

newsletter
on
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2013 “Jefferson Muzzle” awards announced

Since 1992, the Thomas Jefferson Center for the Protection of Free Expression has celebrated the birth and ideals of its namesake by calling attention to those who in the past year forgot or disregarded Jefferson’s admonition that freedom of speech “cannot be limited without being lost.”

Announced on or near April 13—the anniversary of the birth of Thomas Jefferson—the Jefferson Muzzles are awarded as a means to draw national attention to abridgments of free speech and press and, at the same time, foster an appreciation for those tenets of the First Amendment.

Because the importance and value of free expression extend far beyond the First Amendment’s limit on government censorship, acts of private censorship are not spared consideration for the dubious honor of receiving a Muzzle.

Unfortunately, each year the finalists for the Jefferson Muzzles have emerged from an alarmingly large group of candidates. For each recipient, a dozen could have been substituted. Further, an examination of previous Jefferson Muzzle recipients reveals that the disregard of First Amendment principles is not the byproduct of a particular political outlook but rather that threats to free expression come from all over the political spectrum.

In no particular order and as described on the Center’s website, the 2013 Jefferson Muzzles went to:

1) **The Annville-Cleona (PA) School Board: Mamas, don’t let your babies grow up to be naked...**

The Dirty Cowboy is an illustrated children’s book that tells the tale of a cowboy who goes down to a river for his annual bath, undresses, and instructs his dog to watch his clothes while he bathes. When he emerges from the river the cowboy smells so clean that his dog doesn’t recognize him and won’t let him have his clothes back. The remainder of the book chronicles the cowboy’s travails as he seeks to reclaim his clothes, getting dirtier in the process.

Although the cowboy is depicted without his clothes, the drawings never actually show him nude. The whimsical illustrations cleverly block the cowboy’s “private parts” with various images including a boot, a flock of birds, a frog, and more. Written by Amy Timberlake and illustrated by Adam Rex, *The Dirty Cowboy* has received numerous awards and accolades, including the Parent’s Choice Gold Medal, the Golden Kite Award

(continued on page 126)

in this issue

2013 “Jefferson Muzzle” awards announced95

Rhode Island ACLU report finds prevalent Internet censorship in public schools97

“Harlem Shake” videos lead to school suspensions98

White House opens more federally funded scientific research to the public98

in review: *Priests of Our Democracy*100

editorial board resigns in support of open access100

ALA labeled “facilitator of porn”101

Mellen press continues to threaten critics101

survey finds gap in Internet access between rich, poor students102

censorship dateline: libraries and schools, student press, universities, foreign103

from the bench: U.S. Supreme Court, libraries, schools, university, National Security Letters111

is it legal?: schools, colleges and universities, publishing, broadcasting119

success stories: libraries, college, foreign123

targets of the censor

books

The Dirty Cowboy95

Fallen Angels104

Gankutsuo: The Count of Monte Cristo123

Intensely Alice123

Muslim Women and the Challenge of Islamic Extremism [Malaysia]125

Pantheon High123

Persepolis103

The Popularity Papers124

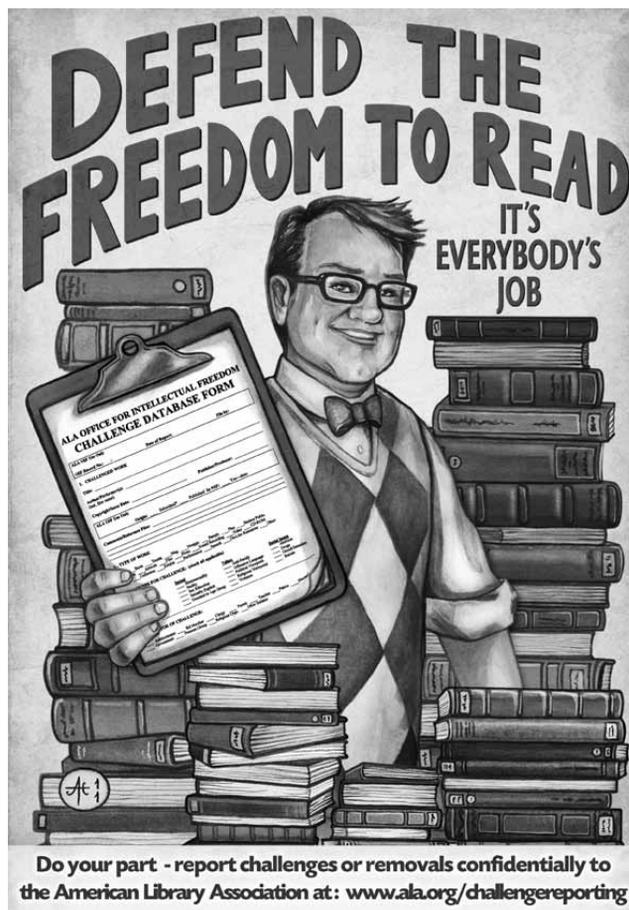
Steve McQueen, King of Cool123

Stone Dreams [Azerbaijan]108

Whale Talk123

periodical

CNM Chronicle [Central New Mexico C.C.]104



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Rhode Island ACLU report finds prevalent Internet censorship in public schools

The websites of PBS Kids and National Stop Bullying Day, a video clip of the Nutcracker ballet, a website on global warming, and a popular book reading recommendation site are among the many online sites that students and teachers have been unable to access at public schools in Rhode Island due to the use of so-called Internet filtering software.

That was one of the findings of a report issued March 11 by the ACLU of Rhode Island, which documents how use of this flawed software has hindered teachers from making use of the Internet to educate students and has hampered students from accessing relevant information in the classroom. The report offers a number of recommendations to ameliorate the harm caused by these programs, including the passage of state legislation to promote transparency in the use of the filters.

Internet filtering programs block certain categories of websites—or even websites that simply mention specific words—when students use school computers to access the Internet. Although primarily designed to prevent access to “pornography,” the deeply flawed software, and school districts’ over-extensive embrace of it, has a significant impact on classroom teaching.

The ACLU report, “Access Denied: How Internet Filtering in Schools Harms Public Education,” notes that allowing school administrators “virtually unbridled discretion to determine how this technological censor will be used gives them a power over classroom teaching that would never be tolerated for offline lessons.”

Through an open records request, the ACLU examined filtering software policies and practices in Rhode Island’s school districts and found:

- Among the many varied sites that teachers have found blocked and interrupting their lesson plans—either due to flaws in the filtering software or the over-reaching implementation of filters by school districts—are the Smithsonian website, the Goodreads.com book recommendation site, a video clip of the Nutcracker ballet, a website on global warming, a YouTube video on Social Security, and the websites of PBS Kids and National Stop Bullying Day.
- More than half the school districts block students from accessing websites that, by the software manufacturer’s own definition, “promote partisan historical opinion” or that include any information about undefined “anti-government groups.”

- A few school districts block, or warn students about accessing, websites in such obviously appropriate categories as “books and literature,” “social opinion,” and “religion.”
- One of the filtering categories that a few school districts use—“Lifestyle & Culture”—has been known to block students’ access to pro-gay rights websites.
- Use of so-called “safe search” keyword blocking by districts has led to such absurd situations as students being unable to access websites for a class assignment involving a synthetic polymer known as “polyvinyl alcohol”—because the search for information contained the word “alcohol.”

The report also criticized the lack of meaningful policies by school districts to govern this intrusive censorship regime:

- While requiring students and staff to adhere to “acceptable use” computer policies, the vast majority of school districts provide no public information as to what categories of websites are filtered.
- There is no transparency in the decision-making by administrators as to what sites or categories of sites will be blocked, allowing non-teaching school officials to make virtually unaccountable decisions regarding the use of the filtering software.
- Even as teachers find class assignments disrupted by over-reaching blocking of websites, school officials appear to exercise unrestrained discretion to decide when to accede to teacher requests to unblock sites.

The ACLU report recommends a number of actions to address the consequent serious impact on students’ and teachers’ First Amendment rights and on their right to access information in schools. Among the report’s recommendations:

- School districts should filter only those categories required by federal law (in general, visual depictions of sexual conduct that fit under the definition of “obscene for minors”), and those required to protect the school computer system (e.g., blocking spyware and viruses, limiting excessive bandwidth, etc.).
- School districts should have in place written procedures to quickly respond to teacher requests to unblock sites, with a presumption that any such request should be granted.
- Information about the categories that are being blocked by school officials, and documentation of

their responses to any requests for blocking and unblocking sites, should be readily accessible to teachers, students and any other interested parties.

- Rather than focusing on censorship, schools should spend more time educating students on Internet safety.

The report's author, ACLU of Rhode Island Policy Associate Hillary Davis, said: "The excessive use of Internet filters by schools has seriously infringed on the First Amendment rights of students and teachers on a daily basis. Internet filtering has censored, rather than expanded, education and placed serious barriers between students and a robust understanding of the world around them. In order to best serve our students, use of filtering software must be strictly limited, with teachers able to lift the filter whenever necessary."

Rhode Island State Rep. Art Handy has introduced legislation, H-5652, that would require school districts to adopt clear policies governing their use of filtering software, as well as procedures to allow teachers to quickly have sites unblocked. The ACLU report is available on the ACLU's website, www.riaclu.org. □

"Harlem Shake" videos lead to school suspensions

It's almost impossible to avoid a video of groups doing the "Harlem Shake" (at least the newest version of it) across the Web, but some students are finding that their 30-or-so seconds of online fame is coming at a fairly high cost.

According to the National Coalition against Censorship, about 100 students across the country have been suspended for making and posting their own version of the viral video on the Web. School districts have offered a variety of reasons for the suspensions, said NCAC Director Joan Bertin, with most saying that the videos, which feature suggestive dancing, are inappropriate. However, Bertin said, she believes that regardless of how the videos could be interpreted, decisions to suspend students and keep them out of class cross the line. The NCAC has compared the schools' actions to the plot of the 1984 film "Footloose," in which a town outlaws dancing and rock music.

"It seems a rather disproportionate response by educators to something that, at most, I would characterize as teenage hijinks," Bertin said.

All technology shifts that give individuals a larger audience—from the printing press on, Bertin said—tend to make authority figures uncomfortable. More student censorship issues have emerged as young people gain more access to outlets for expression, such as the ability to post videos to YouTube, publish their thoughts on personal blogs

and spread ideas through social media such as Facebook.

"We do see more of these situations and they will probably continue to increase until clearer legal rules emerge," Bertin said.

Schools, for example, have suspended students and teachers because of material posted on their social media accounts, even when the activities took place outside of school hours and off school property. "With more forms of expression, there are more reasons to engage in censorship if the people in charge are uncomfortable with forms of expression that younger generations are using," she said.

Educators have struggled with their role in policing online behavior, particularly when it comes to issues such as cyberbullying and general online safety as students move behavior that once could have been regulated in the hallways to the digital world.

In cases where someone feels threatened or which cross over into criminal conduct, Bertin said, schools should refer cases to local authorities. But short of that, she said, her organization believes that other measures—such as asking a student to write an essay, or to clean a classroom—are better than what she called the "almost nuclear" option of suspension.

And the reaction to the Harlem Shake videos, she said, were out of line by any measure. "If it upset people for legitimate reasons—and no one claimed they were coerced into participating, that they felt embarrassed or that they were in any way intimidated by the situation—but if it affected the school environment, then there might be a legitimate reason for the school to call the kids together and say, 'You did this and it caused some of your fellow students to feel deeply uncomfortable,'" she said.

The best option, she thinks, would have been for schools to ignore the videos altogether. "We are very strongly in the camp of telling schools that this is protected speech. Even if it's unpleasant, we do protect that kind of speech in this country and should, as much for students as adults," she said. Reported in: *Washington Post*, March 4. □

White House opens more federally funded scientific research to the public

A new White House directive will allow the general public more access to federally funded scientific research, the Obama administration announced February 22. The directive, delivered in a memorandum from John P. Holdren, director of the White House Office of Science and Technology Policy, instructs federal agencies with more than \$100 million in research and development expenditure to allow public access to some journal articles one year after their original publication date. It also directs researchers to publish their data. Some articles and data will be exempt from the directive for national security or other legal reasons.

The new policy also requires scientific data from unclassified, federally supported research to be made available to the public “to search, retrieve, and analyze.” Affected agencies have six months to decide how to carry out the policy. The measure emulates the policies of the National Institutes of Health, which requires all of its grantees to post copies of journal articles and published results that are funded with public money within a year after publication.

The White House’s announcement emphasized the practical and economic benefits of sharing research. “Scientific research supported by the federal government catalyzes innovative breakthroughs that drive our economy,” Holdren’s memo stated. “The results of that research become the grist for new insights and are assets for progress in areas such as health, energy, the environment, agriculture, and national security.”

The memo also nodded to scientific publishers, saying the Obama administration recognizes that publishers provide “valuable services,” such as coordinating peer review, “that are essential for ensuring the high quality and integrity of many scholarly publications.” The memo called it “critical that these services continue to be made available.”

In a statement, the Association of American Publishers praised the new policy, which it said “outlines a reasonable, balanced resolution of issues around public access to research funded by federal agencies.” Tom Allen, the group’s president and chief executive officer, said that, “in stark contrast to angry rhetoric and unreasonable legislation offered by some,” the Office of Science and Technology Policy had chosen “a fair path that would enhance access for the public” while recognizing “the critical role publishers play” in the process.

Allen cautioned, however, that the policy’s success depended on “how the agencies use their flexibility to avoid negative impacts to the successful system of scholarly communication that advances science, technology, and innovation.”

It was clear that a number of federal agencies already had preparations under way for how they would observe the new policy. For instance, the National Science Foundation immediately sent out a statement affirming its commitment to the principle of public access, saying it had already established a timetable for consultation and planning. It noted that the “implementation details” were likely to vary by discipline “and that new business models for universities, libraries, publishers, and scholarly and professional societies could emerge.”

Open information advocates have tried for years to get the administration to grant further access to publicly funded research, and have even used the White House’s petition tool to draw more attention to the subject. Over 65,000 people signed the petition. The tactic seems to have worked. In a separate online response to the petition, Holdren responded directly to the petitioners. “The Obama administration agrees that citizens deserve easy access to the results of research their tax dollars have paid for,” he wrote. “Your petition has

been important to our discussions of this issue.”

In his response to the petition, Holdren also mentioned publishers and their role. “We wanted to strike the balance between the extraordinary public benefit of increasing public access to the results of federally funded scientific research and the need to ensure that the valuable contributions that the scientific publishing industry provides are not lost,” he wrote. “This policy reflects that balance, and it also provides the flexibility to make changes in the future based on experience and evidence.” He thanked signatories for their petition.

Renewed interest in open access surfaced following the death of Internet activist Aaron Swartz. Swartz, who faced felony computer crime charges after downloading thousands of articles from the academic database J-STOR, was found dead in his apartment in January of an apparent suicide.

Proponents of expanding access to research hailed the new policy as a major victory. “We’re delighted to see this. I do feel like it’s really a landmark in the battle toward open access,” Heather Joseph, executive director of the Scholarly Publishing and Academic Resources Coalition, said. “This is a really good day.”

Joseph’s organization, known as Sparc, has been a leader in the growing push for open access. Sparc issued a formal statement praising the new policy as “a major step forward towards open access to scientific research.”

The Association of Research Libraries also greeted the news with enthusiasm, calling the just-announced policy “historic.”

“This memorandum reflects how 21st-century science is conducted in order to advance discovery while, at the same time, it makes federal investment in research broadly available,” Wendy Lougee, the association’s president and the university librarian at the University of Minnesota, said in a written statement. “ARL commends the Obama administration for recognizing the importance and value of making the results of federally funded research publicly available.”

It was not immediately clear how the new policy would affect the prospects for the proposed Fair Access to Science and Technology Research Act, a bipartisan bill introduced in Congress. If enacted, the legislation would require federal agencies with external research budgets of \$100 million or more to make the results of federally financed research available to the public within six months of publication.

Heather Joseph of Sparc said that the bill would codify the core principles laid out in the White House directive, even though the legislation calls for public access within six months of publication rather than a year. She said her group would continue to push for Congress to pass it. “We want this to be the law of the land,” she said, “not just the precedent of a single administration.”

One of the bill’s sponsors, Rep. Mike F. Doyle of Pennsylvania, said in a news release that the policy reflected the legislation’s goals and that he would push to have it enacted this year. Reported in: *Washington Post*, February 22; *Chronicle of Higher Education* online, February 22. □

in review

Priests of Our Democracy: The Supreme Court, Academic Freedom and the Anti-Communist Purge. Marjorie Heins. New York and London: New York University Press, 2013.

In this engagingly written and carefully researched study, Marjorie Heins, whose previous book, *Not in Front of the Children*, won the ALA's 2002 Eli Oboler Award for best published work in the field of intellectual freedom, tells three interlinked stories. Much of the first half of the book recounts the emergence, first on the eve of WWII and then more virulently in the early years of the Cold War, of an anti-Communist purge directed at both K-12 and university teachers, with particular focus on events in New York and on the emergence of loyalty oaths as a central tool of repression. New York's Rapp-Coudert hearings in the early 1940s and the purge of teachers from both the New York City public schools and the city's public colleges in the 1950s have been treated previously, but Heins's account brings the stories together with new and revealing details, thereby providing a critical context for the Constitutional issues that are central to subsequent chapters.

Although Heins is concerned from the beginning with the fate of court challenges to the purge, the book's focus shifts in the latter half to the story of how the U.S. Supreme Court, which in 1952 had validated New York's loyalty oath in *Adler v. Board of Education*, gradually moved to overturn that ruling in the landmark 1967 decision in *Keyishian v. Board of Regents*, which effectively nullified the same New York oath. It was in that decision that Justice William Brennan, Jr.'s majority opinion famously declared academic freedom "a special concern of the First Amendment." The final section of the book surveys developments since *Keyishian*, chronicling the fates of some of the major players in the previous stories but also assessing the extent to which the Constitutional principles enunciated in *Keyishian* have been sustained and delineating several of the major challenges currently faced by advocates of academic freedom.

What ties the book together is the *Keyishian* case. Harry Keyishian had been a junior at Queens College in New York City when in 1952 the high court in *Adler* upheld New York's Feinberg Law, which required university and school instructors to sign an anti-Communist oath. That fall the Senate Internal Security Subcommittee came to town and called several Queens faculty members as witnesses. When they refused to tell the subcommittee if they had ever been Communist Party members, they were dismissed, moving the previously apolitical young Keyishian to join a student committee to protest the firings.

Fifteen years later, *Keyishian*, now a young English

(continued on page 131)

editorial board resigns in support of open access

With academics increasingly fighting back against scholarly journal publishing rules that lock up information, some have wondered how scholars who work for some of those journals feel. In one case, those academics have made a very loud statement. The editor and entire editorial board for the *Journal of Library Administration* have all resigned en masse to protest the journal's closed access provisions, which they claim are "too restrictive and out of step with the expectations of authors."

