: Sure.

K: The Freedom to Read Foundation does not. We probably do but it is not generally known. So it is a different view of ALA from FTRF, which has been very beneficial for the Foundation. I mean, it's always better not to have a stigma attached to your head. It's as simple as that.

G: Getting back to the ACLU, I had a couple [more] questions.

K: That's fine.

G: In the 1980s, the Foundation pursued a lot of cases in the schools, having to deal with books being removed out of the school libraries, and curriculums being shaped by boards, or the attempt to shape what the kids could read for the classes. I noticed going through that—this is before the eighties hit—the Chelsea case [*Right to Read Defense Committee v. School Committee of Chelsea*, 1978] happened. It seemed like you—

K: Pico [*Board of Education, Island Trees School District v. Pico,* 1982]—

G: You started.

K: Oh, you're right, Chelsea, Massachusetts.

G: Yes, that was a little bit earlier than Pico. Pico started in the late seventies and didn't end until the mid eighties, right?

K: It was our annual non-event; we always have one.

G: Your annual non-event? So, it looked like you started developing your network with ACLU [then]. Maybe starting with the school cases? You had at least one, and [sometimes] more than one case, every single year in the eighties, except, I think, 1989. It seems like, from how it appears on paper, your network just seemed to spread, and grow, and spread through the ACLU. Is that true? Or, can you talk about that?

K: Look, we were very young in the seventies. We had few members, we had few resources, the Foundation had no staff, so I was doing OIF and everything that involved, and ethics, and Foundation—so I'm looking for help. The publisher's association [Association of American Publishers] had a Freedom to Read Committee but it was nowhere nearly as developed as it is today. There was no Media Coalition. We worked with the American Booksellers Association but they had no presence—no First Amendment presence, per se. Yet they were very concerned because the First Amendment is so vital to any bookseller. But there was no committee, there was no focal point, no person that I could talk to. But ACLU understood our concerns, understood our issues, and it became a natural ally and so we worked with them. We didn't get the flack that we subsequently got because the office was not terribly important in those days.

People look at me and say, We want to build an organization like you have, and we want to do it really fast. I'm sitting there and going, You know, what you're saying is you want to hook your star to my wagon and let me pull you. Excuse me, but it took me 40 years to do what we're doing today. It doesn't happen overnight. Nothing happens overnight. You don't make friends overnight. You don't develop issues overnight. It takes hard work and that's what we set out to do. Nobody associated with the Freedom to Read Foundation was afraid of working hard, and we did. Our legal counsel put in untold numbers of hours, for which I never got a bill. Our legal counsel is still putting in an incredible amount of work, for which I never receive a bill, because it's important. As you know from what we've talked about earlier, there's quid pro quo here. I mean, they're getting things from us that are really intangible, as well as being really tangible. I dumped the CDA [Communications Decency Act] case in their lap. I dumped CIPA [Children's Online Protection Act] in their lap. Well, excuse me, they're getting their money but they are also getting prestige, because as our prestige grows, their prestige grows, and as their prestige grows, ours grows.

If you had told me when I started my career that this is what my career would be, I would've looked at you and said, Number one, my career is going to last for three years and then I'm going to quit and have children.

G: Oh, wow.

K: But then, after three years, my husband looked at me and said, It's time to quit and have children. I said, I'm not quitting.

G: (Chuckles)

K: He said, Well I don't want to have children if you're working. I said, You lose.

G: (laughs)

K: It wasn't quite that cavalierly said. (laughing) It was a very long discussion over a long, long period of time. Finally, he just threw up his hands and said, Well, I don't care. If you want to keep working, you can keep working, but we have to have children. I said, Okay. Because, the only thing I wanted was control over my own destiny.

G: Sure.

K: My daughter looks at me today and she says, You know mom, you really were a pioneer. I say, Yes, I really was. (laughing) My mother-in-law never really quite accepted that but, God bless her, she was wonderful. She never said anything to me.

G: Of course not.

K: She was dear. She really was.

G: (laughs)

K: Anyhow, so it's—it's been a hell of a ride, and it ain't over yet.

G: Noooo, no.

K: I have to go back to something. I have to go back to Ted Kennedy [Senator Edward M. Kennedy].

G: Okay. We had been talking, that. I asked you if you knew him.

K: Yes. Right, I remember that. I said that I really, really like him. When I got my honorary [doctoral] degree from the University of Illinois last year, before the actual ceremony, the night before, there was a dinner with all of the awardees and those nearest and dearest to them. It was really an elegant, elegant affair. We each got to say something. There were six honorary degrees given last year, of which three were given by the university and I got one of those, and three were given by individual schools. My degree was recommended jointly by the library staff and the library school, the first time in the history of [the University of] Illinois that has ever happened.

G: What an honor.

K: It was incredible. But (sigh), I said in my remarks that a sitting U.S. Senator has recently said that the two most important things that the United States of America has exported is first, food—and the knowledge of how to grow food. So we export food, but we also export the knowledge of how to grow food, because

exporting food is only as good as our ability to grow it, but what's really valuable is to teach people how to grow their own. The second most important thing, which I happen to think is *the* most important thing, is the First Amendment. We also export the knowledge of what it means and how to go about protecting your right to read, your right to speak, your right to practice the religion of your choice, your right to assemble, your right to petition the government for a redress of grievances. I never mentioned the senator who said that because that was less important than what he had said. But, Ted Kennedy is the person, is the senator, who said that.

G: Oh wow.

K: And, I was thinking about that because internationally, the First Amendment is not highly regarded. In fact, the first time I spoke—you're going to love this—at the European Union, my host said, We don't want to hear anything about the First Amendment, it's not important to us.

G: No!

K: Yes! To which I said, Why did you invite me to speak if you don't want to hear about the First Amendment? He got very pissy about the whole thing and said, I'm telling you now. I said, Okay. So what I based my remarks on was the Article 19 of the Universal Declaration of Human Rights, which is the closest that you can get to the First Amendment in an international document.

G: (laughs)

K: I slipped the First Amendment in there a couple times but it was just so very interesting that he came out right on the line and said, This is what I do not want you to speak about. I think the First Amendment, to many people, to many regimes, is dangerous. They consider it dangerous. They consider it dangerous because it means a lessening of their control over their populace, which I think is a pretty neat thing to be—I think that says something about the First Amendment. Okay, your turn to ask another question.

G: No, no, no—don't let me stop you. You are making me think of the international treaty—

K: Universal Declaration of Human Rights?

G: No, the cyber, terrorism, cyber terrorism—what is that treaty called? [I was thinking of the cybercrime treaty by the Council of Europe Convention on Cybercrime.]

K: Whoops.

G: I've got it, I've got it here (looks at notes). Anyway, we won't go there.

K: The Freedom to Read Foundation is not involved in (inaudible).

G: (laughs)

K: No, you know, it's— One of the things that I get a lot, both in the Foundation and in OIF is, Why can't you do whatever it is that they want us to do in whatever foreign country they want us to do it in?

G: Really?

K: So, I very patiently explain. Well, I'm less patient now than I was 25 years ago—but, you have to keep explaining these things. We can't do that, whatever it is that you want, on the basis of the First Amendment because the truth is the First Amendment is a part of the Bill of Rights, which is a part of the *United States Constitution*. It only affects the United States of America.

G: (chuckles)

K: I would love to export it, but it's pretty hard to do that. It's like, Well, why can't you get involved in China, or Tunisia, or wherever this issue or problem arose? The Danish cartoons—why can't you get involved in what's happening with the Danish cartoon? Well we can get involved with what's happening in *this* country vis-à-vis the Danish cartoons but I cannot go over and protect Denmark on the basis of the First Amendment to the United States Constitution.

G: (chuckles) But you can do a statement of concern, or the ALA would do that.

K: Well, except—

G: Well, that could be really dicey.

K: We decided not to do anything regarding the Danish cartoons. My problem was I didn't know what to say. You know, what do you say? Because, the government of Denmark is saying the newspaper has the right and I agree. They absolutely have the right. Other people have the right to protest—

G: Sure.

K: The denigration of their religion. (pause) But how are you protesting and on what basis? The other problem or one of the many problems with this whole brouhaha

was what was not made public.

G: Oh, really?

K: Why it began and how it began, and how the reaction was fostered and made public. I mean, it is my understanding, from people whom I believe know, that these cartoons were originally printed as an anti-immigration action. The newspaper that published them is far right of center and hates immigrants coming into Denmark, and wanted to— You know, this is their statement that says, We don't want you here. Go home. We particularly don't want Muslims here. We particularly don't want Africans here who are Muslim. So, there's a lot more to this issue than would appear. The government is also quite conservative. I mean, this is all hearsay that is coming to me. We do think that this office, the Office for Intellectual Freedom, is rumor central, for ALA, for the United States of America, and now for the world.

G: (laughs)

K: Rumors—if there's a rumor somewhere in the world somebody calls and says, Did you hear?

G: (laughs)

K: And, can you verify that? Anyhow, so this is yet another rumor. The [Danish] government was delighted with this because it said what they were precluded from saying, okay? Now, how did this become a big brouhaha? In November, the Imans—that resided not in Denmark, but in Saudi Arabia—wait (pause). No, the Imans, were in Denmark. They packed up these cartoons and took them to Saudi Arabia and to some of the other countries, and in effect said, (taps desk) You have to do something about this. Okay, so given the background, which took me a long time—I don't like to jump on issues at first blush.

G: That's wise.

K: Well, sometimes they are clear cut and I have no little bells going off and sometimes I just go, Eh, wait a minute, this looks awful but is it awful? So, you start talking to people, you talk to people who talk to other people. By the time I got all this information together it's already this year. The cartoon incident happened in September 2005. We're not going to get involved now. But, IFLA [International Federation of Library Associations and Institutions] is going to get involved.

G: Really?

K: The Free Access to Information [and] Freedom of Expression Committee [FAIFE] is the international intellectual freedom committee and, actually, was established by Bob Wedgeworth when he was President of IFLA. That was the thing he really wanted. It was one of the things he really wanted to do. It was, in effect, to bring the intellectual freedom concept into the international community. He did this in his final year, his sixth year as IFLA president. God bless him for doing it because I think FAIFE is so important. I think that FAIFE could save the Internet—

G: Really?

K: For the world. We're librarians. We have no political axe to grind. We have no economic axe. Our only axe is information. Our only concern, and I don't care where you're from, our concern is bringing people and information together. Now, you've heard that before too. That's what I started out with.

G: I know it.

K: It's because that's what we do. So we can do what other people can't. We can be concerned with issues in ways other people can't because what do we have to gain? Nothing, we're doing our jobs.

G: That's powerful. That's really powerful.

K: Anyhow, I do work with FAIFE as a consultant. But what we're doing in regard to the Danish cartoons at the next IFLA—which is in Seoul, in August—we're going to have an open forum. We are going to discuss all sides of this issue and bring in people from the Muslim community who can speak *rationally* about it, bring in people from the newspaper community who can speak *rationally*—she said hopefully—about it, and just air the issue. Air the different sides. Talk it through. (sigh) Another pronouncement we don't need. What we need is understanding. Understanding is not going to come from a pronouncement. Understanding is going to come by bringing people of different beliefs, of different perspectives, together and letting them sit down and discuss it, hopefully in a civilized way. So that's what we're doing.

G: How exciting.

K: It's a great life (laughs). I love it.

G: Yes, it was reminding me of—it's a totally different issue—but people getting together to react to what happened to Salman Rushdie. That would be a circumstance in which you would get involved.

K: Oh we were on—

G: You did, immediately.

K: I was on the Salman Rushdie legal defense—or not legal defense, we were on the Salman Rushdie— It was a defense committee. We got together and we decided how to protect him and what we could do. It was amazing, I mean it. And by the way, he is—

G: You've met him?

K: He is delightful. Oh, yes. Actually, he was president of PEN, PEN American Center—Poets, Essayists, Novelists. This is a group we work with. Salman Rushdie was President of PEN and he was very much involved in the Campaign for Reader Privacy against Section 215 of the USA PATRIOT Act. April, it's a small world.

G: (laughs)

K: There are so few people who are involved in the fight to protect the First Amendment and we keep finding each other. But I find Salman Rushdie rather delightful, actually. I still could never finish *The Satanic Verses* (laughs).

G: Has anyone read that?

K: But I bought it and I proudly carried it all over the country with me just to say, Screw you, I bought this book and I'm not afraid to show it. There were a lot of people who did things like that.

G: (laughs)

K: I'd get on a plane and I'd be carrying *The Satanic Verses* and I'd— There'd be two or three other people and we'd look at each other and say, Did you read it? And, they'd go, Are you kidding?

(laughter)

But we all bought it. Actually, I read a lot of it; I just never quite made it to the end. It is a very difficult book to read.

(laughter)

Midnight's Children I loved, but this one. Anyhow, yes I do know Salman Rushdie and I like him very much. Part of what the Campaign for Reader Privacy

did was to—

G: Yes, tell me about that.

K: Well, Campaign for Reader Privacy was a campaign that we started—the publishers, the booksellers, ALA and PEN—to bring attention to Section 215.

G: Including those posters as part of the campaign.

K: Yes, yes. The poster I showed you was part of it. That was our transit campaign. I tried to get other people to pick up the transit campaign, in New York, in Washington and Los Angeles, and in some of the other bigger cities. I said, We'll give you everything—we'll give you the design, we'll give you the material that you need, so the only thing you have to do is print it and follow the specs [specifications] that your transit authority has.

G: Right.

K: But, nobody— Oh, it's so expensive. I said, It's not expensive, not for the bang that you're going to get for the buck. I mean, come on, guys. But they said, Well, can you contribute? I paid for my own campaign. No, it's so—you know, money is always a problem. The truth is that on the left of center where we are, money is always a problem. The right of center has more money than you can shake a stick at and we're always grubbing. But, we do it and you get people who are willing to contribute and it's— I look at the people who have contributed to the Freedom to Read Foundation over our 37 years of existence and they have given millions and millions of dollars. But, you see, we made a decision very early in regard to the Foundation. We said we want a lot of little contributors as opposed to a few big contributors. The biggest contribution the Foundation has ever received from one individual was twenty-five thousand dollars, and that was a one year contribution. So, the next year, of course, you had all this money, so you raise your sights and hope that you can not only match it but exceed it. But when that one didn't come through the next year, it was like, you know, we were— We? *I* was a disaster. How were you down ten, twelve, fifteen thousand dollars from last year? Well, it's real easy. We lost our major contributor. Why? Well, there's a long story but that's— So, we decided we were going to go for a lot of little contributors and that's what we do.

G: Who was that? Who was the twenty-five-thousand-dollar contributor? I know I found that. Do you remember who?

K: Silverstein. I can't remember his first name.

G: I can look that up.

K: Yes, Jonathan, Jonathan [Kelley] would know. But I can't get into his email, he's not here. Well, you know, but— So we have a lot of little contributors. People started out—our initial dues was, I think, ten dollars.

G: Ten dollars.

K: Now it's thirty-five [dollars]. The board says, Well, do you think we should raise it? I'm going, Well, yes we probably should raise it. But you know what?

G: Isn't that out there right now, to raise the dues?

K: No. In some ways, it is more important to have people—to have a big membership or a bigger membership in the Foundation than it is to have a few extra dollars. You see, we send these people information, so they're learning the kinds of things we'd like them to learn. It's—I'd rather make the information accessible to people who can't afford fifty dollars or sixty or seventy a year. So they pay thirty-five and, when they're able, they pay fifty. If you look at some of these numbers, the number of people who started out at thirty-five and are now fifty or one hundred or even two-hundred-dollar contributors—very, very big. And our people stay with us. I mean, we have people who have been with us from the very beginning, and they're still here, like me! (laughs)

G: I was going to say, you.

K: Well, we flag all of these people. Anybody who has been a member for 25 years or longer I write to and thank them every year because it is very, very important. You see, every member that renews is a membership that is worth more than thirty-five dollars because I don't have to spend anything to get that money. It's automatic—it's one thirty-seven cent stamp and a thirty-seven cent stamp back, which we also pay for. But that's it. I don't have to spend any more money, so what's coming back is pure gravy.

G: (chuckles)

K: That's it in a nutshell; it is not costing me anything. They are our members. That's what makes our members, our membership, so valuable.

G: So these are individual memberships. It's institutional memberships that are going to go up a little bit—library—

K: No, we don't have an institutional membership, we're just working on it now.

G: Okay, okay. I just read something recently, that's why I thought—

K: Yes, we are proposing an institutional membership to the board at the Annual Meeting in June.

G: Okay, so you have made an announcement about this in the newsletter and that's where I saw it. I just assumed—okay.

K: Jim Neal, who is on the board and on the membership committee, has drafted a letter. Well, actually, we've drafted this letter for him. Jim is going to be our guinea pig. He is going to send out the letter and we're going to go from there. So it's, you know, it's fun. Almost every state in the union, almost—sorry—almost every chapter of ALA is a Foundation member. We started out with a couple. But we, and God bless them, the presidents of ALA have been writing to all of the laggards recently saying, Come on guys. We have a really good relationship with ALA, really good. They are very supportive and I do what I can for ALA because it is important. We need ALA and ALA needs us.

G: Did the Foundation's membership— The membership in ACLU went up right after September 11 and skyrocketed.

K: I know.

G: It grew by like 85 percent.

K: Yes, I know.

G: You know all of this.

K: They also got, they also got— Well, I've been a card carrying member for— I actually work very closely, not only with national but with Chicago ACLU, well, Illinois ACLU but it's Chicago. And we work very closely with national. I started getting those reports and I'm thinking, Oh why didn't my membership go up? But—this is interesting—our membership might not have gone up 85 percent but the amount of money that our individual members were contributing went up.

G: Okay, so there was an effect there.

K: We did get a bump from 9-11 and we continue to get it. We have gotten a bump from the work we've done with ALA on the Campaign for Reader Privacy—our fight against [USA PATRIOT Act Section] 215.

G: You would basically say it's—the different reasons for the bump since 2001—

K: Well, I think that part of it is that they think that we can contribute to the effort and we are.

G: Yes, yes.

K: But in a different way. We are focused on schools, we are focused on libraries. We are focused on libraries, regardless of whether they are in schools or public or academia. So it's important.

G: What I meant was, Romero from the ACLU—his interpretation why they started getting all of this money was, of course, because people felt like their civil liberties were under fire, which (laughs)—

K: Duuuh.

G: Yes, well, it's an obvious conclusion but (laughs) yes. Now, with the rising tide lifting all boats did the ACLU's swell in money and membership, did that flow—has that helped you, your organization, the Foundation?

K: No.

G: No. (pause)

K: Our support comes from really interesting sources. I told you we lost our major contributor but there was a woman, her name was Lois—I forget what her last name was. But, when she died, the Freedom to Read Foundation got five percent of her estate—after her bequests were paid, and her funeral expenses, and then the other expenses relating to the estate were paid. So I looked at Jonathan [Kelley] and I said, Okay, great, three or four thousand bucks. She's a librarian. [She] was never a member of the Foundation, never a member of ALA, but she was a librarian. I said, Three or four thousand bucks at thirty-five bucks a year, which is our basic dues, that's x-number of members we don't have to worry about—fabulous. Do you know what we got out of that? Almost fifty thousand dollars.

G: No. Wow!

K: Floored me.

G: Whoa.

K: I got a check for something like twenty-seven thousand dollars the first round of distribution. I got a check for fourteen thousand, and then I got a couple of little checks. I'm going, My God. I had nobody to write to.

G: Oh, because she had passed away. Her family, I suppose.

K: It all came through the lawyer and I said, Who can I write to? They said, There's nobody there to write to.

G: Oh.

K: It's, you know, it's her estate and this is what she is doing. So, you know—

G: Yes, a thank-you letter could be—

K: I just—who knows? So, one of the things— There are a lot of Foundation members who have put FTRF in their wills and I know this because they say, We've done this and we just want you to know. I keep saying, Don't die, I'd rather have you than your money (laughs). They said, Well if I live too long you won't get as much money. I said, I don't care, I don't care, it's all right (laughs). It's just, it's like, help.

(paused the interview for a break)

G: I want to switch gears and I want to ask you a couple of questions from the sixties again.

K: Okay.

G: There were numerous accusations against the way the Foundation was set up, what it was set up to do—many, many things, and we're not going to get into all of them. There are a couple of things that I think you've already answered but there's a couple more things that I want to get your perspective on.

K: Okay.

G: Just to give a little bit of background, everybody was pushing to have a legal defense fund and the process was moving, the rusty slow process was moving [and] the Office for Intellectual Freedom got formed. The total program was conceived. The green light was on for the Foundation to be formed. The feasibility study was approved and all of these things happened, and yet, there was a lot of pressure, and there was a lot of desire to get some support for different intellectual freedom issues. So, I think it was in Atlantic City 1969—do you remember Atlantic City 1969?

K: Oh, yes.

G: Yes, everything was in place and—go ahead.

K: I remember sitting on the boardwalk with our president, who was Roger

McDonough, eating ice cream cones at about midnight (laughs). We were sitting on the boardwalk with our legs dangling over. It was charming—great memories. That conference almost killed me, oh God.

G: At that time, you were working, as you told me when the mic [microphone] was off, maybe seventy hours a week—

K: Oh, yes.

G: Trying to get the Office for Intellectual Freedom going and the Freedom to Read Foundation going. You and [William] North—

K: And Alex Allain, don't forget Alex.

G: And Alex.

K: Very, very important.

G: Was he instrumental in helping with the bylaws or the philosophy?

K: The philosophy. Bill North basically wrote the constitution and bylaws and then we argued over the points that I didn't like (laughs). I pretty much lost on every count.

G: Oh no.

K: Oh well, I was very young in those days, I didn't know how to fight dirty yet.

(laughter)

G: So, you got the bylaws done. In Atlantic City—I think it was there—an angry heckler came out of the crowd, yelled out of the crowd and said, You guys have been sitting on your cans! And, Eli Oboler said, I take personal umbrage at that!

K: Eli was really, really an interesting man. He was a curmudgeon.

G: Was he?

K: Yes. But he was terrific. (laughs) But he didn't take crap from anybody. Oh, people are great.

G: So, needless to say, very quickly the bylaws were written, turned around, pushed through, approved and announced. You, I think, with the help of [David] Clift and William North, got this all through.

K: This went to the ALA Executive Board at its fall meeting in 1969.

G: Just before Chicago. Right, and that was approved in November.

K: That was approved and, on December 1, the Freedom to Read Foundation was formed because when you approve the constitution and the bylaws, you have in effect established it, and that's exactly what happened.

G: Okay.

K: I remember sitting in the boardroom.

G: You do?

K: Yes, I really do.

G: Do you have anything else you want to say about that day?

K: Oh, I was sort of shaking. First of all, it was night.

G: Oh, it was night.

K: We did it—it was after 6:00. I was beside myself because Stephen [Judith's son] was just two years old, I just had to get home. I was pregnant with Michelle and I was tired, and I really wanted to get home (laughs). (pause) And, we were sitting there. Actually, no, actually I was not pregnant—Michelle was already born. She was born in April of that year, '69. But, I had a baby at home and I had to get home and we were sitting there. I was like, Get done here! Bill [North], God bless him, spoke, David [Clift] spoke and it was pretty exciting. I can't remember now whether Alex [Allain] came to that meeting or not. I have the feeling he was there also but I just, but it was, I mean, I remember walking out of the room and looking at Bill and saying, We did it! And he looked at me and he said, Oh, do you have work to do now. After all these years I can feel my face falling and [thinking], well, we've come this far, how bad can it be? It was very—

G: Did you have any idea how much work it was going to be?

K: None. Absolutely none. Well, April, if I had known how much work anything that I said yes to was going to be, I probably would've kept my mouth shut.

G: (laughs)

K: Always. But you know, as Mr. Clift used to say, You're the original girl who can't say no. Because, it's easier to say yes than to explain to people why you

can't do something. I'm the same way now. I mean people go, Why do you travel so much? Well, it's because I can't say no. Because when people say, Can you? It's always easier to say, Oh yes, it's clear on my calendar, I might as well, than it is to say, Well no because it interferes with this that I want to do, and that that I have to do. And you do it.

G: Okay.

K: But it's—

G: Okay, so, basically, you went to the Chicago conference in 1970 and the Foundation was announced there, right?

K: No, actually, the Foundation was announced at Midwinter 1970 [ALA conference]. I remember we had a big open meeting one night and I know Bill was there and Alex was there and Lillian Bradshaw sat at the table. Lillian, I think her presidency was a little down the road (flips through a notebook). She was really fabulous.

G: Oh, Midwinter, I'm sorry. Washington, DC [The 1970 Midwinter Meeting was in Chicago, when the Foundation's formation was announced. The 1969 Midwinter Meeting was in Washington, DC, when it was determined that it was legal and feasible to establish a support fund.]

K: Right, that's when it was announced.

(long pause as Judith flips through the notebook)

K: Oh, maybe she was—I wonder if she was president then.

G: President of?

K: ALA, Lillian Bradshaw, because I have the list of presidential candidates.

G: No. Wasn't Dix President?

K: I'm sorry?

G: Of ALA.

K: Yes.

G: It wasn't William S. Dix?

K: Bill Dix might have been president, I can't remember when Lillian was. Maybe

Lillian was before that? It might have been Bill Dix, I don't have it back that far (continues to flip through notebook). Oh well.

(long pause)

K: I tend to forget.

(long pause)

Oh boy (sigh). Oh well, yes, continue. Anyhow, Lillian Bradshaw sat there and people were yelling about how the Foundation was set up, and we didn't take into consideration the concerns of SRRT (Social Responsibilities Round Table), and this was never going to work because nobody would support it, and—

G: Right. The Social Responsibilities Round Table had decided, at a certain point, that they were not going to support the Foundation.

K: Right. And they didn't.

G: But, later, didn't they actually become, I mean some of them became board members.

K: Yes.

G: Eric Moon, and—

K: Well, he became a board member by virtue of being—

G: Oh, ex-officio.

K: Chair of the Intellectual Freedom Committee.

G: Right, right. Anyway.

K: Yes, and then he became president of ALA.

G: Right. So, I just want to distill most of the criticism. I think the strongest criticism that was probably leveled against the Foundation is something that you have already addressed, in part, and in part we haven't talked about. It has to do with how the Foundation policy was set. Members, foundation members—those who join are not given a vote except to elect trustee[s]. So, one of the largest criticisms was, Why don't members get to set policy? Why don't members get to vote on more things? So, I just wonder if you can explain that. I don't think they can know everything that goes on in some of the strategy meetings, but—

K: Well, that's part of it. Part of it is because it is a legal defense arm. It's not a *membership* organization in the same way ALA is a membership organization. Our goal is to deal in the legal arena to protect the rights that we have, to make them more meaningful, to expand them, if possible. It's a different kind of organization and, therefore, it cannot emulate all aspects of ALA. Policy that we have relates to *legal* actions: when you get involved, and how far you go, and what level you operate at. It's not developing the whole intellectual freedom policy base again. We are on record as indicating that we would follow the policies of the American Library Association. So, it's a different kind of policy base. In our handbook, we have a set of criteria that we look at before we involve ourselves in any legal action. Is it meaningful? Does this move us forward? What is it going to do for librarianship? What does it do for the First Amendment? I mean, I am not certainly quoting the, the—

G: The list of criteria.

K: The list of criteria. But, that's what we're dealing with. We're not dealing with, Well, is this First Amendment or is this not First Amendment? We've already made that determination. We don't get involved unless it's First Amendment. So it's—(sigh) that's number one and the most important issue. The second important issue is that we're dealing with the courts and the law. I can't wait six months to make a decision as to whether we're going to do something. That decision has to be made simultaneously with the decision for us to get involved and, if it's not, we're out.

There's a South Carolina case [*Southeast Booksellers v. McMasters*, 2003] that several members of Media Coalition are involved in right now. I couldn't reach the [FTRF] Executive Committee to have them make a decision. I could only find two people. It came up during a period of time when my Executive Committee was out of hand; it was out of pocket. They were either traveling, they were on vacation, they were somewhere. We're not in the case. We follow it like we were but we weren't in the case because I couldn't get the vote. Can you imagine having to deal with a *membership* when I need a rapid vote on some aspect of *policy*? Or, on some other matter where the Executive Committee would not have been able to fulfill its function? You see, in the early years, we didn't even have an executive committee. We didn't get an executive committee until we got big enough and important enough that people were coming to us and saying, We really want you in this case. Then we had to reassess who we were and what we were, and how we were going to operate. [We] adjusted the bylaws and the constitution, the constitution and the bylaws accordingly. But, 37 years ago the power was vested in the board. If I couldn't reach the board, I couldn't do anything. We also had a bigger board than we do now, so.

G: I'm not even going to get into that. That's well documented (laugh). Although I can ask what are the different—

K: Well part of the reason—

G: Discussions and the back and forth—

K: Part of the reason for that size board was to placate the SRRT [Social Responsibilities Round Table] complaints. It was unwieldy. And, again, when you're dealing with the law, you can't spend inordinate amounts of time (pause) running the administration of an organization. The other problem was, or another problem was, I was the only person here. So, when I sit down and I have to start telephoning 18 or 19 or 20 people, it's like, that is several days work. Actually, we just had a parliamentarian review our constitution and bylaws—well, not our bylaws, our constitution—and he suggested we might want to consider making the board smaller. I demurred on that suggestion.

G: Really?

K: I don't think that the board can be any smaller. You see, the logical place to go is to eliminate the ex-officio trustees and I can't do that because it's our connection with the American Library Association.

G: Doesn't that give you leverage in the library association? I mean, that's the real reason for these—

K: Well, it's all kinds of things. I mean, how do I sit here and ask ALA to pay for heat, light, typewriters? I run Jonathan's [Kelley] salary through ALA. They take care of all that crap so I don't have to do it—social security and benefits. He is treated like an ALA employee. It's quid pro quo; they need something in return. If we are really ALA's legal defense arm in the First Amendment arena, they need to have a say in some way. The way that we have done it is to bring in the powers of ALA: the president, the president-elect, the ED [executive director] and the chair of the Intellectual Freedom Committee. The only person who will be with the Foundation for every meeting, every Midwinter and every Annual Conference from the ex-officio trustees is the chair of IFC. The president comes in. Leslie Burger was there. She is great. She is on one of our committees.

G: Oh, right, right.

K: I mean, she really is into this and she's excited about it, but she can only be there for an hour. There are all kinds of other things she must do as president-elect.

G: Right.

K: In the early days, David Clift wouldn't miss a minute of the Freedom to Read Foundation. He loved it and he also felt that he needed to be there for me. David was very supportive of his staff. The truth is, I don't need the executive director sitting there now. I can take care of myself. But when I was 28 years old, I needed somebody there.

G: Sure.

K: The president was there, the president-elect was there. Everybody was there in the early days, everybody, because there was so much brouhaha about the Foundation.

G: It was a big, big deal.

K: It was a big—

G: And that was one of the most important focuses of ALA—intellectual freedom.

K: But you see, it's still a big deal, it's just that we have been integrated into the ALA, in, not only in—we have been integrated into, yes, ALA structure and into the association so that while we are separate we are still integral. For me, it's very comfortable. When I leave, it might not be comfortable for the next person but for me it's comfortable. It's comfortable for me because I know my way around ALA and the Foundation is my baby. I happen to enjoy working like this.

The other thing that I love about the situation that we're in now is that people only have to make one telephone call—one. I know where to put something. If it's not quite a legal action yet, it goes into OIF and we deal with it. But if it turns into a legal action, it's a seamless transition. We just flip it over to the Foundation. You know the biggest problem? We pull the files out of ALA files, give them to Jonathan [Kelley], [and] he puts the Foundation label on them and puts them [in the Foundation files]. But it's seamless. You don't have to go through a double staff and tell people the same story again and again because we all know. We all have two roles here, so we know what's going on. It works. It works very well. It makes it incredibly easy for the people we're trying to help. The same thing happens with the Merritt Fund because Jonathan and I are the two involved in Merritt. So when somebody calls—do you know what the Merritt Fund is [LeRoy C. Merritt Humanitarian Fund]?

G: I do. Although, I thought that the Merritt Fund had separated away from the Foundation and that—

K: Oh, it is.

G: And that you didn't administer that whatsoever anymore, and that they had a different mandate, you know, a broader mandate.

K: Well, they do, but it is still administered out of this office.

G: That I did not know. Well I'm glad this came up.

K: Oh yes. The LeRoy C. Merritt [Humanitarian] Fund is administered out of this office. It's no longer attached to the Foundation.

G: Okay.

K: It is a separate legal entity.

G: That's what confused me.

K: But it is still administered by this office—in theory by me. I am the secretary. Jonathan [Kelley] really runs it. (looks at calendar) The Merritt Fund meets Sunday during conference, during lunch. I have a speaker luncheon and I'll be at the speaker luncheon because these are my guests, and Jonathan can run Merritt.

G: Sure.

K: But, again, I mean it's money. And if it becomes legal, if I need Theresa, she's there. It's so easy to just take care of people the way they need to be taken care of. I see one of my roles as making life a little bit easier for librarians who are in trouble or who are having trouble. To give them the ability to make a phone call and have access to the entire range of support services that we can provide is just a blessing for them. They tell their story once. They know, when things change, they only have to make one phone call and if there's money involved, it all comes out of the same person. I mean, I'm running ALA, I'm running the Foundation, I'm running the Merritt Fund. I have to deal with different boards but *we* deal with different boards, and different lines of authority and lines of command, but they don't have to be *involved* with that. That is *my* responsibility. That's the scut work. I do that. The only thing they have to know is, You're going to get a check. We're going to send it electronically so you have it immediately. You know? My role is to make their lives easier, and I do. So, people still complain that they don't know the Foundation is different from ALA. Well, it is. Okay, so you don't know it, it's okay. (laughs) I mean, I don't use that kind of cavalier attitude publicly but the truth is it's not important that the world knows that there is a definite line of separation between all these different arenas in which we all operate.

G: No, of course not.

K: What's important is, when you make a phone call, you're going to get help. You don't have to worry yourself about whether you've called the Freedom to Read Foundation, or the LeRoy C. Merritt Humanitarian Fund, or the Office for Intellectual Freedom. I have to tell you, I get a lot of calls from a lot of people. Even my colleagues here will come up here and say, I can't handle this, tell me what to do. We'll sit here and spend hours and say, Here's how you do it good. This happens with APA all the time, the Allied Professional Association, which is newly established at ALA.

G: I'm not familiar with that.

K: (sigh) It's a group that has as its end goal the certification of librarians. It was pushed by PLA [Public Library Association].

G: What's your opinion of that?

K: It has nothing to do with the Freedom to Read Foundation.

G: (laughs)

K: It is not something that I really feel is appropriate for this interview; we can talk about that over lunch.

(laughter)

G: Okay, okay, there [are] other parts of the question I can ask but you've answered (pause).

K: Messed up your outline, huh?

G: Yes, you did.

K: (chuckles) I don't generally answer things in outline form.

G: No.

K: You see, I have the same problem when I stand up to give a speech. I always take this beautifully printed text with me.

G: (laughs)

K: Then I look down and go, Oh my God I've been talking for 40 minutes and I'm on page two? (laughing) I quick jump to page 20: Well in conclusion, let me say. Oh dear. So we get off track, occasionally. Occasionally? Yes. We have ten minutes kid and then we're going to lunch. I'm starving.

G: Is there anything else you want to say (looks at notes), here we go, about that lovely section of time or do you want to move on?

K: Which section of time?

G: The conflict during the 1969 period, probably 1969 to 1974.

K: It was pretty exhilarating, actually. There were some people involved in that—I guess it was a controversy—who never did talk to me again.

G: Really?

K: Oh yes. It was very carefully, it was very deeply held. There are other people who didn't talk to me for a long time and I just went along my merry way because there were a lot of people who did talk to me (laughs). I just felt, Okay, well, I'm happy so— (sigh)

Look, everybody wants to be liked, okay. Everybody wants to believe they are doing a good job and other people recognize it, but when push comes to shove, I made up my mind that it just wasn't all that important whether I was loved or unloved. I guess I still feel the same way. I remember when I made *The Speaker: A Film about Freedom*. That was an incred—I mean, there are some people who feel that I went out to generate controversy.

G: That sparked some controversy.

K: It was 1976 [the film was released in 1977]. So that was not long after the Foundation, you know, got settled down that I found myself back in hot water. Fabulous film.

G: I've never seen it and I've always wanted to.

K: It's wonderful. It's wonderful. There isn't one at San José?

G: There has got to be. I think Professor Schmidt has one. I'll just need to borrow it. I'm almost positive he has got one.

K: It's a wonderful film. You should see it.

G: I will.

K: It really is. But there were people who got vicious. There were people who said that you're going to stay at ALA headquarters over my dead body.

G: Whoa!

K: It was really nasty. I took the film home and I showed it to Herb [Krug], and the kids watched it—my kids. Steven was about six [or] seven years old and he looked at me and said, Mommy, that's the bestest film—that's the bestest movie I ever seed.

G: (laughs)

K: And you know what, April? I said, Screw the rest of them. You know, right *here* is what's important to me. So, over the years, I've just pretty much said— (pause, sigh) Not that I know that I'm right (pause), but I know (pause) where we have to go. I know how important our work is and I also know that I am *never, never* going to find agreement with, among, the entire constituency that we serve. In my maturity (smiles)—

G: (laughs)

K: I didn't think that was funny. I am more willing to share. I am more willing to listen to people. I think I've mellowed substantially; you can ask Dr. Schmidt about that. (pause) People still get upset over what we do. I think my judgment is a lot better these days. I still make mistakes—little ones.

G: (chuckles)

K: But we know where we're going and it's a pretty strong group that knows where it is going. So, as I said, I'm not ready to throw in the towel yet but I'm also not willing to take a lot of crap anymore.

G: What do you think that the qualities of your successor should have?

K: My successor?

G: Or successors. By the bylaws, it's not completely clear. I mean the director of the Office for Intellectual Freedom would be the ex-officio—

K: Not ex-officio, *is* the executive director of the Freedom to Read Foundation.

G: *Is*, yes, and secretary.

K: And that is one of those mechanisms that we put in there to ensure a working—

G: Relationship.

K: I actually, that was one of the things that Bill and I argued about because I wasn't sure that that was terribly wise. I think that at some point that may be one of the

things that is separated out. If the Foundation gets really bigger, one person is not going to be able to run OIF and run the Freedom to Read Foundation, too. Not in this day and age. Nobody is going to put in the 70 or 80 hours that I put in 35, 40 years ago. They are not going to do it. That's not the way people work today. I see it in younger staff. I see it in this building. I see it out in the profession. Every once in a while you'll get an individual who is not a clock watcher. I have a whole office full. But, they're pretty unique. You know, we try to leave—I never leave on time. I don't even know what "on time" means. But most of my staff, when there's work to be done they sit there and they get it done. When the work is done they go home. That doesn't happen in a lot of places. What do you need to be successful? You need commitment, you need compassion, you need chutzpah.

G: (laughs)

K: You need to know what your value system is. I adopted the value system of my profession. That's my value system and it has worked for a lot of years. (claps hands together) That's it, girl. We're done.

G: Okay, thank you for this interview.

K: This marathon?

G: Marathon interview session. (chuckles) Not session, sessions, it's a marathon. I had one more question.

K: Alright, go ahead, one more question.

G: Okay. I wanted you to leave a message for librarians in the future. What would you like to say to the librarian 100 years from now?

K: (laughs)

G: You can just beam them a message through the recording.

K: That's really funny because I hate to cook.

G: (laughs)

K: Well, I hate to cook and people say, How can you hate to cook? I said, Well, first of all you spend hours doing it and ten minutes after you put it on the table it's destroyed, as well as gone. I could be spending those hours writing an article that is going to last for a hundred years. So here I'm going to leave a tape that is going to last for a hundred years.

G: Which will be transcribed.

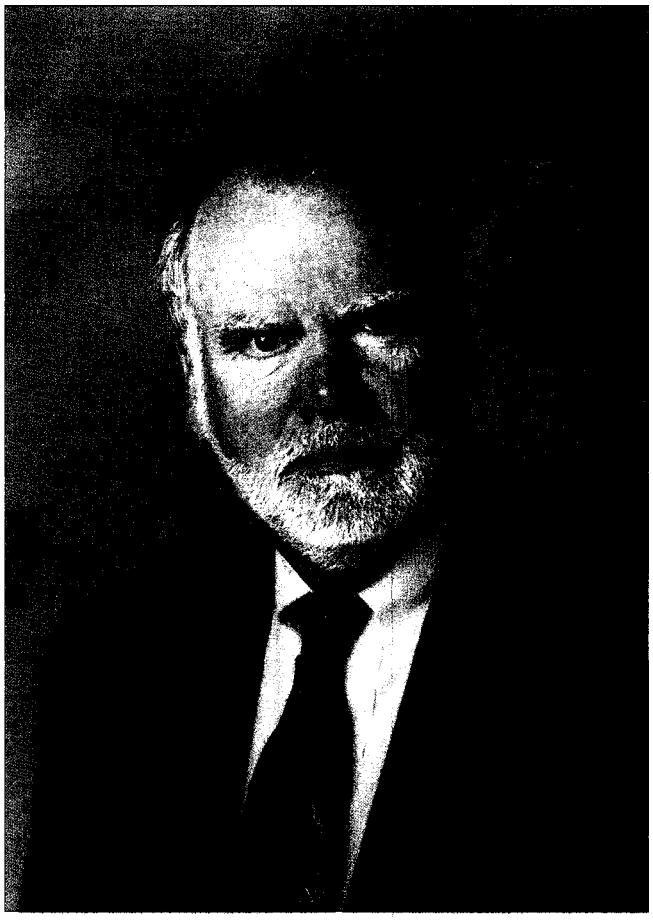
K: Right, right, right. (sigh) This is really a wonderful, wonderful profession. It gives you an opportunity to be whatever you want to be but you have to go out and get it. Nobody is going to hand it to you, just like nobody is going to hand you anything as you go through life. But the opportunities are here and if you're smart, you'll grab them and you'll run with them. And in the end, what we do every single day (pause) strengthens the constitutional republic in ways that people cannot even begin to imagine on a daily basis. If I had one thing to say, it's that you just have to keep fighting to make sure information—regardless of whether you love it, or hate it, or agree with it, or disagree with it—as long as it's information it has to be available and it has to be accessible to *every* citizen who needs it or wants it.

G: Thank you for this interview, Judith Krug.

K: You are more than welcome, April Gage.

END OF INTERVIEW

Chapter 3: C. James Schmidt



Introduction

> *If you're an optimist, the forces for truth and justice will overwhelm the forces of fear. (Schmidt interview with Gage, November 16, 2006)*

There are several ways in which one can participate in the management of the Freedom to Read Foundation, and Dr. C. James Schmidt, who worked with the Foundation in the 1980s and 1990s, has covered most of them. From 1986 to 1989, while chair of the ALA's Intellectual Freedom Committee, he was a trustee in ex-officio capacity, from 1991 to 1992 he was President and trustee by appointment and election,

and in the latter half of the1990s, he served as a liaison to the board for the International Relations Round Table.

During this slice of his career, Schmidt wrangled, in the courts of law and public opinion, with high-profile issues such as government spying in libraries, when the FBI Library Awareness Program was exposed in 1987, and library patron behavior and policy, when a homeless man, Richard Kreimer, was expelled from the Joint Free Public Library of Morristown, New Jersey, in 1989. Also, as Schmidt predicted, a new battleground for intellectual freedom emerged in a new medium—the Internet—with litigation over the Communications Decency Act (CDA) of 1996.

Schmidt was born in Flint, Michigan, in 1939 as the youngest of four children. His mother was widowed nearly three months before his birth, when his father passed away rather suddenly of spinal meningitis. Schmidt's mother was a librarian who instilled in him at an early age an appreciation of literature and literary publications such as the *New Yorker* and the *Saturday Review*. Schmidt's mother also taught him how to play golf, when he was about twelve years old, which remains one of his passions today.

Schmidt received his bachelor's degree in Philosophy from Catholic University in Washington, DC and, encouraged by his mother to pursue a career in librarianship, received a scholarship to Columbia University, where he earned his M.S.L.S. After a brief course of graduate study in Political Science at the University of Texas and Ohio State, he received his Ph.D. in library science from Florida State University.

Schmidt has been in librarianship for over 40 years, in such roles as university librarian, director, administrator, officer, and consultant in academic, public and special

libraries. Currently, he is an administrator and professor at San José State University, and his courses, such as the intellectual freedom seminar he offers each fall, are highly popular with students. Schmidt has also contributed to the construction program planning and execution of several library buildings, including the Dr. Martin Luther King Jr. Library, a joint public-academic facility on the San José State University campus. It was in a small, bright, windowed meeting room high on the sixth floor of that library that Schmidt participated in these oral history interviews in the spring and fall of 2005.

In these interviews, Schmidt draws from his deep knowledge of and interest in such areas as technology, law, politics, philosophy and ethics, to analyze issues that have impacted First Amendment rights in libraries and occupied the Foundation's time and resources. He not only examines many facets of a given topic, but explains larger trends associated with it. For example, in discussions of intellectual freedom and the Internet, Schmidt explains technology issues, such as the difficult prospect of disabling filtering software on a case-by-case basis in the context of centralized computer networks in schools. He talks about government control of information, on the Internet and elsewhere, by such mechanisms as executive order. He outlines legal aspects of specific cases, such as the Supreme Court opinion in the case involving the Children's Internet Protection Act (*United States v. ALA*, 2003), how that case might be challenged on an "as applied" basis, how it impacts the library's status as a designated public forum, and where that case fits in the series of major cases involving the Internet in libraries. Further, he provides insights about former and sitting Supreme Court justices, including Rehnquist, O'Connor, Roberts, and Alito.

In addition to his exploration of issues, Schmidt shares some of his memories of two men with whom he formed friendships in his work for the FTRF and IFC, and through shared interests, such as law and poetry: the now-deceased long-time Foundation President, Gordon Conable, and General Counsel, Bruce Ennis.

Schmidt was rewarded for his dedication to furthering the cause of intellectual freedom in libraries with the prestigious Robert B. Downs Intellectual Freedom Award in 1990. In 2001, the Northern California Chapter of Society of Professional Journalists honored him with the Norwin S. Yoffie Career Achievement Award.

Four interviews with C. James Schmidt follow.

Interview with C. James Schmidt, March 17, 2005.

Location: Dr. Martin Luther King Jr. Library in San José.

Duration: 130 minutes.

April Gage:

> This is an interview with Dr. C. James Schmidt for the San José State University School of Library and Information Science Oral History Project. The interview is being conducted at the Dr. Martin Luther King Jr. Library in San José. The interviewer is April Gage, a student in the school's oral history class. Today we will be talking about intellectual freedom.
>
> Dr. Schmidt, you have been a university librarian and professor for over thirty-five years; served on a number of state and federal committees on information technology, including [the] State Library of California and the Network Advisory Committee on the Library of Congress; held posts in professional associations including the American Library Association, the Center for Research Libraries, [and] the Association of College and Research Libraries; run a consulting practice; and been conferred honors such as the Robert B. Downs Intellectual Freedom Award. You were even a major contributor to the construction program planning and execution of the library we're sitting in now.
>
> I thought we might take a moment to look back in time before all of these

achievements—and let's start there. When and where were you born?

C. James Schmidt:

I was born in 1939 in Flint, Michigan. I was the fourth child and my father had passed away of spinal meningitis about three months before I was born.

G: Oh no.

S: The family had come to Flint because he was a graduate of the University of Michigan's engineering school, and he was hired by the Buick Motor Division of General Motors to design and supervise the construction of a conveyor system in the Buick foundry that they were building in Flint.

G: Oh. So you never got to meet your father.

S: Never got to meet my father.

G: Did you ever get to talk to some of his colleagues or did you learn about him through your mother?

S: I learned about him from my three older sisters, in particular the middle one of the three who turned out to be the family historian, genealogist and recorder of the family tree. He was, besides being an engineering graduate from the University of Michigan in 1926, he was an excellent golfer, as were two of his brothers in the family he grew up in, in Grand Rapids [Michigan]. He was a singer in the city's light opera company and he was close to being the city champion in ping-pong.

G: (laughter) So did you grow up in Flint, Michigan?

S: Yes. I went to the parish school there as my sisters before me had, and went to the community college and finished the community college and moved on to a four-year school, and happened to choose the Catholic University in Washington, DC.

G: To skip ahead slightly, your wife is in the library profession, is she not?

S: Yes. My wife, now retired, was a public librarian and she worked in Suburban Public Library when we lived in Albany, New York. When we moved to Providence, Rhode Island and I took a job as the University Librarian at Brown, she didn't work but when we came to California she worked three, three and a half years in the Meyer Undergraduate Library at Stanford. And then she worked for the San José Public Library, and then she got a job as the Assistant City Librarian

in the City of Santa Clara, and was there for, oh, about nine years I guess. The last year she was the acting City Librarian in the City of Santa Clara.

G: How did you and your wife meet?

S: In the stacks.

G: In the stacks?

S: Literally. When I went away to the East to go to Catholic University I left the job in a newly created young adult department in a local public library, which she got hired for. And then, when I graduated some years later, when I graduated from Columbia's library school [Columbia University] and was offered the professional job back in the public library in Flint, she was still there. By then she was in her junior year at the University of Michigan.

G: So you got your MSLS at Columbia University.

S: Yes.

G: And then you went on to get your PhD at Florida State [University] and then, later you pursued graduate study in political science.

S: Actually the graduate study in political science was in between the MSLS and the Ph.D. It was my way of seeing if there were something else I could do if I was not liking librarianship.

G: Leaving your options open?

S: Yes, and I even went to the extent of applying for admission to law schools, and at just the time when my wife and I were going to be married—the spring of '65—I was in fact offered a job at the law school of Saint Louis University in St. Louis, Missouri. The offer included tuition remission and I'd work in the library, especially in the evenings, and go part-time to law school. The plan would be complete your law degree in four years. But I got another job offer and decided I really didn't want to leave librarianship and so shortly after we were married we moved to Texas.

G: Right. What attracted you to the library profession? And what motivated you to pursue a library degree?

S: Well, although my mother didn't try to recruit me, that was her career. She had been a middle school librarian, raising a family of four kids as a single parent.

I graduated from Catholic University with a degree in philosophy, and the jobs that I'd had during the summers and during the Christmas breaks when I was an undergraduate were in the public library in my home town. So, in the spring of my senior year at Catholic U, I got a call from my mother and it informed me that there were three scholarships for tuition available through the state library in Michigan [Library of Michigan] using federal funds provided under the Library Services Act, which later became the Library Services and Construction Act, and later became the Library Services and Technology Act, which it is now. My mother had some of her friends in the library community say, Call Jim, tell him about these scholarships and encourage him to apply. She sent the paperwork to me from Flint to Washington, DC and I sat in my dormitory room, filled out the paperwork and sent it back. And, lo and behold, I got one of the scholarships. Little did I know that one of the people that I had worked with in the Flint Public Library in the reference department, a reference librarian, a man, was on the scholarship committee, but nobody told me that but he was on the selection committee. Good thing, too, because it turns out that as they were discussing the applicants and the essays that the applicants had written, another member of the committee looked at this fellow who knew me and said, I think this essay has been plagiarized.

G: Oh.

S: [He said,] Well, Bob, you know this person. Would that be likely? And he said, Absolutely not likely, that's the way he talks.

G: [removed]

S: I got saved. I got a scholarship and it was enough to pay the tuition at Columbia if I also took a part-time job. So I got a job through the School of Library Service office working in the library at Hunter College, which is across Manhattan on the East Side. Columbia is up at 116th Street on the West Side and Hunter College—then and now a unit of the City University of New York, but mostly women—Hunter College is at 67th and Lexington. In order to get to work I would take the subway down the west side of Manhattan, and take the Times Square Shuttle over to the East Side connecting line, and then take the subway up to 66 or 65—I don't remember the subway stop—then go work in the Hunter College Library, first in the Cataloging Department, and then on the weekends in the Social Science Reading Room handing out reserve books.

G: So you worked a full part time—

S: I worked about 20 hours a week. The biggest piece of that was the weekend work assignment. The Monday through Friday hours were quite modest.

G: Except for your commute.

S: Yes. And the subway then cost 15 cents. So, I had to spend maybe three bucks a week on subway fares.

G: I thought we would leapfrog over many things because there's no way we can adequately address your education and career in one meeting. I'd like to focus our discussion now on your interest and involvement in intellectual freedom. When did your interest in intellectual freedom begin?

S: I think it began when I was fooling around with constitutional law and constitutional history as part of graduate study in political science, because I got very interested in civil liberties generally and the First Amendment in particular. That also connected up with something that had been going on in the region where I grew up. There were, in the first six decades of the 20th century, three [of] what I call "extreme right movements."

The first of those three—latter 1930s—was led by Monsignor Charles Coughlin who ran the Church of the Little Flower in a northern suburb of Detroit [Michigan]. He was also known as the Radio Priest and he would give these sermons on Sunday night, and the blue-collar communities of Detroit and Flint and Pontiac and Lansing [Michigan] were just mesmerized. He was an isolationist; he believed that there was a Zionist conspiracy. He, like Jack Kennedy's father Joseph Kennedy, was opposed to being involved in World War II. He was quite a colorful character and I had collected two volumes of his radio speeches.

Then Senator [Joseph] McCarthy came along, a junior senator from Wisconsin, and I got interested in what was going on there. A lot of the same segments of the population that got energized by McCarthy got energized by the Radio Priest. Then, in the sixties, here comes Robert Welch and the John Birch Society. You may not remember that in the book that Robert Welch wrote and sold called *The Politician*, he called Dwight Eisenhower a conscious and dedicated agent of the Communist conspiracy. For people who know anything about Eisenhower's partisan affiliation and his general policy posture during his two terms in office, that's a kind of a *stunning* allegation.

I got interested in these three movements and I also got interested in the effect that these movements had on speech—not that any one of these three movements had enforcers that they could send, put out in the street, and make people speak in only a certain kind of a way. But the volume of their voices—volume is a metaphor here—and the nature of their message really did have a chilling effect on a lot of people who might have been of a different

political opinion. Especially as McCarthy, alone among the three, had had some governmental clout behind him and he could investigate and he could, and did in fact, ruin reputations and careers. That's kind of the historical background.

When a good close friend of mine then and now got elected as president of the American Library Association in 1985, [Beverly P. Lynch (1985-86)] she was having to make committee appointments. It happened at that time, by the nature of the people who were on the Intellectual Freedom Committee whose terms hadn't yet expired, it didn't look to her like there was a prospective chairman who could grow into the job. So she asked Eric Moon, who had been the editor of *Library Journal*, if he would chair the committee and he said he would but he would only do it for one year.

G: Okay, and then—

S: So she appointed me to the committee but not as chair and then I got appointed by her successor [Regina Minudri (1986-87)] to be the chair '86-'87. Then, the [FBI] Library Awareness Program emerged. I sat in the chair for two years carrying the flag for ALA against the activities of the Bureau [Federal Bureau of Investigation].

G: You've preempted my next question.

S: (laugh) Okay.

G: In 1987, when the [FBI Library Awareness] Program became public, you were the chairman of the ALA Intellectual Freedom Committee. Did you find out that summer from Paula Kaufman or someone in the library community about the program or did you find out about it when the news broke on September 18?

S: I found out about it at the same time the Committee did. Paula Kaufman had originally contacted the New York Library Association. I don't know what the New York Library Association did in response to Paula Kaufman's communication but the New York Library Association also communicated with the ALA saying, Da da da. . . [The use of ellipses is stylistic. No portion of the recording was removed.] We have a report that. . . Here's a copy of the business card from the agent who appeared at the Science and Math Library on the Columbia Campus. At the time, the ALA Intellectual Freedom Committee was meeting in San Francisco at the Annual Meeting and there was a leadership transition in the directorship of the Bureau [FBI]. What the committee felt it needed to do was to try to get verification of the report that had been provided. It's not as though we thought Columbia had made it up; we just wanted to see if we could verify what they were reporting. So the committee elected to write a letter to the acting director of the Bureau and the letter in effect said, We are of

the committee of the American Library Association that's concerned with matters of intellectual freedom. . . It has been reported to us that. . . An agent da da da da da. . . Columbia, such and such a date. . . Asking for the following kinds of information. . . And, when the agent was subsequently invited to meet with the acting University Librarian at Columbia, Paula Kaufman, the agent reported that the visit was part of a program called the Library Awareness Program. Please Mr. Interim Director, can you confirm that the agency has a program of activity called the Library Awareness Program?

G: And this director is William Sessions at this time or this was (inaudible).

S: It was the interim guy, I think his last name was Moon. [John E. Otto was Acting Director just before Sessions became Director.] I've got the letter, in fact, back at my office.

The acting director responded—quite quickly for a federal agency by the way, within two or three weeks of receiving the letter from the Intellectual Freedom Committee—and said, Yes we do have such a program.

G: Did they offer any other information?

S: No. But although the visit had occurred on the Columbia campus, although the visit had occurred on June 4 [1987], the *New York Times* on a front-page story on their Sunday edition, September 18, 1987, had a big story about this activity. And the rest, as they say, is history.

G: So what was your personal reaction to the news?

S: Well, I thought it was outrageous and I thought it was silly. I mean, at this point I'm— 1987— I'm 25 years removed from having been a student in the library school on that campus. If you walked into any library and said, Do you have any people who look Eastern European using your libraries? It would be such a hysterical scene that you'd think, Oh my God.

G: (laugh)

S: And oh, by the way, the National Security Advisor to Jimmy Carter when he was President, Zbigniew Brzezinski, was a faculty member at Columbia.

G: (laughter)

S: But I don't single him out. It was, as you might expect, a very, very cosmopolitan community of students and faculty and so on. To ask if any Eastern Europeans are using your library is, is crazy. It would be crazy if you did that at a branch of

the New York Public Library for that matter. And oh, by the way, how are you supposed to tell if they're Eastern European? Well, they wear funny wool coats, don't they—or something.

G: (laugh) Do you remember the first steps that you took to address the situation, as Chairman of the ALA Intellectual Freedom Committee?

S: Well, besides writing the letter of confirmation—

G: Besides the letter—

S: We immediately sought funding for a fall meeting for the committee at which it could focus on something. We decided first to review and call attention anew to the ALA's policy on confidentiality of library records. That policy had been developed in 1970-71 [adopted January 20, 1971] in response to the bombing of the math and computer center building at the University of Wisconsin in Madison in which two people were killed. As part of investigating that murder, some agents showed up at the Milwaukee Public Library and asked for the names of any patrons who had checked out books on plastic explosives. The librarian at the time, Don Sager, refused. But the ALA response to that episode was to immediately set to work to develop a policy statement on confidentiality of library records because at that time some states had passed state laws that protected the records and some had not.

G: Right.

S: Here was a model policy document that ALA could produce that would help the library community. We asked for support for a fall meeting and we spent our time looking at the confidentiality document making sure that—it now being 16 or 17 years old—it was okay or were there ways in which it should be tweaked. We also decided that we would create a communiqué, which we called— What did we call it? *Action Alert* or something like that. We spent a day and a half at a Bell System conference center in a suburb of Chicago working over this action alert which was going to go out to all libraries in the country, alerting them to the existence of the FBI program, encouraging them to report if there were agents showing up in their libraries so that we could build a file of instances, and giving them some advice about what to do like check your state statute. If you have a state statute, the state statute may say you cannot disclose without a court order. If that's what your state statute says—remember that a court order can be challenged—you might want, if one is presented to you, to contact the person who does the legal work for your library, and go to the court that issued the court order, and see whether or not there was sufficient cause demonstrated for the issuance for the court order. So, we did that.

The next thing that we did kind of came, I think, a year later. Maybe not, but we were handed an opportunity by the folks who were opposing the nomination of Robert Bork to sit on the United States Supreme Court. During his confirmation hearings, an alternative weekly newspaper in the greater District of Columbia area had gotten a hold of the records from the video store that the Bork family used [that revealed] what videos they had rented. There was outrage on both the Right and The Left that this kind of information—the merits of Bork as a sitting judge aside—there was outrage that this kind of information was made public. The reaction to that outrage was the creation of a piece of legislation called the Video and Library Privacy Act [This became the Video Privacy Protection Act of 1988]. This would be a piece of federal legislation that would make it a federal crime to disclose specified personally identifiable information by libraries or by private actors—video stores—who rented videos. I'll come back to that in a minute.

The other action that we took, besides the issuing of this action alert [and] the reviewing of the confidentiality policy, was to arrange a meeting with the FBI. The first thing that happened was that the then chairman of the National Commission on Libraries and Information Science [Jerald Newman] was from the family that owns Reader's Digest—political leanings well-known— He contacted the Executive Director of the ALA and said, I have some friends, some contacts, and what I would like to do is to arrange for the person who is in charge of your office for intellectual freedom, your President, the Chair of your Intellectual Freedom Committee, and the Executive Director of ALA, to have a briefing on the Library Awareness Program. From the time the thing became public in September of 1987 until people got tired, the FBI was taking a terrible PR beating here. We wouldn't have had to win anything in the courts of law because we were winning everything in the courts of public opinion. I got called when I was on a business trip. I was actually in Los Angeles. There was the Executive Director of ALA, there was the person then and now, who runs the office for intellectual freedom—

G: Judith Krug.

S: And there was me. This offer had been made for a briefing and I said, No deal. If we're going to have a briefing on the program for ALA, it's going to be a briefing that every member of the Intellectual Freedom Committee can attend, and it won't be in their quarters.

G: Why did you take that position?

S: I thought that this was an attempt—still behind the curtains—to try to defuse [the situation] and maybe put the fire out. Who knows what they'd say in a briefing?

We had no particularly independent ways of finding out whether they were telling us the truth or not. But it certainly seemed to me as though, if there was going to be a briefing, it ought to be rather more open than closed. So, not in their quarters, every member of the committee attends, we will make a transcript of it and the transcript will be made public on request. Those were the three conditions for the briefing.

The briefing occurred, and it occurred in the boardroom of the District of Columbia Public Library, which happens to be a block away from the headquarters of the FBI. Before the briefing started, some staff for the two senior executives for the FBI who were going to do the briefing came over and swept the room to make sure there were no recording devices or anything like that.

G: Really?

S: They'd already agreed that a transcript could be made and that the transcript that was made would be under our control and we could make it public upon demand if people wanted it. The briefing occurred and the thing about the briefing that was interesting to me— They had earlier conceded, in a briefing that they'd done of the National Commission [of Libraries and Information Science], that the library program of the eighties was a resuscitation of a program they'd had active in the seventies.

G: And possibly as early as the sixties?

S: In the briefing of the Intellectual Freedom Committee, they tipped over the sixties card and revealed that it had been part of the counter surveillance that they were doing, of lots of liberal groups in the sixties, during the demonstrations about Vietnam and all kinds of other things.

G: Civil rights demonstrations.

S: Woodstock and the like. If you look in the transcript of the briefing of the committee, you'll find strong hints that they were doing some of this in the sixties. If you look in the transcript of the briefing that they did of the National Commission of Libraries and Information Service [Science] at the San Antonio Midwinter meeting—that would be 1988 or 1999 [1988]—you'll find an admission that they were doing it not only in the eighties but in the seventies.

Back to the congressional path, in addition to the Video Library and Privacy Act [This became the Video Privacy Protection Act of 1988], we also were called to testify before the Subcommittee on The Constitution and Civil Rights of the House Judiciary Committee [Subcommittee on the Constitution,

Civil Rights and Property Rights]. That subcommittee was then, and had been for a long time, chaired by the long-time congressman from San José, Don Edwards. The testimony was given and I remember being asked by John Conyers and Pat Shroeder, What would you have us do? I said, I would have you have them stop.

The legislative thing didn't come to fruition. The legislative process, hearings and other kinds of things— Then they go into a meeting called markup where they are going to write the bill, the version that is finally going to be voted on by the committee and sent to the floor for action. We were informed by a state librarian in one of the New England states who had contacts in the course of his job as the librarian with senatorial staff of the New Hampshire senators.

G: Which librarian is this? Do you remember?

S: I'd rather not put his name in the record.

G: Oh, okay. (laughs)

S: But he was the state librarian in a New England state and one of his two senators was a very conservative Republican. But the state librarian had contacts with the senatorial staff of both of the state senators because that's part of his job. I don't know how he learned this but he learned that—in the markup session that was going to be a joint session including members of the House subcommittee that we had testified before, and the Senate subcommittee that had jurisdiction but hadn't held the hearings—in the interests of expedition, they were going to hold a joint House subcommittee-Senate subcommittee markup session. This state librarian had learned that his senator was going to propose an amendment to the library portion of the act. The amendment would have allowed a national security letter, about which we've heard a whole bunch in the context of the [USA] PATRIOT Act. The amendment would've allowed a national security letter to be issued, thus trumping whatever existing state confidentiality laws that there were. At that time I think we knew that there were variously 36, 37 or 38 states that had laws protecting the confidentiality of personal information in library records.

We thought to ourselves, Oh my, this amendment will almost certainly get adopted and included into the bill. What should we do? We can stay the course in the hope that maybe we can fight it off and we get a federal protection of information in library records, instead of individual state protections. Ummmmmm, okay. Or, we can be a little more cautious here. We've got as much progress as we've got with the number of states that have passed laws, and the library communities in some of the states that haven't are working to get some of those states to step up. Conclusion—we instructed the congressional staff to sever the library portion of the act. So, library portion being gone, the

amendment never got proposed, the act sailed through as a federal protection of video rental records in commercial establishments from unauthorized disclosure. There are a lot of morals in that tale, among them is having a network of people who get information to you and then having to make a calibrated judgment about whether to proceed or whether to, as they say, live to fight again another day.

G: So that explains a few things here. Backing up, when you did meet with James Geer and the others in the FBI in I think it was the second meeting— (pause)

S: Thomas DuHadway.

