

**FREEDOM TO READ COMMITTEE MEMBERS, COUNSEL
AND STAFF**

The following served as regular members of the Committee during Fiscal Year 2002/2003.

Jane Isay (Harcourt, Inc.)—Chair; **Susan Amster** (Harcourt General); **Brenda Bowen** (Simon & Schuster Children's Books); **Jean Casella** (The Feminist Press at CUNY); **Lisa Drew** (Lisa Drew Books/Scribner); **Roy Kaufman** (John Wiley & Sons); **Heather Kilpatrick** (Time Warner Book Group); **Nancy Miller** (The Ballantine Publishing Group); **Jennifer Pasanen** (Scholastic Inc.); **Emily Remes** (Simon & Schuster); **Andre Schiffrin** (The New Press); **Beth Silfin** (HarperCollins Publishers); **Mark Sirota** (Reader's Digest); **Linda Steinman** (Random House, Inc.); **Suzanne Telsey** (The McGraw-Hill Companies); **Jane von Mehren** (Penguin Books); **Susan Weinberg** (HarperCollins Publishers); **Tina Weiner** (Yale University Press)

Counsel: **R. Bruce Rich, Esq.**; **Jonathan Bloom, Esq.** (Weil Gotshal & Manges LLP)

Staff: **Judith Platt**, Director, Communications/Public Affairs, Freedom to Read, AAP

FREEDOM TO READ BRIEFS

Fiscal Year 2003/2004

Freedom to Read Committee
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The First Amendment is not an abstract legal concept for publishers. Threats to free speech such as government-mandated “solutions” to the problem of media violence, legal actions to hold publishers and other content providers liable for criminal acts “inspired” by their works, and high-stakes libel and defamation actions seeking to discourage criticism of public figures, have a profound impact on the way publishers do business. In attempting to bring to light information and ideas that will inform public debate on important issues, publishers often find themselves on a collision course with the inevitable desire of those in power to shield their actions from public scrutiny.

The AAP Freedom to Read Committee works to protect intellectual freedom and the free marketplace of ideas, serving as the industry’s early warning system on issues such as libel, privacy, school censorship, attacks on public libraries, reporters’ privilege (confidentiality of source materials), Internet censorship, sexually explicit materials, third-party liability, and efforts to punish speech that “causes harm.” The Committee coordinates AAP’s participation in important First Amendment cases, and sponsors educational programs on free speech issues of importance to publishers.

“Ratings” for Books

As the culture wars rage on, fueled by incidents such as Janet Jackson’s Super Bowl fiasco (the tempest in a c-cup?), and the face-off between Washington and Hollywood over sex and violence shows no signs of abating, publishers find themselves increasingly challenged to provide descriptive content “ratings” for their books along the lines of TV, movie, music, and video game ratings. The Freedom to Read Committee played an important role in drafting a response to such requests, which was published as an open letter from AAP President Pat Schroeder. Pointing out that guidance regarding the content and age-appropriateness of books published for children is widely and readily available from a variety of excellent sources, including the publishers themselves, the letter states that when it comes to literature published for adults, “The idea of having publishers ‘rate’ literary material intended for adult audiences runs counter to every legal and traditional understanding of basic First-Amendment protected rights.”

A Little Help from Our Friends

In defending freedom of expression, The Freedom to Read Committee works closely with allied organizations, notably the ALA Office for Intellectual Freedom, the American Booksellers Foundation for Free Expression, PEN American Center’s Freedom to Write Program, and the Association of American University Presses. AAP is a founding member of Media Coalition, a group of trade associations working together on censorship issues.

- In November, AAP led a coalition of media and First Amendment groups in a friend-of-the-court brief to the Texas Supreme Court defending the right to satirize public officials without being sued for defamation. The case, *New Times v. Isaacks*, involves a mock “news” report about the arrest of a 6-year-old for writing a book report on *Where the Wild Things Are*. The satiric piece was published to criticize the actions of a local judge and district attorney in sending a 7th-grader to jail for writing a Halloween essay which was judged “too violent.”

The Freedom to Read Committee fulfilled its educational mandate, working with allied organizations the over the past year to present two outstanding programs:

- In May at BookExpo in Los Angeles, the Committee joined with the American Booksellers Foundation for Free Expression (ABFFE) and the ALA-affiliated Freedom to Read Foundation to co-sponsor “Terrorism, Privacy and the First Amendment,” a program featuring Congressman Bernard Sanders (I-VT), sponsor of the Freedom to Read Protection Act, and Georgetown University law professor David Cole. The discussion focused on the threat to civil liberties posed by the government’s war on terrorism.
- In June AAP joined with ALA’s Intellectual Freedom Committee and ABFFE to sponsor a program at the ALA Annual Conference in Toronto. Entitled “Censorship at the Border: The Little Sisters Bookstore Experience,” the program took a close look at the Canadian Customs Service’s ongoing harassment of Little Sisters, a gay and lesbian bookstore in Vancouver. Canadian Customs routinely targets shipments of feminist and gay books and magazines coming in from the States and destined for the store, delaying their delivery and often “losing” them altogether. At the same time, these materials are allowed to reach other destinations, including the Toronto Public Library. Program participants were: Janine Fuller, manager of Little Sisters; Thelma McCormack, Professor *Emerita* at York University and an expert on Canadian censorship issues; and Susan Caron, Manager of Collection Development, Toronto Public Library.