The editor, Damon Jaggars (also an associate university librarian at Columbia University) only became the editor recently, but noted that many authors he approached pushed back about the licensing terms. Some found the terms too confusing, Jaggars said, while others felt they were too restrictive. Many requested, instead, a form of Creative Commons license, arguing that the journal's agreement left them little ownership of their own work.

What may have pushed the editorial board over the edge, it seems, was the Aaron Swartz story (see page 99). One of the editorial board members, Chris Bourg, who is an assistant university librarian at Stanford, published a blog post in which she directly cited the Swartz situation as making it clear she needed to resign:

"Damon asked me to write an article about our Library Concierge project for JLA, and ... I said yes. When Damon contacted me later with an actual deadline for the article, I told him I was having second thoughts. It was just days after Aaron Swartz' death, and I was having a crisis of conscience about publishing in a journal that was not open access. Damon reminded me (gently) that not only had I agreed to write for JLA, but I was on the Editorial Board, so this could be a problem. More importantly, he assured me that he was working with Taylor & Francis to try to get them to adopt less restrictive agreements that would allow for some form of Creative Commons license. He told me his strategy was to work from within to encourage change among publishers. Once again, Damon's power of persuasion worked.

"So, I worked on the article, and just recently submitted it. In the meantime, Damon continued to try to convince Taylor & Francis (on behalf of the entire Editorial Board, and with our full support), that their licensing terms were too confusing and too restrictive. A big part of the argument is that the Taylor & Francis author agreement is a real turn-off for authors and was handicapping the Editorial Board's ability to attract quality content to the journal. The best Taylor & Francis could come up with was a less restrictive license that would cost authors nearly \$3,000 per article. The Board agreed that this alternative was simply not tenable, so we collectively

ALA labeled “facilitator of porn”

The American Library Association and Barnes & Noble were among the groups named by conservative group Morality in Media in its “Dirty Dozen List” of “the top 12 facilitators of porn.” The list states that the

ALA encourages libraries to have unfiltered computers, and that the bookstore chain “is a major supplier of adult pornography and child erotica.” The top spot, however, went to U.S. Attorney General Eric Holder for “refus[ing] to enforce existing federal obscenity laws.” Reported in: *LISNews*, April 2. □

resigned. In a sense, the decision was as much a practical one as a political one. Huge kudos to Damon for his persistence, his leadership, and his measured and ethical stance on this issue.”

Everyone resigned on March 22. As of the latest updates, the company that publishes the journal, Taylor & Francis, had not responded to anyone about the resignations. Reported in: *techdirt.com*, March 27. □

Mellen Press continues to threaten critics

Edwin Mellen Press is continuing to threaten its online critics.

A second librarian is facing legal threats from Mellen, a scholarly publishing house in Lewiston, N.Y. Mellen is threatening legal action against Rick Anderson, the interim library dean at the University of Utah, after Anderson criticized Mellen, in part for legal action the press has already taken against another librarian.

Strong reaction by academic librarians suggests Mellen could face a backlash among the academics who make up the target audience for the books Mellen sells.

In the first case, Mellen sued Dale Askey, associate librarian at McMaster University in Ontario, over a blog post he wrote in August 2010 while employed as a librarian at Kansas State University that was highly critical of Mellen (see *Newsletter*, March 2013, p. 68). The company dropped that suit, but another in which Mellen’s founder is the individual plaintiff in a libel action against Askey remains.

Now, Mellen has threatened Anderson for two blog posts he wrote about the Askey case that were also critical of Mellen. The publisher is also threatening a freelance copy editor who left a comment on one of Anderson’s posts.

In the short term, Mellen’s threats prompted the Society for Scholarly Publishing’s to remove Anderson’s posts and the comment critical of Mellen from the society’s blog, *The Scholarly Kitchen*.

Mellen’s attorney, Amanda R. Amendola, said in a letter to *The Scholarly Kitchen* that Anderson had “written

disparaging comments about our publishing program, the quality of our books and has attacked the character of our editor, Professor Herbert Richardson.” She said the intent of her letter was to put the blog “on notice” about Anderson’s writing.

In a February 11 post, which remains online at a site that regularly archives large swaths of the Internet, Anderson called Mellen’s books “generally overpriced and of poor quality” and gave his account of a conversation with Richardson, which he called the “strangest phone conversation I’ve ever had with a publisher.”

In a March 5 post, which also remains archived online, Anderson continued to question some of the company’s dealings. Faced with legal action, Anderson said he thinks Mellen’s behavior now speaks for itself. “It’s an important part of a professional librarian’s work to evaluate the offerings of publishers and I think the letter from Edwin Mellen Press’s attorney speaks eloquently for itself,” Anderson said.

In a second letter to *The Scholarly Kitchen*, Amendola threatened specific legal action against a freelance copy editor, Kristine Hunt. In a comment left on one of Anderson’s posts, Hunt said Mellen offered its authors “no copy-editing, proofreading or layout services.” Amendola said Hunt’s claim was “simply untrue.”

In the face of the letters from Mellen, *The Scholarly Kitchen* decided to remove the posts. The blog’s editor in chief, Kent Anderson, said he made the decision on the advice of legal counsel. “We have had the posts up, the information wasn’t necessarily that novel and we felt that the trade off between taking them down and posting the letters was fair,” Anderson, who is not related to Rick Anderson, said.

The British Columbia Library Association also reported what it called “possibly bizarre” activity. According to website domain name registration records, someone claiming to use a Mellen email address registered at least two Dale Askey-related domain names, *daleaskey.com* and *daleaskey.net*. This activity was discovered by Dave Pattern, a library systems manager who highlighted the registration records on Twitter.

Askey said he did not register the domains himself and would be troubled if Mellen is, in fact, swooping up domains with his name. “If there is any truth to those allegations, I would be very disturbed,” Askey said. “I think

registering someone's name as a domain is a very creepy thing to do. You can't mean well by it. There's no good intent to it."

Mellen is no stranger to criticism or litigating its critics. The company sued the now-defunct *Lingua Franca* over a 1993 article that called Mellen a "quasi-vaudeville press cunningly disguised as an academic publishing house." The article said Mellen had capitalized on a pre-approval system universities use to automatically buy some publishers' books. Mellen lost the suit.

Now, librarians are suggesting Mellen's legal maneuvers may hurt the company because university librarians will be on the lookout for Mellen books and give them closer scrutiny.

Askey said he is in disbelief over Mellen's latest action. "When you're not really making friends in the business, why you would want to dig a deeper hole escapes me," he said.

Kent Anderson said it didn't make sense to him for any company to argue with its customers. "I think every customer of anything, if you didn't like it and you told somebody and you get sued for saying that—that's a bad thing in general," he said.

John Dupuis, an acting associate university librarian at York University who has closely followed the Askey case, said Mellen should have ignored its critics. "They seem hell-bent on torturing their reputation with people who've got to be 99 percent of the people who are buying their books," he said. Reported in: insidehighered.com, April 1. □

survey finds gap in Internet access between rich, poor students

Technology has become essential to middle school and high school learning, but a gap in access to the Internet between the rich and poor is leading to troubling disparities in education, according to a survey of teachers.

Students depend strongly on the Web to find information and complete their assignments. The vast majority of teachers say they also rely on sites such as Wikipedia

and social media to find teaching resources and materials, connect with other teachers and interact with parents, according to a survey released in February by the Pew Research Center.

The findings came as educators debate the role of technology in classrooms, which pose great advantages for students to research and find information. But three-quarters of teachers surveyed also said Google and other search engines have conditioned students to expect to find information quickly and easily and discourage children from using a wide range of sources for research, according to the report.

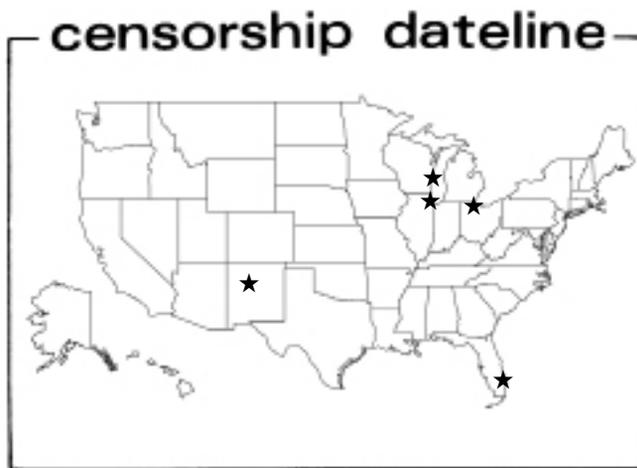
But even as many schools race to adopt tablets, e-readers and cell phones for their course work, those technologies are more widely available to middle- and higher-income students and schools.

Half of all teachers of higher-income students say that all or almost all of their students have access to the digital tools they need at home. The figure drops to 20 percent among teachers of middle-income students and just 3 percent among teachers of the poorest students, according to the survey of 2,462 teachers by the Pew Internet & American Life Project in cooperation with the College Board and National Writing Project.

The growing disparity of Internet access is leading to a gap in performance, about 56 percent of teachers said. About seven in ten teachers say their students now rely on the Internet to complete their assignments.

"Teachers whose students come from the lowest income households feel they are at a disadvantage," said Kristen Purcell, an associate director of research at the Pew Internet & American Life Project.

Smartphones are used by three-quarters of all teachers in their classroom, making the device as important to learning as laptops and computers. Use of cell phones, however, has caused some consternation among educators. Seven out of ten teachers say managing a student's cell phone use and other digital tools can be problematic and distracting. Reported in: *Washington Post*, February 27. □



libraries and schools

Chicago, Illinois

When students at Lane Tech College Prep High School caught wind of a district directive to remove all copies of the graphic novel *Persepolis* from classrooms and libraries, it didn't take long for them to spot the irony.

"They're banning a book that's all about freedom of speech," said senior Alija Maurer.

The book, a graphic novel about author Marjane Satrapi's experience growing up in Iran during the Iranian Revolution, is studied by seventh- and eleventh-grade students as part of Chicago Public Schools' Literacy Content Framework.

At least it was, until district officials sent an email in March instructing schools to remove the book. A school official told ALA's Office for Intellectual Freedom that the books were removed due to what she termed "graphic illustrations and language" and concerns about "developmental preparedness" and "student readiness." While still in school libraries, they have been "temporarily recalled" from classroom libraries and teaching curriculum until CPS can "control" how the book is being presented. She said there was no timeline for CPS's evaluation.

Initially the order explicitly included libraries, but the head of school libraries issued a directive that, pursuant to its collection development policy, the book was to remain on library shelves. Officials also later clarified that the directive was meant to apply only to seventh-grade students. But by that time, upperclassmen at Lane Tech were already enraged.

As news of the ban spread, students took to their Facebook and Twitter accounts to express their outrage. They piled into the library and checked out copies of the

book, wrote blog posts in disgust and sent emails expressing their frustration at being subject to censorship without explanation.

On March 15, as a steady drizzle fell, about two dozen students staged a protest at the corner of Addison Street and Western Avenue, a busy intersection near Lane Tech. "Let us read, let us read," they chanted as they waved signs with slogans like "Iran and CPS. Two dictators."

By that point, CPS had issued a letter telling high school principals to disregard the earlier order to pull the book. The book would not be removed from libraries and will still be read by juniors and seniors, CPS Chief Executive Officer Barbara Byrd-Bennett said.

The moment was considered a modest victory at the high school. "I'm extremely proud of my students for standing up for their First Amendment rights," said Steve Parsons, a social studies teacher at the school.

Parsons doesn't teach the text in his classroom but attended the protest in support of his students. "I tell my students all the time, this is what education is all about," he said. "You don't learn just so you can take a test. You learn so you can change the world. They are actually doing that now."

Alexa Repp and Katie McDermott, seniors who organized the protest, said district officials should have discussed their concerns about the book with students and faculty. And they questioned why the book should be banned for younger students.

"There's a big difference between education and exposure," Repp said. "As long as (students) are being guided through the book, I don't see what's wrong with it."

McDermott said this was the students' moment to express their frustration with the school district. Many of the students' signs were made from old posters used by teachers during their strike last year. "The teachers had their strike in the summer and they were heard," McDermott said. "It's the students' turn to be heard."

For one student, the row was more than a teaching moment. It was a professional opportunity. Immediately after hearing about the directive, Matthew Wettig, a student journalist who writes for the campus newspaper *The Warrior*, said he started investigating. He tried to contact CPS officials but got nowhere. He even reached out to the author and her publicist.

In an email to Wettig, Satrapi expressed disappointment and confusion over the decision to pull her text. At the time, she, too, didn't have an explanation or clear idea why it was ordered off shelves.

"America is the largest democracy in the world!!! Why?" she wrote. "The question turns round and round in my head and I don't have any answer. And I feel sad. And I am ashamed of people who take these kinds (of) decisions. No matter who they are, SHAME ON THEM!"

Wettig watched the protest as a detached journalist. He was proud to have scored a response from Satrapi.

He felt no need to join in with his classmates. “I am attempting to remain objective at the moment,” he said. “I’m not carrying a sign or anything. I need to report on it objectively.” Reported in: *Chicago Tribune*, March 15; OIF blog, March 15.

Toledo, Ohio

A group of parents at Danbury Middle School wants a controversial book banned from their children’s classroom. *Fallen Angels*, by Walter Dean Myers, is on the reading list for middle schoolers this year. The book depicts the reality of the Vietnam War, with sometimes gruesome descriptions of combat and frequent foul language from soldiers.

“We were just appalled to think that our 13-year-old daughter was having to read this out loud,” said Greg Dziak, whose stepdaughter is in the eighth grade. “She was coming home from school complaining to us about the language of the book.”

Dziak says the students were not allowed to take the book home, and parents were not informed ahead of time that a book with vulgar language and racist slang would be on the curriculum. “It’s something that shouldn’t be in a middle school. It’s controversial, and it’s not necessary for a 13 year old to have to read,” said Dziak.

Dziak said a picture of one of the pages from the book was posted on Facebook, which got the attention of several other parents, including Justin Tuttamore and Dave Wilson, who also have children reading the book.

“When I saw the book and found out a permission slip was never sent home, I thought right away, this teacher is trying to hide something from us,” said Dave Wilson.

“We were basically told by the school it wasn’t a problem, and it would be taken care of, but obviously, it hasn’t been,” said Justin Tuttamore.

Dan Parent, superintendent of Danbury Local Schools, defended the decision to keep the book on the curriculum. According to Parent, the school has used the book for five years, and has never had a complaint, however, he admits the English teacher who chose it made one mistake.

“Up until this point, the teacher had sent a consent letter home every year,” said Parent, “but since he’s been teaching it for four years, he just assumed that it wouldn’t be a problem.” Parent said he does not believe the teacher, who was recently named an “honored educator,” deserves to be punished. Parent said when the issue came up, a letter was sent home to parents informing them about why the book may be controversial, and it offered a second reading option to parents who were uncomfortable with *Fallen Angels*.

Out of fifty English students, five had a parent who returned the form, opting out of the current reading material.

Dziak and other parents said they were planning to attend the next school board meeting to voice their concerns. He and other parents want the book taken out of the

school’s curriculum for good, in addition to an apology from the teacher, who he says, mocked their children for taking this issue to their parents.

Superintendent Parent said he wants to get parents more involved in order to prevent issues like this in the future. “We’re going to meet with a group of four parents in an executive session to discuss the issues and see what we can do moving forward.” Reported in: toledonewsnow.com, February 12.

student press

Albuquerque, New Mexico

Central New Mexico Community College reinstated its student-run newspaper March 27, saying administrators suspended it because they were concerned over a high school student being quoted in the controversial sex issue. The reinstatement took place at a meeting on campus.

According to a copy of a speech CNM President Kathie Winograd delivered at the meeting, the school will now give the confiscated newspapers back to the *CNM Chronicle*, which dedicated its latest issue to the topic of sex, including stories about sex classes and practices, sexual resources, an article on abstinence and a feature on “favorite sexual position.”

When the suspension was made public the day before, CNM administrators said it was due to long-standing concerns regarding oversight of the paper. But Winograd said the school pulled the sex issue because “we needed to check on legal ramifications of information on a minor in a publication of the college.”

“I believe as a college we have failed to provide the *CNM Chronicle* with the level of editorial resources and education that it needs and deserves. I hope that in today’s Publication Board meeting, the board will discuss ways the college can provide you a better educational experience through your participation with the *CNM Chronicle*. We encourage you to bring our community partners here today to the table to assist us in creating a positive situation moving forward,” Winograd said.

The reinstatement is immediate, Winograd said.

Jyllian Roach, *Chronicle* editor-in-chief, said the issue hit the newsstands March 26 and six hours later, she and other staff members got a call to meet with the dean of students. “All we know at this time is they thought it was ‘raunchy’ and that was it,” she said. “It’s a sex issue, but it really focuses on education,” Roach said, adding that there’s no nudity or curse words.

An initial statement from the college read: “CNM does not have a journalism program, which has limited the college’s ability to provide the education and training that students need to appropriately operate a newspaper that is distributed to a student body of nearly 30,000. CNM is going to re-evaluate how students can be trained, educated

and supervised in operating a widely disseminated student newspaper.”

A spokesman added that the college funds the newspaper. Students who work on it receive work-study money. They were to be assigned other jobs on campus while the paper is suspended.

“The current issue was part of an ongoing pattern of concern with the content,” said Brad Moore, CNM spokesman. He declined to elaborate with examples of past concerns over content.

An attorney for the Arlington, Va.-based Student Press Law Center said he believes the college could not legally shut the paper down. The fact that the college funds the newspaper is “irrelevant,” said Adam Goldstein, attorney advocate, adding that the college is a public institution.

“When you’re the government, you’re always subject to the First Amendment,” he said, adding, “It sends a really adverse message in that you have to read the mind of your administration and try not antagonize them.”

To protest the CNM decision, the University of New Mexico *Daily Lobo* announced that it too would suspend print publication until CNM reinstated the *Chronicle*. *The Daily Lobo* called the move a violation of students’ rights to freedom of speech and freedom of the press.

Editor-in-Chief Elizabeth Cleary said in a statement: “On Tuesday, CNM administrators, in a ruthless and authoritarian display of censorship, stripped students of some basic constitutional rights. Tuesday’s issue of the weekly, student-run *CNM Chronicle* centered on sex.”

Cleary went on to say: “The *Daily Lobo* will not publish printed issues of the newspaper until the CNM administration agrees to reinstate *Chronicle* staff members to their former positions at the paper and allow the newspaper to remain free of faculty, staff or administrative oversight. *The Daily Lobo* will still be publishing content online at DailyLobo.com.” Reported in: *Albuquerque Journal*, March 27.

universities

Boca Raton, Florida

In January, Florida journalists noticed that a professor at Florida Atlantic University had been blogging about his doubts that a massacre really took place at a Newtown, Connecticut, elementary school in December. The professor, James Tracy, teaches communication and writes, among other things, about his view that mainstream media is inaccurate or deceptive in many ways. He has taught about conspiracies.