G: After the meeting you were quoted as saying, "While I wished for broad agreement as a result of getting together, I did not realistically expect one given the differences in principle which exist." [Krug, 1988, p. 208] Would you mind elaborating on that and how you felt about the situation with the FBI at that point? So this is, I believe, after the hearing. This is your briefing with the FBI.

S: Well, I was going to say, "You always do," but I don't want to say that. I would always go into a meeting of that kind, hoping that the outcome of two to three hours of interaction would produce some points of agreement. Obviously the points of agreement that the ALA and the Intellectual Freedom Committee would have been happy with would have been, We're going to stop doing this. After all, none of these libraries had classified information in them to begin with.

G: Exactly.

S: So it's not as though someone of Eastern European appearance—costume or otherwise—is, by virtue of coming to these libraries, going to get access to classified information. They're not, because they don't have it. In fact, Columbia University prohibited classified research to be done on its campus, as did many other universities in the post-Vietnam demonstrations. The Stanford Research Institute had been on the campus. They moved it off the campus and then declared that no classified research could be done on the campus and split the Stanford Research Institute up as a separate corporate entity, now known as SRI International. Lots of universities, in reaction to the Vietnam demonstrations on their campuses, declared their campuses as places where no classified research can be done. In fact, that was the case at Columbia when they made the visit in the first place. But the larger point is that none of the libraries that were visited in the LAP [Library Awareness Program] had classified information in them.

Where was I? We hoped for points of agreement but we didn't get them because at the end of the session there was no indication from Mr. Geer, who later went on to become the Director of Security for DuPont, and Thomas DuHadway, who a few years after this episode died— There was no indication that they were

going to agree to cease and desist from these visits—none. That was the disappointment. You always have the hope, then you have the reality, and in this case the reality was a disappointment.

G: Now, considering that, I'm sure [that on] more [occasions] than in the fall of 1987 and the spring of 1989, you say, "Eternal vigilance is the price of intellectual freedom" [Schmidt, 1989, p. 63] in the context of your efforts to change the FBI Library Awareness Program or get it to go away altogether. Can you elaborate on that?

S: Well, I think that you have to be constantly aware of the agencies or actors who, in pursuing their interests, might encroach upon the intellectual freedom of others. At the time that the library awareness controversy was going on, we had instances of the IRS [Internal Revenue Service] showing up at a resort town in Delaware seeking to know if so and so was a registered borrower of the public library there, because they were obviously seeking to identify the possibility of some assets associated with a second property, a vacation home or whatever. This was part of an IRS investigation. [There were] numerous reports of local police showing up as part of an investigation of a possible crime or a crime that in fact had occurred. They were trying to gather evidence and showing up in the public library and trying to get information, usually from circulation records.

It seemed to me then and it seems to me now that you have to simply add this awareness and sensitivity to the other kinds of things that librarians, library staff, and libraries have to be aware of. There isn't a lot that libraries and librarians can do in protecting intellectual freedom in other venues—I mean they can oppose encroachment when it becomes public—but they can certainly mind their own stores, in ways that are predicated on being vigilant, being aware, setting up routines and procedures that protect the privacy and confidentiality of library patrons.

G: The documents that the NSA [National Security Archive] was able to get via FOIA [the Freedom of Information Act] about the Library Awareness Program uncovered that not just library patrons might have been investigated but those people in the library organizations who had a problem with the program may have had files opened on them. Or, the FBI said that a very small amount of crosschecking was done on them. Do you think a file was opened on you?

S: I'm sure it was. In fact, the law firm that was working with us then, Bruce Ennis, the late Bruce Ennis of Jenner & Block, but then the law firm had a different name— We had a draft letter and we got it published in the *American Libraries* magazine and we encouraged people who thought they might have been investigated to use the letter and send it to the FBI to see if they have a file. The

understanding was that the FBI would be obligated to do a search and to reveal whether or not there was a file. If you wanted its contents then you had to take another step to see if you could get the contents. Well, there's an absurdity about this particular aspect of the enterprise. If they do a search, by virtue of doing a search they open a file.

G: (laugh)

S: In my case I decided to write a letter. So I did and I got a response saying there was no file.

G: Interesting.

S: Now since I knew that the fact of doing the search created a file I would've expected a different kind of an answer. But the other thing about the FBI's files is that what exists at the national office doesn't necessarily exist at the major regional offices. Since at the time of these events—mid to latter eighties—I was working at the Research Libraries Group on the Stanford campus and living in Palo Alto [California]—

G: Sorry. (Conversation interrupted to flip a cassette.)

S: And living in Palo Alto, it occurred to me that I might have gotten a correct answer to the letter I wrote to the headquarters office but I wondered if I might get a different answer if I would write to the San Francisco regional office. Well, bad news—no new disclosures here—I didn't get around to writing the San Francisco office. But I always suspected, given the answer that I did get, that the real truth is that there was and there may still be a file and that it's in the San Francisco regional office. But I don't know that.

G: Do you think you ever will get around to writing that letter?

S: Well, I don't think of it very much anymore but maybe I will. Then I'd have to go through the FOIA process to try to get the contents disclosed if I got the existence of it confirmed.

G: Which could take years.

S: It could take a very long time. I'd turn it over to my friends at the National Security Archives and say, Hey, you do the hectoring on this one for me, will you?

(laughter)

S: Because it's the National Security Archives—

G: That got those records.

S: That got the redacted things from the FBI. The 1,700 pages or however many that there were.

G: The other day you mentioned that you had tons and tons of files, of what I assumed were files from the FBI.

S: I have a set of the pages that the National Security Archives got from the FBI. There are 1,700 pages—1,700 pieces of paper—with heavy, black wide marker redactions. Some of the redactions, if you study them closely, you can see— The other thing about redactions of things being released under FOIA, they have to indicate the reason for the redaction. So you'll see something blacked out and then you'll see in the margin "2c" or "4d" or "5e" and if you go somewhere to a source document that lists the reasons that you can redact—if you're the disclosing agency—they all have these numbers: 1, 2, 3, 4, 5 or A, B, C, D, E or whatever, whatever, whatever. The protocol then at least was, if there's a redaction there should be this little marginal note saying what the basis for the redaction was. Now if you paid close attention to the list of reasons you could redact and then you looked at the document, if there was any surrounding context you could quite often figure out, okay, this was a privacy basis for redaction or this was this other reason for redaction, [but] sometimes you couldn't. There are a few pages that are, again, from the comedy of the absurd. It would appear as though they had four words on them and all four words are redacted, so there's nothing on the page except the black mark of the redaction.

G: (laughs)

S: I mean, you could do a theater of the absurd by assembling a lot of aspects of this whole series of events.

G: It seems like an exciting time to have been Chairman of the ALA Intellectual Freedom Committee.

S: It kept me on— I learned how to go to my office on the Stanford campus, get a flight to Chicago, get a flight from Chicago to what is now the Reagan Airport [Ronald Reagan Washington National Airport], get on the Metro [and] get to a hotel. I remember one of those trips. Nonstop to Dulles [Washington Dulles International Airport] takes you a long time to get into town but if you break the trip at the Chicago airport [Chicago O'Hare International Airport] then you can fly into the Washington National Airport, now Reagan, and you can get on the metro—right there—and go to where you need to go. I could leave my office at

10:00 California time, get to San Francisco Airport [San Francisco International Airport], get on the plane with a very light bag and meet someone for dinner at 8:00 in Washington, which I did a couple of times, including testifying, the night before one of the congressional hearings. I was being briefed that night by a lawyer and we didn't know each other. She was a woman and very, very short. We went to a restaurant in southeast Washington called The Broker. Well there was a thunderstorm and I got delayed, and I kept having to call and get messages to her that, I'm going to be late, I'm going to be late, I'm going to be late. Well, the last message, the last "I'm going to be late" didn't get to her. So she went to The Broker at a time that had been twice postponed by then.

G: Oh no.

S: She was there waiting for me. She didn't know what I looked like. So she waited and it all turned out all right because I got there. But I learned from her when I did get there, she said, Do you see those two people over there? I said, Yes. She said, Well, do you know what I did because I didn't know what you looked like? I went over to that man in the white shirt and said, Hi there, I'm Linda Steinman and I'm supposed to meet Jim Schmidt are you he? And the man in question was Al Gore.

G: No way! Really? I thought you were going to say he was a Jim Schmidt, just not you.

S: I went up to him while we were waiting—after we had ordered and were waiting for our dinner to be served—I said, Hi, I understand that you got mistaken for me—all that time you spent campaigning—and you don't look like me at all! We had, we had a pretty good time.

(laughter)

S: He was there with another senator talking about, presumably, senatorial business. She is now the counsel for the American Publishers Association [Association of American Publishers].

G: Speaking of lawyers, you came into contact with Bruce Ennis, I assume, during this time and probably other times in your career. Did you ever get a chance to sit down and discuss civil liberties issues with him?

S: Oh yes. Since my years as a student at Columbia, my years as a student at Catholic University, I've been a daily reader of the *New York Times*. One of the things that Bruce did was—as a counsel for the American Civil Liberties Union—to take up a very famous case involving the state mental institutions, in Long Island [New York] in particular; a source of great embarrassment to the city

and to humanity, in fact. I think it was called Wildwood or something like that but just terrible, terrible abuses, just awful.

G: The Patient's Bill of Rights came out of this legislation, I think.

S: Something like that, yes. It was Bruce who led the legal charge in that case. We used to talk often. He would come and brief the committee and the board of the Freedom to Read Foundation. But we didn't talk about civil liberties very much after I discovered that when he was an undergraduate at Dartmouth he'd been a poet. (Loud siren sound in the background.)

G: A poet?

S: A poet. He was, in fact, responsible for inviting a now deceased poet and translator by the name of John Ciardi—who was a faculty member at Rutgers, and a columnist for the *Saturday Review*, and an author of children's books, including some books of poetry that are intended to be read aloud, both by the child and the adult. We probably have several copies in this library. As a faculty member at Rutgers, Ciardi was regarded as having done the finest translation of Dante of anybody—anybody. Bruce and I used to talk about John Ciardi because Bruce hadn't met a lot of people who knew anything about him. It turned out that Bruce not only knew about him but knew *him* because he had gotten Ciardi to come and judge a poetry contest at Dartmouth and he, Bruce, was the host. I grew up in a house with my mother a middle school librarian, the *New Yorker* and the *Saturday Review*. So, Bruce and I would talk about John Ciardi a lot. We didn't talk about civil liberties very much, except that he did keep reminding me, If you think about or are tempted to initiate some litigation in connection with the Library Awareness Program, we're doing so well in the court of public opinion—don't.

G: I was actually going to ask you a few things about the [USA] PATRIOT Act. Do you think that's working with the PATRIOT Act? I mean, there are other issues involved but in the court of public opinion, how would you say the libraries are faring?

S: We don't know. We can't find out.

G: (chuckle)

S: Mr. Ashcroft, in January of this year, hinted that it may have been used once, whereas in November or December of last year he said, Well, it hasn't been used—against libraries, which invites the So-why-did-you-need-it-in-the-first-place? kind of response. No. I think, unfortunately, we have an entirely different political and social climate. Post 9-11 is part of that but it seems to be, as there

have been in previous times in our history, a greater tolerance on the part of the population at large to have a civil liberties compromise in a context where there's a feeling that we are, to some degree, under threat. On the other hand, I think that we did educate some people in our reacting to the Library Awareness Program so that by the time Section 215 of the [USA] PATRIOT Act comes along we have 48 states that have protections. We have an attorney general opinion in one of those other two that is regarded as binding. So, you know, there we are.

G: So which is the lone state? Hawaii or— [Hawaii and Kentucky only have Attorney General opinions protecting the confidentiality of library records.]

S: I think it's Ohio. I'd have to look that up. I remember the 48. You could check the ALA Web site, in fact, because they are all listed there. But we have, unfortunately, the [USA] PATRIOT Act—specifically Section 215—as a *federal* statute, so the issue would be whether the federal statute trumps the state laws. Remember that the reason why we cut the library thing out of the Library and Video Privacy Act [This became the Video Privacy Protection Act of 1988] was that we thought the national security letter device—which is what's being used in the [USA] PATRIOT Act—we thought the national security letter device would trump the state laws that are on the books in '87, '88, '89, so we decided to bail and to go ahead and encourage the states that didn't have them to pass them.

The good news I guess, if there is any, is that at least with respect to the gag order language in Section 215, in litigation initiated by the ACLU [American Civil Liberties Union] involving Internet service providers under Section 505 of the [USA] PATRIOT Act, the FBI was seeking—had in fact sent subpoenas to Internet service providers—to get a list of their Internet subscribers. Some of the ISPs contacted the ACLU and said, We don't want to do this and we don't think this is right. Will you take this on and let's challenge the constitutionality of Section 505? Which they did and a federal district judge in New York ruled that Section 505 was unconstitutional. Well, that's good but he went a step further. Section 505 also had gag language, which said that the Internet service providers who might supply the names of subscribers were prohibited from telling the subscribers that they'd made this disclosure. The gag order language there in 505 is identical to the gag order language in 215. So, you could reasonably think that if the gag order language in 505 is unconstitutional then the gag order language in 215 is unconstitutional, which doesn't really solve the problem that 215 represents—it just takes the muzzle off.

G: At least.

S: But it leaves this broadened definition of business records. It leaves the change in standard from probable cause to reasonable belief.

G: And you have the secret court [Foreign Intelligence Surveillance Court]—

S: Yes.

G: Who issues the letter—

S: Right. So, the current, most hopeful path is Bernie Saunders, the congressman from Vermont, [who] is carrying legislation that would change Section 215 to the conditions that existed prior to the passage of the [USA] PATRIOT Act. The other thing about Section 215 is that it is one of the sections of the PATRIOT Act that is scheduled to sunset on the 31st of December of this year. So if it doesn't get modified it may just go away. But, on the other hand, it may get extended.

G: What do you think is going to happen? I know what you would like to happen. (chuckle)

S: Congressman Saunders's legislation in an earlier incarnation actually came up and it was defeated in the House [U.S. House of Representatives] on a tie vote, which the Republicans had to hold open for an extra half hour—

G: Twenty minutes, I think—

S: Fifteen minutes, something like that, in order to get enough of their number to vote so that the vote could, in fact, be a tie. Because at the point at which the vote should have been closed, the amendment was passing.

G: And the Democrats were shouting, Shame! Shame!

S: Yes. Yes. So, I think that 215 has a chance of not getting extended because it is clear that there are, at both ends of the liberal-conservative continuum, people who are opposed to aspects of the [USA] PATRIOT Act. While they may not be—especially on the conservative end—opposed enough to do anything about it they might be opposed enough to not want to see it extended.

G: (long pause) So, with these new powers that are granted to investigators with the [USA] PATRIOT Act, how do you see the ALA approaching the fight? How can the ALA fight this? And the ACLU? It seems some of their weapons that they had, obviously, during the FBI [Library] Awareness Program are neutralized. Do you think Section 215—

S: I think Monica Lewinsky did us a favor.

G: (laugh) Okay.

S: That's not because of how I feel about Bill Clinton by the way. You remember, maybe, that in the course of investigating Monica Lewinsky, law enforcement went to the bookstore off of Dupont Circle, Kramerbooks & Afterwards [Café & Grill]. I've been there many times, that's why I remember the name. They sought records of books she bought from the store and that seeking was challenged. The court in which it was challenged was a District of Columbia court, and the judge ruled that they could not demand the records. Okay? Now that's a tiny, tiny, tiny case with no precedential value except that we recite cases with no precedential value all of the time in the arguments that we make. I think that that sets the stage for communicating to the public at large what Section 215 means to you even if you never set foot in a library.

G: Right. Right.

S: All tangible records is what the Statute [Section 215] says and the basis for it is *reasonable belief that,* not *probable cause that.* Well, how many gazillion books are sold every year?

G: Doesn't this include business records?

S: Yes.

G: Your bank records, your medical records—

S: Yes. Originally the language had to do with car rentals, motel records and a couple of other categories. The definition of business records in [Section] 215 replaced that older language which had four limited categories. And it says *any* tangible record in *any* form, ta da, ta da, ta da, ta da, ta da. So I think we have an opportunity. But, again, as Bruce Ennis would put it, it's in the court of public opinion. I think we have an opportunity and we don't have to invent a, What if they go to a bookstore and ask about da da da da da, because here we have in the Lewinsky scandal—whatever you want to call that—an *actual* example. The Tattered Cover Bookstore in Denver, Colorado, is another *actual* example. In that case (*Tattered Cover Bookstore, Inc. v. City of Thornton*, 2002) the Colorado Supreme Court said, No you can't. So, here we are and if something happens I think we can challenge it.

However, the bad news is that if what happens is that somebody shows up with a search warrant—as opposed to a subpoena that was triggered by a national security letter and issued by a secret court—if they show up with a search warrant, search warrants are immediately executable—immediately. The only thing a library can do—if presented with a search warrant—is stand aside and keep a careful record of what's taken. If it's a subpoena then there's an opportunity to challenge the basis on which it was issued. But if it's a subpoena

issued under [Section] 215 then the challenge that you'd make would be governed by the gag order and so you would be going into a secret court to challenge a subpoena which publicly doesn't exist (G laughs), and you can't admit that you're in the court—the secret court—challenging it, no matter what the outcome is.

G: Do you think there are back channels within the ALA and the library community that are finding out if any of these things are happening?

S: I'm sure there are. I don't know first-hand what they're finding out, but ALA has been *incredibly* effective in establishing coalitions and collaborative relationships with other organizations. That was true during the time of the Library Awareness Program; it has been true since the passage of the [USA] PATRIOT Act. The members of ALA and the library community that benefit from ALA's activities get *way* more bang for the bucks that are spent because ALA doesn't have a lot of bucks compared to other politically active organizations. The relationships that ALA—through its staff and its prominent members—have established, really, really deliver *way* beyond anything that ALA spends. (A noisy group can be heard in the study room next door.)

G: How are you doing?

S: Pardon me?

G: How are you doing?

S: I'm doing fine.

G: Okay.

S: I'm doing fine.

G: What are your thoughts on government secrecy now as opposed to the Reagan era?

S: Well, what we have, as in many other areas, is a pendulum that swings. Executive Order 12,356 [Executive Order no. 12,356, *Federal Register* 47 (April 6, 1982): 14,874. Title is "National Security Information."] issued by President Reagan caused the pendulum to move from less classification to more because it said, When in doubt whether to classify, classify. And it said, When in doubt as to the level of classification to assign, prefer the higher level, and it *extended* the number of years before automatic declassification would occur. The Clinton executive order—and every president has issued an executive order on classification— The Clinton executive order on classification, which was quite late in his first term or maybe early in his second term when they finally issued it,

moved toward less classification and moved to kind of shorten the time before automatic declassification would occur. [Reagan's E.O. 12,356 was revoked by Clinton's Executive Order no. 12,958, *Federal Register* 60 (April 20, 1995): 19825. Title is "Classified National Security Information."]

G: Right.

S: In the Reagan years there was a phrase called "sensitive but unclassified information," and that concept was promulgated by Admiral John Poindexter who later appears in the [George W.] Bush administration as the architect of the Total Information Awareness program in the Department of Defense's ARPA Agency [Advanced Research Projects Agency]. The second President Bush executive order [Executive Order no. 13,233, *Federal Register* 66 (November 5, 2001): 56,025. Title is "Further Implementation of the Presidential Records Act."] is in the form of amendments to the Clinton executive order rather than a complete replacement. But the cumulative effect of those amendments is to move in the Reagan direction rather than the Clinton direction. Then there's the whole matter of, And how are things working out operationally in practice. (A din of voices from the room next door can be heard.)

G: Right.

S: In practice what we have is a violation of the Presidential Records Act because some of the same actors in Reagan's administrations are actors in the second Bush administration, and so some of the papers from the Reagan administration that should have been released under the Presidential Records Act, George W. Bush has prohibited their release. The watchdog agency organizations in the beltway that focus on classification are reporting an *astronomical* increase in the number of items classified each year.

G: Under the Bush administration—Bush II.

S: Under the Bush administration. Just an *astronomical* increase. And, the Bush administration and the Department of Homeland Security have floated a 21st-century analog to "sensitive but unclassified." They call it "sensitive security information but not classified." They seek to have it treated as though it were classified. So, take down from government Web sites the information that's there about water supplies and dams and so on. [It has] been there for a long time and if it wasn't on Web sites it was in other formats before that. No, take it down, take it down.

G: Sure.

S: The technological circumstances that we're in right now, of course, is that Web

sites and Web pages come and go with the speed of light. I think that there's absolutely no telling how much stuff has been removed from federal agency Web sites that was unclassified.

G: That was unclassified without being archived whatsoever. It went into the ether.

S: Right. It's gone. It's gone. I think there's no telling.

G: Do you think in the deep Web, among librarians and their list servs—you know, GovDocs [government documents] librarians—there is some kind of paper trail?

S: Oooh.

G: (laughs)

S: Librarians. One of the things librarians do well is keep track of stuff and so there may be. Then there's the Web site with "hole" in its name [The Memory Hole]. I've forgotten what it is but it gets stuff and keeps it there; stuff that is being taken down from other places.

G: Oh, I don't know of that one. The only one that I know of is the Wayback Machine. It just takes snapshots of the Web. You can go to the Wayback Machine to find things that are now gone but I don't know—

S: Is that like Kahle's Internet Archive?

G: I don't know that one. [The Wayback Machine is part of Brewster Kahle's Internet Archive.]

S: I think his name is Brewster Kahle. He is up in San Francisco.

G: Oh.

S: He has been taking snapshots of the Internet and saving them. But there is a URL with the word "h-o-l-e" in its name and it has some things on it that are controversial—or were—that have been taken down by whoever originally put them up, in some cases government organizations, in some cases not.

G: This may be a rhetorical question. Do you ever feel discouraged about the current state of affairs vis-à-vis this administration's track record on civil and human rights?

S: Often. I've been carrying around since last weekend the long story in the Sunday *New York Times* about their bogus news reports that had been produced by federal

government agencies and used by local television channels as though they were news stories. I think that this is just outrageous and, I mean, I don't care whether that commentator who was supposed to pump up No Child Left Behind—Randall whatever his name was—that got the two hundred and fifty thousand dollars [Armstrong Williams was paid two hundred and forty thousand dollars by the U.S. Department of Education]. I think that's outrageous. But to learn from this story in the Sunday *New York Times* how pervasive this was across the federal government and then to have the President say yesterday in his news conference that it was okay. I just, you know, that's not per se a civil liberties issue but it displays a kind of turn of mind that, you know— I guess the operating ethic is, Anything that you can do is okay. Maybe hardball politics at the national level is that way but I can't get there. I mean, where the hell are we if that becomes the prevailing ethic of behavior? Anything that you can do is okay. Wow. Terrible. I think under that, it's clear that—at least with Mr. Ashcroft as the attorney general—we can do anything we decide to do. So the memoranda on torture and then Jane—what's her name? [She is] the *New Yorker* reporter who parted the veil on the story about rendering prisoners—exporting prisoners to countries that would torture them.

G: Oh, oh. Yes, yes.

S: Jane Mayer, I think her name is.

G: Outsourcing prisoners.

S: Yes, It's just—

G: Outsourcing torture, basically.

S: It's almost beyond belief except it isn't because it's clearly going on. So, you know, you pick one at a time and you fight the ones you think you can win and, as Bruce, God bless him, said, you don't always win them in the court of law. You might win some of them in the court of public opinion and that might be just as good. At least in the court of public opinion you have a broader record—especially in this day and age—that you can point back to and resurrect. If you win it in a court of law you've got the opinion of one court and maybe an appellate court. Those things, while they are available online, are not as pervasive nor are they as accessible to the public—by which I mean as understandable and digestible—as news reportage would be.

G: But when you add in the secrecy factors and the gag orders, in the court of public opinion your hands are kind of tied.

S: They are.

G: A) you may not know about it and B) you may not be able to say anything.

S: Right. So I guess one could conclude from that, April, that there's good reason to be paranoiac (G laughs) because you may not know about it. But depending on what it is, you may know about it but can't say anything about it. That seems to me to turn our national traditions on their heads. I mean you ought to be able to know about it and you ought to be able to talk about it and you should be able to talk about it—within reason—even if you don't know about it. What I've said about the FBI and the Library Awareness Program in the sixties—that's more inference than it is explicit unqualified language that I could point to. But I submit that if anybody looked at the transcript that was made at the briefing of the committee [ALA Intellectual Freedom Committee] when the discussion turned to, Well we know we're here in the eighties and we know from this other place that you were doing this in the seventies and, mmmmmmmmm, might it have been going on earlier than that?

G: (laughs)

S: There's a kind of response which isn't an unqualified admission but it's a sufficient evasion so that you could reasonably conclude that the answer, had it have been given, probably would have been yes.

G: (pause) How are you doing now?

S: I'm doing fine.

G: I wanted to ask you a few questions about equal access to library materials for minors, specifically materials available over the Internet—another touchy topic.

S: (laughs)

G: So there was the Communications Decency Act, which was struck down as unconstitutional, then there was COPA [Child Online Protection Act] which was struck down as unconstitutional [in the lower courts], and then there was CIPA [Children's Internet Protection Act], which was finally upheld. CIPA mandates that libraries and schools must adopt an Internet safety policy which incorporates the use of Internet filters in order to receive E-rate discounts and certain types of funding. A big issue at stake here was the efficacy of Internet filtering.

S: Right.

G: And there was a fear of children being exposed to constitutionally unprotected, sexually explicit material over the Internet. Now you were appointed to serve on the COPA Commission, which found that Internet filters weren't the answer but

that information resources and education were. So, first of all, what was your role in the commission? You were appointed by— (pause)

S: Richard Gephardt. It was just to be a member of the commission. The structure of the architecture of the commission was, as is often the case, that the majority and minority leaders get to appoint some number. In the context of the Congress at the time the COPA Commission was formed, the Republican side had like one more appointment or two more appointments than the Democratic side. I heard the testimony, as did the others. I didn't do anything particularly differently than the other commissioners except arrange a site for them when they wanted to hold one of their hearings out here. We had it here on [the San José State University] campus in the Student Union.

I did poke a little harder than some of the other commission members when we had witnesses about filters—in terms of how they worked and in terms of the research that some people had already done on them with respect to underblocking and overblocking and so on. The ALA position, although some say it wasn't well articulated as far back as the CDA, is that filters may be okay for parents to use with their own children—that's a parental choice that parents have a right to make. We have some things that we would caution parents about before they make the decision, like, Here are some problems with how they work. You shouldn't feel overly confident about them achieving the objective that you want to have achieved. But in the privacy of your own home, in the exercise of your role as legal guardians for your children, you could do this.

When it is a question of filters being used in a public setting, where a singular set of values is being imposed on everybody, we've got trouble. We've got a lot of trouble. Now in the case of the public library, it's the values that are behind the filtering that's done by the maker of the filter, whatever those values are. And to the extent the filter operationalizes those values—perfectly or almost perfectly—that set of values is being imposed upon all of the users of that resource. We've got trouble with that. We've got a lot of trouble with that because where we think the responsibility for *content* in minors ought to be and ought to remain is with the parents or the legal guardians. You shouldn't put a publicly funded agency in a position of, in effect, implementing a *singular* set of values as though they were shared by all members of a particular community, because they're not. We know that some parents will let the child read this book other parents would let their children not read the same book, that is to the extent the parents are paying attention anyway.

G: (laughs)

S: With the CIPA decision what we have—apart from Mr. Rehnquist's [Chief Justice

William H. Rehnquist] obiter dicta that the Internet is not a public forum—is a small opening presented by Justice Kennedy [Associate Justice Anthony M. Kennedy] in his opinion that if turning them off upon request of an adult doesn't prove to be feasible or easily implementable then there may be a case for challenging CIPA, "as applied." Which is to say that the opinion uses the possibility of having the filter turned off upon the request of an adult as a kind of an out. So we're not infringing on adult speech in order to protect minors because we can turn it off, can't we? Now, if operationally in the real world, instead of in the language of judicial opinion, the turning off turns out not to be easy or even feasible in the event, for example, that you're at the branch of a public library and the filter is on a server at the main library, or in the case of a high school where in the school library the filters are on a server at the district headquarters. Well, maybe the high school senior isn't an adult but in some states the high school senior *is* an adult. But if that filter is on a server at the district headquarters it's not going to be easy to disable it for that adult, even if they go to the trouble of requesting it. Of course, the whole problem with asking people—making people ask permission to exercise their legal rights—is a whole, whole other issue. At least in the First Amendment area, we haven't gone there. We said, You've got them, you don't have to ask permission to exercise them. That's what this "out" in the decision on CIPA requires; the adult who has the rights has to go to somebody and say, Please, I want to exercise my rights.

G: That could have a chilling effect for some.

S: You bet.

(Cassette tape stopped and there is a momentary silence)

G: How are you doing?

S: I'm doing okay.

G: Let me get past the leader here. We flipped another tape.

Asking adults could have a chilling effect on them if they have to ask for the filter to be removed.

S: I'm sure it's a deterrent. I mean, I'm sure there are people who say, Oh, I'm going to feel embarrassed if I go and ask to have the filter turned off, quite apart from what it is that I'm seeking to look at. I'm, I'm, nuts, I'll go home. Or maybe I don't go home. Or if I do go home I don't have access to the Internet. So, this one is problematic but in the given the makeup of the current court—to say nothing of the directions in which Mr. Bush is trying to take the circuit courts—unless we can build a case based on Justice Kennedy's "as applied" idea,

as distasteful as the CIPA decision is, I think we're stuck with it. There is a steady stream, as you know, of state-level enactments along this line either criminalizing the communication of certain content or in some states now, post-CIPA, passing laws that will require any school district that receives state funding or state aid to put filters on the devices that access the Internet.

G: Do the ALA's intellectual freedom policies argue that no filters should be put on for anyone ever—even at home? Would that be true?

S: No, I wouldn't make an ALA argument with respect to home.

G: Okay.

S: I would make the argument that the home is the place where the parents can exercise choice. If we're talking about the print world, the choice that they can exercise is to prevent their children from reading book X or book Y. In that hypothetical I would say a wiser choice would be to read the book to [the child] and then have a conversation about it.

G: Okay. Okay.

S: With respect to the Internet and the Web, if you are an informed user of filtering—of filters or the filtering capability that some of the major ISPs have—then you won't be susceptible to overconfidence about the degree of protection that you're going to get. Again, like the book, it seems to me a more sensible way of proceeding is to have a conversation with your child about what it is that they are accessing and why they are accessing it. At some age, sexually explicit content is incoherent and the child doesn't get interested and goes on to something else. At some other age, they get interested up to a point and then they get bored because it is mostly the same and so, you know, I tried something and I don't like it, or I'm not interested, or whatever. If there is a situation where your, probably teenager, is unseemly attached to it or, for that matter, to violent comic books then there's a more serious kind of thing going on. As with serious things in raising kids—in my case two daughters—you have to have serious conversations. I mean there are petty shoplifting phases that some kids go through. Now that's serious and you have to deal with it seriously. The good news is that most of the time when you take those kinds of unusual behaviors seriously and are aware of them, the family structure—most of the time—enables us to deal with them and parent and child can move on. Sometimes it turns into alcoholism or drug addiction or addiction to gambling. I recognize that and, again, I'm sorry about those cases. But they have to be dealt with both seriously and professionally.

G: Would you say that there is more or less unity now than there was before public

libraries had to deal with computer terminals connected to the Internet, or are things about the same with respect to age-neutral access? Do you think the libraries are— (pause)

S: Although I don't have data here my impression is that the most common situation in public libraries today, with respect to unfettered access to the Internet regardless of age, is that the devices in the children's area have filters on them, the devices in the adult areas don't but the children are free to move to any area in the library. I suspect that if I had data I would find that more than 50% of public libraries have some filters but it's only a tiny percentage of public libraries where every device is filtered. Where the devices in the youth area are filtered the youth are free to move to other areas of the library and access the Internet. That's what I'd expect to find. It's not a pure kind of situation but it's a—if my suspicion about prevailing pattern is correct—it seems to me it's one that, at the least, does not reduce the adults' access to a level suitable for children. (A noisy vehicle passes by so the narrator is difficult to hear for a moment.) And, neither does it prevent the children from having broader access, and that's probably the best we can make out of the situation given the real world of kids, parents, libraries and all of the stuff associated with that.

G: What would be your position if a parent comes to your library and wants you to act *in loco parentis* and says, I don't want my kid on any computer that doesn't have a filter on it. What would you do about that professionally and what would be your opinion?

S: I would have to say, assuming for example that we had filters on the devices in the children's area, I can't police your child while he or she is in the library unless they engage in some egregious behavior that is demonstrably disturbing other people and impairing their ability to effectively use the library. Absent that, I can't police your child. If that's the way you feel then what you've got to do is say Look, when you are out with your friends and you go to a store, you know and understand that I don't expect you to steal. You know and understand that I don't expect you to walk around the neighborhood and throw rocks and break people's windows. You know and understand that I don't expect you to walk around and slash people's tires. Okay? I expect you, when you are in the library, not to use a computer to access the Internet unless it has a filter on it. In those previous three situations I'm not there but you know what my expectations are. This is another one of those. You know that if you do slash tires or break windows or engage in petty thievery that I'll deal with it, and you may have some consequences that you prefer not to suffer. The most important thing is that when you are out there (punctuates the rest of the sentence by tapping the table with his index finger) you know that I have a set of expectations about how you're supposed to behave. This library situation—the Internet, filters—is another one of those. I know you're a

concerned parent. I can't police your kid. I know you've got a set of expectations about how you expect your kid to behave in certain situations based on norms and values that you've communicated. This is another one of those, communicate it to your kid. Maybe it works with the parent, hopefully between the parent and the child it works, and we will see.

G: Ethical standpoints represented in the Library Bill of Rights are a result of an iterative process that has taken several decades. In your career as a leader of various libraries, organizations, intellectual freedom groups, and as an educator, you have been called upon to explain these ethics. It seems that they must be mulled over, digested and debated in order for them to make sense. How do you handle the challenge of conveying the truth within these views, especially when there's little time to do so, as in a lecture or a hearing?

S: Oh, that's a tough question. I guess drawing on my experiences—three of them, I guess, testifying before Congress—you have to articulate the principle, and you have to try to relate it to something that is simple and basic that you hope and believe the legislators you are testifying before will understand. For example, you say the principle is *X* and so that makes *this* like *this*. You've already dealt with *this* by doing whatever you did—passing the bar, whatever—well this is like *that* so that's why we're here. I think it was three times that I testified, only once on the Library Awareness Program, the other two times on something else. That was kind of the thought in my mind. I've got to connect this thing up to something else they're already familiar with or can be reminded of. Maybe they're not familiar with it today, maybe they've forgotten about it, but I've got to connect it up with something that I can point to and say, And you recognize that, don't you? Others who have much more experience than I in testifying will say, Stay on the high road, speak in powerful but general and principled language. I feel more comfortable in relating the general and more principled language to something specific that I'm guessing the people I'm talking to will recognize and say, It's like *that*. Is that more effective? No, I don't know; I don't have any idea.

You're right, the code of ethics took a while and every time it is looked at [or] a word is fussed with, these are very, very careful and deliberative discussions, because one has to try to anticipate the many different ways in which the same set of words will be read. When you start fussing around with the ones that have been there for a long time and have through custom and belief acquired some understanding and maybe even acceptance you need to tread very lightly and be very, very careful. An example of history is when ALA decided, under the context of the Library Bill of Rights, to remove age as a barrier to access. The strongest advocate organization for the rights of children in the United States is the Children's Defense Council, established in 1974 [Children's Defense Fund, established in 1973]. You may recall that Hillary Clinton was on its board. It's a

very active, reasonably well-funded and powerfully articulated organization. The rights for children—generically rights—they focus mostly on child welfare issues and things like that. In fact, they hardly delve into the First Amendment rights for minors but, nonetheless, they are the leading organization and the leading voice. ALA added age—or, removed age—from the Library Bill of Rights five years before the Children's Defense Council was established.

G: Really?

S: That was because ALA had, and has, very, very, very active youth divisions that are interested in library services to children and to teenagers—youth.

G: Now that change took a while for people to even understand.

S: Oh yes. Oh yes. In the real world that kind of removal of age as a barrier is imperfectly operationalized because some libraries still require a minimum age for a card or they require a card that has a designation that you're below age X or whatever. So, you know, you can do the careful, careful policy development, you can wordsmith the language until you get it just so, but ALA has no enforcement arm.

G: (chuckle)

S: There are no ALA cops that I know of. Through membership participation, [you can] develop and promulgate, and then urge the use of [policy], but at the end of the day, in the public library world or the school library world, local government is going to take over and they will do what they will do. They might be persuaded by the very carefully crafted model statement from some national organization that has appropriate interest in a particular area that they're trying to do, whether it's searching school lockers or the school library or whatever. But, they might look at those carefully crafted things and say, Nope, not here, not for us. That's what local government is about.

G: When you're in the classroom teaching, you know, preparing library students for the real library world and you're conveying these ideas you have to maintain a professional distance and you do—I've taken your class.

(laughter)

G: I haven't taken your Intellectual Freedom seminar [yet] but in a portion of your class in 200 [Information and Society] you deal with intellectual freedom. You maintain that distance, and from my perspective you seem to want to let people make up their own minds. But do you feel as if you need to change hearts and minds in the classroom? I hate to use that [phrase] because it echoes the Bush

administration and war.

S: I like to think that I have influenced hearts and minds but, in my view, there will be no mistaking on the part of the student where I am. I don't think being doctrinaire is a way to get them to where I am or want them to be. I also recognize that, as in the case of what I think is going to be found to be the typical public library situation with respect to filters. Is that the ideal situation? No. Is it a situation which allows as much of the ideal to be achieved as is possible? Yes. There are no barriers for the adults and there are no impediments in the face of the young people for moving out of the youth areas into somewhere else. I guess having been addicted to the game of golf my whole life, there's a moral that I take from that. There is no perfect in golf.

G: (chuckles)

S: Maybe in the real-world situations that you have to administer and manage and so on, you don't get pure. You don't get perfect. Back to the students, I think that after the intellectual freedom discussion in 200 [Information and Society] and/or after the Intellectual Freedom seminar their minds have been moved—to a degree. I have had students come away from both of those experiences, the single shot in 200 and the seminar in 234 [Seminar on Intellectual Freedom], still believing that, to some degree, the public library ought to be willing to assume an *in loco parentis* role. I say to myself about them, Well, over a period of experience as a practitioner maybe the school of hard knocks will influence their feelings about that. One of the things that you can pretty surely say about *in loco parentis* is, given the staffing levels and given the rising usage levels, it would be damn hard to do even if you were disposed to try.

G: That's a good point.

S: I mean, it serves no useful purpose to say its impractical but as a practical matter it is impractical.

G: (laughs)

S: Because there are too many patrons, too little staff and not enough time.

G: As a young adult I was a great fan of Judy Blume.

S: Yes.

G: When you were President of the Freedom to Read Foundation you and Judith Krug presented her as Member Extraordinaire and gave her a Roll of Honor award. I wonder, did you get to choose her?

S: No, I wasn't part of the selection process. There was a committee that did that; but the committee nominated people, which the Executive Committee, the Board, then had to approve. But I did get to hang out with her.

G: Did you?

S: Yes. Because we typically take the people who get the Roll of Honor Award out to dinner afterward. In that case, as I recall, we went to Tommy Toy's, an upscale Chinese restaurant in San Francisco. Judy, although she is normally very quiet, told some interesting stories about encounters with editors over her books—pre-publication encounters with editors. Two or three of those stories which I've since discovered are part of a kind of a standard speech she gives about the chilling effect of things on writers. I don't remember any one of those stories.

G: That's okay.

S: (inaudible) fascinating.

G: That was actually a question that I wanted to ask you to elaborate on just a little bit and that's the notion of the chilling effect.

S: Well, I've offered one example, the necessity in certain library situations for the adult to ask to have the filters turned off. There's a piece of First Amendment jurisprudence that I can't recall but there's a case that's directly on an adult having to seek permission to exercise a right which they have. Whatever the issue was at hand, the court said, No, no, no you don't have to ask permission. So, whatever it was, a law or regulation, it got tossed. It wasn't in the library context specifically.

Judy Blume is another example of this kind of generic chilling effect. She would not have to have very many inquiries from her editor at the publisher for some things before she might begin to hesitate to write in a certain kind of way and end up writing in a different kind of a way. That happens with creative people all the time who are creating content for what we call "the media." Consider the team of writers for a successful sitcom and what they must go through consciously or even worse, unconsciously, before they even create the script that someone is subsequently going to review. Think of Stephen Bochco and the "NYPD Blue" first episodes and what he must have subsequently done, maybe even repressed, during the twelve years that that series was on the air.

Very occasionally some creator will be willing to approach the line—wherever that line is in the medium and in the context. How many creative, I mean *really* creative people, are willing to step over it? The lines, by the way, are not fixed. There's a wonderful scene in *The Aviator,* the movie that got an academy award for the life of Howard Hughes. Howard Hughes in his

moviemaking period made a movie that the Production Code Administration, the Hayes Office, initially wouldn't put the seal of approval on. It's a movie staring Jane Russell and it's called *The Outlaw*. It was a sort of a western. In the movie *The Aviator* there was a scene where Howard Hughes goes to the Production Control Board and appeals the denial of the seal of approval. The denial of the seal of approval was predicated on the fact that the garment that Jane Russell wore exposed too much of her breasts. [It was] not anything like Sophia Loren in the movie—a famous scene in *Two Women*—that (inaudible) scene I think it was. The defense Howard Hughes made was to bring in mounted cells from five other movies with famous actresses of the period and then have an expert of some flavor—he was a male character actor—take a ruler and measure how much of the upper breast was shown in Movie A by actress X, and Movie B by actress Y, and Movie C, and then Jane Russell in *The Outlaw*.

G: (laughs)

S: There were fewer inches of exposure of Jane Russell than there were of any of these other three. Hence, the denial of the seal was reversed and *The Outlaw* got the seal. That's kind of a silly example but the line that we're talking about is one that is influenced by a whole bunch of social and cultural things that are going on at any given moment in time. My favorite example is Maggie MacNamara and William Holden in—oh something about—*The Moon is Blue*. That, with *The Outlaw* and a couple of others, are the ones that just collapsed the code. It totally collapsed. *The Moon is Blue* would probably get a PG-13 rating now.

G: (chuckle)

S: What it got was a denial of the seal of the code from the [Production] Code Administration Office and a condemned rating by the Legion of Decency.

G: The Legion of Decency?

S: Yes.

G: Does such a thing still exist?

S: No. Good thing, too.

(laughter)

S: The line moves. But as long as there is perceived to be a line then some expressors and some creators are going to feel deterred by it. Chilling effect.

G: One more thing. I wonder if you ever secretly cringed at what your daughters

read?

S: I did.

G: Did they ever try to test your convictions by waving around things like Robert Mapplethorpe's photography or *The Painted Bird* [by Jerzy N. Kosinski]?

S: No. My older daughter was addicted to the *Sweet Briar High* [*Sweet Valley High*] series. I think that's what they are called.

G: Oh. (laughs)

S: I read one.

G: You did?

S: I did. There's a factory that produces them. I don't know how many writers there are but there's a factory that produces them. Every time she bought the newest one—I can't tell you how many bookstores we went to, to keep up—every time she bought the newest one I would hope that it would be the last.

G: (laughs)

S: Because I thought they were wretched. I didn't have any experiences like that with the younger daughter and, actually, she is more of a reader than her older sister. As adults, my wife exchanges books more with the younger daughter than with the older daughter. I try to get the older daughter to read [Joan] Spencer mysteries but she doesn't like them. There's a new one on the coffee table by Robert Parker and I'm trying to get her to read it but she doesn't like it. Neither of the girls are very fond of mysteries. No, I didn't have any hazing based on their reading although I did have this business with *Sweet Briar High* or whatever the name of that series was.

G: Thank you for this interview Dr. Schmidt.

S: You're welcome.

END OF INTERVIEW

Interview with C. James Schmidt, November 2, 2005.

Location: Dr. Martin Luther King Jr. Library in San José.

Duration: 14 minutes.

April Gage:

This is a follow-up interview with Dr. C. James Schmidt for the San José State University School of Library and Information Science Oral History Project. The interview is being conducted at the Dr. Martin Luther King Jr. Library in San José on Wednesday, November 2, 2005. The interviewer is April Gage, a student contributing to the project. Today we will extend discussion about the FBI Library Awareness Program from our first interview in March 2005.

At the time the FBI's counterintelligence visits to libraries became public in 1987, Dr. Schmidt was Chairman of the American Library Association's Intellectual Freedom Committee and the Executive Vice President of Research Libraries Group. Dr. Schmidt was also one of the few people who represented the library profession in hearings about the FBI's Library Awareness Program before the Subcommittee on Civil and Constitutional Rights of the House of Representatives' Committee on the Judiciary.

So, before we resume our discussion about the Library Awareness Program I'd like to ask you a couple more personal questions. You became a grandfather this year.

C. James Schmidt:

I did. [I] became a grandfather.

G: How do you like being a grandfather? (laughs)

S: It's a lot of fun.

G: Do you—

S: You can give them back.

G: (laughs) Does your grandson look like you?

S: No, he looks like his parents.

G: He does?

S: Yes.

G: I guess we'll see when he gets a little older.

S: Well, my wife and I care for him two days a week, Thursdays and Fridays, and Friday is normally the day when I don't come to campus so I get to help out.

G: So you've changed a few diapers.

S: Yes, and [I've] fed, been spit up upon, all the things that happen.

G: (laughs) And this is your first—

S: First grandchild.

G: First grandchild, right?

S: And at the time of this interview he is six months old. Growing like a weed.

G: Okay, speaking of raising children, your mother raised you and your sisters as a single parent and, considering that she was a middle school librarian in Flint, Michigan, I assume she was raising you on a limited or modest income. You must have a great deal of respect for her and her ability to provide for you and your sisters. I wonder if you would just tell me what she was like?

S: Well, she was a small woman. Before she became a librarian she taught Spanish because she had majored in Spanish at the University of Michigan and she graduated from there in 1924. Her husband was two years behind her. He graduated as an engineer.

She was small, [and] she was incredibly stable in her temperament. She was very well read. One of the things that I say to people when they ask me about, Gee, you have a large vocabulary. I say often, Well, I grew up with the *Saturday Review of Literature* [Retitled the *Saturday Review* in 1952], and *The New Yorker* around the house. And they got read. My friends would come early to my house to get me for something that we would be going out to do because they wanted to read the cartoons in *The New Yorker*.

G: That's the best part.

S: They were unaware that other parts of *The New Yorker* got read, at least in that household. My sister said, at the time my mother was in the early stages of her fatal illness, a parish priest stopped in from the church where she went, and he was Polish—although not an immigrant, he just had a Polish name, okay.

G: Okay.

S: And my sister said he didn't know quite what to do when he walked into her hospital room and she had the rosary in one hand and *The New Yorker* in the other.

G: (laughs)

S: So, that, kind of, is my mother.

G: Did, possibly because of having *The New Yorker* around and the *Saturday Review*, she help shape your politics? Her influence—

S: Yes, I think she had some influence on them but we were in a union town, the UAW [Union of Auto Workers], and that meant Democratic politics. I can't think off-hand of any parents of any of my friends who we knew to be Republicans.

G: Oh, okay.

S: So that was the climate that we were in. I remember my mother and I having a rather spirited argument—and this isn't, per se, about partisan politics—but, a rather spirited argument about whether boxing was intrinsically immoral.

G: (laughs)

S: She arguing that it was.

G: And you arguing that it wasn't.

S: Trying to.

G: Did she win the argument?

S: But it was a loser, because I now recognize that the object of boxing is to physically disable the opponent—by intent. And, that was the basis for her argument, that it was immoral and, in that respect, unlike anything else that we called a sport.

G: Okay, [a] pretty good argument.

S: Yes. Not one I was able to beat down.

Among the things she was uninterested in was sports. So the University of Michigan's football game would come on the radio in the afternoon on Saturdays, okay, but she was fundamentally not a sports fan.

G: Certainly not boxing, which isn't a sport anyway. (laughs)

S: Any more than wrestling is. (clears throat)

G: I'll have to remember that.

So now I'd like to revisit the FBI Library Awareness Program. In 1987 when the Program became public, you were Chairman of the ALA [American Library Association] Intellectual Freedom Committee and Executive Vice President of Research Libraries Group. You and two others comprised the first of two panels of library professionals who testified at the hearing. Duane Webster from the Association of Research Libraries and David Bender from the Special Libraries Association [also gave testimony]. How did you come to be chosen to testify at this hearing?

S: Well, I believe it's the case that Jim Dempsey [James X. Dempsey] then Majority Counsel [Assistant Counsel] for the Subcommittee [on Civil and Constitutional Rights of the Committee on the Judiciary, House of Representatives, 100th Congress], and thus responsible to [Rep.] Don Edwards who was the chair of it. Representative Edwards having decided to hold the hearing, Dempsey then elected to invite representatives of library associations to testify. He quickly identified three significant library associations: ALA, the Special Libraries Association and the Association of Research Libraries. Two of those three were based in Washington and at that time the ALA had a Washington, [DC] office. The decision that ALA made at the Executive Director level, which was the norm for ALA, [was that it was] better to have a member of the ALA than an employee of the ALA presenting testimony.

G: Oh.

S: And, given that modus operandi, then they naturally pointed at the chair of the Intellectual Freedom Committee. Who is in it? Is it somebody who could do this? Even if they aren't in Washington, can we arrange for them to get there? I had figured out from RLG [Research Libraries Group] how I could go to the office on the Stanford campus—by that time we'd moved off the campus—go to the office, do two or three hours of work, get to San Francisco's airport [San Francisco International Airport], get a flight that stopped in O'Hare [O'Hare International Airport] in Chicago, change planes, get a flight that would go into the National Airport in Washington [Ronald Reagan Washington National Airport] and then I could use the Metro to get to where I needed to go. Because, if you ended up at Dulles, you had a very, very long ride—in probably a cab—to get into downtown Washington. Since I'd gone to school in Washington I knew how to get around the town a little bit and so it even worked out that I could meet for a pre-hearing dinner or caucus at 7:30 or 8:00, which is a good dining hour in Washington. Maybe [it's] too late for some folks in other parts of the country but [it's] a pretty good dining hour in Washington. So I took two planes and a metro train ride and we could have a strategy dinner.

G: A very long day.

S: Then, the hearing would be the next day and then I'd get the last flight out of National [Reagan National Airport] back to Chicago and the last flight from Chicago back to San Francisco. You get home at about midnight. (clears throat)

G: So you mentioned a strategy meeting. Did you compare notes with the other panelists at the hearing?

S: Indeed, we did. We tried to exchange draft versions of what we were going to say electronically before we even came to Washington.

G: To make sure you weren't covering too much of the same ground, or that you were all on the same page?

S: Mostly what we were trying to do was the obvious, eliminate repetition. But the more important thing was that we were trying to cover all of the talking points. Among us, taken in total, they would all be covered. So that's really the most important thing we were trying to do. (clears throat)

G: Going back to Don Edwards, the chair of the committee. He seems to have been a great ally of libraries at this time. How did you come to know him? Did you know him before the hearings?

S: I did not know him before.

G: You didn't.

S: I knew of him because I had been a bit of a junkie about judiciary committees and related matters. So if you'd have asked me who the chair of the judiciary committee is or who the chair of his subcommittee was I could have told you. But I'd never had any dealings with him—never met him. I didn't live in his district. His district was the one that includes the university, here. So no, I had no prior knowledge of him nor of the man that was the Majority Counsel [Assistant Counsel], Jim Dempsey, who is currently Executive Director [Policy Director] for the Center for Democracy and Technology in Washington.

G: Now, his papers are in the King Library [Dr. Martin Luther King, Jr. Library] in the California Room, I believe.

S: Yes. Well, a portion of his papers. When I came here, I was University Librarian and when he announced his retirement I thought, Gee wouldn't it be nice to get his papers? Actually, congressional papers divide themselves neatly into three categories. One is the case files, as they are referred to in the trade, and those are the files that are created as function of somebody requesting assistance, and the congressman—usually the congressman's staff—going to work on it and

providing the assistance—

END OF RECORDED INTERVIEW

The remainder of this interview recording was not captured by the recording device. A repeat interview took place on November 16, 2005.

Interview with C. James Schmidt, November 16, 2005.

Location: Dr. Martin Luther King Jr. Library in San José.

Duration: 88 minutes.

April Gage:

> This is an interview with Dr. C. James Schmidt. The interview is being conducted at the Dr. Martin Luther King Jr. Library in San José on Wednesday, November 16, 2005. The interviewer is April Gage. Today we are revisiting a session we conducted two weeks ago, about the FBI Library Awareness Program, which did not record properly.
>
> At the time the FBI's counterintelligence visits to libraries became public in 1987, Dr. Schmidt was Chairman of the American Library Association's Intellectual Freedom Committee and the Executive Vice President of Research Libraries Group. Dr. Schmidt was also one of the few people who represented the library profession in hearings about the FBI's Library Awareness Program before the Subcommittee on Civil and Constitutional Rights of the House of Representatives' Committee on the Judiciary.
>
> In 1990 you were awarded the prestigious Robert B. Downs Intellectual Freedom Award. Was there a direct correlation between your role during the FBI Library Awareness Program and your receipt of this award?

C. James Schmidt:

> I think so but you'd actually have to ask the jury about that. The pattern on that award, although it's not given every year, has been to identify a particularly notorious or egregious or famous—pick your word—intellectual freedom incident and make the award to a person or a group. For example, the Director of the art museum in Cincinnati [Dennis Barrie of the Cincinnati, Ohio Contemporary Arts Center] who insisted upon not taking down the Robert Mapplethorpe photographs got the award, notwithstanding the fact that the county prosecuting attorney

wanted to put him in jail for violating whatever Ohio's obscenity statute is. The group that sued the board of trustees of the Loudoun County Virginia library—an ad hoc group called Mainstream Loudoun—got the award in an appropriate year [1994] as a group. So the jury at the University of Illinois identifies individuals, identifies a group. [In] my view—and one of my colleagues from Florida reminded me of this—given the importance of intellectual freedom to librarianship, it's probably the case that the Downs award is as high as it gets.

G: That's what I thought—pretty nice honor. So, when the recording was lost in our previous interview, we were just beginning to discuss how you were instrumental in getting [Rep.] Don Edwards, who was the chair of the Library Awareness Program hearings [FBI Counterintelligence Visits to Libraries, Hearings before the Subcommittee on Civil and Constitutional Rights of the Committee on the Judiciary, House of Representatives, 100th Congress], to donate his papers to the King library [Dr. Martin Luther King Jr. Library]. What did he donate?

S: Well, congressional papers, then and maybe now as well, can be divided roughly into three categories. The first category is what I call case files and that is a file that is created as part of responding [to] requests of constituents for some assistance in particular—with the [U.S.] Social Security Administration, with the VA [U.S. Department of Veterans Affairs]; you can imagine the kinds of requests that they get. At least at the time Don was retiring from Congress after 15 or 18 terms—it was a long time—13 terms [16 terms in the U.S. House of Representatives], the view of the staff with respect to case files is that those were confidential and upon leaving office they were shredding them.

The second category of stuff has to do with the congressperson's service on committees, Senate or House. I discovered that the House historian and the Senate historian are right on the doorstep of the retiring member to be sure that the congressional committee stuff gets into the history files, wherever they are, and doesn't go away. Now who knows what the senator or congressman might have chosen to direct staff to photocopy to save for later disposition—don't know. But the historians are loathe to let that stuff go.

The third category of stuff, which is what we got from Don, is miscellaneous correspondence, plaques, photographs, a wide variety of things, but things that could not be categorized as relating to a case. Nor could they be categorized as belonging to the history of his committee service—the subcommittee that he chaired and the other ones that he was on. So we got that third potpourri for want to a better word, and ditto with Norman Mineta. Again, at the time of the termination of the Mineta stuff, the same three general categories were applied. The committee stuff went to the historian, the House historian, and the case files in Mineta's files, were destroyed. Now when you do

that, you're not only destroying the stuff but you've got to destroy at both ends. You've got to destroy at the local office, the district office, which might have more contact with the constituents than at the office in Washington. Then, you've got to destroy in the Washington office, where the Washington-based staff is interacting with the local district office staff, and then going across the street to the appropriate federal agencies to try to solve the problem. So you've got to be careful. In Edwards's case, what they arranged to do was to pull the case material from the files in Washington and ship it to the district office. Then the district office could systematically match from the Washington files with what they had and, case by case, a higher degree of comfort was assured that the material had in fact been destroyed.

G: Okay.

S: So, Edwards's were the first papers. We established a thing with some collaboration with the Political Science Department [at San José State University]. We called it the *Legislators' Archives*, with the apostrophe in the appropriate place, because we wanted to assume that we would get more than one legislator. And, indeed, Mineta came along, Dianne McKenna from Santa Clara County, the County Board of Supervisors, Tom McEnery, former Mayor of San José, and a couple of others.

G: Okay. Now you had said, I believe, that the bound hearing [transcript] from the FBI Library Awareness Program sessions was a symbolic—

S: Yes. We needed or wanted something that Don could present in a photo-op setting. And, because I had been involved with the hearing before his subcommittee, and because the bound volume of the transcript of the hearing was in the collection, why not? It was a natural. And so that was the symbolic presentation volume that was used in the ceremony of his giving of his papers to the university [San José State University].

G: Now, in 1991 when you were President of the Freedom to Read Foundation, Don Edwards won the James Madison Award, which recognizes individuals and groups that have defended open access to government information and the public's right to know. (inaudible) in connection with the FBI Library Awareness Program. I'm wondering whether or not you had any involvement with him getting that [award]?

S: No, I didn't. If they'd asked me I'd have been enthusiastic about him getting it, taking into account the totality of his work as chair of that subcommittee. But no, I wasn't involved in committee deliberations on that one. I believe the Madison Award is presented by a coalition of groups, not just by ALA [American Library

Association]. I'd have to look that up, truthfully, but I think there are some other groups involved in choosing the recipient of that award.

G: There's another award that's presented. I'm not sure about the coalition, but I know that it is presented on Freedom of Information Day.

S: Yes. Yes. Usually in March [on or near March 16, which is the birthday of James Madison].

G: (chuckle)

S: Is that not so?

G: Actually, I'm not sure. (laughs)

I wanted to move on to library-library user privilege. Associate Counsel Alan Slobodin probed members of both panels [at the first hearing of the FBI Counterintelligence Visits to Libraries, Hearings before the Subcommittee on Civil and Constitutional Rights of the Committee on the Judiciary, House of Representatives, 100th Congress] for clarification on the question of library-library user privilege. What he wanted to know was whether it would be considered a breach of ethics to comply with a court order for patron records. Let me read you a couple of excerpts from the hearing:

Slobodin states, "Why, if it is founded on similar principles . . . like a journalist's First Amendment privilege . . . wouldn't it be ethical for a librarian to refuse to give information where it is pursuant to a court order if it is founded on similar principles? . . . to me, it sounds like the argument the librarians are making is an argument of principle. Yet . . . the feeling I am getting, is that some of you are arguing that if they get a court order, that is different. Why would that be different?" [*FBI Counterintelligence Visits*, 1988a, p. 70]

In providing insight into the issue, you and Paula Kaufman and Herb Foerstel and Judy Krug all seemed to say that you do not see a conflict between complying with the profession's code of ethics and the law, but the issue still remains murky. Can you explain the rationale more clearly?

S: I'm not sure I can. What an individual might choose to do when served with a subpoena from a court of competent jurisdiction, that there has been an opportunity to challenge the grounds for its issuance, thus clarifying the legality of the request for disclosure under the applicable state law, as opposed to the individual taking an ethical position that is not based in law, and electing to not disclose—notwithstanding the fact that the legal aspects of the subpoena had been clarified, justified, whatever word you want to use. Part of the problem lies in the

fact that, just as no man is an island, every—almost every—person is an employee of an organization. So the question is: What liability would an individual—based purely on an ethical commitment—incur for the organization in which he or she was a part?

Now we saw in the case of Judy Miller of the *New York Times* in the last several months, she took a position based on principle. The organization defended her. She/they had their day in court. It went to the next court [and] they had their day in that court. It went to the Supreme Court and the Supreme Court declined to hear the case. At that point the individual can stand on his or her ethical principles, be cited for contempt, and go to jail for a period of time, which she did.

G: Right, right.

S: But it seems to me that it's necessarily a different matter when it comes to committing the organization to incur a legal liability for you because of an ethical position not based in law that you choose to assume. So I don't think that there is a problem with expecting libraries as organizations to abide by the law. In Judy Miller's case, what the courts said the law *was*, was that reporters' privilege did not exempt [them] from having to testify before a grand jury like any other citizen who might be called by that grand jury. So in the case of the disclosures by a library, I think that the expectation is that—given guidance from the experts that ALA can provide—what ALA's members would expect is that ALA would assist a library in conforming with the law. Because, the opposite can't be the case—ALA members would encourage ALA to encourage a library to not conform to the law. I don't think that's a responsible position for ALA to take vis-à-vis a library. If an individual wishes to take an ethical position not founded in law, that's a different matter. But then the employing organization has to decide whether they are going to stand with or whether they can't stand with that principled position.

G: Okay. Now I had asked you [in the previous interview]—assuming the opposite of what you answered—that the relationship between a library and its patrons, and a reporter and an informant, is a many-to-many instead of a one-to-one relationship. I had assumed that if one person doesn't come forward with the information someone else would.

S: In the case of a library?

G: In the case of a library.

S: I think that's entirely possible if you think of libraries as organizations which have a chain of command. I think as a request passes up the chain of command, which

it presumably would do upon being presented, that some places in the chain of command might draw the principled line in different places. The simplest of all possible hypotheticals would be that the person to whom it is presented takes a principled position and says no. Well, then it goes to the department head and then it goes up the chain and up the chain and up the chain. In a large- or medium-sized library it will get to the senior administrator who is responsible for matters legal and custodial and safety. That person might take into account the circumstances and say: No, this is not one where we take a principled position because it appears, based on the facts that surround this, this request is consistent with the law as it stands.

G: And if it were actually the person at the top of the library who took the principled stand? Do you think the staff would follow suit?

S: I suspect in that hypothetical that the answer is to some extent uncertain, but probably. If the principled position was taken by an actor at the top of the organization, I would guess that it is probable that most of the other players in the organization would conform.

G: Okay. Considering the controversy of Section 215 of the [USA] PATRIOT Act and the seeming ease with which national security letters can be obtained to access library records—and abused—do you think that the ALA will change its stance on library-library user policy, user privilege, and draw the ethical line in a different place, perhaps at any request for records?

S: I'm not sure I understand the question but let me try. What I think Section 215 has done is to strengthen the ALA's spine on this, in this area. The privacy toolkit; the privacy audit that they developed; the general notion that ALA has at least sanctioned if not advocated putting up the kinds of signs that Santa Cruz and Berkeley have put in their public libraries; the encouragement in the privacy audit for libraries to look at all of the records that they keep with personally identifiable information, [and] make sure that those records are needed; look at the retention schedule, keep them no longer than necessary, and destroy them. The best defense in an operational sense against a [Section] 215 request is to have no records. Then there aren't arguments about contempt, violating the law, whatever. Here is as a request under a national security letter for da da da da da and, oh, by the way, we don't have them anymore.

G: You can't produce what you don't have.

S: That's right. So, I think ALA has been hardened in its position with respect to user privacy. I think that they've put out some additional tools for libraries to use and additional ways of thinking about the problem for libraries to pursue to try to

make sure that, to the greatest extent possible, patron privacy is protected.

G: Okay.

S: And then, ALA not being a public actor, the law will be what the law will be. ALA can certainly act as lobbyist, but at the end of the day the law will be what the law will be.

G: Okay.

S: By the way, today's news is that they reached a compromise today, in the conference committee that is dealing with the different versions of extending the [USA] PATRIOT Act. Twelve of the 14 sections that are scheduled to expire at the end of the year have been made— In conference there's an agreement that those will be made permanent. But Section 215 is one of the remaining two, and the thing I read this morning didn't say what the other one was because there were 14. Section 215 would be renewed for seven years. Now it remains to be seen whether that compromise holds as the conference committee ultimately votes on what to report back to the two houses. It remains to be seen whether—if that's what they report back—one or both of the houses adopts it. It is usually the case that what comes out of a conference committee gets passed.

G: Really?

S: That's why they send it to a conference committee in the first place. There are these differences that are serious, okay? Instead of having hundreds of people working on it, let's have a group of two dozen sit around the table and try to hammer it out. So we'll see.

G: I wonder if the other section is 505? There's no telling, there are so many of them.

S: What I read didn't name the last one.

G: I would like to ask a few questions about the testimony of James Geer, the Assistant Director of the FBI's Intelligence Division. In the second hearing, Mr. Geer alleged that you made an accusation about the [FBI Library Awareness] Program to the subcommittee and the media, which he said "was sufficiently outrageous as to demand a direct response" [*FBI Counterintelligence Visits*, 1988b, p. 107]. He said:

> Mr. Schmidt alleged that the FBI has used telephone taps and hidden cameras in the library . . . to monitor reading habits of patrons. This is absolutely untrue, and a spurious statement of this nature only

> exacerbates the misinformation in this matter by adding disinformation. [*FBI Counterintelligence Visits*, 1988b, p. 107-108].

I didn't find any such allegation by you in the transcript of the hearing on June 20 [1988] or in news reports, but I might have missed something. Was Geer's accusation unfounded or misdirected?

S: Well, I certainly don't remember making such an accusation, although there certainly were rabid partisans on the library side who would, in a New York minute, go into flights of paranoia-inspired fancy, and—

G: (laughs)

S: Say such a thing. But, I have no recollection that I said anything like that. The most smart-alecky remark that I remember making in this whole affair was in response to a telephone interview. It was in a telephone interview with somebody who writes the "Talk of the Town" for the *New Yorker*. They had called Judge [William S.] Sessions who had become the head of the FBI and asked about the Library Awareness Program. The judge said what the heads of the regional office in New York and the head of the regional office in Washington, [DC] had been saying: This is a limited program; it's limited to scientific and technical collections in the greater New York area. And the *New Yorker* person said: What do you have to say to that? And I said: Based on the reports that we have, I have a different map than Judge Sessions.