Banned Books Week—2003

More than 21 years ago, AAP helped create the Banned Books Week observance as a reminder that the freedom to read can never be taken for granted. In celebration of Banned Books Week 2003, AAP hand-delivered gift bags to the Congressional leadership containing copies of the most challenged and banned books in the U.S. On September 24, AAP President Pat Schroeder, carrying Get Caught Reading bags, paid a visit to Speaker of the House Dennis Hastert and Senate Majority Leader Bill Frist, bringing with her copies of *Harry Potter and the Order of the Phoenix*, *The Adventures of Huckleberry Finn*, Robert Cormier’s *The Chocolate War*, Maya Angelou’s *I Know Why The Caged Bird Sings*, and *Roll of Thunder, Hear My Cry*, Mildred D. Taylor’s moving story of a black family in the Depression South. The books were all included on the American Library Association’s list of the country’s most challenged titles. Mrs. Schroeder expressed the hope that the Congressional leadership would read and enjoy the books, and share them with colleagues.

Free Speech and the USA Patriot Act

Soon after the USA Patriot Act passed, the Freedom to Read Committee found itself increasingly concerned about the implications of Section 215, for publishers and investigative journalists as well as for library patrons and bookstore customers. Under section 215, the FBI can easily obtain an order from a secret foreign intelligence court for “tangible items,” including library circulation and bookstore purchase records, with no requirement for a showing of probable cause, no adversarial hearing, and no need for the government to demonstrate that the individual whose records are sought might be involved in criminal activity or an agent of a foreign power. Booksellers and librarians faced with such an order are forbidden to reveal its existence. The Committee played a key role in alerting the publishing community to the “chilling effect” on the exercise of First Amendment rights if the government is allowed to track the reading habits and Internet usage of individuals without proper oversight by the federal courts.

A year ago, Vermont Congressman Bernard Sanders introduced the Freedom to Read Protection Act (H.R. 1157) to exempt libraries and booksellers from Section 215. The legislation

would allow law enforcement authorities to obtain these records when necessary, but would return the safeguard of judicial oversight to the process. In May, AAP was one of 32 book community organizations and businesses who joined in a statement urging passage of the Freedom to Read Protection Act. Over the course of the year, additional bills with bipartisan sponsorship were introduced in the Senate — S.1709, the Security and Freedom Ensured (SAFE) Act, and S.1158, the Library and Bookseller Protection Act, and a SAFE Act was introduced in the House. In February 2004 AAP voiced the publishing industry’s support for a newly launched “Campaign for Reader Privacy,” the objective of which is to obtain a million or more signatures on petitions in bookstores and libraries supporting passage of this legislation. AAP was among the 40 publishing, library, bookseller and author groups signing the statement, along with more than 80 companies including large and small publishing houses, independent booksellers, national bookseller chains, and book distributors. The complete text of the Book and Library Community Statement and a list of signatories can be found on the AAP web site (www.publishers.org)

Developments in the Courts

The committee was involved in a number of important First Amendment court cases over the past year:

- Last spring AAP joined in an *amicus* brief in federal court in Arkansas seeking to have the Harry Potter books returned to school library shelves. Despite a recommendation by a library review committee that the critically acclaimed books remain on open library shelves, the books had been removed by the Cedarville School Board following a complaint by a parent that they promoted witchcraft and encouraged children to question authority. A lawsuit was filed by two parents on their daughter’s behalf, asserting the school board’s actions violated students’ First Amendment rights. On April 23, a U.S. district court judge ordered the books returned to the open shelves “where they can be accessed without any restrictions.” Although there have been numerous challenges and attempts to ban the Harry Potter books around the country, this is the first time that the issue reached the courts.

- Last February AAP took the lead in an *amicus* brief to the U.S. Supreme Court to support the ALA challenge to the Children’s Internet Protection Act (CIPA). Mandating the use of censor software filters on all public library computers as a condition for receiving federal funding, the law was challenged as an unconstitutional abridgement of the right of library patrons to access large amounts of constitutionally protected materials. The Supreme Court heard oral arguments on March 5, 2003. Unfortunately, on June 23, in a fragmented decision that produced five separate opinions, the Court failed to uphold the 3rd Circuit ruling that found CIPA to be unconstitutional on its face. However, two members of the majority, Justices Kennedy and Breyer, left the door open for further challenges to the law “as applied” if it proves too burdensome.
- In January 2004 AAP again took the lead in an *amicus* brief asking the U.S. Supreme Court, for the second time, to find the Children’s Online Protection Act (COPA) unconstitutional. The case went up to the Supreme Court 2 years ago on the very narrow question of whether “community standards” could be applied to speech on the Internet. Failing to strike the law down on these grounds alone, the high court sent the case back to the federal appeals court for a fuller consideration of First Amendment issues. The appellate court again struck COPA down, this time on broader First Amendment grounds, finding it unconstitutionally overbroad, vague and an unconstitutional burden on protected speech between adults. It is now back before the Supreme Court and was argued on March 2.
- In June AAP joined with ABFFE, the Arkansas Library Association, an independent bookseller, and other plaintiffs in challenging a new Arkansas statute governing the display and accessibility of harmful to minors material. Our complaint charges that the statute places an illegal burden on access by adults and older minors to constitutionally protected material and would force booksellers to create “adults only” sections to display some of the world’s great fiction and important works of non-fiction.
- In August a federal appeals court struck down yet another Internet harmful to minors law, this time in Vermont. AAP was among the Media Coalition plaintiffs. Similar statutes have been struck down by federal courts in Arizona, New Mexico, Michigan, New York, Virginia, and Ohio. AAP has been a plaintiff in all but the Michigan and Virginia cases.