Of Newtown, he wrote on his blog: “While it sounds like an outrageous claim, one is left to inquire whether the Sandy Hook shooting ever took place—at least in the way law enforcement authorities and the nation’s news media have described.” Tracy speculated that the Obama

administration was using Sandy Hook to advance a gun-control agenda.

The university responded at the time (in public at least) the way many institutions do when their faculty members say things that are controversial. A spokeswoman told local reporters that “James Tracy does not speak for the university. The website on which his post appeared is not affiliated with FAU in any way.”

What wasn’t clear at the time is that the university was meeting with Tracy, complaining that he had not done enough—in the opinion of FAU officials—to distance his views from the institution that employs him.

Florida Atlantic was already facing criticism from many professors who say that the university failed to defend a faculty member who was attacked by politicians and others for a classroom exercise in which he asked students to write the name “Jesus” on a piece of paper and to step on it. The idea behind the exercise is that students will hesitate, leading to a discussion of the power of symbols. But the university—when one student complained about the lesson, and quickly attracted widespread press and political attention—apologized, and said it would bar the activity from ever being used again.

At about the same time the university was facing criticism over that course, it was issuing a reprimand to Tracy.

Heather Coltman, interim dean of arts and sciences, wrote that she was reprimanding Tracy for failing to take sufficient steps to disassociate his blog from the university.

In the “About” section of his blog, Tracy notes that he teaches at Florida Atlantic. But he also states, in bold: “All items published herein represent the views of James Tracy and are not representative of or condoned by Florida Atlantic University or the State University System of Florida. James Tracy is not responsible for and does not necessarily agree with ideas or observations presented in the comments posted on memoryholeblog.com.”

Coltman wrote that this disclaimer was “ineffective” as people—including reporters—continued to associate him with the university. Further, she criticized him for mentioning the university in blog posts (that criticized the university). And she noted that these posts did not have the disclaimer attached to them.

“You may, of course, blog in your personal time. You must stop dragging FAU into your personal endeavors. Your actions continue to adversely affect the legitimate interests of the university and constitute misconduct. This letter of reprimand is disciplinary action subject to Article 20, Grievance Procedure. If you continue to fail to meet your professional obligations and respond to directives from your supervisor, you will face additional disciplinary action,” she wrote.

The university released the letter as a public document under Florida’s open records act. But a university spokeswoman denied that the letter—even though it explicitly reprimanded Tracy and said he could “face additional

disciplinary action”—constituted a punishment. “These letters reflect that no employee has been disciplined for his/her personal activities or publications,” she said.

Tracy has continued to express his views on free speech—including the reprimand he received. On a recent blog post, he reflected on a sculpture on the campus that is devoted to the First Amendment, and wrote that the university had failed to protect the professor in the Jesus controversy or another professor he didn’t name (or need to)—whom he wrote the university was trying to intimidate over his writing on Newtown.

Wrote Tracy: “The First Amendment sculpture’s spirit and presence at FAU is contradicted by the university administration’s recent attempts to coerce faculty and students from publicly addressing controversial subject matter of tremendous public interest and concern.”

In the meantime about sixty demonstrators on April 9 accused Florida Atlantic administrators of abandoning academic freedom when they apologized for and abandoned the controversial classroom exercise in which students were asked to write Jesus’ name on a piece of paper and step on it.

Accompanied by a guitarist and hand-lettered placards, a group of faculty, students and others rallied outside the FAU administration building to show support for Deandre Poole, the part-time instructor who followed a textbook guide and conducted the “Jesus” exercise in an intercultural communications class to demonstrate the power of words as symbols.

A student’s complaint about the lesson ignited a national firestorm in which FAU initially defended the classroom activity and initiated disciplinary proceedings against the complaining student, who allegedly assaulted the instructor. Faced with widespread media coverage, much of which falsely accused the instructor of ordering students to “stomp on Jesus,” a petition campaign for his removal and calls from politicians, the University reversed course and removed the exercise from its curriculum without consulting Poole or faculty. Gov. Rick Scott wants a report on the matter from the state university system and has said he wants to make sure the exercise isn’t repeated.

Demonstrators accused Scott and FAU administrators of meddling in the classroom. They also urged FAU to retain Poole, who teaches on a year-to-year contract that expires in May. Poole has been placed on administrative leave with pay for his safety after receiving hate mail and threats.

Poole, who has called himself a “very religious” Christian, said the activity was not meant to denigrate Christianity but to spur discussion. He did not attend the rally but sent a statement thanking the demonstrators.

Student Gabi Aleksinko led demonstrators in a version of the disputed classroom exercise, handing out paper and pens and asking them to write “something important to you” on a piece of paper and place it on the ground. She then asked participants to step on the word they had written. Some did; others did not.

Christopher Robe, a communications professor who heads the FAU faculty union, called on administrators to issue a statement affirming academic freedom and “admit they made a mistake” in responding to the controversy.

“The one thing I thought students, faculty and administration could agree on is academic freedom,” said Robe. “The fact that we have to come out here and do this is a deep betrayal.”

The ACLU of Florida said in a statement that FAU “seemed to be caving in to political pressure rather than protecting the integrity of the classroom from outside forces. The university should not be letting politicians, including Gov. Scott, intimidate or interfere with what happens in the classroom.”

FAU responded with a statement that said the university “embraces open discourse across its campuses and values its public mission as a venue for free expression... We will to work with the FAU faculty and staff to address sensitive and controversial subjects, while upholding freedom of expression. A university campus is the best place for discussions of differing opinions.”

In an op-ed piece on insidehighered.com, Cary Nelson, past president of the American Association of University Professors, wrote:

“It seems that whenever a university administration issues a statement undermining academic freedom it begins by reaffirming its undying commitment to exactly the principle it is about to damage. While such doublespeak, as Orwell famously demonstrated, is common to bureaucracies, that does not much help the cause of higher education when our own administrations once again prove his point. The administrative conundrum—how to appease angry stakeholders with contempt for academic freedom, while covering yourself with a ritual incantation supporting that very principle—was very much in evidence in Florida Atlantic University’s public statements about its ‘Step on Jesus’ controversy. Unfortunately, the ultimate effect of the kind of disingenuous rhetoric the university used is to disable a principle by turning it into a hollow piety.”

Nelson continued: “Here, then, is FAU’s effort to eat its cake and have it too: ‘Florida Atlantic University is deeply sorry for any hurt that this incident may have caused the community and beyond. As an institution of higher learning, we embrace open discourse in our classrooms. Based upon the emotions brought about by this exercise it will not be used in the future and no students will be disciplined in any way related to the exercise, either inside or outside the classroom. The university supports its faculty members in their efforts to develop [a] curriculum that will bring about learning and enhance students’ experience at FAU.’”

“It’s hard to see how FAU could have waffled more often in a few sentences. Its leaders support academic freedom but apologize for its exercise. Academic freedom will not be permitted to be exercised in this way again. Anything that arouses strong emotions may be barred from

classrooms. And, of course, if people protest your assignments—even assignments taken from a popular published textbook—FAU will not get your back. And finally, as subsequent events have shown, if fanatics phone in death threats, you will be removed from campus to protect your own safety and that of others. That most recent step is eerily reminiscent of the University of South Florida's 2001 decision to exile engineering professor Sami Al-Arian from campus after death threats were received. Some of us wondered at the time whether phone-in threats would prove a popular way to remove faculty from campus.

“FAU went still further in undermining academic freedom and the First Amendment by subjecting Poole to a gag order, making it impossible for him to defend himself. The student meanwhile was free to claim his religious beliefs had been ‘desecrated,’ and the conservative blogosphere could promote the story as part of a long-running project of discrediting godless universities.” Reported in: *insidehighered.com*, April 2, 10, 12; *Palm Beach Post*, April 9.

Milwaukee, Wisconsin

Another female sexuality controversy is smoldering at Marquette University, more than two years after the university made national headlines for rescinding an offer of a deanship to a lesbian scholar over concerns that her writings were incompatible with the school's Catholic mission and identity.

This time, the lightning rod for debate is a 12-week student-led workshop called FemSex, modeled after courses at the University of California-Berkeley and Brown University to engage students in “the exploration of social forces through the lens of female sexuality.”

Among the workshop activities that critics found objectionable: coloring anatomical images of vaginas—referred to by a re-appropriated feminist term that many consider offensive—and creating “an anonymous piece of erotica exploring fantasy and desire.”

The weekly Female Sexuality Workshop started after they were given the green light in January by the campus's Gender and Sexuality Resource Center. But Marquette University President Father Scott Pilarz and Provost John Pauly pulled university sponsorship in mid-February, and forbade the workshop from continuing to be held at the Gender and Sexuality Resource Center.

In a statement Marquette spokesperson Brian Dorrington said Marquette's leadership initially wasn't aware of the specific programming planned for the workshop. University leaders reviewed the workshop outline after receiving a complaint from a former student, and found that “aspects fell outside the center's stated purpose,” Dorrington said.

“Because of this, the Gender and Sexuality Resource Center is no longer sponsoring the student-led workshop,” Dorrington said, declining to elaborate on the reasons. “To be clear, this was not an academic course and was not led by

faculty. It was student programming that took place outside the classroom, which like all student activities, is subject to university guidelines.”

Ethan Hollenberger, the 22-year-old Marquette alumnus whose challenge against the workshop prompted Marquette's review of its content, said that he and other students took issue with the university's sponsorship. “Catholic traditions hold marriage as the only legitimate context for sexual intercourse,” Hollenberger said. “Opposing contraception and abortion, the Church promotes abstinence for single individuals and natural family planning as alternatives for married couples. Casual sex for the sole purpose of pleasure is morally objectionable.”

Marquette graduate student Claire Van Fossen said that the workshop will continue, at an undisclosed location. Van Fossen, who is working on her master's degree in nonprofit management, said FemSex “does not teach any curriculum, push any agenda, condone any behavior, or act as therapy.”

The FemSex syllabus for the Marquette workshop states it encourages exploration of identities through group discussions, activities and individual exercises, Van Fossen said. The workshop “explores what it means to take ownership of one's sexuality, body, pleasure, language, and education, and that peer facilitators foster introspection and encourage participants to develop empowered, informed relationships with themselves and others. Thus, at its core, FemSex is about introspection, discussion, exploration, and self-empowerment,” Van Fossen said. “Or are those anti-Catholic now, too?”

Hollenberger, a founding member of the Young Americans for Freedom chapter at Marquette, said in a blog post for the Young America's Foundation that he emailed Pilarz when he heard about FemSex, “seeking comment and a defense of the workshop.”

“While Marquette's leaders standing up for the principles of the school is applauded, they only did so after tough questions and pressure,” Hollenberger said in his post. “FemSex should have never been considered for university sponsorship in the first place. Marquette administrators have an established pattern of retreating after public outcry. If not for watchful conservatives, FemSex might be officially sanctioned today.”

Culturally, Marquette is a Catholic Jesuit university, Hollenberger said. “FemSex teaches Marquette students to give into a debased and anti-Catholic view of sex and desire,” he said. “As a small group of individuals, these women can meet and talk about any topic of their choosing—provided the Catholic institution doesn't sponsor or recognize them as a group,” Hollenberger said.

Van Fossen said the center where the workshop was to be held was space founded “for the pursuit of dialogue, growth, and empowerment around issues of gender, sex, and sexuality.”

Marquette University “fully supports the Gender and Sexuality Resource Center and the goals set forth in the

center's charter," and has done so since the center's inception, Dorrington said.

The workshop initially came under fire when Marquette political science professor John McAdams published an article on his personal blog, "Marquette Warrior," denouncing FemSex as anti-Catholic and criticizing the university for sponsoring it. McAdams alleged in his blog that FemSex workshops at other universities tell women "that men are evil exploiters."

"The image of college women one gets from FemSex is that of whining neurotics," McAdams said in his blog.

The term referring to vaginas may have seemed vulgar, Van Fossen acknowledged. But it should not have led Marquette to revoke sponsorship of the workshop, she said. The workshop was open to people of all genders, Van Fossen said. It "in no way conflicts with Catholic theology, unless creating a safe space in which to discuss these topics is anti-Catholic."

Pilarz, she said, "betrayed student trust by failing to do his due diligence regarding the claims that had been made about FemSex at Marquette and by refusing to engage with students and advocate for their interests in the matter."

Dorrington, the Marquette spokesman, disagreed with that characterization. "During the past two years, Marquette University has worked diligently to implement and embed many educational programs on the important topics of gender and sexuality," he said. "The center allows us to delve into issues of gender and sexuality with respect, sensitivity, academic rigor and concern for social justice," Dorrington said.

Marquette drew national attention in May 2010 after rescinding an offer to Seattle University professor Jodi O'Brien for an open deanship at its College of Arts and Sciences.

In making that decision, Marquette cited concerns relating to the school's "Catholic mission and identity" and the university's incompatibility with O'Brien's writings. O'Brien is a lesbian scholar, but Marquette at the time said the decision had no connection to her sexual orientation.

The decision attracted national attention and raised issues about the mission of Catholic higher education, academic freedom and the role of gender and sexual orientation in academia. Dozens of faculty members from both Marquette and Seattle University bought a full-page ad in the *Milwaukee Journal-Sentinel* condemning the university's decision and demanding that she be given the dean's job, along with an apology.

The university reached a settlement with O'Brien. Reported in: *Milwaukee Journal-Sentinel*, February 26.

foreign

Baku, Azerbaijan

Azerbaijan's troubled efforts to portray itself as a progressive and Western-oriented country took a beating in February with the announcement by a pro-government

political party that it will pay \$12,700 to anyone who cuts off the ear of a 75-year-old novelist.

The author is Akram Aylisli, and his crime is to have written a novella called *Stone Dreams* that is sympathetic to Armenians and recounts Azeri atrocities in the war between the two countries twenty years ago. Aylisli's misfortune is to have had his work published, in Russia, at a time when an insecure regime in Azerbaijan is whipping up anti-Armenian fervor.

Azerbaijani President Ilham Aliyev has already stripped Aylisli of his title of "People's Writer" and the pension that goes with it. Aylisli's son was fired from his job and parliament has demanded that Aylisli submit to a DNA test to prove he's Azerbaijani. In February book burnings were staged around the country.

But on February 12 the head of the Modern Musavat party, Hafiz Hajiyev, told the Turan Information Agency that the time has come for Aylisli to be punished for portraying Azerbaijanis as savages. "We have to cut off his ear," Hajiyev said. "This decision is to be executed by members of the youth branch of the party."

Watchdog groups, including Human Rights Watch and the Institute for Reporters' Freedom and Safety, denounced the threat. "I can't believe he's a man or human being," Leyla Yunus, head of the Baku-based Institute of Peace and Democracy, said of Hajiyev. Even the Soviet era, Yunus said, didn't feature "such horrible propaganda."

The Interior Ministry pointed out that cutting off an ear is a crime and said it would investigate. But the government, rattled by protests in January, has been lashing out at its opponents and, as it has in the past, tried to distract public opinion by stirring up fears of an Armenian threat. Although a 1994 cease-fire stopped the war between the two former Soviet republics, Armenians still hold the territory of Nagorno-Karabakh, and Aliyev frequently vows to take it back.

Antagonism is high, and Aylisli has fallen afoul of that. While Azerbaijan has spent billions of dollars in oil revenue on military equipment, efforts by the United States, Russia and France to broker a settlement have failed. Shots across the cease-fire line are becoming more common.

E. Wayne Merry, a senior fellow for Europe and Eurasia at the American Foreign Policy Council in Washington, said recently that Nagorno-Karabakh is in a "pre-war" situation.

The government also has arrested two leading opposition politicians, Tofik Agublu and Ilgar Mammadov, and charged them with fomenting protests last month over an alleged brothel in the town of Ismayilli. The brothel, which was burned down, reportedly was owned by the son of one of Aliyev's cabinet ministers.

The men will be held for two months and then face trial on charges that could bring three-year prison sentences. The arrests have been criticized by the European Union, Amnesty International and Human Rights Watch.

Azerbaijan's foreign ministry has rejected the criticism as unfounded.

Mammadov is a member of the advisory board of a group called Revenue Watch, which called for the immediate release of the two men. The United States, which values Azerbaijan for its hostility to neighboring Iran but criticizes the country's human rights practices, urged the government to observe due process.

In an e-mail Mammadov sent to his supporters on the eve of his February 4 arrest, he noted that he had been to Ismayilli, in a lull between protests, to see for himself what was going on. "Now the government is trying to use that fact to speculate that I have organized that massive unrest," he wrote. He noted that his Republican Alternative party is likely to nominate him to run for president against Aliyev in October.

Aylisli told Radio Liberty in late January that he dwelt on Azeri atrocities in *Stone Dreams* because that was his responsibility as an Azerbaijani writer. Let Armenian authors, he said, write about the atrocities of their side—notably, a 1992 massacre in the town of Khojaly, the memory of which has become a major rallying point for aggrieved Azeris.

Aylisli also has written thinly veiled attacks on both Aliyev and his father, Heydar Aliyev, the former president, for the brutality and corruption of their regimes. That's an image that Azerbaijan has gone to great lengths to obscure, helped by the glitzy revival of its capital, Baku, thanks to revenue from gas and oil. Using events like last year's Eurovision song contest in Baku, the government has painted Azerbaijan as an outpost of flash and modernity that outshines its neighbor, Iran.

The secular fatwa against Aylisli's ear, though, could make that campaign an uphill battle. Reported in: *Washington Post*, February 12.

Moscow, Russia

Last summer, Russia passed an Internet blacklist bill which required Internet service providers to censor certain sites. At the time Russian officials insisted it would be used to "protect the children" from "harmful information," including child porn, suicide instructions, and pro-drug propaganda. They insisted it would not go beyond that. But within weeks, a popular blogging site, LiveJournal, was censored, followed by the Russian equivalent of Wikipedia.

And now they're targeting journalists as well. Added to the blacklist has been a site used by prominent free speech and civil liberties reporters in Russia who have been critical of the government. The government claims (of course) that they put the site on the blacklist due to "child pornography elements," but critics point out that rather than just removing such content, they've blocked access to the entire site, which is notable given the usage by critical reporters.

At least two prominent journalists host their blogs on LJRossia.org: Andrei Malgin, a journalist who has been very critical of the government and hosts a mirror site at LJR, and Vladimir Pribylovsky, who has been targeted for publishing a large database of government misdeeds and for disclosing official documents that expose corruption. Reported in: *techdirt.com*, February 14.

Singapore

Singapore likes to promote itself as a business-friendly country where the government has a soft touch. But by firing a professor known for criticizing the government's censorship strategies, ruling elites have demonstrated that they still have a firm hand in controlling political conversation.

As one of Singapore's most high profile censorship critics, Cheria George is guilty of several things. In his teaching, he is guilty of corrupting several cohorts of young journalism students with ideas about press freedoms. In his role as a public intellectual, he is guilty of helping to organize and inform the country's growing community of independent bloggers and citizen journalists.