G: (laughs)

S: That's the one indulgence in smart aleck talk that I remember engaging in.

G: (chuckles) Now, Geer repeatedly asserted that library visits by the FBI in states other than the greater New York area were not part of the Library Awareness Program. Instead, [he said that] they were part of individual investigations. Other than trying to show this was not a nationwide program, what do you think was his point of trying to distinguish one type of visit from another if the characteristics of both are basically the same and equally unacceptable and, in some circumstances, illegal?

S: I think he was doing public relations damage control. Given the fact of the single visit in New York and then the subsequent reports of visits elsewhere, he only had two choices. He could concede that it might be a nationwide program, however ill-advised, and then say something by way of, But we're going to cease and desist. Or, he could try to minimize the geographic scope of it, given that he couldn't deny the fact of it.

Shortly after the report of the visit at Columbia [University], there was an article in *New York Magazine* about a student at Queens College who was a foreign student who was engaged by a Soviet diplomat to go into a Queens College library and make photocopies of unclassified scientific and technical things in magazines.

G: This is [Gennadiy] Zakharov.

S: Yes. The student was from an African country. There was also contact made with that same student [by] somebody in the FBI. So every time he would make a delivery to Zakharov, they would meet at some fast food place according to the article in the *New York Magazine*, like the IHOP [International House of Pancakes]. After the transaction with the Russian was finished, the student would go to another fast food place where he would meet with a person from the FBI and debrief with him. And I guess that was my second indulgence in smart-alecky language because I observed in a public forum about that part of the whole episode, that this poor African student must have had the worst case of indigestion in the world.

G: (laughs)

S: Although we didn't get [Geer's] briefing books, the National Security Archives sued for them and couldn't get them and didn't even get redacted versions of them. I think that Geer could only have admitted that there was a program of greater geographic spread and then said, We're going to call off the hounds, or, try—and he chose to try—to diminish, minimize, by saying, whatever else, whatever other visits were going on in these other places, they weren't part of this program. This program really was limited to scientific and technical libraries in the greater New York area. And I'm sure that in the staff meetings they were trying to figure out not only how to deal with the legalities and the politics of the Bureau vis-à-vis the Congress and all that, they were trying to figure out a way to contain the PR [public relations] damage that they were suffering. In a cab ride across town in Washington, [DC] during this time, the late Bruce Ennis, the attorney for the Freedom to Read Foundation, said in response to something that I was saying in a moment of heat: No, no, Jim, this is won in the court of public opinion and not in a court of law. Bruce was always smarter than I was.

G: (chuckles) He was pretty amazing, from what I can understand.

S: Yes, indeed.

G: You were lucky to have been able to work with him.

S: Sure was.

G: So, kind of along similar lines, maybe in terms of strategy, in his brief opening remarks, Geer noted that performing effective counterintelligence operations in our "open society" would be "a much simpler task in the Soviet Union," and stated that a Soviet ambassador [Vladimer Cherkasov, Third Secretary at the Soviet Embassy in Washington, DC] attended the initial hearing, when you testified [*FBI Counterintelligence Visits*, 1988b, p. 107]. He said that the reason he pointed this out was to "contrast the systems." Some might argue that he wished he were able to perform the kinds of counterintelligence operations that would have been possible in the Soviet Union, and the reference to the ambassador might have been a subtle tactic designed to weaken opposition to the way the FBI was conducting the Program, as well as justify the means. What point do you think he was trying to make by making these references to the Soviet system?

S: Oh, I don't know, but I would take him at face value, and that is, assuming for purposes of my response that the crucial fact was true, i.e. there was a Russian ambassador in the hearing room—

G: (chuckles)

S: In the gallery section. I think that Geer was just trying to make a simple point. The presence of that person at that time on that topic was, quite rightly, a symbol of our openness. I think Geer was pointing out that there are other places on the planet where that kind of openness doesn't exist. Now, beyond that, and that's so obvious that I'm hard-pressed to think about: Okay, so is there *another* point that you're trying to make or are you just making the point that it's harder here than it is somewhere else? Okay? You have a convenient example that illustrates that in an ironic and coincidental kind of way. I don't know, can't go past that, based on what I know.

G: Okay. On to national security. As we know, the availability of unclassified technical and scientific information was seen by the FBI and other departments as a serious threat to our national security. The threat was sometimes referred to as a "hemorrhage" or massive "give-away" program. Let me quote a couple of examples cited as a cause for concern: One, a study by the Defense Nuclear Agency titled *Civil Defense in Soviet Perceptions*; two, a study by the Department of Defense titled *A Simulation of the Army's Command, Control, Communication, and Intelligence Process*; and, a July 1984 study arguing that the Soviet military benefited from unclassified information in its development of its cruise missile.

You've characterized the concern and coordinated multi-agency efforts to restrict access to these kinds of documents as "high-level paranoia about unclassified information." I realize this is a big can of worms, but can you

explain why concerns such as those just mentioned are paranoid?

S: Implicit in discussions about this are a couple of presumptions. One of them is that the information, because it's unclassified, hasn't already gone somewhere. The other is that the information is *only* at that one source, so the only place where you could find information about the Army's command and control structure was in the report of the simulation study.

G: Okay.

S: Now, that's *really* hard for me to believe, given that the starting point here is that that information is unclassified. If it's unclassified, there's *no* way of knowing where it is and where it went. If it's something other than a study, if it's information about some technology, well, who developed the technology, on what university campuses, with foreign graduate students from where, some percentage of whom went back home when they finished their studies, taking back home in their heads some crucial pieces of information about a particular program or a particular piece of hardware or whatever? These things have gestation periods. A lot of hands touched them, and a lot of those hands belong to people who don't stay here. In fact, in the current circumstance, things are in some respects *worse* than they were in the eighties. In the eighties, a very high percentage of the foreign graduate students in physics, chemistry, biology and various fields of engineering—a very high percentage of them—were coming here to study because we have the best programs in those fields in the world, and staying because they liked being in America. In the latter nineties and now in the twenty-first century, a higher percentage of those kinds of graduate students who come here are going back to their home countries. Even if they go back with an empty suitcase and no wardrobe, they go back with a head full of stuff.

G: Professionals who have been ensconced in the country for a long time, scientists, are going back now—

S: Some are, yes, because the situation in their country in some respects has improved or because they are working in an area such as stem cell research where it's very difficult to do in the United States. Except, it's a little easier to do if you are in the private sector than in the public sector, but you can't get federal funding for it. So the current posture with respect to stem cell research has done two things: it has driven that research out of public spheres into private spheres and it has driven it off shore. I think we ought to be the leading edge of research, especially in areas where unclassified information is the coin of the realm.

G: Why do you think that we ought to be? Why should we continue to carry that mantle; wear that mantle of being the best?

S: Except in isolated pockets of specialization I don't think that there's another country in the world that is better equipped than we are to do that. There was a report two or three weeks ago from the National Academy [of Sciences], the wing of the National Academy that sees after engineering [National Academy of Engineering]. They were talking about how we were losing our competitive advantage in engineering because we aren't graduating enough engineers.

G: Engineers?

S: They pointed to countries like South Korea and a couple of other places where the numbers of engineering graduates has been growing rapidly and is now equal to or greater than ours. Now, what is the quality of the engineering education those people have gotten? I'm not able to do a comparison but it's clear that the people who were involved in that panel were kind of alarmed by the numbers and felt that there was a real risk to our competitive advantage in the fields of engineering.

G: Do you think that this phenomenon [has to do with] a general attitude of this restriction of unclassified information and reclassification of unclassified information? A combination (inaudible)?

S: I don't have any evidence that, if there has been a decline in our production of graduates in the scientific and engineering fields, it is because of classification of information. More likely, our decline would be attributed to a lack of funding, a decline in funding for these fields. Keep in mind that, at some level, a scientific breakthrough is a breakthrough of methodology.

G: Okay.

S: Do this thing. Do this process this way instead of that way. Historians of science will tell you that scientific breakthroughs are capital expenses. The easiest way to illustrate that is to talk about the kinds of things that an astronomer can do, or an astronomical physicist can do with a telescope, okay; the bigger the diameter of the lens, the greater the power of the telescope. Now, on the scale that researchers of astronomy work, increasing the diameter of the lens is a major capital investment in eight figures. So that's why there is in fact a collaborative organization of these kinds of researchers around two or three collaboratively owned major telescopes: one in Spain, one in Arizona, one in Hawaii. But when you start looking at the diameter of those lenses and the diameter that they would like to increase it to in order to do these additional things, and then convert this larger diameter toy into an increased capital expense, [it] is an enormous number.

The principle is that scientific and special methodological breakthroughs are purchased through a capital investment. It may be a capital investment where you provide funding to four places and then come together and pool the funding

into the investment, but the logic is the same. So, I don't know that if we've lost an edge in the scientific and engineering fields that we've lost it because more information has been classified in the last two years than in the previous however many. But, I think we may have not funded or kept the funding up in these fields, and therefore find, even through currency conversion of foreign currencies, that some other countries are ramping up way more rapidly—putting more of their gross domestic product, or however you want to measure it, into funding these areas than we are.

G: Countries like China.

S: China for one, Korea for one, to name two—but there are others. Some parts of India.

G: Sure. (pause) Can you think of any argument for restricting the flow of information to or from countries, such as China and India, who are becoming more competitive with the U.S.? It used to be that we were very afraid of the—

S: The short answer is—

G: Economic threat of other countries.

S: You know, listen. The short answer is, not unless I can— I mean I wouldn't be even willing to talk about it unless we could establish that there is a single source. Back in the eighties when there was a heightened level of concern about technology transfer that ultimately lead to the Library Awareness Program, there was a report by, I think, a team at Rand.

G: Selling the Soviets—

S: Selling the Russians the Rope [Gustafson, T. (1981). *Selling the Russians the rope? Soviet technology policy and U.S. export controls* (Report No. R-2649-ARPA). Santa Monica: Rand Corporation].

G: Right.

S: And if I remember that, one of the things in that report was certain things needed to build an oil pipeline were on the restricted commodity list and therefore American producers of those things couldn't sell them to Russia without a license from the Department of Commerce. Okay?

Well it turns out that those things were not uniquely available in America. So however many of those things the Russians bought, for a pipeline that either was or wasn't successful, they simply bought it from other vendors, [from] other

suppliers in other countries that didn't have this kind of export restriction. The other example in I think the same Rand report was a technology that a country seeking to purchase it had no ability to use—no infrastructure. Well, they wanted to buy some PCs [personal computers] that could track missiles, let's say, speaking hypothetically.

G: Okay.

S: But they had no operators, no trained people who could use them even if they got them.

G: Right, right.

S: So, it seems to me to make sense to think about restricting exports of things that are uniquely and *only available* to us—available from us—and not available to country X anywhere else in the international marketplace. Then we could ask ourselves the question of whether the commodity was, as they used to say in the eighties, of a dual-purpose potential. [It] could be used in benign ways to keep track of crops and plantings and different kinds of rotations and yields and all that stuff, or it could be used to do this bad thing. If it is *uniquely* available from us and it has this dual purpose, okay, that's a reason for concern but not a reason for prohibition. Why not enter into some diplomacy with the potentially purchasing country and say: You recognize this could be used for this and this, how about we enter into an agreement that if we make it available for export to you, you use it for this benign purpose and not for other purposes? That's diplomacy instead of a prohibition and instead of a gun.

G: Right.

S: We could try that. But the prerequisite to thinking about it in that way is that the commodity in question is available in the international marketplace *only* from us.

S: Because as soon—

G: Right.

S: As soon as we enter into a conversation like that, if there's any other source of supply, the buying country is going to go there and seek to purchase without having to enter into this diplomatic negotiation. I don't begin to concede that these matters ought to be worried about until someone persuades me that the information, product, commodity, whatever you want to call it, is uniquely and only available from the United States.

With 20 years after the Library Awareness Program, with globalization,

there are increasingly fewer things that we can say are uniquely and only available from the United States in the international marketplace. Furthermore, there are many more countries that have the infrastructure and the capabilities to use technological products and methods—way more of them than was the case in the eighties. In the eighties, we didn't think about the computer engineers in India that we think about now. So, a lot of other countries have developed—maybe not matured, but developed—an infrastructure of capability, of technology itself—hardware, software—and it's increasingly less the case that something technological is uniquely available from us. It's just not so, classified or otherwise.

G: (pause) After the Library Awareness Program was publicly exposed, some states quickly tightened their privacy protection laws and other states eventually adopted privacy protections. But on the federal level, we now have the [USA] PATRIOT Act. Is it correct to assume that the federal law trumps the state law in the area of library patron privacy or do you see any possibility of, say, a trend emerging that may allow state privacy laws to trump federal ones?

S: I think that the general proposition that federal law trumps the state law is true, excepting in instances where the federal law sets a floor which a state could elect to go above. For example, there is a stronger privacy protection in California than is provided by federal law.

G: Okay.

S: So, in that instance, it isn't exactly an example of the federal trumping but rather it's an example of the federal setting the floor. States can't go below the floor that the federal sets but they can reach to a higher level if they elect to do so. In the matter of library records and federal law, we know that during the legislative process following on the Library Awareness program, occasioned by the [Robert] Bork nomination to the Supreme Court, there was a video library and privacy act introduced [Video Privacy Protection Act of 1988]. In the markup session the library supporters, myself included, elected to withdraw, that is, eliminate the library portion so that now the federal law protects video rental records from private renters. There would have been something that would've protected library records but we took it out because of an amendment that we knew was going to be made to it that would have *then* introduced the thing that we're *now* having trouble with, the national security letters. (long pause)

I think the possibility exists, given the much-hyped new boundaries of federalism that the Supreme Court has been drawing on—the court being [Chief Justice William H.] Rehnquist, [Antonin] Scalia and [Clarence] Thomas—in the Lopez case [*U.S. v. Lopez*, 1995] banning guns from within 500 feet away from a

school. The Supreme Court said Congress exceeded its authority under the Interstate Commerce Clause to do that; it's null and void.

There is another case in another area. [The] same core in the court, same reasoning, same result, invalidated a congressional statute. It's arguably the case that that kind of new federalism thinking—given not one but two new actors on the court—could, with respect to Section 215 of the [USA] PATRIOT Act, result in Congress having exceeded its authority. The counterargument to that is that [Section] 215 doesn't confer any new authority on state and local law enforcement. It only confers that authority on federal people who are involved in foreign intelligence investigations and have "reason to believe" [as opposed to probable cause]. But one could concoct a scenario in which this so-called new federalism development in the Supreme Court could have the result of saving state statutes in the face of [Section] 215. Do I think that's likely? Nnnno.

G: (chuckles)

S: The reason that I say that is, however offensive [Section] 215 is to librarians and librarianship, vis-à-vis patron privacy rights, it wears the clothing of national security. The clothing of national security is very significant. Yes, national security concerns can be hyped and falsified but national security concerns start out by getting the benefit of the doubt.

G: Okay.

S: So I don't think there's likely to be a new legislative aim to try to get back to the library privacy part of the video privacy act [Video Privacy Protection Act] at the federal level, and I don't see a scenario in which there's likely to be litigation, excepting for the gag part of [Section] 215. We're already at the Second Circuit Court level at the appellate court level in the federal judiciary on that with the case of the Connecticut organization getting an NSL [National Security Letter] under Section 215, and the case of the Internet service provider getting the national security letter under Section 505. Those cases have been combined by the appeals court and they are hearing them both. The thing that is bothering both the appeals court and the judge who heard the challenge to [Section] 505 is that the gag order is perpetual.

G: Okay.

S: It is forever the way the language is written, so the government's attorneys who are defending the [USA PATRIOT] Act concede that, Yes, in fact, there is no time in your life, if you've been served with an NSL, that you can say you've been served.

G: What's the punishment? Do you know?

S: I don't know. I haven't looked that up and so I don't know. I would imagine that it would at least be subject to contempt but I'm going to guess that, with respect to the gag order, there's probably a monetary fine and some jail time.

A little bit of humor helps in this. In fact, the identity of the organization served in the library case in Connecticut was revealed by the court's own Web site.

G: (chuckles)

S: Because they put the name of the organization up there and one or more people saw it and they said, Oops! That shouldn't be there. They took it down [but] by then it was too late. Now, it has been dug out by reporters who have confirmed it more than once. And, so, therefore it is known that George Christian, who is the director of the Library Connection, is the guy who was served. We don't know whose records they wanted, and we don't know which ISP, I don't think.

G: (inaudible) (pause) I hope this isn't too general. It is predicted that privacy issues will occupy more of the Supreme Court's docket in years to come. Do you have a sense for upcoming privacy issues that would impact libraries and how the Roberts [Chief Justice John Roberts Jr.] court might rule?

S: No, I have to say that I don't. I'm trying to recall some of the things that are on their docket for the current term and I'm not coming up right away with anything. (pause)

Roberts persuaded me at least that he has a high regard for precedent and he even embraces what is called in some quarters "super precedent." But Roberts's phrase in his hearings was "settled law." Fundamentally, what he is thinking is that there are some matters at a high level that he regards as settled law and he would be loath to depart from them. One interpretation of his interaction with the members of the Senate judiciary committee [United States Senate Committee on the Judiciary] on that question was that and maybe in fact he said it in so many words, after *Planned Parenthood v. Casey* [1992], the spousal notification law in Pennsylvania had passed and the Supreme Court declared [it] unconstitutional. Some commentators interpreted Roberts's discussion of settled law to, in effect, say *Roe v. Wade* [1973] is settled law. There's another case in between *Planned Parenthood v. Casey* and *Roe v. Wade* [*Hodgson v. Minnesota*, 1990; minors can go to a judge if they cannot or will not comply with the parental notification law] that covered another aspect of abortion, and some people read him to be saying: That's an example of settled law so far as I'm concerned—has nothing to do with my personal views on abortion,

but as a judge.

Alito [Associate Justice Samuel Alito Jr.] has displayed in his opinions the kind of conservatism that Justice Kennedy displayed, excepting for a very strong support for First Amendment rights. In fact, one of the legal writers for the *New York Times* has compared Kennedy and Alito on precisely that dimension. Kind of a conservative libertarian was the turn of phrase, and the libertarian part was very, very strong supporting the First Amendment area, but otherwise quite conservative. Stare decisis is important, precedent, precedent, precedent, rarely did he overturn a piece of legislation, et cetera, et cetera, et cetera. That will be interesting. I don't know if it will go to privacy necessarily because I don't yet have a clue about where Alito is on privacy. It's clear that he is smart. [He is] not as smart as Roberts, I don't think, but he is clearly, he is clearly smart. He has a big paper trail, 15 years worth. It's clear that he is a technician in some sense.

G: What do you mean by that?

S: He tries very, very hard to look at relevant prior cases and extract from them some guidance and principles that can be applied to the new set of facts without disturbing the direction or the basis of the decisions in those prior cases.

One of the silly things that happened in the Myers fiasco was: I can assure you that she won't change. I've known her for 22 years and she hasn't changed. Guess what? You can't not change.

G: (laughs)

S: If you're sitting on a court, you'd *better* be able to change because there are a whole bunch of things that Alito will face prospectively that he could not have dreamed of in his wildest imaginings 15 years ago when he went onto the appellate court. So, trying to extract guidance, principles, [and] directions from decisions that dealt with a different set of facts, and translate them and apply them to the current set of facts, is not easy work.

G: No.

S: So that's why I call him a technician, because he tries very, very hard to do that, whereas some other justices will more easily re-write something. O'Connor's [Associate Justice Sandra Day O'Connor] addition to an abortion decision where she claimed the phrase "undue burden," which phrase or anything like it had not previously existed in the decisions in that area. In claiming it, did she offer any judges, who would have to acknowledge it downstream, any guidance as to what she meant by undue burden? Not a clue.

G: So that would seem pretty wide open.

S: That forces somebody like Alito, who looks for guidance, and in fact [he] was involved in *Planned Parenthood v. Casey* [1992] as an appeals court judge. I acknowledge that this is an important concept in this area. What does it mean? What did the author of the concept mean when she offered it? I have to try to find out and I have to try to then apply those principles to the facts in front of me. So, he won't be flashy.

G: (laughs) And you're pretty sure he'll be nominated?

S: This week I think there will be more negative votes than I thought last week but we'll just see. As my wife [Martha Schmidt] said last night: Where in the heck did the 1985 thing come from? Who keeps stuff like that?

(laughter)

S: I mean, it was an application for a job for heaven's sake—a higher-level position. Who keeps that stuff?

G: Librarian types. (laughs)

S: Archivists.

G: (laughs) Archivist types.

S: Okay.

(laughter)

G: Okay, in your 1989 Yuri Nakata Lecture you said, "1989 marks the end of a bad decade for intellectual freedom—the worst since the fifties." Where do you suppose the state of intellectual freedom lies in this decade, in comparison with the fifties and the eighties?

S: (pause)I think that, with respect to civil liberties generally, Mr. Ashcroft [John Ashcroft, United States Attorney General until he resigned in November 2004] did an enormous amount of damage. After Ashcroft, we are much worse off than before Ashcroft. I think in the Clinton years, while no time is perfect, I think we had fewer intrusions on the civil liberties fronts, with fewer compromises. I don't think yet that we've resurrected Senator Pat McCarran and Joseph McCarthy, although sometimes Mr. Sensenbrenner [Rep. F. James Sensenbrenner Jr.] from Wisconsin comes close. But we do have the [USA] PATRIOT Act and our efforts to rid it of the noxious portions to, especially to libraries and bookstores,

haven't born fruit. I wish they had and I hope they will, but if you'd ask me to place a bet, I would say this "renew it for seven years" is part of this afternoon's compromise inside the beltway. [It] is highly likely to be the result that we're going to get.

The good news, it seems to me, if you want a good news/bad news kind of answer, when the Library Awareness Program surfaced we had 36 or 38 states that had statutes that protected the privacy of library records. Now we have—and that included the District of Columbia—forty-eight states, and the two that don't have the law [Hawaii and Kentucky] have attorney general advisory opinions that have the effect of law in those states. Things like this move slowly through the legislative processes. They have to be agreed to by the legislative branch and the executive branch, at the state level. That is, the legislature has to pass it and the governor has to sign it. I think the change between 1987 and 2005 is good news.

G: Really? Okay.

S: I mean, it could've been no change.

G: Sure.

S: Every state including the District of Columbia has some kind of protection for privacy of patron information in libraries. That certainly was not the case then.

I think we've made some progress on freedom of speech as well. The various attempts of the federal government to regulate obscene or even pornographic content on the Internet, some have been tossed out and others have been limited. It's significant to note that with COPA [Child Online Protection Act] and the CDA [Communications Decency Act] there was a regulation of content and an attempt to punish the communicators of the content. Well, that wasn't the case with CIPA [Child Internet Protection Act]. What they decided to do there was regulate access by establishing a requirement that libraries install filtering software. So they've learned a little bit from us that two failed attempts to regulate the communicators and punish the communicators of the content that had failed the constitutional tests. They could at least take up the issue of access to content in schools and libraries and regulate access—make those institutions regulate access at the expense of a federal benefit.

Now we have several states that have been trying to regulate Internet content and the first batch of them lost because the laws were ruled a violation of mostly the Commerce Clause and assorted other reasoning depending on the state in question. But there's eight or ten of those and so, okay, states can't do it either. But some states are considering things like CIPA at the state level and contemplating legislation that would restrict access. Not punish the

communicators of content, the majority who are offshore anyway, but trying to impose upon public entities in the state, for example, limitation of access. I'm not entirely sure whether any of those have yet passed but, at one point, between five and ten states were actively considering state-level analog to the CIPA law on a federal level. In the case of the states they wouldn't have to attach it to receipt of a benefit.

G: They could—

S: They could just do it.

G: Just legislate that.

S: For public entities. So if the high school kid wants to have unlimited access to the Internet, for some legitimate high school purpose, better go to a private school.

G: Wow. Nice furthering of the digital divide. Even though many high school students are adults, high school seniors (inaudible). It's still unlikely that they would be able to get the block off of a computer they might want to use, because you pointed out a lot of the systems are controlled at the district level.

S: Ah. I think a high school student who is now of an age to be regarded as an adult would have a very difficult time mechanically and procedurally getting the filtering switched off even though CIPA allows that to occur, simply because of the way filtering software is installed in school settings. Now I would love to discover that—at the high school level—filtering software that is in place is at the work station level, because the teachers and the counselors and some of the other folks who were doing this thought about it. And, if that's true, so much the better and so much the easier for turning it off. But, I'm thinking that that may not be the norm.

G: It would be too difficult to maintain.

S: Oh yes, because you have to have tech[nical] support at the *building* level and not a lot of school districts do that.

G: (pause) I'll ask you another question. Also in your 1989 Yuri Nakata Lecture you wondered whether what you called our "domestic information phobia" might diminish and "perestroika would replace paranoia." It seems that did not happen. Looking forward in time, beyond the current state of intellectual freedom, do you see reason for optimism as you did in 1989?

S: Well, if you're an optimist, the forces for truth and justice will overwhelm the forces of fear. (pause)

I think that (pause) globalization economically has disbursed or diffused information that was previously concentrated or allegedly concentrated within our shores. Tom Friedman's current hobby horse is that we live in the age of diffusion and that was apropos of some conversation that he was having on one of his latest trips to the Middle East and to India. Globalization has clearly done that in a sense that—I mean, not just whiplash of offshoring jobs that used to be in America but with the kind of technological and commercial competence that has emerged in many more places on the globe than where it used to exist. You used to talk about the United States, and for a period of time we talked about Japan and we talked about Western Europe, and everything else, setting aside Australia, was underdeveloped. While we still have a conversation occasionally about developing economies and about the economies that aren't—mostly in Africa—generally, I would argue, there's a level of economic development that is higher and present in many more places than used to be the case. Along with that rising of boats in more locations I think comes more access to information.

An interesting sidelight here to me is how the countries that never had telephone infrastructure—it was just awful—are in fact moving rapidly to telecommunications infrastructure but they're skipping the physical wire phase and they're figuring out a way with wireless and with satellites to simply leapfrog the age of telephone poles and wires that we see when we drive around in our country. No reason to reinvent the square wheel when there are round ones that go very fast that they could buy or build.

G: (laughs)

S: That development of that infrastructure encourages me about access to information. I think, for example, that the attempts by some countries to control content on the Internet is going to be very severely weakened by access to the Internet by wireless and/or satellite. I could imagine the ministry in China established for the purposes of doing precisely regulating content on the Internet is going crazy thinking about and dealing with wireless access and the satellite access—just going bonkers. My sense is that those bureaucracies will become—if they don't collapse—impotent with respect to their purpose, their objective, because they simply won't be able to do it.

G: Hmmm, hmmm. You think so? Do you think that it's not—part of this has been explained to me—possible to surveil networks [with, for example,] the FBI's CARNIVORE? [DCS 1000, an FBI electronic surveillance and diagnostic tool,] which was renamed and could possibly be used for something else. These types

of technologies and methods are not effective on wireless networks?

S: I think the intentionally anarchical architecture of the Internet will prevail over surveillance because the anarchists—the technologically-competent anarchists—seem to me to always be one leap ahead of the folks who are trying to create surveillance and monitoring devices.

G: Okay.

S: So, more information is being spread through globalization and I think that the ingenuity of the technological anarchists will continue to stay a jump ahead of the monitors and surveillors.

G: Thank you so much for this interview.

S: You're welcome.

END OF INTERVIEW

Interview with C. James Schmidt, November 30, 2005.

Location: Dr. Martin Luther King Jr. Library in San José.

Duration: 73 minutes.

April Gage:

This is an interview with Dr. C. James Schmidt. The interview is being conducted on Wednesday, November 30, 2005, at the Dr. Martin Luther King Jr. Library in San José [California]. The interviewer is April Gage, a student in the San José State University School of Library and Information Science. Today we will be talking about intellectual freedom and the First Amendment, and Dr. Schmidt's involvement with the Freedom to Read Foundation.

You have been a great champion for the cause of intellectual freedom in your career and you have held many leadership positions in this area for professional associations such as the American Library Association, the Association of Research Libraries [not an organization associated with intellectual freedom] and the California Library Association. For nearly a decade at the Freedom to Read Foundation alone, you were President, Treasurer, ex-officio Board member, and liaison to the Board. You were Chairman of the ALA Intellectual Freedom Committee twice, and have been conferred honors such as the Robert B. Downs Intellectual Freedom Award.

I thought we'd start with a light-hearted question. I suspect that when fighting for our First Amendment rights tires you out, you retire to the golf course. When did you learn to golf?

C. James Schmidt:

(Chuckles) That is a light-hearted question. My father was a golfer, although he died a few months before I was born. When I was 8, 9, 10, I discovered a set of his golf clubs in the basement.

G: I see.

S: My mother thought, okay— So when I was about maybe 11, 12—because she had played too with my father—she took me out to a public nine-hole course and introduced me to the game. I also had a friend in a parish school that I went to whose father was a golfer and he was quite an athlete—way more than I—but he was interested in golf because of his father and so we would, from time to time in the summer, go to this same public nine-hole course and play. John later became a very good player and I never did.

G: (laughs)

S: By very good I mean when he was of college age, a routine 18-hole round was in the seventies, very close to par.

G: That's pretty good.

S: I never got there.

G: I was going to ask you, it seems that people play for years and never get any good at it (laughs)—never improve, but you must be somewhat good at it.

S: Well, it takes a lot of time and, on a good day, I can post a score in the upper 80s and that's as good as it has gotten in my lifetime.

G: [That's] not bad. Okay, you received your undergraduate degree in philosophy from Catholic University. What did you carry with you from that?

S: You know, my friends say that what I carry from that is what is known in philosophy circles as the Aristotelian meat grinder. It's either on or it's off. It's the kind of binary logic that's common in computing but rhetorically it goes back to Aristotle. People observed me pulling some line of argumentation apart and said, Boy, once they teach you that Aristotelian meat grinder you don't forget it, do you? So, I guess that's maybe what we now call critical thinking. Maybe it's

just applying logic to rhetoric. Whatever, I don't know. But, judging from observations others have made to me about myself, that seems to be something that I've carried from all those hours in the various branches of philosophy.

G: That must have served you well studying law.

S: It helps. It helps to deal with the distinctions that are often made in the opinions that are written. It helps to recognize the basic set of facts that are involved in a particular case. I at one point seriously considered going to law school but decided not to.

G: Having studied in addition to philosophy, constitutional law, constitutional history and political science in your graduate studies, did you ever consider a career in politics?

S: I don't have the patience for politics.

G: (laughs)

S: And to, to take it a step further, I haven't a history of success of getting elected to offices in professional associations. I was four times a candidate for the ALA Council—never got elected. I was a candidate for the chairmanship of one of the ACRL sections; I did get elected to be chair of the University Libraries Section. I've lost more elections for the Freedom to Read Foundation Board than I've won.

G: Really?

S: And, I was a candidate for the presidency of ALA and got beat two to one. So, no, [I have] no illusions about being a successful candidate for election.

G: But you must have been. For the Freedom to Read Foundation, you do have to be elected to become an officer—by the Board. How did you come to get your office as President and as Treasurer?

S: Well, I first served on the Board of the Foundation in ex-officio capacity as Chairman of the Intellectual Freedom Committee.

G: Right.

S: And the Board of the Foundation has five ex-officio slots—ALA [Executive] Board liaison slot, they have Executive Director of ALA, they have the President, the past President and the President-elect, and the Chair of the IFC [Intellectual Freedom Committee]. [Now, four ex-officio board members are filled by the Executive Director, President, President-elect and IFC Chairman.] Maybe that's

six, I lost count. Then I was chosen by the Board to fill out the unexpired balance of a term that someone had who couldn't fill the term. Then I was nominated and I was successfully elected that time. So, by appointment initially by the Board, after my period of ex-officio service on the Board, and then once through election.

G: Okay. Did anybody have to try to talk you into the position or were you happy to fill it?

S: Talk me into?

G: The President—being the President.

S: Oh, I was happy to fill it. My relationship with Judy [Krug] was good, given the interactions that we'd had when I was Chair of the Intellectual Freedom Committee and she was the principal staff in support of our committee. We had also bonded in a different kind of way when we were dealing with the Library Awareness Program and (inaudible) and the Video Privacy Act that once had library protections in it, and so on.

So, being the President of the Foundation, for the Board to elect me to do that was fine. I could do that. At that time, and that was the early nineties, I also had some notions about what the next frontier was going to be. I had, by that time, completed my nine years with the Research Libraries Group dealing with computing and networking and so on, and I was convinced that the next frontier for the Foundation was cyberspace. Others, including Judy at that time, were less convinced than I that that was going to be a significant frontier. Sometimes when you think you see things off in the future you're right and sometimes you're not. I think on that one I was right because we've certainly spent the second half of the nineties and into the first half of this decade dealing with intellectual freedom issues in the context of cyberspace. The balance is, if I was right about cyberspace, that didn't mean that intellectual freedom battles over print and other media were going to go away because, indeed, they have not. It's in addition to, not instead of.

G: Okay, okay. Is it usual for Freedom to Read presidents—Foundation presidents—to come into the position with knowledge and understanding of the law and the legal process?

S: Hmmm. Since Gordon Conable had been president for so many years before he died and then Richard Dougherty stepped in from Illinois—I've forgotten his first name. (pause) No, John Berry stepped in. I think John had some knowledge of the law because he had worked as Executive Director for a couple of divisions at ALA Headquarters before leaving ALA for work for this cooperative.

Necessarily, working for a library cooperative gets you into matters legal—agreements and that sort of thing, but maybe not into constitutional law. Gordon, on the other hand, was my successor as chair of the IFC.

G: Right.

S: And then as president of the Foundation. He immersed himself in the legal aspects of intellectual freedom issues beginning when he was an undergraduate student at Antioch College in Ohio. That had to do with banning a campus speaker.

G: Oh.

S: It made him a First Amendment junkie on the spot.

G: (laughs)

S: He has told me the story many times about [how] he initially got hooked and involved. So I guess the answer, the straight answer to your question, is that Schmidt and Conable brought background to the table, John Berry—not implying any criticism—less so, but some feel for the law because of the nature of his day job. Candace Morgan, in between, was also, for a long time, an intellectual freedom camp follower and was aware of some of the legal aspects and, indeed, was teaching as an adjunct at Portland State University while she was Associate Director at Fort Vancouver Public [Regional] Library around the Northern Washington border.

G: What was she teaching?

S: She was teaching a course that was nominally listed in public administration but she had managed to shape it so that it had a lot of First Amendment overtones to come in.

G: Interesting.

S: But, her point of entry was as a senior administrator of a public agency in the public sector.

G: Okay.

S: And then she moved from that to other content in the course.

G: Okay. Getting back to Gordon Conable, his terms [as IFC Chair and FTRF President] followed directly after yours. Were you two friends?

S: Very much. We hadn't known each other prior to our encounter in the context of the Intellectual Freedom Committee but we got very well acquainted during that time. Gordon, then, was the embattled director of the Monroe County, Michigan Public Library [Monroe County Library System] over Madonna's book.

G: Right, *Sex*.

S: He had, at various points in time, on a five-member board, a half-vote majority.

G: (laughs)

S: With respect to including that book in the collection. And, generally, [he] made his selection policies open and inclusive as opposed to closed and exclusive. He was also very, very interested in the whole federal government apparatus as represented by the FBI in the case of the FBI Library Awareness Program but, as represented by other aspects of the federal government in other matters that the Freedom to Read Foundation touched, such as the Bullfrog Films controversy [*Bullfrog Films, Inc. v. Wick,* 1988].

G: Oh, Wick, okay.

S: Yes, some of those other things. Interested to the point of, occasionally, finding an agent under the bed.

G: (laughs) What?

S: Or imagining that there was one.

G: (laughing) Did he become a conspiracy theorist?

S: From time to time, he could spin them off with the best of them. Ha!

G: Okay.

S: And God bless him.

G: Okay. Moving on to how the Freedom to Read—I wanted to ask you questions about how the Freedom to Read Foundation selects their cases. Well, first of all, through which channels does the Foundation find out about cases that might be of interest to them?

S: Well, there's a network, informal to be sure, but a network. Many of the state library associations are members of the Freedom to Read Foundation—organizational members.

G: Oh, oh, okay.

S: Without exception, I think the 50 state library associations have intellectual freedom committees, which are in varying degrees active or not. Now, I don't know that to be precisely true but if it isn't the case that 50 state associations have intellectual freedom committees, it's the case that 45 do.

G: Okay, that's a lot.

S: So, it's the case that there's this kind of network of interested parties around and about. And, given that the Office for Intellectual Freedom has been around since the late sixties, and the Intellectual Freedom Committee before that, there is some level of awareness in librarianship, generally, that if a potential problem appears on your doorstep you can call this place—

G: Right.

S: And, ask for some advice and help and so on. It's out of that—network sounds more formal than it is—but it's out of that constituency that things come to the Office for Intellectual Freedom for the Freedom to Read Foundation because Judy [Krug] wears two hats.

G: Right.

S: After getting a call from Des Moines or wherever, she will frequently consult with the legal team at Jenner & Block that handles the Freedom to Read Foundation's legal business. Sometimes that will be advice that she will pass back to the troubled location, sometimes it will be the Jenner & Block team getting in touch with counsel that the local library has on its board or has engaged. Sometimes it will be Jenner & Block talking to a local chapter of the ACLU [American Civil Liberties Union], which the library has reached out and touched as maybe, probably, friendly to our cause, maybe you can help us out. Out of that, those kinds of interactions then will evolve a shape and a form that might or might not be a case. The interface between the Freedom to Read Foundation and the ALA [Executive] Board has, over the years, been a little troublesome occasionally.

G: Oh, really?

S: So, one of the things that the ALA ex-officios on the Freedom to Read Foundation pushed was: We would like to have the Foundation to develop a rating scheme for determining whether they'll take a case.

G: Okay.

S: Because, when the Foundation goes to the ALA [Executive] Board *formally* and says, Here's this case and we recommend that ALA enter it as a main plaintiff, the Executive Board has to agree to that. So, what this rating scheme was about was to try to provide to the Executive Board the appearance and, to some extent, the reality of a rational underpinning for the choice-making that the Freedom to Read Foundation would do and, therefore, a rational underpinning for these occasional recommendations from the Freedom to Read Foundation Board that ALA become the named—a named plaintiff in a particular case. Now, with something like the CIPA [Children's Internet Protection Act], it's pretty much a no-brainer. I mean, that, that's so clearly a library case.

G: Right, right.

S: And, nothing else; it's a library case.

G: They had no problems putting their name on that?

S: No problem. But, on some of the others, depending on the political disposition of the members of the ALA Board—their attitudes about matters First Amendment—they would occasionally say, Ah, *Meese v. Keene* [1987], Bullfrog Films labeled as propaganda, not being allowed to be imported, now the impact for libraries on this one is? When you get something that isn't as obvious as CIPA was, or if you don't persuade them as we did with CDA [Communications Decency Act] that there are clear implications here even though a library doesn't appear in the bill—at all in the law—they begin to ask questions. So this rating scheme became a device that was applied to the factors and facts that had surfaced about a particular event. And, on that basis, the Freedom to Read Foundation would first make a decision for itself as to whether to enter the case.

A note of history. For maybe the first 20 years of its existence, the Freedom to Read Foundation offered advice, offered access to their legal team—Bruce Ennis and company—but, as a matter of policy the Freedom to Read Foundation didn't enter cases at the trial level.

G: Oh, the district court level.

S: At the district court level. They didn't enter them in the trial court. They reserved what ammunition they had, which was relatively damn little, in terms of funds, for amicus briefs at the appellate level. Now that kind of thinking is less predominantly the case now than it was in the seventies, eighties, and into the early nineties. Clearly, the Freedom to Read Foundation got active at the trial court level in CDA, and in COPA [Child Online Protection Act], and in CIPA, and in the litigation *ALA v. Pataki* [1997], the New York Internet content regulation statute, which was the first state statute passed regulating content on

the Internet. It was being sufficiently important and potentially precedential that the Freedom to Read Foundation persuaded the ALA Board to become the main plaintiff and the ACLU was going to carry the legal bill.

G: Okay.

S: So, initially then, the Freedom to Read Foundation's rating scheme was applied to cases that had been through trial court—

G: Right.

S: And had been appealed. So then, the rating scheme was the way to evaluate whether to enter the case as a friend of the court at the appellate level. Sometimes the friend of the court role for the Freedom to Read Foundation was a free ride because the Media Coalition or somebody else was paying the freight. But, most of these special interest, First Amendment groups liked having the Freedom to Read Foundation or the ALA as a main plaintiff, even if they weren't picking up part of the tab, because it added, it was thought, some respectability to the parties who were at the bar.

G: Okay, okay.

S: Now I can't say the degree to which, in this decade, this rating scheme is still, in fact, used in any way. It may, without having being rejected, have fallen into disuse. I don't know.

G: Okay. How would you decide whether to do a brief or whether to participate in a case as a litigant?

S: Well, as I've indicated, April, in the first two decades approximately, the principle was pretty clear that the Foundation didn't enter at the trial level.

G: Right, right, and that's when you (inaudible)

S: You didn't make that choice. Subsequently, the thing was kind of: does this appear a) to be of great potential importance and b) can we tie it in the issues, in some ways, that's direct, immediate, *obvious*, with respect to libraries and librarians?

G: Okay. So, when a court [case] moves to the appellate level a party can't switch out their lawyers if they want to? (laughs).

S: No, but amici can approach the appeals court and say, We have something that we think would be good advice for the court. We want to file a friend of the court

brief on this. So, in the case of *Kreimer v. Morristown* [*Kreimer v. Bureau of Police for Morristown,* 1992]—

G: I was going to say, this is our next topic.

S: Yes. That came to our attention when Judge [Stanley] Sarokin issued the district court opinion.

G: Okay, and not before.

S: (pause) For the members of the Freedom to Read Foundation, myself included, it was a no-brainer that the Foundation should enter that with an amicus brief at the appeals court level.

G: Okay. Why was it a no-brainer?

S: Because the judge had opened up questions that we knew that libraries were having to deal with: user regulation issues, the right to receive information in a public library, and the beginnings of what later blossomed more fully, the beginnings of the public library as a designated public forum.

G: But why Kreimer's case, since he was obviously disrupting everyone in the library? And, it doesn't quite seem like his right to receive information was at issue, although he had a different story than the library.

S: Because we didn't have another one.

G: Okay.

S: And, because we thought, as a practical matter, if we could come out of that with a decision that would guide libraries—that libraries could use as a touchstone for developing user regulations, including eviction when appropriate—okay, that that would be helpful. We thought that the other two constitutional notions that were in that case, the right to receive information as a constitutionally based right in a public library and the library as a designated public forum were, if we could get them established at the appellate court level, would be very, very significant and very important. Now, as I look back 15 years later, there or thereabouts, we were clearly right in the notion that the library as a designated public forum would have some echoes downstream. The echoes were the loudest, actually, at the trial court level in CIPA.

G: Yes.

S: Although the echo was muted by Mr. Rehnquist in his majority opinion at the

Supreme Court level.

G: (chuckles) I wanted to ask you—does that wipe out the idea of the library as a [designated] public forum?

S: No, I don't think it does April, because what I read Rehnquist to have said is that he disagreed with the trial court that the *Internet* was a designated public forum.

G: Okay.

S: As distinct from whether or not the *library* is a designated public forum. And, in fact, there's some Rehnquist language in *Pico* [*Pico v. Board of Education, Island Trees Union Free School District No. 26*, 1982] that would allow you to conclude that the distinction or the absence of mention, the absence of denial of the library as a public forum—designated public forum—in CIPA by Rehnquist, wasn't accidental. Because even though he had signed on to the plurality opinion in *Pico*, in the opinion that he did issue, he wrote some words that were *very close to* arguing that the library was a place of free investigation and the free flow of ideas and *ta da ta da ta da ta da ta da*. You don't know whether in the CIPA case, 15 years or how ever many after *Pico*, whether it was an oversight on his part that he didn't say, And I don't agree that the library is a designated public forum either, or whether he was doing what lawyers do, and that is make careful distinctions, and in this case he wanted to swat down the notion of the Internet as a designated forum and intentionally remain silent on this other point.

G: Okay. It's kind of difficult to understand, knowing that the library has computers with Internet connections in them and, to put the filter on, if there were this notion of the library as a designated forum for receiving information—

S: Correct.

G: Based on a constitutional right to receive information.

S: And Rehnquist gets around that basically by simply saying that the Internet isn't a designated public forum.

G: Even though it's sitting in the library.

S: Even though it's sitting in the library. Now, as you know, the chink in the decision, the potential opening that exists is Mr. Kennedy's—

G: Right.

S: Statement about, if it should prove not to be feasible to disable upon request, then

we may have a basis for litigating constitutionality *as applied.* But the argument that was presented was CIPA is unconstitutional on its face, and facial challenges are hard to make unless it's blatant.

G: Okay. There's a facial challenge in the news today with New Hampshire and abortion.

S: Yes.

G: Can you just, can you explain what a facial challenge is.

S: A facial challenge is that the language of a statute is unconstitutional on its face. Think, if you will, about CDA. The operative word in CDA for the content that was being proscribed was "indecent"—indecent content. Now, in the lexicon of First Amendment litigation having to do with obscenity and pornography, the word indecent has no standing.

G: Okay.

S: None. I don't recall, in particular, about CDA whether the argument was made that it was facially unconstitutional but, potentially, you might have made that argument because of the use of this *crucial* but inoperative word. So, in the case of the parental notification statute from Vermont, the argument—the facially unconstitutional argument was, I think, although I haven't seen it yet—there was no exception provided for health or life-threatening circumstance. Because of other abortion-related cases where the laws have been declared unconstitutional because they didn't have those exceptions in them, one of the problems of the argument is almost certainly, This one is facially unconstitutional because it doesn't contain exceptions for these two sets of circumstances.

G: Okay. It doesn't let the doctor save someone's life if you can't get hold of the parents.

S: The other thing that is interesting—and the media has done an okay job but could have done a better job—is the distinction between parental notification and parental consent.

G: Consent.

S: The Vermont statute was a parental notification.

G: Okay.

S: You have to wait 48 hours and if you wait 48 hours because you can't find a

parent to notify then you can go to a judge, *da da da da da da*. But that doesn't resolve the life-threatening—

G: No, it doesn't.

S: Because the life-threatening circumstance could kill you in 48 hours.

G: Okay.

S: But I have been heartened by the fact that some of the print media coverage that I've read about this case coming to the Supreme Court today did make the distinction between parental consent and parental notification laws, especially when they talk about how many states have *da* and how many states have *da*.

G: Okay.

S: And I thought, Good. Good job in making a very useful and very important distinction.

G: To educate the public?

S: Hmmm?

G: Does that help the public know what the heck they're voting on? (laughs)

S: I don't know how many people read past page one.

G: (laughs) Okay, getting back to *Kreimer v. Bureau of Police for Morristown* [1992], the Morristown library [Joint Free Public Library of Morristown] denied that the First Amendment was applicable. Instead, the right to receive information, according to them, "has been found to exist only in cases involving content-based censorship" [*Kreimer v. Bureau of Police for Morristown,* 1992]. It seems to me that that argument almost seems to take a position against the right to receive information in libraries and could, down the road, be a little nearsighted, in terms of future cases.

S: Well, surely. But the Morristown position was self-serving. I mean, they are, after all, in defense of themselves. Again, you can go back to Brennan [Justice William J. Brennan Jr.] and Douglas [Justice William O. Douglas], and cases in the eighties where the right to freely express oneself certainly must include the right to be heard. Out of that has evolved some work trying to specifically codify the right to receive information. A former student in 234 [LIBR 234, Intellectual Freedom Seminar] who now works up at Hastings Law Library, Marks has done an article in the *Law Library Journal* about the constitutionally based right to

receive information, in a lawyerly, law-review kind of way. While we have little snippets of the kind I just referred to, Douglas, Brennan, and so on, over several decades, there isn't a lot of case law specifically on the narrow point of a constitutionally based right to receive. Actually, the best opinion that we have on that score, even though the appeals court in *Kreimer* reinstated the library's regulation, the best opinion that we have on a constitutionally-based right to receive information in a public library is in the appellate court decision in *Kreimer*. Were you to set that opinion on the table, and set the amicus brief from the Freedom to Read Foundation filed in that case next to it—

G: (laughs) They're mirror images?

S: In the discussion of the issue of whether there's a constitutionally based right to access information in a public library, you find that the Third Circuit Court adopted a lot of the reasoning and words in the amicus brief which is, of course, why amici file briefs.

G: Okay. I have another couple of questions. There was debate in ALA and the New Jersey Library Association thought that the Freedom to Read Foundation's amici brief—amicus brief—was pointed against their case.

S: I'm sure that the New Jersey Library Association and the Morristown Public Library—the public library at Morristown, in particular—felt that the Freedom to Read Foundation brief was directed specifically at them. What actually became manifest at the ALA convention in Dallas of the crucial year was that the New Jersey Library Association was offended that the Freedom to Read Foundation did not ask them before the Freedom to Read Foundation decided to file an amicus brief.

G: Did the Foundation choose to inform them before, or—

S: We did neither. We didn't ask them before we decided and we didn't inform them—

G: Before you filed the brief.

S: That we filed the brief. In hindsight, and it is my hindsight because it was on my watch—I would not have asked them in a way that implied that we were seeking their consent. But, I would have said, This has come to our attention, the Executive Committee has discussed it, the staff has briefed us, and we have concluded that we will recommend to the Board that the Foundation file an amicus brief. That would have been the phone call that I would have had with Patricia Tumulty, the Executive Director of the New Jersey Library Association. As it is now she doesn't speak to me.

G: She's the one who won't even speak to you to this day? I was going to ask if you kind of met with her to mend fences and explain the Foundation's position.

S: I tried that.

G: That was a failure?

S: In the context of the ALA membership meeting over which Richard Dougherty of the University of Michigan was presiding at the time. I tried to do this when they took a recess and it was too late.

G: (chuckles) Oh no. Oh, well, that's too bad. So, do you have anything else you want to talk about in terms of this case?

S: No, except to repeat that we saw the need for libraries to develop regulations—not just because of homeless people, but user regulations that would be fair and equitable. So, we didn't intentionally fault the library for developing user regulations. That was not the point. The point was, Are the regulations in question fair and equitable and do they deal with behavior rather than persona?

G: Right.

S: Because there was a whole bunch of messy history about [Richard] Kreimer specifically and the library: sleeping on the loading dock, and so on.

G: I wondered about that too, yes. Why that was.

S: And then the other two constitutional threads that were in the district court opinion: the constitutionally based right to access information in a public library and the public library as a designated public forum. So when you take those three things, sure, we could've and should've handled the interface with the New Jersey Library Association more gracefully. But those three reasons were still and, in my view looked at now 15 years later, stand up as justification for entering the case and reminding us that the case came along at a time when the Foundation was still, by and large, not entering cases at the trial level. The litigants at the trial level were the Poverty Law Center at the Rutgers University Law School [Rutgers School of Law, Constitutional Litigation Clinic] and people from the ACLU.

G: Okay. Kreimer was represented pro bono.

S: Yes.

G: Okay. (pause) Because the subject is the focus of the Foundation's work so often,

I think I'd be remiss if didn't ask you one question about obscenity (laughs). The Miller Standard is used to determine whether something is obscene and, just in general, what are your opinions about the Miller Test? The three prong test.

S: I think that it is virtually impossible to apply, and I say that because of the one key concept, contemporary community standards. In a world that has gotten so compacted and sped up, it isn't apparent to me how you could define contemporary community standards. If you think about it in geographic terms, you might reasonably conclude that the intention of the court—in Miller—which was, after all, about mailing stuff, okay. So Miller could have arranged to not mail to a certain community where a perception existed of a different set of standards by just [deciding] okay, these are the zip codes that we won't mail to.

G: Right.

S: But, if you apply a geographically specific sense of contemporary community standards to media that doesn't admit of being as easily controlled, with respect to distribution as through the mail is, I think— I mean, *how* could you through a broadcast medium or how could you through the Internet say, Okay, what we're going to do is to reduce content to the standards of the most conservative, specific community that we can identify? And, at various points in First Amendment litigation, there are nice phrases like, You can't reduce adult dialogue to the level of a sandbox.

G: Right, right.

S: You can't burn the house to roast the pig.

G: (laughs)

S: Okay, so I think that the element of contemporary community standards in the Miller Test is *so problematic* that it is hard for me to think of the Miller Test—for which I have no good alternative, by the way.

G: I was going to ask that.

S: But it is hard for me to think of it as a workable thing. And, ever more so as the cultural forces and the communication forces that are part of our everyday living have made the total assemblage of communities more homogeneous and less heterogeneous.

G: Right, right, okay.

S: So why would there be such a sharp difference between Eighth Avenue in New

York and Topeka, Kansas, *now*, as opposed to the mid-eighties or the seventies? And on what basis? What factual evidence would be offered to try to persuade that there really is an identifiably demonstrable difference in contemporary community standards between any two locations—you pick them—Chicago and Toledo, New York and whatever. I mean, I don't know. So, I don't know what is going to happen with the Miller Test if I'm right, but I think that it is problematic in its application.

G: You asked this question in a speech, and I thought I'd ask it to you (chuckles).

S: Oh dear.

G: If definable, should obscenity be illegal?

S: (pause) More and more I guess I think not. (pause) In the Child Pornography Prevention Act, which got involved with simulated or morphed or computer-generated things, the Supreme Court's conclusion was, There's no victim and so there's no crime.

G: Right.

S: One of the reasons that we criminalize child pornography is when it involves the use of real minors in the production of it. That's an interesting line of reasoning, because it doesn't take as its point of departure that the pornographic content, that uses or appears to use minors, is harmful. It takes the position that it's the victimization of the minors that were used in the production of the content that's the crime, not the harmful effects of the content.

G: Nothing going past (inaudible)

S: So, I don't know how far that line of reasoning is going to go but, at least with respect to *simulated* minors—computer-generated minors, where there's demonstrably no human beings involved *at all*—okay, hmmm. Does that lead us toward—obscenity is just not prosecutable?

G: Oh.

S: It's prosecutable if we can define it, but the defining of it is so problematic that we can't prosecute it because we can't define it. So, I guess, while wallowing in obscenity is not something that I—anybody ought to do—

G: (laughs)

S: On the other hand, prosecuting obscenity? I think that's very problematic for the

reasons that I've indicated with respect to the Miller Test. So, no, they couldn't prosecute. They couldn't convict the director of the Cincinnati Art Museum who had the Mapplethorpe exhibition.

G: Oh, right.

S: At the end of the day, that stuff didn't violate Ohio's obscenity law. Now, I'm not suggesting that I think it should have, but I've looked at the Mapplethorpe book that had the pictures that were in the exhibition that traveled around.

G: Right.

S: It would be fair to describe them as graphic.

G: I think so.

S: You know. I haven't actually looked at the Madonna book [*Sex*].

G: I haven't either.

S: Even after all of the controversy that surrounded that, I haven't looked at it, so I don't know what I feel about that content.

G: (chuckles) Me neither.

S: My guess is that there'll be fewer and fewer and fewer and fewer prosecutions mounted by local district attorneys or federal prosecutors, with respect to obscene content.

G: Okay. (pause) Let's move on to flag burning.

S: Okay.

G: When you were President of the Freedom to Read Foundation, in 1990 the Foundation signed on to, I think it was an amicus brief in two flag burning cases. One was with the People for the American Way. What are your thoughts on flag burning and First Amendment rights and why would the Freedom to Read Foundation take part in that kind of a case? I mean, it is a fit there [with the] First Amendment, but there's no books.

S: Right, right. (pause) I don't remember the particulars of that one, but I could imagine that it was a matter of putting our name on a brief, along with a number of our coalition partners in the First Amendment community, more than perceiving that there was a library issue, immediately and obvious, in the case.

One of the things that the Freedom to Read Foundation has done, which has resulted in it having influence way beyond its means, is to be active in a coalition of interest groups that have First Amendment issues as their menu. But the Media Coalition has a different set of interests—publishers, broadcasters, and folks like that. Media Coalition [and] the American Booksellers Foundation for Freedom of Expression have the particular interest that their title implies. Sometimes the Center for Democracy and Technology and those two groups, and/or the Freedom to Read Foundation, find overlapping and intersecting interests. So, while you don't rupture your relationships in a coalition if you say no to a particular case, you can strengthen them or keep them healthy by recognizing—at a general level—some common interest, some level of importance that this particular case represents. When asked to consider signing on, you discuss it and decide or you don't.

G: Okay.

S: The other members of the coalition recognize that each group has its own particular interests and they might not always join hands together on every single case and march down Pennsylvania Avenue.

G: (laughs) Speaking of joining hands together for a common cause, I think it was on Valentine's Day in 1989, that the Ayatollah Khomeini issued basically a fatwa against Salman Rushdie.

S: Right.

G: For his [*The*] *Satanic Verses* and, you know, put a bounty on his head. You were pulled off of a golf course to respond to this and there apparently was a swift collaborative response on a national [level]. You were directly involved in a national response, and then there was also an international response that kind of hit the papers a little later. I was wondering if you could just talk about that?

S: That's not one of the ones I remember very clearly, April.

G: Okay.

S: But, (pause) that would have come to the office [Office for Intellectual Freedom] and to Judy [Krug] from the American Publishers Association [Association of American Publishers]. [From] their law firm in New York, whose name I have forgotten for the moment, and the predecessor to the American Booksellers Foundation for Free Expression. There was a precedent organization and I don't remember exactly what its name was [founded by the American Booksellers Association]. That one was wanting to be immediate because of the media value of responding right away. It wasn't, at that time, and turned out not to be a

decision about whether to enter into litigation.

G: Right.

S: It was, in this instance, doing battle in the court of public opinion and not a court of law. It seems to me—it seemed to me then probably although, as I say, I don't remember much of that—obvious and straightforward that a writer should have a sovereign nation issue a call for his death or her death because of a book that they wrote? No. *No.*

G: (laughs)

S: *No.* That, you know, ought not happen. And when a sovereign nation does that in the exercise of their sovereignty, there ought to be a countervailing voice.

G: And it sounds like there was a loud one.

S: Well, just a whole bunch of groups recognized that one. I don't know the extent to which Rushdie was actually in hiding when he was living in England. But let's take it at face value that he felt physically threatened on a day-to-day basis for several years because of a piece of *fiction* that he had written. *No.*

G: (laughs)

S: *Gee.*

G: (laughs) It's amazing. It amazes me. And several million dollars—

S: Yes.

G: Reward for his head.

S: Yes. And I can't tell you how many times I've tried to read that book.

G: (laughs) I haven't even tried.

S: I tried three or four times. I actually bought it because I wanted to contribute to his royalties.

G: Okay.

S: I tried to read it several times and I just couldn't get through it.

G: (laughs) Let me ask you another question. For one of the assignments in your Intellectual Freedom Seminar you ask students to find a list of banned or

challenged books, assume a real or hypothetical library and its collection development and materials selection policy, choose a banned book, and discuss why it should or should not be in the library's collection. The assignment seems to get students to think deeply about book selection, about censorship issues, why selection can be censorious. But what I'd like to know is, if you were given your own assignment, what book do you think would be an interesting choice?

S: I guess my thoughts partition the students. If I had a group of students who were going to be children's librarians I would give them a list of no more than ten books, maybe only five, because what I would hope for would be more than one student writing about the same book and reaching a different conclusion. So, *Heather Has Two Mommies*, *Daddy's Roommate,* [*The Story of*] *Little Black Sambo* and a couple more. If I had youth services people I would certainly pick a Judy Bloom but I would probably pick in the vein of some of the other writers for youth who are writing realism fiction rather than fantasy fiction. If I had a group of adult services—these are all in a public library—I would probably give them a short list that might include a couple of items from the Grove Press list, maybe a Henry Miller, maybe an Anaïs Nin, maybe the [taps table with fingertip] trilogy that one of our colleagues did in this class.

G: Oh, the—

S: Written by the—

G: Anne Rice? That one?

S: Yes. Anne Rice in a pseudonymous way [A. N. Roquelaure].

G: Sleeping Beauty [*The Sleeping Beauty Novels*]. Right. There was *American Psycho*—a lot of—

S: There's a lot of things that you could use. And what I've said in those three examples was all fiction. You might look into non-fiction. One of my candidates for potential outrage would be Ann Coulter.

G: (chuckles)

S: Or, you might pick something more classical like *The Protocols of the [Learned] Elders of Zion*. Or, take the panda book [*Of Pandas and People*] and take Origin of the Species [*The Origin of Species*].

G: Oh, right. Oh, right.

S: The other, another spin on this would be to box people in and establish the type

and size and location of the library, and then give them a short list to pick from, knowing that the items on the list would be potentially troublesome in the hypothetical setting that was imposed. I've actually thought about changing the assignment in that way but I continue to let students choose more broadly in the design of the assignment. For better or for ill, that's the way it has turned out. I do, however, ask students at the end of the seminar about each of the assignments—about the critique of the statement of interpretation [interpretations of the Library Bill of Rights adopted by the ALA Council], the banned book assignment [and] the cases—to try to see, and I think I'm seeing this semester that some of the cases that are on the case list this semester should disappear.

G: Oh, you think so?

S: Yes. You don't need that many state Internet cases, for example, because they come out, kind of— after you've read New York and Michigan and the next and all the other ones follow, okay?

G: (laughs)

S: The fact that they introduced some new wrinkles in terms of referring things to the state supreme court in an attempt to save the statutes. Well, that's a nice procedural wrinkle and the keepers of the faith decided to try that and they were losing on every other front. But, you know, it's probably not crucial to know. The list of public library things can be enhanced because there's a public library art gallery case in a Long Island setting in the first part of this decade that draws on the public forum.

G: Oh.

S: In this case, the exhibition had become the designated public forum and so, No you can't withdraw these two pieces because somebody complained about them. So, probably the case list needs to be pruned but I think the banned book assignment and the critique of the statement of interpretation—only because that introduces the apparatus of the [Library] Bill of Rights and that suite of interpretations to students who might not otherwise know about it—those are probably keepers.

G: Oh, I think so.

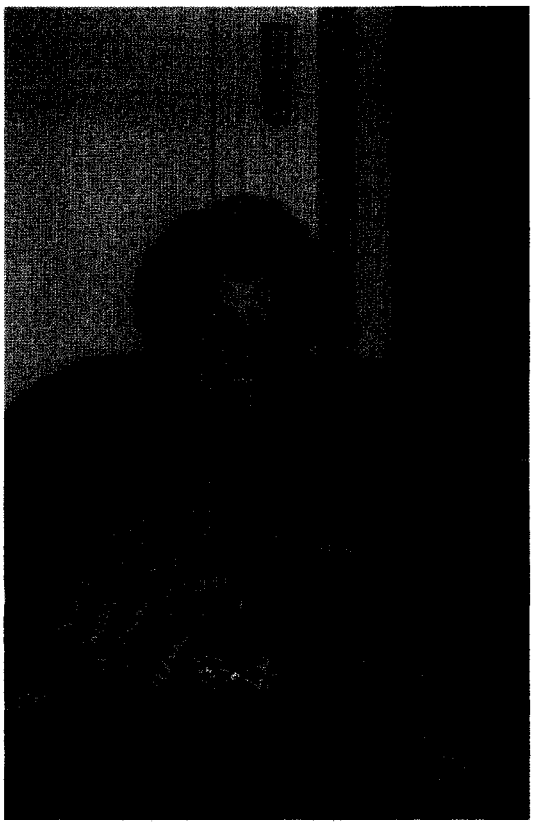
S: (laughs)

G: Well thank you for this interview, Dr. Schmidt.

S: You're welcome. You're welcome. Thank you.

END OF INTERVIEW

Chapter 4: Zoia Horn



Introduction

> *If you believe in the First Amendment, then you have to support being against undermining of dissent. (Horn interview with Gage, August 24, 2006)*

Zoia Horn was born in Odessa, in the former U.S.S.R., in 1918 and came to live in the United States in 1926. She graduated from Brooklyn College in the late 1930s and from Pratt Institute Library School in 1942. Horn has 50 years' experience in the librarianship profession, including positions in public, county, high school, academic and special libraries. She has spent her life advocating for intellectual freedom and, in her 88th year, continues to accept invitations to educate others about the importance of such issues as library patron privacy. Horn chaired the Intellectual Freedom Committees of

the American and New Jersey Library Associations, and served as a member of the ALA Council and the Social Responsibilities Round Table Action Council.

Horn's direct experience with the Freedom to Read Foundation has been as a grant recipient and trustee. In 1972, she received one of the first grants disbursed from the LeRoy C. Merritt Humanitarian Fund, which was then managed by the Freedom to Read Foundation. In 1975 and 1976 she was a trustee of the Fund. Later, she was appointed by mentor and then-ALA President Eric Moon to chair the ALA Intellectual Freedom Committee from 1977 to 1978, which made her an ex-officio member of the Foundation's Board of Trustees for the same time period.

Judith Krug has said that Horn was the first librarian to go to jail in support of her commitment to intellectual freedom principles when she refused to testify before the federal court at Harrisburg, Pennsylvania, on March 3, 1972, in the trial of the Harrisburg Seven (Egelko, 2002). This act of civil disobedience was prompted, in part, by Horn's belief that the government was "spying in homes, in libraries and universities . . . [and] in gatherings of friends, picnics, [and] parties" (Horn, 1995, p. 145), and that ordinary discussions were "interpreted by the government as advocacies of conspiracies" (p. 145). Horn saw these activities as a violation of the constitutional tenets of freedom of thought, association and speech, and wanted to have no part in the trial. The judge, incensed by Horn's refusal to testify, shouted, "Take her away!" (p. 145), thus silencing her effort to read a prepared statement explaining her refusal to testify. Horn spent 20 days in the Dauphin County jail as a result.