Through his research, Cheria George has demonstrated how subtle and sophisticated censorship strategies by Lee Kwan Yew, the 89-year-old father of modern Singapore who ruled for thirty years and still holds considerable influence, allowed the country to become "sustainably authoritarian." Singapore's elites, journalists, and democracy advocates have long known about these tricks. But George documented and demonstrated it, with good research and poignant comparisons to Malaysia and other neighbors. And he updated his findings as other figures moved into power within the ruling People's Action Party.

However, his home base, Nanyang Technological University (NTU), decided not to give George the protections of tenure. This means his contract will not be renewed, and he will lose the support that comes with his institutional affiliation.

This is actually the second time there has been high level interference with his career trajectory. In 2008, he helped lead a coalition of democracy advocates to lobby for more Internet freedoms in Singapore, and helped lead a workshop to teach bloggers about their (lack of) rights. The regime ordered NTU to have nothing to do with the efforts, though that did not stop George from moving ahead on his own energy. The National University of Singapore's Law School had originally offered to host the blogger workshop, but they too were instructed to stay clear.

But George helped pull the event off anyway. The next year, his case for promotion moved smoothly up the ranks within the University, but was quashed with little explanation by the University's president.

George is known for a string of investigative books and articles on how politicians in Singapore and Malaysia use the media as a tool for social control. He is Singaporean,

has (had) a job in the Communication Studies department at NTU, and his career track has been derailed by the political elites he has disparaged. In 2009 he was promoted to associate professor without tenure, meaning he could have a bump in pay but not the support of a permanent job at the university.

It is difficult to dismiss George on the basis of academic merit. With degrees from Cambridge, Columbia, and Stanford, his pedigree is admirable. He has three books under his belt: the eviscerating *Air Conditioned Nation*, the evocative *Freedom From the Press* and a scholarly tome comparing independent online journalism in Singapore and Malaysia that was actually published at home by Singapore University Press. George has been equally critical of the government and the press, so it is not surprising that the country's journalists have not rushed to his defense. He's had positive teaching evaluations. It is unlikely that he does not meet the academic standards of the university.

George's treatment should raise serious questions for the future of Singapore's research partnerships. Yale now has a significant project in Singapore. NTU alone claims it has over a dozen partnerships with universities like MIT, Caltech, and the University of Washington. Local academics suspect that both the National University of Singapore and Nanyang Technical University have personnel decisions informally vetted by the government. Will the government have veto power over Yale's hiring decisions as well? Since most Western universities—including Yale—have committed to respecting Singapore's laws, will Yale's personnel decisions involve the same informal approval process?

Global partnerships can be great things for universities. Researchers learn to approach problems in new ways, and students are presented with ever more opportunities to learn about the world. But it can be tough for academics in one country to understand the rules, norms, and patterns of behavior for academics in other countries. And for even mildly authoritarian regimes, collaborating with universities in the West can be a way of laundering their reputation.

In not giving George tenure, Singapore has demonstrated the obvious—that its universities are not like our universities. When an authoritarian government punishes its critics we need to take note. And when an authoritarian government punishes its scholars at home, Western universities have an opportunity to weigh in. Oddly, the Communication Studies undergraduate program at NTU is now entirely led by non-Singaporeans. We should not assume that Western academics can help erode authoritarian tendencies when they build research partnerships with universities in tough regimes. Instead, bringing in Western scholars and firing any local trouble-makers may be the safe bet for tough regimes. Reported in: techpresident.com, March 5.

Dubai, United Arab Emirates

The London School of Economics and Political Science abruptly canceled an academic conference on the Arab

Spring it planned to hold in February at the American University of Sharjah, in the United Arab Emirates, citing “restrictions imposed on the intellectual content of the event that threatened academic freedom.”

The last-minute cancellation took place after Emirati authorities requested that a presentation on the neighboring kingdom of Bahrain—where a protest movement was harshly repressed with the support of Saudi Arabia and the Emirates—be dropped from the program.

Kristian Coates Ulrichsen, a scholar on Arab politics at the London School of Economics who was scheduled to give the presentation, was stopped and briefly detained at the Dubai airport's passport control. A security official told him he was on a blacklist and not allowed to enter the country.

“The U.A.E. is a strong supporter of efforts by the Government of Bahrain and the opposition parties to resolve their situation through peaceful dialogue,” said a written statement from the Emirati foreign ministry. “Dr. Coates Ulrichsen has consistently propagated views delegitimizing the Bahraini monarchy. The U.A.E. took the view that, at this extremely sensitive juncture in Bahrain's national dialogue, it would be unhelpful to allow nonconstructive views on the situation in Bahrain to be expressed from within another GCC state.” (GCC stands for Gulf Cooperation Council, a political and economic bloc Bahrain and the U.A.E. are a part of.)

Ulrichsen believes what happened to him is “a taste of things to come,” an example of the unavoidable “tension between cash-strapped universities and Gulf governments” that have funds to spare but also expect that Western academics will defer to local sensitivities and restrictions.

The London School of Economics' Middle East Centre has received \$8.5-million from the Emirates Foundation, which is financed by the government (but reportedly played no role in the demands to alter the conference program). A spokeswoman for the British institution told *The Chronicle of Higher Education* in an e-mail that it is “currently monitoring the situation carefully and will assess the implications in due course.”

This is not the first time the school has run into difficulties because of its ties to the Arab world. In 2011 the school's director resigned after the institution faced criticism for accepting a \$2.27-million donation from Seif al-Islam el-Qaddafi, a son of the former Libyan dictator and a graduate of the school. A subsequent report said the decision to accept the Qaddafi donation had showed a “disconcerting number of failures in communication and governance.”

The American University of Sharjah, a private university founded with the support of the ruler of Sharjah, one of the seven principalities that make up the U.A.E., was to serve as the conference's host. It declined to answer inquiries and would say only that it had been the London school's decision to cancel the event.

(continued on page 132)



U.S. Supreme Court

If you're the legal owner of a copy of a book or other work copyrighted under U.S. law, the Supreme Court says you have the right to resell or give it away, even if it was made overseas.

In a much-anticipated ruling in the case of *Kirtsaeng v. John Wiley & Sons*, the court ruled, 6 to 3, on March 19 that the so-called first-sale doctrine protects the buyers of copyrighted works even if those works were legally manufactured outside the United States. Library groups celebrated the decision as "a total victory" for library users and others who share or resell copyrighted products. But publishers said the ruling would have "significant ramifications" for creators of copyrighted works and would discourage global trade.

The case pitted Supap Kirtsaeng, a Thai national, against John Wiley, a major textbook publisher. Wiley sued Kirtsaeng for importing and reselling foreign-made copies of its textbooks when he was a graduate student in the United States. The books cost less abroad than in the United States, enabling him to turn a profit. The U.S. Court of Appeals for the Second Circuit upheld a lower court's judgment in favor of Wiley. Kirtsaeng then appealed to the Supreme Court, which heard arguments in the case last fall.

Writing for the majority in the case, Justice Stephen G. Breyer laid out the essential question as the court saw it: Can someone who buys a copy of a protected work "bring that copy into the United States (and sell it or give it away) without obtaining permission to do so from the copyright owner?" Justice Breyer asked. "Can, for example, someone who purchases, say at a used-book store, a book printed abroad subsequently resell it without the copyright owner's permission?"

In the majority's view, the answer is yes. "We hold that the 'first sale' doctrine applies to copies of a copyrighted work lawfully made abroad," Justice Breyer wrote.

The majority appeared to take seriously the arguments, made by libraries and others, that limiting the first-sale doctrine by geography could cause serious harm to what they do. Justice Breyer noted "the practices of booksellers, libraries, museums, and retailers," who have long relied on first-sale protections. "The fact that harm has proved limited so far may simply reflect the reluctance of copyright holders to assert geographically based resale rights," he wrote.

The "practical problems" laid out by Kirtsaeng and the groups that filed supporting briefs on his behalf "are too serious, extensive, and likely to come about to be dismissed as insignificant—particularly in light of the ever-growing importance of foreign trade to America," the justice concluded.

Justice Elena Kagan wrote a concurring opinion in which Justice Samuel A. Alito joined. The dissenting opinion was written by Justice Ruth Bader Ginsburg, joined by Justice Anthony M. Kennedy and (with some qualifications) by Justice Antonin Scalia.

The Library Copyright Alliance, which includes the American Library Association and the Association of College and Research Libraries, filed a friend-of-the-court brief supporting Kirtsaeng and his first-sale defense. They declared the ruling "a total victory for libraries and our users." In a written statement, they said the decision "vindicates the foundational principle of the first-sale doctrine—if you bought it, you own it."

The Association of American Publishers described itself as "disappointed" by the ruling, which "ignores broader issues critical to America's ability to compete in the global marketplace," the group said in a written statement. "To quote Justice Ginsburg's dissenting opinion, the divided ruling is a 'bold departure' from Congress's intention 'to protect copyright owners against the unauthorized importation of low-priced, foreign-made copies of their copyrighted works' that is made 'more stunning' by its conflict with current U.S. trade policy," the group said.

The publishers' association added that it's likely that Congress will consider the issues raised by the Supreme Court's ruling. The Library Copyright Alliance said it was ready to carry on the fight on Capitol Hill as well.

"Wiley and others who sought a right of perpetual control over these materials may turn to Congress to roll back the court's wise decision," the alliance said. "Libraries and our allies remain vigilant in defense of first sale and all of the rights that make it possible to serve our communities."

The chief executive officer of Wiley, the publisher that pressed the lawsuit against Kirtsaeng, did not indicate what it might do next. "We are disappointed that the U.S. Supreme Court has decided in favor of Supap Kirtsaeng and overturned the Second Circuit's ruling," Stephen M.

Smith, Wiley's chief executive officer, said in a brief written statement. "It is a loss for the U.S. economy, and students and authors in the U.S. and around the world." Reported in: *Chronicle of Higher Education* online, March 19.

The Supreme Court on February 26 turned back a challenge to a federal law that broadened the government's power to eavesdrop on international phone calls and e-mails. The decision, by a 5-to-4 vote that divided along ideological lines, probably means the Supreme Court will never rule on the constitutionality of that 2008 law.

More broadly, the ruling illustrated how hard it is to mount court challenges to a wide array of antiterrorism measures, including renditions of terrorism suspects to foreign countries and targeted killings using drones, in light of the combination of government secrecy and judicial doctrines limiting access to the courts.

"Absent a radical sea change from the courts, or more likely intervention from the Congress, the coffin is slamming shut on the ability of private citizens and civil liberties groups to challenge government counterterrorism policies, with the possible exception of Guantánamo," said Stephen I. Vladeck, a law professor at American University.

Writing for the majority, Justice Samuel A. Alito Jr. said that the journalists, lawyers and human rights advocates who challenged the constitutionality of the law could not show they had been harmed by it and so lacked standing to sue. The plaintiffs' fear that they would be subject to surveillance in the future was too speculative to establish standing, he wrote.

Justice Alito also rejected arguments based on the steps the plaintiffs had taken to escape surveillance, including traveling to meet sources and clients in person rather than talking to them over the phone or sending e-mails. "They cannot manufacture standing by incurring costs in anticipation of non-imminent harms," he wrote of the plaintiffs.

It is of no moment, Justice Alito wrote, that only the government knows for sure whether the plaintiffs' communications have been intercepted. It is the plaintiffs' burden, he wrote, to prove they have standing "by pointing to specific facts, not the government's burden to disprove standing by revealing details of its surveillance priorities."

In dissent, Justice Stephen G. Breyer wrote that the harm claimed by the plaintiffs was not speculative. "Indeed," he wrote, "it is as likely to take place as are most future events that common-sense inference and ordinary knowledge of human nature tell us will happen."

Under the system of warrantless surveillance that was put in place by the Bush administration shortly after the terrorist attacks of September 11, 2001, aspects of which remain secret, the National Security Agency was authorized to monitor Americans' international phone calls and e-mails without a warrant. After the *New York Times* disclosed the program in 2005 and questions were raised about its constitutionality, Congress in 2008 amended the Foreign Intelligence Surveillance Act, granting broad power to the

executive branch to conduct surveillance aimed at persons overseas without an individual warrant.

The Obama administration defended the law in court, and a Justice Department spokesman said the government was "obviously pleased with the ruling."

The decision, *Clapper v. Amnesty International*, arose from a challenge to the 2008 law by Amnesty International, the American Civil Liberties Union and other groups and individuals, including journalists and lawyers who represent prisoners held at Guantánamo Bay, Cuba. The plaintiffs said the law violated their rights under the Fourth Amendment, which bars unreasonable searches, by allowing the government to intercept their international telephone calls and e-mails.

Justice Alito said the program was subject to significant safeguards, including supervision by the Foreign Intelligence Surveillance Court, which meets in secret, and restrictions on what may be done with "nonpublic information about unconsenting U.S. persons." Chief Justice John G. Roberts Jr. and Justices Antonin Scalia, Anthony M. Kennedy and Clarence Thomas joined the majority opinion, and Justices Ruth Bader Ginsburg, Sonia Sotomayor and Elena Kagan joined the dissent.

Jameel Jaffer, a lawyer with the ACLU, said the decision "insulates the statute from meaningful judicial review and leaves Americans' privacy rights to the mercy of the political branches."

Justice Alito wrote that the prospect that no court may ever review the surveillance program was irrelevant to analyzing whether the plaintiffs had standing. But he added that the secret court does supervise the surveillance program. It is also at least theoretically possible, he added, that the government will try to use information gathered from the program in an ordinary criminal prosecution and thus perhaps allow an argument "for a claim of standing on the part of the attorney" for the defendant.

Jaffer said the situations were far-fetched. "Justice Alito's opinion for the court seems to be based on the theory that the secret court may one day, in some as-yet unimagined case, subject the law to constitutional review, but that day may never come," Jaffer said. In many national security cases, he added, the government has prevailed at the outset by citing lack of standing, the state secrets doctrine or officials' immunity from suit.

"More than a decade after 9/11," he said, "we still have no judicial ruling on the lawfulness of torture, of extraordinary rendition, of targeted killings or of the warrantless wiretapping program. These programs were all contested in the public sphere, but they have not been contested in the courts." Reported in: *New York Times*, February 26.

The Supreme Court heard arguments February 20 about whether Virginia may permit only its own citizens to make requests under the state's freedom of information act. The justices appeared to differ about whether such a restriction was sensible, but they seemed largely united that it did not run afoul of the Constitution.

The case, *McBurney v. Young*, was brought by Roger Hurlbert, a California man who collects property records for commercial clients, and Mark McBurney, a Rhode Island man who once lived in Virginia and who sought information concerning child support payments. They sued when Virginia refused to comply with their requests under the law.

Virginia appears to be one of only three states that discriminate against requests for information from noncitizens. Its law contains an exception for representatives of newspapers and magazines with circulation in Virginia and of radio and television stations that broadcast there. It does not address Internet publications.

Hurlbert, Justice Stephen G. Breyer said, “has a very reasonable request, in my view. But the question,” he went on, “isn’t the reasonableness of his request. The question is, you know, whether they can do it.”

Justice Antonin Scalia said the law was perfectly reasonable, but that this did not matter in the constitutional analysis. “Is it the law that the state of Virginia cannot do anything that’s pointless?” he asked. “Only the federal government can do stuff that’s pointless?”

Chief Justice John G. Roberts Jr. said the plaintiffs’ claims did not seem weighty enough to justify striking down a state law as unconstitutional, which on one theory would require a finding, he said, of “something that is essential to hold the country together as a national unit.”

“It seems to me it’s a bit of a stretch,” he continued, “to say somebody gathering records under FOIA fits that description.”

Justice Scalia added that the very goal of the law justified limiting it to citizens. “The purpose of it was not to enable people to get information per se,” he said. “It was to enable people to see how their government is working, so that they could attend to any malfeasance that is occurring in the process of government.”

Deepak Gupta, a lawyer for the plaintiffs, called that an oversimplification. “Transparency was one purpose,” he said, but “these laws also carried forward the much more longstanding rights to access based on personal interests and property interests.”

Justice Breyer acknowledged that the Constitution sometimes stopped states from discriminating in favor of local interests. But, he went on, “it’s pretty hard for me to put this case into that mold.”

Earle Duncan Getchell Jr., Virginia’s solicitor general, said the case was simple. The law did not invite constitutional scrutiny, he said, because it did not regulate commercial activity and because the asserted right of access was not fundamental. He listed other state programs that discriminated against noncitizens, including welfare payments, in-state tuition and assistance to local businesses.

The New York Times Company, along with many news organizations and advocacy groups, filed a brief supporting the plaintiffs.

Justice Scalia said a right to government information could not be fundamental because laws like the one in

Virginia were fairly new, starting in the 1960s. “I think it’s in my adult lifetime that Florida was the first to enact a sunshine law,” he said. Getchell agreed. “They were very much the fad,” he said. “It happened in my lifetime, too.”

Justice Elena Kagan issued a kind of dissent. “I want to put myself on record,” she said, “as not remembering when these statutes were passed.” Reported in: *New York Times*, February 20.

libraries

Salem, Missouri

In a consent judgment signed March 5, a federal district court ordered the Salem Public Library to stop blocking patrons’ access to websites related to minority religions that the library’s web filters classified as “occult” or “criminal.” Blocking access to material based solely on viewpoint is a violation of the First Amendment.

Judge E. Richard Webber entered the judgment in a case brought by the American Civil Liberties Union and the ACLU of Eastern Missouri on behalf of a Salem resident who was blocked from researching websites discussing minority religions’ ideas about death or death rituals.

“Even libraries that are required by federal law to install filtering software to block certain sexually explicit content should never use software to prevent patrons from learning about different cultures,” said Tony Rothert, legal director of the ACLU-EM.

The resident had originally protested to library director Glenda Wofford about not being able to access websites about Native American religions and the Wiccan faith. While portions of the sites were unblocked, much remained censored. Wofford said she would only allow access to blocked sites if she felt patrons had a legitimate reason to view the content and added that she had an obligation to report people who wanted to view these sites to the authorities. The resident’s attempts to complain about the policy to the library board of trustees were brushed off.

“We are happy to see an end to the library’s discriminatory Internet practices,” said Daniel Mach, director of the ACLU Program on Freedom of Religion and Belief. “Public libraries should be maximizing the spread of information, not blocking access to viewpoints or religious ideas not shared by the majority.” Reported in: *Salem News*, March 6.

New York, New York

As myriad court battles pitting the Occupy Wall Street movement against New York City agencies proceed, protesters claimed a victory April 9, based not on how they were treated, but on how their books were mistreated.

The City of New York and Brookfield Properties agreed to pay more than \$230,000 to settle a lawsuit filed last year in Federal District Court asserting that books and

other property had been damaged or destroyed when the police and sanitation workers cleared an encampment from Zuccotti Park in 2011.

The books, and other items, had been set up in the northeast corner of the park soon after the Occupy protests began in September 2011. Called the People's Library, the collection included novels and history books. About 3,600 volumes were removed when the city cleared the park. A suit filed by protesters in February 2012 said only about 1,000 could be recovered.

The settlement called for the city to pay \$47,000 to the movement's Library Working Group for the loss of the books and \$186,000 in legal fees. About \$16,000 will come from Brookfield Properties, the owner of the park.

Last year, lawyers for the city said Brookfield had hired a private carting company to help remove items from the park and take them to a landfill. Lawyers for Brookfield replied that the police had directed the company to hire workers to clear "refuse" from the park and that Brookfield employees had helped city workers load material.

"There are many reasons to settle a case," said Sheryl Neufeld of the New York City Law Department. "And sometimes that includes avoiding the potential for drawn out litigation that bolsters plaintiff attorney fees." Brookfield declined to comment.

"In our opinion people's constitutional rights were violated," said Norman Siegel, a lawyer for the protesters. "And our settlement holds the city accountable." Reported in: *New York Times*, April 9.

schools

Tucson, Arizona

A court upheld most provisions of an Arizona state law used to prohibit a controversial Mexican-American Studies curriculum in Tucson March 8. The ruling dealt a blow to supporters of the suspended classes, who had hoped the courts would overturn a 2010 law championed by Arizona conservatives determined to shut down the unconventional courses.

"I was really surprised at the decision," Jose Gonzalez, a former teacher of Tucson's suspended Mexican-American Studies classes, said. "But as a student and teacher of history, I know in civil rights cases like this there's always setbacks."

The experimental Tucson curriculum was offered to students in different forms in some of the local elementary, middle and high schools. It emphasized critical thinking and focused on Mexican-American literature and perspectives. Supporters lauded the program, pointing to increased graduation rates, high student achievement and a state-commissioned independent audit that recommended expanding the classes.

But conservative opponents accused the teachers of

encouraging students to adopt left-wing ideas and resent white people, a charge the teachers deny. Aiming squarely at Tucson's Mexican-American Studies program, the Arizona legislature passed HB 2281—a law banning courses that promote the overthrow of the U.S. government, foster racial resentment, are designed for students of a particular ethnic group or that advocate ethnic solidarity.

Federal Judge Wallace Tashima said the plaintiffs failed to show the law was too vague, broad or discriminatory, or that it violated students' First Amendment rights.

The news wasn't all bad for supporters of the suspended classes. Tashima ruled that the section of the law prohibiting courses tailored to serve students of a particular ethnicity was unconstitutional.

Originally filed in October of 2010 on behalf of the program's former teachers, who lost standing because they are public employees, the case is currently brought by former Mexican-American Studies student Nicholas Dominguez and his mother Margarita Dominguez. They were likely to appeal the ruling to the U.S. Court of Appeals for the Ninth Circuit, their lawyer Richard Martinez said.

"This case is not over," Martinez declared. "It's not only important to Arizona, but to the country as a whole that this statute be addressed."

Arizona Attorney General Tom Horne began a campaign to eliminate the Mexican-American Studies program from Tucson Unified School District in 2006, when he was serving as the state's Superintendent of Public Education. Angered that Mexican-American civil rights leader Dolores Huerta had said that "Republicans hate Latinos" in a speech to Tucson students, Horne sent Deputy Superintendent Margaret Dugan, a Latina Republican, to give an alternate view. But the intellectual exercise turned confrontational when students, who said they were not allowed to ask Dugan questions, sealed their mouths with tape and walked out of the assembly room.

"As superintendent of schools, I have visited over 1,000 schools and I've never seen students be disrespectful to a teacher in that way," Horne said in an interview last year.

The final product of his efforts was House Bill 2281, which then-State Sen. John Huppenthal (R) helped pilot through the Arizona legislature. Huppenthal, who succeeded Horne as state superintendent of schools, then found Tucson out of compliance with the new law and ordered the district to shut Mexican-American Studies down or lose ten percent of its annual funding—some \$14 million over the fiscal year. In January of 2012, the school board complied, voting 4 to 1 to discontinue the classes.

The decision drew national attention as administrators plucked Latino literature that once belonged to the curriculum from classrooms, explicitly banning seven titles from instruction.

Judge Tashima wrote that Horne's anti-Mexican-American Studies zeal bordered on discrimination. "This

single-minded focus on terminating the MAS (Mexican-American Studies) program, along with Horne's decision not to issue findings against other ethnic studies programs, is at least suggestive of discriminatory intent," Tashima wrote.

But the federal judge stopped short of invalidating the law on those grounds. "Although some aspects of the record may be viewed to spark suspicion that the Latino population has been improperly targeted, on the whole, the evidence indicates that Defendants targeted the MAS program, not Latino students, teachers or community members who participated in the program," the judge wrote in the ruling.

Not everyone agrees. Writer and activist Tony Diaz—who along with independent journalist Liana Lopez and multimedia artist Bryan Parras launched a "librotraficante" caravan to "smuggle" books banned from Tucson classrooms into Arizona—said the court had "failed our youth, our culture and freedom of speech" by upholding the Arizona ethnic studies law.

"But we remain inspired by the youth of Tucson, the teachers, the families, the activists who will appeal this unjust ruling and continue the struggle to the Supreme Court," Diaz said. Reported in: huffingtonpost.com, March 11.

university

Elon, North Carolina

The North Carolina Supreme Court split evenly March 8 in a ruling that leaves unresolved the openness of private college police records.

Nick Ochsner, a former student journalist at Elon University, asked the campus police department for a report related to the arrest of another student, but was given little information. Ochsner went to court to determine whether the report was a public record.

In the opinion, the court said it was split 3-3 after Justice Barbara Jackson recused herself. The prior court of appeals decision in the case "is left undisturbed and stands without precedential value," according to the opinion.

The court of appeals ruling determined that private schools' police departments are exempt from North Carolina's public records law.

Ochsner said he was disappointed by the ruling but the fact that the court of appeals decision will not be a precedent is "a silver lining." He said he's hopeful recently proposed legislation in the state will still make private school police records more open. "And when you partner that with the new legislation pending ... we've got the ball rolling in the right direction," he said.

The legislation, House Bill 142, was filed in February and would make some private universities' police department records—such as incident reports—accessible to the public. It would not make all records public. Salary information, emails or internal memos would not have to

be released under the proposed legislation. House Bill 142 would also shift the custodianship of records from the state attorney general to campus police departments themselves.

The legislation was drafted by a coalition of private schools in the state and introduced only days after the state Supreme Court heard oral arguments in Ochsner's case.

Ann Ochsner, Nick Ochsner's mother and an attorney who represented him, said on hearing the court's decision, she worried the legislation might be dropped. But because Elon University has said from the beginning that the issue should be handled by the legislature, Ann Ochsner said she hopes private colleges will maintain their support for the bill.

"If they want what they said, they should go forward with this bill and not solicit its withdrawal," Ann Ochsner said.

A spokesman for the university issued the following statement on behalf of Elon President Leo Lambert: "Elon University is pleased that the North Carolina Supreme Court has affirmed the rulings of the North Carolina Court of Appeals and Alamance County Superior Court in this case. Elon has always maintained that the question of public access to records of private college police departments is most appropriately dealt with in the General Assembly, rather than in the courts. To that end, we have partnered with the North Carolina Independent Colleges and Universities to propose legislation that would provide the same kind of access to law enforcement records at private schools as is allowed at North Carolina's public universities. We support passage of this sensible bill."

Amanda Martin, a media law attorney who filed an *amicus* brief in the case on behalf of several newspapers in the state, said she was "very disappointed" in the court's decision.

"First I feel like the public should have access to this information and so I'm disappointed that the court would permit institutions to deny access to significant criminal information," Martin said. "On a more broad or fundamental basis, I'm disappointed that the court did not clarify that any body that is carrying out significant governmental functions is accountable to the public under the public records law."

No matter where a crime occurs, the public should be able to obtain information about it, Martin said. "Elon University is located in the town of Elon, and so what we argued to the court is it should not matter whether a crime takes place on the campus of Elon University or the streets of that town, the public should have the same [right of] access to that information," she said.

Ann Ochsner said she also has not given up on her son's court case. "I'm going to see if there are other appellate procedural mechanisms available to me," she said. Reported in: splc.org, March 8.

National Security Letters

Washington, D.C.

Ultra-secret National Security Letters that come with a gag order on the recipient are an unconstitutional impingement on free speech, a federal judge in California ruled in a decision released March 15.

U.S. District Court Judge Susan Illston ordered the government to stop issuing so-called NSLs across the board, in a stunning defeat for the Obama administration's surveillance practices. She also ordered the government to cease enforcing the gag provision in any other cases. However, she stayed her order for ninety days to give the government a chance to appeal to the U.S. Court of Appeals for the Ninth Circuit.

"We are very pleased that the Court recognized the fatal constitutional shortcomings of the NSL statute," said Matt Zimmerman, senior staff attorney for the Electronic Frontier Foundation, which filed a challenge to NSLs on behalf of an unknown telecom that received an NSL in 2011. "The government's gags have truncated the public debate on these controversial surveillance tools. Our client looks forward to the day when it can publicly discuss its experience."

The telecommunications company received the ultra-secret demand letter in 2011 from the FBI, seeking information about a customer or customers. The company took the extraordinary and rare step of challenging the underlying authority of the National Security Letter, as well as the legitimacy of the gag order that came with it.

Both challenges are allowed under a federal law that governs NSLs, a power greatly expanded under the USA PATRIOT Act that allows the government to get detailed information on Americans' finances and communications without oversight from a judge. The FBI has issued hundreds of thousands of NSLs over the years and has been reprimanded for abusing them—though almost none of the requests have been challenged by the recipients.

After the telecom challenged the NSL, the Justice Department took its own extraordinary measure and sued the company, arguing in court documents that the company was violating the law by challenging its authority. The move stunned EFF at the time.

"It's a huge deal to say you are in violation of federal law having to do with a national security investigation," Zimmerman said last year. "That is extraordinarily aggressive from my standpoint. They're saying you are violating the law by challenging our authority here."

The case is a significant challenge to the government and its efforts to obtain documents in a manner that the EFF says violates the First Amendment rights of free speech and association.

In her ruling, Judge Illston agreed with EFF, saying that the NSL nondisclosure provisions "significantly infringe on speech regarding controversial government powers." She

noted that the telecom had been "adamant about its desire to speak publicly about the fact that it received the NSL at issue to further inform the ongoing public debate" on the government's use of the letters. She also said that the review process for challenging an order violated the separation of powers. Because the gag order provisions cannot be separated from the rest of the statute, Illston ruled that the entire statute was unconstitutional.

Illston found that although the government made a strong argument for prohibiting the recipients of NSLs from disclosing to the target of an investigation or the public the specific information being sought by an NSL, the government did not provide compelling argument that the mere fact of disclosing that an NSL was received harmed national security interests.

A blanket prohibition on disclosure, she found, was overly broad and "creates too large a danger that speech is being unnecessarily restricted." She noted that 97 percent of the more than 200,000 NSLs that have been issued by the government were issued with nondisclosure orders.

She also noted that since the gag order on NSL's is indefinite—unless a recipient files a petition with the court asking it to modify or set aside the nondisclosure order—it amounts to a "permanent ban on speech absent the rare recipient who has the resources and motivation to hire counsel and affirmatively seek review by a district court."

It's only the second time that such a serious and fundamental challenge to NSLs has arisen. The first occurred around an NSL that was sent in 2005 to Library Connection, a consolidated back office system for several libraries in Connecticut. The gag order was challenged and found to be unconstitutional because it was a blanket order and was automatic. As a result of that case, the government revised the statute to allow recipients to challenge the gag order. Illston found that unconstitutional as well in her ruling this week because of restrictions around how they could challenge the NSL.

In 2004, another case also challenged a separate aspect of the NSL. This one involved a small ISP owner named Nicholas Merrill, who challenged an NSL seeking info on an organization that was using his network. He asserted that customer records were constitutionally protected information. But that issue never got a chance to play out in court before the government dropped its demand for documents.

With this new case, civil libertarians are getting a second opportunity to fight NSLs head-on in court.

NSLs are written demands from the FBI that compel Internet service providers, credit companies, financial institutions and others to hand over confidential records about their customers, such as subscriber information, phone numbers and e-mail addresses, websites visited and more. NSLs are a powerful tool because they do not require court approval, and they come with a built-in gag order, preventing recipients from disclosing to anyone that they have even received an NSL. An FBI agent looking into a possible

anti-terrorism case can self-issue an NSL to a credit bureau, ISP or phone company with only the sign-off of the Special Agent in Charge of their office. The FBI has to merely assert that the information is “relevant” to an investigation into international terrorism or clandestine intelligence activities.

The lack of court oversight raises the possibility for extensive abuse of NSLs under the cover of secrecy, which the gag order only exacerbates. In 2007 a Justice Department Inspector General audit found that the FBI had indeed abused its authority and misused NSLs on many occasions. After 9/11, for example, the FBI paid multimillion-dollar contracts to AT&T and Verizon requiring the companies to station employees inside the FBI and to give these employees access to the telecom databases so they could immediately service FBI requests for telephone records. The IG found that the employees let FBI agents illegally look at customer records without paperwork and even wrote NSLs for the FBI.

Before Merrill filed his challenge to NSLs in 2004, ISPs and other companies that wanted to challenge NSLs had to file suit in secret in court—a burden that many were unwilling or unable to assume. But after he challenged the one he received, a court found that the never-ending, hard-to-challenge gag orders were unconstitutional, leading Congress to amend the law to allow recipients to challenge NSLs more easily as well as gag orders.

Now companies can simply notify the FBI in writing that they oppose the gag order, leaving the burden on the FBI to prove in court that disclosure of an NSL would harm a national security case. The case also led to changes in Justice Department procedures. Since February 2009, NSLs must include express notification to recipients that they have a right to challenge the built-in gag order that prevents them from disclosing to anyone that the government is seeking customer records. Few recipients, however, have ever used this right to challenge the letters or gag orders.

The FBI has sent out nearly 300,000 NSLs since 2000, about 50,000 of which have been sent out since the new policy for challenging NSL gag orders went into effect. Last year alone, the FBI sent out 16,511 NSLs requesting information pertaining to 7,201 U.S. persons, a technical term that includes citizens and legal aliens.

But in a 2010 letter from Attorney General Eric Holder to Senator Patrick Leahy (D-VT), Holder said that there had “been only four challenges,” and those involved challenges to the gag order, not to the fundamental legality of NSLs. At least one other challenge was filed earlier this year in a secret case. But the party in that case challenged only the gag order, not the underlying authority of the NSL.

When recipients have challenged NSLs, the proceedings have occurred mostly in secret, with court documents either sealed or redacted heavily to cover the name of the recipient and other identifying details about the case. The latest case is remarkable then for a number of reasons, among them

the fact that a telecom challenged the NSL in the first place, and that EFF got the government to agree to release some of the documents to the public, though the telecom was not identified in them.

The *Wall Street Journal*, however, used details left in the court records, and narrowed the likely plaintiffs down to one, a small San-Francisco-based telecom named Credo. The company’s CEO, Michael Kieschnick, didn’t confirm or deny that his company is the unidentified recipient of the NSL, but did release a statement following Illston’s ruling.

“This ruling is the most significant court victory for our constitutional rights since the dark day when George W. Bush signed the USA PATRIOT Act,” Kieschnick said. “This decision is notable for its clarity and depth. From this day forward, the U.S. government’s unconstitutional practice of using National Security Letters to obtain private information without court oversight and its denial of the First Amendment rights of National Security Letter recipients have finally been stopped by our courts.”

The case began sometime in 2011, when Credo or another telecom received the NSL from the FBI. EFF filed a challenge on behalf of the telecom in May that year on First Amendment grounds, asserting first that the gag order amounted to unconstitutional prior restraint and, second, that the NSL statute itself “violates the anonymous speech and associational rights of Americans” by forcing companies to hand over data about their customers.

Instead of responding directly to that challenge and filing a motion to compel compliance in the way the Justice Department has responded to past challenges, government attorneys instead filed a lawsuit against the telecom, arguing that by refusing to comply with the NSL and hand over the information it was requesting, the telecom was violating the law, since it was “interfer[ing] with the United States’ vindication of its sovereign interests in law enforcement, counterintelligence, and protecting national security.”

They did this, even though courts have allowed recipients who challenge an NSL to withhold government-requested data until the court compels them to hand it over. The Justice Department argued in its lawsuit that recipients cannot use their legal right to challenge an individual NSL to contest the fundamental NSL law itself.

After heated negotiations with EFF, the Justice Department agreed to stay the civil suit and let the telecom’s challenge play out in court. The Justice Department subsequently filed a motion to compel in the challenge case, but has never dropped the civil suit.

The redacted documents don’t indicate the exact information the government was seeking from the telecom, and EFF won’t disclose the details. But by way of general explanation, Zimmerman said that the NSL statute allows the government to compel an ISP or web site to hand over information about someone who posted anonymously to a message board or to compel a phone company to hand over “calling circle” information, that is, information about who

has communicated with someone by phone.

An FBI agent could give a telecom a name or a phone number, for example, and ask for the numbers and identities of anyone who has communicated with that person. “They’re asking for association information—who do you hang out with, who do you communicate with, [in order] to get information about previously unknown people.

“That’s the fatal flaw with this [law],” Zimmerman said last year. “Once the FBI is able to do this snooping, to find out who Americans are communicating with and associating with, there’s no remedy that makes them whole after the fact. So there needs to be some process in place so the court has the ability ahead of time to step in [on behalf of Americans].” Reported in: wired.com, March 15. □

The Merritt Fund

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schools

Easton, Pennsylvania

A full federal appeals court on February 20 heard arguments about whether school districts may bar students from wearing the popular “I ♥ Boobies” wristbands promoting breast-cancer awareness.

The U.S. Court of Appeals for the Third Circuit, in Philadelphia, is reviewing a 2011 decision by a federal district judge to block the Easton Area School District in Pennsylvania from enforcing a ban on the wristbands.

“The district court’s treatment of the constitutional issues raised threatens to open the school gates to a flood of cause-based marketing—energized by clever sexual double-entendres—that pushes the limits of propriety in public schools and imposes a substantial risk of disruption and distraction,” John E. Freund III told the Third Circuit.

Administrators at Easton Area Middle School believed the reference to “boobies” was vulgar and inappropriate for middle school students. Two students who were suspended for defying the prohibition challenged it in court through their parents as a violation of their First Amendment free-speech rights. The students are Brianna Hawk and Kayla Martinez, who are now in high school.

Their lawyer, Mary Catherine Roper of the American Civil Liberties Union of Pennsylvania, told the Third Circuit that “a school cannot censor student speech unless it can show its action was caused by something other than a mere desire to avoid discomfort or unpleasantness. In most instances, that means a showing of substantial material disruption or reasonable forecast of substantial material disruption.”

The case prompted a provocative hour-long argument before the thirteen members of the appeals court, with

the judges debating which U.S. Supreme Court decision on student speech the “boobies” case should be analyzed under, and whether the “boobies” slogan was inappropriate in schools.