It was also for this act of civil disobedience that Horn was ultimately awarded a

grant from the LeRoy C. Merritt Humanitarian Fund. However, the Merritt Fund trustees did not agree to award her the money right away (Horn, 1995, p. 153), even though Horn and Patricia Rom, with support from Horn's mentor and former co-worker Page Ackerman, successfully guided the ALA's Resolution on Government Intimidation through Council in 1971, the year before. In its initial determination, the board did not associate Horn's action with the issue of intellectual freedom in libraries and considered her ineligible for a grant. Seven days later, the Merritt Fund trustees reconsidered her case and awarded Horn five hundred dollars "to defray hardship occasioned by your opposition to threats to intellectual freedom" (Horn, 1995, p. 292).

During the fight to repeal the portions of the USA PATRIOT Act affecting libraries, Horn's 1972 stance against government spying in libraries was remembered and rewarded. In 2002, she was honored with the Robert B. Downs Intellectual Freedom Award and the Jackie Eubanks Memorial Award and, in 2003, the California Library Association created the Zoia Horn Intellectual Freedom Award in her name.

In her home overlooking Lake Merritt in Oakland, California, Horn passionately discussed the critical role of freedom of thought, speech, debate and dissent in a democracy. Importantly, Horn is the only narrator to bring to the story of the Foundation this last perspective, the voice of dissent. She continues to share the views vigorously expressed by SRRT librarians in the late 1960s and early 1970s, who felt that the Foundation belonged within the ALA, that ALA members deserved greater control of the Foundation's governance, that OIF and FTRF did not conduct all operations with sufficient transparency, and that ALA, and therefore OIF and FTRF as pillars of the

intellectual freedom program of action, should pursue a broader application of the profession's philosophies. Horn also shares recollections, both sympathetic and critical, of past and present influential members of ALA, such as LeRoy C. Merritt, Eric Moon, Judith Krug and E.J. Josey.

Horn views librarians as educators who, to facilitate the flow of information, should constantly strive to learn as much as they can and actively participate in their communities and cooperate with other organizations. In her words:

> We're an absolute essential part of education throughout the life of every person . . . the more you know, the more you hear, the more you see, the more valuable you are as a librarian. That's why it's a marvelous profession. Some of the greatest people were librarians, you know. (Horn interview with Gage, August 24, 2006)

An interview with Zoia Horn follows.

Interview with Zoia Horn, August 24, 2006.

Location: Dr. Martin Luther King Jr. Library in San José.

Duration: 115 minutes.

April Gage:

> This is an interview with Zoia Horn. The interview is being conducted at Ms. Horn's home in Oakland, California, on Thursday, August 24, 2006. The interviewer is April Gage, a student at the San José State University School of Library and Information Science. Today we will be talking about Ms. Horn's role in the history of the Freedom to Read Foundation.
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> Ms. Horn was born in Odessa, in the former U.S.S.R., in 1918 and came to live the United States in 1926. She graduated from Brooklyn College in the late 1930s and from Pratt Institute Library School in 1942. Ms. Horn has 50 years of broad experience in the librarianship profession, including positions in public, county, academic and special libraries. She has spent her life advocating for numerous intellectual freedom causes. It has been said that Ms. Horn was the first librarian to go to jail in support of her commitment to intellectual freedom

principles when she refused to testify at the trial of the Harrisburg Seven in 1972. Ms. Horn was ultimately awarded a grant from the LeRoy C. Merritt Humanitarian Fund when it was an arm of the Freedom to Read Foundation.

Ms. Horn has chaired the Intellectual Freedom Committee of the American and New Jersey Library Associations, and served as a member of the ALA [American Library Association] Council, the Social Responsibilities Round Table Action Council, and the Freedom to Read Foundation Board of Trustees. In addition, she helped organize the Coalition of the Right to Know and the Coalition on Government Information.

Honors conferred on Ms. Horn include the Robert B. Downs Intellectual Freedom Award and the Jackie Eubanks Memorial Award, and she was the first librarian ever to receive the San Francisco Bay Area's James Madison Freedom of Information Award. Recently, in 2003, the California Library Association created the Zoia Horn Intellectual Freedom Award in her name.

In your memoirs [*ZOIA! Memoirs of Zoia Horn, Battler for the People's Right to Know*], you explain that it was your mother, Dina, who introduced you to libraries when you were a young girl. Would you like to take a moment to talk about this?

Zoia Horn:

Yes, I think that my interest in libraries, when it was time for me to decide what career to choose, goes back to that period. My mother discovered, after about two or three years in this country, that there were Russian books in one of the branches of the New York Public Library [Seward Park Branch]. One of the times that I visited the library a very interesting thing happened. I was given permission to select books from the adult collection. I was looking over Tolstoy and Chekhov, and Dostoevsky, and Gogol, and all the major Russian writers which my mother recommended, so that I could read in English translation that which she loved and was familiar with. Suddenly I felt a hand on my shoulder and there was a librarian. She was very tall and straight, and she had a bun in the back of her head and she wore a long, dark skirt, and white blouse. She was a little forbidding looking but she very nicely said, Come with me, I want to introduce you to some other books that you might be interested in. She brought me to a collection in a narrow bookcase and she took several books out and said, You might like these. They turned out to be Louisa May Alcott, *Little Women,* and Jack London, [*The*] *Call of the Wild.* The *Little Women* I was to read six, seven, maybe eight times. My daughters made fun of me for many years because I had somehow absorbed the manners of the nineteenth century American family that was depicted. The daughter that I wanted to be was Jo or Amy. Amy I knew

I shouldn't be because she was so vain.

G: (laughs)

H: But Jo was really quite the person, the character, that I would've liked to emulate. So, when it was time—when I was already married and my husband was working long hours in New Jersey (this was during the Second World War)—he said, Well, this is a good time for you to go back to school and see if you can get a profession. I thought and thought and thought. There were very few professions at that time that were really open.

G: To women?

H: Yes, to women. I really didn't want to be a teacher. I like one-to-one teaching. Tony had gotten his chemical engineering degree from Pratt Institute and we were living in Brooklyn, so I decided to apply to Pratt Institute Library School. I dearly loved reading. I dearly loved books, I dearly loved art, I dearly loved music and I thought, if I can combine those interests and be helpful to other people, that was what I wanted to do. So that's what happened.

G: Your mother was happy with that choice?

H: My mother? Yes.

My mother didn't have many friends. She felt alone. I meant a great deal to her, more than usual, because I became sort of a confidant. I'm afraid that she thought I could do no wrong, which of course is not true (laughs). But she was very open and she took me to museums and to free concerts.

G: Okay. Now, I sort of wondered about that librarian. Your mother introduced you to the Russian greats and you were reading them.

H: Yes.

G: And then this librarian gave you Louisa May Alcott.

H: And Mark Twain.

G: And Mark Twain.

H: And Jack London.

G: And Jack London.

H: She really helped me put my feet firmly on American soil at that point.

G: So was it a shock to switch from the Russians to the Americans? Were you sort of disappointed at all? The subject matter in those kinds of books is so very different.

H: It was so completely different, indeed, indeed. The books which I was reading had the comfort of names that were familiar but the situations were really way beyond my ken at that point. But still I enjoyed them enormously because, philosophically, I was open to them. [They were very thoughtful.]

G: Okay.

H: There was a simplicity about the books that I was given—Louisa May Alcott. But, again, they were young people and I enjoyed the excitement of Jack London. The situations were completely different but were so American and I recognized that in Mark Twain and Jack London. So it was really a very fine introduction to the best of the United States, really. You know, May Alcott's father was a utopian socialist.

G: I didn't know that.

H: Well, yes, he was. Bronson Alcott created a utopian community for a while. It didn't last long as these things rarely do. Certainly Mark Twain was very, very advanced in his thinking. And Jack London, certainly. He too was a socialist. But you see, that's what this country should have—ideas on many, many different sides for different points of view and different philosophies. It is what's worrisome when we have McCarthy-like periods, and other periods during President Nixon's administration, during the Vietnam War—

G: Right.

H: Where what you think and feel put you in danger of being called subversive.

G: Sure.

H: That just should not be. (pause) Not in this country.

G: (pause) Is there anything else you would like to say about that?

H: [Yes. At the present time, governmental surveillance, and spying and periodic intimations that if you are critical of current war policies you are unpatriotic, brings us back full circle to where we were.]

G: Okay. Now the details of your involvement in the Harrisburg Seven case are well documented by you and many others so I don't want to ask you to go to the

trouble of detailing the case for us, but I am interested in asking you a few questions about the relationship between that experience and the professional ethics of librarianship, and ALA policy formation that came out of that.

H: That's a good one (chuckles).

G: (chuckles) In 1971—the year you were questioned by the FBI [Federal Bureau of Investigation] and called to testify before a grand jury—you helped establish the ALA Resolution on Government Intimidation at the ALA conference in Dallas. Although this resolution has been modified over the years—I think three times—it remains an important part of ALA policy. Would you explain for a few moments the meaning of this resolution?

H: [The Governmental Intimidation Resolution reaffirmed the American Library Association's concern with preserving intellectual freedom and identified the freedom to think, communicate and discuss as elements of intellectual freedom. It then identified the threats to intellectual freedom by governmental spying, use of informers and spies, electronic surveillance, and use of grand juries, which intimidated people in their daily activities as citizens. ALA then recognized the danger to intellectual freedom by governmental agencies spying in libraries and went on record against use of grand jury procedures to intimidate anti-war activists using laws for the purpose of intimidation of people in their ordinary, legal activities of meeting and discussing alternative methods of bringing about change. Then followed ALA's reaffirmation of confidentiality as part of librarians' professional responsibility. Then followed ALA assertion of confidentiality of the professional relationship of librarians to the people they serve, comparable to medical doctors to their patients, lawyers and their clients, ministers and the people they serve. In addition, librarians would not accept the role of informants, whether revealing circulation records or identifying patrons and their reading habits.]

At that time the Vietnam War had been going on for quite some time, and many, many people in the country were against the war. There were many marches and protests, and much writing, and many groups that participated in civil disobedience. The government at that time was headed by President Nixon. A campaign attempt to undermine the dissent was started. Dissent was equated with being unpatriotic and being almost treasonous. One of the activist groups contained a number of nuns and priests. The names that are most familiar are the two Berrigan brothers, Fathers Dan and Philip Berrigan.

G: Okay.

H: They had already committed civil disobedience by going into draft boards. They had gone into draft boards and, at one time, spilled blood on those so that they were defaced. At another time they had pulled out all the draft cards and had a garbage pail outside in which they—

G: Threw them into?

H: Burnt them.

G: Oh, burnt them.

H: Then they stayed, waiting to be arrested. I think it was called the Catonsville case. (pause) At that time, well, you don't want to really go into the particulars. At that time, I was the head of the reference department at Bucknell University and this was in Lewisburg, Pennsylvania.

G: Right.

H: A tiny town maybe of 5,000 people altogether. There was another major institution in Lewisburg and it was the federal prison. That was where Philip Berrigan ended up after the Catonsville trial. I had met him one time when he visited a mutual friend, Dick [Richard] Drinnon, the head of the History Department.

The whole case was really built on a prisoner who had been given permission to go out to Bucknell University to take a course. To pay for the course he was given a job in the library. It turned out that he was an FBI informant. I think he was also an agent provocateur, so that he went beyond just reporting but he became involved in pushing two young women to get involved in ways that they really wouldn't have thought of getting involved. They didn't, fortunately. Anyhow, my problem with the behavior of our government was that it was making dissent a criminal act and, on a personal level, my privacy was being invaded.

G: Correct.

H: Because I was against the war. I consider that having a spy who was being paid by the FBI in my home and in the library is a no-no.

G: (chuckles)

H: Well, it was. After the grand jury, Dean [Galloway] and I flew to Dallas for the Annual [ALA] Conference. I told Pat Rom, my assistant, I wanted to bring this matter up at the conference so that other librarians would know what was

happening, because I am a very strong supporter of intellectual freedom of all kinds, not only limited to libraries. This is an issue that has been dealt with within the library community and continues to be. There are librarians who believe that we ought to deal with *only* library matters when it comes to intellectual freedom.

G: Right.

[Removed]

H: You've got to have debate. You've got to have freedom to speak and to dissent. Indeed, our country was based on just that. The dissenters went to war in order to establish a democratic country.

G: Okay, so you—

H: I introduced.

G: Introduced that Resolution on Governmental Intimidation.

H: Indeed. Part of that statement also said that a librarian would not accept a role of informant under any circumstances—not by telling anyone what the person read, what the person wanted to get information on, or any of the records of what he or she had read or looked for. That was a major part of that original resolution.

G: The original, much longer resolution.

H: The original, yes, yes.

G: Now they are all shorter.

H: They are. [Sadly, gone are the rationales, the historical contexts. They are available, but I suspect are rarely looked at.] There was an area in the original one that I proposed and read, and it was voted on by the membership. Then it was brought to the council by Page Ackerman who had hired me for UCLA [University of California, Los Angeles]. Page Ackerman became a mentor in many ways, although she didn't always agree with me. In a few years it was decided that the Intellectual Freedom Committee would re-write it. It was made more eloquent, but it had omitted two major provisions. There was a vote for the revised one when it was read, and someone popped up from the [ALA] Council and said, Oh, you don't have the fourth and fifth sections of the original, which are very pertinent. Those two provisions were retained and are sort of floating somewhere but not acknowledged. But it was voted that it would remain as part

of the governmental intimidation policy. But since then I think it became part of the code, not as explicitly as I think it ought to be, but.

G: The history of each version of it is printed in the Intellectual Freedom Manual.

H: Yes.

G: I think available online is just the new one that's a paragraph. Are you unhappy with the current one? Is it diluted? Is it not forceful enough?

H: It doesn't have the clear statement of the refusal of librarians to accept the role of informants. That is what's needed.

G: For librarians to understand the policy?

H: For librarians to understand, yes. This is my code, my ethical job. It should be part of the job description that says I will not spy on anybody. There should not be any spies in the library, or spying if it's technology. That must not be. That's why I am against RFID [Radio Frequency Identification], because there is no guarantee of privacy.

G: No. That's a very important topic. Dangerous possibilities do exist with that technology. As far as I know—I'm no expert. Okay, so as you said— (pause)

I think that you have explained why you helped establish this resolution. Then the trial came, and you refused to testify based on your ethical principles. I think you've kind of just explained [why you refused, because] you don't believe in spying in the library and it infringes on our First Amendment rights.

H: Yes, but also when I spoke at the trial I would not lend myself in my conscience to what is going on in this trial. I never expected that I would be called. I had married Dean and I was living in California.

G: You moved, right.

H: I had a visit from an FBI agent from Sacramento to the library [in Modesto, CA] where I was working and given a subpoena to appear in Harrisburg, Pennsylvania.

G: At your own expense?

H: No, they paid [after the trial was over].

G: They did pay for you.

H: Yes, they did.

G: Okay. I wondered about that. Now, you did not enjoy the *full* support of the library profession right away, and you indicated in your memoirs that that hurt you very deeply as you sat in jail.

H: That's right.

G: I'm wondering if you think that, over time, that the profession does see things from your point of view—better understands your point of view. And, whether or not the passage of time and your opportunity to detail your side of the story in your memoirs has helped ease some of your hurt against what happened?

H: May I correct something that you said?

G: Please do.

H: You said that the library profession didn't support me.

G: Well—

H: And that is not so.

G: That's true, that's true. The ALA Executive [Board].

H: This came from the Executive Board. That came out in print that they had been asked to support me both financially and morally, and that they had said, No, because they felt that it was not appropriate. I don't remember how they worded it but it was a terrible blow to me since I didn't ask them for help. For them to come out that way was just unbearable. As it turned out, Judith Krug had called our lawyer [Allen Black] and said that she happened to have some money that she could offer.

G: She thought she could get.

H: Yes. Then she pulled back from that. The money was not the problem; I hadn't asked for it. Pat told me about it when she visited me in jail. When I came out I wrote a very strong letter to the Executive Board, which is in my memoir.

G: It is.

H: I had also written to Page Ackerman. [We were allowed to send only one letter per day in jail.] I don't know exactly what happened behind the scenes. There was a change and the LeRoy Merritt Fund, which was part of the Freedom to

Read Foundation, came through with five hundred dollars. But, of course, by that time the Social Responsibilities Round Table had established a committee that asked for funds, and it just flowed in. [I received many, many letters from friends and family, but also from total strangers who agreed with my stand.]

G: Right, right.

H: I give SRRT a great deal of credit. Dean and I went specifically to the ALA Annual Conference to see if we could clear this up. I was asked to come to Intellectual Freedom Committee meetings and answer questions.

G: Right, right.

H: That was a *dreadful* experience. I was put on what seemed like a dock with a whole group of people, plus William North [ALA Legal Counsel]. I was badgered.

G: Was he acting in his capacity as ALA counsel during this?

H: [I assume so. He wasn't one of the questioners.]

G: Okay.

H: Well, I know that he said my refusal to testify was "absurd," (smiling) but not to my face. At that time his point was that I had been asked by a properly constituted court that had all the legal power to ask me to answer.

G: That was his point of view?

H: Yes. I think that you might truly get his statement because he made the same statement not only in my case but whenever there was a controversial resolution that was brought up. He was so concerned about the tax-exempt status for ALA.

G: Tax-exempt status?

H: The tax-exempt status was one of the problems that we come to again and again and again. Either you believe in a philosophy and believe in certain rules we have, like the Library Bill of Rights. Or, if you fuddy dud with that, you're no longer standing up for what you really believe. That incidentally leads to why many of us did not want the Freedom to Read Foundation to be a separate entity, which it really isn't.

G: Right, it's connected through ex-officio members.

H: Yes, indeed. There's one person who has a mass of other organizations that she is involved in, in a crucial way, and that's Judith Krug. That's one of the things that I wrote about to the Executive Board, that I do not know whether Judith Krug, with the advice of William North and [Alex] Allain, was the one who created the point of view that the Executive Board used when they said that they would not support me.

G: Would not?

There was a debate that raged in the association at that time that was a side of what part of the membership believed in, I thought. This neutrality, you know, the Berninghausen debate—[professional] neutrality versus taking more of a social stance; having the professional association serve [in] more of a union type capacity. (pause) This is getting a little further afield but—

H: No, protecting librarians is only a small part of union, so it's not really a union.

G: Not a union.

H: It has to do with what you believe in. You believe in the First Amendment or don't you believe in the First Amendment. If you believe in the First Amendment, then you have to support being against the undermining of dissent.

G: Sure.

H: Or control of information.

G: Sure.

H: Which is censorship, isn't it?

G: Yes.

H: There are many kinds of censorship. For example, when publishers would not publish certain books because they might be called subversives. That is censorship at the source, isn't it? And if librarians don't recognize that, then we are not reading and being as aware of what the dangers are to undermining what the constitution is supposed to protect us from.

G: Okay.

H: By the way (motions to the recorder), is it working?

G: It is working. I'll turn it up a little bit more, just in case.

(laughter)

See, we can see the lights blinking. Okay, I guess going back to the Merritt Fund—actually, we will return to the Merritt Fund.

I read a newspaper article about you in which Judith Krug was quoted as saying, We didn't do our jobs with Zoia Horn, and mentioned that there was more hesitance toward defying such an official part of the government, like a court, at that time. But part of the association didn't have any problem with that and that was the Social Responsibilities Round Table group who supported you immediately. (pause)

H: [But avoiding controversial positions was not at all unusual.] An example: Years before when I came to California I read in the newspaper that a Spanish librarian had been arrested and put in jail. It was Amnesty International which reported it. There was talk in the ALA of the universality of the Library Bill of Rights, so I wrote to the Office of Intellectual Freedom and said, We should really come to her defense. We should publicize this. As I remember, Ms. Krug got in touch with the State Department. The State Department replied after many months that this is not something that they wanted to get involved with. So nothing was done. Many years after that there was a resolution against Israel for closing down (pause) the Palestine publishing houses—also, some of their newspapers. The resolution had been debated and finally passed. Immediately after that there was a hue and cry that we were picking on Israel. I read that [and] wrote an article in *American Libraries* saying, Why? We have criticized other countries that used censorship and controlled media—why is this picking on Israel? Then they proposed a change in the next Annual [Conference] saying that all of the Middle East is censoring.

G: Oh, right. You wrote about this.

H: Yes.

G: I remember this, yes.

H: Yes. You can't do that. The Middle East isn't a country that can establish policies. They can't take responsibility. It was Israel that was doing it. There was one article and, later, a letter to the editor two or three years later. But there are some sensitivities. But there are some issues that ALA does not want to deal with because they create controversies within ALA. It's a kind of inequality.

G: What do you mean by that? "They" being the upper echelons of the American Library Association?

H: What ALA is not willing to take on. This is intellectual freedom, isn't it? There was—there still is, I think—a resolution, which is policy about helping people in countries where censorship goes on by the government. Somehow or other the American Library Association has this dichotomy within it. It's not only the tax-exemption issue—fear of losing their tax status—but fear of starting a conflict within ALA of people who will defend Israel under any and every circumstance.

I happen to be a Jew, a secular Jew, and for me there's a separation between being Jewish and Israel. Israel is a country with its own responsibilities and when it misbehaves as a nation, then it's open to criticism. That is true of every other country as well.

G: Our own as well.

H: On an equal basis. We've gone far afield, I'm sorry.

G: That's okay; it all has to do with intellectual freedom.

H: Indeed, indeed.

G: So we're still on point. I did want to go back, just momentarily, to the FBI—the FBI in libraries.

(paused the interview)

G: In his book about the FBI Library Awareness Program, Herbert Foerstel—I hope I am pronouncing that correctly.

H: I think so.

G: Okay. He chose to include your experience as part of a pattern of FBI surveillance activity in libraries. Do you think that the awareness generated in the profession by your experience with the FBI in your library helped to contribute to its strong reaction to the FBI Library Awareness Program?

H: I don't know. I think that (pause) my case in American Library Association is not referred to very much. As a matter of fact, in the current Intellectual Freedom Manual (points to the Seventh Edition of the *Intellectual Freedom Manual*), my experience is in a chapter on governmental intimidation. But, in Chapter 2 [ALA and Intellectual Freedom: A Historical Overview] by Judith Krug, various intellectual freedom issues and occasions are described where there were victims of their stands on intellectual freedom representing a variety of intellectual freedom challenges over the years. It would have been appropriate to have mentioned me in that grouping. I'm nowhere there. It is only because there are

still people who are elderly at this point, as I am—I'm a real ancient—that when the [USA] PATRIOT Act was enacted someone said, Hey we have somebody. Someone else said, Oh yes, that was Zoia Horn. Suddenly I started getting awards. [Much appreciated, I must say. Incidentally, I wonder what the Freedom to Read Foundation would do nowadays if it were faced with someone choosing to go to jail rather than cooperate with a government which was spying, trying to suppress dissent? Would it step up, help, support?]

G: Really?

H: Yes.

G: So it was—

H: SRRT gave me the Jackie Eubanks [Memorial] Award. Then, I got a telephone call, would I accept the Downs award [Robert B. Downs Intellectual Freedom Award] and I said, Are you serious?

(laughter)

H: The woman on the other end started laughing. But, it was honestly made because it was as if I was being taken off a dusty shelf and whisked, whisked the dust off me because nobody had mentioned that. Foerstel did and certainly Eric Moon did, and certainly Eshelman, but not many people did know. Who else?

G: Really?

H: Yes, so it's strange. It really is strange. Then the California Library Association established the annual "Zoia Horn Intellectual Freedom Award." It was really a marvelous thing for them to do. But I had been, twice, ten years apart, head of the [California Library Association's] Intellectual Freedom Committee and worked on the manual and so on. And, so my name was perhaps familiar.

G: The *Right to Know*.

H: My *Right to Know* project was published by DataCenter. They may have known about that. But I don't think that my name is routed around very much. It's a long time ago.

G: True, true but the Library Awareness Program was—well, who knows when it really started. But it was in the late 80s when it was unveiled by the *New York Times* and Paula Kaufman. Well, that's interesting. Okay. (pause)

So, considering the [USA] PATRIOT Act, since you've brought it up, what sorts of changes do you see in the profession's awareness of these kinds of issues now versus back in the 1970s, when what happened to you happened?

H: Well, I think it's much worse now because this Bush administration seems to have institutionalized—by having it passed into law by Congress—these attacks on our privacy that are now legal and justified it on the basis of being at war. Well, this war has no end. So, laws that are passed now will have to be handled for many years beyond his presidency. It [USA PATRIOT Act] has all kinds of gag rules so that you can't tell people. We are really on the road to authoritarianism. But it's now legal, you see. We now have a series of laws whereas before you could say, The FBI did this and tsk, tsk, tsk, tsk, tsk, tsk. We had a [J.] Edgar Hoover who we could blame.

G: Right, right.

H: Because he was a law unto himself and the FBI couldn't be touched. Now, we are in really a pickle.

G: Right, right.

H: But what it means, of course, is that we have to be even sturdier and smarter.

G: As librarians.

H: As librarians, and be very, very, very sensitive. I spoke at a Berkeley Public Library meeting, and I said that I was allergic to anything that undermines our democracy and, I could smell it, I could feel it, I could physically react to it. I've lived through a lot of history and I've read a great deal, and I've participated when I could. One of the difficulties of being an ancient is that you can't do as much as you would have liked to.

G: What do you mean by that?

H: Well, we used to go regularly on marches, protests, participate in various organizations. We contribute to a lot of organizations but we don't have as much energy.

G: Okay.

H: Okay?

G: Okay.

H: Every once in a while librarians ask me to come and I've written letters to the editor which I'm told have helped in causes that they were involved in, so I can do a little bit.

G: Is there anything else you would like to say on that topic of librarians being aware? [On] the awareness of librarians now versus then?

H: I think librarians should be reading newspapers and magazines all the time.

G: You do.

H: They've got to *know* what's going on, particularly in their own area. They have to translate it into action. They have to really do that. They have to do it with other people and not only librarians. I was a great believer in contacting other organizations with similar feelings, whether it's about energy, whether it's about ecology, whether it's on education—education above all else because *we are educators*. I was shocked one time when I mentioned that in a meeting of the [ALA] Intellectual Freedom Committee. I was just a visitor. I used to—after I was out of the Intellectual Freedom Committee I would come and sit in on all of their meetings.

G: They have an open meeting policy as well.

H: They do.

G: As they should.

H: As they should, indeed. But I had said that we are educators and a librarian spoke up and said, No we're not. We're not. We're not. We're not teachers. And I said, But we are. We function as educators, we provide information, we lead people to the information they need. But it's a shock to me because we are coupled with education all the time. We're an absolute essential part of education throughout the life of every person. They're going to be learners for the rest of their life so we should be seen as educators. Librarians should be reading, reading, reading because there is nothing that you read that you, at one time or another, aren't asked.

G: Oh, I bet—especially if you are a reference librarian.

H: Yes, or a cataloger.

G: Oh right, right.

H: Yes. The more you know—

G: That's hugely important in cataloging.

H: The more you know, the more you hear, the more you see, the more valuable you are as a librarian. That's why it's a marvelous profession. Some of the greatest people were librarians, you know.

G: It's a wonderful profession.

H: It is! It is.

G: Okay. Well, just to change topic for a moment, maybe to a less positive topic—getting back to when the Foundation, the Freedom to Read Foundation, was formed, in the years it was sort of evolving into forming, it took a few years to sort of come around. Part of the ALA membership, most notably the Social Responsibilities Round Table, disagreed with the way the Foundation was set up and a huge conflict ensued. Although the Social Responsibilities Round Table itself did not represent the majority of the profession in the association, it was the largest roundtable in the association, I think at 1970 with over 1,000 members. It represented a really loud voice calling for change in the ALA as I understand it.

H: Yes.

G: I wonder, before we discuss some of the criticisms of the Foundation and how it was set up, if you would just like to take a moment to say something about SRRT and its significance in the seventies, or late sixties, early seventies.

H: You mean, within ALA?

G: Within ALA. (long pause)

H: Well, I think that you referred to the feeling within the ALA that was sensitive to anything that the government might not like. That's one aspect of it, but also ALA members tend to be more conservative and tradition bound—not all of them by a long shot—and some of them have done yeoman's service to the profession by standing up passionately for what libraries and librarians should be in protecting the patrons, in broadening the variety of books. [SRRT was in the forefront of issues like racism, sexism, and gay rights.]

G: Right.

H: In opening the doors to controversial but important issues. So there have been many battles, some having to do for example with resolutions that were anti-war.

G: Okay.

H: Way, way back. The questions were raised, What has that got to do with our running the library?

G: Right, right, I think I remember a comment, We're the ALA not the ACLU, that someone made in one of these older articles.

H: Yes, but the fact is that anything that happens affects young people. When you have a war, it means that an incredible amount of money is being spent—an incredible amount—that, were the priorities different, could be spent on education, improvement of education, on our communities, on establishing community centers so that young people could have a meeting place and not have to stand on, on—

G: Street corners.

H: Street corners and get into trouble of all kinds—all sorts of things. It sucks the money, tax money, that we pay and willingly pay because we want a good life and a good government. So war is a terrible thing, particularly if it is not clear *why* we are at war and *why* people are getting killed on both sides. I think that there is a sense of narrowness in our concept of intellectual freedom. Narrow because it has to do with—it used to be just books, then it got broadened out to music.

G: Videos.

H: To videos, to DVD, to computers. But even with computers—when computers arrived, librarians were the ones who provided the reference, the reference material [and] the information in computers for the patron, because they knew how to use this new technology and many patrons did not. As soon as it became more and more popular and people had them, they were permitted to use them, themselves. But then, because they were expensive, librarians started to charge fees.

G: Oh right, for computer use.

H: For computer use. Or they then created a section of the library reference staff who were doing research, and the library got paid for that research. That happened in San Francisco Public Library.

G: It did?

H: And I would go to the in-library board meetings. I felt that it wasn't interference on my part because it had to do with the quality of access to anything that's in the library. Actually we won but it took several years. So there's a tendency to be

very narrow in our application of our philosophy of librarianship. I don't know whether that answers your question.

G: Well.

H: Some.

G: That's good. Okay, so moving on, at the end of 1969 the [ALA] Executive Board approved the Foundation's bylaws and the Foundation was incorporated. Then, in 1970, the Foundation was announced at the Midwinter Meeting in Chicago. There were a number of criticisms that some had and I think that the criticisms were loudest from the Social Responsibilities Round Table. One of them was that it was called a "paternalistic fait accompli" because the membership did not get to review any of the bylaws before it was incorporated. Would you talk about this concern?

H: Well, actually I was aggrieved by the fact that it was done behind the scenes. This became familiar to me years later. I experienced that in reference to *The Speaker*, which was a film that was created, supposedly by the Intellectual Freedom Committee. But, as a member of the Intellectual Freedom Committee at that time, I had asked what it was going to be about and I got no answer.

A lot of things tended to happen behind the scenes and apparently this was one of them. The first time I knew about it was actually in 1970, when it was brought to membership and council. It was at that time that there was this explosion. E.J. Josey, who later became the first black man president [of ALA]—Actually, Clara Jones preceded him.

G: She was the first woman.

H: The first black woman.

G: She's the one who appointed you to the Intellectual Freedom Committee.

H: Right. Then Eric Moon appointed me as Chair.

G: Right, right.

H: The argument that was presented by E.J.—he was joined by Arthur Curley who was an outstanding librarian. He is now dead. But he was a great intellect and he had the clarity of getting to the essence of whatever was being said with both eloquence and crisp clarity so that there was no doubt as to what we were talking about.

G: Okay.

H: He was one and Eric Moon [*Library Journal* Editor, later President of ALA] was another. But their point was that American Library Association, the organization of librarians, should have the responsibility for making policy statements that are very, very important, and would be responsible for acting on those responsibilities, to support and protect librarians.

G: Okay.

H: And therefore you discuss it in the conference and you take a position, and you hold to it. When you have this extra body that is appointive, then it isn't democratic and responsive. We don't feel a responsibility *nor do we have a say*. We are back to that other issue that I've brought up again, and again, and again. You have one person who is always there and that is Judith Krug who is the head of the Office of Intellectual Freedom, who is in the Intellectual Freedom Committee, of course, [and] all the state committees. She is the one who deals with them all: Intellectual Freedom Round Table, Freedom to Read Foundation, LeRoy Merritt Humanitarian Fund.

G: As staff.

H: As staff. She is also involved in the LeRoy Merritt [Humanitarian Fund], she is also involved in many others, I no longer can identify them all. But if it has to funnel through one person, no matter how good she is, and she is good in many ways. She has publicized the censorship issue so that she is the person who is called on by the *New York Times* and *LA Times*, all the newspapers when there's a censorship issue.

G: Oh sure.

H: That is very, very good. But she also has her biases and, if it's funneled through one person—and she has so much influence, she's a powerhouse—then it's very, very dangerous. It no longer is something that American Library Association takes responsibility for, but what Judith Krug and a group that she's involved in appointing. If you look at IFRT, that's the Intellectual Freedom Round Table, if you look at Freedom to Read Foundation, if you look at LeRoy Merritt [Humanitarian Fund], probably others, it's like a—what is it? The revolving door. You know, they're often the same people.

G: Oh, okay.

H: The same people go round and round. They go from IFC to IFRT, from IFRT to Freedom to Read Foundation, and so on, because she is at the center. It's

convenient, and it's efficient. It would be people who agreed with her and were malleable.

G: But she doesn't appoint people to any of these committees. You were not appointed by Judith, you were appointed by [Clara Jones and] Eric Moon.

H: That's right.

G: Let me just back up for a second, I'm sorry. (pause) Now with the Foundation being presented as a paternalistic fait accompli, as the [Social Responsibilities] Round Table have it, there was a really long delay for this foundation to finally get put together and announced. If at that meeting the constitution and bylaws [were] put up for everyone to debate and discuss and help decide democratically, would there still have been a problem? Because there still would've been no foundation. Part of me wonders if everyone would've been angry no matter what happened because there still would be no foundation and it would be what, year eight, that this thing still hadn't come around?

H: Well, before that foundation was created some people got together and started collecting money [National Freedom Fund for Librarians].

G: Right, for [Ellis] Hodgin.

H: I think you will find it in one of these books [motions to several books about library history which she has laid out]. Once the Freedom to Read Foundation was established, they gave the money to the Foundation [the Merritt Fund] and felt as if they had done as much as they had wanted to. I didn't mention that E.J., when E.J. Josey angrily spoke against both the manner in which it was created and the separation from ALA and lack of democratic control, he asked people who agreed with him to walk out.

G: Oh, right, this was—

H: Dean and I and someone sitting behind us walked out, and many other people walked out in protest.

G: I think I read that something like 100 people walked out behind him.

H: Could be, it was a very large meeting.

G: And that was protesting the point of—

H: The separation from ALA.

G: The biggest was being separate from ALA.

H: That's right.

G: Right. Is there anything else you would like to mention about the separation from ALA? Why that was such an enormous issue?

H: Well, we have—since it is not democratically elected it's interesting to discover who actually gets on it. Again, we have [Alex] Allain who appears over and over and over again. I don't know if you ever met him.

G: Oh no.

H: Probably not. He was a lawyer but rarely did he speak as a lawyer, although I'm sure he did at other times. But there again, the same names would somehow appear, which means that they were comfortable with the one person who was attached to ALA.

G: When you worked at UCLA you—I think, from what I understood from your memoirs—got to know Merritt a little bit. He worked there, LeRoy C. Merritt. Was that at UCLA?

H: No, I met LeRoy C. Merritt at a 1964 pre-conference, [an] intellectual freedom pre-conference. That's the time that I met Eric Moon.

G: Okay.

H: Because it was a three-day thing, and we came out with a suggestion that there be a lawyer hired who would be in Chicago in the [ALA] headquarters and he or she would be available to help librarians legally, you see. There were marvelous speakers who spoke on various aspects—on religion, on pornography, all the issues we had. Not so much. I don't remember anything about governmental things. That's when I met LeRoy Merritt, Lee Merritt. Then we corresponded because he was the chair of the Intellectual Freedom Committee in California. He also was the editor of the *Newsletter on Intellectual Freedom*.

G: Right, right.

H: I reminded him that we had met at that conference and I said, You know, when you write your articles, which I enjoy very, very much, but you assume that everybody knows that a place was in California. And, I don't know when it is California and when it isn't California. He says, Oh no, no. And then he went back and examined it and he said, You're absolutely right. So, since it was the newsletter for ALA, that was important. So we had a nice little correspondence.

He died while he was head of the library school in Eugene, Oregon [School of Librarianship of the University of Oregon in Eugene] that had been established.

G: Now you, by virtue of— Why did I think he was at UCLA? I'm sure I'm mixing him up with someone else.

H: Well, he may indeed have been but I think that is not where I met him.

G: Where you had your encounters with him. Now Everett Moore was at UCLA as well.

H: Yes.

G: Do you have anything you would like to say about him? He was a part of the Foundation for a while.

H: He was very bright. He wrote very well on intellectual freedom. I didn't know him very well. I was just a lowly reference librarian at the College [Library]—the undergraduate library—rather than the University [Research Library]. It was a cockeyed wonder that I got the job because I had public library [experience] and I was a high school librarian just before I came. It was a cockeyed wonder. Page Ackerman interviewed me. It must have been a number of things. The head of the college library was going to be going to Leeds, England, and a Leeds librarian was going to be there. Maybe she thought that an older person on the staff would be helpful or the fact that I had said that I had some experience in writing—journalistic writing. That may have helped. But whatever it was, she was most respectful and said that she hoped that UCLA had the job for you, that you will enjoy your stay here. If not we encouraged people to find the best available and we like to think that they will be better trained when they go to find another job. What she was saying, what she was intimating, is that since I did not have another master's degree besides my library science degree, the likelihood of my getting to the university library, being upped, was very small.

G: Oh. Oh really?

H: So this was her very gentle way of saying, It's alright. But she was really straightforward with me and I liked her a lot. One time I was put on a committee for the university system and found something that I was very strong about. She asked me to go to lunch with her and she said, You know, Zoia, it's not going to happen. Eventually it probably will happen but it's not going to happen as you want it (quietly laughs), which is very nice from the second in control. She was the one who carried my resolution to council much later.

G: So she was a big ally of yours.

H: She was, yes. She offered herself as an ally.

G: Now, speaking of another big ally of yours, you have mentioned Eric Moon. He was the one who appointed you to your chairmanship.

H: Yes.

G: And, I don't remember if he was the one who encouraged you to run for council; it may not have been him.

H: No. Actually, it was his wife, Ilse.

G: Ilse, okay.

H: Yes, and she's the one that got a lot of signatures.

G: Okay. And he was also, himself, on the board of the Foundation the same time you were. So I wondered.

H: No.

G: Ex-officio capacity. He was [ALA] president and you were IFC [Intellectual Freedom Committee] Chair.

H: That's true, that's true. He wasn't always there.

G: He wasn't? On purpose or he was just so busy?

H: I think he was very busy.

G: I see.

H: I don't remember.

G: Would you like to just say a few things? I just read recently that someone—I think it's the author of the biography about him and that author's publisher and I don't know who else—has called him one of the most influential librarians of the latter half of the twentieth century. So with that lofty introduction I wonder if you would say something about Eric [Moon]?

H: Well, he was very, very bright and very funny, and he was almost a guru.

G: A guru?

H: Almost a guru, because there were a lot of very young people who had come into librarianship who wanted to democratize it, who wanted women's rights, who wanted to make changes in the American Library Association. They were very active, very passionate and he was available to them. He would sit in a middle of a room surrounded with young men and young women with the—the women were wearing, you know.

G: Probably mini skirts (laughs).

H: (smiling) Either mini skirts or long dresses and the hair was long and sometimes wild, and imitation afros. Well, it was a very exciting time, the sixties and early seventies. He was very important to them because he knew about diplomacy; he knew about when it was a good time to bring up this subject and bring up with whom. Ilse at that time may have been his wife or would be eventually. She would be there to guide and he would discuss so that it would be very, very clear what the politics that were going on, and how to deal with a board that was sort of conservative, and how to deal with a situation, and how to bring up a resolution, and whom to go to for allies. This is very important in an organization. So, he was a great leader and a great teacher, and he was passionate in what he was doing. He had a group of people who would sit with him in council and they would mention to each other—how this one should do something and stand up and say what.

G: Oh really?

H: Yes! Or they would go up and talk to somebody else in council and suggest something. That's what happens. It was overwhelming to me, frankly, because I'm not a good organization person. I do things because, if I understand it and believe in it, I'll take a chance on it. But, you really have to do that in order to get something accomplished. You have to work with many people.

G: I don't think I'd be very good at that.

H: Well, some people are and some people aren't.

G: Right. So he was very politically savvy.

H: He was very politically savvy.

G: It sounds like he also had a great deal of charisma.

H: Indeed. Indeed. I do recommend that biography [*Eric Moon: The Life and Library Times*], because one of the good things about the biography is that Ken, I think that's his name.

G: Oh, (looks at Zoia's copy of Moon's biography, which happens to be sitting beside her) Kenneth Kister.

H: Kenneth, Ken, yes, uses his words a lot, even if they are whole paragraphs, so that in essence you are getting almost a memoir.

G: I heard he did something like a hundred interviews with him, a phenomenal amount.

H: Oh, yes.

G: Okay. Is there anything else you would like to say about Eric Moon?

H: Just that I wish there were more Eric Moons now. He was very important at a very important time, and we need somebody who can work with many people and can accept leadership gracefully.

G: Okay.

H: He is very thoughtful, in terms of thinking through issues. I remember that when I introduced something when I was on council and very often it was controversial. One of the ways of deflecting what I was trying to get done was to say, Why don't we send it to a committee to look into this?

G: Okay.

H: I discovered how many layers they are to squash something. You send it to a committee—you send it, we'll discuss it.

G: So considering that level of layers, wasn't the Foundation set up partly to avoid the bureaucratic layers?

H: Well, the democratic, not the bureaucratic.

(laughter)

No, just the opposite, because it was a bureaucratic creation. So, no it was a way of separating from accountability. You know, ALA stopped having membership meetings for quite a number of years. They claimed that there weren't enough members who came. And, of course, what happened is that many things that were important to librarians never got to the council. I'm glad to say that they have changed that again, but that was terrible. It was an undemocratic thing to do.

G: Okay.

H: So, having a separate, or a so-called separate organization that is not responsive to the members is an undemocratic direction to go. I don't know where I read that they changed that too, that they're going to be elected. Do you know anything about that?

G: Well, a portion of the board is ex-officio by virtue of the ALA office so you have a few, including the IFC Chair, the President, the Executive Director, the President-elect, [who] would serve by virtue of their office. The rest of the trustees are elected by the membership. There has always been a portion of the board of trustees elected by members—not ALA memberships, [but] members of the Freedom to Read Foundation.

H: So that just continues.

G: (inaudible) as Foundation memberships.

H: Well, that's precisely what is undemocratic.

G: So, okay.

H: It's again, a small group of people that can be turned over and over.

G: Okay. Anyone in ALA can be a member of the Foundation, although they do have to pay a different set of fees.

H: Well, that's something new.

G: When it was established, I think it was ten dollars to be a member and now I think the lowest membership is thirty-five [dollars].

H: But you don't have a say, really? Do you vote for—

G: You do not vote on strategy. Legal strategy is closed. You vote on the—for the trustees, the portion of the trustees who are not [ex-officio].

H: Oh, I see.

G: Right. There's no vote on which cases they might take or which issues they may follow, no.

H: Well, I was one of the three first members of the LeRoy Merritt group, [a Trustee from 1975-1976].

G: Of the humanitarian fund?

H: Yes.

G: You were a trustee of that?

H: Yes.

G: I didn't know that. Oh, were you really? I think [you were] maybe the fourth grant recipient but I'm not sure. [Anyway, you were] one of the earliest to receive that grant. Actually, I did wonder about the Merritt Fund. Was there objection at all to the Merritt Fund?

H: I don't think so.

G: [Just to] the Foundation.

H: As a matter of fact, you know, April, I did not know it was part of the (pause)—

G: Foundation?

H: The Foundation—Freedom to Read Foundation.

G: Well, it split off. I think it was conceived of as a mechanism for getting funds to librarians so that the Foundation could focus on First Amendment litigation. Actually, I did wonder whether or not you thought twice before accepting [the grant]. Not knowing what your views were about the Merritt Fund, [I wondered] whether or not you thought about it before you accepted the grant—whether or not you believed in that fund [or] if you thought about turning it down.

H: No, at that time (pause) I did not have any compunction about that. Of course, I did not know that it was part of the Freedom to Read Foundation so, to me, it was a separate one. The fact that I was appointed didn't bother me because we were the first ones, so somebody had to.

G: Right, okay.

H: Then I started contributing money. At one point, after about a year, Judy [Krug] came over and said, May I tell them that you've been paying back? I said, No, indeed, you may not tell them because I wasn't paying back. I accepted the fund as something that was given.

G: Not as a loan?

H: Not as something that I had to pay back. I hope that that isn't done.

G: Were you expected to pay it back?

H: Pardon?

G: Were you expected to pay it back?

H: No. Never. There was never any mention of paying the grant back.

G: Okay, right.

H: But I was annoyed that I was going to be used that way. No, I was contributing money for other people. I wasn't paying back.

G: How did you come to be appointed to the Merritt Fund?

H: I don't know. I was asked and accepted.

G: (pause) Okay. Well, I wonder if I could ask you one more question?

H: Okay.

G: That would be, what do you think is the most pressing intellectual freedom issue in American librarianship today?

H: (pause) April, we need (pause), we need a recognition on the part of librarians [of] how important libraries are and the basis on which libraries, public libraries, free public libraries were set up. I'm afraid in the same way that I think young people aren't taught civics and what it means to be a citizen of this country—what democracy means—they blithely say, Well, we can say anything we want in this country and not elsewhere. But they don't realize that that's not necessarily so and they are not sensitive to what being a participant in the democracy [means]. Librarians aren't passionate about that aspect of librarianship.

G: Okay.

H: The fact is that they should be participating in their communities. They should know organizations. There should be somebody from libraries going to meetings, providing materials and information. When they see that somebody needs information they should be able to say, I can find out for you. I think libraries should be centers for debate where current questions—political, economic, social questions—should be discussed in the rooms that are available.

G: In the meeting rooms?

H: Yes. Books on important issues should be put out right there so that you could see that they're available. I don't see that often enough. It's what used to be done.

G: Really?

H: Well, that library where the librarian introduced me to the United States through books. [It] had a meeting room where there was a piano.

G: [The] Seward Park Branch of the New York Public Library.

H: Seward Park Branch, yes. Thank you, of course. Did I tell you that I met the—I saw the woman, the librarian when I was a—

G: I read that you did.

H: Yes.

G: When you were a librarian.

H: When I was a librarian at Montclair Public Library.

G: And she was the director of the [New York Public Library's Seward Park Branch].

H: She had been. Seward Park.

G: Seward Park.

H: And I didn't know that but I saw this elderly woman and her profile looked so familiar, so I walked over to her and I introduced myself and said, Are you? Did I meet you? And I told her the story and tears came to her eyes and into mine.

G: I bet.

H: Yes. She was so happy that she had made a difference.

G: She let you play the piano in the basement.

H: That's right.

G: She introduced you to American literature.

H: Yes.

G: And this was the—wasn't this the time in your life when you were trying so very hard to be American, making the transition?

H: Absolutely, absolutely. I had even changed my name.

G: Right. To Laura?

H: Laura, yes. But I changed it back when I thought that I could speak English as well as anyone around me. She helped my acculturation into this country and its social values.

Yes, they had meetings where there were discussions and they became citizens learning what it was like because they had to discuss what was happening. So libraries were terribly important. In our Oakland [California] Public Library there was a poet, Ina Coolbrith, who was the library director. She's the one who took Jack London under her wing.

G: Ina Coolbrith, or Ina, however you [pronounce it]—the first, well, not the official first but, for all intents and [purposes] she was basically the first librarian. She has an amazing story.

H: Amazing, yes. How important she was.

G: She was.

H: To the community. And the effect she had on this one young man, Jack London. And how many more people that we don't know of?

G: Oh, so, so many.

H: Indeed.

G: She was the first woman poet laureate of California, I believe.

H: Yes.

G: An amazing woman. She was supposed to be a great beauty as well, I believe.

H: Really?

G: Good role model (laughs).

H: Yes, wonderful. So that should be part of our, the gift we can give, not only as a responsibility but as a gift to the next generation and to all the immigrants, and all

the people who want education and learning, and information, to take care of their own lives as well.

G: Well thank you so much for this interview.

H: You're very welcome, very welcome. I hope you will enjoy your librarianship.

END OF INTERVIEW

Chapter 5: Theresa A. Chmara

Introduction

> *I think that the better informed attorneys are at the local level, the better everyone is served and First Amendment rights are protected. (Chmara interview with Gage, July 17, 2006)*

Theresa A. Chmara has been the Freedom to Read Foundation's General Counsel since 2000. Starting in 1988, she worked with the Foundation's previous General Counsel, Bruce Ennis, when the two joined Jenner & Block, the prestigious firm which has represented FTRF since that time. As a sixth grader, her interest in law was sparked when she participated in a mock trial. In 1985, Chmara received her B.A. cum laude, Order of the Cross and Crown, from Boston College, and, in 1988, she earned her J.D. cum laude from Georgetown University Law Center.

Chmara was born, on December 27, 1963, in New Jersey. Raised as a Catholic, she developed a strong sense of duty to the community. As a youth, she was a candy striper and a member of service clubs. As a young college woman, she volunteered her time to programs such as the Street Law Clinic, which has a goal of teaching high school kids about the law, and a free clinic which provided legal assistance to individuals "who wouldn't have otherwise had legal representation" (Chmara interview with Gage, July 17, 2006). Chmara's inclination toward community service developed into a commitment to pro bono work once she became a practicing lawyer. As a professional, her inclination toward service to others developed further as she sought out pro bono work. In fact, she relates that her attraction to Jenner & Block derived specifically from their commitment to pro bono work. Now a partner in that firm, Chmara has donated untold hours of her

time on behalf of the Foundation in many ways, including as an instructor in both the Lawyers for Libraries and Law for Librarians training programs and as a legal advisor to librarians across the United States.

This interview took place over the phone one morning in late July, with one end of the line in California and the other in Chmara's office in Washington, DC. In patient, gentle tones, she explained aspects of the Foundation's litigation support criteria, developed by William D. North in 1983 to help guide decisions about which cases to pursue. She explained rulings in specific cases, such as the 1982 *Board of Education, Island Trees School District v. Pico* (1982) and *United States v. Playboy Entertainment Group* (2000) decisions, which have resulted in significant shifts in First Amendment protections. She detailed issues involved in the Children's Internet Protection Act case (*United States v. ALA*, 2003), on which she worked extensively as a lead attorney. Further, she discussed the trial and sketched out a scenario of a possible challenge to the application of the CIPA.

For her efforts in the CIPA case, and her service to the Foundation as well as libraries and attorneys across the nation, the Foundation awarded its Roll of Honor Award to Chmara in 2003.

An interview with Theresa A. Chmara follows.

Interview with Theresa A. Chmara, July 17, 2006.

Location: This interview was conducted over the telephone.

Duration: 67 minutes.

April Gage:

This is an interview with Theresa A. Chmara. The interview is being conducted over the telephone on Monday, July 17, 2006. The interviewer is April Gage, a student at the San José State University School of Library and Information Science. Today we will be talking about Ms. Chmara's role in the history of the Freedom to Read Foundation.

Ms. Chmara is a partner in the prestigious law firm, Jenner & Block, which has long represented the Freedom to Read Foundation. Ms. Chmara has been on the Foundation's legal team since [1988], serving as General Counsel since 2000. She is a lead faculty member of Lawyers for Libraries and Law for Librarians training institutes, a member of the board of directors of the American Booksellers Foundation for Free Expression, and is a mentor in Georgetown Law's Street Law Program. Ms. Chmara has represented and advised many clients on First Amendment issues, including leading the legal team and coalition that challenged the Children's Internet Protection Act. For her efforts in the CIPA case, and her service to the Foundation as well as libraries and attorneys across the nation, the Foundation awarded its Roll of Honor Award to Ms. Chmara in 2003.

Okay, I'd like to start by asking you a few questions about your background.

Theresa A. Chmara:

Sure.

G: When and where were you born?

C: I was born in 1963 in Trenton, New Jersey.

G: Did you grow up in New Jersey?

C: Yes, I did.

G: You did. Were there any influences in your childhood that stimulated your interest in law?

C: I would say that it was really, it sort of sounds funny, but in sixth grade we did a mock trial in class. I would say that was sort of the point when I said this is really interesting and it seems like something that would be really fun to do. I think it was after that that I was always focused on law school as a good career choice and something I would enjoy doing.

G: Oh, how interesting, as early as sixth grade.

C: You think it's early but I think just sort of being exposed to it for the first time—I didn't have anyone in my family who had been a lawyer or anything else, so that was really the first time I can remember starting to think about it then.

G: Okay, okay, so then in 1985 you received your B.A. cum laude from the Jesuit university, Boston College. Part of the stated mission of the college reflects the Jesuit mission to blend academic excellence with service to others. Has the Jesuit mission influenced your choices of professional pursuits?

C: I think so. I am Catholic and was raised Catholic. I think that has influenced me in always trying to be very involved with community—involved [and] helping. Throughout high school I worked in various volunteer positions—nothing to do with law but just being part of the community, as a candy striper and in a service club. I think that growing up I always felt that it was important to be part of the community and give back to the community. That was reinforced at Boston College and then again at Georgetown Law School where I went to law school.

G: Right, right. Did you become interested in intellectual freedom issues as an undergraduate or before? After?

C: Well, I think it's something that's always interested me. I've always been a firm believer in the importance of First Amendment rights. I've always been a huge reader growing up [and] the importance of having access to books, and folks having access to information, certainly, has always been something I've believed in. But I would say [it was] probably not until Georgetown Law School and coming actually to Jenner & Block, a firm that worked on intellectual freedom issues with different clients, that I became more involved in that area.

G: Okay, right. So, in 1988, you received your J.D., cum laude again, from Georgetown University Law, and then you went to work for Jenner & Block. Why did you choose that particular firm? Was it because of their (inaudible)?

C: I think, initially, no. I think that it was, you know, all of the work seemed very interesting, in litigation. I think what really moved me toward Jenner & Block was actually their commitment to pro bono in general.

G: Oh really.

C: As I said, I was always involved in the community working as a volunteer and that continued through when I was at Boston College, and continued through law school where I was involved in two different clinical programs, where the focus was helping folks in different ways who wouldn't otherwise get legal assistance or legal information. One of the clinics was a clinic that actually focused on litigation and working on immigration issues with folks who wouldn't have

otherwise had legal representation. But the other one was the Street Law Clinic—and I'm still involved with them—which actually found me three times a week throughout the school year at a local high school here in Washington, DC teaching about law which, I guess, in some ways is tied to intellectual freedom, because to the extent that we can inform and teach folks about their legal rights and about what the constitution means and what law means, we empower them to know and to be able to help themselves in the community as well. It was a really great experience to be able to do that with a high school class. Ultimately all of the high school students in the program and all of the different high schools in DC participated in a mock trial. That was a really great experience and so my choice of Jenner & Block really was just an extension of all of those other things that I had been doing. Jenner is very, very committed to pro bono of different kinds. Some of it is litigation, but it's civil, it's criminal, it's administrative, it's counseling. Now the attorneys here are very committed to making sure that that is a part of their lives. That's really what drew me here and part of what has kept me here.

G: Going back to the Street Law Program for a moment, which kids get to take that class? It's an elective, I think, but do they have to be the smartest kids in the school or can anybody take it?

C: I think it varies from high school to high school as to how a student ends up in the Street Law class. But I think, generally speaking, it tends to be upperclassmen. It would be juniors or seniors mostly. That seems to be the way it works out, although there will be some sophomores. It would be unusual for a freshman to be in the class. It's generally a student—not necessarily a student who has the highest grades—but someone who has shown an interest maybe in law.

G: Okay.

C: So it would be unusual for freshman to be in the class because I think that, to some extent, teachers and administrators are involved in making sure that they are students who are going to get a lot out of the class.

G: Okay.

C: They are varied as far as where they are in terms of grades but certainly [in] the class I had, they were very committed and interested in the subject matter. I think that students do have to exhibit an interest in doing it because it's a fair amount of work that they have to do to get ready for the mock trial at the end of the year.

G: I've looked at a little bit of information about it and I couldn't believe it was a high school class.

C: Yes.

G: It looked like a lot of information for them to absorb but it looked so exciting.

C: It's a great program and it's wonderful to see the high school students be able to stand up and do the mock trial. And the sense of confidence they get from that—[from] being able to [speak in front of a large group and present an entire case in a court]—that accomplishment is wonderful.

G: Okay, getting back to Jenner & Block, it seems that you worked closely with the Foundation's past general counsel, Bruce Ennis, for many years. I've heard many people express admiration for him. What was it like for you personally to work with him?

C: Bruce was just a wonderful, wonderful person. We both started at Jenner & Block in 1988, I newly graduated from law school and Bruce coming over with a number of attorneys from another firm. They came over as a group. We immediately started working together and he was just an incredibly smart person, incredibly kind, a wonderful mentor. I worked with him not only on the Freedom to Read Foundation and the American Booksellers [Association] cases but on many, many cases. It was just a privilege, really, and an honor to be able to work with him for all those years. He still is very, very much missed by us here at Jenner.

G: Oh, I bet. How did he help or did he? How did he help shape your professional values?

C: Oh, he had a huge impact. Being able to work for him and just to learn from him and to see his commitment, both to his clients and to his pro bono matters, and his involvement in the community. He was just an unbelievable role model and a very kind person—just a great person to know and to be able to work with.

G: So was it Bruce who introduced you to the Freedom to Read Foundation?

C: Yes. Again, when I started working here he asked me if I would work on a couple of projects and we just clicked working together. I think in the introduction you said 1990s but it really was right away in 1988.

G: It was. Okay.

C: That I started working with them. It also just worked. Between all the folks at Freedom to Read Foundation, we just had a good rapport and we had a good team together.

G: Okay. Is there anything else you would like to say about your early days at Jenner & Block or Bruce Ennis?

C: No. It really just sums it up to say that it was a lucky day for me, the day that Bruce asked me to work on cases with him, both the Freedom to Read Foundation and also on the others.

G: Okay. Now, shifting to a more detailed level, what I'm wondering about is how the Freedom to Read Foundation decides which cases to take on in terms of the litigation support criteria that were developed by William D. North in 1983. There are, I believe, ten factors and I wanted to ask you about a few of them.

C: Okay.

G: I may have been looking at an older version of these factors so feel free to correct me. In terms of parties requesting help from the Foundation, I read that defendants are given top priority, plaintiffs second, and requests to serve as amicus curiae third. Can you explain why a defensive action would be assigned a higher priority than an offensive one?

C: Well, I think that, I think actually it's probably important to say at the beginning that all of those criteria are looked at together.

G: Okay.

C: You know, everything, and through the whole context of the litigation. It's a little hard to take one out of context like that and address it because I think, more realistically, when—and it's hard to talk about it when you don't have the actual facts in front of you. And I wasn't there when those particular criteria were developed, so it's hard for me to say why it may be written a certain way. I can tell you that from practice, when a request comes in, really the board looks at its own policies and how would participation in a case further those policies of providing the greatest access to the greatest amount of information for the greatest amount of people? So, I'm not sure whether more cases are coming in for defendants versus plaintiffs. It does seem like actually, certainly in the years that I've been involved, it's more often than not been an action challenging some sort of restriction on First Amendment rights. So I would say, regardless of what those criteria say, it seems to work out more often that they are supporting plaintiffs.

G: Okay, okay.

C: I mean I'm not entirely sure whether that means defendants who might—I'm not sure exactly what that means, actually.

G: Okay.

C: Because I think the focus is more what is the First Amendment right at stake rather than the status of [the party or person making a request for assistance].

[removed]

G: Okay. So I think, then, that would answer a question about another part of the criteria that probably has to be taken into context, so I will skip that. Now, you look at the quality of the case as well. In North's words, "Bad facts and a bad litigation environment can make bad law." He identified the importance of such things as the number and quality of the lawyers, adequacy of the documentation and commitment to the case. Can you explain how you analyze a situation to figure out whether the case might result in bad law?

C: Well, I think sometimes it's, again, it's something you have to look at in context. Certainly you will have a case sometimes where the principle is something that you support, and ALA or the Freedom to Read Foundation policy would support protecting the First Amendment principle. But, when you look at the facts of the case, for example, you realize that they are not the best facts. Or, when you look at it—certainly I can—you can recall times when you're not involved as a plaintiff or a defendant, so you're watching a case develop and you can see that in the case maybe the attorneys are conceding things that they shouldn't be.

G: Oh.

C: Maybe for the purposes of filing a summary judgment motion so that it can be decided as a matter of law. They might say, Well, we'll say that even if the facts were such-and-such we should still win. And you can tell by looking at it that that's not the best way to go about it. That may be a factor then. One factor only, because I really do think that they look at all of this, again, in [a] context that says, We only have a limited amount of resources and this isn't the case to become involved in and to use those resources. Now I think that, first and foremost, the Freedom to Read Foundation is committed to making sure that those principles are protected. They wouldn't just say, Well, we won't join. There would be an effort made to discuss it with the attorneys, to see if you might be able to persuade them if you felt strongly enough that it wasn't being litigated in the best possible way. You might try to persuade them but that doesn't always work.

G: Okay.

C: You might want to say to them, Here's what our concerns are and we don't think you should be conceding all of this, because you don't have to, and you may end

up making bad law because the judge will decide it on the facts that haven't been fully developed yet.

G: Okay. I don't suppose you can think of an example of a case resulting in bad law that would be simple enough to (pause)—

C: Offhand, I can't think of a case I would use as an example. And, I guess, to some extent, I wouldn't. A lot of times those conversations—I wouldn't want to put, you know, (laughs) someone in the position of having said, Well they didn't quite litigate that case the way I would've wanted to. Because when I give that advice as a lawyer to my client, The Freedom to Read Foundation, that's privileged information.

G: Right, right. Okay, well another factor that was part of this was a party's commitment to the case in terms of keeping a party from settling, because I guess if they do you get no law, which wouldn't quite be desirable. How do you figure out whether a person has staying power? Some cases drag on for years.

C: You know, I think that's something that you look at but it's not something you always know the answer to.

G: Of course.

C: I think it wouldn't be something that you could determine in every case. But it would be something if it became obvious that someone really wasn't bringing the case for the constitutional principle, they were bringing it because they wanted to get some sort of money settlement. That would be a case you might not get involved in. There's no particular case but an example that comes to mind is perhaps if a book were banned, it generally wouldn't be the kind of case where you were trying to get some kind of money settlement. But if, for some reason, there was, that wouldn't be a case that necessarily the Foundation would want to be involved in. The one they would want to be involved with is the one where the constitutional principle of protecting the library against censorship. It's the principle that you want to protect.

G: Right.

C: The Foundation isn't going to use its resources to help someone else get a monetary settlement.

G: Okay. So, according to North, these criteria were developed to reduce subjectivity when the Foundation decides which cases to support and, as you're saying, to help focus on what the Foundation's reason to be is. To an outsider like myself, logic and reason seem to reign supreme in the realm of law.

C: I'm sorry, can you repeat that? I didn't quite catch that.

G: Oh sure. To an outsider like myself, logic and reason seem to reign supreme in the realm of law but it also seems that intuition must factor in. I imagine it would be somewhat relevant when you are scrutinizing a party's commitment or perhaps during a jury selection in other kinds of cases. Would you talk about how intuition plays a role in your craft?

C: Well, I think certainly as a litigator or even as someone who might be a counselor, kind of behind the scenes, you are always using your intuition to see how best to present a case. Sometimes it's even how best to present it to a judge. Is this a judge that would prefer to have a case heard all the way through? Is it better to file a summary judgment motion? Maybe I should spend a minute describing what that is.

G: That would be good.

C: When you file for a summary judgment, for example, you're saying to the judge, there's no dispute of fact.

G: Okay.

C: And we think you, the judge, can look at the facts that there are—there's no dispute—and decide it as a matter of law. If there is a dispute of fact, then the judge can't grant a summary judgment and there has to be a trial. There are certainly some judges that are more comfortable saying, There really is no dispute of material fact and so I can decide this, versus judges who say, Actually I'd be much more comfortable if we had a full trial. So sometimes you have to use—You're not just using your intuition, because you're looking at the judge's past cases and you're looking at how the judge has dealt with other situations. But, in some sense, a little bit of intuition—a little bit of kind of gut instinct comes into play when you decide, Do we even go through the process for filing a motion for summary judgment? Is there a value to it? Maybe there's a value to it because you ultimately think the judge may not grant it, but it's a way of educating the judge a little bit early about the case. So you might think that there's a value to that. Or, you might think, really, in this case—even though you may feel very strongly that you should win it on summary judgment—you know the judge won't grant it and may be annoyed that you took up the time to bring it.

G: (laughs)

C: It's not a guessing game; it really isn't. It is more intuition, gut instinct and experience that comes into play. But it's a little bit more than just—there's nowhere that it's written what you should do. So I think in that sense, you do

need to use some intuition and experience—I don't know if that makes sense—as you are coming up with your strategy for a case.

G: Okay.

C: And sometimes you have to have a sense of which witnesses will have a greater impact on the judge or jury.

G: Right, okay.

C: To some extent it's experience, but it is some intuition that comes into play, because I've seen too many times someone who appears like they may be a very good witness when you're talking to them. When they finally get into their deposition—a deposition is taken during the discovery process of fact, so it's not before the judge but it's before a court reporter as sworn testimony—you can see somebody who seemed like they would be a good witness turn out not to be. There's something about the pressure of actually being a witness.

G: Oh.

C: So you do, over the years, hone an ability to be able to sort of use, again I think, your intuition about whether someone will be the best advocate for you or the best person to really describe the facts. I think that's another thing, another area.

G: Do you ever test out a person and do kind of a mock questioning to see how they might hold up?

C: Sure, I mean, absolutely. You have to, just to be a good attorney, question someone. And there are different kinds of witnesses. You can have a case where if there was a book removed from a library, there are only so many people that can be witnesses.

G: Right.

C: The people in the library, the school board, whoever is bringing the case. There you don't have much choice. But when you're doing a case like the CIPA [Children's Internet Protection Act] case, where you're trying to explain to the judges why filtering would be harmful, there are lots of librarians you could pick to tell that story. So you do have a little bit more of a leeway in deciding who you will pick to tell that story and that's where you have to use some intuition. Who is going to be the best person to not just describe the facts, but really be able to communicate?

G: Well, Candace Morgan was a witness in that case, under different circumstances. When the other side put the pornographic pictures in front of her and tried to rattle her cage it was interesting that she was calm, cool and collected.

C: Exactly, and that's what we expected.

G: You did.

C: She was a perfect witness, a great witness, because we knew that she would be able to withstand whatever cross-examination came her way. That's an example of being able to say, lots of librarians feel the same way but who will be the best person to tell this story to the judge? Who will have the impact? That's definitely a place where you have to use intuition.

G: Okay. Is there anything else you would like to say on this topic or about the Foundation's litigation support criteria?

C: I guess only to sort of finish up by saying that none of them are isolated. It really is a look at the whole situation, the whole context of not just the case but the time. What are the issues now that are important? So, I think all of that comes into play.

G: Now the Foundation has been involved in so many cases that have resulted in significant shifts in First Amendment protections. I want to ask you to comment on a couple of these, in terms of their importance to libraries and how they continue to assist in the defense of the freedom to read in libraries. I'd like to throw out a couple of cases and get your comments on them.

C: Okay.

G: And nothing is really obscure.

C: Okay.

G: First, the 1982 *Board of Education, Island Trees School District v. Pico* decision, which I believe limits (clears throat) excuse me. [It] limits a school board's discretion in removing books from school libraries. It's said to be the most important decision to date in terms of school libraries and the First Amendment. Would you comment on the significance of this case?

C: Well, it is certainly a case that lawyers still rely on very heavily. It was an important case. It was an interesting case in that there was no majority opinion and the justices, really, there were so many different opinions written and they joined different parts of it with each other.

G: (laughs)

C: But the important one is the plurality opinion, which made it clear that if there was an unconstitutional motivation—that is, if the reason for removing the book was because the person removing it disagreed with the content of it, or the viewpoint in the book—that would be unconstitutional. That continues to be a case that is relied on in book censorship cases as the principle and that's the test that's been applied by court after court after court—the lower courts who have had to deal with these issues. So, you really can't overstate its importance. It's an important case. Important also was the discussion of how important a library was to the community, I think. The recognition of that.

G: Okay, now I was reading somewhere, someone pointed out that the kind of viewpoint discrimination the Island Trees School District Board exhibited when it pulled those books out of the library is now exercised by the filtering software companies that deliberately, deliberately overblock certain types of content. Do you think that viewpoint discrimination is a relevant issue here?

C: Do you mean in the Internet—

G: Yes, the filtering software companies deliberately—I mean, this is an allegation that sites are deliberately overblocked in addition to some things that the filters just block out.

C: You know, I don't know really what the motivation is. There are so many different companies out there and I wouldn't want to generalize. But I think that the problem is that, even if you didn't have an agenda, that it's impossible to just filter out material that is illegal. Even under the CIPA law, if you accept that funding, the only kind of filtering that's required is filtering out visual images that are obscene, or child pornography, or harmful to minors under the statute. There is no filter that can do that.

G: Right.

C: It just can't. It will both overblock and underblock. There's probably child pornography out there that a filter won't block because it can't. It's just a machine. It's just a software program.

G: Right.

C: It can't do it and clearly it will underblock, and clearly it will overblock, because there's no way to set it to find things that are just illegal speech because it's not illegal speech until a court finds that it is.

G: Well, there's that too.

C: So there's no way that a software program can do that. So I guess I would be reluctant—I don't really know what the motivations of particular software companies are to say that they are deliberately trying to do it. Even if they are not, they are doing it, because there's no way that they can do it without overblocking and underblocking.

G: Right, okay. Is there anything else that, just getting back to Pico for a second, is there anything else that you would like to say about Pico?

C: No, I mean, I think it was an important, really important case and it's still a very important precedent that you'll find being cited by lower courts, and it continues to be a very important case.

G: Okay. Now, moving on, there's the case *United States v. Playboy Entertainment Group* [2000]. In this case the Supreme Court struck down Section 505 of the Telecommunications Act of [19]96 as a violation of the First Amendment, which, it seems, loosened regulation of cable television content programming. This case has been used to support arguments in cases in which the Foundation has participated, including COPA [*Ashcroft v. ACLU*, 2004] and *Doe [and] ACLU v. Gonzales* [*Doe v. Gonzales,* 2005]. Can you give examples of how this case is used to defend the freedom to read?

C: Well, I think that a lot of the cases recently have dealt with how different media is treated by the courts as far as First Amendment protection. A lot of the cases recently have also dealt with the issue of stigma, and that was also in the CIPA case. One of the things often we see in legislation these days is, well, something will be blocked, but you can go ahead and ask for it—that kind of a thing. I think that the courts have, importantly, recognized that there's a stigma associated with asking for something that's being *labeled* as perhaps a bad thing. I would say that one important case along those lines is a book removal case in Arkansas [*Counts v. Cedarville School District,* 2003]. It was actually a *Harry Potter* issue—

G: What a surprise (laughs).

C: A student brought home a *Harry Potter* book and the mom felt that it was an inappropriate book, and she challenged it. The school board actually ended up—although the challenge was only to one book—banning them all from open access. They said that in the school they would put them on a restricted shelf and the students could only get access to the books if they had a parental permission slip that allowed them access. The court—and we had filed an amicus brief in that case as well—accepted the argument that that was an imposition on First Amendment rights because there was a burden involved. If you should be able to

get access to information, then there should be no burden on your ability to do it. So, even though the government was arguing that the student that brought the case that challenged the removal with her parents, they said, Well, what kind of legal standing could she possibly have when her parents—they're willing to bring a litigation matter about this, certainly they're going to be willing to sign a permission slip, right?

G: (laughs)

C: And, you know, she's got the books at home, so clearly this is not a big deal. But the court said, Yes, this is a big deal. If you have the right to access the information, then there shouldn't be any burden placed on that. If I'm recalling correctly—there's so many cases that we're involved with.

G: Right.

C: That was a lot of what the *Playboy* case dealt with is the whole stigma issue, where the only way you would have access to something on the cable channel is to— Everything would be scrambled and you would have to ask for it to be unscrambled versus the other way around where, if you wanted it scrambled, you could request for it to be. That's a better way to go. That's my recollection of if without having it in front of me.

G: Okay. Now, another big one was the Communications Decency Act, and in this case [*Reno v. ACLU*, 1997], restrictions on the display and transmission of indecent communications online were found to violate the First Amendment. The conclusion being that the Internet enjoys full First Amendment protection unless the government can prove otherwise, as it did with CIPA, which we will talk about in a little bit. Would you care to comment on the ongoing significance of this ruling?

C: Sure. I think that the CDA case was really important because I think there has been sort of an increasing movement among legislatures—and that's not just the federal Congress but states as well—to say well, we need to protect our children and to pass legislation. Everyone recognizes that it is important to protect children. But the way the legislatures are doing it is that it would curtail the amount of speech that adults would have access to. That's exactly what the CDA case did. It said, under penalty of criminal punishment, that content providers couldn't put anything on the Internet that might be indecent—putting aside even for a moment what that means, because the court also said that that term was vague.

G: Right, right.

C: The court really focused in on, you can't say that the way we're going to protect children is by cutting off access for adult speech. The test that the court applies might be worth sort of talking about for a minute.

G: Sure.

C: When there is an imposition or any sort of burden on First Amendment rights, and there's a challenge to that burden or that imposition, or restriction, the test that the court will look at is, is there a compelling interest that the government has? Secondly, if there is—

G: For curtailing the speech?

C: I'm sorry?

G: For curtailing a certain kind of speech?

C: Right. Does the government have some compelling interest for putting a restriction on access to speech, or speaking? Even if they do, there are two more things the court will look at. One is well, okay, you may have a compelling interest but is this narrowly tailored to address that?

G: Right.

C: And then third, is there a less restrictive way to do this? So in the CDA case, the courts said, Well sure, we all think children should be protected. No one wants children exposed to child pornography or something like that. Child pornography isn't protected anyway; we certainly don't want that to be on the Internet, it's illegal. But the way you have crafted this law restricts access for adults to material that is clearly protected for them. There are other ways you can do that because parents can protect their children by using filters at home. They can make them as limiting as they want, but they are doing it for their own children. Really, that theme continues through all of the cases and even into CIPA, where the court upheld CIPA. First of all, it was a funding issue, so it wasn't being imposed as being a criminal violation kind of case.

G: Right.

C: So it was basically, well if you take the funding, you know what you're getting into; this is what you have to do. But, importantly, the court said the reason they were upholding it is because when we got to the Supreme Court, the Solicitor General of the United States stood up there and said, Well, this really won't impact adults. So we were back to that theme again because, after the CDA case,

the government knew that the court wouldn't uphold anything that would place restrictions on adults.

G: Right.

C: In the CIPA case, what the law said was that if you accept the funding you have to have filters, again, that blocked visual images that were obscene or child pornography, or harmful to minors, *and* that you had to have a system in place to disable the filter. The way the law was phrased, it said you have to be able to disable it if there's a bona fide reason to do it.

G: Research interest.

C: Right. Clearly that left too much discretion in the hands of some individual to decide. But what the Solicitor General said was that we are interpreting that to mean that *any* time an adult asks for it to be disabled—no questions asked—it will be disabled. It's only because of that that there were enough votes in the CIPA case, that that statute was upheld. But that, of course, the Solicitor General didn't say until he was standing up in front of the Supreme Court. That was not how the case was litigated, initially or below. But I think, to go back to your initial question, to the importance of the CDA case, it was important that the court—*unanimously* in the CDA case—every justice held that in the interest of protecting children this didn't mean that you could come up with a scheme that would curtail speech for adults. You had to find a less restrictive way to do it.

G: Were you caught off guard in the CIPA case when the Solicitor General made that qualification?

C: I think it was such a departure from everything that they had said below that it was certainly a different interpretation of that and it was the first time. I think the Supreme Court justices may have been a little caught off guard because if you read the record—and I think they had; they were very well prepared and had read the decision below—that was certainly *not* the position the government attorneys had taken below.

G: Okay. Is there anything else you want to say about CIPA? I'm sure it will keep coming up because it was a major case.

C: No, not at the moment.

G: Not at the moment, okay. Along not the same lines but similar, there's the 1998 COPA case, *Ashcroft v. ACLU* (2004), which is now, I think *Gonzales v. ACLU* [*ACLU v. Gonzales*, 2006] enforcement of which has been blocked by the courts for years. COPA sought to punish commercial Web sites that failed to obtain

proof of age before serving up material that was considered harmful to minors. In the last decision, this, I guess, wasn't considered to provide the least restrictive means of shielding kids from harmful content. But the Supreme Court did not rule on its constitutionality, but remanded it to the lower court. There is a trial scheduled for October of this year, yet again. What do you expect to happen with this case?

C: Well, I guess I need to step back and say this case is part two to CDA.

G: This is son of CDA.

C: Right. This is the government's attempt to cure the problem in CDA so that, instead of all content providers, they tried to restrict it to commercial providers. They changed the age to17 and under and they made it harmful to minors versus indecent speech. So those are sort of some of the big changes.

G: Okay.

C: But I think the courts, including the Supreme Court, have upheld the fact that it was unconstitutional. The issue on remand is the court has said, well the last time that the trial court looked at filters was so long ago that there has to be another trial to sort of see what the state of filtering is right now. Because, again, kind of going back to that test I described, the court is looking [at], you know, Is there a compelling interest? I think that the courts basically have said, Yes, there is a compelling interest to protect children, and that's the interest that the government advances for why it needs this. But the question is, Is there a less restrictive way to do it? The court, in CDA and in the initial COPA trial, held that there is a less restrictive way to protect children, which is that parents can use filters at home. So I think that what the court was saying is, Are filters still effective? And [they are] taking a look at that. I think it is worth saying that you have to look at filters, in what context are you looking at them being used?

G: I was going to say, this is kind of difficult.

C: You know, I think sort of at face value seems like it is but I don't think it is.

G: Okay.

C: Because I think that when you're talking about CDA and about COPA, what the government is trying to do there is to say to the people actually putting content on there, You better not put anything on there that might be harmful to minors that a minor might get access to. It's hard for a content provider to know what that is so, naturally, because they don't want criminal penalties, it's going to chill speech.

G: Sure.

C: They are going to be putting only what would be acceptable to the very youngest of kids because that's not the law. No one wants to take the chance of being prosecuted. So clearly it will chill speech. What the court is saying is that, rather than doing that, where adults won't be able to have access to speech and won't be able to speak in a way that's completely protected constitutionally for them, it's much better, if a parent is concerned at home, that they use filters. They can set them with as many limitations as they want or they can say entirely that the child can't get on the Internet. You can do that. There are filters there and protections. The parent can say, You don't get on the Internet unless I'm there, or, You can only get on these sites. There's a lot that parents can do and filters can obviously do all that, because you can set them to limit as much as possible. So, in that sense, clearly they are a less restrictive alternative to saying to content providers, You're restricted from putting certain speech on the Internet. I think that the difference in the library context is that there it's no longer the parent making the decision.

G: Right.

C: It's trying to force the library to impose that on the whole community. That's why it's a problem. The decision the parent makes with their own children they make. They are in the best position to decide for their own child what they're ready for, what kind of material. But as an entity serving the whole community, filters don't work because there's no way that a filter can be set that is set in a way that is most protective of First Amendment rights for all members of the community, and for the kind of access that everybody might want.

G: But if filters become relied upon—and I don't know if this is something that can be determined from one case to another—as a reasonable alternative solution, does that just kind of become a norm or a standard that is then accepted, whether or not it is the best way for a community?

C: Well, I think there are people that might say, Well, it's much better to teach your children to be responsible rather than to use filters with them. But I think that we would all agree that every parent has the right to make their own decision as far as that goes. I think that the only thing worth saying as why a filter is a less restrictive or a better alternative is that it's better to use that for the people who really want it to have that than to restrict access to information for everybody else.

G: Okay.

C: Because there's some people who want to restrict access either for themselves or their own family, you see what I mean.

G: Or their whole community. [Those who try to restrict everyone's access.]

C: Well, I don't think for the whole community. I think that's the problem. Filters work as an individual choice made for an individual family. A parent restricting access to the information that's out there—and when I say that, I'm not talking about information that may be illegal. If it's obscene or child pornography, then it clearly shouldn't be there.

G: Of course.

C: That's where criminal enforcement has to come in to get that off the Internet. So, what I'm always talking about [is] material that doesn't fit those categories that clearly is constitutionally protected.

G: Of course, of course.

C: Right. So in that case, to me, you can't ban it for everybody because people's views are so different in what they don't want, maybe, their children to have access to. For one parent it might be, you know, violence, for another it might be something that is sexually explicit, for another it might be both. For another it may just be games because they want their child doing homework.

G: (laughs)

C: But it can be— There are so many things and as long as we have the ability for parents to use some sort of blocking or filtering software, to individualize it for their own children and make their own family value choices, that to me is the best alternative to saying to someone, You can't put that on the Internet, even though it's constitutionally protected. The reason why filters don't work in the library context is because then it's not just a mom or dad imposing it on their own child.

G: Right.

C: It's somebody, some individual working for the library—whether it's the director or the board of trustees or someone—imposing those values on everybody in the community.

G: Right.

C: The better way is for parents to be involved with their children at the library, to continue to make those choices that they are making at home.

G: Now, in the COPA case could the other side use the underblocking argument and say, Well, these don't really work altogether. I mean, can they turn the arguments that ALA has used in CIPA against ALA in that case?

C: I think they tried to. Certainly they've tried to but I think that because a parent can block by completely eliminating all access to the Internet if that's what they want, there's really no response to that.

G: I see.

C: I think the other important thing that sometimes gets lost is that in COPA, of course— The law, because it's criminal law here in the United States, can only apply to speakers in the United States.

G: True.

C: But there's so much on the Internet that is put on overseas that how effective is this really going to be? So that the second part of the test too is important. Sometimes folks lose sight of [it] and they go jump right to the less restrictive alternative. But it is also important to say, Is this really narrowly tailored to address that compelling interest?

G: Right, okay.

C: I would say it isn't. If 40 to 50 percent of the speech that is on the Internet is posted overseas, and this law won't have any impact on it, then it really—it's really not accomplishing anything. It's not really serving that compelling interest. I think that's important to look at, too.

G: Sure.

C: That's not the way to do it.

G: Okay. Is there anything else you would like to say about COPA?

C: No. What will happen in the case? I think you asked that and I didn't really answer that. I'm not involved in the day-to-day discovery process. I think a lot has been, there's been a lot of speculation that, Well filters have gotten so much better. I think that filters have gotten better in the sense that, you know, when they first started, it would block so much.

G: I know.

C: That you couldn't even get information about breast cancer through looking on it because the word breast was there. Have they gotten better than that? I think so. Do they still underblock and overblock? Yes, I think so and to a great extent. I think those are the facts that are going to come out, so it will be interesting to see how that case turns out.

G: Going forward, I'd like to touch on a couple of areas that, it seems, are going to command the Foundation's attention and resources: the Internet, of course, and the USA PATRIOT Act. Another one of these cases is, Congress continues to devise legislation to protect children from online predators, and one of the latest ones is the Deleting Online Predators Act [H.R. 5319], or DOPA. This bill would, among other things, require children to have adult supervision to access, I think, so-called online communities of social networks, like MySpace.com. Would you care to comment on this proposed legislation?

C: Well, I have to be honest that I don't usually work with legislative matters. Being a litigator, I'm not involved in that part of it, so I actually have not read the statute. So, I'll be commenting only based on your description. I myself haven't studied it. But, I think it bears noting that, in a lot of this, what's also forgotten is that children, minors, do have First Amendment rights of their own. That is something, a principle that the Supreme Court has upheld many, many times. So I think that any sort of restriction on children—even though this is just focused on children now and not focused on adults, which is where some of these cases we've been talking about had an impact—I think that it will have to be evaluated in that context as well. The recognition that minors do have First Amendment rights and is this going too far? And, again, looking at that test of, Well there may be a compelling interest to protect them but is this really narrowly tailored to address that and are there less restrictive ways to do it? So, I can't comment much more than that because I'm not really familiar with the legislation.

G: Sure.

C: Other than I've heard about it in the abstract but I think it's worth noting that just because it involves just children, a lot of times people think well, of course you can have any legislation then and that's not necessarily true.

G: Okay then, probably it's too vague to answer this question. You didn't brief the ALA representative that testified before the House [of Representatives] last week, then?

C: No, I didn't. I wasn't involved with that. I really don't have a legislative practice.

G: Yes, okay. I was surprised because her arguments seemed similar to those used in CIPA and I wondered, considering the outcome of CIPA, how the Foundation might strengthen a challenge to that kind of law.

C: Well, because the court initially struck it down on, based on the fact that you are restricting too much access to adults.

G: Yes.

C: Even the lower court didn't really address the issue that, well, what about minors? I don't know that the courts focused on that although that argument was there. So I think that, even post-CIPA, CIPA didn't say, well minors don't have rights.

G: Right.

C: Certainly that is a case that could still come up because the court left open a possibility that someone—

G: The "as applied?"

C: Right. Could bring an "as applied" challenge so that you could still have— In a particular situation, if a minor wasn't able to access information that is clearly constitutionally protected for minors because the filter was in place and they couldn't get it disabled, that could still be a challenge we see.

G: It would be for a minor and not an adult not being able to access?

C: Right. I think that that is still a possibility, if it's constitutionally protected. Remember, the only thing that CIPA requires you to block is obscenity, which isn't protected for anyone, child pornography, which isn't protected for anyone, or material that's harmful to minors. But if, consistently, a minor wasn't able to access material that was constitutionally protected—[if the material] didn't fit that category of harmful to minors because of the type of filtering program that a particular library chose [and] there was no way that they could bypass it—[then] they asked for it to be disabled to get to a site and they couldn't.

G: Right.

C: They do have First Amendment rights and it's possible you could still see a challenge of that sort.

G: Okay. Now, I don't know much about these cases but there's mini-CIPAs that are state-level.

C: Right.

G: Sort of modeled after CIPA. How do you deal with those? I mean, is it even possible to fight a state-level CIPA if it's modeled really closely to the federal law?

C: Well, I think again—this is CIPA, not CDA?

G: Right. Right, because the CDAs are blown out of the water pretty much.

C: Right, Right. I think again you'd really have to look at what does it say? How is it set up? Again, what sort of access to material under the statute is provided to adults? Because you always have that concern, I would say, as a library, as an "as applied" challenge, to make sure that you still are providing complete access for adults.

G: Okay. (pause) So, moving on to *Doe and ACLU v. Gonzales* [*Doe v. Gonzales*, 2006], this case challenged the NSL [national security letter] and gag order provisions of the [USA] PATRIOT Act.

C: Yes.

G: Or, national security— You can explain this better than I can. They were ultimately successful when the government dropped its demand for library records from The Library Connection. But the Foundation produced amicus briefs at the district and appellate levels. After I read these, I felt as if our First Amendment rights are null and void in the face of the [USA] PATRIOT Act. Would you like to comment on the Foundation's involvement as a friend of the court in this case?

C: Sure. You know, I think that certainly the [USA] PATRIOT Act and the national security letter statutes have curtailed privacy rights dramatically, and that's why the Freedom to Read Foundation has been involved as an amicus in these cases but also why ALA and the booksellers foundation [American Booksellers Foundation for Free Expression] have been very involved at the congressional level trying to change the statutes. I would say that given the most recent amendments and given these cases that I wouldn't say that it's null and void. I think that there's a recognition by the courts, whenever a challenge has been brought and where it has been adjudicated, that there are First Amendment issues involved, which is why the court found, and we had argued, that it has to be unconstitutional if there is no recourse to a judicial review of it. Because, if you didn't have judicial review of it then, yes, it would be null and void because your only option would be to turn it over. I think that there was a recognition by the courts and then ultimately by Congress in the most recent amendments that there had to be some process. Now all of those rules aren't out yet because in the case

of the FISA [Foreign Intelligence Surveillance Act] court they had set up a procedure for that and how that's set up. But I think that while there was perhaps more, much more that the library and booksellers would have wanted from the amendment, certainly it isn't fair to say that they didn't get something. It's clear now that you do have to have some right of review.

G: Okay, so how can this case provide leverage for other kinds of challenges to the [USA] PATRIOT Act?

C: Well, I think—

G: That's a very general question.

C: Well, I guess I would say—

G: As it affects libraries and booksellers.

C: Right. I think what's important about it is, right now the statutes have been amended to provide for judicial review and to at least provide for some process for requesting the gag order [to be] lifted. I think because the opinion was so strong that it will have an impact on the kind of procedures that are set up.

G: Okay.

C: And I think that it will have a great impact on the challenges that will come. Because there is a judicial review process in place now, the next step will be that somebody will get a request and they'll use that judicial review process. I think that it is important that this judge at this district court level and the judge in Connecticut came out very strongly protecting First Amendment rights and spoke out strongly against these permanent gag orders. I think that that will have an impact on cases to come.

G: Okay. So, where do you see the battleground lying ahead for the Foundation—the most important issues?

C: You know, unfortunately, it's hard to just isolate one. There are still several places. Everyone has been focusing in recent years on the Internet and filtering and, most recently, on [USA] PATRIOT Act issues. But there continue to be book removal/book censorship cases all the time. So, I think that the Foundation can't let its guard down and hasn't on that either—on the very core of being able to get the books in the library that the community wants and not having that censorship take place. The Foundation is involved in [and] continues to be involved in those cases as well, sometimes by filing amicus briefs and sometimes simply by providing access to counsel for local lawyers

that are defending those cases, and—in a less direct but certainly critical way—by providing these Lawyers for Libraries training seminars.

G: Right. Would you talk about that a little bit?

C: Yes. I think with those, you do empower local attorneys to be able to handle some of these issues immediately and correctly from the beginning, so that when a book censorship issue comes up they're prepared right away to know what to do to try to [do].

G: When you say correctly, what does that mean?

C: Well, I think that sometimes local attorneys are in a difficult position because sometimes they are representing everybody. They represent the library and they may represent the school board because they represent the city.

G: Right, right.

C: So I think that sometimes without having the right foundation of information they didn't always know how to respond when one part of the client they are representing is trying to censor a book that another part thinks shouldn't be censored. So I guess that's really what I mean, is that these training sessions provide a foundation of information on the law for lawyers, and they are better able to serve their clients, because they're better able to serve the libraries and defend them when there's a censorship issue. But they're also better able to advise perhaps a school board or a library board that, in the end, given all these precedents, removing this book, they're not going to win and they're just going to subject themselves to attorney's fees and costs that they'll have to pay at the end of the day. So, I think that the better informed attorneys are at the local level, the better everyone is served and First Amendment rights are protected.

G: And you inform these lawyers during the training about liability.

C: Oh sure, definitely. It's something that is brought to their attention so that they can, in turn, bring it to the attention of their clients so that they realize that if they are censoring a book and it's clear that that's going to be held as unconstitutional later, then they face that prospect of not only having to pay for defending themselves but also having to pay the attorney's fees for the other side, which under statute many times they have to do.

G: Okay. (pause) Well, thank you for this interview, Theresa.

C: Well thank you. It's always interesting to talk about all these issues. I hope it's helpful.

END OF INTERVIEW

Chapter 6: Candace D. Morgan

Introduction

> *In a government institution librarians can do only that which they are authorized to do by the nature of their institution. Nowhere that I know of is it written in any state constitution or state law that librarians have the authority to assume parental rights. (Morgan interview with Gage, July 8, 2006)*

Candace D. Morgan was born in San Francisco in 1942, and grew up in central and southern California. She was raised in a lively political atmosphere, with spirited debates among family members of different political persuasions. While in high school in the latter 1950s, Morgan joined the Young Democrats of California, which was formed by Senator Alan Cranston. At that time she learned the importance of the First Amendment from her father, who belonged to the Republican Party. In the interest of providing a balanced viewpoint and encouraging his daughter to articulate her emerging

opinions, her father often took time out of his busy schedule for the two of them to debate their political views. At the same time, she got involved in her high school debate team, which earned the distinction of being California debate champion. Morgan's mastery of the art of argument would come to stand her in good stead when debating thorny intellectual freedom issues.

In college, Morgan majored in political science and minored in sociology at the University of California at Riverside, which was then a small liberal arts college. Having developed an interest in constitutional law by then, she also took whatever courses were available in the subject, graduating from Riverside in 1963. In 1964, Morgan received an M.L.S. from Columbia University and later, in 1999, earned an M.P.A. from Lewis & Clark College.

Morgan's introduction to library work was as a volunteer for a public library in National City, California, while she was in junior high school. Today, she has over 50 years of experience in the library profession in public, state, special and academic libraries. Outside the library, she serves as an instructor at the Emporia State University School of Library and Information Management and Portland State University's Hatfield School of Government. In her advocacy of intellectual freedom, Morgan has extended the purview of her work by chairing the American, Public and Washington Library Association Intellectual Freedom Committees and serving as President and board member of the Oregon chapter of the American Civil Liberties Union.

Morgan has been connected to the Freedom to Read Foundation for the better part of the last two decades. She served as an ex-officio trustee when she chaired ALA IFC

four years running and as an elected trustee who was twice a FTRF president. Morgan currently functions as the Foundation's vice president, chair and faculty of the Lawyers for Libraries and Law for Librarians training programs, and chair of the Roll of Honor Committee. She has also worked on the Foundation's Nominating Committee.

Two interviews with Morgan took place in a small meeting room in the beautiful Hillsdale Library branch of the Multnomah County Library System in Portland, Oregon, which happens to be a certified "green building." Here, Morgan talked at length about her life and work in the library profession, and her experience with the Foundation. In the portion of her conversations presented here, she explains functional areas of the Foundation, including trustees' roles and responsibilities, the process by which board members are nominated and elected, and how Roll of Honor Award winners are discovered and selected. Further, she discusses the inception and administration of the Lawyers for Libraries and Law for Librarians training programs.

In 1999, when she was President of the FTRF, Morgan testified before the Senate Committee on Commerce, Science and Transportation about S. 97 the Children's Internet Protection Act (CIPA). Later, in March of 2002, she served as a witness in the CIPA case before U.S. District Court for the Eastern District of Pennsylvania. Morgan discusses CIPA from multiple perspectives, drawing on her experiences as a Foundation Trustee, Library Director, witness, and instructor of information ethics and management. In addition to discussing specifics of the case itself, she describes how Foundation lawyers helped her prepare for the hearing and trial, her impressions of the courtroom activities, her recollections of the day the CIPA ruling came down, the implications of the

Supreme Court's decision and how the profession would respond to it. Further, Morgan provides counter-arguments to views held by supporters of CIPA and other measures of restricting the distribution and flow of information over the Internet.

Using examples from her 21 years at the Fort Vancouver Regional Library in Vancouver, WA—it was former long-time Foundation President Gordon Conable who hired her—Morgan also examines aspects of library policy development and implementation. She discusses areas such as Internet access, hiring practices, hostile work environment issues, situations involving difficult patrons, and book selection. ("I've heard many times people who want to argue that libraries shouldn't have inaccurate information on their shelves. I ask always, Exactly what causes cancer today?" Morgan interview with Gage, July 8, 2006)

Morgan has received several honors for her dedication to the cause of intellectual freedom, including the Foundation's Roll of Honor Award in 2002, the ACLU of Washington's William O. Douglas Award in 2004, and Washington Library Association's President's Award and ProQuest/SIRS Intellectual Freedom Award in 2005. In 1997, Morgan was the first person ever to be named Intellectual Freedom Champion of the Year by the Oregon Library Association and in 2004 was awarded an Honorary Life Membership in that association.

An interview with Candace D. Morgan follows.

Interview with Candace D. Morgan, July 8, 2006.

Location: Dr. Martin Luther King Jr. Library in San José.

Duration: 157 minutes.

April Gage:

This is an interview with Candace D. Morgan. The interview is being conducted at the Hillsdale Library in Portland, Oregon, on Saturday July 8, [2006]. The interviewer is April Gage, a student at the San José State University School of Library and Information Science. Today we will be talking about Ms. Morgan's role in the history of the Freedom to Read Foundation.

[In addition to her work as an educator and consultant, Ms. Morgan has 40 years of broad experience in the librarianship profession, including positions in state, public, special and academic libraries. A steadfast advocate for intellectual freedom, Ms. Morgan has held numerous leadership positions, including being Chair of ALA's Intellectual Freedom Committee four years running, Chair of the PLA Intellectual Freedom Committee, and President and board member of the Oregon affiliate of the ACLU. Currently the Vice President of the Freedom to Read Foundation, Ms. Morgan was elected President of the Foundation three times and her service on the Board of Trustees has spanned two decades. Honors bestowed on Ms. Morgan include the Foundation's Roll of Honor Award, the ACLU of Washington's William O. Douglas Award, Washington Library Association's President's Award, and ALA's Intellectual Freedom Round Table's State and Regional Achievement Award. Ms. Morgan was the first person ever to be named Intellectual Freedom Champion of the Year by the Oregon Library Association, and was awarded an Honorary Life Membership in that association.]

So Candace, you have been a trustee for the Foundation for many years and I wondered if you would outline the role of a Foundation trustee.

Candace D. Morgan:

Okay. There are two, I would say, two major roles. As is typical with a non-profit organization, fundraising is a major role. So, in fact, we indicate to everyone who is going to be nominated that the expectation is that they will participate in that and be responsible for generating a minimum of five hundred dollars in income. That can be done by contributing themselves, by recruiting contributions, by designating honorariums that they would otherwise get to the Foundation, [and] by recruiting members. As a matter of fact, we have never aggressively—in the time I've been on the board—followed up on that. Although, recently at the last Foundation board meeting we asked staff to

consider, to check to see if that is actually happening, and whether the Executive Board could make a friendly reminder to someone if they are not.

G: Right.

M: Or contributions for other people.

G: What have you done in the past?

M: Well, it's one of the major things that I contribute to, plus, at times, I have contributed honorariums to them, too.

G: You have.

M: I've also recruited members. I'm about ready to do something that was not my original idea, it was one of the other member's, and that is to challenge my students that I had last semester that if they would become members then I would match whatever they gave as a membership.

G: Oh.

M: It's thirty-five dollars for a membership so that's not a big deal—as an encouragement for trying to get new members. Getting new members is an important aspect. It's difficult. The Foundation is lower profile than ALA. A lot of people don't equate that it is a different organization that they have to join.

G: Right, right.

M: Unless they themselves were in need of legal assistance, they oftentimes don't recognize the importance. And the fact that going to court, which is what we do— that's a major function of the Freedom to Read Foundation—is expensive.

The other function is for the board to review and to make decisions about what legal battles we go into. As a matter of fact, the Executive Committee usually does this. The Foundation Board only meets twice a year and it's not often that decisions coincide. The CIPA [Children's Internet Protection Act] one did but usually that doesn't happen. We get a report each time from our counsel—it has been Theresa Chmara since Bruce Ennis died—so that she keeps us up-to-date about what's happening and what's on the horizon. It used to be [that] the Executive Board would get a conference call when a decision needed to be made but with the advent of email and listservs the request—the fact that we need to consider this—is sent to the entire board. The Executive Board members need to have a majority who respond, Yes, but any board member can respond. It also means that Jonathan [Kelley] can usually provide us access to the proposed

brief so that we can actually read [it]. With attorneys on the board, that's been important because sometimes they have made some very important suggestions in relationship to what might happen.

We, actually, are more active in joining as a friend of the court and filing an amicus brief. That, of course is also less expensive.

G: Sure.

M: But that brief review is really important then because our policies and guidelines for joining a lawsuit include the fact that there is nothing in the arguments being made—of the party who is preparing the brief—that is contrary to the Freedom to Read Foundation's purpose.

G: Okay.

M: So, there have been times in which we have decided not to join a brief because the other parties' interests may coincide in some aspects with ours but clash in other important ways.

G: Okay.

M: We need to be careful if we are lending our name to items. We, the Freedom to Read Foundation, is involved in a much broader range of legal challenges than ALA is. ALA gets involved when it is something that is core to librarianship, when any reasonable person would make the connection, and in which it would be noted if ALA was not part of the challenge. Because a challenge to a law that directly affects libraries that doesn't include ALA as one of the plaintiffs leads to questions about the legitimacy of the challenge.

G: Sure.

M: The Freedom to Read Foundation looks more broadly at legal principles. Even if the facts of the case have nothing to do with libraries, there is a potential that an adverse ruling in relationship to some of the principles that we have to have—as a basis for access to information in libraries and bookstores, et cetera—might be harmed. So we will be filing in cases in which nobody would make a connection with libraries unless they were aware about the impact of the legal principles. Sometimes those ones might raise more questions if the American Library Association were a part of it. So, law makes strange bedfellows.

G: (laughs quietly)

M: Frequently you might find yourself in a case in which the people involved are

controversial. We don't shun controversy, but the controversy is not clearly connected in most [of the] public's mind with libraries.

G: Right.

M: So that's one reason why. That's another advantage the Freedom to Read Foundation can take, is that we are separate. We are associated with ALA but we are a separate 501 (c) (3).

G: Right.

[removed]

M: We sometimes meet with the [ALA] Executive Board if it coincides with a conference, particularly to discuss strategy in a case. It doesn't happen very often. It did happen in CIPA because it happened just at the time of the conference.

G: Right, okay. This is probably really hard to quantify but how much time would you say you spend working for the Foundation?

M: You know that's pretty impossible to say because of the overlap of my interests that serve multiple purposes.

G: Sure.

M: The [ALA] Intellectual Freedom Committee, when I've been on it, the ACLU [American Civil Liberties Union].

G: Right.

M: Also, ALA oftentimes files an amicus brief with the ACLU—much more often now with the [USA] PATRIOT Act—and I teach information ethics, so one needs to keep up-to-date with what one's teaching (laughs).

G: Of course.

M: I would say that I spend a lot of time keeping up-to-date because it's such a rapidly changing field but it serves multiple purposes.

G: I see.

M: I would venture a guess, in fact, it's true. Almost all of the board members have overlapping issues. You don't get elected to the Freedom to Read Foundation Board if you aren't heavily involved in these issues in the rest of your life.

G: Okay.

M: So, as a matter of fact, the time that is specifically Freedom to Read Foundation is the necessity of going to the American Library Association conferences a day early.

G: Right, you always meet before the conference starts.

M: Yes, yes, and that's a whole day. And, reading the emails that come specifically directed from Jonathan [Kelley]. Although those emails, except when it's a brief review because of a case, are almost always also sent out on the Intellectual Freedom Action List. I'm on the Privacy Committee of the Intellectual Freedom Committee, even though I'm no longer on the committee itself, and often it's privacy-related. So, often I may get three messages that are exactly the same, so I only need to read one of them and it does three purposes.

G: (laughs)

M: I think that's true with lots of other people, too.

G: Okay.

M: So I think that the time commitment is basically keeping up to date.

G: Okay. I noticed mention of a trustee manual in some minutes and I wondered—do you know when this resource was created and can you talk about what it is?

M: I can talk about what it is. I don't know—I don't remember—when it was created. It seems like it has pretty much always been there, although I'm sure it wasn't. It has the bylaws, it has some history in terms of the Association itself, much of which is also on the Web site. And, it has that timeline, which is also on the Web site, that indicates the different cases that the FTRF has been part of.

When the Freedom to Read Foundation meets, it usually starts at 9:00 am. At 8:00 am the president and the vice president and Judith [Krug] meet with new trustees who are there to kind of go over the manual so that they understand. We remind them at that point about the fundraising responsibility, which they would have heard about when whoever on the Nominating Committee called them. We answer any questions that they might have about how things work. It talks about the process of giving grants, which we sometimes do give grants, particularly to other organizations who are non-profit and we want to make sure that they continue to represent our interests, too.

G: This is like Media Coalition gets a regular, maybe ten thousand dollars.

M: Yes, that's right.

G: Okay.

M: Not only do they frequently file briefs that we join, but they also maintain a database of cases that supplements the Freedom to Read Foundation list, with OIF [Office for Intellectual Freedom]. Their resources are a very important supplement to ours and we have a very vested interest in having them do that, and it costs money.

G: Yes, yes.

M: That's one of the reasons why we give grants to them also.

G: They also research state laws and—

M: Yes they do.

G: Is that a separate database?

M: Yes, and the intellectual freedom office does this too so we have two sources of information about state laws affecting intellectual freedom that have been introduced. We rely upon people in the field to let us know when something has been introduced in their legislature. We're hoping that the Law for Librarians will broaden that because we have the chance, in multiple training sessions, of talking about the importance of doing that.

G: Right.

[removed]

M: We need that kind of field reporting to make sure we know what's happening.

G: So as a trustee, do you have direct access to these databases or do you have to go through Jonathan [Kelley] and Jonathan's counterpart at Media Coalition?

M: You mean, with—why the databases? Oh, yes, they're online. They are available. Yes. Yes. Because one of the purposes of compiling them is to inform people.

G: Sure.

M: Deborah Caldwell-Stone [Office for Intellectual Freedom], on behalf of just all of the units that are interested in this, also keeps track of the state laws in relationship to privacy so that a person can go and see. [removed]

G: Right, right. Okay, this is a silly question but I wanted to ask it anyways.

(laughter)

I read that a present is always given to outgoing trustees and I wondered what sort of presents trustees receive.

M: It is usually books. [removed]

G: Oh.

M: One of those that I got was actually the recording of some of the oral arguments in intellectual freedom cases before the Supreme Court.

G: Oh, interesting.

M: There are things that are directly related in one way or another and, more often, [it's] books. There will be a brand new book out that directly relates to the business of the Foundation and that will be what is given.

G: Okay. Is there anything else you want to say about the role of a trustee and—

M: No. Promoting the Foundation, recruiting membership, fundraising and decision-making. We've also, and we go back and forth on this, Trustees also help keep us up-to-date on new developments.

G: Okay.

M: And, from time to time, we set aside a brainstorming session time at our meeting to discuss those trends. On a couple of occasions, when we have a trustee who actually has expertise in that area, we ask them to do a kind of a brief—an informational report before the discussion. Or, we know of someone who actually is available, either coming to ALA for some other reason, so that we can invite them to come to the meeting to give us that common background.

G: To come in and brief you?

M: Yes.

G: Okay. And are these closed-door meetings?

M: No, no.

G: When you are discussing strategy or—

M: No, no our—

G: Trends?

M: As I said, my only remembrance of a closed-door meeting—and I know it was rare because comment was made about it then—was when we were discussing what approach we would take in relationship to litigating CIPA.

G: Would you explain what happened?

M: Yes. As you know, CIPA dealt with both school libraries and public libraries.

G: Correct.

M: So the issue is, I think nobody questioned that we would file a suit. We knew that there were a lot of interested parties so we actually had a representative for the ACLU and I think maybe the People for the American Way, because we knew we were going to be partners. A real issue was, Are we challenging the whole law or are we challenging the law as it relates to public libraries? There was a strong emotional feeling amongst many people, and I don't exclude myself from it, about not abandoning the schools. We knew there was. But, we were told by our counsel—and we already knew also—that the school one would be much harder to deal with, because the legal setting of a public school is very different than a public library.

G: Correct.

M: And that it might, in fact, endanger the whole potential of winning the case if we did that. The other issue was an issue of legitimacy—the American Library Association—and standing. The American Library Association represents all kinds of libraries but school libraries are not independent entities. They are part of school districts.

G: Correct.

M: They are represented by several associations that are not part of ALA—the school superintendents [and] the National Education Association. So the issue was if the national associations representing education were not part of the case, then it would cast doubts. In fact, prior to that meeting several school people tried to make some contact with NEA to see if they would be interested in joining a suit. They did not respond.

G: They didn't?

M: No, they did not. There were not a lot of complaints amongst school administrators and school boards about the requirement to filter.

G: Interesting.

M: Yes. In fact, for some I think it was a relief.

G: Probably.

M: Yes, taking away the pressure.

G: But the Foundation had pursued school library cases throughout the entire eighties.

M: Yes, yes, that's true. Those school library cases were sometimes against school library boards. Oftentimes they were.

G: Of course.

M: But the general education community makes some distinction between books and the Internet. The school library cases focused in on the removal of materials.

G: Of course.

M: Materials that had already been inappropriately purchased according to school policy and which, oftentimes, didn't go through a challenge process. Oftentimes those cases were in which administrators summarily removed the materials—or school boards—without having gone through their process. The courts are reluctant to interfere with the appropriate legal authority of other government bodies, particularly those that have elected governance, so they give a wide latitude. It's only when it's an egregious violation of individual liberties that they actually take action. They don't do borderline stuff.

G: Sure.

M: That's part of the separation of powers and the balance of powers. That's just the way it is. It's a legislative function that needs to be dealt with as a legislative function.

G: Okay.

M: That's hard [and] sometimes disappointing for people. So we debated it long and hard. We eventually came to the decision that we would recommend to ALA, and take a stance ourselves, that we should only represent public libraries [and]

that we should open the opportunity—depending on how the case went and if it were successful—if we could convince the bodies that represent school libraries in general, as well as ALA, to file a subsequent suit, that that would be a possibility.

G: Oh, to follow up that suit.

M: That's right, that's right. Of course, that didn't happen because we lost. It was a partial loss a partial win as I explained yesterday. But the partial win was totally relevant to public libraries and not to school libraries.

G: Okay, okay.

M: One little note here. The sad part about all of this—and this is certainly not uniformly true among school librarians—but, as you know, school librarians, media specialists as they call themselves often, are often being cut from budgets and being removed from schools. I heard somebody say they were a dying breed and I don't agree with that but, in fact, it has been a struggle. They are understaffed—terribly understaffed—public libraries are too but even more so [with school libraries], and often given duties like signing out textbooks and a variety of different things that take away from the library. Oftentimes what happens is that the school, the media specialist, will rely upon the filtering to just take care of whatever might be to do with Internet use and don't spend a lot of effort teaching students how to use the Internet responsibly. That, of course, is the huge problem with filtering. The amount of time that children and teens spend searching the Internet in the library, compared to all of the other options available to them, is miniscule. If everyone breathes a sigh of relief and says, It's taken care of, we're doing a huge harm to youth because we are not teaching them how to make their own choices in a responsible way. Without deciding what is responsible for them but to help them learn how to use the Internet. It isn't just an issue of sexual content. It's also an issue of authenticity and the best source.

G: Sure, sure.

M: That's very bad, especially when we hear about how oftentimes searching the Web becomes the major means of getting information for them, in school and in life. If they don't know how to use it intelligently to find what they really are looking for, it's a bad thing.

G: That's true.

M: That's been the worst byproduct of mandatory filtering as far as I'm concerned.

G: Okay. Not their safety but—

M: No, I don't think [so]. We provide them with a nanosecond of safety in the library but that's only a small portion of their life. Also, the other really horrible byproduct is the removal of parental rights—the interference with parental rights. Parents no longer, in a library setting, have the authority to provide guidance for their child. If in fact there is mandatory filtering then the parent can do nothing about it.

G: That's true.

M: Theresa Chmara has begun to suggest that a parent sitting with the child—[if] the parent is doing the searching and the child is there—would not be in violation of CIPA. That's a jump that I certainly would support. It has to be a guess about if somebody would bring [suit]. But, that does offer some option for what a parent might do in relationship to that because it's part of the parent's job to help the child learn [and], according to the family's values, how to use resources. The library is the place they can do it without a charge.

G: Right.

M: The library is a much better environment than most other places outside the home where a child might go. Although most homes have computers, many of them do not have even the possibility for broadband or high-speed Internet access. It's not available everywhere in the country.

G: Right.

M: It's not affordable everywhere in the country.

G: Right.

M: So a whole bunch of the large database stuff that children and teens might need to get access to—it's almost impossible to do so on a dial-up home computer.

G: Right.

M: So the library is the place—

G: If you happen to have one.

M: Yes, that's right. That's right.

G: Okay, I actually had another question, getting back to this case. Now the ALA and the ACLU, as we've said, do partner frequently on many, many things. Why do they file separate suits as they did in CIPA?

M: I think they very much wanted to be high profile also, and the cases got combined. We knew they probably would get combined. But, of course, they didn't have standing to file, so they needed a public library. The Multnomah County Library was the library that stepped forward to do that.

G: Right. (inaudible) The one we're sitting in.

M: Yes, right, which is not inappropriate, particularly for Portland [Oregon]. It was a good thing for which they got very little flack in our community about (laughs), interestingly enough. But it also meant that the ACLU could immediately start dedicating a bunch of their legal research time. They could go forth without having to consult with the governance of their organization. They solicited some expert witnesses and did a lot of work on it so that it was, from the ACLU's point of view, most appropriate that they separately have a case.

G: Okay.

M: If you are an amicus, all you do is file a brief.

G: Right.

M: You are not in on the decision making.

G: Right.

M: If you file a suit yourself, then you are in on the decision making. It was a plus to us as well, to the American Library Association, that that happened.

G: Now as you pursue your separate paths of inquiry and strategy, are you comparing [notes]? I mean, because the Foundation and the ACLU are so close, are you comparing notes all along the way?

M: Yes, the attorneys were in constant [communication]. They actually flipped a coin as to who was going to do the oral arguments, and that's typical. If one person wanted to, they could have done it but I believe they flipped a coin and the American Library Association [won]. We got Paul Smith [from Jenner & Block]. They were both— [Smith and] Ann Beeson [from ACLU]—very strong attorneys. Their attorneys were present and, actually, an attorney from Multnomah County's legal office was also present in the courtroom during the arguments because they were actually the plaintiffs.

G: Right.

M: He was involved. He actually went to Lawyers for Libraries.

(laughter)

He is in private practice now. He's no longer is with Multnomah County but he is still very much involved with Lawyers for Libraries. The new attorney who represents Multnomah County went to Lawyers for Libraries as soon as she was appointed to do it.

G: Good.

M: They are very supportive of that (laughs).

G: Very good. My other question is, when the two of you come at this thing with two cases, does that give power to the suit?

M: There's power to the cause in relationship to the resources dedicated to it.

G: And that's it?

M: It doesn't make any impact in relationship to the justices, I'm sure.

G: Okay.

M: Although, they get a lot more information, obviously, as a result of that. Because we had legal staff representing both, plus a lot of assistance from the others who joined us in amici fashion. All the appropriate organizations were very much involved in that.

G: Okay. (pause) We'll come back to CIPA in a minute.

M: Okay.

G: You've chaired the Roll of Honor Committee in the Foundation. Could you just talk a little bit about the criteria for selecting awardees?

M: There are a number of intellectual freedom awards. The focus of the Foundation award is people who have benefited the Foundation and there are a variety of ways that that can be. From time to time a major part of the benefit has been significant financial contributions.

G: Sure.

M: Or, for example, Carolyn Forsman is selling her jewelry all the time to benefit the Foundation.

G: You gave her her [Roll of Honor] Award.

M: Right, that's right, yes. Also, people who have regularly served on the board [have received the award]—attorneys who have both served on the board and also done great help for the Foundation, in terms of either producing briefs or reviewing briefs for us. [And] those who have been out actively promoting the Foundation who, every time they give a speech some place, hand out things and try and push the Foundation. So there are a variety of different ways. We don't solicit nominations but occasionally there will be somebody suggested. This happened to me that somebody was suggested who [was] definitely, definitely a strong intellectual freedom supporter, but [was] not closely enough related to the Foundation to justify this being the award that they might get.

G: I see.

M: Because it is the roll of honor of the Freedom to Read Foundation.

G: Right, right. Now who writes the award citations? Is that Judith [Krug]?

M: Judith. Yes.

(laughter)

G: They ring with a Judith sound.

M: They do. Judith and the staff member Jonathan [Kelley]. Oftentimes Jonathan will assist. He's very, very good. He is just wonderful; he's the best we've ever had.

G: Really.

M: Although each one of them have been really, really good.

G: He is now full-time.

M: Yes he is.

G: (inaudible) budget?

M: Yes, I believe so. You'd have to check that but yes. But he also does the Lawyers for Libraries and Law for Librarians too. The Roll of Honor Committee reviews the draft citation. We receive information and research potential awardees so we have information. We just look at it to make sure it rings true.

G: Right.

M: But Judith, she doesn't need to do research. She has it. She knows these people

well. (laughs) She doesn't select the winner. When I've been on the committee, I'd sometimes ask her opinion or we'll brainstorm people who might be suggested to the committee, but she doesn't make the decision.

G: She doesn't name them?

M: No. No, no, she does not. She does not.

G: So you as a collective come up with ideas and brainstorm?

M: Individual ones of us in the committee might come up with ideas. I actually thought of Carolyn Caywood and Judith was just delighted.

G: I bet.

M: As she pointed out, Carolyn is in a position. [She is] a branch librarian in a not particularly significant library in terms of size, et cetera but she has—and oftentimes below the horizon—been out there. She has been available to testify at various things, both at Virginia and nationally. I have never heard that woman make a presentation or be anywhere in a public place, where it is possible to push the Foundation, where she doesn't. She is just *there*. (laughs)

G: I didn't know that.

M: Yes. Everyone who has gotten it has deserved it but she was very deserving of that award. I was very pleased.

G: Have you ever experienced heated arguments about one person over another?

M: No and, as you may notice, occasionally we may give more than one.

G: That's right.

M: Nothing keeps us from doing that. Timing is important. There may be a time in which we might say we could do that another year, but the timing is very important now.

G: Like your award.

M: Yes. I guess, yes.

G: It was probably closely tied to your work on CIPA and everything else—the accumulation of many things.

(laughter)

M: Well, one thing about it is we never expect, and it hasn't happened, that anybody to whom we give an award sort of retires from intellectual freedom work.

G: They are then expected to do more?

M: Oh yes, exactly.

(laughter)

So, yes, that was the interesting thing about the William O. Douglas Award. That's a lifetime commitment too and was for advocating for intellectual freedom in libraries in Washington State. Of course, they gave it to me as I was retiring. I don't live in Washington, never did, but I told them I would continue to help. Actually they have called upon me a couple of times if something happens in Clark County, like that discussion of the CIPA decision at Fort Vancouver. For them, they need to call somebody down from Seattle, which they can, but somebody is not always available. I told them, If somebody is not available and you think I can play the role, then go right ahead, I'll be happy, because I'm still a member.

G: You are?

M: Yes, I am. The national ACLU does not recognize the possibility of someone being from two states, so they keep assigning you—because it's a monetary thing—to your affiliate. Finally I started using the library's address so that I could be a member of both. Now [for] the ACLU of Washington, I use their address to be the member of the Washington one. I told them when they gave me the award, I said, I have one request: Can you help me be a member after I'm no longer working in Washington? (laughs)

G: Interesting.

M: Yes, so there's a good reason for it. I've tried to convince the ACLU to be more flexible but, oh well. It's a relatively minor complaint. (chuckles)

G: You worked it out. Now, you were also on the Foundation's Nominating Committee. Is there anything [else] you'd like to talk about [concerning] the process of the nominations?

M: Well, we gather a whole long list [of candidates] and ask members of the Foundation Board to suggest individuals. Sometimes people offer themselves and we add them to the list. Then the committee gets background information if we don't know somebody. If somebody has recommended somebody we just get information. Then we look at the total mix. We need attorneys, we need

librarians, [and] we need people from the publishing world. We want to make sure we have a broad range—somebody from school, academic, public, so that's what we look at. Everybody is excellent and we usually put forth a big slate. I think we are going to start—Judith has suggested it and I agree with her that—Particularly, the last two or three times, we've had some excellent people who haven't got elected because they don't have enough name recognition.

G: Right.

M: But, particularly when we have somebody who [by] just one vote misses out and has been nominated twice, and was close both times, you begin to think about, maybe we need to have a smaller slate.

G: Okay.

M: I don't know whether that's going to happen or not. I think we will discuss it at the next meeting. If nobody brings it up I will. Offering choice is important but perhaps it shouldn't be quite so much choice. We would never deliberately nominate somebody who isn't a good candidate, for sure, and people should have some choice. But I probably need to look at that in terms of the impact, of not having some people get elected who had a lot of votes but not enough, and that would be a very definitely positive addition to the board.

G: So the process of trying to get onto that board—you have to write a statement, and you approach the board if someone were going to nominate themselves or someone wants to nominate someone else, obviously I assume that someone would be agreeing to it.

M: Yes, that's right we actually do call and ask for agreement and tell people, and say you've been suggested for being nominated. But yes, obviously some people suggest themselves and that's fine. We might not think of someone and it certainly indicates a willingness [to participate], which is an important thing.

G: Sure.

M: So yes, and the whole board doesn't decide this. The committee itself just makes a decision on who to be nominated.

G: Okay, right.

M: We just report to the board because we've given them the opportunity to suggest people and certainly, if other members of the board suggest someone, the committee gives serious consideration to the suggestion.

G: Exactly.

M: To being included on the slate.

G: So, your final list, you then narrow it down, you contact these people and, at that point, you explain what their duties are if they were to be elected?

M: Right, and explain that it is highly competitive. In fact, the first time I ran I didn't get elected. It's not unusual, just about everybody has that happen. What both Judith and I are concerned about is that a couple of people more than once have been put up, and [have] been very close. So that's when you begin to wonder about the tip of the balance here. Returning members are good but we don't want to have the whole board be ones that have been there before. We need to bring in new people also and, again, we like a nice balance. Corporate memory is important.

G: Yes.

M: So you don't want to exclude people just because they've served before but you also want to have some new people, too.

G: Okay.

M: Oftentimes people are new but not completely new, certainly, to the Foundation because we have liaisons from the divisions of ALA who are interested, and have a vested interest in what the Freedom to Read Foundation does. Oftentimes people who serve first as liaisons will end up being interested in being on the board itself. We know they are knowledgeable, particularly if they are liaisons who have attended the meetings. Sometimes divisions appoint liaisons and they don't attend the meetings. That would be a different situation.

G: Right. That would probably not be a successful nominee.

M: Right, exactly.

G: If they can't make it to the meetings.

M: Maybe because they can't get away that extra day if their jobs don't allow them to do it. You have to attend the meetings. From time to time someone will not be able to and we understand that, but a pattern is not good. We need people there.

G: Right. Is there anything else you would like to say about the nominating committee?

M: No.

G: Okay. I wanted to ask you some questions about Lawyers for Libraries and Law for Librarians. The first Lawyers for Libraries institute was held in 1997, the stated purpose being to develop a network of lawyers, either involved or planning to become involved in First Amendment library issues, the goal being for local attorneys to handle censorship challenges in the United States. Can you first provide a little bit of background about how and why this program came about? I think Judith Krug thought of this.

M: Yes, she did. She thought of it based on her and her office's experience. People, librarians, calling [because they were] facing a problem and they really needed legal advice. It's important that that advice come from a knowledgeable attorney. [From] an attorney who is knowledgeable about state laws also, as well as the federal and state litigation—state judicial decisions. So, it seemed that the best way to accomplish that is to step right in and provide that training as a possibility. So Judith came up with that idea and checked with our counsel from Jenner & Block about their interest in it and willingness to be part of it.

G: Their instruction is pro bono, right? She pays for their airfare and they—

M: That's my understanding, yes. So they were very interested in it also.

G: They were.

M: Oh yes, oh yes. So that's how it got started. We didn't know if it would be effective but it has been extremely successful. It has gone through a lot of shifts and changes and now, of course, encompasses a very strong element of Fourth Amendment, in addition.

G: Oh.

M: Because of the privacy issues.

G: Oh, oh.

M: So we have a whole presentation on confidentiality and privacy. That was always part of it because privacy always was important. Since the [USA] PATRIOT Act, it has been a more important part, just because there's a lot more going on. While I'm thinking about it, one of the services the Foundation and OIF provides, is that we have told people if they get a law enforcement visit that includes a gag order, and they do not have a competent legal counsel to consult, or if their legal counsel feels that they don't have enough background to—

G: Handle it?

M: To figure out what their alternatives are, this person can call the office and say, I need an attorney [and] say nothing else so the gag order is not being violated. It is a code for, I have a gag order.

(laughter)

But [they provide] no details, so they are not violating it. They haven't said it. They will be put in touch with one of the Jenner & Block attorneys that are part of ALA's defense. In addition to that, many times when local attorneys take cases, Jenner & Block helps out a lot.

G: They advise?

M: They advise. They do briefs [and] they help out as a part of their services to the Freedom to Read Foundation. So, that's also good to know. And, as I mentioned to you now, as a result of the Lawyers for Libraries, we have this list where people can post questions. It's pretty busy.

G: Oh, right. That was after the tape was turned off [during our interview yesterday]. So this is the—

M: Yes, that's right. This is a lawyer's list and it includes everyone who has attended Lawyers for Libraries.

G: A listserv. An electronic mailing list.

M: Yes. So, once or twice a month, somebody will raise a question and whoever is available and thinks they have something to contribute can contribute with ideas, with samples of policies, with thoughts, whatever. (chuckles) It's very rich. [It's] a very rich source. I didn't recognize how rich it was at first and now I'm keeping all of those emails. I put them in a separate folder. Jonathan [Kelley] has them all.

G: Right.

M: Yes, he has an archive because actually I had a question when I needed to know who had responded to something. I needed some information and I couldn't find it in my files and Jonathan found it for me. (chuckles)

G: That sounds really helpful. So, this is—

M: When somebody gets a challenge, one of the biggest helps can be identifying

another library who has had a similar situation and, if possible, an attorney that was involved in it at the same time. It can save a lot of time, in relationship to getting started on figuring out how you are going to respond.

G: Right, right. It's also a network of peers.

M: And [it's] just plain emotional support.

G: That too. Now this network of lawyers that you're developing through this program and other efforts—are these expected to be defensive efforts or offensive efforts?

M: There is no explicit expectation. It can be also just consultative help, too. A library is writing a policy and it should be reviewed by an attorney who has the appropriate background.

G: Okay, right.

M: So, that is defensive in a way but it's also just a good management process. That is part of it also. I think Jonathan will post to that lawyers list when something important happens in relationship to the need—a legislative action, et cetera—so that definitely it's a pure choice or not.

G: He'll post [a question like], Do you want to be part of this case?

M: Well, not do you want to be part of, just that there's a call. ALA is calling for notifying your elected representatives.

G: Oh, oh.

M: If it is something that has been directly relevant. He doesn't by any means post as many things to that as get posted to IF Action or to the [ALA] Washington office action list. But, there are times when it is just directly right on, [having] to do with the [USA] PATRIOT Act, for example. [It's] just keeping them informed about the fact that something has been introduced and what's going on. So, he sometimes does that.

I would say that, yes, I'm certain that some of the attorneys involved are also activists, maybe as much on the basis of their other associations as for Lawyers for Libraries. But, being informed about the issues and the realities of the way things play themselves out in libraries certainly doesn't hurt. There are several different ways—one can contact your elected representative, one just saying vote this way or that way, the other one is with a persuasive, knowledgeable argument. (chuckles)

G: Right.

M: Most people are too busy to spend the time sometimes—unless it is so direct and important and to them—to actually be able to come forth with that argument.

G: That's really interesting. So, it's kind of a lobby.

M: Yes. Congress gets these. It's an informal, not a formal, lobby.

G: No, of course not.

M: What I'm saying is it opens up the possibilities of people being informed to participate in that kind of activity if they so wish. It's a means for getting that information. Congressmen get these, they get petitions, they get comments. You can't blame them, they also have to be careful about responding to the loudest shout, which may be a minority interest in relationship to their constituency. So, having identified [people] or folks who are identifying themselves as having particular expertise or interest in an area, that might make a difference.

G: Right, right. Okay.

M: I know some of the Oregon delegation. I'm thinking Earl Blumenauer is very good about this, our elected representative—congressman. He's not mine but, nevertheless, he consults with the Oregon ACLU and with the Oregon Library Association.

G: He does?

M: He'll keep track. He pays attention to what we have to say. [He] even did a briefing session with the ACLU of Oregon Executive Board at one point, when [USA] PATRIOT Act stuff was developing. He was deciding whether to run for mayor or to run for Congress again. He came to town just to investigate [and] find out where he would be most effective.

G: How interesting.

M: So he talked to constituencies and librarians were invited into it. He had little public meetings around and librarians were on his list for being invited. But I mentioned that he was part of the review of Multnomah County when they changed their governance. It's an argument for being sure to include elected officials when you are doing things like that, to get a vested interest.

G: Right. (pause) You were the chair of the Steering Committee [for Lawyers for Libraries and Law for Librarians]—have been or still are?

M: Still are, [have] always been, since when it was formed, yes, first for Lawyers for Libraries, then for Law for Librarians.

G: Okay, so for Lawyers for Libraries, what is your role?

M: What that means is that I work with Judith. She is the person I can bounce ideas off of. She does the majority of the work, obviously. But when there are decisions to be made, for example, Are we going to add something to the curriculum or change something to the curriculum? We want to do something in this part of the country, where is a good place? We will hold a conference call and discuss that.

G: Okay.

M: Also, when it was decided that we needed to add the perspective of libraries, we started out with a keynote address from a librarian. It was me talking about librarians working with attorneys and how the partnership works.

G: Okay.

M: What librarians need from attorneys and also giving some examples of some of the issues that are from a practical point of view. Then, that morphed into being a panel.

G: A session of its own.

M: A session in which we struggled about where to put it because first it was the night. We used to have a dinner beforehand the night before.

G: Right.

M: It was noisy. It didn't work too well but we tried it for a while. We realized we were losing attorneys by having them have to come the night before.

G: Oh.

M: So we decided making it compactly into one day was better.

G: So you couldn't expand into a two day?

M: We could.

G: There's so much information.

M: But we would probably, yes, there's so [much] we could use for content. But, in

terms of the busy lives of attorneys, this is rarely their only area that they need to concentrate on. And, CLEs [continuing legal education credits] are usually one day, so that's the way that goes.

G: Okay.

M: In any case, now I think we've got it down pretty well. We've got it to the end of the day—worked out a way to have it be that way—so it can be kind of a close-out session too for people's arguments [and] questions. What I've done for the last three times is to identify developing issues that I think are important for them to hear about and then have Jonathan send out a message saying, Here are some of the things that the panel could discuss. Are you interested? What are you interested in? What do you want to get? The interesting thing about that is we frequently get responses for things that are actually within the subject area of other presenters, so we forward it to the presenter saying, At least one person is interested in being sure that this is included in your presentation. Deborah [Caldwell-Stone] and Theresa [Chmara] have both received those and they've actually—if they are not explicitly mentioning that—are sure to add it so that it can be addressed.

G: Oh.

M: So then you would let the attendees know that some of their requests were cycled to other presenters. We began to get some questions about copyright, which I understand but—and it is true that it would be very nice to have a means of training attorneys who address copyright issues for libraries—but it couldn't be done within that one day framework, it just could not.

G: That would have to be its own thing on a different day.

M: Absolutely. It is too incredibly complex. That's the reason I no longer teach it as a part of information ethics. Emporia [Emporia State University School of Library and Information Management] wanted me to do it and I said I'd try it. After two times I said, I won't do it anymore, either it's a separate course or it doesn't happen. This fall is the first time it's a separate course that I'm teaching. That's why I'm (hits a stack of books next to her) updating my stack. (laughs)

G: That's why you have a huge stack of books. For the record, Candace has a mountain of books on the table here.