Some judges sounded as if they accepted that the “I ♥ Boobies” wristbands, which are sponsored by the nonprofit Keep A Breast Foundation of Carlsbad, California, were at most ambiguous double-entendres that were meant to promote discussions of breast cancer in a way that would capture the attention of young people.

“I don’t see anything offensive about them,” said Judge Delores K. Sloviter, noting that the Third Circuit court had lost one of its members to breast cancer. “Breast cancer is offensive.”

Other members of the court were more sympathetic to the school district, citing the fact that other nonprofits have seized on suggestive phrases to promote awareness of diseases such as testicular cancer. Reported in: *Education Week*, February 21.

Shillington, Pennsylvania

The American Civil Liberties Union and the ACLU of Pennsylvania have sent a letter requesting that school officials at Governor Mifflin School District in Berks County stop using Internet filters that violate students’ First Amendment free speech rights. The district uses a “sexuality” filter that blocks sites that express support of lesbian, gay, bisexual, and transgender (LGBT) people, and an “intolerance” filter that blocks political advocacy sites that are labeled as intolerant.

Junior Maison Fioravante discovered that Governor Mifflin Senior High School was blocking access to web content geared toward LGBT communities while researching for a class project on social issues. However, sites for organizations that condemn homosexuality were not blocked. Fioravante circulated a petition and online video asking the school to stop blocking these sites, which has over 3,200 signatures.

“It’s not only important for support for LGBT students and those questioning their sexual identities to be able to access these sites, but also for students who simply want information for school projects,” said Fioravante. “It’s wrong for my school to determine that this kind of information is too sensitive for the student body.”

Fioravante was unable to access websites for organizations like the Gay, Lesbian & Straight Education Network (GLSEN), Safe Schools Coalition, Freedom to Marry, the Equality Federation and Lambda Legal. Those sites were blocked for falling into the commercial filtering software’s “sexuality” filter.

“Being able to access information on the Internet at the school library is not only critical for academic purposes, it can also be a lifeline for LGBT students in crisis who don’t feel safe seeking support on their home computers,”

said Reggie Shuford, executive director of the ACLU of Pennsylvania. “Blocking these sites not only violates the First Amendment, but it does a disservice to students trying to learn about themselves and the world around them.”

Although the “sexuality” filter blocks only websites that express an LGBT-supportive viewpoint, a separate filter called “intolerance” blocks some websites from organizations like the National Organization for Marriage and the Family Research Council, which oppose legal protections for LGBT people.

“Regardless of whether you support or oppose legal protections for LGBT people, these sorts of viewpoint-based filters puts everyone’s First Amendment rights at risk,” said Joshua Block, staff attorney with the ACLU LGBT Project. “If you give school officials the power to censor viewpoints they don’t like, they may use that power to block your own viewpoint too.”

Governor Mifflin School District uses filtering software from Smoothwall, Ltd. Last year, a federal judge ruled against a school district in Camdenton, Missouri, that refused to remove a similar discriminatory filter. The letter asked the district to advise the ACLU by March 14 whether and how it will address the filtering problem. Reported in: ACLU Press Release, February 27.

colleges and universities

Cambridge, Massachusetts

Bewildered, and at times angry, faculty members at Harvard criticized the university March 9 after revelations that administrators secretly searched the e-mail accounts of sixteen resident deans in an effort to learn who leaked information about a student cheating scandal to the news media. Some predicted a confrontation between the faculty and the administration.

“I was shocked and dismayed,” said the law professor Charles J. Ogletree. “I hope that it means the faculty will now have something to say about the fact that these things like this can happen.”

News of the e-mail searches prolonged the fallout from the cheating scandal, in which about 70 students were forced to take a leave from school for collaborating or plagiarizing on a take-home final exam in a government class last year.

Harry R. Lewis, a professor and former dean of Harvard College, said, “People are just bewildered at this point, because it was so out of keeping with the way we’ve done things at Harvard.”

“I think what the administration did was creepy,” said Mary C. Waters, a sociology professor, adding that “this action violates the trust I once had that Harvard would never do such a thing.”

Last fall, the administrators searched the e-mails of 16 resident deans, trying to determine who had leaked an

internal memo about how the deans should advise students who stood accused of cheating. But most of those deans were not told that their accounts had been searched until the past few days, after *The Boston Globe*, which first reported the searches, began to inquire about them.

Rather than the searches being kept secret from the resident deans, “they should’ve been asked openly,” said Richard Thomas, a professor of classics. “This is not a good outcome.”

Though some professors were disinclined to speak to a reporter, they showed less restraint online, where sites were buzzing with the news, and several professors said the topic dominated the faculty’s private conversations.

On his blog, which is closely followed by many people at Harvard, Dr. Lewis called the administration’s handling of the search “dishonorable,” and, like some of his colleagues, said the episode would prompt him to do less of his communication through his Harvard e-mail account, and more through a private account.

Timothy McCarthy, a lecturer and program director at Harvard’s Kennedy School of Government, posted about the e-mail search on Facebook. “This is disgraceful,” he said, “even more so than the original cheating scandal, because it involves adults who should know better—really smart, powerful adults, with complete job security.”

A resident dean generally has two Harvard e-mail accounts, a general one and one specifically for the post of resident dean. A Harvard official said the searches had been limited to the resident dean accounts and limited to message headers indicating whether the leaked e-mail had been forwarded to anyone; the official said no one had looked at the content of any e-mails.

The resident deans are employees who live in Harvard’s residential houses, alongside undergraduates, and counsel them on a range of matters. They also have appointments as lecturers—people who teach classes but are not on the tenure track for professors—and serve on various faculty bodies.

Several Harvard faculty members speculated that the administration had felt free to search the e-mail accounts because it regarded the resident deans as regular employees, not faculty members; Harvard’s policies on electronic privacy give more protection to faculty members. The prevailing view from professors seemed to be that the resident deans are faculty members.

“If their role as administrative deans means that they can be treated like staff,” Dr. Waters said, “then I do think that the e-mails of the president, provost and dean of the faculty should be turned over to the Faculty Council to investigate who ordered this witch hunt. If the resident deans don’t have protection as faculty, neither should any other faculty serving in an administrative capacity.”

The faculty policy states that while the administration can search a Harvard faculty e-mail account as part of an internal investigation, it must notify the faculty member

beforehand or soon after. In this case, the notification followed after about six months.

“So it would seem that the administration violated its own policy,” Michael Mitzenmacher, a professor and area dean of computer science in the school of applied sciences, wrote on his blog. As for the resident deans, he said, “as far as I can tell right now, they’re faculty under any reasonable definition the university gives.” The affair “is the kind of thing that make faculty think they need to push back or even rein in the administrative side of the university,” he said.

Some of the resident deans said they considered the lack of notice—and even the searches, themselves—a violation of trust, but they refused to speak for the record because they lack job protection.

Students said they knew little about the e-mail searches or had no particular view on them. It was not clear that the initial wave of ire from faculty members was representative of professors’ views, and there were a few dissenting voices.

“If you really want to keep things confidential, then you have to stop leaks; to do that, you have to stop those that are making the leaks,” said Harvey Mansfield, a government professor who has taught at Harvard for more than fifty years. “I think the resident deans are essentially functionaries. They’re part of the administration.”

Strong reactions extended beyond the campus. “This is, I think, one of the lowest points in Harvard’s recent history—maybe Harvard’s history, period,” Richard Bradley, a Harvard alumnus and author of the book *Harvard Rules*, a look at the tenure of a former university president, Lawrence H. Summers, wrote on his blog. “It’s an invasion of privacy, a betrayal of trust, and a violation of the academic values for which the university should be advocating.”

Last August, Harvard revealed that “nearly half” the students in a large class were suspected of having cheated on a final exam. The university would not name the class, but it was quickly identified by students as Government 1310, Introduction to Congress, which had 279 students last spring.

Days later, news organizations reported on an e-mail sent to resident deans. Among other things, the e-mail said they might suggest to students accused of cheating who were varsity athletes that they withdraw voluntarily, rather than face being forced out and losing a year of athletic eligibility. It was the leak of that e-mail that prompted the searches of the e-mail accounts. Reported in: *New York Times*, March 10.

St. Louis, Missouri

Efforts to measure the mood of Saint Louis University’s faculty members might in fact have worsened it, as the administration has threatened a faculty leader with a copyright lawsuit if he circulates his own version of a survey about the campus climate.

The dispute stems from faculty members’ dissatisfaction with climate surveys that the Saint Louis University Board of Trustees sent out in March to faculty members, students, and staff members. Although the board had the surveys developed in response to no-confidence votes taken by faculty members and students against the Roman Catholic university’s president, the Rev. Lawrence Biondi, just one of the 23 questions on the surveys asked specifically about him.

Most of the questions—posed as statements to which survey respondents are instructed to express their levels of agreement or disagreement—gauge attitudes toward the institution in general.

The Saint Louis University chapter of the American Association of University Professors responded to the board’s surveys by attempting to devise its own “AAUP Supplemental Survey” for faculty members that would include specific questions about Father Biondi. Where the university’s survey for faculty members asked how much they agreed or disagreed with the statement “The university appreciates the contributions of the faculty,” the AAUP survey would, for example, ask how much respondents agreed with the statement “The president appears to respect and value the faculty.”

A *St. Louis Post-Dispatch* article on March 27 mentioned the AAUP chapter’s plan for a survey. The next day the chapter’s president, Steven G. Harris, a professor of mathematics and computer science, received a letter from William R. Kauffman, the university’s vice president and general counsel, telling him that the university’s new surveys are copyrighted and any use of them would violate federal law.

Kauffman’s letter said that anything derived from the university’s surveys would likewise be regarded as a violation of the university’s rights. “Any infringement,” the letter said, “will be addressed by the university and could result in legal action” in which the university could seek injunctive relief, damages, and the recovery of any legal fees.

Harris responded to the letter by sending complaints to the AAUP’s national office and to the American Civil Liberties Union of Eastern Missouri. His letter to the local ACLU chapter said Kauffman had met with him personally, denied being under instructions to file a lawsuit if the faculty survey were distributed, and characterized the letter as merely advice. Nevertheless, Harris said, he regarded the lawyer’s letter as intimidating and an “attempt at suppression of free speech.”

B. Robert Kreiser, an associate secretary of the national AAUP in the department of academic freedom, tenure, and governance, said the university lawyer’s letter “borders on unconscionable” and “certainly supports the complaint that there is a climate of intimidation at the university.”

“I find it remarkable,” Kreiser said, “that the administration would invoke copyright as the basis for challenging the right of the chapter to conduct an evaluation of the president

or the administration of Saint Louis University generally.”

The local ACLU chapter has not responded to Harris’s complaint.

Clayton Berry, a spokesman for Saint Louis University, said that the institution had no comment on its lawyer’s letter to Harris. In a statement issued to the news media on March 26, the university said students and faculty and staff members had been involved in devising its confidential surveys, which is being administered by Psychological Associates, a local human-resource development firm.

The statement said the university’s Board of Trustees voted in December to have such surveys conducted annually by an external organization, but the first attempt “is more limited than what is expected in future years” because it is being conducted on a tight timeline.

“The survey seeks to provide the university’s Board of Trustees with a broad overview of three primary areas of interest and concern that have been expressed: communication, climate, and voice (the ability to make suggestions for change),” the university’s statement read.

Harris said that he and other members of the AAUP chapter were discussing how to proceed. He said he was not sure whether he would go ahead with the survey even if his own lawyer assured him that he could not be successfully sued for copyright violations.

“The issue,” he said, “is not whether the university will prevail in such a suit but whether I would be forced to run up enormous legal bills to defend against such a suit.”

The university is no stranger to invoking copyright law in a dispute with a faculty critic. In 2007 it filed a copyright lawsuit against Avis Meyer, a professor of communications and a journalism adviser, following a fight between the university’s administration and students over control of the student newspaper. The lawsuit accused Meyer of copyright or trademark infringement for having established a nonprofit organization with the same name as the student newspaper, *The University News*, in case students there decided to break away from institutional control and publish off campus. A federal judge dismissed the copyright- and trademark-violation accusations, but Meyer said that he ended up incurring more than \$100,000 in legal bills. Reported in: *Chronicle of Higher Education* online, April 2.

publishing

New York, New York

Three independent, brick-and-mortar bookstores have filed a lawsuit against Amazon and the big six publishers, claiming that they are violating antitrust laws by collaborating to keep small sellers out of the e-book market.

In a lawsuit filed February 15 in U.S. District Court for the Southern District of New York, the Book House of Stuyvesant Plaza and Posman Books, both based in New York, and Fiction Addiction, based in South Carolina,

alleged that they and other small bookstores were being deliberately forced out of the digital market as a result of agreements between the big publishers and Amazon.

“The contracts entered into between Amazon and the Big Six,” the complaint said, constitute “a series of contracts and/or combinations among and between the defendants which unreasonably restrain trade and commerce in the market of e-books sold within the United States.”

At the heart of the lawsuit is the idea that the top publishers signed secret contracts with Amazon that allowed them to code their e-books in such a way that the books could only be read on an Amazon Kindle device or a device with a Kindle app. The booksellers are pushing for open-source coding that would allow readers to buy e-books from any source and download them on any device.

They argue that the proprietary coding compels consumers who own Kindles or tablets with Kindle apps to buy e-books only from Amazon. The lawsuit states that the publishers have no similar contracts with independent booksellers. It also notes that Apple once used similar exclusive coding, known as DRM, in the music business, but that after a series of legal challenges, all music available on iTunes was made DRM-free.

The booksellers are seeking an immediate injunction to the practice, as well as damages. The six publishers named were Random House, Penguin, HarperCollins, Macmillan, Simon & Schuster and Hachette. The plaintiffs said their claim was a class action on behalf of other independent booksellers as well.

In a statement, Adam Rothberg, a spokesman for Simon & Schuster said, ““We believe the case is without merit or any basis in the law and intend to vigorously contest it. Furthermore, we believe the plaintiff retailers will be better served by working with us to grow their business rather than litigating.” Amazon said it would not comment on ongoing litigation. Reported in: *New York Times*, February 20.

broadcasting

Washington, D.C.

The FCC asked for public comment April 1 on whether the agency should cut back on its indecency enforcement to focus on only the most egregious cases. At the same time, the FCC announced that the agency had eliminated 70% of the agency’s pending indecency complaints—or more than one million—since September 2012, when Chairman Julius Genachowski directed FCC enforcement officials to focus on only the most egregious examples of alleged violations.

In its announcement, the FCC said that its massive backlog of indecency complaints had been slashed “principally by closing pending complaints that were beyond the

(continued on page 132)



libraries

Flagstaff, Arizona

Steve McQueen became a box office star when he drove a 1968 Ford Mustang GT to its limits while portraying a police detective in the movie “Bullitt.” In his personal life, the popular movie star moved even faster—he was married three times, professionally raced cars, drank and smoked heavily, and reportedly the police once found a hit list with his name on it.

But not everyone thinks his biography—*Steve McQueen, King of Cool: Tales of a Lurid Life*—should be on the shelves of the Flagstaff City-Coconino County Public Library.

The book was one of a handful that have been “challenged” by library patrons over the last few years in an attempt to have them removed or placed in a specific section of the building, explained Heidi Holland, the director for the local library district.

“When we receive a request to remove an item from the library, it is reviewed by library supervisors and then by the Flagstaff City-Coconino County Library Board,” Holland explains. The board then votes on a recommendation on how to handle each complaint.

Holland said a library board member volunteered to review the McQueen biography and reported back to the citizen-run group. The book still resides on library shelves for anyone to read, albeit in the adult section.

The most common complaint, Holland said, occurs in the Youth Services Department when someone believes that a particular book or other form of media is inappropriate for minors. Two graphic novels have recently been challenged by one local resident and resulted in two different outcomes.

Gankutsuo: The Count of Monte Cristo is a story of high school life with characters who are sons and daughters of Greek gods and had both mass murder and sexually explicit references. After review, it was moved to the adult section of the library. *Pantheon High*, which contains description of nudity and portrays the murder of at least one character, was catalogued as “Young Adult.” The designation indicates the book is for older teens and was allowed to stay in the Young Adult area of the library.

A book titled *Whale Talk* has been challenged, with a patron contending the front cover of a boy running “was too visual to have at eye level of younger patrons.” The book stayed in the library after the review, but it was moved to a higher shelf.

The library district does remove books from the shelves regularly, but mostly when they become out of date or have not been checked for an extended period of time. Reported in: *Arizona Daily Sun*, March 1.

Buffalo, Missouri

A committee has elected not to remove a coming-of-age novel from the library at the middle school in Buffalo after the principal filed a formal complaint against the book. Dallas County School District Superintendent Robin Ritchie said a committee consisting of Buffalo Prairie Middle School’s librarian, assistant principal, four teachers and two parents made the decision to keep Phyllis Reynolds Naylor’s 2009 novel *Intensely Alice* in the library.

“The committee voted unanimously to keep the book on the shelves with no restrictions,” Ritchie said. Ritchie added that the committee did discuss the possibility of being more proactive about informing parents that they can place their own restrictions on what their children can access in the library.

Ritchie said principal Matt Nimmo would typically have served on the committee, but that the assistant principal took his place. Nimmo filed the complaint, she said, “as a parent.” A grandparent of students had raised concerns about the book to the counselor, but did not take the formal step necessary to prompt the committee. Nimmo said he filed the complaint himself because he wanted to get the appeals process started as soon as possible after reading several “very questionable pages” featuring a safe sex scene. The grandparent, Nimmo said, did not bring the book to the counselor’s attention with the specific goal of having restrictions placed on it.

The complaint prompted letters in support of the novel from the American Civil Liberties Union and the American Library Association. The novel is part of a series of more than twenty books by Naylor that follows the main character Alice McKinley as she grows up.

“I also believe we’re the only school in our conference that has the books past the junior high,” Nimmo said. Nimmo said the committee’s decision will stand unless

someone with a connection to the school appeals it. In that case, he said, the school board would make the final decision. Nimmo said he does not plan to appeal the committee's decision. He has four children in the school district, including at the middle school.

Author Naylor said she understood the principal's concerns, but felt her book is appropriate for a middle school library. "I think it is, because kids by and large are much more experienced than Alice is," she said. Naylor said that her own children and grandchildren have read her books at the middle school age. It's not unusual for parents to object to scenes in the series, she said, but the vast majority of the feedback she receives is positive. "A good librarian will know what to tell students who read it," she added. Reported in: *Springfield New-Leader*, March 5.

Prosser, Washington

A review committee has recommended a book challenged for its portrayal of a family with two fathers remain on the shelves of libraries in two elementary schools.

The Popularity Papers, by Amy Ignatow, only is available to fifth graders in those two schools. The committee said it wants to keep that restriction in place. The committee—composed of teachers, administrators, parents and a student—also recommended the district notify parents that they are free to read books in the library themselves and limit their children's access to titles they don't want them to read.

"We need to allow parents to make that decision," said committee member K.J. Gilbertson, who also is a librarian in the district.