(laughter)

M: Yes, I'm doomed with what I teach. It changes every moment. You talk about some faculty member just being able to forever teach the same thing—no way.

(chuckles) I'm not complaining.

G: Well, it keeps you on your toes.

M: That's right, that's right.

G: So would you say—it's probably very difficult to pick out the most important issue. Would you say privacy? (pause)

M: Privacy is the most difficult issue. Just briefly, I'd like to state why because this doesn't always get pinpointed.

G: Please do.

M: If one reads the Fourth Amendment, it is very time-specific to when the Constitution was adopted, when people kept all of their records or most of their records on their person, or in their homes, or perhaps in a bank deposit box. With the advent of the administrative state and with the World Wide Web, and the adoption of that model of doing business commercially as well as by the government, the whole status of where your personal information is kept has changed. [There is] a concept of a third party, whereas, in order for you to have a connection with an author, you oftentimes have to use the third party of a bookstore or a library, and you have to give information to that third party. [It's] the same thing with medical records, financial records and government records. So the issue of the status of [the] confidentiality of third party records—when you give them to them voluntarily—is critical. The summation of legal opinions—both federal and judicial decisions, and in many states—has defined a test for determining. Because not everything you give to a third party necessarily has a heightened area of constitutional protection.

G: Oh.

M: We all would think it is. But, those things that relate to those rights that are protected by the Bill of Rights are more important than what you buy at the supermarket, even though you can tell something about what people buy from the supermarket. It's not so automatically, obviously protected as speech is.

G: Okay.

M: So, the test is whether a reasonable person, in giving over the information, expects that that information will be kept private and confidential. Actually, it's confidential by the time it gets to the third person. It's not private, because private is just to you.

G: Oh.

M: And, whether society has a reasonable expectation, in fact, [that] that sort of information should be kept confidential. That's the test. If that test erodes [and] if we start throwing our arms up, as I've heard even many librarians do, and say, Nothing is confidential anymore, [then] someday, sometime, in some court—this is my feeling and my fear—a library will receive a subpoena. They will move to quash that subpoena on First Amendment and Fourth Amendment grounds. The court will have to balance the compelling government need—does the government have a compelling need to have this information—versus the rights that would be violated by releasing it. In terms of determining the nature of the rights being [abridged and] the importance of the rights being abridged, they will use that test. We are in danger of having a judge or a jury say, Wait a minute, there's no evidence anymore that people have a reasonable expectation of privacy or society thinks it is. So what we as a library profession, and [what] supporters of libraries and supporters of privacy rights need to focus on—in not only defensive mechanisms and attempts to influence legislatures—we need to be advocates in our communities for the importance and the role of libraries in that. Because, that's *society* having the reasonable expectation. It's up to the states to determine what is confidential because it's an issue of public records mostly. Not all of them are in the context of public records law but most are.

G: Okay.

M: Because transparent government is a very important value. That means everything that government does is transparent, is available. We're talking about government records. One of the court decisions that define this test, the Katz case [*Katz v. United States* in] 1967 I believe [decided December 18, 1967], also indicated that it is up to states to protect these privacy rights. That's why it is state laws that protect that. That's why, when a state legislature has to decide, Is there a compelling reason to close public records, they oftentimes use that same test or at least their law. When adjudicated in that case, that similar kind of an approach was used. I know Washington and Oregon most intimately because of my connections. There are cases in both of those states that use a very similar test to decide in a balance between a compelling government need—assuming it's compelling, but the government need which was expressed as compelling—and the holder of that information, and the person whose records are represented as an investment and right to having it private.

G: Okay.

M: It's a tenuous connection.

G: Yes.

M: We have to be worried about it, I think. Yes, for that purpose. Under the radar, the other important issue is one we have already discussed, the erosion of rights in relationship to the Internet.

G: Right.

M: And the guise of CIPA as a means of taking away individual choice for access to constitutionally protected material. Yes, that is less visible at the moment but it is still, I think, very, very critical, because as that becomes increasingly eroded it will be much more difficult to defend it.

G: Right. Okay.

M: The other thing, of course— I'm sorry, there is the other thing. This is because of the strong interest groups associated with it, the attempt to deny and abridge access to young people to materials that are felt to be not appropriate for them, both in terms of sexual materials—particularly that involve homosexual themes.

G: Right.

M: And violence.

G: Violence. All the video games.

M: That's right, that also. State after state keeps trying to pass a law. I don't know. What a waste of taxpayer's money because every single one of them gets struck down eventually, has so far at least, and they have to defend it. They relentlessly keep on. That has consumed quite a bit of litigation focus, too.

G: Right. Okay. (pause) The two programs blend together so much, Lawyers for Libraries and Law for Librarians.

M: They are the two sides of the coin.

G: Is there anything else that you wanted to say about Lawyers for Libraries?

M: No. I think that pretty much covers it. Would you like me to address Law for Librarians as well?

G: I would. I would. I was wondering how this came about and whether there was a demand from libraries or whether you saw that this was just a natural?

M: Both. We always opened Lawyers for Libraries [to librarians]. We would set a

maximum attendance at Lawyers for Libraries. At the beginning we said it had to be an attorney and we wanted the attorney to be accompanied by the library that would be recommended. We also have some librarians who are attorneys, so that was fine.

G: How nice for them.

M: Then we'd say that it would be open for attendance for others who wanted to [go]. So, occasionally we would have people if we didn't have a full attendance. But we would have many librarians who really wanted to learn more. Lawyers for Libraries is aimed at attorneys, with a lot of detail in terms of litigation issues that wouldn't— It's not bad for librarians to know them but we couldn't dilute it in relationship to legal knowledge. We always told the librarians who came that they had to recognize that content had to be at a credible level for attorneys, otherwise it wouldn't qualify for CLE and we wouldn't accomplish our goal.

G: Right.

M: But in addition to that, lawyers and libraries need to be partners. They need to be partners in a way in which they respect each other's expertise and combine it to produce the most positive outcome, in terms of policy development, and in terms of strategy, and policies, and procedures, and implementation policies, as well as legal defense. It was an obvious jump first, recommended at first, of course, by Judith to approach it from the other side. Now we were well into Lawyers for Libraries. We established a means by acquainting attorneys with the issued faced by librarians in the legal sphere. Now we need to make sure that librarians understand the structure of the law and how it works.

G: Right.

M: So they can be full partners, which sometimes is what they need to do to gain respect from the attorney also. Attorneys do sometimes think they know it all and sometimes librarians and other professions are very willing to delegate that authority. Librarians shouldn't delegate their authority to an attorney but they need them. [They] very critically need their knowledge. So that was the purpose. Judith got the grant, which I'm sure she talked to you about.

G: No.

M: Okay, she got a Ford Foundation grant.

G: Ford Foundation.

M: Yes. To be able to support it because then the issue is if you ask everybody to

come from everywhere, not every state can afford it, or not every library could afford it.

G: Of course.

M: She got money to bring two representatives from each state. We didn't have two from each state but we had every state, every single state, represented.

G: At this last one you had.

M: At the Law for Librarians, that's right. It was a train the trainers.

G: Oh, right, right.

M: We did this once before, a train the trainers.

G: They are supposed to go back to their state and train [their colleagues].

M: That's right. We did this once before in general intellectual freedom issues and I'm sorry I can't remember the dates on that.

G: That's okay.

M: I was involved. I did one in a joint conference with the Oregon Library Association and Washington Library Association after 1983. We did it at Fort Vancouver Regional Library, that's why I know that.

G: Okay.

M: The Law for Librarians training included not only substantive information but also how to train. [We provided] some hints on training. Catherine Lord who, at that time, worked for King County Library, had done an intellectual freedom training handbook that is published by Public Library Association [*Defending Access with Confidence: A Practical Workshop on Intellectual Freedom*]. She used to be a trainer for King County Library; she did intellectual freedom training. By the way, I have to say this for the record. Her mother, Mary Jean Lord, is a strong member of the Friends of the Goldendale Library, which is part of the Fort Vancouver Regional Library, (laughs) whom I knew from years before because Catherine is quite a bit younger than I am.

(laughter)

When her daughter asked her—they had a conversation about me I gather, so then Catherine and I got together to talk about doing things together as a result of this

connection with the Friend of the Library in Goldendale, Washington—small world. But Catherine is just excellent and she is very knowledgeable about training techniques, so she did some presentations on that. So we provided materials, we provided substance, and we provided some information on training. We asked that everyone there do at least two trainings. I mean, they aren't always going to be able to include everything. It was very intense and it was three days. We already know that that's unlikely to happen at that level. But parts of it can, for sure. I know some things are happening because, for example, Mary Minow who is from California, who actually is a lawyer, is doing a Web cast of one.

G: Is she?

M: Yes. It starts Tuesday because she sent me the outline. She asked me if I would review the syllabus and she wanted some additional handouts. Mary does teaching too, so we exchange syllabi and discuss things a lot.

G: Oh you do?

M: Yes. So she starts on Tuesday to do one. Illinois, and I don't know if they counted this or not but they have a thing called Library U, which uses some synchronous communication software called Opal, which is wonderful. You can actually have a class with a lecture and discussion back and forth. [It's] very seamless. It's wonderful. I actually sat in on this one because I heard about it and sat in on it. [It was] ALA Publishing, as a matter of fact, who told me about it. I asked to be part of it. Mary Ross, who is a Seattle Public Library staff member who does training, was an instructor. It was all on intellectual freedom issues for public libraries. It certainly qualifies for this.

Several of us are going to do a program at the Pacific Northwest Library Association conference in Eugene. So, it's kind of rolling out in relationship to doing that.

G: I see.

M: I think Jonathan is going to start tracking it so that we can have that. I think that Judith is also, I think, looking for the potential of some funds to help do further support. Particularly, I think it would be nice. People need to identify local resources. I mean, we offered to help them find resources and OIF has got people all over the country who would be close by and perfectly competent to do it, and that's part of it. I actually am going to Nebraska in October to help out [there]. The two people from Nebraska who went called me and asked me if I would go. I agreed I would because it is 30 minutes from where my brother lives. (laughs)

G: Oh, well there you go.

M: But I know that the delegates at Law for Librarians are in the process of thinking [about] what they can do.

G: And—

M: Planning.

G: Now, in terms of some of the content, do you talk about liability to the librarians or to the lawyers only?

M: Well, the lawyers definitely talk about liability. It comes up in Theresa's presentation, in relationship particularly to the liability of providing Internet access, because there are some cases. The Livermore case in California [*Kathleen R. v. City of Livermore*, 2001] being the prime one. The issue of religion has been the other thing that has come up, because of the growing amount of litigation in relationship to separation of church and state. There have been a couple of meeting room cases [in] Contra Costa, one. In fact, Theresa [Chmara], as her presentation has evolved—both the Lawyers for Libraries and the Law for Librarians [presentations]—talks about the legal framework, talks about the necessity for policy, with some hints of what should be in it, and makes it very clear about potential liability. She brings it up when she talks about collection, about the liability that the library accrues if they don't follow their policy. Having a policy is not enough. If you don't follow it then that's a real red flag if something is filed against you, for example.

G: Okay.

M: And when she talks about rules of behavior. There have been some library cases that kick people out who file suit. [Where a person who was kicked out of a library filed suit against the library.]

G: Oh, Kreimer [*Kreimer v. Bureau of Police*, 1992].

M: Yes, *Kreimer*. But there was also another case in which a person was kicked out when, in fact, what he did was to stalk and threaten a library staff member, but not on the premises of the library. So, you can't do that.

G: Oh no.

M: You can help that person get a restraining order, which would keep that person from coming in when that person is working. You can't kick him out of the library if the behavior didn't happen in the library. It's intertwined, as is appropriate [and] she just automatically adds that to her presentation. There is a certain amount of that in the other presentations also, to inform people about

liability.

G: And you provide these librarians with best practices, sample policies?

M: Yes, we do, directly or through links. Now, Jonathan always does a CD, which has got a lot of stuff on it. He puts full text of court decisions on there, as well as policies, and links, and guidelines—the whole thing. Yes, we do.

G: Is there anything else you would like to say about Law for Librarians?

M: No. I think it's very exciting and we are at the very tip of being able to realize the advantage of it. Oh, one other thing—if I could go backwards to Law for Librarians.

G: Yes.

M: One of the things that we've had happen with Law for Librarians is to be approached to come to someplace to provide [training]. We went to Texas. It was the Texas Library Association who said, Come [and] make it a pre-conference to the Texas Library Association conference. They helped support [it]. They provided financial support. They paid all the expenses for the presenters to come—to get us there. Then, I believe they did some subsidy to make sure that they could have a good representation of people there who attended. It was really good. It was one of the best ones we had in terms of—Because of the sponsorship by the library association and their recruitment of getting people to come, I think they helped create an atmosphere of preparedness. So people came with excellent questions and things to share and discuss. We always get that but this was, I believe, and the other presenters believed too, one of the best ones in terms of that dialogue. So we're hoping that will happen elsewhere, [that] people would just ask us to come.

(laughter)

G: That would be really nice.

M: And that was the second one in Texas. We did one earlier in Texas, in Dallas. So we've done two in Texas, as a result, actually, yes. We get people from all over. One attorney looks and says, Oh, gee, I'd like to go to that town and I get a CLE. We don't care. (laughs)

G: Maybe you should have one in Hawaii.

M: Well, we've talked about that. Or Alaska—I personally would prefer Alaska to Hawaii. I'm not a hot climate person.

G: Okay, let me see (long pause). I thought maybe we should move to your CIPA hearings—hearings before the Committee on Commerce, Science and Transportation. I think we hit upon a couple of things yesterday so let me just see where we are.

M: Okay.

G: (pauses, looks at notes)

M: I don't think I discussed the hearing particularly and I can—

G: We discussed issues from the hearing but why don't we, yes, why don't you talk about [the hearing].

M: Yes, if I've said this before just let me know.

G: That's okay.

M: When Congress does hearings— Ironically enough, there's a book by former attorney general [Edward H.] Levi, written in 1949, called *An Introduction to Legal Reasoning* that I use in my class. He talks about the relative importance and legitimacy or effectiveness of legislative intent. He talks about the role of hearings. It's interesting because my experience with that committee mirrored everything he said in that book, which I read on the plane going there because I was going to give a lecture right when I got back. I had to re-read the book.

In any case, the staff, [Senator John] McCain was the majority leader, Rockefeller [Senator John D. Rockefeller IV] from West Virginia was the minority chair. You know, they have minority and a majority. Obviously McCain and his staff were in charge of putting together this hearing and he is the one who introduced the bill. Senate 97 was one of those bills.

G: Right.

M: At that time it just covered children; it didn't cover adults. It really was the Children's Internet Protection Act.

G: (chuckles)

M: [The] ALA Washington Office became aware that there were no librarians or no attorneys who represent an intellectual freedom point of view on any of the panels that were being put together. They got nowhere with McCain's staff, so they contacted Rockefeller's office and he got them to expand it.

G: He did?

M: He did. So, they decided to have one librarian and one attorney from the People from the American Way representing an intellectual freedom point of view.

G: Oh, right.

M: You probably have the information. Elliot Mincberg was the attorney from the People for the American Way.

G: (inaudible)

M: In any case, we present— What you do when you are doing it is you do a written—and there's a limit on the number of words—you submit written testimony.

G: Right.

M: Then you have to extract from that like three minutes for your presentation. But, after I was on, and prepared to go and [was] listed as an American Library Association witness—just two or three days before I was to leave to go do this—McCain's office notified ALA that they would not accept a witness representing [the] American Library Association.

G: Why?

M: They don't have to explain.

G: They gave no—

M: They don't have to explain. They just wouldn't. So I get this call saying is it possible for you to represent your library? I was actually testifying about our library's policy.

G: You did.

M: Yes. But I was anyway. So I talked to Sharon Hammer, the director of the library, and she—they didn't have to vote on it because the board doesn't need to approve staff travel. There were no expenses involved. ALA could still pay my expenses. But she just polled the board to say, Would you have a problem if she is listed as [being] from Fort Vancouver Regional Library? It didn't necessarily say "sent by." They said, no, they didn't mind. So, they didn't get me off the panel that way. (chuckles)

I was briefed by ALA Washington staff in a brutal breakfast in which they just threw these things at me. They informed me that Senator McCain was known for his very brusque and almost harassing manner with women, and he was.

G: Really?

M: At one point when he was first going to run for president, all of the elected Arizona women made a public statement about their not supporting him because of this.

G: Harassing how?

M: He excused himself because he had been a prisoner of war. Anyhow, he has changed.

G: Oh, okay.

M: I think the process of running for president, of having these elected Arizona women Republican and Democrats throw this in his face— But, I was warned, so they threw this stuff at me and prepared me for about two hours [or] three hours.

G: So they just barraged you with questions?

M: Yes, they did. Yes, they did. Yes, they did.

G: Really hard questions.

M: This is what happened.

G: Were you a nervous wreck by the time you got there?

M: No. Remember, I was a competitive debater.

G: That's right!

M: You have to have cross-examination in competitive debate. You can ask the other team questions.

(laughter)

And I love debate. I opened my mouth to start my presentation and Senator McCain said, You know, I looked your name up on the Internet and found all of these sexually explicit sites. Would you like to see them?

G: You're kidding me?

M: No, I'm not. One of the things that they told me is that he will try to divert your attention so you don't get to make your point.

G: Oh. Kind of like FOX News.

M: So I said, Did you have a question for me Senator McCain?

G: You did?

M: (laughing) I did. So, of course, well, yes he did. His question was, Well, you're just not interpreting this bill correctly. Libraries only have to buy and install software, they do not have to put it in use. That was not accurate.

G: No.

M: So I'm fumbling for getting the exact wording from the bill and trying to talk, and he kept interrupting me. Senator Rockefeller—he's so funny—he kind of leans back and he says in this great Southern drawl, he says, You know I had a bad night last night. I was out really late. But, you know, so I'm not really quite alert yet this morning. But, you know, I think that Ms. Morgan has a point to make. Let her read what the bill says. So I did. (laughs) So he got off of that and then I could make my statement.

The other impression I got from those hearings was, particularly [from] one of the witnesses. I think her first name was Jamie? I'm not sure of her last name [Janie Harris]. She came from a shelter for women and children particularly who suffered death, had death traumas, et cetera. [It was] kind of a—not a shelter—[but] a counseling center [Solace House].

G: Oh, okay.

M: A sex site had, with a URL [uniform resource locator] that was only slightly different than the one for Solace House, commandeered her Web site. So, sometimes, when people typed the wrong URL, they would be exposed to sexually explicit material.

G: Oh.

M: She was crying. She was distraught about it. But the fact of the matter is, is what would this bill that put filtering in libraries do? I mean, what percentage of the number of times would women and children be searching for that site in the library? It didn't really address it. What I will say is that I learned later, she was from Kansas. Anyway it was wherever Kent Oliver was at that time. He has moved to Ohio. Because she was in his community and, actually, later on

apparently became aware that she had been manipulated.

G: Oh really.

M: Well, because she cried and the questions were meant to elicit this kind of an emotional response—it was transparent. Bruce Taylor, who is an attorney, who has been associated with the conservative right—various legal institutes that represent the conservative right—used to be with the National Law Center for Children and Families. When Congress was passing the Children's Internet Protection Act, in fact, he was involved in providing advice to Congress for the Communications Decency Act. He gave them prejudiced information about the constitutional issues. I'm not going to argue because there are always cases [on] either side—his written testimony was all legal stuff, but what he said verbally was purely emotive and very different in terms of that. It was carefully picked, I'm sure, for that reason.

G: You had a very different style than these [people]. I read his testimony and another woman who deals with abused children; it may be the same woman. But you had a very different style.

M: What I needed to say, and which is important, is that local libraries—what I talked a bit about yesterday—they're community organizations. They have governing bodies [and] they have the authority to make policies and procedures. They have to do it within the framework of the Constitution but then they make their choices based on their community. It is totally inappropriate for Congress to mandate a local library policy. It just is not appropriate. And, it was relying upon filters, which can't produce what the law said they had to do [because] they overfilter and underfilter. And, there was the issue of the rights of parents and interfering with those rights by having a government agency take over for the parent. That was the message. Not against filters, they have their role in the home. They have their role in the library if it's optional, I believe. Not every librarian agrees with me but I don't think we should mandate just because we think they're flawed, that we should have to tell people that they have to accept that when they are using the library. So that was the core of my message in relationship to that and has always, consistently, been my message in relationship to this whole issue.

As for the hearing, congressional hearings have very little credible use for determining legislative intent, unless the witness is representing an organization or a government agency in which they are giving authoritative background in relationship to that. Because there is no requirement that any or all important viewpoints be represented, or that it be balanced. It is totally up to the chair.

G: Chair.

M: Committee reports are a more credible way to determine legislative intent. There is an expectation in relationship to how Congress comports itself that they will actually do a very reasoned discussion with what they chose, and what they didn't choose, and what the meaning was and all of that.

G: Okay.

M: They may draw from hearings that may have authoritative representative witnesses who come, but otherwise not. Most hearings are not open to just anybody who wants to testify. There's good reason for that. They have to be within a time frame.

G: Of course.

M: So that was my experience with that committee. Do you have any other questions or do you want to go on to the actual case itself?

G: Let me just double-check here (pauses to look at notes). I think I did actually want to ask you—in the [Children's Internet Protection Act] case before the U.S. district court you again were a witness. Reports of your experience show that you were extremely graceful under fire.

M: (chuckles)

G: I'm very interested in hearing some of your memories of that day. I guess you were forced to look at a binder of color photos downloaded from porn sites.

M: That's right, that's right.

G: You didn't flinch, you didn't laugh nervously as people in the gallery did, and you calmly answered the questions and pointed out that this kind of content is, indeed, available in books in your library. But, what went through your mind when the defense attorney handed you that book?

M: Well, first of all, I called upon— I've often said that my debate coach in high school taught me more than anybody else *ever* had because you needed to do that. You had judges when you debated and you needed to be able to keep a calm demeanor. Even if you didn't know the answer [you had] to not show that in your facial or body language, or whatever. [You had] to come up with something. I deliberately reminded myself, because that was many years ago obviously. Paul Smith, who argued the case for us, put me through hours and hours and hours of training.

G: Really?

M: Again, the same thing [happened] that happened in the Washington office. He tried to figure out all the questions that I might be asked.

G: Okay.

M: Judith and I arrived in Philadelphia, a whole day before. I think two or three times I met with him, just the two of us. He went over it and prepared me as a witness—not telling me what to say but asking me the questions, and giving me hints about presentation thoughts, in case. He was an excellent coach.

G: Presentation thoughts? What does that mean?

M: That isn't clear. Or, have you thought about this? But he never attempted to put words in my mouth. I was not scripted at all.

G: That's nice.

M: He did give me a chance to think of the range of things that might happen. I was the first witness.

G: You were.

M: That put a certain amount of pressure on the circumstances. I loved it, by the way, I had a great time.

G: (laughs)

M: I knew. I teach my students, a case above the trial level is a forum and that's the purpose. That's one of the purposes that the judicial process serves and I never really internalized exactly how that was, because judges ask questions too. You may have noticed that. And they had these boxes full of things that came from discovery and they had clerks up there. Obviously they had reviewed it all. They were aware and sometimes they would ask a clerk to find something, and it was all open boxes with indexes. They were just in boxes so it could be carried from their offices to the courtroom.

G: Okay.

M: I was very impressed by the panel, the judicial panel, at their involvement and the whole feeling of having it not just be questions by the government's attorney or the plaintiff's attorney. Paul informed me that it would be very possible that I would be given some sexually explicit pictures to review and [asked] would that

bother me. I said, No it would not. I simply am perfectly capable of maintaining a separation and, besides that, I just have too many other things to deal with in my life to bother with excess emotions that are useless, like anger.

(laughter)

Yes, I'm a human being but I, over the years, disciplined myself to not waste my energy on things that I can't change. In any case, I was prepared. We didn't know what they were going to be like, so there was no way to be prepared about how I would respond.

G: He didn't flash pictures in front of you to prepare you?

M: No, he didn't. But, you know, Fort Vancouver Regional Library always had a certain number of complaints and I was almost always involved, one way or the other, in the committee that reviewed materials. So nothing that was shown—they obviously were not going to bring into court something that was illegal. The whole question then would be why wasn't the FBI out arresting them? (laughs)

G: So they didn't show you anything that was obscene?

M: No.

G: Only pornography.

M: First of all, it is obscene only if a court finds it to be so.

G: Right.

M: It's meant to be a community-based decision. That's the concept of community values. Community values are determined by a jury of your peers. That's who determines what community values are in a legal setting—a jury representing you as a peer. I happen to believe in the jury process. I've been on several jury panels. I think it works as well as could be. It's not perfect but it works.

So I had nothing. Presumably, no court had found the images I was shown to be obscene or child pornography. There were some youthful looking women but no reasonable person would think they were under age.

G: That was the "hot teen pussy" [photo]?

M: Yes, that's right. That's right. I had no reason to believe that they weren't young adults.

G: Okay.

M: Indeed, there was nothing in those pictures that I hadn't seen some time before or might not be within the context of materials also be there. That's what I said and it was apparently quite a disappointment for the government's attorney. He got a little aggressive at one point.

G: Really?

M: He did. I was fine. You know what I did? I've learned this in speech but Paul also mentioned it. The more aggressive he got the softer I talked and the slower I talked.

G: Really?

M: Which is a good technique when you are talking with a difficult patron too, by the way. Yes. That's what I did and the judge actually told him to stop.

G: He did. Can you give an example of his aggression?

M: He wasn't answering.

G: Was he getting up in your face?

M: Well, he was back on the floor. But he just kept, in a bordering on angry tone voice, repeating questions to me because I didn't answer the way he wanted me to. It was clear. I wasn't behaving the way I should have. Part of it, of course, was not responding in the way he hoped I would to these pictures. I would think you would do some investigation about the other side's witnesses, which are public. It wouldn't be very difficult to determine who they were dealing with when they were dealing with me. Apparently, here I am, grey-haired. What was it? I think it was a (inaudible). Someone described me as grey-haired, beady-eyed, soft spoken librarian.

G: Grandmotherly librarian.

M: Yes, something like that. Yes, that's right. Whatever. Yes, I thought that was quite hilarious. It was a deliberate choice of words.

G: They were painting a picture in the article.

M: That's right, I wasn't offended. Several of them were afraid to ask my age and I have no problem with telling people my age. I didn't fit the appropriate stereotype for what I was saying. I didn't get upset. I could answer everything. I

just kept talking. He had gone through and gotten some information about complaints, because it was a part of discovery.

G: Oh sure.

M: Complaints about the Internet, all of our logs, et cetera. Oh, the staff at Fort Vancouver [Regional Library] had never heard the word redacting and they had to redact lots of stuff. It was a bunch of stuff in a short time frame. Finally, they would just sort of skip around, it was just too much and they had everything else to do. One of them, at one point, got up and started this whole little dance in the business office of "redacting here we go, redacting here we go."

G: (laughs)

M: It was a release of tension. (laughs) But I put it into context because I counted the percentage of complaints by category and created myself a spreadsheet.

G: You did?

M: Yes, I did, to prepare myself so I could point out that they were talking only about a miniscule number of complaints. Furthermore, and this was their error, they could have kept this from happening, and this is where he got angry too. (clears throat) He would read a complaint and it was actually for pop-ups coming up. Well, when that became a problem, we got software that kept that from happening. We had progressively made changes when things became a problem. That was in the record and he missed it. Three quarters of the stuff that he put forward to me the library had responded to. I, of course, said that's an example of community/library decision-making. Each time, I gave an example. I said and this is what we did about it and this is when we did it, and that's an example of community/library decision making.

G: (chuckles)

M: So, it wasn't working the way he had thought it was. He just was not prepared in the way that he should have been. That's sort of their problem, not mine. But it made it fun. (laughs)

G: I had wondered if, by handing that book, if he also would've had other motives that would've gone outside the courtroom. That [scene] would have been a sensational item that maybe the press would pick up.

M: Yes, exactly.

G: And the rest of your arguments would then fall out of the article.

M: That's right. That's right. That's very possible but I think the way I reacted really helped beat that, because the press paid attention to that.

G: They did.

M: I got lots of people right after that little session—press coming up and asking me all these questions.

G: Were you satisfied with the press coverage of your—

M: Yes, I think it was pretty good coverage. You know, there's those talk show guys. I told Larra, the [ALA] PR Person, Larra Clark. I did one of them and then I just told her, Have somebody else do those, they are not worth my time. My responding to these, which I take very seriously as a responsibility, is to help get the message out.

G: Right.

M: That's not a forum where you get the message [out]. We have a local idiot here, Lars Larson, that I've done once. After that I won't do that because it's useless. What he did, what Lars did to me too, was after I said, That's it, that's all the time I have, he described me on air as this librarian who obviously doesn't get it. He wouldn't say that to my face but he said it on air.

G: Oh.

M: Dr. Laura [Schlessinger] once, when Fort Vancouver Regional Library adopted its first policy that gave parents some choice to change their children's Internet access, she said, Candace Morgan must be a very disappointed person today. But I helped to draft it, because of course parents should have some rights. The children should have the default right. So, of course, I just laughed and I said, It's an audience that is just no point

G: Right, it would be a waste of your time.

M: Yes, exactly. So I told her, I said, I'll do any real reporter. A reporter from radio or TV that's seeking things I will do. If you have a talk show program that you have absolute proof that they actually want to hear all points of view—if we have a history of that being the case—then I will definitely be willing to do that. But the other ones, get somebody else.

G: Sure.

M: So I just said no. When Dr. Laura wanted to have something and it involved

going down to California or something, for a program (I think it was her short time of being on TV), Mike Wessels, who is a librarian in the Timberland Regional Library, who is also an ordained evangelical minister, and had served time on the [ALA] Intellectual Freedom Committee—I remember recruiting him for that. He was wonderful. We used to do a whole bunch of programs where he presented how to provide service to Christian fundamentalists and to help people understand their framework of life so you could know how you could do your best and what to fit. He was wonderful. He decided he was going to go down there because at least he is from the same point of view. She treated him the same way.

G: She did.

M: Because he got one sentence out of his mouth that she didn't expect from his background, his minister background. So, he had the same kind of experience. He said, Well, I tried it (laughs), didn't work.

So I really, really enjoy both that, being the witness and being a witness both to testify before the committee and to be a witness in court. It was sort of a living part of what I've been teaching. Of course, now I have wonderful stories to tell my students. To illustrate, when I'm telling them about a role of a hearing, I can tell them about my experience—my PA students particularly—on that one. (laughs)

G: Is there anything else you would like to say about that day in court?

M: No.

G: Your day in court.

M: Oh, one other thing. You might be interested to know how I heard about the district court's decision. I was climbing Mount St. Helens.

G: You were?

M: (laughs)

G: Okay.

M: I had my cell phone and there's only limited areas of cell coverage.

G: You had coverage?

M: I was the climb leader and I told the people, I said, I'm going to be stopping every

once in a while to see if I have a voicemail message. So here we are up at whatever level of elevation, I think it was about 7,000 feet, and I noticed I had a message. I had to wait until I was out of the trees and in a place where I could get a message. So we had this one, two, three cheers from the climbers—most of which who were not involved at all—for the court. (laughs)

G: That's great. It's a good place to get the news.

M: Yes, it was very good.

G: Okay, (pause) I think that we kind of covered this yesterday but were you surprised by the court's decision to uphold CIPA?

M: No. The reason I wasn't surprised is [that] I sat in on the oral arguments. I listened to the oral arguments. Paul Smith said, I'll bet you anything, as we walked out, he said I'll bet you anything that Theodore Olsen's [42nd Solicitor General of the U.S.] declaration will be the basis of their decision. Although I didn't reach that decision myself, I didn't know enough about how those things work necessarily, because it's rare to have that kind of a circumstance happen. But when I read the decision I thought, Okay, that's right. He was definitely right, a very seasoned person, Smith. I knew right away when I read it that this is going to be extraordinarily difficult to explain to people. Extraordinarily difficult to explain to people and to tell them what meaning it has, in relationship to practical application. That, certainly, has been true. Because it isn't a total win or a total loss. It's perfectly fitting in terms of the role of the court. It certainly is not an unmitigated disaster. The worst thing is the kids.

G: Okay, so before Paul said anything to you [when you were] walking out of the courtroom, did you have a bad feeling?

M: No, I had a confused feeling, because it was so—it had not gone the way I thought it would go, and the nature of the arguments was of course very different, and the nature of the discussion was very different than it had been in the district court. It was interesting. The one thing that really didn't necessarily surprise me but was both shocking and disappointing to me was Clarence—

G: Clarence Thomas?

M: Clarence Thomas. He didn't say a thing, [and] was the only one who did not participate in the discussion. [From the way] he looked, it wasn't even clear that he was listening although I'm sure he probably was. A couple of times he looked back and spoke to a law clerk sitting behind him. What was amazing to me is that, all these years later, the ACLU has done some things that they call the *Freedom Files* [*The ACLU Freedom Files*], which are television broadcasts.

They did one on the drug case. I don't know if you saw that.

G: I didn't.

M: There was a young woman who was an athlete and she lost the case in the Supreme Court [and] they interviewed her. These are real life, real person personifications of the ACLU's cases and the ACLU's work is the purpose of this *Freedom Files*. She was emotionally distraught by the fact that Clarence Thomas did the same thing. His demeanor and participation in the oral arguments on *her* case were exactly the same and, because of the way the court case came out, she felt demeaned by the fact that they didn't accept the fact that she was not—there was no way, there was no probable reason to believe at all that she could be a drug addict. So her individual liberties were significantly being impacted and she's an emotional teenager. But what really struck her was the way that Clarence Thomas [behaved]; his demeanor throughout it. I thought, You know, I can agree with that. I felt the same way.

G: He was completely disinterested and nonchalant?

M: Yes, that's right. That's right. Certainly, you know, he is not an unintelligent man and I certainly haven't always disagreed or agreed with him on certain items. Occasionally he even brings up a really important point that deserves some concern, certainly [in] a case involving domestic violence recently. He made a really excellent point. As a FindLaw commentary person says, it doesn't mean that he has become a feminist but it does mean that he has made a point that's very important in relationship to rights and problems faced—having to do with what kind of testimony is admissible.

G: Oh.

M: The Sixth Amendment to the Constitution provides you with the chance to confront witnesses against you. The issue is [that] domestic violence can be very different. A witness may be too frightened to step forth. They dealt with two cases and he made a strong argument that the two cases were different. One case dealt with whether a 9-11 call could be used in court even if they didn't have the person there, and the other one had to do with a wife who was a witness—the abused person. He dissented and took a point of view that was saying, This second case may be different. This kind of case might be different. So he obviously—I'm not saying he doesn't listen— But in relationship to the attitude that he communicates, and the participation and discussion. Because the discussion in oral arguments is a really important part of the judges' decision-making process.

G: Sure.

M: He may, but in these two cases at least, he did not participate at all in the discussion and was the only one that didn't. Everybody else spoke out.

G: That's interesting.

M: So, it's interesting.

G: So yes, it is a very confusing ruling and I am still not clear on [part of it]. Isn't it true that under CIPA, depending on your funding, filters just *may* [be disabled]? You started to clarify this yesterday—

M: It has to do with disabling?

G: They may be disabled. The language of the bill says they *may* be disabled for adults, not *must*.

M: And, for bona fide research or other legal purposes.

G: Right.

M: Yes, it said it *may* be, which means there's—for CIPA's purposes—no mandate that they be. But, what the court was addressing—maybe this will help—[was] whether Congress was using the incentive of financial aid as a means of forcing a library to take an unconstitutional action.

G: Right.

M: In order to get the funding, does it force a library to have an unconstitutional policy? This had to do with the constitutionality of that kind of policy, not just CIPA. First they had to deal with, can funding be used as a leverage? There's some contradictory evidence about this. There were several different precedents that could be followed. We argued one of them. We argued what the decision was in the legal services decision [*Legal Servs. Corp. v. Velazquez*, 2001] and the court, the government argued the Planned Parenthood case approach [*Rust v. Sullivan*, 1991]. We felt that we had strong arguments based on ours and the court didn't buy into that. The court didn't even discuss it in oral arguments. The Supreme Court didn't discuss it all that much because they didn't have to. They don't need to go there if there is a way that it can be constitutionally implemented. And there is and that is that librarians disable the filter, for an adult who requests it, in a timely manner. So the *may* is only for the purposes of CIPA. The *must*, and unblock any site that is not illegal for either an adult or minor, is if you want to be constitutional about it. Of course that just means if you don't want to expose yourself to the liability of— First of all, I'm going to be broader than that. If you don't want to take an unethical act. It's unethical to do something

deliberately that is unconstitutional, for a librarian—for any government official.

G: Sure.

M: If you care about being ethical, then you don't want to deliberately be unconstitutional. That means that you must disable the filter, and the person shouldn't have to tell you why.

G: No.

M: For any reason.

G: No.

M: You can make it anonymous, that's fine. It's impossible in most settings to make it totally anonymous because it's a limited resource, so you need to identify people so you can know that they're timed, because you don't have enough for everybody. That's another compelling need that you have to balance. But an electronic "ask" is as anonymous as possible because it's not happening with direct conversation. There's no way that anybody would even know unless they had an appropriate [reason]; unless they had a reason to go into your record and check how you were searching. It isn't even relatively important or necessary for library staff to do that. They can extract statistics to know how many people request unfiltered access but they don't need to connect individual names with what the choice is. So, you can make the choice anonymously and implement [it] in a timely fashion.

The other thing, besides the ethical issue, is that if the library doesn't do it that way then the Supreme Court has provided a plaintiff strong arguments. A library user can go into the court and say, as the Supreme Court said, you are implementing this in an unconstitutional manner. Then, of course, you actually have to prove that the implementation has the impact of placing an unreasonable burden on speech.

G: Now conservatives like Janet LeRoux claim that the librarians are breaking the law by not—

M: Well, it's because she doesn't know how to read a U.S. Supreme Court decision. (laughs)

G: Okay.

M: Deliberately or accidentally. (laughs)

G: (smiling) Okay. What about children? You cannot disable a filter for children.

M: Okay, no you can't.

G: But can you unblock [a site]?

M: Yes. Yes, and reference to this is a little less direct but reference is made in the decision to unblocking an inappropriately blocked site. You know what that means, that means something that's legal. It's very narrow—harmful to minors, obscenity or child pornography. The question is how do the library staff know what's obscene or even harmful to minors?

G: Right.

M: The Loudoun County case [*Mainstream Loudoun v. Board of Trustees of Loudoun County Library*, 1998] actually pointed out that that's inappropriate for library staff to exercise an authority they don't have. Then there's an issue about equal protection, because each library staff member would have to react and interpret in the same manner. Otherwise, it would be a variable standard, which isn't legal. So, it's not impossible that circumstances would arise in a setting in which individual potential plaintiffs—patrons—might not actually be able to determine that different things are happening; that different staff members are making different decisions. But it's not easy. It's not easy. Somewhere, someplace a library will be so egregious and arrogant about how they implement the policy, or uncaring or unknowing that, along with some very interested patrons—patrons who want to make a point—that will be where there will be an "as applied" challenge.

Now in Rhode Island there is one authority that provides the online services for all the public libraries in the state. The ACLU Rhode Island discovered, when they conducted a study of Internet practices, that a lot of libraries were refusing to disable the filter or [that they were] not letting people know that they had a right to do so, and that they were overblocking. They were using software at levels that were really overblocking. So the Rhode Island ACLU—I talked to the Rhode Island ACLU about all of this—they raised the question with this authority and with the libraries in Rhode Island suggesting that what they were doing was not [constitutional]. They educated them on the meaning of the court case [CIPA]. In reaction, this association actually did several things. They notified all the libraries about the necessity of having to disable, having it in their policy and letting people know. They changed filters and went to a filter level that was better.

G: The lowest?

M: A better filter than the one they were using in terms of that. The person I talked to at the ACLU in Rhode Island said they are still not really sure that in reality that all the libraries are actually making it clear to their patrons or taking very seriously the necessity. They aren't sure, but they are not doing anything about it at this particular moment. I mean, it could always arise in the future.

G: In your experience at the Fort Vancouver Regional Library, did you ever post information that showed patrons, These are the kinds of sites that are blocked, know this if you're using a filter?

M: No, just the descriptions because of course we didn't have access to the list of what's being blocked.

G: Incorrectly blocked.

M: Or correctly blocked.

G: To educate them.

M: Well, you see, it wasn't an issue prior to the CIPA-compliant policy for anybody because if a person would complain to a staff member that they weren't getting to something because the filter was blocking it, the individual had complete authority, no matter what their age was, to change it. Except if it was a kid and their parent had imposed it they couldn't change it.

G: Right, right.

M: But if they could tell if it was something that should not have been blocked, they could take care of it right then and provide them with access. For adults, after Fort Vancouver Regional Library implemented CIPA, it still wasn't an issue because they could shift back and forth. So it wasn't a setting in which you could really provide lists of blocked sites. However, some members of the board and the director would test filters by searching using terms that might be blocked—then you could identify some of what's being blocked at that point. You can tell something is being blocked and know what that is. So the library could have provided that information. They didn't explicitly do so to my knowledge.

G: Okay. (pauses and looks at notes) Okay, you've already answered a few of these. (pause) Was there anything you would like to say about the First Amendment rights of minors in terms of filters blocking protected speech, anything else?

M: I don't know of anybody who isn't concerned about minors and who doesn't recognize that there are [some things] inappropriate for minors. There are

different views, and no strong psychological evidence for either side, about what the actual harm or not harm is about a minor encountering something that isn't appropriate for him or her if it is occasional, if it is accidental. We do have lots of [examples] with sex abuse victims, those that have been groomed and constantly exposed to sexually explicit materials, but that's not what we're talking about in a library setting.

G: Right.

M: Several committees were charged by Congress to review ways to protect children on the Internet.

G: The COPA Commission.

M: Yes, that was one. The Kaiser Family Foundation, has also done such a study. The Meese Commission also studied the impact of sexually explicit images on children way back then. All these studies found little information and conflicting views. They aren't going to recruit child subjects to test this out.

G: No.

M: The only actual evidence they have is with sex abuse victims. But that is not the general population.

G: No.

M: So that's very difficult. But, in addition to that, there are many different views about how children should be raised. There are those who believe that children should be kept away from anything that the parent believes they should not have contact with and sort of magically, when they are no longer under control of the parent, become an adult, then will know what to do. Now I'm saying my view. There is this view that they are now ready and now they can deal with it. Then there are parents who believe that children should have access to information when it is right for a specific child, based on the parent's own personal knowledge of their child's emotional as well as chronological age, have an opportunity to help the child deal with things that are difficult. Chronological age and emotional maturity are not correlated in any scientific way. Who knows better about that than the parent himself or herself? There are those who have more knowledge than the average [person] who doesn't know the family at all—family friends, social workers that are dealing directly with that family on an interpersonal level [and] teachers somewhat, but not [entirely]. But their connection with the kids is also not as intense enough to be able to really have a full concept of a child and what they are ready for.

So, the library is a very good place for a parent to orchestrate that exposure to ideas and learning to deal with new issues. I can speak with authority because it's how I raised my children. I told them—the Internet was not around at the time—but I told them, You can check out anything you want from the library. You can read anything you want. I just ask you to keep me informed about what you are reading so that we can have discussion—just exactly my dad's approach. And they did that. My daughter, I took her to a hearing once, about a Constance Greene book in a school district in rural North Clark County. She was maybe ten or twelve, and her cousin was about a year younger than she was, and was visiting. They stayed three-quarters of the way through [and then] they asked if they could go out to the car. I thought they were just bored. They went out to the car and I stayed. The school board removed it from the library. I went out. They asked me what happened. I told them. My daughter said to me—I swear this is the truth—she said, Mom, you never told me how dumb adults can be. There's something really important you have not told me how dumb adults can be.

G: (laughs)

M: I said, Well, what do you mean? She said, Those people believe that anything I read I'm going to do. That is totally ridiculous.

G: She said that?

M: She did. She said, Now Mom, I know you've told me that you want me to discuss ideas with you and I do, but I have to tell you that sometimes I don't tell you right away. Sometimes I want to inform myself because I want to be able to defend myself if that's necessary or at least to be able to have a conversation with you. She says, Lots of times I will hear about something. My friends will say something and I don't know what it is. I want to figure out, I want to protect myself. So, she says, I go to the library to try to figure it out. Emma Rood, who was one of the witnesses in CIPA, is a lesbian. Her mother [Joanna Rood] is director [manager] of the Clackamas County Library Network [Library Information Network of Clackamas County] also said exactly that. Nobody would be more open and willing to talk than her mother, but many library employees knew her [Emma] and she did not want to be identified.

G: Right, I remember now.

M: You know she is transgender now? She's a male now.

G: Really?

M: Yes. She is in the process of transgendering. Emil, her new name is.

G: Emil.

M: (laughs)

G: From Emily to Emil.

M: Yes. But nobody could have been more understanding and supportive than that family. She has an identical twin too. But, as she said, I was exploring, I needed to know.

G: Right.

M: Also, she said that any library she went into, if she couldn't do so anonymously—her mother knew so many people—(laughs) she didn't want to have to say she needed this information. She wanted to be able to go in and just do it where nobody could see what she was doing. It's a very good point.

G: Right, it is.

M: So the issue is how do we protect everybody's rights? How do we protect both of these kinds of parents? The only way I can say, in relationship to that, is to say that we provide tools that can be used by the parent. We make sure we let them know. We make sure that our own views are not forced on others because most librarians believe that an incremental, guided by parents, introduction to information is the best choice.

G: A lot of kids don't get that.

M: But most librarians believe that, from their experience of watching kids or their intellectual knowledge, believe that. We have no right to impose that on a parent or a family. What we do have is a right to make sure that one parent's view doesn't get imposed on everybody's view.

G: Right.

M: So we, to serve our communities, we have to figure out a way to be able to offer the options that meet the needs of all the families that we serve. Restricting access to tools often has the opposite effect. In fact, all you need to know, every time that a school controversy would erupt in Clark's community, Klickitat Counties, the library always had the books and there would be a rush on them. Everybody, including the kids, would want to read them. As you know, [before] the issue of the *Annie on My Mind* case [*Case v. Unified School District No. 233*, 1995], it hardly circulated at all. It circulated like mad afterwards. *Daddy's Roommate* and *Heather Has Two Mommies*—the same experience happened.

G: *Lady Chatterley's Lover*, way back when.

M: Right, exactly. It's suddenly attractive; it comes to people's attention. The idea that simply reading something is going to inalterably harm you— Now there may be, we have to deal also with the mentally healthy. We can't make societal rules based on those who have emotional or mental problems. We also should [consider], obviously, those people have guardians, presumably, that can assume some responsibility for their use of the library.

Oftentimes the argument is made that parents don't do their job. They made it when we were dealing with Madonna's *Sex*. There were schoolteachers who argued that all these irresponsible parents don't care and teachers can't do anything about it either so who else is there? The librarians ought to do it. In a government institution librarians can do only that which they are authorized to do by the nature of their institution. Nowhere that I know of is it written in any state constitution or state law that librarians have the authority to assume parental rights. There are government officials who, under certain circumstances, with due process rights being given, governmental agencies that can take over parental rights. Parental rights can be taken over by social work departments, but not libraries.

G: Okay.

M: Parental rights can be removed by the criminal justice system but there is a full evidentiary hearing, and expert witnesses, and examinations, and psychologists, and doctors that have to be involved in order to get to that point of taking away parental rights. There's no authority. A library staff member who assumes that authority is acting outside the scope of their appropriate legal duties. Now, there are no police who are going to arrest them for that but it does raise a liability issue that could, in fact, lead a parent to believe that their child had been inappropriately limited. In fact, many of the school challenges are done by parents and their children indicating that a school had violated their parental rights. It is a real liability. The case in Wichita Falls, with *Daddy's Roommate* [*Sund v. City of Wichita Falls*, 2000], was done on behalf of a variety of plaintiffs who argued that parental rights had been taken away, and individual rights had been taken away. There is, as the Tinker case [*Tinker v. Des Moines Independent School District*, 1969] said, [the point that] children and teachers do not surrender their First Amendment rights when they go through the school house gate. Not an exact word quote but very important one.

In terms of the violence, of course violent expression cannot be illegal unless it's violent sex and it meets the obscenity standard or the child pornography standard. There's a wonderful case, an Indiana case in which Judge

[Richard A.] Posner, who I recently heard described as one of the best legal minds in the country—

G: You've quoted him.

M: He talked about [how] parents do not have the right to assume the voting rights of their kids when they get, magically, the age to vote. So to, as they approach that age, allowing government or parents to take on the rights of kids to limit their access to information. Violence is a public issue. We vote to go to war [and] we have law enforcement officials. The violence that's often discussed in that happens on the streets and it's on the daily news.

G: Of course it is.

M: It's going on in the world.

G: That is the news.

M: Yes. Shielding kids from that is dangerous for their own health, in terms of making up their own minds. Especially with the military making it sound about how sexy it is to be in the military and you get all this money. I totally support our troops and certainly am pleased that they are willing to defend us, whether that defense is appropriate or not, it's not their decision that they made. But I think that it is totally inappropriate to try to recruit them without giving them the full story. Access to full, uncensored information about what happens is an important part of that, that we should not block access to.

G: Of course.

M: So, you know, as I said before, democracy is based on trust. We could not operate otherwise. Therefore it needs an informed citizenry and those citizens have to have access to all ideas, whether they are good, bad, accurate or not so that they can compete in the marketplace of ideas and individuals can make their choices. Libraries not only provide the choices, they also contribute to the process of educating individuals about how to evaluate those resources. We do information literacy stuff. Indirectly if not directly, when we have story hours and we have programs for children, we model about the choice of materials for children and how to share that information with children. We choose Web sites that we highlight on our Web sites that model the criteria for use [and] for selecting information. We do many things obliquely and directly that serve the purpose of educating individuals about using information and selecting information, as well as providing the full range of information. But we are not in a position to decide what's appropriate for a specific child.

If a child asks us for a suggestion for something, of course, we'll ask questions to try to get as much information as possible to help figure out what it is. If a kid—and kids do this surprisingly often—if a kid says, My mother says I'm not supposed to have any books with witches in them, for example. Even if it's the best thing that might be on their topic we're not going to— For example, when we automated Fort Vancouver Regional Library, right afterwards I went to each branch to help support staff, because they'd been in a totally manual system before. So I went and worked. Also, it helped me understand what they were facing. In Ridgefield, it's this little rural town in Clark County, I was at the desk and checked out a whole bunch of books for a little kid who [in] 15 minutes came back and said, Oh, you know, I didn't go home. I forgot, my mother says I can't have anything with witches and there's some witches in a couple of these. Can I turn them back in?

G: (chuckles)

M: I said, Of course and would you like me to help you find some other, similar things that don't have witches in them? (laughs) She said, Yes and so we went and I helped.

(laughter)

I don't agree that reading about witches is dangerous but it's not my job to decide what was appropriate for that kid. I encouraged anecdotal stories from my staff to give me examples of this. They were constantly giving me examples of kids who would tell the library staff member what their parents had told them or what their parents wanted them or not wanted them to read. If the kid then wanted the staff member to use that to advise them, of course they would. But if the kid was going to ignore it, they would follow what the kid says.

G: Right, okay.

M: It's up to them. (chuckles)

G: Right.

M: Kids. My personal opinion is that part of coming of age is the process of challenging parental authority. You have to take that risk. And, it is a risk, an emotional risk, certainly, if not anything else. Sometimes they do it using the library. (chuckles)

G: Sometimes. Okay. (pauses) Is there a specific argument that you don't think that we have talked about that you wanted to address, about filtering in libraries? One of the points, I guess, that we didn't talk about is that conservatives will point

out—pro-CIPA supporters who may not be conservatives—they'll point out that even a really well-stocked library can't come close to providing the amount of information that's available through a filtered connection. They've [also] cited statistics for certain studies. [In] the Kaiser Foundation study, I think 1.4 percent of legitimate health information was blocked as opposed to 84 percent of pornography being blocked.

M: Okay, that's a real good question and it has several aspects I'd like to address.

G: Okay.

M: Let's do the one you mentioned last. That's an aggregate. It's looking at percentage blocks. It doesn't deal with one individual's needs. Libraries serve individuals. They also serve the community, in terms of reflecting the diversity of the community, but they *serve* individuals. So, you may be in that one, small percentage and exactly what you need to have access to might be blocked.

Now, let's go to the issue of, of course libraries can't have everything on the shelves and, therefore, of course they make decisions. Of course they make decisions, however, not based on viewpoint, but with a content-neutral, viewpoint-neutral perspective as much as possible. They also don't "balance" the collection by providing the same amount of information on all subjects and viewpoints. The interests of the community are considered. Libraries, however, have mechanisms in place making available materials that were not selected because of space or money or interest level or anything else. They offer interlibrary loan.

G: Right.

M: With interlibrary loan they don't run interlibrary loan requests by their selection policy. Not if they are a good library. There have been tales I've heard about libraries, for example, who won't buy *Daddy's Roommate*. Some Emporia library school students a number of years ago apparently had that problem. They took a literature course and they were supposed to read *Daddy's Roommate*, et cetera. They tried to get it on interlibrary loan from their library and were refused.

G: No!

M: This was five years ago; I don't know if it is still the case. I heard this from Perri Parise, who is the coordinator of the Oregon Cohort. But, I haven't heard it directly; this is anecdotal.

G: Okay.

M: The difference between the book you get on interlibrary loan and the sites that you search on the Internet on one hand and books that are selected for the library is critical in terms of this discussion. When you select books for the library they stay on the shelves afterwards. They are not just for one person. They are for any person who might want to select them.

G: Okay.

M: The books, the things that an individual requests on interlibrary loan, the things that a person accesses on the Internet, is a direct personal interconnection that disappears once that need is met. So you can't use the same criteria for evaluating. They *aren't* in the library, so the issue is not do they belong in the library or do they belong in this particular library. The issue is meeting an individual need that the library has the infrastructure to provide. So I think it's a fallacious argument and I've not been able to convince everybody that I've told about it. I may be wrong but nobody has been able to convince me with the other argument that it fits. They are not parallel.

G: Yes.

M: Now, when we select sites to be linked to our Web site, they are not just for an individual's request, they're there. So we should have a policy about which of the many sites that we link to and, at that point we evaluate it as best we do—because they are representative of information—about their accuracy and all that.

G: Sure.

M: But, speaking of accuracy, I've heard many times people who want to argue that libraries shouldn't have inaccurate information on their shelves. I ask always, Exactly what causes cancer today?

G: (laughs)

M: Which diet works and is safe today? (chuckles) And do you, if I'm talking to a librarian, or does your staff, if I'm talking to a board member because I've been asked, go daily through your collection, depending upon the changes in the scientific world's views of these? Then, what about the two books about black hole theory that I once read a review [of] in the *New York Times Book Review*? The author of the article described the diametrical theories about what causes black holes represented in the books. The reviewer stated that it was hard to imagine that these two books could even sit on a shelf next to each other without getting in an argument.

(laughter)

How is the library to know what's accurate? Science doesn't even know what's accurate. So, of course you have inaccurate things. Plus, the whole issue about creationists. People have a right to believe in inaccurate information.

G: (laughs)

M: And, if a person wants to argue something is inaccurate, [they] should have access to it so they can make the argument. Accuracy is one of those things you look at so you make sure you have a balance. Based on what scientific and informed theory says at any particular time is accurate, you want to make sure that you have that. But then you also have to survey and be aware of alternative points of view, and make sure they are represented also. It's very important not to delegate that just to interlibrary loan, because people discover those things just by browsing through the catalog or on [the shelves]. It's also questionable to decide that it's too controversial to have on the shelf but ought to be only in one location, only in the central library, not in the branches, even though it's very popular. Which is one approach that sometimes I think is taken to avoid controversy in the smaller community libraries. There are things that just don't get as much demand or are too expensive or there's a room issue that are only in the central library. You do have, at least with the Web catalogs, a much better way. But to do so because of a potential controversy, the motive here is what's important in terms of that and the motive needs to be content- [and] viewpoint-neutral, and not because something is or presumed possibly to be controversial.

G: Right, right. Okay.

M: I'm not opinionated. (chuckles)

G: No, no. Okay.

M: She says facetiously, in case the tone wasn't picked up.

G: (laughs) Oh true. (looks at notes) Let's see. I'm wondering if you want to—let's see how we're doing (checks the time). I did want to touch upon the hostile work environment argument as well.

M: Oh, okay.

G: I guess the Foundation has posted a really excellent—

M: Yes.

G: Information about the hostile work environment on the Foundation's Web site, explaining why it would be difficult to prove legally. But this area seems to give

proponents of CIPA some leverage in the court of [public] opinion.

M: Yes.

G: In the court of public opinion. I guess a good example would be the twelve librarians who sued the Minneapolis Public Library.

M: Which, as you know, was never determined factually because they settled.

G: They did settle.

M: The other thing is that the facts that we know about that case indicate that the administration of that library was not responsible in terms of developing policies or responding to inappropriate behavior. Their testimony is a part of that. For example, they would encounter somebody masturbating and they would report it to the security guard who would ridicule them and not take action.

G: Wow.

M: There were people who left sexually-explicit printouts all around for people easily to see. That's behavior, that's not speech. They did not move quickly enough. I don't think deliberately but just not— It's this whole thing that I frequently see in the fact that because you are so concerned about protecting free speech you don't make the distinction between speech and behavior. I always say, separate that behavior from the fact that it is sex-related, because it is usually, and make up some other topic it might be related to, and then see if you wouldn't take any action.

G: Hmmm.

M: It's like, people talk about a problem because all the noise when the teens are around looking at sexually-explicit sites. I said, well okay, let me tell you about the old people's investor club at Fort Vancouver Regional Library who, each day, used to make a lot of noise when they were all scrambling to get the *Wall Street Journal*.

G: (chuckles)

M: Then, when there was investment information on the Internet, they made enough noise as to be disruptive. The content is irrelevant; it's the behavior. They were too noisy. Anybody who participates in sexual behavior, as masturbation, that's the behavior. It doesn't matter what they are masturbating to. And, you know, if you want to look at psychological things, people masturbate to the oddest things. It isn't necessarily images that are themselves sexually explicit. So it's the

behavior that matters. It is also behavior when somebody is enticing someone to look at things they don't want to look at.

G: You have those antisocial patrons who come in and purposely leave it around.

M: So there's no problem. They have violated the rules of behavior and it ought to be clear that it is deliberate. Now, oftentimes when situations arise in libraries, it happens because somebody looks over the shoulder of someone else and sees what they are looking at. They didn't have to do that.

G: They didn't have to do that but some people purposely remove—some of these antisocial patrons will remove the privacy screens.

M: Well, then that's behavior.

G: And, is that—

M: That's because then they are taking deliberate action to expose something.

G: Right.

M: To somebody that they [knew], would not want [them] to do it. It's deliberate.

G: Right.

M: But if they are sitting there quietly searching here and somebody sees—I don't know if you are familiar with that legal principle called "avert your eyes"?

G: (chuckles)

M: That is a legal doctrine.

G: I didn't know that.

M: It is.

G: I heard [or read] Judith [Krug] saying it.

M: It is. The case most often used—it wasn't the first time but the one that often ends up in the citations in court decisions—is a case called *Erznoznik v. City of Jacksonville* [1975], which happened with a large screen outside motion picture theater.

G: Oh, the movie theater.

M: That's right. As the judges pointed out it is a conflict potentially between privacy rights and free speech rights. Somebody's privacy can be abridged by being forced to look at something they don't want to, but the courts very narrowly define that. If the two are at issue then the presumption is that the First Amendment prevails unless there are certain circumstances.

G: Okay.

M: One is, within the privacy of your own home, which is one reason why the broadcast industry is restricted during certain hours. The presumption is you don't know what's going to come on your screen when you turn it on.

G: Right, right.

M: But the U.S. Supreme Court, in the CDA case [*Reno v. ACLU*, 1997], said that the Internet is not like broadcast [media]. It is not a broadcast media. It deserves the full First Amendment protection that books and periodicals do. Another consideration is the degree of captivity. So, if you are a captive audience, if there is no way that you can avert your eyes, you may have a privacy right.

G: Which—

M: But if you can avert your eyes then it's your responsibility to do so rather than placing the burden on the speech of the person. There is a message here that a lot of libraries have missed, and I did. Fort Vancouver did; I didn't see it soon enough. Libraries need to look at placement of terminals and not place those terminals on heavily trafficked thoroughfares. They need to look at where they aim the monitor, both to protect the privacy of the person who is using the Internet and to protect the inadvertent viewer, to minimize the level of captivity. Below desk monitors help; they are better than privacy screens. Recessed monitors [help]; Fort Vancouver had them.

G: Some people want to put them in a well-trafficked area as a deterrent.

M: No, no, no, no, no. That's the heckler's veto. [That's] enabling the heckler's veto. If somebody says to you, That person is looking at something, and then you go and tell a person that they can't look at it, now some libraries have reached a slightly different way of approaching this, which is not the best but is defensible. That is, for some reason or another they have chosen not to put privacy screens on all of the terminals. If somebody complains about someone else they give a privacy screen to the person. The reason why it is not the best is that it draws attention to that person.

G: Of course.

M: Sometimes they will ask a person to move to a terminal that is in a different part of the library. Again, [it's] not the best choice, but—

G: Right, right.

M: A community college where I do training does this. Most of the time when they encounter situations like this it's neither faculty nor students. They will argue that their service pattern works best with the way they have things arranged, et cetera, for their primary clientele, but they are tax-supported, so they have no intention of shutting off the public, in general. It works for them, the staff. I know because we have talked a lot about techniques for doing this. That has become part of the training I do for them. I know they are very concerned about doing it in a sensitive manner—trying not to call attention to it, being very quiet, making it look like a conversation that has nothing to do with inappropriate behavior.

G: Okay.

M: Making sure that the person who makes the complaint knows that the person is looking at things that they have the *right* to look at, suggesting that they don't look at what the patron is and protect their privacy. I'm pretty confident that they have done the best they could in terms of that situation.

G: Okay.

M: The criteria for sexual harassment [are]—you know because you've read it. It has to be targeted, it has to be persistent, et cetera. I, therefore, argue that libraries that adopt a tap on the shoulder policy, that basically assign their staff to monitor what people are looking at, not only is an egregious violation of the privacy of the person who is searching, but it is setting up a situation in which it is possible that a staff member could argue that they are being targeted. They are being *assigned* to look for sexually explicit material.

G: Oh, that's interesting.

M: It hasn't happened but it certainly could. The other thing is, if we're talking about the personal belief systems of librarians, because not everybody is going to react as if that were sexual harassment. I love to tell a story of some training I did for Los Angeles Public Library. This was in probably 1997, so it was the early years of all of this stuff—before CIPA. One of the staff members challenged me quite emotionally about seeing things on other patrons' terminals.

G: She was upset by it?

M: Yes, it had sexual information on it. So I started to answer the question and

another person, this person said, I don't believe in abortion but that doesn't mean I can refuse to help someone. If I'm asked about information about abortion, I have to respond, it's part of my job. Several other ones came up with examples. I said, Well, there you have it. If, in fact, the library was going to do something to shield librarians from things—library staff from things they find offensive—they can't make it viewpoint- or content-based. It's going to have to be anything that anyone might find to be offensive.

G: Wow.

M: Yes, and one at that training said, What am I going to do? Should each of us wear a sign with a list of things we won't answer questions about? (laughs)

G: It's a difficult situation.

M: It is a difficult situation.

G: How would you [handle the situation] if it were your library and the person comes up to you, and they are shattered by what has been happening? I mean, judging from her testimony, one of the women was *shattered.* What do you do with that situation?

M: Okay, okay. Library staff should be told as they are hired what kind of a working environment it is, and that they should be prepared for the fact that, because the nature of the collection and the constitutional framework, and the policies of the library, they inevitably will have to confront things. It's part of the job.

G: Yes.

M: So people have to make their own decisions about working in a library. Every single person that applied for a job at Fort Vancouver was told what the library's policy was.

G: Right.

M: And asked if they could live with it. Then throughout the interview [I] asked several job-related, directly task-related questions that would actually happen in that person's job—which is a situational question, they were asked how they would handle it. Even to the point that facilities people, for example, a question we developed for them was, you go to the local hardware store, there's a controversy going on at the library about Madonna's *Sex* or sex on the Internet and the person asks you how in the world could you expose children to that, how would you respond? There are a range of acceptable answers but one of them is not, You're right, we shouldn't be doing that.

G: Right.

M: But the person's job is not to explain library policy. They have the option of saying something like, I understand that you're quite upset, would you like me to give you the name of a staff member to call you and talk to you about [it]? Or, I can give you the number of a staff member that you can call and talk to about this, so that it was arranged. I remember when we interviewed the head of the Information Technology Department, the scenario for him was that you're out working on a computer and this happens. Well, three or four years after he came into my office one time. He says, Guess what? I said, What? He said, Remember that scenario? It just happened. (laughs)

G: It happened? (laughs)

M: He said, I hope I did as well as I did in the interview. I said, I'm sure you did, Ron. (laughs)

G: That's good.

M: Anyway, because of that it's hard to believe that somebody would be shattered. We try to make the questions direct, because we understand that the person may have no idea what is in a library. We explained that the library has materials that people might find offensive. So you talked about *Playboy*, Madonna's *Sex*, gay sex manuals, [books about] how to make a bomb, et cetera.

G: Right, right.

M: [You] mention things that were actually in the collection so that they would really know. Occasionally, somebody would say, I just can't work in that environment, and you would have to say, Well this is just not a good job for you, because it's a job requirement.

G: Okay.

M: We had to be very careful in order [to] not be perceived to be discriminating [against] them, based on their personal beliefs. Lots of times you get people that would say, Well I wouldn't let my kids, and we would say respectfully, But you're not being interviewed to be a parent, nor are you expected to or allowed to act as a parent when you are on the job. You are going to be acting as a library staff member (this would be mostly clerks). Now, and [we would] say, In that setting, will you be able to follow library policy? We would always document that this dialogue happened, in case somebody were to complain that they were being discriminated [against].

G: Wow, interesting.

M: We'd have to, just as a self-defense kind of thing.

G: Right, right. I suppose there are school libraries or grammar school libraries where the sort of things that might be encountered in a public library are not going to be an issue.

M: Individuals all have different kinds of skills. Everybody who works for the library has to be prepared to deal with complaints and they've got to do that in an acceptable way. But if it goes on and on, it is not inappropriate, because you know that somebody else is just better at this, to get somebody else to intervene. But you do that not just with sexual content on the Internet, but with all difficult encounters, for example with individuals who have mental problems.

G: Oh, difficult.

M: Yes, difficult persons in which it's not a behavior that a person can necessarily control but who have a right to use the library. There are naturally some people that deal with that situation better than others. Now you see what I'm doing right now? I'm removing it from the context of the nature of the speech.

G: Right.

M: I'm putting it in [a different context] so that you can better and less emotionally and more rationally analyze whether a practice is acceptable. On many times I would say to staff members, If Susie actually is much better at dealing with this patron with a mental problem then, if Susie is on duty and this person comes in and has a problem, of course it is not inappropriate for some other staff member to defer to Susie, that's fine. Now, it's not fine for the other person, if Susie is not available, to refuse to deal with the situation. You have to have minimal skills to do that. You have to have minimal acceptable skills.

G: Right.

M: But we can recognize people who are better at it.

G: Okay.

M: And you can use your staff team to do that. But you have to serve all people, all the time the library is open. In most libraries, no one person is always there. Never, because even if the hours correspond with one person's shift they're going to be sick sometimes, they're going to be on vacation sometimes, they're going to be in a meeting sometimes. So, you don't get to escape that duty but you can

recognize people's differing levels of ability. But then, in the staff meetings you need to discuss the techniques that person is using, you need to share, it needs to be a coaching situation, [and] you need to use it as a way to be able to improve your skills, because those are essential skills for working in a library. So that's, to me, what needs to happen so that you don't get into a situation where someone is totally surprised. They should be able to deal with these situations and, if not, it isn't a good job for them.

G: Sure.

M: Just like you usually have to set a minimum amount of weights somebody has to lift. If you can't lift fifty pounds, at Fort Vancouver at least, because of the delivery boxes full of things that are shifted everywhere, it's a rare setting only in a few places that actually always have someone there who could do what's absolutely necessary in order to do the job. So, under ADA [Americans With Disabilities Act] if a person can suggest an affordable, possible, reasonable accommodation then the library has a responsibility for doing that, but it has to meet all of those requirements.

G: Okay.

M: Exempting a staff member from doing certain duties because they are disturbed or offended by content of a person's speech just doesn't equate with what being a library is all about. Now that may sound harsh and difficult but most people learn techniques for shielding their psyche from things they find disturbing. It's an essential survival skill.

G: In some occupations [especially], for police, or doctors or EMTs [emergency medical technicians] who may have to see disturbing—

M: Right, right. The library isn't generally thought, in much of the public's viewpoint, to be of that nature but it is in terms of the types of speech.

G: Okay.

M: I've done some coaching. It's not dissimilar to coaching people about how to deal with a confronting patron in terms of techniques can be used. For example, take a deep breath, separate yourself. You must be astute enough to recognize the different things that are going on in your mind and your emotions. Recognition is a means of dealing with them and deep breathing is a means of getting more oxygen to your brain so that you can actually take those steps. So I don't think we should ignore or ridicule people who have difficulty dealing with complaints. I think we should recognize you have a problem and I understand that's a problem, you don't deny it's a problem. Now let's talk about techniques you can use to deal

with it so you can do the job.

G: Right.

M: Lots of times people used to assume, because I can fairly glibly respond to difficult patrons on these issues, that it was easy for me. I would respond that, every single time—it's true—every single time I confront a difficult patron I'm human. I feel the same. So when I'm coaching you, I'm coaching you on techniques I learned myself. I say the same thing to my students, my public library students. I say, I take the deep breath.

(laughter)

M: The reality of it is, and I think it helps staff to have this knowledge, that the person on the floor who is on the front line, usually gets the first brunt of somebody's anger or distress. That is the hardest time because the person has gotten no information prior to that [and] their anger or their emotional distress is at the highest level. It's not a failure if the person on the front line does not successfully deal with that because it's incremental. I know that many times in which then I would get a call—either a call to come physically if it happened to be in the business office, if I was there, or if I was out at a branch or on the phone—that an essential step has been taken in dealing with it already. That made it easier for me. I would say something and the person would say, Oh yes, I was told that, so that they would be—a reasonable person—would be beginning to absorb the message.

Not everybody is reasonable and there are many people, it doesn't matter what you say, it's not going to make a difference. You know what I say to staff about that? It's not just about you and that person because, although we try to protect the privacy of a conversation with a patron, in a public setting it is almost completely not private. There will be people who are aware [of] what's happening and they will judge the library on the way you treat that person. So, even if that person is not going to be convinced, even if you know it's useless, it's worth delivering the message because it will be heard by people who haven't yet made up their mind. Or, it may be heard when the person goes home and tells the family. In this way, people become aware that patrons who complain about materials are not treated with disrespect.

G: Right.

M: So it's important to keep up that conversation and not lose your cool, even if it's hopeless—if somebody is hopeless, they've already made up their mind.

G: Do you have a parting thought that you would like to share with librarians 200

years from now?

M: (laughs) Join the Freedom to Read Foundation.

(laughter)

G: Thank you for this interview.

M: You're welcome.

END OF INTERVIEW

Chapter 7. Conclusion

This history of the FTRF is both a history of what the Foundation has been and what it has not. Of the voices transcribed here, Zoia Horn's is the one most representative of the view that it should have become a more inward-oriented Foundation, perhaps something akin to a union, intensely focused on defending a broader array of injustices faced by librarians on an individual and local level. Would such a Foundation have been a better organization than the one that in fact came to be? This is not the kind of question that an oral history, or perhaps any history, can answer. What the Foundation has chosen to do, it has done extremely well. Those who have provided their energy and labor to it have done so idealistically and selflessly. This is no refutation of the vision for the FTRF held by Ms. Horn and members of the SRRT. So, in a way, no disputes are resolved here.

But while the oral history method, allowing as it does some of the principal players to speak for themselves, cannot resolve the controversies surrounding the Foundation's inception or remaining disputes about how it should or should not have developed, it does permit a resolution of a different kind. In listening to these individuals speak in their own voice about their convictions and goals at the time of the Foundation's birth and afterwards, it becomes clear that their motives and beliefs are ultimately the same. They were and are, equally and without exception, deeply and sincerely committed to the cause of intellectual freedom.

The troubling controversy surrounding its establishment can also be seen as a source of the FTRF's strength. Would the Foundation and OIF be as good as they are

today if they had been created in a stagnant atmosphere that was devoid of debate? The passion and commitment to librarianship, society and democracy expressed by ALA members, the level of scholarship and wit that informed their debates, the solidarity members displayed toward those who were embattled, their pride in the profession, and their enthusiasm for library work all worked its way into the fabric of the Foundation. From an outsider's perspective—outsider in the sense of one who was not "in the moment" with those sincere, intelligent librarians who passionately debated the future of librarianship and of the American Library Association—the time of the Foundation's birth was a time of high emotion, strong convictions and desire for change which, it seems, stimulated an atmosphere supportive of risk-taking. The call for action in the ALA was loud and clear, and appears to have resonated with members from the top to the bottom of the organization. It's possible that some of those at the top of ALA, such as Clift, who had more power to get things moving than the collective, became caught up in the spirit of the time and used their power to cut through procedural red tape from which the ALA was trying to rid itself in order to expedite change. But, adjustments were made to the composition of the board, including ex-officio slots converted to elected slots, the Foundation's stated priorities were reordered, the Merritt Fund was established, and meetings were opened up to anyone who wanted who attend.

In time, the intense conflicts of the early days subsided for most members as the Foundation got to work. The Foundation's separate status emerged as an asset, allowing it to function with agility and autonomy, independent of and unbeholden to the sluggish ALA bureaucracy. Although legally separate, the Freedom to Read Foundation occupied

the same small allotment of office space on the third floor of the ALA headquarters building in Chicago and shared the same resources as the ALA's Office for Intellectual Freedom. This continuity gave members the opportunity to reach the ALA's intellectual freedom nerve center with one telephone call, letter, conversation or visit to the office. Judith Krug has met the challenge of her dual-responsibilities by working long hours (often twice the amount for which she was paid in the early days) with a passion and dedication for building a high-functioning OIF and FTRF. One can see that, rather than resting on laurels as a figurehead or developing a petty fiefdom, Krug has worked in the spirit of cooperation and accomplished a great deal. Operating under this ethic of cooperation, her efforts have facilitated a well-coordinated network of state ALA intellectual freedom associations, of like-minded organizations, interest groups, authors, individuals, attorneys and others.

The Foundation also had the good fortune of having a team of excellent people who helped shape its future course. Those who have become legends and paragons of the profession actively took part in the Foundation when it formed, lending it their time, efforts, support, and sometimes their political clout. These were individuals who received the deepest respect and, for some of whom, the profession has named its highest honors, such as Alex P. Allain, Lillian Bradshaw, William S. Dix, Robert B. Downs, Everett Moore, Eli M. Oboler, Carrie C. Robinson, and Joseph H. Reason. They also served as allies and mentors to Krug, who was a mere staffer fresh out of library school when she was given the job. It was Clift who was instrumental in putting her in charge of the small but important new Office for Intellectual Freedom and Freedom to Read

Foundation, and he who opened up the support of the traditional power structure to her, in a move that appears to have been an experiment of sorts, to test the feasibility of creating a progressively structured entity within the thickset bureaucracy of ALA. It isn't surprising that members of a giant organization like ALA felt highly dubious about entrusting the defense of their core professional principles to a small entity with a tiny operating budget that was only staffed by one full-time employee. Against these odds, the "experiment" has been immensely successful. The Foundation has built powerful alliances, attracted top-notch attorneys, filled its ranks with brilliant, highly dedicated individuals and partnered with librarians and library institutions throughout the nation.

Lacking money, the fledgling Foundation found other means to propel itself forward. As stated, some of the best minds the profession had to offer, as well as powerful members of the ALA, worked on its behalf. It cultivated a vast network of alliances within and outside of the ALA, the common bond being their interest in defending and shoring up rights and privileges under the First Amendment. Where it could not afford to go to court on a given issue, the Foundation could rely on getting help from its friends. A significant support for its cause was the professional ideology it defended. By representing the unselfish, straightforward mission of America's libraries as embodied in the Library Bill of Rights, the Foundation could make its case from high ground, unsullied by profit motives, corporate interests, or political ambitions. This moral and ideological position facilitated, in part, the growth of its symbiotic relationships with other organizations. Thus, by lending its or ALA's name to a case or an amicus brief or contributing a modest grant, the Foundation could stretch its limited

resources to bring battles within its reach, while its partners, happy to have the moral force of the library profession standing beside them, paid the legal bill. The Foundation, it seems, quickly learned the value of its standing as a representative of the ALA and continued to build strong coalitions and alliances with numerous groups.

But the Foundation has done much more than to simply lend its name to important cases. It has attracted some of the most dedicated and capable legal minds of the country, who have offered their resources at little or no charge. These attorneys have delivered winning arguments on behalf of the library profession before numerous courts, as litigants and as amicus curiae. As advisors, they have personally assisted numerous libraries and librarians and, as instructors, they have educated lawyers and librarians alike, empowering them with the knowledge and support needed to act in their local arenas. Also in the spirit of cooperation, the Foundation's lawyers join forces with legal teams from other organizations such as the ACLU in order to mount a truly powerful offensive. Both might collaborate on a given case or each might file separate suits so that, taken together, the court is better educated on a given issue.

Since its establishment nearly 37 years ago, the Freedom to Read Foundation has amassed an incredible amount of experience and become a highly respected, influential force in the nation's legal arena. The Foundation has achieved success through its expert legal counsel, capable leadership, and extensive cooperation with others who defend the same principles.

As Judith Krug approaches her retirement from ALA, one wonders how the OIF and FTRF will proceed in her absence. Her departure will mark the end of an era and a

huge loss for ALA; those offices will never be quite the same. As Krug supposes in one of her interviews included here, it is likely that more than one person will step in to fill her position. One can only hope that the Foundation will give them the trust and support that Clift and others once gave Judith Krug when she started out so many years ago.

Areas for Further Investigation

There are two critical areas for further study. One is to record the oral histories of the Foundation's staff, leaders, members and partners, starting with those who have the longest history with the FTRF. The more of these interviews that are gathered, the greater our understanding of the Foundation's legacy will become. If oral history projects of any size weren't so labor-intensive, time consuming and expensive, more would have been gathered for this thesis from other past trustees, staff and attorneys, and from partner organizations such as the American Civil Liberties Union, American Publishers Association and Media Coalition. Some of the individuals who originally protested the Foundation's formation but then later supported it might also have been interviewed. The other crucial area of research lies with Judith Krug. No biography of her has ever been written. A good biography of Krug, aside from the promise of being wonderfully entertaining, would capture important historical information about the librarianship profession from multiple perspectives, the Foundation being but one. A study of Krug, who has been a mover and shaker, could also provide a fascinating portrait of a true original whose qualities, abilities and accomplishments have taken on legendary proportions.

There is ample room for further effort to document the Foundation's history in

many areas, such as a closer look at the Foundation in terms of its development, business, leaders and partnerships; a deeper investigation into the politics surrounding its formation; and a scholarly examination of the Foundation from a legal perspective, including how the organization's efforts have contributed to the courts' interpretation of the First Amendment. Hopefully, the historical details, sources and oral histories in this thesis might serve as a support for a richer investigation into this important area of library history.

Observations about the Oral History Methodology

When setting out to research the FTRF I naively thought that it would simply be necessary to identify a few main areas to research and that information in these areas would be neatly waiting to be found in archives, publications, and the minds of the narrators. What I didn't anticipate was that history does not unfold or present itself tidily. Every story has multiple substrata and, although the ALA archives proved to contain a wealth of meeting minutes, notes and correspondence, and other primary data unavailable in published form, there were also many missing pieces and pieces whose significance could only be tentatively inferred or perhaps only guessed at.

The oral history methodology provided a way to gain clarity in the process of learning about the Foundation's history and workings, and narrators' input helped create a fuller picture. They provided missing information, nuances and answers through their knowledge, insight and experience because *they were there*; they experienced the drama of the Foundation's history first-hand as principal actors. They were able to convey what written records could not, partly because of the spontaneity of the method. In the

transcripts and recordings, the presence of narrators—their voices, passion, personality, laughter and frustration—plays upon the surface of the historical matters they relate, thus situating the past within the immediacy of the present and giving the Foundation's story life. Further, the interviews give us the opportunity to hear what intellectual freedom means from the perspectives of people who have spent a lot of time thinking about it and have dedicated their lives to it, as librarians, lawyers, educators and activists who have stood in front of colleagues, classrooms, the media, the FBI, Congress and courts in defense of the profession's principles.

Interviews also afforded narrators the opportunity to contribute to this study *in their own words*. Unlike an informational interview in which the interviewer's interpretation of the interaction stands between the principal actor and the reader, the oral history method allows an actor's words to stand intact as the record. Narrators' views and recollections, combined with the written record, reduce the burden on a historian's interpretation of events, leaving the reader (or listener) free to come to her own conclusions. By including lengthy recollections from these individuals in this thesis, the danger of censorship by omission in the narrative, however inadvertent, is also reduced. There are areas where this historical overview barely scratches the surface of the Foundation's story, a fuller development of which was necessarily constrained by the unavoidable limitations of life, such as time and budget. Through the inclusion of oral histories, however, portions of the Foundation's story, which were glossed over or missed in the narrative section, did not get lost because discussions of the missing information emerged in the interviews, in depth and from various perspectives. Further, some of the

more mundane aspects of the Foundation were more interesting in the context of an interview. For example, Candace Morgan and Judith Krug's discussion of aspects of the organization's structure are far more compelling than any written account I have come across.

It seems that oral history is the best way to carry the Foundation's story forward. By engaging in open dialogue with more individuals, compelling details might be rescued from oblivion, its history will come alive to enrich the written record, and it will be conveyed in the words of those who experienced it.

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Appendix A: The First Amendment to the United States Constitution

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances (United States, 2006).

Appendix B: The American Library Association's Library Bill of Rights

The American Library Association affirms that all libraries are forums for information and ideas, and that the following basic policies should guide their services.

I. Books and other library resources should be provided for the interest, information, and enlightenment of all people of the community the library serves. Materials should not be excluded because of the origin, background, or views of those contributing to their creation.

II. Libraries should provide materials and information presenting all points of view on current and historical issues. Materials should not be proscribed or removed because of partisan or doctrinal disapproval.

III. Libraries should challenge censorship in the fulfillment of their responsibility to provide information and enlightenment.

IV. Libraries should cooperate with all persons and groups concerned with resisting abridgment of free expression and free access to ideas.

V. A person's right to use a library should not be denied or abridged because of origin, age, background, or views.

VI. Libraries which make exhibit spaces and meeting rooms available to the public they serve should make such facilities available on an equitable basis, regardless of the beliefs or affiliations of individuals or groups requesting their use (OIF, 2006, p. 55-56).

Appendix C: Freedom to Read Foundation Presidents and Trustees

Presidents

2006 - 2007 John W. Berry
2005 - 2006 John W. Berry
2004 - 2005 Gordon M. Conable
2003 - 2004 Gordon M. Conable
2002 - 2003 Gordon M. Conable
2001 - 2002 Gordon M. Conable
2000 - 2001 Candace D. Morgan

1999 - 2000 Candace D. Morgan
1998 - 1999 Candace D. Morgan
1997 - 1998 June Pinnell Stephens
1996 - 1997 June Pinnell Stephens
1995 - 1996 June Pinnell Stephens
1994 - 1995 Gordon M. Conable
1993 - 1994 Gordon M. Conable
1992 - 1993 Gordon M. Conable
1991 - 1992 C. James Schmidt
1990 - 1991 C. James Schmidt
1989 - 1990 Robert S. Peck
1988 - 1989 Robert S. Peck
1987 - 1988 Judith A. Sessions
1986 - 1987 J. Dennis Day
1985 - 1986 Lee B. Brawner
1984 - 1985 Ella G. Yates
1983 - 1984 William D. North
1982 - 1983 William D. North
1981 - 1982 William D. North
1980 - 1981 Florence McMullin
1979 - 1980 Florence McMullin
1978 - 1979 R. Kathleen Molz
1977 - 1978 R. Kathleen Molz
1976 - 1977 Richard L. Darling
1975 - 1976 Richard L. Darling
1974 - 1975 Richard L. Darling
1973 - 1974 Alex P. Allain
1972 - 1973 Alex P. Allain
1970 - 1971 Alex P. Allain

1969 - 1970 Alex P. Allain

Foundation Trustees, 1969 to 1979

1969-1970 (17)
Alex P. Allain
Jackie Eubanks
Sanford Cobb
Lillian Bradshaw
Dale B. Canelas
Edwin Castagna
Julius Chitwood
David H. Clift
William S. Dix
Robert B. Downs
Gerald B. Hubble
LeRoy C. Merritt
Joseph H. Reason
Carrie C. Robinson
Sophie Silverberg
Theodore Waller
C. Lamar Wallis

1970-1971 (16)
Alex P. Allain
Everett T. Moore
Daniel Melcher
David Berninghausen
Lillian Bradshaw
David H. Clift
William S. Dix
Keith Doms
Kenneth Duchac
Ervin Gaines
Joseph H. Reason
James H. Richards
Carrie C. Robinson
Sophie Silverberg
Jean-Anne South
Richard L. Waters

1971-1972 (17)
Alex P. Allain
Everett T. Moore
Daniel Melcher
David H. Clift
Richard L. Darling
William S. Dix
Keith Doms
Ervin Gaines
Katherine Laich
Joan Marshall
Florence McMullin
R. Kathleen Molz
Eli M. Oboler
Carrie C. Robinson
Jean-Anne South
Lester L. Stoffel
Richard L. Waters

1972-1973
Alex P. Allain
Everett T. Moore
Richard L. Waters
William D. Cunningham
Richard L. Darling
Stanley Fleishman
Ervin Gaines
Katherine Laich
Evelyn Levy
Jean Lowrie
Florence McMullin
R. Kathleen Molz
Eli M. Oboler
Carrie C. Robinson
Grace Slocum
Robert Wedgeworth
Joslyn N. Williams

1973-1974 (17)
Alex P. Allain
Everett T. Moore
Richard L. Darling
William D. Cunningham
Stanley Fleishman
James A. Harvey
Edward G. Holley
Evelyn Levy
Jean Lowrie
Florence McMullin
R. Kathleen Molz
Eli M. Oboler
Carrie C. Robinson
Grace Slocum
Robert Wedgeworth
Joslyn N. Williams
Jane Wilson

1974-1975
Richard L. Darling
Florence McMullin
Jean-Anne South
Dale B. Canelas
Frances C. Dean
Emanuel Dondy
Nancy Doyle
Stanley Fleishman
Edward G. Holley
Evelyn Levy
Allie Beth Martin
R. Kathleen Molz
Eli M. Oboler
Betty Carol Sellen
Helen W. Tuttle
Robert Wedgeworth
Jane Wilson

1975-1976
Richard L. Darling
R. Kathleen Molz
Jean-Anne South
Dale B. Canelas
Frances C. Dean
Leslie Fiedler
Stanley Fleishman
Marilyn Hinshaw
Clara S. Jones
Arthur Kirschenbaum
William M. Lucas Jr.
Florence McMullin
Allie Beth Martin
Betty-Carol Sellen
Claude Settlemire
Helen W. Tuttle
Robert Wedgeworth

1976-1977 (13)
Richard L. Darling
R. Kathleen Molz
Helen W. Tuttle
Neil H. Adelman
Dale B. Canelas
Leslie Fiedler
Clara S. Jones
William M. Lucas Jr.
Florence McMullin
Eric Moon
Eli M. Oboler
Sophie Silberberg
Robert Wedgeworth

1977-1978
R. Kathleen Molz
Dale B. Canelas
Helen W. Tuttle
Neil H. Adelman
Kenneth Donelson
Zoia Horn
William M. Lucas Jr.
Florence McMullin
Eric Moon
Eli M. Oboler
Russell Shank
Sophie Silberberg
Robert Wedgeworth

1978-1979
R. Kathleen Molz
Neil H. Adelman
Florence McMullin
Nancy Doyle Bolt
Frances C. Dean
Kenneth Donelson
Thomas J. Galvin
William M. Lucas Jr.
Eli M. Oboler
Russell Shank
Sophie Silberberg
Grace P. Slocum
Robert Wedgeworth

Appendix D: Freedom to Read Foundation Roll of Honor Award Winners

(Note. From the Freedom to Read Foundation, (2006b). Retrieved July 3, 2006 from http://www.ftrf.org/ Reprinted with permission.)

2005: David Cohen
2004: June Pinnell-Stephens
2003: Theresa Chmara
2002: Joyce Meskis and Candace D. Morgan
2001: Carolyn Forsman and John K. Horany
2000: Emily Wheelock Reed
1999: Charles L. Levendosky
1998: Dorothy M. Broderick
1997: Bruce J. Ennis
1996: Gordon M. Conable
1995: J. Dennis Day and Judith F. Krug
1994: The Partnership of the School Board, Superintendent and librarians of the Juneau, Alaska, School District, and Frank Zappa
1993: Lillian M. Bradshaw and Jerry A. Thrasher
1992: Eleanor and Elliot Goldstein, and R. Kathleen Molz
1991: Judy Blume and Carrie C. Robinson
1990: William D. North and Russell Shank
1989: Alex P. Allain and Jeanne Layton
1988: Everett T. Moore and Sidney Sheldon

Appendix E: Freedom to Read Foundation Timeline

(Note. From the Freedom to Read Foundation, (2005c). Retrieved May 25, 2005, from http://www.ftrf.org/ Reprinted with permission.)

1969-1979

1969

Foundation was created. The Freedom to Read Foundation (FTRF) was incorporated in November.

1970

Joan Bodger dismissal - The first major action by the FTRF was a grant to assist librarian Joan Bodger, fired from the Missouri State Library. Bodger lost her job for writing a letter to a local newspaper protesting the suppression of an underground newspaper. An ALA Office for Intellectual Freedom fact-finding report, approved by the Executive Board, vindicated Bodger and deplored the library's actions.

Marshall E. Woodruff legal defense fund - A grant was awarded to support a lawsuit challenging Woodruff's conviction for selling an allegedly obscene issue of the Washington Free Press. The Maryland Court of Special Appeals eventually overturned the conviction.

T. Ellis Hodgin dismissal - $500 was awarded to defray financial hardships after Hodgin lost his job as the city librarian of Martinsville, Virginia. Hodgin had come under fire for joining a lawsuit challenging the constitutionality of a religious education course taught in the city school system attended by his daughter.

1971

T. Ellis Hodgin legal defense - Continuing its involvement in the defense of Ellis Hodgin, a second $500 was awarded to assist in perfecting an appeal to the U.S. Supreme Court in a lawsuit Hodgin brought seeking reinstatement as city librarian. The Court declined to review the case.

Todd v. Rochester Community Schools - A grant was awarded to a school system in Rochester, Michigan, for its legal expenses in appealing a state trial court decision upholding the removal of Slaughterhouse-Five from school libraries and classrooms. The Court of Appeals of Michigan eventually ruled in favor of the school system, allowing the book to be returned. This was the Foundation's first support of litigation to oppose the removal of library materials.

1972

Moore v. Younger - For the first time, the FTRF served as a party in a lawsuit. The lead plaintiff was Everett T. Moore, Assistant Librarian at UCLA and Vice-President of the Freedom to Read Foundation. The class action suit challenged California's 1969 harmful matter law, asserting that

it was unconstitutionally vague and overbroad, and placed librarians in criminal jeopardy for distributing matter judged "harmful to minors." Ultimately, the defendant state attorney general acknowledged, in 1976, that librarians were exempt from the harmful matter law.

1973

"Pentagon Papers" fund - A grant was awarded for legal defense costs in the federal prosecution of Daniel Ellsberg and Anthony J. Russo Jr., for their role in the publication of the "Pentagon Papers," which disclosed the official secret history of American involvement in Vietnam. The charges against Ellsberg and Russo were eventually dismissed.

Kaplan v. California - The FTRF became involved in its first U.S. Supreme Court appeal by filing, through the American Library Association, a motion asking the Court to consider an amicus brief addressing constitutional questions posed by the new three-prong test for obscenity in Miller v. California. Denying the motion, the Court declined to consider the argument that First Amendment protections are not limited just to serious literature or political works.

New York v. Kirkpatrick - An amicus brief was filed in the U.S. Supreme Court supporting a challenge to a New York state statute that raised a legal presumption that those lending or selling "obscene" material—in this case Zap Comix by the artist Robert Crumb—did so with knowledge of its content and character. The Court declined to review the case.

1974

Jenkins v. Georgia - An amicus brief was filed in the U.S. Supreme Court urging the reversal of various convictions in Georgia resulting from showing the movie Carnal Knowledge in violation of the state obscenity statute. The Court found that the film was not obscene under the new test for obscenity in Miller v. California.

Hamling v. United States - An amicus brief was filed in the U.S. Supreme Court asking for a clarification of what "guilty intent" was required for a conviction under obscenity statutes. The Court held that convictions would stand regardless of whether or not the defendants believed the materials were obscene.

Moore v. Younger - In the federal court litigation begun in 1972, the Foundation and other plaintiffs were ordered to file a second lawsuit in California state court, so that the state system could first interpret for itself the California harmful matter law. The decision eventually issued by California's Los Angeles County Superior Court became the basis for the final outcome in the matter, namely, the attorney general's recognition that California librarians were exempt from the statute.

1975

Knopf v. Colby - An amicus brief was filed in the U.S. Supreme Court (in cooperation with the

Association of American Publishers and the American Booksellers Association) urging the Court to review the decision of the U.S. Court of Appeals for the Fourth Circuit requiring a redaction of certain portions of the published text of The CIA and the Cult of Intelligence. The Court declined to review the decision.

Smith v. United States - A grant was awarded to support an appeal to the U.S. Court of Appeals for the Eighth Circuit seeking to reverse a conviction under the Comstock Act. The appeal argued that applying the federal act essentially nullified Iowa-based community standards for obscenity that were embodied in the less restrictive Iowa obscenity statute.

1976

Smith v. United States - Continuing its involvement in this case, an amicus brief was filed in the U.S. Supreme Court to support an appeal of the decision of the U.S. Court of Appeals for the Eighth Circuit affirming the federal Comstock Act conviction. The Supreme Court held that state law cannot define community standards for a prosecution under federal obscenity law. Community standards are questions of fact to be resolved by the federal jury.

Harry Reems legal defense - Best known as the male lead in Deep Throat, Reems was charged with conspiracy to transport obscenity across state lines. He and others were convicted, but the indictments were eventually dropped after a retrial was granted. The FTRF contributed to support the actor's defense.

1977

Right to Read Defense Committee of Chelsea v. School Committee of Chelsea - A grant was awarded to aid Chelsea (MA) High School librarian Sonja Coleman and other plaintiffs in a federal lawsuit to resist efforts of the Chelsea School Board to remove from the high school library an anthology of student literary works entitled Male and Female Under 18. The controversy surrounded a poem, "The City to a Young Girl," written by a 15 year old New York City student who used sexual slang words and complained about sex starved construction workers who saw the author only as "a good piece of meat."

Niemi v. National Broadcasting Co. - Amicus briefs were filed in the California Court of Appeal and in the California Supreme Court to support the dismissal of a civil action by Niemi seeking to hold NBC responsible for the criminal conduct of third parties allegedly inspired by the violence depicted in a television program. After the Court of Appeal reversed the lower court's dismissal of the action and the California Supreme Court refused to review that decision, an application for review was filed in the U.S. Supreme Court. The FTRF filed an amicus brief in support of the application, but the Court declined to review the case.

Flynt v. Ohio - An amicus brief was filed in the Ohio Court of Appeal (in cooperation with the

Association of American Publishers, the American Society of Newspaper Editors, the International Periodical Distributors Association, the Council for Periodical Distributors Associations, and the American Booksellers Association) to protest the use of Ohio's "organized crime" law to chill freedom of expression. Flynt's conviction was eventually reversed.

1978

Right to Read Defense Committee of Chelsea v. School Committee of Chelsea - Continuing its involvement in this case, begun in 1977, an additional grant was awarded to assist in an action to enjoin removal of the book Male and Female Under 18 from the shelves of the Chelsea (MA) High School library. Ultimately, the U.S. District Court for Massachusetts returned the book to the shelves.

Pico v. Board of Education, Island Trees Union Free School District No. 26 - An amicus brief was filed in the U.S. District Court for the Eastern District of New York (in cooperation with the New York Library Association, the Long Island School Media Association, the Nassau County Library Association, the Suffolk County Library Association, and the Suffolk School Library Media Association) supporting a student's `challenge of the constitutionality of a school board's removal of Soul on Ice, A Hero Ain't Nothing But a Sandwich, The Fixer, Go Ask Alice, Slaughterhouse-Five, The Best Short Stories by Negro Writers, Black Boy, Laughing Boy, and The Naked Ape from the district's high school and junior high school libraries.

Niemi v. National Broadcasting Co. - Continuing its involvement in this case, begun in 1977, an amicus brief was filed in the U.S. Supreme Court supporting an application to stay the commencement of a trial in this action involving broadcaster liability. The Court denied the stay. During the trial, the plaintiff limited its claim against NBC to one of negligence, and the court dismissed lawsuit for a second time. On appeal, the California Court of Appeal affirmed the dismissal.

Federal Communications Commission v. Pacifica Foundation - An amicus brief was filed in the U.S. Supreme Court (in cooperation with the American Civil Liberties Union, the Association of American Publishers, the Citizens Communication Center, P.E.N. American Center, and Poets and Writers, Inc.) supporting a challenge to an FCC order as to "possible" sanctions against a radio station for its afternoon broadcast of comic George Carlin's "seven dirty words" monologue. The Court upheld the FCC order.

St. Martin's Press v. Carey - An amicus brief was filed in the U.S. Court of Appeals for the Second Circuit (in cooperation with the Association of American Publishers and the American Booksellers Association) in a case seeking to enjoin prosecutors from using a New York state penal statute—which forbid promoting a sexual performance by a child—to restrict the distribution of Show Me! and other sex education publications. The appellate court ruled that the

lawsuit did not present a "case or controversy." The court dismissed the complaint on the ground that the publications were never intended to be prosecuted and did not come within the language of the statute.

Lamb v. Independent School District 719 - The Minnesota Civil Liberties Union was awarded a grant to provide expert witnesses in a federal lawsuit challenging the school board's removal of Ms. magazine from the Prior Lake (MN) High School library. Ultimately, the U.S. District Court dismissed the case when it found there was no plaintiff in the class action lawsuit representative of the class of affected students.

American Booksellers Ass'n v. Leech - A grant was awarded to the Tennessee Library Association allowing it to participate in a constitutional challenge of a newly enacted sweeping state criminal obscenity statute.

Spokane Arcades v. Ray - The Washington Library Association was awarded a grant for legal expenses in preparing an amicus brief filed in a federal lawsuit seeking to invalidate a "moral nuisance" law passed by Washington state voters in a ballot referendum.

1979

Bicknell v. Vergennes Union High School Board of Directors - A grant was awarded to the Vermont Civil Liberties Union to assist Elizabeth Phillips, the Vergennes (VT) Union High School librarian, as well as students and other plaintiffs, in a federal lawsuit challenging the school board's removal of The Wanderer and Dog Day Afternoon from the school library. Bicknell was eventually decided with the Pico case (see 1978) by the U.S. Court of Appeals for the Second Circuit, which distinguished the two cases on the basis of the motives attributable to the respective school boards. The dismissal of the Bicknell lawsuit was upheld because the board based its removals on objections to the "vulgar and indecent language" contained in the books, rather than their ideas.

Pratt v. Independent School District 831 - A grant to the Minnesota Civil Liberties Union aided the plaintiff students in a lawsuit challenging a school board order forbidding classroom use of the film The Lottery in Forest Lake, Minnesota. The U.S. Court of Appeals for the Eighth Circuit eventually upheld the challenge, finding the school board had violated the First Amendment because it banned the film on the basis of its "ideological content."

Lo-Ji Sales v. New York - An amicus brief was filed in the U.S. Supreme Court (in cooperation with the American Booksellers Association, the Association of American Publishers, the Council for Periodical Distributors Associations, the International Periodical Distributors Association, and the National Association of College Stores) defending the principle that allegedly obscene materials may not be seized unless a "neutral and detached magistrate" has "focused searchingly"

on each item "taken as a whole." The Court upheld that principle in unanimously overturning the obscenity conviction.

Penthouse v. McAuliffe - An amicus brief was filed in the U.S. Court of Appeals for the Fifth Circuit (in cooperation with the American Booksellers Association, the Association of American Publishers, the Council for Periodical Distributors Associations, the International Periodical Distributors Association, and the National Association of College Stores) resisting the misapplication of the "taken as a whole" requirement contained in the Miller v. California test for obscenity. The Fulton County (GA) Solicitor General Hinson McAuliffe sought to apply the requirement to limited or separate portions of certain magazines and anthologies.

Oaks v. City of Fairhope - Claire Oaks, dismissed from her position as librarian of the Fairhope (AL) Public Library, was awarded a grant to help defray her legal expenses in a lawsuit charging that her First Amendment rights had been violated. Oaks eventually reached an out-of-court settlement and was restored to her job.

United States v. The Progressive, Inc. - An amicus brief was filed in the U.S. Court of Appeals for the Seventh Circuit (in cooperation with the Reporters Committee for Freedom of the Press) supporting the appeal by *The Progressive Magazine* of a U.S. District Court order permanently barring the publication of an article on how to build a hydrogen bomb. Ultimately, the Court of Appeals did not rule on any of the issues. After the substance of the article appeared in another periodical, the government dropped its case against The Progressive.

American Booksellers Ass'n v. Leech - Continuing an involvement begun in 1978, an additional grant was awarded to the Tennessee Library Association to continue its challenge to a Tennessee obscenity statute. The Tennessee Supreme Court eventually determined that the statute was unconstitutional.

Zykan v. Warsaw Community School Corp. - The Indiana Civil Liberties Union was awarded a grant to represent a Warsaw (IN) High School student challenging the school board's ban on classroom use of a textbook, entitled Values Clarification, and other books, such as Growing Up Female in America, The Stepford Wives, Go Ask Alice, and The Bell Jar. The student's lawsuit also challenged the cancellation of ten elective English courses in subjects such as black literature, science fiction, and Gothic literature, and the firing of two teachers who had taught controversial works.

Vance v. Universal Amusement Co. - An amicus brief was filed in the U.S. Supreme Court (in cooperation with the American Booksellers Association, the Association of American Publishers, and other First Amendment groups) arguing that a Texas "public nuisance" law allowing a court to enjoin any future exhibition of obscene movies if it was shown that the theater had exhibited an

obscene movie in the past amounted to "prior restraint" violating the First Amendment. The Court ultimately invalidated the statute on those grounds.

United States v. Giese - An amicus brief was filed in the U.S. Supreme Court (in cooperation with P.E.N. American Center and the American Booksellers Association) arguing that convicting a bookstore proprietor for criminal conspiracy had a devastating effect on the freedom to read and discuss books. The Court declined to review the case.

1980-1989

1980

Bicknell v. Vergennes Union High School Board of Directors - Continuing its involvement with this Vermont school library book removal case, the Vermont Civil Liberties Union was awarded an additional grant to help defray legal expenses incurred in prosecuting an appeal of the district court decision to the U.S. Court of Appeals for the Second Circuit.

Zykan v. Warsaw Community School Corp. - Continuing its involvement in the Indiana school censorship case, begun in 1979, an amicus brief was filed in the U.S. Supreme Court (in cooperation with the National Council of Teachers of English). The decision of the trial court dismissing the lawsuit had been upheld on appeal to the U.S. Court of Appeals for the Seventh Circuit. The Supreme Court ultimately denied review.

Layton v. Swapp - A grant was awarded to Jeanne Layton, director of the Davis County (UT) Public Library, to help defray legal expenses in a lawsuit resulting from her dismissal for refusing to remove Don DeLillo's Americana from the shelves of the library. Her dismissal was the result of a county commissioner's complaint. The Foundation offered a challenge grant, matching $2 for every $1 contributed to the Layton defense fund, between June 27 and year's end.

1981

Layton v. Swapp - Continuing its involvement with this dismissal case, Layton was granted an additional amount to meet her outstanding legal debts.

McKamey v. Mt. Diablo Unified School District - A grant was awarded to the plaintiffs to assist in an action protesting restrictions imposed by the school board on access to Ms. magazine in the Ygnacio (CA) High School library.

Association of American Publishers v. Rendell - A lawsuit was filed (with the Association of American Publishers, the American Booksellers Association, and others) challenging amendments to the Pennsylvania criminal law dealing with the exhibit and display of "explicit sexual materials" to minors. In a decision affirmed on appeal to the U.S. Court of Appeals for the Third Circuit, the federal district court abstained from the case. A related challenge in state court

concluded with a determination that the statute was constitutional.

Penthouse v. McAuliffe - Continuing an involvement with this case, additional grants were awarded to support the lawsuit against the Fulton County (GA) Solicitor General. Ultimately, the U.S. Court of Appeals for the Fifth Circuit ruled that an entire magazine issue constitutes a work that must be "taken as a whole" when determining whether the magazine possesses serious value under the third prong of the Miller v. California test for obscenity. The court found two of the three magazines at issue in the case obscene. Additional proceedings in the U.S. Supreme Court were discontinued.

Saryn Paris grant - Assistance was awarded to the publisher of Jerry Falwell: An Unauthorized Profile.

Board of Education, Island Trees Union Free School District No. 26 v. Pico - Continuing an involvement with this case, begun in 1978, an amicus brief was filed in the U.S. Supreme Court (in cooperation with the American Library Association and the New York Library Association) urging the Court to settle the standard for judicial review to be applied in school library book removal cases.

1982

Layton v. Swapp - Additional grants were awarded to settle Jeanne Layton's remaining legal debts, concluding FTRF involvement with this case, begun in 1980. Layton ultimately won reinstatement as director of the Davis County (UT) Public Library.

New York v. Ferber - The Media Coalition was given a grant to prepare an amicus brief addressing the impact of a New York state child pornography statute on publishers, booksellers, and librarians. Ultimately, the U.S. Supreme Court upheld the statute in question, deciding that child pornography is a category of speech excluded from First Amendment protection.

Tattered Cover Bookstore v. Tooley - An amicus brief was filed in a challenge to a Colorado minors access law. Ultimately, the Supreme Court of Colorado held the act unconstitutional. It found that the provisions of the statute designed to restrict children's access to sexually explicit materials were overly broad and infringed adults' rights. [See also Tattered Cover Bookstore, Inc. v. City and County of Denver, 2000.]

Board of Education, Island Trees Union Free School District No. 26 v. Pico - Still involved in this 1978 case, a grant was awarded to the New York Civil Liberties Union to continue the school library book removal challenge. Ultimately, in a 5–4 decision, the U.S. Supreme Court upheld the students' challenge to the school board's actions. A majority of the Court held that the First Amendment is implicated when a school board removes books arbitrarily. The plurality opinion by Justice Brennan declared, "If petitioners intended by their removal decision to deny" students

"access to ideas with which petitioners disagreed ... then petitioners have exercised their discretion in violation of the Constitution."

1983

McKamey v. Mt. Diablo Unified School District - An additional grant was awarded in this school library restriction case, first started in 1981. Ultimately, a California Superior Court struck down the school district requirement that students get parental permission before reading Ms. magazine in the school library.

Stark v. Special School District No. 1; Stark v. Independent School District No. 179; and Stark v. Osseo School District - Assistance was granted to the Minnesota Civil Liberties Union to defend teachers' rights to invite outside speakers on alternative lifestyles into public school classes and to uphold the speakers' rights to address students. Stark's lawsuits were eventually settled favorably. In the case involving Osseo School District, Stark was permitted to speak on alternative lifestyle issues and the school district agreed to adopt a policy on speakers consistent with First Amendment guarantees.

Robertson v. Special School District No. 1 - A challenge grant was awarded to the Student Press Law Center matching $1 for $1 all funds raised during the year to support litigation over student press rights in Minnesota.

Janklow v. Dyer - Donna Dyer was awarded a grant to assist her defense in a libel suit filed by South Dakota Governor William J. Janklow in connection with a book In the Spirit of Crazy Horse, by Peter Matthiessien, sold by Dyer in Hot Springs, South Dakota.

Peterzell v. Faurer - Support was given to an American Civil Liberties Union National Security Project litigation effort to invalidate actions by the U.S. National Security Agency withdrawing the personal documents of cryptologist William Friedman from open access shelves at the Virginia Military Institute's George C. Marshall Research Library. The cryptologist's letters had been used in the research and writing of James Bamford's The Puzzle Palace.

M.S. News Co. v. Casado - An amicus brief was filed in the U.S. Court of Appeals for the Tenth Circuit supporting a challenge to a local ordinance in Wichita, Kansas, banning open display of sexually explicit materials. The appellate court upheld the ordinance.

1984

American Library Ass'n v. Faurer (formerly Peterzell v. Faurer) - Continuing its involvement in this case concerning a cryptologist's personal papers, a grant was given to the American Library Association, the District of Columbia Library Association, and the Virginia Library Association for expenses incurred in the litigation. A grant also was given to the American Civil Liberties Union National Security Project for its role in the legal action.

American Booksellers Ass'n v. Hudnut - An amicus brief was filed on behalf of the Indiana Library Association and the Indiana Library Trustees Association supporting a constitutional challenge of an Indianapolis (IN) anti-pornography ordinance. The ordinance outlawed "pornography" defined as "graphic, sexually explicit subordination of women, whether in pictures or in words," presenting women as sex objects, or as enjoying pain, humiliation, or servility. The challenge argued that the ordinance imposed viewpoint discrimination.

English v. Evergreen School District - A grant was awarded to support a lawsuit challenging the removal of books from a school library in Washington state. The case was eventually settled when the school board returned all books, including two books on homosexuality that the school board had especially opposed. In accord with the settlement, policies for handling complaints about instructional materials were rewritten.

Janklow v. Viking Press - Continuing its involvement in this matter involving Governor William J. Janklow of South Dakota, an amicus brief was filed supporting the publisher, booksellers, and Peter Matthiessien, author of In the Spirit of Crazy Horse, in their defense against the lawsuit accusing them of libel. Ultimately, the court dismissed the libel suit as asserted against the publisher on the basis that the alleged defamatory statements were "neutral reportage" accurately repeating the statements of another.

Bullfrog Films, Inc. v. Wick - A grant was given to the Center for Constitutional Rights to support a lawsuit to invalidate regulations promulgated by the U.S. Information Agency denying "certificates of educational character" to U.S. documentary films judged to be misrepresentative of the United States, thereby limiting their access to foreign markets. An amicus brief also was filed in the matter.

Maryland v. Macon - An amicus brief was filed in the U.S. Supreme Court supporting a bookstore clerk's appeal of his conviction for distributing obscenity. The brief argued that the arrest of the clerk without first obtaining a court-issued warrant constituted a "prior restraint" violating the First Amendment. Police "purchased" the obscene magazine and, without obtaining a review of the material by a court, took the clerk into custody. The Court eventually ruled that the risk of "prior restraint" did not come into play where the police purchased the materials in question.

Brockett v. Spokane Arcades, Inc. - An amicus brief was filed in the U.S. Supreme Court in support of a constitutional challenge to a Washington state obscenity statute, urging that its definition of "lewd matter" was overbroad and reached materials that arouse nothing more than a normal interest in sex. The Court eventually ruled that the statute should not be invalidated in its entirety but, rather, only insofar as it reached constitutionally protected materials.

1985

American Library Ass'n v. Faurer (formerly Peterzell v. Faurer) - In further involvement in this case concerning a cryptologist's personal papers, an additional grant was given to the American Civil Liberties Union National Security Project to support the lawsuit against the U.S. National Security Agency. Ultimately, on the appeal, U.S. Circuit Court Judge Ruth Bader Ginsberg ruled that the library associations and other plaintiffs lacked standing to bring their lawsuit in the first instance. In the proceedings below, the U.S. District Court for the District of Columbia had ruled that the U.S. National Security Agency had authority to withdraw the papers in question from the Virginia Military Institute library.

American Booksellers Ass'n v. Hudnut - Further involvement in this constitutional challenge to the Indianapolis anti-pornography ordinance led to an amicus brief being filed in the U.S. Court of Appeals for the Seventh Circuit. Ultimately, the decision of the court below, which struck down the law, was affirmed on the appeal. The appellate court stated that the ordinance impermissibly established an "approved" view of women and how they react in sexual encounters, and banned sexually explicit words and images that did not adhere to that view. The U.S. Supreme Court affirmed the decision.

Illinois v. Heinrich - A grant was awarded to the DePaul University College of Law to cover printing costs incurred in challenging a criminal libel law.

Pagitt v. Independent School District No. 270 - The Minnesota Coalition Against Censorship and the Minnesota Civil Liberties Union received a grant to assist two high school students prohibited, even before the start of the school day, from distributing a religious newspaper to fellow students. The lawsuit brought by the students was dismissed as moot after they had graduated.

American Council of the Blind v. Boorstin - An amicus brief was filed in support of a lawsuit challenging, as discrimination against protected speech, a Library of Congress decision to cease publication of Playboy magazine in Braille. Ultimately, the U.S. District Court for the District of Columbia ruled that the library had violated the First Amendment rights of blind people.

Faulkenberry v. Board of Education, Sallisaw Public Schools - Legal counsel and financial assistance was awarded to parents protesting a school board's removal of J.D. Landis' The Sisters Impossible from the elementary school library. After a lengthy struggle and, eventually, a lawsuit, the school board agreed to return the book to the library shelves. It also agreed to follow ALA and Oklahoma Library Association recommended review procedures for library materials and pay a significant portion of the plaintiffs' legal expenses.

1986

Bullfrog Films, Inc. v. Wick - Continuing an involvement begun in 1984, an additional grant was awarded to the Center for Constitutional Rights to reimburse litigation expenses in this challenge to regulations promulgated by the U.S. Information Agency.

Fraser v. Bethel School District No. 403 - An amicus brief was filed in a challenge to the two-day suspension of a high school student who used sexual puns in a student-government nominating speech at a school-sponsored, but voluntary, assembly of students. Ultimately, the U.S. Supreme Court reversed lower court decisions enjoining the student's suspension. It does not follow, the Court held, that "simply because the use of an offensive form of expression may not be prohibited to adults making what the speaker considers a political point, that the same latitude must be permitted to children in a public school."

McCarthy v. Fletcher - A grant was given to the American Civil Liberties Foundation of Southern California to support a lawsuit filed by Lee McCarthy, a Wasco (CA) Union High School teacher, and others challenging the school board's prohibition against teaching John Gardner's Grendel in a senior English class without first obtaining the consent of every parent.

Bystrom v. Fridley High School Independent School District No. 14 - A grant was given to the Minnesota Civil Liberties Union to assist in the defense of students who published an underground newspaper with "lewd" content, allegedly potentially inciting violence. The students brought the lawsuit challenging a school policy under which officials reviewed the publication and blocked its distribution on school premises.

Maine Citizens Against Government Censorship - A grant was awarded on behalf of the Maine Library Association supporting a successful fight against a proposed law to ban the sale of sexually explicit materials.

Playboy Enterprises, Inc. v. Meese - An amicus brief was filed opposing actions of the Attorney General's Commission on Pornography warning retailers to cease distributing materials that it judged might be pornographic. A federal district court eventually ruled that the commission's actions violated the First Amendment.

Pope v. Illinois - An amicus brief was filed in the U.S. Supreme Court challenging the use of community standards, rather than a generalized "reasonable person" standard, in the third prong of the test in Miller v. California used to judge whether an allegedly obscene work has "serious literary, artistic, political, or scientific value." Ultimately, the Court held that only the first and second prongs of the test—appeal to prurient interest and patent offensiveness—should be decided with reference to community standards. It upheld, however, the obscenity convictions in question.

1987

Bullfrog Films, Inc. v. Wick - Continuing involvement in this case, begun in 1984, another grant was given to the Center for Constitutional Rights for legal expenses in its challenge of regulations promulgated by the U.S. Information Agency.

Bystrom v. Fridley High School Independent School District No. 14 - Supplementing its first grant to the Minnesota Civil Liberties Union, in 1986, a second grant was given to further assist the civil liberties group in representing students in their challenge of a school policy restricting an underground newspaper. The U.S. Court of Appeals for the Eighth Circuit eventually upheld the school policy. The court found that prior restraints in the high school context are not per se unconstitutional, and that the government may regulate the distribution of written materials that fall within guidelines outlining what is "obscene to minors," libelous, pervasively indecent or vulgar, invading privacy, or advertising products or services not permitted to minors by law.

McCarthy v. Fletcher - Continuing its involvement in this matter, begun in 1986, an amicus brief was filed and an additional grant was given to the American Civil Liberties Foundation of Southern California in support of the challenge to a school board action banning Grendel. Ultimately, the California Court of Appeal ruled that school boards do not enjoy absolute discretion to remove books. Reversing the lower court's dismissal of the lawsuit, the appellate court held that improper motives violate the First Amendment and that the plaintiffs had a right to probe further into the motives behind the banning.

Meese v. Keene - An amicus brief was filed in the U.S. Supreme Court urging the Court to uphold an injunction against enforcement of the Foreign Agents Registration Act used to require labeling, as "political propaganda," films about acid rain produced by the National Film Board of Canada. The Court reversed the decision granting the injunction.

Smith v. Board of Commissioners, Mobile County - An amicus brief was filed in the U.S. Court of Appeals for the Eleventh Circuit (in cooperation with the Association of American Publishers) supporting the appeal of a decision that found that textbooks used at various grade levels taught the "religion" of secular humanism and ordered their removal from the school curriculum. The appellate court reversed the lower court ruling. It held that, as long as the school was motivated by a secular purpose, it didn't matter whether the curriculum and texts shared ideas held by one or more religious groups.

American Booksellers Ass'n v. Virginia - An amicus brief was filed in the U.S. Supreme Court supporting a challenge to a Virginia "harmful to minors" law restricting the display of "harmful" materials. The Court ordered a return of the case to the Virginia Supreme Court for a ruling in the matter. The Virginia Attorney General had urged that the law be construed narrowly and interpreted to apply to the most mature minors. The Virginia Supreme Court accepted that

construction.

Randall v. Meese - An amicus brief was filed (in cooperation with the American Association of University Professors and other groups) in support of author Margaret Randall's appeal for permanent residency in this country because her writings criticized the role of the United States in Vietnam and the actions of the National Guard at Kent State (OH) University. Ultimately, efforts to deport Randall were abandoned after Congress removed "ideology" as a ground for excluding aliens from the United States under the McCarran-Walter Act.

1988

Bullfrog Films, Inc. v. Wick - In a continuation of its involvement, another grant was awarded to the Center for Constitutional Rights to defray legal costs in the U.S. Information Agency challenge. Ultimately, the regulations denying "certificates of educational character" to films judged to be misrepresentative of the United States were invalidated. The U.S. Court of Appeals for the Ninth Circuit upheld a ruling by the U.S. District Court for the Central District of California that such regulations violated the First Amendment. Subsequently, the lower court invalidated a second attempt to promulgate similar regulations.

Village Books v. City of Bellingham - A lawsuit was filed (with Village Books, the American Booksellers Association, the Pacific Northwest Booksellers Association, the Washington State Library Association, the Association of American Publishers, and three individuals) challenging the constitutionality of a city anti-pornography initiative in Bellingham, Washington, targeting sexually explicit speech involving the subordination of women. The challenge was successful and the ordinance ruled unconstitutional.

Virgil v. School Board of Columbia County - An amicus brief was filed in a federal district court challenge to a school board's decision to remove from classroom use a literature textbook entitled Humanities: Cultural Roots and Continuities. Parents had objected to alleged vulgar and sexually explicit language contained in excerpts from the classic Greek comedy Lysistrata and Chaucer's The Miller's Tale. Ultimately, the U.S. Court of Appeals for the Eleventh Circuit upheld the school board's action. The court focused on the fact that the books were used within the curriculum and thus bore the school's stamp of approval. It found that the reason for the removal—sexuality and vulgar language—was a legitimate pedagogical concern.

1989

American Library Ass'n v. Thornburgh - A lawsuit was filed (with the American Library Association, the American Society of Magazine Editors, the American Society of Magazine Photographers, the Council for Periodical Distributors Associations, the International Periodical Distributors Association, the Magazine Publishers of America, Satellite Broadcasting and Communications of America, and the American Booksellers Association) challenging the

constitutionality of the record-keeping, labeling, and forfeiture provisions contained in the Child Protection and Obscenity Enforcement Act, and seeking to enjoin enforcement of the statute.

FW/PBS, Inc. v. City of Dallas - An amicus brief was filed in the U.S. Supreme Court (in cooperation with the American Booksellers Association, the Council for Periodical Distributors Association, and others) in a constitutional challenge of a Dallas (TX) regulation of "sexually oriented businesses" that denied licenses to "adult" book and video retailers on the basis of a single past misdemeanor conviction. The Court's eventual ruling did not reach the First Amendment issues. Nevertheless, the Court did find that the licensing scheme gave local officials too much discretion to inflict barriers on speech.

Webster v. Reproductive Health Services - An amicus brief was filed (with the American Library Association) in the U.S. Supreme Court in support of a constitutional challenge of a Missouri statute prohibiting the expenditure of public funds to "encourage or counsel" woman about abortion. The Court eventually determined that, owing to procedural considerations in the case, the controversy over funds for encouraging or counseling women about abortion was moot.

1990-1999

1990

American Library Ass'n v. Thornburgh - In further involvement in this case, begun in 1989, the FTRF opposed the government's appeal of the district court decision striking down the record-keeping and labeling provisions of the Child Protection and Obscenity Enforcement Act. An appeal was filed by the Foundation limited to the adverse ruling on post-conviction forfeiture provisions. In due course, the U.S. Court of Appeals for the District of Columbia ruled that the FTRF and other plaintiffs did not have standing to challenge the forfeiture provisions of the act. It also ruled that the government's appeal of the district court decision was moot because of the subsequent enactment of the Child Protection Restoration and Penalties Enhancement Act, which was intended to correct the constitutional defects highlighted in this litigation.

United States v. Eichman - An amicus brief was filed in the U.S. Supreme Court supporting a successful First Amendment challenge to a new federal anti-flag burning statute. The Court upheld the lower court's dismissal of charges brought under the Flag Protection Act of 1989, passed by Congress in response to the Court's flag desecration decision issued that year.

Rust v. Sullivan - An amicus brief was filed in the U.S. Supreme Court supporting a challenge to regulations that prohibited organizations receiving federal funds from disseminating materials advocating abortion as a means of family planning. Ultimately, the Court upheld the regulations, finding that they did not discriminate on the basis of viewpoint, but simply amounted to the government's funding of one activity to the exclusion of another. Justice Blackmun filed a

dissenting opinion.

Davis-Kidd Booksellers, Inc. v. McWherter - A lawsuit was filed challenging a Tennessee "harmful to minors" statute similar to that in American Booksellers Ass'n v. Virginia (see 1987). The challenge targeted the statute's prohibition against display of non-obscene materials "harmful to minors" in any place where minors have lawful access, as well as issues surrounding the knowing exhibition of such materials.

Tennessee v. Marshall - An amicus brief was filed in a constitutional challenge involving the question of whether the Tennessee constitution provided broader free speech guarantees than the First Amendment to the U.S. Constitution. The Tennessee Supreme Court eventually ruled that the Free Expression Clause of the Tennessee constitution must be read to have substantially the same requirements with respect to obscenity as the First Amendment.

1991

American Library Ass'n v. Barr - A lawsuit was filed (with the American Library Association and several media groups) challenging the Child Protection Restoration and Penalties Enhancement Act. The new act was intended to correct constitutional defects in the Child Protection and Obscenity Enforcement Act challenged in the earlier American Library Ass'n v. Thornburgh suit (see 1989 and 1990).

R.A.V. v. City of St. Paul - An amicus brief was filed in the U.S. Supreme Court addressing only issues involving the "overbreadth doctrine" raised in a constitutional challenge of a St. Paul (MN) ordinance prohibiting the posting or display of symbols and signs that may cause imminent or profound offense to any individual based on race, religion, or gender. The Court eventually struck down the "hate symbol" ordinance. Its reasoning, however, bore little resemblance to established First Amendment doctrine or any of the arguments in the amicus brief.

Kreimer v. Bureau of Police for Morristown - An amicus brief was filed in the U.S. Court of Appeals for the Third Circuit in a case brought by a homeless person denied access to the Morristown (NJ) Public Library. The Foundation, which took a position different from that of the public library, proposed a neutral framework of legal principles by which the court, it argued, should determine the rights in question. The court was urged to recognize a First Amendment right to receive information that only may be denied by a public library for good reason; the library, as a limited public forum, may adopt reasonable rules governing use of facilities, supporting its substantial interest in providing access to information for all. Adopting this basic analysis, the appellate court eventually upheld library rules that required patrons to be reading or otherwise using library materials while in the library, prohibited noisy or boisterous activities, and permitted the removal of patrons with offensive bodily hygiene.

1992

Alexander v. United States - An amicus brief was filed in the U.S. Supreme Court (in cooperation with the American Library Association and the Association of American Publishers) in a case challenging the use of the forfeiture provisions of the Racketeer Influenced and Corrupt Organizations Act (RICO) to shut down speech-related businesses convicted of no more than isolated obscenity violations, suppressing future lawful speech. The Court eventually held that the use of RICO did not violate the First Amendment because the forfeiture orders did not expressly forbid, or require the government's prior approval for, future expressive activities.

Soldier of Fortune Magazine v. Braun - An amicus brief was filed supporting the Soldier of Fortune publisher's application to the U.S. Supreme Court seeking review of a decision upholding an award of damages for the magazine's role in publishing an ad that allegedly led to the hiring of an assassin to commit murder. The Court declined to review the case.

Davis-Kidd Booksellers, Inc. v. McWherter - In further involvement in this matter, the FTRF opposed the appeal to the Tennessee Supreme Court of a Chancery Court decision. The Chancery Court found the law to be unconstitutionally vague only with respect to the meaning of "excessive violence" in the definition of "harmful" materials. The Foundation and other plaintiffs filed an appeal on issues concerning the display and knowing exhibition of materials deemed "harmful to minors." Ultimately, the Tennessee Supreme Court upheld the Chancery Court decision. Addressing the display issues, the state high court found that the display provisions could be narrowly construed to apply only to materials "which lack serious literary, artistic, political, or scientific value for a reasonable 17-year-old minor."

1993

Pampano Books and Video v. Satz - An amicus brief was filed in the U.S. Court of Appeals for the Eleventh Circuit supporting the claim by three bookstores in the Fort Lauderdale (FL) area that prosecutors had engaged in a pattern of harassment to close down the businesses, regardless of the lawfulness of the materials they sold. The lower court had refused to enjoin the prosecutors. The issues on appeal concerned the government's mixed motives in suppressing speech. The amicus brief argued that, if any part of the government's motive was suppression, its actions were unconstitutional. Ultimately, the appellate court summarily rejected those arguments, and affirmed, without opinion, the lower court decision.

American Library Ass'n v. Reno (formerly American Library Ass'n v. Barr) - Continuing its involvement in this lawsuit, begun in 1989, challenging the record-keeping provisions of the Child Protection Restoration and Penalties Enhancement Act, the Foundation opposed the government's appeal of the decision of the U.S. District Court for the District of Columbia invalidating the act.

Brown v. Woodland Joint Unified School District - An amicus brief was filed (with People for the American Way) in the U.S. Court of Appeals for the Ninth Circuit on the appeal in a lawsuit brought by the American Family Association challenging the use of the Impressions textbook series in the Woodland, California, school system. The lower court rejected the conservative religious group's claim that the series promoted the religion of witchcraft and, therefore, violated the First Amendment. Affirming the lower court decision, the appellate court held squarely that the textbook was not intended to promote witchcraft as a religion, and that an "objective" elementary school child would not view the activities and materials in the series as an endorsement of witchcraft or a disapproval of other religions.

In Re North - The Foundation and the Association of American Publishers wrote to the judge of the U.S. Court of Appeals for the District of Columbia Circuit scheduled to hear an emergency motion by the Reporters Committee for Freedom of the Press and other organizations seeking to unseal the report of Independent Prosecutor Lawrence Welsh concluding his investigation of the Iran-Contra affair and the role of Oliver North. The FTRF/AAP letter supported the emergency motion, which was granted within hours after the letter was delivered to the judge via one-day mail.

Knox v. United States - An amicus brief was filed (with members of the Media Coalition) in the U.S. Supreme Court seeking the reversal of a decision upholding a federal child pornography conviction. The crime involved the alleged "lascivious exhibition of genitals or pubic area" in videotapes depicting fully clothed female minors.

1994

Case v. Unified School District No. 233 - $2,500 was authorized to assist the American Civil Liberties Union to pay for legal fees incurred in opposing the removal of Annie on My Mind from the Olathe school district's libraries. The school board's removal order covered not only copies of the books recently donated by Project 21, a gay and lesbian group, but also copies purchased by the district that had been on the shelves of the libraries for many years. The U.S. District Court for the District of Kansas eventually ruled that the removal was unconstitutional

Knox v. United States - After the U.S. Solicitor General shifted the government's position into alignment with some of the Foundation's contentions on the appeal filed in 1993 of a child pornography conviction, the U.S. Supreme Court vacated the conviction and remanded the case to the lower court. On the redetermination of the matter by the U.S. Court of Appeals for the Third Circuit, an amicus brief (with members of the Media Coalition) was filed. Ultimately, the appellate court reaffirmed its original interpretation of the federal child pornography statute, concluding that even depictions of fully clothed minors can be a crime.

National Treasury Employees Union v. United States - An amicus brief was filed in the U.S.

Supreme Court in a challenge of the government's ban on accepting honoraria offered to federal employees for speeches and articles unrelated to their government work. The case explored how financial burdens, as opposed to outright suppression of speech, impacts First Amendment rights, and addressed the government's contention that the ban on payment to federal employees for speech avoids the appearance of impropriety. The Court eventually ruled that the ban infringed the employees' free speech rights.

Debbie Denzer dismissal - $2500 was given to the American Civil Liberties Union for expenses incurred in filing a lawsuit to reinstate Denzer after she was fired from her job as a school library aide in Kallispell, Montana. In response to a request from two seventh grade students, Denzer provided two books on witchcraft from her personal home library. Parents of the students deemed the books to be unsuitable for seventh graders and complained to the school district. Denzer eventually received a favorable settlement in the case.

X-Citement Video, Inc. v. United States - An amicus brief was filed in the U.S. Supreme Court in an action interpreting the federal statute criminalizing the "knowing" receipt, distribution, or reproduction of visual depictions of child pornography. The Court was asked to interpret the statute to require actual knowledge that participants or models are minors, rather than a lesser level of knowledge involving mere recklessness. The Court eventually ruled that proof of actual knowledge was required.

1995

American Library Ass'n v. Reno (formerly American Library Ass'n v. Barr) - Continuing an involvement begun in 1989, $3000 was awarded for legal expenses in the case challenging the record-keeping provisions of the Child Protection Restoration and Penalties Enhancement Act. On the government's appeal of the federal district court decision invalidating the act, the U.S. Court of Appeals for the District of Columbia reversed the lower court. Ultimately, the U.S. Supreme Court declined to review the case.