Rich Korb, the Prosser High School social studies teacher who filed the complaint against the book, told the committee the book should be removed because it isn't age appropriate, promotes a political issue and is a blow against the community's morals.

"We have clouded our academic purpose for political agendas," he told committee members.

The Popularity Papers is about two girls who want to unlock the secrets to being popular in middle school. One of the girls has two fathers, the other has only a mother. The book actually is part of a whole series about the girls' adventures, presented in a diary format.

District Librarian Vivian Jennings said the book is highly regarded by third- through fifth-graders around the state. It has been short-listed for the Washington Library Media Association's Sasquatch Award. Jennings contacted school librarians in the Kennewick School District, with four schools indicating it was made available to third- through fifth-graders, she said. She said the book's style and format are highly desired, as they invite repeated reading by children.

"The challenges and problems these girls face are ones children face every day," Jennings said.

Korb, who has also challenged another book, framed his opposition to *The Popularity Papers* by saying that it is up

to parents, not schools, to teach values to children. He hung signs on the front of his table with the phrases "This is the schoolhouse, not your house" and "Leave your personal issues in the hallway."

At the same time, in an apparent contradiction, Korb bemoaned the increasing removal of morals from the classroom. He cited the sexual revolution of the 1970s, the anti-establishment movement of the 1980s and the rash of school shootings beginning in the 1990s. "We are experiencing a moral shift in America and the line between right and wrong has become very cloudy," Korb said.

A few committee members said they personally didn't agree with the idea of two gay men or women raising a child, but did not think the book should be removed.

"For us to pass judgment on this book is to pass judgment on those families," said Deanna Flores, principal at Housel Middle School.

Some committee members said they didn't detect a political agenda behind the book. Most said the book was humorous and a good way to help girls, specifically those in the fifth and sixth grades, contend with the challenges of growing up.

"It hits the nail on the head for the tween years," said Peggy Valnes, an elementary school teacher.

Parents can restrict the books their children check out from the library, though Jennings acknowledged that kids have found ways around that system. Overall, the committee said it's a parent's responsibility to know what their children are exposed to and talk with them about it. Reported in: *Tri-City Herald*, February 8.

college

Dayton, Ohio

Ohio's Sinclair Community College (SCC) has settled a First Amendment lawsuit by revising an unconstitutional speech code that prohibited students and visitors from holding signs on campus. The plaintiffs' attorneys confirmed that the terms of the settlement have been accepted by the Ohio Attorney General's Office.

The lawsuit, filed last July on behalf of students Ruth Deddens and Ethel Borel-Donohue and invited speaker Bryan Kemper, director of Youth Outreach for Priests for Life, was prompted by SCC's violation of the First Amendment at a campus religious freedom rally held on June 8, 2012. At the rally, police officers forced event attendees and participants to put away their handheld signs communicating the protesters' message, citing the college's speech code.

SCC President Steven Lee Johnson told the *Dayton Daily News* that the ban on signs was necessary because of "safety and security" concerns. Invoking the tragic Virginia Tech shootings in 2007, Johnson said that banning signs was justified because signs could be used as weapons,

telling the *Daily News* that the restriction “has nothing to do with what was printed on those objects, but what those objects could be used for.”

Under the revised Campus Access Policy adopted by SCC in the wake of the lawsuit, “any person or group may use, without prior notification, any publicly accessible outdoor area” (with some exceptions) for the purposes of “speaking, non-verbal expressive conduct, the distribution of literature, displaying signage, and circulating petitions.”

“This settlement should send a clear message to colleges in Ohio and across the nation that unconstitutional speech codes aren’t worth defending,” said Greg Lukianoff, president of the Foundation for Individual Rights in Education (FIRE), which came to the students’ defense. “It’s outrageous to use the shooting at Virginia Tech to justify a blanket ban on holding signs at protests on a public campus. A ban on signs is an insult to our liberties and has no value in preventing violence on campus.”

On June 8, 2012, SCC’s Traditional Values Club (TVC) hosted a “Stand Up for Religious Freedom” rally on the SCC campus, one of more than 160 such rallies held on that day nationwide to oppose federal government mandates regarding abortion and contraception. Despite SCC’s obligation to uphold the First Amendment on campus, police ordered participants and attendees to put signs supporting the event on the ground, out of view. The censorship was documented with photo and video evidence.

Such censorship had apparently been taking place at SCC for more than twenty years. According to *The Clarion*, SCC’s campus newspaper, campus police had enforced a policy against signs at SCC since 1990, justifying this censorship through an extremely broad reading of the college’s Campus Access Policy.

FIRE wrote to President Johnson on June 15, 2012, asking SCC to disavow the censorship of TVC’s event by the SCC police and to promise never to enforce such a ban against signs in the future. SCC’s response was to ask for more time to make a decision and then to reiterate its policy.

After discussions with FIRE and the Thomas More Society, the plaintiffs filed suit in the U.S. District Court for the Southern District of Ohio with the assistance of Ohio attorneys Curt C. Hartman, Christopher P. Finney, and Bradley M. Gibson. The suit alleged that SCC, its Board of Trustees, President Johnson, and SCC’s police department maintained and enforced policies that restricted expressive activity at SCC (particularly spontaneous student speech in response to recent or unfolding events), gave unfettered discretion to administrators and the police to restrict student speech, and threatened students with disciplinary or criminal charges for exercising their First Amendment rights.

“It’s hard to believe that for twenty years, Sinclair Community College had been enforcing an absurd ban on holding signs at protests,” said Robert Shibley, FIRE’s senior vice president. “We’re glad that Sinclair Community

College and the State of Ohio realized that continuing to defend a ban on signs would not just fly in the face of the First Amendment, but would also be a profound waste of taxpayer money.” Reported in: thefire.org, March 12.

foreign

Putrajaya, Malaysia

Sisters In Islam (SIS) scored a long-awaited victory March 14 after the Federal Court threw out the government’s appeal to reinstate a ban on an SIS publication. The five-member Court found there was no evidence to show that the book, *Muslim Women and the Challenge of Islamic Extremism*, was “prejudicial to public order” as claimed by the Home Affairs Ministry.

This was the government’s second attempt to reinstate the ban on the book on the grounds that it was a threat to public order as its contents would “confuse the Muslim community, especially women.” SIS had argued that the book is a collection of academic writings based on research carried out by international scholars and activists. The book was first banned on July 31, 2008, two years after its circulation.

SIS filed a judicial review on December 15, 2008 which resulted in the High Court overturning the ban on January 25, 2010. An application by the Home Affairs’ Ministry to reinstate the ban was rejected by the Appeals Court on July 27, 2012.

“Here we have a book that has been in circulation for two years and nothing has happened,” Justice Tan Sri Suriyadi Halim Omar pointed out. “You’re too late by two years. If on the day it circulated you slapped this order, then perhaps you would be on better footing.”

Suriyadi also said that the then Home Minister, Datuk Seri Syed Hamid Albar, had taken an “over simplistic” position when he equated the banning of the book by the Islamic Development Department of Malaysia (Jakim) to it being a threat to public order. “The minister wasn’t applying his mind (in deciding to ban the book) but the mind of Jakim,” he said to laughter from the group of SIS board members that included Zainah Anwar and Datin Paduka Marina Mahathir. “And the question is whether that was sufficient (in banning the book).”

Senior Federal Counsel, Noor Hisham Ismail, attempted to argue that evidence of public disorder was unnecessary when the issue involved the purity of Islam and that the minister’s decision was sufficient, but the judges disagreed. Lead defense counsel Malik Imtiaz Sarwar told the media that the Federal Court judges had basically reaffirmed the Appeals Courts viewpoint than the ban was “an outrageous defiance of logic that falls squarely within the meaning of unreasonableness and of irrationality.”

The book’s editor, Associate Professor Norani Othman, said the decision was “rational” and proof that the previous

two judgements were correct. “There is really no basis to ban the book” she stated. “It is academic and sits in the libraries of all public universities to be used in reference to the teaching of gender studies.” Reported in: fz.com, March 14. □

2013 “Jefferson Muzzle” awards... from page 95)

and the International Reading Association Notable Book award.

Not everyone is a fan of the book, however. In the spring of 2012, the parents of a student in Pennsylvania’s Annville-Cleona school district objected to the book being in the elementary school library for fear it would teach children that “looking at nudity is okay and not wrong” and that “pornography is okay too.” Acting on their objection, the Annville-Cleona School Board deemed the book inappropriate for young children and voted to remove *The Dirty Cowboy* from the elementary school library.

The removal received national media attention. The American Library Association, the National Coalition Against Censorship, and an online petition signed by more than 300 local parents and taxpayers urged the Board to reconsider its action. As the American Library Association put it in a letter to the school board, “the school library has a responsibility to meet the needs of everyone in the school community—not just the most vocal, the most powerful, or even the majority. If a parent thinks a particular book is not suitable for their child, they should guide their children to other books.”

In taking the extreme step of removing the book from the library, the Annville-Cleona School Board ignored the views of many in the community that they serve, the many awards the book has received, and the opinions of the American Library Association and other professional organizations. By so doing the school board essentially declared that there is only one “reasonable” view on the book’s appropriateness for children—a view that earns the Annville-Cleona School Board a 2013 Jefferson Muzzle.

2) Prague (OK) High School Principal David Smith: Heck hath no fury like a principal scorned.

Prague, Oklahoma is a quiet town of fewer than 2,200 people, located about an hour east of Oklahoma City. The school district proudly calls itself “the home of the Red Devils,” a fact evidenced by the district’s official school logos: a snarling Satan for the high school; a mischievous, demonic imp for the middle and elementary schools. Of all the things that might raise eyebrows in such a Hades-happy hamlet, saying “hell” would figure to be pretty low

on the list. Yet, that’s exactly what happened when the high school’s valedictorian, Kaitlin Nootbaar, uttered that word in her commencement speech.

Nootbaar was describing to her fellow classmates and their guests how she had initially wanted to be a nurse, then a veterinarian, but when asked now, could only reply: “How the hell should I know? I’ve changed my mind so many times.”

Principal Smith, who had previously approved an advance copy of Nootbaar’s speech that used “heck” instead of “hell,” was so angered by the switch that when the straight-A student stopped by to pick up her diploma last August, he refused to release it to her until she wrote a formal letter of apology to him, the school board, and all of her teachers. Kaitlin and her parents felt that she had done nothing deserving of an apology and complained to the School Board.

Superintendent Rick Martin sided with Smith, stating that “the high school principal requested a private apology for her transgression before releasing her diploma. His request was both reasonable and in keeping with established federal case law interpreting the First Amendment.”

Superintendent Martin’s assessment of constitutional law is debatable. But even if he were correct, the withholding of Nootbaar’s diploma would still be deserving of a Muzzle. It is difficult to see how the use of the word “hell” in a speech at a school where the mascot is El Diablo himself and the students are known as the Red Devils—could be called inappropriate.

Nootbaar’s only sin was departing from her approved script. If Principal Smith felt that such a minor transgression nevertheless warranted some sort of reprimand, he could have done so by any number of less drastic means. Instead, Smith elected to deny the school’s best academic student the fruits of four year’s hard work.

High school graduation is a watershed event in the lives of most students. Unfortunately, Kaitlin’s Nootbaar’s memories of her graduation will be forever clouded by the fact she was not given her diploma. David Smith may be one hell heck of a principal, but his decision to hold Kaitlin Nootbaar’s diploma hostage was an egregious overreaction—one that earns him a 2013 Jefferson Muzzle.

3) Oklahoma City Public Schools Board of Education: Forget ‘rithmetic... Here, we’re all about readin’, writin’, and rootin’ for the home team!

When five-year-old Cooper Barton showed up to kindergarten one day wearing a University of Michigan t-shirt, the die-hard Wolverines fan had no idea that his shirt—navy, with “The Big House” in bright gold letters—violated a section of the district’s dress code prohibiting “Clothing bearing the names or emblems of all professional and collegiate athletic teams (with the exception of Oklahoma colleges and universities).” Upon discovering the offending t-shirt, the principal of Wilson Elementary instructed the

kindergartener to go behind a tree on the playground and turn his shirt inside-out.

Although the U.S. Supreme Court has held that the First Amendment permits public school officials a significant degree of discretion in regulating the expression of students during school hours, such discretion is not absolute. School officials are not permitted, for example, to impose policies that purposely discriminate on the basis of viewpoint. In a letter to the Thomas Jefferson Center, the Oklahoma City Board of Education defended the policy, stating its purpose had nothing to do with promoting Oklahoma colleges over their counterparts in other states. Rather, the policy was born out of a concern for student safety. “It is a fact of life that gangs and gang colors are an unfortunate fact in America today. . . . The intent of the policy was to address this concern. . . . At the time of conception, no gangs reportedly employed the primary colors of our two state schools.”

The eradication of gang violence in Oklahoma schools is without question a laudable goal, but it does not fully explain this provision of the school district’s dress code. For one, the policy says nothing about permissible colors, only “names” and “emblems.” Furthermore, Oklahoma has 27—not two—“state schools” with a color palate rivaling a jumbo box of Crayolas.

Public reaction to the incident was swift and overwhelming. Perhaps realizing that its treatment of Cooper Barton was likely unconstitutional, the school board quickly suspended enforcement of its “home teams only” policy. A task force was convened to develop a revised dress code, but as of April 2013—eight months after the incident took place—no action has been taken and the policy remains on the books.

As for Cooper, he became something of a folk hero among Wolverine fans. When the University of Michigan heard about his ordeal, the Barton family was invited to a home football game where they were honored on the field at halftime before more than 100,000 fans. The school also presented Cooper with a custom-made two-sided Michigan t-shirt—just in case.

For instituting a dress code policy that plainly discriminates on the basis of viewpoint—permitting Oklahoma-themed apparel while banning all others, enforcing that policy against a 5-year-old child, and attempting to justify its actions as necessary to prevent gang activity in its schools, the Oklahoma City Public Schools Board of Education earns a 2013 Jefferson Muzzle.

4) The North Carolina General Assembly: North Carolina school supplies: Pencils, paper, and a good attorney.

When North Carolina legislators enacted The School Violence Prevention Act in 2009, their intent was clear. “The sole purpose of this law,” they said, “is to protect all children from bullying and harassment.” Now, thanks to a 2012 amendment, that same Act could be used to go after

students accused of bullying their teachers or other school officials on the Internet.

The problem is twofold: First, the Act treats the same speech differently depending on where it appears. A student who vents against a teacher in the cafeteria is unaffected by the law, but identical comments made online could subject him to discipline, including—depending on his age—fines or imprisonment. As noted by the ACLU of North Carolina: “students have been complaining about their teachers for as long as there have been students and teachers. They’ve been writing it on bathroom stalls or carving it into desks. . . . Just because they post it online doesn’t make it suddenly any less protected.”

The second problem has to do with the language of the Act itself. The law, which went into effect December 1, 2012, prohibits online activity intended to “intimidate or torment” school employees. Legislators, however, neglected to define those terms, making it unclear what will violate the law. With no clear legal standard, the threat of arbitrary enforcement against students is significant. This last point is particularly troubling since the law expressly applies to statements made about school employees “whether true or false.”

Teenagers are prone to making rash and unflattering statements about others, including classmates and teachers. The harmful effects of this trait are no doubt increased when the statements are posted online, reaching a much larger audience than before the advent of social media. But while young people may lack discretion when it comes to making such remarks they are, by virtue of their age, also more susceptible to emotional injury when others direct hurtful comments towards them. Hence, one can understand laws directed at protecting children during this especially vulnerable age. By contrast, educators (hopefully) possess the maturity to react to student criticism with a tough skin and, if necessary, respond to most excesses within the school environment.

For those rare instances where a student engages in speech that is not protected by the First Amendment, existing laws are a sufficient deterrent. North Carolina State Senator Tommy Tucker, the sponsor of the bill, sees it differently. Tucker suggests that the law is necessary to protect teachers from malicious students: “These children are bright and conniving.”

But what Senator Tucker fails to appreciate is that the vagueness of the new law creates the very real possibility that students may be charged with a crime for speech that previously would have resulted in staying late after class. Moreover, the law discourages respect for free speech by teaching young people that government officials are above criticism.

North Carolina legislators amended a law intended to protect children from bullies so that it now threatens those same children with fines and criminal charges, while providing no clear guidance as to what conduct may result in

a student being branded a cyberbully. For this, the North Carolina General Assembly earns a 2013 Jefferson Muzzle.

5) The Idaho State Liquor Division: Idaho... making Utah look progressive since 2012!

In the United States, there are eighteen “control states” in which the wholesale and/or retail sale of alcoholic beverages is subject to a state monopoly. One such body, the Idaho State Liquor Division, offers the following description of its mission: “to provide control over the importation, distribution, sale, and consumption of distilled spirits; to curtail intemperate use of beverage alcohol; and to responsibly optimize the net revenues to the citizens of Idaho.”

Notably missing from that statement is any mention of protecting consumers from words or images that some of them might find offensive. Yet that is exactly what happened when a Utah company, Ogden’s Own Distillery, attempted to sell its award-winning “Five Wives Vodka” in Idaho. The Liquor Division refused to include Five Wives on its list of products available for sale at bars and in liquor shops after determining that the “concept” of the product was “offensive to a prominent segment of our population.”

Based on the Liquor Division’s explanation of its decision, Ogden’s Own concluded that the only group who might find the concept of Five Wives Vodka offensive was Idaho’s Mormon population. While Mormons make up 27 percent of the state’s population—certainly a “prominent segment”—they also, as a rule, do not drink alcohol and would presumably be very unlikely to encounter Five Wives in a bar or one of the state-run liquor stores.

When Ogden’s Own pointed this fact out to the Liquor Division and it was picked up in the press, the Division claimed that women, not Mormons, were the issue. Bottles of Five Wives Vodka feature a historical photograph of five 19th century women in bonnets and petticoats holding kittens near their lady parts. What this image has to do with the “concept” of the product is unclear, but according to Jeff Anderson, director of the Division, at least one female member on his staff found the label to be objectionable.

Anderson then added a new wrinkle to the controversy: Despite evidence to the contrary in its letter to Ogden’s Own, he suggested that the Division’s decision to ban Five Wives was unrelated to the label at all. Calling the award-winning spirit “an average product trying to get a premium price,” Anderson claimed that there simply wasn’t enough space for Five Wives alongside the 106 other similarly-priced vodkas sold by the state.

It wasn’t until Ogden’s Own threatened a lawsuit that the Liquor Division’s parade of justifications for the ban came to a halt. The agency agreed to make Five Wives available to customers in Idaho, but only on a special order basis. Bars and individuals can order Five Wives through the state, but liquor stores still may not stock it on their shelves. This status also means that Ogden’s Own may not engage in

the same type of advertising and promotional activities for Five Wives that are available to companies selling products stocked in the state-owned stores.

Because the value of speech is a completely subjective determination that can vary from person to person, the First Amendment does not permit government officials to impose their individual preferences on the public. As United States Supreme Court Justice Harlan famously wrote, “one man’s vulgarity is another’s lyric.” Whether one finds the “Five Wives” name and label amusing or offensive is a matter of personal taste. For believing it has the right to define what is offensive for all the citizens of Idaho, the Idaho State Liquor Division earns a 2013 Jefferson Muzzle.