Playboy v. Deters - The prosecuting attorney for Hamilton County, Ohio, was sued by the FTRF (with Playboy Enterprises, Inc., and eleven First Amendment organizations) after he sent a letter to a Barnes & Noble bookstore in Cincinnati stating that several magazines, including the January, 1995, issue of Playboy, were "harmful to juveniles" and should not be displayed. The lawsuit challenged the prosecutor's action as a "prior restraint" violating the First Amendment and sought an injunction, as well as judicial review, of the Ohio display statute. The U.S. District Court for the Southern District of Ohio eventually ruled that the prosecuting attorney's letter was null and void. It ordered the letter withdrawn and assessed costs against the prosecutor. The court refused to review the "harmful to juveniles" statute, however, since a state court had not yet had the opportunity to do so.

Brown and Williamson v. Regents of University of California - An amicus brief was filed in a lawsuit by a tobacco company over documents said to reveal that the tobacco industry knew of a link between smoking and cancer earlier than had been previously understood. Alleging they were stolen, Brown and Williamson sought to recover documents from the University of California at San Francisco (UCSF) and to obtain the names of university library users who had access to them. The Foundation's brief focused on issues concerning the confidentiality of library use. Ultimately, the California Superior Court in San Francisco refused to block the UCSF from making the documents available to the public. The court, however, did not address the confidentiality issues.

Cohen v. San Bernardino Valley College - An amicus brief was filed in the U.S. Court of Appeals for the Ninth Circuit (in cooperation with the Thomas Jefferson Center for Protection of Free Expression and the American Association of University Professors) in a lawsuit testing the constitutionality of restrictions placed on classroom speech. The lower court had determined that a professor's selection of topics for classroom discussion, his choice of language, and his teaching style constituted sexual harassment by creating a hostile learning environment. Ultimately, the appellate court reversed that decision, stating that the college's "hostile learning environment" policy was too vague as applied to Cohen.

Alliance for Community Media v. Federal Communications Commission - An amicus brief was filed in the U.S. Supreme Court in a constitutional challenge of provisions of the Cable Television Consumer Protection and Competition Act of 1992. The act compelled any cable operator to either ban or segregate on a separate channel all sexually related material that the cable operator "reasonably believes" to be "patently offensive." A viewer wishing to see programming on the segregated channel was required to notify the cable operator. The Court eventually struck down the requirement that cable operators ban or segregate "patently offensive" materials, as well as one other provision of the act.

1996

American Library Ass'n v. United States Department of Justice - A complaint was filed (with the American Library Association, the American Booksellers Association, America Online, People for the American Way, and numerous other organizations) successfully challenging the constitutionality of the Communications Decency Act of 1996. Represented by general counsel Bruce Ennis of Jenner & Block, the American Library Association and the FTRF took the lead in developing the factual background for the case. The Communications Decency Act criminalized "indecent" and "patently offensive" communications on the Internet. Based on the First Amendment, the lawsuit urged that the government cannot reduce adult reading material to a level appropriate only for children, and that the vague language of the statute had a chilling effect on speech.

American Library Ass'n v. Pataki - A lawsuit was filed (with the American Library Association, the New York Library Association, and others) challenging a New York statute proscribing online dissemination of materials "harmful to minors." The lawsuit was based on the First Amendment of the U.S. Constitution, as well as the Commerce Clause, which forbids one state from imposing unreasonable restrictions on the conduct of persons in other states. Ultimately, the U.S. District Court for the Southern District of New York enjoined enforcement of the New York statute on Commerce Clause grounds. Since the decision of the U.S. Supreme Court in United States Department of Justice v. American Library Ass'n—the ALA's challenge to the Communications Decency Act—was then still awaited, the district court in Pataki declined to address the First Amendment issues.

Playboy Entertainment Group, Inc. v. United States - An amicus brief was filed in the U.S. District Court for the District of Delaware in a challenge to the provisions of the Telecommunications Act of 1996 requiring that "indecent" broadcasts be scrambled or blocked so cable viewers can receive no portion of audio or video unless they specifically subscribe to the program. The brief argued that the statute was unconstitutionally vague and attempted to usurp the role of parents, since lockboxes were the appropriate "least restrictive" means to assure that children were not exposed to restricted programs. An adverse decision of a three-judge panel of the district court was appealed to the U.S. Supreme Court, which remanded the case for further proceedings. The lower court eventually ruled that the statute was unconstitutional, and on May 22, 2000, the U.S. Supreme Court agreed in a 5–4 decision.

1997

United States Department of Justice v. American Library Ass'n - The government's direct appeal to the U.S. Supreme Court of the decision by the three-judge panel of the U.S. District Court for the Eastern District of Pennsylvania striking down the Communications Decency Act of 1996 was successfully opposed. In a 9–0 decision, the high court rendered a landmark decision hailed as "the birth certificate of the Internet." The Court held that speech on the Internet is entitled to the highest level of First Amendment protection, similar to the protection the Court gives to books and newspapers.

Rice v. Paladin Enterprises, Inc. - An amicus brief was filed in the U.S. Court of Appeals for the Fourth Circuit (in cooperation with the Association of American Publishers, the American Booksellers Foundation for Free Expression, the National Association of Broadcasters, the Society of Professional Journalists, the Newspaper Association of America, and other First Amendment groups) asking the appellate court to affirm a lower court decision dismissing the lawsuit by family members of murder victims seeking to hold the publisher of Hit Man liable for the felon's alleged use of the work to commit the crimes. The appellate court reversed the lower court decision, holding that a jury could find that the book's content amounted to aiding and

abetting of criminal conduct and that it did not, therefore, enjoy blanket First Amendment protection. The U.S. Supreme Court refused to review the decision. After additional proceedings in the lower court, the publisher unexpectedly agreed to a multi-million dollar settlement of the case on May 21, 1999, presumably at the insistence of its liability insurer.

Ashcroft v. Free Speech Coalition - Amicus briefs were filed (with various First Amendment groups) both in the lower court and in the appellate court in support of a lawsuit (initially titled Free Speech Coalition v. Reno) challenging the constitutionality of the Child Pornography Protection Act of 1996. The act expanded the definition of child pornography to include morphed images that appear to be sexual conduct involving a minor but in fact involved no real child in their creation. The trial court found the act constitutional, but the U.S. Court of Appeals for the Ninth Circuit reversed that finding. The Ninth Circuit's finding of unconstitutionality conflicted with the First Circuit's ruling on the Act in United States v. Hilton. In 2002, the U.S. Supreme Court overturned CPPA on the grounds that the law was overbroad (prohibiting otherwise legal, non-obscene images) and unrelated to the legitimate reasoning behind prohibiting child pornography—that it inherently involves child sexual abuse.

Video Software Dealers Ass'n v. City of Oklahoma City - An amicus brief was filed in a lawsuit seeking a judicial declaration as to the unconstitutionality of police seizures of video copies of The Tin Drum in Oklahoma City. The police acted after privately obtaining the oral opinion of a state judge that the Oscar-winning film violated Oklahoma law prohibiting depictions of underage sexual conduct. Issued at separate stages in the proceedings, the U.S. District Court for the Western District of Oklahoma ruled that the police actions were unconstitutional and that the film, as a bona fide work of art, did not constitute obscenity or child pornography.

Pitt v. Playgirl, Inc. - An amicus brief was filed (with various members of The Media Coalition) in a lawsuit by Brad Pitt against Playgirl seeking a permanent injunction of, and damages for, the magazine's August 1997 issue featuring nude photos of the actor. The brief, which was limited to issues concerning the scope of the injunction, argued that preventing the distribution of the entire magazine was a "prior restraint" violating the First Amendment. Eventually the parties settled the case. The settlement agreement, like the case itself, was filed under seal.

1998

Anchorage and Fairbanks, Alaska, book removals - The public school districts in Anchorage and Fairbanks, Alaska, removed the book American Indian Myths and Legends from school libraries. In Anchorage, the administration and board went through their adopted procedures and kept the book in libraries, but on a restricted status. In Fairbanks, a new superintendent reinstated the book in 2004 after receiving a final demand letter informing the district of impending litigation. The Freedom to Read Foundation gave a grant to the Alaska Civil Liberties Union in support of their

efforts, and FTRF counsel provided legal assistance.

Finley v. National Endowment for the Arts - An amicus brief was filed in the U.S. Supreme Court (in cooperation with a wide variety of free speech and arts-related organizations) challenging a statutory requirement that, when deciding whether to award an arts grant, the National Endowment for the Arts must consider whether the artist's work meets "general standards of decency and respect for diverse beliefs of the American people." The brief argued that arts grants are designed to encourage private speech and the First Amendment forbids the government to exercise viewpoint discrimination, preferring one speaker over another, on the basis of a "decency and respect" requirement. Ultimately, the Court found there was no realistic danger that taking "decency and respect" into consideration would preclude or punish the expression of particular views, and that the statutory requirement, therefore, did not inherently interfere with free speech rights.

American Civil Liberties Union v. Johnson - A lawsuit was filed (with the American Civil Liberties Union and numerous individuals and organizations) challenging a New Mexico statute nearly identical to the attempted regulation of the Internet by New York struck down in American Library Ass'n v. Pataki (see 1996). The U.S. District Court for the District of New Mexico preliminarily enjoined enforcement of the statute. That decision was appealed to the U.S. Court of Appeals for the Tenth Circuit, which upheld the injunction and declared the statute unconstitutional on November 2, 1999. There was no further appeal.

In Re Grand Jury Subpoena to Kramerbooks & afterwords, Inc. - An amicus brief was filed in the U.S. District Court for the District of Columbia (in cooperation with the American Library Association, the American Booksellers Foundation for Free Expression, the Association of American Publishers, and various media associations) supporting separate motions by Kramerbooks and Barnes & Noble to quash subpoenas seeking bookstore purchase records in the Monica Lewinsky case. The brief argued that revealing what bookstore patrons read had a chilling effect on their exercise of First Amendment rights. The federal district court eventually issued a decision requiring the Independent Counsel to show both a "compelling need for the information sought" and "a sufficient connection between the information sought" and the criminal investigation. As the court made subsequent rulings based on that standard, Lewinsky herself voluntarily turned over materials sought by the prosecutor, and thus concluded the matter.

United States v. Hilton - An amicus brief was filed in federal appellate court supporting an individual's challenge to the Child Pornography Prevention Act of 1996. The court below struck down the act holding that the language defining a "minor" and its use in the definition of "child pornography" was unconstitutionally overbroad because it impacted a "significant amount of adult pornography featuring adults who appear youthful." The U.S. Court of Appeals for the First

Circuit reversed, stating that "it is a logical and permissible extension" of leading cases defining child pornography "to allow the regulation of sexual materials that appear to be of children but did not, in fact, involve the use of live children in their production." Subsequently, in 2001, the Supreme Court accepted for review the case of Ashcroft v. Free Speech Coalition, in which the Ninth Circuit found CPPA to be unconstitutional (see 1997).

Byers v. Edmondson - An amicus brief was filed in the Supreme Court of Louisiana opposing a lawsuit seeking to hold director Oliver Stone and various film producers responsible for the acts of criminals allegedly inspired by the movie Natural Born Killers. The brief argued that the exception to the First Amendment for "fighting words" inciting violence did not apply to film, only to live person-to-person speech. The original trial court had dismissed the case, but an appeal court ruled that the plaintiffs had stated a valid cause of action for an intentional tort against the defendants. The Supreme Court of Louisiana upheld the appeals court, and the U.S. Supreme Court declined to review the case. The Freedom to Read Foundation filed a second amicus brief in favor of U.S. Supreme Court review. In 2001, the case was dismissed for a second time on the grounds that there was no evidence proving that Time Warner Entertainment or Stone had intended to incite violence with the film. In 2002, the Louisiana Court of Appeals upheld the dismissal.

Ashcroft v. ACLU - An amicus brief was filed (in cooperation with nineteen other members of the Citizens Internet Empowerment Coalition and Media Coalition) in support of the motion by the American Civil Liberties Union and other plaintiffs to enjoin enforcement of the Child Online Protection Act (COPA). The act would have required individuals seeking access to certain Internet sites-ones that possibly contain material deemed "harmful to minors"-to type in a credit card or other adult verification number. The brief argued that this blocking of content was not the "least restrictive means" to effect the government's interest in protecting children from certain material. In 1999, the U.S. District Court for the Eastern District of Pennsylvania granted the preliminary injunction, finding that the plaintiffs are likely to show successfully at trial that COPA imposes an unconstitutional burden on adult speech. The government appealed the decision to the U.S. Court of Appeals for the Third Circuit, which in 2000 upheld the district court's decision, stating that "harmful to minors" laws are based on community standards that cannot be applied in the Internet context. FTRF joined an amicus brief arguing against COPA. In 2002, the U.S. Supreme Court remanded the case to the Third Circuit for reconsideration of the other issues before it, finding that the "community standards" issue on its face did not justify striking the statute. On March 6, 2003, the Third Circuit again found COPA unconstitutional. In an opinion by Judge Garth, the Court found the statute vague and overbroad for a number of reasons. The Justice Department filed a petition for rehearing and for rehearing en banc, but the Third Circuit denied the petition. The Justice Department appealed to the Supreme Court, which

granted certiorari for a second time to consider the constitutionality of COPA. On January 14, 2004, FTRF filed an amicus brief with the Supreme Court. Oral Arguments were heard on March 2, 2004. The case was originally ACLU v. Reno.

Kathleen R. v. City of Livermore - A parent sued the Livermore (CA) Public Library after her twelve-year-old son evidently downloaded pornographic images to a disk at the library, printed them at a relative's house, and eventually distributed them to friends. The lawsuit was dismissed, likely because of California's statutory immunization of libraries from such lawsuits. The parent refiled the lawsuit, arguing the library's policy of providing unfiltered access to the Internet violated the constitutional rights of parents and children using the library, but the second lawsuit also was dismissed. This decision was appealed and FTRF joined an amicus brief in support of the city and the library. In 2001, the First Appellate District Court of California upheld the dismissal.

1999

PSINet Inc. v. Chapman - FTRF was a plaintiff in this "mini-CDA" case challenging Virginia's Internet content statute. The Foundation filed suit in the U.S. District Court of the Western District of Virginia, arguing that the statute violated the Commerce Clause, was overly vague, and restricted constitutional speech without protecting minors effectively or by the least restrictive means. The district court granted a preliminary injunction in August 2000, which was not appealed, and in October 2001, the court granted plaintiffs' motion for summary judgment. Virginia appealed to the U.S. Fourth Circuit Court of Appeals, and in February 2003, the court certified two questions of state law to the Virginia Supreme Court, rather than deciding the appeal. In March 2003, the Virginia Supreme Court issued an order accepting the certified questions, but also directing counsel to brief and argue whether the questions are outcome dispositive. In September 2003, the Virginia Supreme Court refused to accept the certification. The Fourth Circuit upheld the permanent injunction in March 2004. The Commonwealth of Virginia filed a motion for rehearing or rehearing en banc, and a decision on that matter is pending from the Fourth Circuit.

Cyberspace Communications v. Engler - FTRF joined an amicus brief in the appeal of the preliminary injunction against Michigan's Internet content law. The ACLU sued to overturn the law, enacted in June 1999, using arguments similar to those used in other "mini-CDA" cases, including American Library Ass'n v. Pataki and ACLU v. Johnson. The district court judge granted a preliminary injunction, which was appealed to the Sixth Circuit Court of Appeals. The Sixth Circuit affirmed the district court's decision in an "unpublished" opinion on November 15, 2000. Because the state did not appeal the district court's entry of a permanent injunction preventing enforcement of the Michigan law, this case will not go any further.

Brooklyn Institute of Arts and Sciences v. City of New York - New York's mayor Rudolph Giuliani cut city funding to the Brooklyn Museum of Art because he was offended by an exhibit, "Sensation: Young British Artists from the Saatchi Collection," believing it denigrated religion. The museum sued in federal court on First Amendment grounds. The City then sued in state court to evict the museum from its land and building. FTRF joined an amicus brief in support of the museum's request for a preliminary injunction, which was granted on November 3, 1999. The City appealed to the U.S. Second Circuit Court of Appeals; FTRF joined an amicus brief. The two sides reached a settlement on March 27, 2000, in which the mayor dropped all efforts to penalize the museum and each side paid its own legal fees. Subsequently, Mayor Giuliani in April 2001, appointed a "decency panel" to review artwork at publicly funded museums.

Sund v. City of Wichita Falls, TX - The Foundation assisted in the preparation of a lawsuit against a City Council resolution allowing removal of books from the children's section to the adult area of the library if requested by 300 petitioners. The resolution was passed in response to controversy over two award-winning children's picture books in the library's children's section, Heather Has Two Mommies, by Leslea Newman, and Daddy's Roommate, by Michael Willhoite. Sixteen adults and three children living in Wichita Falls sued in federal court, arguing that the resolution violated the First Amendment prohibition of content-based speech restriction. U.S. District Court Judge Jerry Buchmeyer ruled the resolution unconstitutional in 2000.

2000-2009

2000

ACLU v. Goddard - A "mini-CDA case," formerly ACLU v. Hull and ACLU v. Napolitano. In conjunction with other plaintiffs, FTRF filed suit in the U.S. District Court for the District of Arizona challenging the Arizona "harmful to minors" Internet statute. In February 2001, the judge issued an order, consented to by the plaintiffs and the Attorney General of Arizona, staying enforcement of the law pending the judge's ruling on plaintiffs' application for a permanent injunction. The order also stayed further proceedings in the case pending either the end of the Arizona legislative session or a final vote on a bill that would amend this law. Governor Hull then signed an amended law. In response, the complaint and motion for injunctive relief were amended. In September 2001, the court granted a temporary restraining order and, following a hearing, held the statute unconstitutional. The state appealed to the Ninth Circuit Court of Appeals. The Arizona legislature again amended the statute, and the parties filed a joint motion to remand to district court, which the Ninth Circuit granted in July 2003. In April 2004, the district court judge found the amended statute unconstitutional.

Tattered Cover Bookstore, Inc. v. City and County of Denver - Executive Director Judith Krug testified, and FTRF joined an amicus brief arguing in favor of the Tattered Cover, which sued to

stop enforcement of a search warrant for customer records in an illegal drug making case. The Foundation also made a grant to the Tattered Cover to aid its litigative efforts. In October 2000, the court issued an opinion agreeing with Tattered Cover and amici that the burden was on the government to establish a compelling need and holding, moreover, that the request for all purchasing records of an individual-even for a one month period-constituted a fishing expedition for which the government had failed to establish a compelling need. However, the court also held that Tattered Cover was required to produce information related to the specific invoice in question in the case. On appeal, however, the Colorado Supreme Court ruled in favor of the Tattered Cover, quashing the search warrant. See Tattered Cover Bookstore v. Tooley, 1982.

American Amusement Machine Association v. Kendrick - The Freedom to Read Foundation joined an amicus brief supporting an appeal of the decision to uphold an Indianapolis city ordinance restricting minors' access to arcade games, particularly video games, that include "graphic violence" or "strong sexual content." A complaint was filed in an Indiana district court challenging the ordinance as a violation of the First Amendment. The court denied the request for a preliminary injunction, holding that while it could conclude that "at least some video games are expression entitled to First Amendment protection," the ordinance did not violate the First Amendment. The case was appealed to the Seventh Circuit, which reversed and remanded the trial court's decision, with instructions to grant a preliminary injunction barring enforcement of the ordinance.

Borders Books v. United States Department of Justice - FTRF joined an amicus urging the court to quash on First Amendment grounds a subpoena to a bookstore for information related to the book purchases of a particular customer. After reviewing in camera the evidence submitted by the government, the district court issued a one-paragraph ruling, holding that the government had not met its burden and quashed the subpoena.

City News and Novelty v. City of Waukesha - FTRF joined an amicus brief in support of City News, which was challenging a city ordinance pertaining to the licensing of adult-oriented establishments. Such establishments must annually renew their license to operate. Principally, the complaint alleged that the ordinance is unconstitutional because it fails to guarantee prompt judicial review of a license denial and does not permit maintenance of the status quo during the judicial review process. The Court of Appeals of Wisconsin held that one portion of the ordinance was unconstitutional, but disagreed that the ordinance failed to provide for prompt judicial review or that it was facially unconstitutional for failing to mention that the status quo must be maintained during the judicial process. City News petitioned the U.S. Supreme Court for a writ of certiorari, which was granted, then dismissed. The decision of the lower court was thus upheld.

2001

American Booksellers Foundation for Free Expression v. Dean - FTRF was a plaintiff in this "mini-CDA" case, challenging Vermont's "harmful to minors" Internet statute. The state Attorney General requested that the legislature amend the bill in light of the suit, and an amended bill was passed on June 2, 2001. On June 5, the judge denied plaintiffs' motion for a preliminary injunction, stating that the substance of the statute was changed enough that "a ruling on the law as previously promulgated would serve no purpose." Plaintiffs filed an amended complaint and the state filed a motion to dismiss the case as moot; plaintiffs' motion was granted. After a hearing, the judge granted a permanent injunction in April 2002. The state filed an appeal to the Second Circuit Court of Appeals, which in August 2003 affirmed the district court's decision.

American Library Association v. United States - The Freedom to Read Foundation, in conjunction with the American Library Association and other plaintiffs, filed a lawsuit in the Eastern District of Pennsylvania against the Children's Internet Protection Act (CIPA). The law required a public library to install blocking technology on all of its computers for all adult and child patrons if the library received federal funding for Internet service and/or computer equipment. On May 31, 2002, in a unanimous decision by a special three-judge panel, CIPA was found facially unconstitutional, and enforcement was blocked. The Court ruled that filters both overblock (by blocking access to protected speech) and underblock (by allowing access to illegal materials). It also found that less restrictive alternatives exist to allow public libraries to protect children from material that was illegal for them to access. The government appealed to the U.S. Supreme Court on June 20, 2002. On March 5, 2003, the Supreme Court heard oral arguments. On June 23, 2003, the Court reversed the District Court ruling and held CIPA constitutional. The Court, in a plurality decision, said that, to the extent filters could be disabled for adults, they did not pose a burden on the First Amendment rights of library users. The Court left open the possibility that an "as applied" challenge could be brought against CIPA if an adult library user was denied a request that a Web site be unblocked.

City of Los Angeles v. Alameda Books, Inc. - The Foundation joined an amicus brief in this case, which examined whether the LA City Council required evidence to demonstrate that a combination adult bookstore/arcade standing alone produced harmful secondary effects, or whether the council could rely on a prior ruling by the Fourth Circuit upholding a state law almost identical to the city ordinance. In 2002, the U.S. Supreme Court upheld the ordinance.

Suntrust Bank v. Houghton Mifflin Company - The Freedom to Read Foundation joined an amicus brief in support of Alice Randall and Houghton Mifflin, who were being sued by the Margaret Mitchell estate over publication of The Wind Done Gone, a parody of Gone with the Wind that retells some of the events of that novel from a slave's perspective. The Mitchell estate alleged copyright infringement and asked the court for a temporary restraining order and a

preliminary injunction preventing sale or distribution of the book. Amici argued that without regard to the copyright issues, an injunction would be an unlawful prior restraint of speech under the First Amendment. The District Court ruled in favor of the Mitchell estate, and defendants appealed. Once again, FTRF joined in an amicus brief in support of the defendants' right to publish. A three-judge panel of the Eleventh Circuit, in a rare oral decision from the bench, unanimously ruled that the preliminary injunction was an abuse of discretion and an unlawful prior restraint. It ordered that the injunction be vacated and that publication of The Wind Done Gone be allowed to proceed. On May 10, 2001, the parties settled the suit. Under the terms of the settlement, Houghton Mifflin, publisher of The Wind Done Gone, agreed to make an unspecified contribution to Morehouse College, a historically black school in Atlanta to which members of the Mitchell family have long been benefactors.

Yahoo! v. La Ligue Contre Le Racisme et L'Antisemitisme - After a French court fined Yahoo! for hosting customer pages advertising Nazi and racist memorabilia, the company filed suit in U.S. District Court in San Jose, seeking a declaratory judgment that the French court's orders were neither cognizable nor enforceable under United States law. The court ruled that no other nation's law could serve as a basis for suppressing free speech in the United States. The defendants appealed the ruling to the Ninth Circuit Court of Appeals. FTRF joined amicus briefs in support of Yahoo! in both the original case and in the appeal. Oral argument was held in December 2000, and a decision is pending.

2002

ACLU v. Department of Justice - In October 2002, the Freedom to Read Foundation joined the ACLU, the Electronic Privacy Information Center, and the American Booksellers Foundation for Free Expression in filing a Freedom of Information Act request with the Department of Justice (DOJ), seeking more information about the implementation of Section 215 of the USA PATRIOT Act. Upon being denied the requested the information, the organizations filed suit in federal court. The DOJ released some heavily redacted documents in response. In May 2003, a federal judge held that the aggregate information being sought by the plaintiffs could be withheld on national security grounds. In October 2003, the organizations filed another FOIA request seeking information on Section 215 orders. The organizations filed a legal action in December seeking the release of the requested records, but the FBI claimed they could not be produced before June 2005. The U.S. District Court for the District of Columbia ultimately overturned the FBI's decision and ordered the agency to release the documents over a period of six weeks. In June 2004, the FBI released some documents, including a memorandum from October 2003 indicating the agency had submitted an application for an order under Section 215 less than a month after Attorney General Ashcroft stated that the section had not been invoked. More documents are expected to be released in July.

American Historical Association v. National Archives and Records Administration - President George W. Bush signed Executive Order 13233, which permits both former and sitting presidents, and their relatives, to restrict access to presidential records eligible for release under the Presidential Records Act of 1978. The Freedom to Read Foundation joined an amicus brief in support of the American Historical Association, which filed suit in federal court to overturn the order. On March 28, 2004, the judge dismissed the case as moot because the National Archives and Records Administration had released the sought-after records. She did not rule on whether the executive order was within the president's authority.

American Booksellers Foundation for Free Expression v. Petro - Formerly Bookfriends, Inc. v. Taft. The Freedom to Read Foundation and other plaintiffs filed a lawsuit in the federal court in Dayton, Ohio, challenging an Ohio statute. Part of the statute defines "harmful to juveniles" to include violence, cruelty, foul words, and glorification of crimes, while another part is an Internet provision similar to those successfully fought by FTRF previously. On August 2, 2002, the court issued a temporary restraining order, ruling that the new "harmful to juveniles" definition was overbroad. The state then appealed the decision to the Sixth Circuit Court of Appeals. While the appeal was pending, the Ohio legislature adopted an amendment to the law eliminating most of the overbreadth problems, in an attempt to moot the litigation. Subsequently, in June 2003, the Sixth Circuit remanded the case back to the trial court for further action. In August 2003, plaintiffs filed an amended complaint focusing on the Internet provision, and in September, plaintiffs filed a motion for summary judgment.

IDSA v. St. Louis County - The Freedom to Read Foundation joined an amicus in the appeal of this case challenging a St. Louis County ordinance making it unlawful to knowingly sell, rent, make available, or permit the "free play of" video games with violent content to or by minors without the consent of a parent or guardian. A federal judge had upheld the ordinance, holding that video games were not First Amendment-protected and, in any event, that violent material could be regulated. The judge then dismissed the case. The Eighth Circuit Court of Appeals reversed the lower court judge in 2003, and ordered him to issue and injunction against enforcement of the statute. The county's appeal was denied.

2003

Center for Democracy and Technology v. Fisher - In September 2003, the Center for Democracy and Technology (CDT) challenged a Pennsylvania law that allows the state Attorney General or any county district attorney to unilaterally apply to a local judge for an order declaring that certain Internet content may be child pornography and requiring the Internet Service Provider (ISP) to block the site. Neither the targeted ISP nor the owner of the web site is permitted to participate in the proceedings. The CDT lawsuit argues that the statute violates the First and Fourteenth Amendments to the Constitution, as well as the Commerce Clause. The parties agreed

to a temporary restraining order pending final disposition of the matter. A hearing was held in January 2004. FTRF gave a grant to CDT in support of the case.

Counts v. Cedarville - A student and her parents initiated a lawsuit after the Cedarville, Arkansas, school board voted to remove the Harry Potter books from the school library's open stacks and to require students to obtain a parent's written permission before borrowing the books. The school board acted following a parent's complaint that the series encourages children to disrespect adults and to believe in witchcraft. FTRF and other organizations filed an amicus brief in March 2003 in support of the plaintiffs' motion for summary judgment. On April 23, 2003, Judge Jimm L. Hendren granted the motion, ordering the school board to return the books to the school library's open shelves. The school board voted not to appeal the decision.

Muslim Community Association of Ann Arbor v. Ashcroft - The Freedom to Read Foundation joined the American Booksellers Foundation for Free Expression and many other free expression and civil liberties organizations in submitting an amicus brief in this case, a facial legal challenge to Section 215 of the USA PATRIOT Act filed by the American Civil Liberties Union. Section 215 amends the business records provision of the Foreign Intelligence Surveillance Act to permit FBI agents to obtain all types of records, including library records, without a showing of probable cause. Additionally, the statute provides for a gag order in every request by the government for an indefinite time and without any particular showing by the FBI that a gag order is necessary. FTRF's brief argued that both the gag order and the lack of any requirement that the government show relevance to a terror-related investigation pose severe threats to the rights to transmit and receive information as guaranteed by the First Amendment. The government moved to dismiss the complaint, arguing that plaintiffs have no standing to challenge the statute, because they have not suffered any "actual harm" in that Section 215 has never been used. The government also claimed that the Fourth Amendment and due process rights claimed by the plaintiffs don't apply in this case. Oral arguments were heard in early December 2003, and the case is pending before the district court in Michigan.

New Times, Inc. v. Isaacks - In November 2003, FTRF partnered with the Association of American Publishers and thirteen other groups in submitting an amicus brief to the Texas Supreme Court in support of a newspaper's right to engage in political satire as a means of commenting on government officials' actions. In the case, a judge and district attorney claimed they were libeled by the Dallas Observer, after the paper (an alternative weekly) published a fictitious article criticizing the officials' role in jailing a 13-year-old boy for writing a school-assigned essay for Halloween, which discussed the shooting of a teacher and two students. The article recounted the jailing of a six-year-old girl for "suspicion of making a terrorist threat" in a book report on Maurice Sendak's Where the Wild Things Are. The trial court denied the Observer's motion for summary judgment, an appeals court affirmed, and the case is currently

pending before the Supreme Court of Texas.

Shipley v. Long - In June 2003, the Freedom to Read Foundation challenged an Arkansas statutory amendment that would require retailers and libraries to prevent all minors from accessing constitutionally protected materials that may be considered harmful to minors through the use of blinders and physical segregation of such materials. In February 2004, the federal district court judge certified four questions to the Arkansas Supreme Court. He also issued an interim temporary injunction, so that none of the challenged portions of the law can be enforced at this time. Plaintiffs submitted their brief to the Arkansas Supreme Court on March 18, 2004. The case was formerly Shipley v. Huckabee.

United States v. Irwin Schiff, et al. - On March 19, 2003, a U.S. District Court judge in Nevada temporarily enjoined sales of Irwin Schiff's book The Federal Mafia: How Government Illegally Imposes and Unlawfully Collects Income Taxes. FTRF filed an amicus brief opposing the court's prior restraint of the book. In June 2003, the court issued a preliminary injunction, ruling that the book was "commercial speech" and therefore entitled to reduced First Amendment protection. Mr. Schiff and the ACLU of Nevada appealed the ruling to the Ninth Circuit Court of Appeals, which heard oral argument on February 9, 2004.

2004

Athenaco v. Cox - The Michigan legislature amended its "harmful to minors" statute in 2003, making it illegal to allow a minor to see or examine a work deemed "harmful to minors." The Freedom to Read Foundation joined other plaintiffs in challenging the amendment in January 2004. Oral argument took place in May.

City of Littleton, Colorado, v. Z.J. Gifts - Z.J. Gifts brought a facial challenge to Littleton's adult business licensing ordinance when it opened a retail store deemed by the city to be an adult-oriented business. The company claimed the law was unconstitutional because the licensing provision, which operates as a prior restraint on protected speech, fails to assure a prompt and final judicial decision following a refusal to issue a license. The Tenth Circuit Court of Appeals ruled in favor of the plaintiff, and the city appealed to the U.S. Supreme Court. In January 2004, the Freedom to Read Foundation joined with the American Booksellers Foundation for Free Expression and four other organizations to file an amicus brief in support of Z.J. Gifts. On June 7, 2004, the Supreme Court overturned the initial decision and found the ordinance constitutional.

FCC Petition for Reconsideration - The Freedom to Read Foundation joined a group of individuals, other free speech organizations, and broadcast corporations in filing a petition urging the FCC to reverse a decision it made in punishing NBC, the broadcaster of the 2003 Golden Globes award ceremony, for a comment made by Bono upon receiving an award. The brief argued that the new rules the FCC used to impose punishment violated the First Amendment.

John Doe and ACLU v. Ashcroft - In May 2004, the Freedom to Read Foundation, American Library Association, and American Booksellers Foundation for Free Expression filed an amicus brief in support of the ACLU's challenge to Section 505 of the USA PATRIOT Act, which concerns "National Security Letters." The brief argued that the lack of judicial overview and gag order provision of Section 2709 of the Act threaten the First Amendment rights of libraries, bookstores, and their patrons, as well as Internet communication in general. The case was filed under seal, which means information about it, including the identity of the ACLU's client, an Internet Service Provider, is not public.

Video Software Dealers Association v. Maleng - In January 2004, the Freedom to Read Foundation joined an amicus brief in support of this challenge to a Washington State law barring the sale or rental to minors of any video game containing depictions of violence directed against law enforcement officers. Previously, the district court judge issued a preliminary injunction barring enforcement of the law pending a hearing, which was held in April 2004.

Appendix F: Freedom to Read Foundation Constitution and Bylaws

(Note. From the Freedom to Read Foundation, Retrieved May 25, 2005, from http://www.ftrf.org/ Reprinted with permission.)

FREEDOM TO READ FOUNDATION
CONSTITUTION AND BYLAWS

ARTICLE I

Name, Purpose, Location

Corporate Seal

Section 1. Name. The name of this Foundation shall be the Freedom to Read Foundation.

Section 2. Purpose. The purposes of the Foundation are as follows:

(a) To promote and protect freedom of speech and freedom of press as such freedoms are guaranteed by the Constitution and laws of the United States and as such freedoms necessarily involve the public right to hear what is spoken and to read what is written;

(b) To promote the recognition and acceptance of libraries as repositories of the world's accumulated wisdom and knowledge and to protect the public right of access to such wisdom and knowledge;

(c) To support the right of libraries to include in their collections and to make available to the public any creative work which they may legally acquire:

(d) To supply legal counsel, which counsel may or may not be directly employed by the Foundation, and otherwise to provide support to such libraries and librarians as are suffering legal injustices by reasons of their defense of freedom of speech and freedom of the press as guaranteed by law against efforts to subvert such freedoms through suppression or censorship to the extent such libraries and librarians may request such aid and require it on account of poverty or inability to obtain legal counsel without assistance.

No part of the net earnings of the Foundation shall inure to the benefit of any member, trustee, official or individual and no part of its activities shall involve attempts to influence legislation, to carry on propaganda, or to intervene in any political campaign on behalf of any candidate for public office. Further, the Foundation will operate within the meaning of Section 501(c)(3) of the Internal Revenue Code.

Section 3. Location. The location of the principal office of the Foundation shall be in the City of Chicago, County of Cook, and the State of Illinois. The Board of Trustees may establish additional offices from time to time at such places within and without the State of Illinois as it may deem advisable.

Section 4. Corporate Seal. The Foundation shall have a corporate seal which shall have inscribed thereon the full name of the Foundation, the year of incorporation, and the words "Corporate Seal" and "Illinois."

ARTICLE II

Membership

Section 1. Eligibility. Any person, corporation or organization interested in the purposes of the Foundation may become a member upon payment of the dues provided herein. The Board of Trustees may suspend a member for cause by a two-thirds (2/3) vote of the entire Board and may reinstate a member by a three-fourths (3/4) vote of the entire Board.

Section 2. Membership Classifications. There are six (6) individual membership classifications: (Student Members, Regular Members, Contributing Members, Sponsors, Patrons, and Benefactors) and four (4) institutional/organizational membership classifications (Chapter Sponsor, Sponsor, Patron, and Benefactor). Any person, corporation, or organization is entitled to elect the membership classification which is desired by contributing to the Foundation the membership dues required for such classification.

Section 3. Membership Dues, Gifts and Grants. The annual membership dues which must be contributed by members in each of the six (6) individual membership classifications will be established by the FTRF Board of Directors. The individual membership classifications are as follows:

(a) Student Members
(b) Regular Members
(c) Contributing Members
(d) Sponsors
(e) Patrons
(f) Benefactors.

Institutional/organizational members will be divided into four (4) categories to be established by the FTRF Board of Directors, and the annual membership dues that must be contributed by members in each category will be set by the FTRF Board of Directors.

The Foundation may also receive gifts and grants on such terms and conditions as the board of Trustees deems appropriate and consistent with the purposes and objectives of the Foundation.

Section 4. Payment of Dues. Dues for each membership classification are payable on or before April 1st of each membership year. Members whose dues are unpaid on April 1st shall be dropped from membership but will be reinstated at any time thereafter upon payment of dues for the current membership year.

Section 5 Membership Year and Fiscal Year. The membership year of the Foundation shall commence on September 1st of each calendar year and end on August 31st of the next succeeding calendar year. The fiscal year shall be the same as the membership year of the Foundation and shall govern all business and activities of the Foundation.

Section 6. Voting Rights of Members. The members of the Foundation shall have the right to elect Trustees as provided in Article III hereof. Each member, regardless of classification, shall have the right to cast one vote for each Trustee to be elected by the membership. Aside from the election of Trustees, no member shall have any voting rights on any other issue or proposition. The vote of a member which is an organization, opposed to an individual, shall be cast by its chief executive officer or by the representative duly designated by such organization member by written notice to the Foundation.

Section 7. Membership Roll. The Secretary of the Board of Trustees shall maintain a current roll of members of the Foundation as an official record of the Foundation.

Section 8. Transfer. Membership in the Foundation is not transferable or assignable to another person or organization.

ARTICLE III

Board of Trustees

Section 1. Powers. The property, business and affairs of the Foundation shall be managed by the Board of Trustees in accordance with the laws of the State of Illinois, subject, however, to the Articles of Incorporation and the Bylaws of this Foundation.

Section 2. Number and Selection of Trustees. There shall be fifteen (15) Trustees.

(a) **Elected Trustees.** Eleven (11) Trustees shall be elected by members of the Foundation as hereinafter provided in this Article III. Only individual members may be elected to and continue to serve on the Board of Trustees.

(b) **Ex-Officio Trustees.** Four (4) Trustees shall serve on the board by virtue of their offices in the American Library Association. The persons holding the following offices shall serve as Ex-Officio Trustees:

(1) President of the American Library Association;

(2) President-Elect of the American Library Association;

(3) Executive Director of the American Library Association;

(4) Intellectual Freedom Committee chairperson.

Each of the Divisions and Round Tables of the American Library Association shall be encouraged to send a representative to the meetings of the Board of Trustees, and the representatives shall be accorded the rights and privileges of Trustees except the right to vote.

Section 3. Tenure. The Elected Trustees shall serve a term of two (2) years. Ex-Officio Trustees shall serve during their term of office as specified in Section 2(b) hereof. Trustees shall take office at the final session of the board held in conjunction with the American Library Association Annual Conference. All Trustees shall serve until their successors are elected and qualified.

Section 4. Time and Manner of Election and Appointment of Trustees.

(a) **Elected Trustees.** Elected Trustees shall be elected by mail ballot of the membership. Such ballot shall be mailed to all members no later than April 1st of each year and only those executed ballots received by the Foundation on or before May 1st of the same year shall be counted. At the discretion of the Board, the election may be conducted electronically, under procedures and according to deadlines established by the Board, and the Executive Director shall be responsible for ensuring the accuracy and integrity of the election process.

(b) **Ex-Officio Trustees.** Ex-Officio Trustees shall become Trustees immediately upon assuming the offices specified in Section 2(b) hereof.

Section 5. Resignation, Death or Disability. Any Trustees may resign at any time by giving written notice of such resignation to the Secretary of the Foundation, to be effective at the time stated thereon. In the event an Ex-Officio Trustee resigns the office specified in Section 2(b) hereof or dies, the person succeeding to the office shall serve as Trustee. In the event an Elected Trustee resigns or dies or otherwise ceases to hold office, the remaining Elected Trustees shall, by majority vote, elect a member to serve for the unexpired term.

Section 6. Salaries and Compensation. No Trustee shall receive any remuneration for service on the Board. When authorized by the Board of Trustees, reimbursement may be made for travel and other out-of-

pocket expenses incurred in attending meetings of the Board of Trustees or otherwise discharging official duties as prescribed by the Board of Trustees.

ARTICLE IV

Meetings of Trustees

Section 1. Annual Meeting. The Annual Meeting of the board of Trustees shall be held in conjunction with the Annual Conference of the American Library Association. The election of the officers of the Foundation under Article VI of these Bylaws shall be held at this meeting and other business shall be transacted as shall be required.

Section 2. Special Meetings. Special meetings of the Board of Trustees may be called by the President or by a majority of the Trustees holding office, and shall be held at such time and place as may be designated by the persons calling the meeting. A special meeting of the Board of Trustees shall be held annually in conjunction with the American Library Association Midwinter Meeting.

Section 3. Notice of Meetings. Notice of each annual or special meeting of the Board of Trustees shall be mailed or delivered personally, by electronic means or by such other means that the Board deems appropriate to each Trustee at least (14) days before the meeting. In the notice, the Secretary shall specify the purpose of the meeting and the business to be transacted, but other business may also be transacted at the discretion of the Board. Unless otherwise provided in the notice of the meeting, all meetings shall be held in the principal office of the Foundation.

Section 4. Waiver of Notice. Notice of any meeting need not be given to any person otherwise entitled thereto if waived by such person in writing, or by electronic means or by such other means that the Board deems appropriate, before, during or after such meeting or if such person shall be present at the meeting.

Section 5. Quorum and Vote Required. A majority of the members of the Board of Trustees holding office shall constitute a quorum for the transaction of business. The affirmative vote of a majority of Trustees present and voting at any legally constituted meeting shall be required for action by the Board except as otherwise specified in these Bylaws. For any of the following actions, (a) amendment of the Articles of Incorporation or the Bylaws, (b) sale, lease, exchange, mortgage, pledge, or other disposition of all or substantially all of the property and assets of the Foundation or Endowment Fund, (c) voluntary dissolution of the Foundation or Endowment Fund and adoption of plan of distribution of assets, (d) revocation of voluntary dissolution, (e) merger or consolidation with any other foundation, an affirmative vote of at least a two-thirds (2/3) majority of the Trustees holding office shall be required. For any amendment to Article IX that would increase the authority of the Trustees to invade the corpus of the Endowment Fund, an affirmative vote of at least a three-fourths (3/4) majority of the Trustees then holding office shall be required. Fourteen (14) days prior written notice delivered personally or by mail or by electronic means or by such other means that the Board deems appropriate to each Trustee, together with the complete text of the proposed action shall be required for any action requiring more than a simple majority vote of the Trustees.

Section 6. Executive Session. The President or the Board may call any meeting into executive session, during which only the Trustees and such other officers or individuals as the President or the Board may designate shall be in attendance.

Section 7. Proxy. Trustees shall not be entitled to vote by proxy.

ARTICLE V

Committees

Section 1. Executive Committee. At the Annual Meeting the Board of Trustees shall elect an Executive Committee to consist of the President, the Vice-President, the Treasurer, and any other two (2) Trustees. The President shall chair the Executive Committee. The members of the Executive Committee shall serve until the next annual meeting of the Board of Trustees or until their successors are elected and qualified.

The Executive Committee may provide for regular or special meetings of this Committee, and may adopt rules and procedures for conducting its activities. The Board of Trustees may fill a vacancy in the Executive Committee at any Board meeting.

During the interval between meetings of the board of Trustees, the Executive Committee shall manage the business and affairs of the Foundation insofar as such authority may be legally delegated, except as limited from time to time by resolution of the board or by these Bylaws.

Section 2. Nominating Committee. The President shall annually appoint a Nominating Committee which shall consist of three (3) Elected Trustees. The Nominating Committee shall submit to the membership for election the names of not less than two (2) nor more than (3) candidates for each position on the Board to be filled. No Elected Trustee shall serve for more than two successive terms.

Section 3. Other Committees. The President shall appoint such other committees as, in the judgment of the Board, may be deemed advisable, to have such powers and duties as may be prescribed by the Board.

ARTICLE VI

Officers

Section 1. Designation of Officers. The elected officers of the Foundation shall consist of a President, a Vice-President, and a Treasurer, each of whom shall be elected for a term of one year at the annual meeting of the board by receiving a majority vote at such meeting. The President, the Vice-President, and the Treasurer shall be elected from among the members of the Board of Trustees.

Section 2. Additional Officers. The Board of Trustees may appoint such other officers or agents as it shall deem necessary. The Board shall determine the powers and duties and term of office or appointment of such other officers or agents.

Section 3. Executive Director and Secretary. The Director of the Office for Intellectual Freedom of the American Library Association shall serve as Executive Director and Secretary of the Foundation, but shall not have a vote on the Board or the Executive Committee by virtue of this position.

Section 4. Salaries and Compensation. No officer shall receive any remuneration for service on the board, but officers when authorized by the Board of Trustees may be reimbursed for traveling and other out-of-pocket expenses incurred in discharging the official duties of the Foundation, provided, however, that the Board may pay compensation to the Executive Director in such amount as may be determined by the Board from time to time.

Section 5. Tenure. Officers of the Freedom to Read Foundation shall take office at the final session of the Board of Trustees held in conjunction with the American Library Association Annual Conference. All elected officers shall hold office for one year or until their successors are elected and qualified.

Section 6. Removal of Officers. Any officer elected by the Board of Trustees may be removed by a two-thirds (2/3) vote whenever the Board in its judgment believes the best interest of the Foundation will be served thereby.

Section 7. Vacancies. If for any reason any office, except that of the Executive Director, becomes vacant, it may be filled at any meeting of the Board by a majority vote for the unexpired term of such office.

ARTICLE VII

Powers and Duties of Officers

Section 1. The President. The President shall chair all meetings of the Board of Trustees and the Executive Committee, and shall have the power to enforce all orders and resolutions of the Board and shall have such additional powers and duties as the Board of Trustees may prescribe from time to time.

Section 2. The Vice-President. In the absence of the President or in the event of the President's inability to act, the Vice-President shall have all the powers and shall perform all the duties of the President, and shall have such additional powers and duties as the board of Trustees may prescribe from time to time.

Section 3. The Secretary. The Secretary shall keep the records of the Foundation under the supervision of the President and the Board of Trustees, including a permanent record of all meetings, which minutes shall be signed by the Secretary. The Secretary shall keep a roll of the Foundation setting forth the names of members and Trustees, and shall have charge of such additional books and papers as the Board of Trustees shall direct; shall be custodian of the Seal of the Foundation and see that it is properly affixed to all documents requiring it; and shall, in general, perform all such duties as are incident to the office of Secretary of a corporation not-for-profit under the laws of the State of Illinois and as the Board of Trustees may prescribe from time to time.

Section 4. The Treasurer. The Treasurer shall have overall accountability for all funds and securities of the Foundation, except that the operational administrative duties of the Treasurer may be delegated by the Board to the Executive Director. The Trustees or such other officers or employees as the Treasurer may designate for the purpose shall endorse on behalf of the Foundation all checks, notes or other obligations and evidences of the payment of money payable to the Foundation or coming into the Treasurer's or Executive Director's possession. The Treasurer or the Executive Director shall deposit all funds arising therefrom and all other funds of the Foundation coming into the Treasurer's possession in such banks, trust companies or other depositories as may be designated by the Board of Trustees.

At each annual meeting and whenever else required by the Board or by the President to do so, the Treasurer shall exhibit a complete and true statement of the cash account; shall enter regularly in the books of the Foundation kept for such purposes an accurate account of all moneys received and paid on the account of the Foundation, together with all other business transactions; and shall have such additional powers and duties as the Board may prescribe.

Section 5. Executive Director. The Executive Director shall be the chief administrative officer of the Foundation in furthering the policies and programs established by the Board of Trustees, and shall have such additional powers and duties as the Board may prescribe.

Section 6. Contracts and Checks. The Board of Trustees may authorize any officer or agent of the Foundation to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Foundation. Such authority may be general or confined to specific instances. All checks, drafts, and other orders for the payment of money, notes or other indebtedness shall require two signatures, to consist of officers of the Foundation.

Section 7. Bonds. If the Board of Trustees shall require, all officers and agents of the Foundation responsible for the receipt, custody or disbursement of funds shall furnish bond in such amount and with such surety or sureties as the Board shall approve, conditioned upon the faithful performance of duties, the expense of such bonds to be paid by the Foundation.

Section 8. Audit. The books and accounts of the Foundation shall be audited annually, and at such other times as the Board may direct, by a firm of certified public accountants designated by the Board.

Section 9. Indemnification. In accordance with 805 Illinois Statutes § 105/108.75, the Freedom to Read Foundation Board shall, unless prohibited by law, indemnify any person who is or was a freedom to Read Foundation board member or staff member for the reasonable defense costs actually and reasonably incurred, including reasonable attorneys' fees, fines, and amounts paid in settlement, and for the costs of any final judgment resulting from litigation or threatened litigation, whether civil, criminal, administrative or investigative against that board or staff member, provided that: (1) the actions resulting in litigation were undertaken on behalf of the Freedom to Read Foundation, and such person was acting within the scope of his or her authority; (2) such person acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interest of the Freedom to Read Foundation and with respect to any criminal action or the proceeding, such person has no reasonable cause to believe his or her conduct was unlawful: (3) the actions did not involve acts of gross negligence, malice, intentional wrongdoing or other misconduct; (4) the reimbursement amount does not exceed $40,000 per individual, or $100,000 in the aggregate, in any matter in which the board or staff member is not successful in the defense of the action; (5) the Freedom to Read Foundation has approved the board or staff member's choice of counsel, which approval will not unreasonably be withheld; and (6) the board or staff member has not refused to settle the matter on terms acceptable to the Freedom to Read Foundation, with the Freedom to Read Foundation paying all costs of such settlement.

Section 10. Advancement of Expenses. Expenses (including reasonable attorneys' fees) up to $10,000 incurred by a board or staff member of the Freedom to Read Foundation in connection with any matter to which such person is entitled to indemnification pursuant to Section 9 may be paid by the Freedom to Read Foundation in advance of the final disposition of such matter provided that: (1) the payment of advance expenses is approved by a majority vote of a quorum consisting of board members who are not parties to such action, suit or proceeding, or if such a quorum is not available, by independent legal counsel in a written opinion; and (2) such person provides receipt of an undertaking by or on behalf of such persons to repay such amount in the event it is ultimately determined that he or she is not entitled to be indemnified by the Freedom to Read Foundation.

ARTICLE VIII

Dissolution and Liquidation

In the event of the dissolution of the Foundation, and prior tot he completion thereof, all liabilities and obligations of the Foundation shall be paid, satisfied and discharged, and all of the remaining assets, property and income owned or held by the Foundation, but not so owned or held upon a condition requiring return, transfer or conveyance by reason of dissolution, shall be expended for or applied to the purposes of the Foundation, by transferring or conveying such assets, property or income, in accordance with the provisions of the Illinois General Not For Profit Corporation Act, to one or more corporations or organizations organized and operated exclusively for religious, charitable, scientific, literary or educational purposes, to which exemption from income taxes has been granted under Section 501(C)(3) of the Internal Revenue Code of 1954 or comparable provision of the prior or subsequent federal income tax laws, and not part of such remaining assets, property or income shall be distributed to members or to any other persons whatsoever.

ARTICLE IX

Freedom to Read Endowment Fund

Secton 1. Purposes. The Foundation shall maintain and administer a Freedom to Read Endowment Fund (hereinafter "the Fund"). The assets of the Fund are to be used to implement the purposes of the Foundation as set forth in Article I, Section 2 through grants of income from the Fund and, to the extent hereinafter permitted, invasions of corpus.

Section 2. Management of Fund Assets. The Trustees of the Foundation shall be empowered to receive contributions to the Fund, and

(a) To invest and reinvest any assets of the Fund in, and to purchase or otherwise acquire, any property, real or personal, of any kind or nature, including without limitation any stocks, whether common, preferred or otherwise, participation in any discretionary common trust fund, bonds, secured or unsecured, debentures, obligations, mortgages, other securities and interests in any of the foregoing;

(b) To sell, exchange, give options upon, partition or otherwise dispose of any property that may at any time form part of the Fund at public or private sale, and to make, execute and deliver any and all deeds, conveyances, bills of sale and other instruments necessary to property to transfer and give sufficient title thereto;

(c) To lease any real property held by the Fund for such term or terms and upon such conditions and rentals and in such manner as the Trustees may deem advisable, irrespective of whether the term of any such lease shall exceed the probable period of the Fund; and to renew or modify any such lease;

(d) To make repairs, structural or otherwise, to any such real property or to demolish the same in whole or in part;

(e) To vote in person or by general or limited proxy with respect to any shares of stock or other securities held in the Fund at any and all meetings of stockholders for any and all purposes without any limitation whatsoever;

(f) To consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution or liquidation, foreclosure or lease or sale of the property, incorporation or reincorporation, or readjustment of the capital or financial structure of any corporation in which the Fund may have an interest; to become and serve as a member of any stockholders' or bondholders' protective committee; to deposit any such stock or other securities in accordance with any such transaction; to pay any assessments, expenses and sums of money which may be required for the protection or furtherance of the interests of the Fund with reference thereto; and to receive and retain as investments of the Fund any new securities incurred as a result of the execution of any such transaction, whether or not they would be authorized investments but for this provision; and to make any payments and to take any steps that may be necessary or proper to enable it to obtain the benefit of any such transaction;

(g) To exercise all options, rights and privileges to convert stocks, bonds, notes mortgages or other property into stocks, bonds, notes, mortgages or other property, and hold such stocks, bonds, notes, mortgages, or other property so required as investments of the Fund;

(h) To foreclose, as incident to the collection of any bond or note, any mortgage securing such bond or note, and bid in the mortgaged property at such foreclosure sale, or to

acquire the property by deed from the mortgager without foreclosure; and to retain the property bid in under foreclosure or taken over without foreclosure, or to dispose of such property by sale, exchange, or otherwise upon such terms and conditions as the Trustees shall deem advisable.

Section 3. Expenditure of Fund Income. The Trustees of the Foundation shall have the power, by affirmative vote of a majority of Trustees present at any legally constituted meeting, to expend the income from the Fund assets in furtherance of the purposes of the Foundation as set fourth in Article, I, Section 2.

Section 4. Invasion of Corpus. The Trustees of the Foundation shall have the power in any fiscal year to invade up to 15% of the corpus of the Fund for use in furtherance of the purposes of the Foundation, provided, however, that such corpus may not be invaded unless approved by a two-thirds (2/3) majority of the Trustees then holding office.

Section 5. Invasion of Corpus for Indemnification Purposes. The Foundation is hereby authorized to invade the corpus of the Fund for the purpose of indemnifying board or staff members in accordance with Article VII, Sections 9 and 10.

Adopted December 9, 1969

As amended: January 17, 1970; June 26, 1970; January 16, 1971; January 22, 1972; January 19; 1974; July 5, 1974; January 18, 1975; January 17, 1976; January 30, 1981; January 22, 1982; June 25, 1992; February 4, 1994; June 22, 2006.

Appendix G: Informed Consent and Legal Release Forms

(Note. Forms from the Center for Oral and Public History are reprinted with permission.)

INFORMED CONSENT FORM
ORAL HISTORY INTERIVEW

One Washington Square _ San José, California USA, 95192

Freedom to Read Foundation Oral History Thesis Interview

Conducted by April Gage

The purpose of this thesis is to record an oral history of the Freedom to Read Foundation that documents the history of the Foundation through the unique perspectives of professionals who were directly involved in its establishment and operations from the 1960s until the present. Interviews will comprise the bulk of this project. You were asked to participate as a narrator because you have been a part of the Foundation's leadership.

Interview information

- You will be one of up to six persons interviewed for this thesis project.
- Your interview will last approximately 45 minutes to two hours.
- You will be asked questions about your background, your education, your involvement with the Freedom to Read Foundation, and your thoughts about the right to read.
- You will be asked for permission to be photographed or to provide a photograph.
- Your interview will be audio taped and a verbatim transcript will be made from the tape. You will be given the opportunity to review, edit and approve the transcript prior to its further use.
- A copy of the final edited transcript, audio recording and (if desired) the thesis, will be given to you at the end of the process.

Your risks and benefits

- Some people, including members of your profession or the general public, may strongly disagree with your opinions or interpretations of historical events.
- Your participation would be a significant contribution to the recorded history of the Freedom to Read Foundation.
- You have the opportunity to record of a meaningful part of your personal history and how your life figures into the history of libraries and the freedom to read.

Your rights

- Your participation is voluntary. At any time, you may decline to answer any question or terminate the interview entirely.
- Your privacy is precious. Confidential information you may provide such as your home address and telephone number will not be disclosed to the public.
- You will be given the interview transcript and biographical information to edit, annotate and approve prior to any further use.

INFORMED CONSENT FORM
ORAL HISTORY INTERIVEW

One Washington Square _ San José, California USA, 95192

Deposit of materials

With your consent in the form of a signed release, the final edited transcript, audio recording, and any other photographs or documentary materials you wish to provide will be stored in at the Center for Oral and Public History at California State University, Fullerton. These will be available to the public without copyright restriction. As a result, the information may be accessed as primary source material for purposes such as scholarly research and subsequently referenced in publications.

With your consent, the final transcript, biography and, if applicable, photo will be included in the bound volume of my thesis, which will be available in the Martin Luther King Jr. Library at SJSU.

Yes	No	
		I have been encouraged to ask questions and have received answers to my questions.
		I consent to being audio taped.
		I consent to being photographed.
		I consent to the inclusion of my photograph in the published thesis.
		I understand that I will have the opportunity to review, edit and approve the verbatim transcript prior to its storage at COPH or release for public access.

I give my consent to participate in this interview and have indicated above my conditions of participation. I have received (or will receive) a copy of this consent form.

Date: _____

Name (please print): _____

Address: _____

Telephone: _____

Signature: _____

CALIFORNIA STATE UNIVERSITY, FULLERTON
CENTER FOR ORAL AND PUBLIC HISTORY

NARRATOR AGREEMENT

You have been asked for information to be used in connection with the Center for Oral and Public History at California State University, Fullerton. The purpose of this program is to gather and preserve information for historical and scholarly use.

In return for the tape recording of this interview, photographs pertaining to this interview, and any ephemeral materials, CSUF will preserve them and when it is economically feasible, will make a typescript of the tape, which will be submitted to you for correcting and minor editing. This edited typescript, together with a tape of the interview, photographs and ephemeral materials will then be placed in the oral history collection at California State University, Fullerton. Other institutions or persons may obtain a copy. These materials may be made available in print, electronic (including CD/DVD), or web/internet format, for purposes of research, instructional use, publications, or other related purposes.

I have read the above and, in view of the historical and scholarly value of this information, I knowingly and voluntarily permit California State University, Fullerton the full use of this information, photographs and ephemeral materials. I hereby grant and assign all my rights of every kind whatever pertaining to this information, whether or not such rights are now known, recognized, or contemplated, to California State University, Fullerton.

_____ _____
Interviewer Signature Date

_____
Interviewer (please print)

Address_____

Phone(_____)_____ Email_____

YOUR PRIVACY RIGHT: The Director of the California State University, Fullerton, Center for Oral and Public History is the University official responsible for the maintenance of this form. The information provided will be maintained pursuant to the authority provided in the California Information Practices Act of 1977, the California Administrative Code Sections 42396 through 42396.5, and in certain cases 20 United States Code 1232g, Chancellor's Executive order No.267, California Education Code Section 89546, Chancellor's Office of Faculty and Staff Affairs Memorandum FSA 78-38, Chancellor's Division of Information Services Memorandum is 78-20, and Chancellor's Office of Business Affairs Memorandum BA 78-16Bottom of Form.

CALIFORNIA STATE UNIVERSITY, FULLERTON
CENTER FOR ORAL AND PUBLIC HISTORY

INTERVIEWER AGREEMENT

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I have read the above and, in view of the historical and scholarly value of this information, I knowingly and voluntarily permit California State University, Fullerton the full use of this information, photographs and ephemeral materials. I hereby grant and assign all my rights of every kind whatever pertaining to this information, whether or not such rights are now known, recognized, or contemplated, to California State University, Fullerton.

_____ _____
Interviewer Signature Date

_____
Interviewer (please print)

Address_____

Phone(_____)_____ Email_____

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Appendix H: Interview Details

Schmidt Interview, 03/17/2005	130 minutes
Schmidt Interview, 11/05/2006	14 minutes (recorder error)
Schmidt Interview, 11/16/2006	88 minutes
Schmidt Interview, 11/30/2006	73 minutes
Krug Interview, 05/24/2006:	115 minutes
Krug Interview, 05/25/2006:	95 minutes
Krug Interview, 05/26/2006:	113 minutes
Morgan Interview, 07/07/2006	137 minutes
Morgan Interview, 07/08/2006	157 minutes
Chmara Interview, 07/17/2006	67 minutes
Horn Interview, 08/24/2006	115 minutes
Total (minutes):	1104
Total (hours):	18.40

Audio recordings of all interviews are archived at the Center for Oral and Public History at California State University, Fullerton.

Endnotes

1. In defiance of the order, Milton delivered a printed version of his speech to Cromwell's parliament.

2. The Progressive Librarians Council, like the Progressive Librarians Guild and Social Responsibilities Round Table that came after it, "was the brainchild of ALA members who felt the association did not adequately represent their views on major social issues" (McReynolds, 1990-1991, ¶ 1).

3. Amicus Curiae, translated from the Latin means "friend of the court," and is referred to in plural as amici curiae or simply amici. Friend(s) of the court, according to the Cornell Law School's online legal reference tool are defined as follows: "frequently, a person or group who is not a party to a lawsuit, but has a strong interest in the matter, will petition the court for permission to submit a brief in the action with the intent of influencing the court's decision" (Legal Information Institute, 2006).

4. A narrator for this thesis, Zoia Horn, was among those who walked out.

5. The Merritt Fund, although independent, would still be administered through the OIF.

6. California Penal Code, Section 313, subdivision (a) stated: "'Harmful matter' means matter, taken as a whole, the predominant appeal of which to the average person, applying contemporary standards, is to prurient interest, i.e., a shameful or morbid interest in nudity, sex, or excretion; and is matter which taken as a whole goes substantially beyond customary limits of candor in description or representation of such matters; and is matter which taken as a whole is utterly without redeeming social importance for minors" (Moore v. Younger, 1976). In general, harmful matter statutes were also termed "variable obscenity laws."

7. Prima facie is translated from the Latin, variously, as: "at first look," "at first view," or "on its face." According to the Cornell Law School's online legal reference tool, "A prima facie case presents enough evidence for the plaintiff to win the case barring any defenses or additional evidence presented by the defendant" (Legal Information Institute, 2006).

8. In this case, the Supreme Court established that "nonobscene child pornography as a new category of prohibited expression" under the First Amendment (Tedford, 1997, p. 147).

9. The article is titled "The H-Bomb Secret: How We Got It, Why We're Telling It."

10. The decision had not yet come down from Reno v. ACLU, so the court refrained from adjudicating this case on First Amendment grounds.

11. Note, however, that only a court can determine whether a given instance of speech, such as photographs or text on a Web site, is indeed illegal.

12. It should be noted that the case was made on behalf of public libraries only, not schools.

13. As Justice Kennedy stated: "CIPA might be subject to an as-applied challenge if (a) some libraries did not have the capacity to unblock specific Web sites or to disable the filter, or (b) it was shown that an adult user's election to view constitutionally protected Internet material was burdened in some other substantial way" (United States v. ALA, 2003).

slismail <slismail@brainvine.net>

From: Hansen, Arthur <ahansen@Exchange.FULLERTON.EDU>
To: slismail@brainvine.net
Cc: dhansen@fullerton.edu
Date: 27 Oct '06 17:25
Subject: Thesis on the Freedom to Read Foundation

To Whom It May Concern:

As the Director of the California State University, Fullerton, Center for Oral and Public History, I give my permission to April Gage to include COPH legal forms in her thesis on the history of the Freedom to Read Foundation.

Arthur Hansen

Arthur A. Hansen
Professor Emeritus of History and Asian American Studies
Director, Center for Oral and Public History
California State University, Fullerton

<slismail@brainvine.net>

From: mrsag <mrsag@brainvine.net>
To: slismail@brainvine.net
Date: 11 Oct '06 22:14
Subject: Fw: Re: Request for permission to use FTRF timeline

> -------Original Message-------
> From: Jonathan Kelley <jokelley@ala.org>
> Subject: Re: Request for permission to use FTRF timeline
> Sent: 11 Oct '06 22:10
>
> Hi April:
>
> The Freedom to Read Foundation hereby grants you permission to use the FTRF Constitution and Bylaws as well as the FTRF Timeline is it appears on the FTRF Web site in the appendix of your thesis. Please cite the Freedom to Read Foundation and let me know if you have any other needs or questions.
>
> Jonathan Kelley
>
>
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> jkjkjkjkjkjkjkjkjkjkjkjkjkjkjkjkjkjkjk
> Free People Read Freely ®
> Jonathan Kelley
> Administrative Assistant
> Freedom to Read Foundation
> 50 E. Huron St.
> Chicago, IL 60611
> (312) 280-4226/ fax (312) 280-4227
> jokelley@ala.org