6) Missouri State Rep. Mike Leara: Congress shall make no law abridging freedom of speech, unless it’s speech about gun control.

In the wake of the December 2012 shootings at Sandy Hook Elementary School in Newtown, Connecticut, the role of guns in American society has become hotly debated, perhaps more than ever before. Gun control advocates believe limiting the types of guns that can be privately owned would be an effective means to prevent, or at least reduce, incidents of gun violence. Proposals for restrictions on gun ownership are currently being considered at the federal, state, and local levels of government. Such proposals have met with strong opposition from those who believe the greatest protection against tragedies like Sandy Hook is gun ownership by law-abiding citizens, unimpeded by government regulation.

One point often overlooked in the gun control debate is that both sides share a common goal—the reduction of gun violence. The debate centers on the best means to achieve that goal. As such, most Americans can agree that even those with opposing views should have the right to participate in the gun control debate. There are some, however, who believe that merely proposing a law that restricts gun rights should be a criminal act.

Earlier this year, Missouri State Representative Mike Leara proposed a bill that provides “[a]ny member of the general assembly who proposes a piece of legislation that further restricts the right of an individual to bear arms, as set forth under the Second Amendment of the Constitution of the United States, shall be guilty of a class D felony.” Leara has stated that he has “no illusions” about his measure actually becoming law, but he unveiled his plan anyway “as a statement in defense of the Second Amendment rights of all Missourians.”

Unfortunately, Leara’s symbolic gesture of support for the Second Amendment is also a symbolic slap in the face of the First Amendment. Protecting political debate on issues such as gun control is at the very core of First Amendment protection. Yet Leara’s proposal suggests that the First Amendment should provide no barrier to silencing those legislators who disagree with him on gun control.

Leara's bill also disregards the Missouri Constitution, which provides that "[s]enators and representatives . . . shall not be questioned for any speech or debate in either house nor in any other place."

This Muzzle should not be interpreted as taking a position in the current gun control debate. In fact, this Muzzle is not even about gun control but rather concerns speech on the topic of gun control. Missouri State Representative Leara has the First Amendment right to express his strong opposition to proposed gun control measures. He earns a 2013 Jefferson Muzzle for believing his colleagues in the state legislature should not be entitled to the same.

7) The Democratic and Republican National Committees

"It's not the voting that's democracy; it's the counting."
—Tom Stoppard

"There is not a dime's worth of difference between the Democrats and the Republicans" is a sentiment that has been expressed by persons on the political left and right. The accuracy of the statement is, of course, a matter of individual judgment and opinion. Those believing it to be true, however, will find evidence to support their view in the 2012 national conventions of both parties.

As a practical matter, the role of the Democratic and Republican National Conventions in nominating their respective candidates for president has been reduced to a mere formality by the advent of the primary system. Delegates to both conventions are now largely selected through the state primaries based upon the candidate they intend to support. As a result, the party's nominee is decided months in advance of the "nominating" convention. However, the role of a convention delegate is not limited to selecting the party nominee. On a variety of questions, the delegates are called upon to vote, setting the party's direction on those matters for the next four years. At least that is what the Democratic and Republican National Committees (essentially the governing boards of the respective parties) would like us to believe.

At the 2012 Democratic National Convention in Charlotte, North Carolina, Los Angeles Mayor Antonio Villaraigosa presided over a voice vote of convention delegates to determine whether references to God and the designation of Jerusalem as the capital of Israel should be restored to the party platform. The removal of those references earlier in the convention generated a great deal of public outcry causing the Democratic National Committee to fear a backlash in the upcoming presidential election. A two-thirds majority was required to restore the references. Villaraigosa's first call for a voice vote resulted in an indistinguishable difference between the "ayes" and the "nays." After a second vote, when the delegates again appeared evenly divided, Villaraigosa consulted with a party official

on stage. He then called for a third voice vote, resulting once again in an even split among the delegates. This time, however, Villaraigosa declared that the resolution had passed, essentially muzzling the voice votes of half the convention's delegates.

At the Republican National Convention in Tampa, Florida, House Speaker John Boehner called for a voice vote to adopt new rules proposed by the campaign staff of presumptive nominee Mitt Romney, and endorsed by the Republican National Committee. The changes would make it easier for establishment candidates to dominate future conventions. Many delegates, including those supporting candidate Ron Paul, opposed the changes. After ignoring the objections of several delegates, Boehner proceeded with the vote. As with the Democratic Convention, the crowd appeared equally split among the "ayes" and "nays." Boehner nonetheless declared that the new rules had passed by the necessary margin. Amateur video footage later revealed that Boehner's teleprompter displayed the "result" of the voice vote seconds before the actual votes had been cast, suggesting that the outcome was pre-ordained by party leadership.

The major political parties are, of course, free to set the rules and procedures by which they run their national conventions. Yet encouraging delegates to speak out, only then to ignore what they say, is insulting both to the delegates and those watching from home. The Democratic and Republican National Committees apparently place a higher value on creating the appearance of open and free political discourse at their conventions than they do on actually engaging in such discourse. For their bipartisan action of ignoring the voices of half of the delegates at their respective conventions, a 2013 Jefferson Muzzle is awarded to the Democratic and Republican National Committees.

8) Maryland State Delegate Emmett C. Burns, Mayor Thomas Menino of Boston, Mayor Edwin Lee of San Francisco, and Mayor Rahm Emanuel and Alderman Joe Moreno of Chicago: Around here, we value tolerance so much, we won't tolerate anyone who doesn't!

In July 2012, Dan Cathy, president of the Chick-fil-A restaurant chain, publicly expressed his opinion that marriage should be defined as a union of a man and a woman. Since 2009, Baltimore Ravens linebacker Brendon Ayanbadejo has publicly advocated for legalizing same-sex marriage. Despite the fact that their views on the issue are diametrically opposed, Cathy and Ayanbadejo received very similar reactions from elected officials after publicly expressing their opinions.

Cathy's comments drew the ire of mayors and other elected officials from across the country who threatened to block expansion of the franchise in their cities. Chicago Alderman Joe Moreno threatened to use rezoning laws to block the opening of a new Chick-fil-A in his ward. "[T]here are consequences for freedom of speech," said Moreno,

and “in this case, you’re not going to have your first free-standing restaurant.” When asked if he supported Moreno’s plan to block the new restaurant, Chicago Mayor Rahm Emanuel stated, “Chick-fil-A’s values are not Chicago values. They’re not respectful of our residents, our neighbors and our family members and if you’re gonna be part of the Chicago community, you should reflect Chicago values.” Boston Mayor Thomas Menino wrote directly to Cathy, stating “[t]here is no place for discrimination on Boston’s Freedom Trail and no place for your company alongside it.” San Francisco Mayor Edwin Lee tweeted: “Closest #ChickFilA to San Francisco is 40 miles away & I strongly recommend that they not try to come any closer.”

A similar controversy arose when Maryland General Assembly Delegate Emmett C. Burns, apparently dismayed by Baltimore Ravens player Brandon Ayanbadejo’s outspoken support of marriage equality, wrote a letter to Ravens owner Steve Bisciotti requesting that he order Ayanbadejo to stop publicly advocating for same-sex marriage. Burns’ letter, written on his official government stationery, was clear that he was not writing as a private citizen, but as “a Delegate to the Maryland General Assembly and a Baltimore Ravens fan.” Burns asked that Bisciotti “take the necessary action . . . to inhibit such expressions from your employee and that he be ordered to cease and desist such injurious action.”

In fairness, it should be noted that the elected officials discussed here do not appear to have taken any actual retaliatory action against Cathy or Ayanbadejo. In fact, in the days that followed their initial statements, the officials conceded that the First Amendment prohibited their taking any such steps. Yet their concessions begs the question of why these officials didn’t know this in the first place? A citizen’s right to speak on the political issues of the day, free from government retaliation, is the very heart of the First Amendment. It is incredible that these elected officials, all of whom have sworn to uphold the Constitution, were unaware of this fundamental tenet of First Amendment protection.

Moreover, the subsequent recognition of Cathy’s and Ayanbadejo’s right of free speech does not undo the damage caused by the initial threats of retaliation. Fear that they could be subjected to similar threats or actual retaliation is sure to chill the expression of those holding different views than their elected officials. For their tardiness in recognizing the fundamental nature of First Amendment protection, 2013 Jefferson Muzzles go to Maryland State Delegate Emmett C. Burns, Mayor Thomas Menino of Boston, Mayor Edwin Lee of San Francisco, and Mayor Rahm Emanuel and Alderman Joe Moreno of Chicago.

9) U.S. Rep. Doug Lamborn, Chair, House Subcommittee on Energy and Mineral Resources: That’s the most inappropriate thing I’ve never seen!

Maria Gunnoe is a West Virginia mining activist, the recipient of many awards including the 2009 Goldman

Environmental Prize (the so-called “Green Nobel”), and a tireless advocate for the people of southern Appalachia. She has, on several occasions, been asked to testify on issues involving mountaintop-removal coal mining before Congress, a body that she considered largely unreceptive to her message.

Thus, when Gunnoe was invited by Rep. Doug Lamborn of Colorado to testify before the Energy and Mineral Resources subcommittee he chairs, she wondered what she could do to more effectively make her case. Adopting the old adage, a picture is worth a thousand words, Gunnoe decided to provide the subcommittee with a visual aid—a photo by award-winning photojournalist Katie Falkenberg depicting a five-year-old West Virginia girl bathing in murky orange water, the result of runoff from a nearby mountaintop-removal project.

When Gunnoe arrived on Capitol Hill, she was informed by a member of Lamborn’s staff that the photograph was “inappropriate” and that she could not display it during her testimony. Adding insult to injury, at the conclusion of her testimony, Gunnoe was approached by a U.S. Capitol Police officer who escorted her into a side room where the 44-year-old grandmother was questioned for almost an hour based on an anonymous tip that Gunnoe might be in possession of child pornography.

While the exact source remains unknown, there is no doubt that the complaint came from someone on Lamborn’s staff. Gunnoe emailed the image to Lamborn’s office two hours before the hearing was scheduled to begin. Lamborn denies ever having seen the photograph himself, but told *The Denver Post* that a member of his staff “had a serious question about whether [the image was] appropriate or not.” Based solely on that staffer’s recommendation, Lamborn ordered that the photo be removed from Gunnoe’s presentation. There is no indication that anyone other than Lamborn’s staff ever viewed the image prior to Gunnoe’s detention by Capitol Police.

The censoring of a congressional witness is bad enough, but to then smear her name with allegations of child pornography is simply reprehensible. Lamborn, however, remains unmoved. “I’m not going to issue an apology, and I don’t think the staff members involved are going to issue an apology,” he said, adding “I think this woman should consider what . . . she brings to hearings.”

The implication that what Gunnoe brought to the hearing was in at all comparable to child pornography is laughable. The mere fact that a photograph depicts a nude child does not exclude the image from First Amendment protection. Falkenberg’s photograph is but one example of a continuum of protected images—from candid family snapshots of newborns and children at play in the bath, to serious photojournalism such as the Pulitzer Prize-winning image of Kim Phuc stumbling naked down a road after being severely burned in a South Vietnamese napalm attack.

Rep. Lamborn’s blind reliance on a staff member’s

objection resulted in silencing a significant element of Maria Gunnoe's testimony regarding the effects of mountaintop-removal mining. As Gunnoe sees it "they didn't have anything else in mind other than stopping that photograph from being seen. And it wasn't because the little girl didn't have a shirt on. It was because she was bathing in mine waste."

For personally censoring the testimony of a congressional witness and condoning her further intimidation by means of baseless allegations of child pornography, Rep. Doug Lamborn earns a 2013 Jefferson Muzzle. □

in review...from page 100)

professor at SUNY, Buffalo, became one of five members of that faculty to challenge the Adler ruling, guessing correctly that the Court had changed and would welcome an opportunity to redress the injustice it had previously countenanced. Both his personal story—and those of other victims and challengers (as well as some implementers) of the purge—and the complicated legal chronicle of how the Court came to reverse itself are at the core of the book.

Heins is exceptionally well qualified to tell these stories. Both an attorney, who previously directed the ACLU's Arts Censorship Project and is the founding director of the Free Expression Policy Project, and a university instructor, who is currently a member of the American Association of University Professors' Committee A on Academic Freedom and Tenure, she has a remarkable ability to explain complex Constitutional issues and legal arguments in terms comprehensible to educated lay readers. But she is also a diligent researcher with a fine ear for the human element in her story, which make this both an exemplary work of history as well as legal scholarship.

Not the least of the book's several virtues is how it puts a very human face on the abstract issues of academic freedom, national security, and personal privacy that are at its center. Heins never forgets that both the targets of the purge and those, like Keyishian, who later challenged it were real people. Integrating personal interviews, archival sources, and newspaper reports, she dramatizes how individuals faced the difficult conundrum of choosing between saving a career and upholding principle.

Among her sometimes flawed heroes and heroines are the activists of New York City's Teacher's Union, most of whose leaders were among the more than two hundred city teachers who were either dismissed or resigned in response to the purge. At the university level, her treatment of the Queens faculty who lost their positions and who, even after *Keyishian*, had to fight for years to receive compensation for their sufferings, is exceptionally compassionate and compelling, especially the story of social scientist Vera

Shlakman, whose pathbreaking early social and economic history of the factory town of Chicopee, Massachusetts, was ahead of its time, but who never published another book despite an eventual return to academia as a professor of social work.

But for many readers the book's most important contribution will be its careful and informative account of the Supreme Court's evolution from almost craven accommodation to the Cold War purge under Chief Justice Fred Vinson to its more courageous stance in support of academic freedom under Earl Warren. The turning point was probably the landmark case of *Sweezy v. New Hampshire*, one of four "Red Monday" decisions issued in June, 1957, that collectively undermined the major legal pillars supporting the anti-Communist purge in general and the loyalty oaths in particular.

As Heins demonstrates, however, in *Sweezy* "while the four liberal activist justices (Warren, Black, Douglas, and Brennan) rested the ruling on due process, the Court's two conservative champions of judicial restraint would have recognized a full-fledged right to academic freedom" (181). It would be another decade before Brennan, writing for a narrow 5-4 majority in *Keyishian*, would proclaim for the Court: "Our Nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us and not merely to the teachers concerned. That freedom is therefore a special concern of the First Amendment, which does not tolerate laws that cast a pall of orthodoxy over the classroom" (215).

It is easy to forget today the narrowness of the majority on behalf of which Brennan wrote and the virulence of the dissents—and of the public response—that his words provoked. But as Heins's final chapters show, the academic freedom so eloquently defended by Brennan nearly fifty years ago, is hardly secure today. Although loyalty oaths of the sort that wreaked havoc not only in education but in the labor movement, Hollywood, and elsewhere in the 1950s and early '60s, no longer play much of a role in the twenty-first century political environment, Heins shows that the deeper conflict between freedom and security continues to percolate across American society in new ways, especially in the wake of 9/11 and the subsequent "war on terror."

In a profound and insightful fifteen-page conclusion, worth reading in its own right, Heins explores the ties between the emergence of academic freedom as a universal ideal and the history of the American Left; the role of established institutions and liberalism in defense (or lack thereof) of academic freedom; and the complex relationship between academic freedom as a matter of educational policy and of First Amendment right. Acknowledging that academic freedom may restrain as well as enhance free speech and that delineating its limits may not be easy, she nonetheless concludes that "the occasional difficulty of drawing lines is not a reason to give up on academic freedom" (279).

Heins concludes: “A primary lesson of the history recounted in this book is that the American political system is all too vulnerable to political repression and to demonizing the dissenter, both on campus and off. . . . Just as the anti-Communist panic of the Cold War triggered a political, and eventually a judicial, recognition of academic freedom, so in our post 9/11 world teachers, students, universities, judges, and the whole body politic should adhere to the promise of academic freedom” (282-83).

To which this reviewer can only say, “Amen!” Reviewed by – Henry Reichman, Editor, *Newsletter on Intellectual Freedom*; Professor Emeritus, California State University, East Bay; and First Vice-President and Chair, Committee A on Academic Freedom and Tenure of the American Association of University Professors. □

editorial dateline...from page 110)

Dubai and Abu Dhabi, the two richest and best known of the seven emirates that make up the U.A.E., are home to dozens of foreign branch campuses, including those of New York University and the Sorbonne.

The two emirates have invested heavily in making themselves international business and education hubs. But universities in the United Arab Emirates must obtain security clearances to hire professors and invite speakers, and public debates of any kind are tightly monitored. And ever since the Arab Spring, academics and human-rights groups have noted, the space for free public discourse has been shrinking.

Ulrichsen had “misgivings,” he said, about visiting the country, and “especially about giving a paper on Bahrain in the current climate.”

During the Arab Spring, Bahrain’s Shia majority staged vast street protests demanding greater political and economic participation. The ruling Sunni family treated the protests as a plot to overthrow the state and cracked down on them with the support of the ruling families of neighboring Sunni kingdoms.

Calls for reform in the oil-rich and socially conservative Emirates have been much more timid, but seem to have nonetheless unsettled the authorities. In the last year, they have denied several international organizations the right to operate there, passed a law restricting freedom of expression online, and detained dozens of activists and Islamist reformists.

Ulrichsen believes that an article he wrote last summer for the Web site OpenDemocracy, entitled “The U.A.E.: Holding Back the Tide,” may have played a part in his blacklisting. In the article, he criticized recent political repression and noted that it “calls into question

the judgment of international institutions that bought into the benevolent ‘images’ so carefully promoted by ruling elites. . . . With each new arrest, it will become progressively harder for these predominantly cultural and educational institutions to continue to justify their engagement with a country currently so inimical to the freedoms and values they claim to represent.”

The U.A.E.’s Ministry of Foreign Affairs statement also says that the decision not to allow Ulrichsen to enter the country “in no way reflects the strong ties with both the AUS and LSE and their academic excellence.”

“The U.A.E. states that education is a priority for the country as it develops,” said Matt J. Duffy, a former professor of journalism at the national Zayed University who was abruptly dismissed last summer. However, he said, incidents like this one and several others show that “security forces of the country often undermine this goal.”

Institutions such as the American University of Sharjah “have international accreditation,” noted Duffy, “so they are supposed to be able to teach and hold events that aren’t subject to censorship. These types of actions will severely hurt their chances of retaining international accreditation.”

Ulrichsen said that by daring the London School of Economics to acquiesce to their demands or cancel the conference, the Emirati authorities had “shot themselves in the foot.” They’ve put so much capital into international partnerships that when this sort of thing happens, it’s “incredibly damaging,” he said. The professor noted that the Emirates Foundation’s grant to his university’s Middle East Centre supports collaborative research between British and Arab and Emirati scholars. But he doubts the viability or value of such work, he said, “if we can’t even get in, let alone do free research.” Reported in: *Chronicle of Higher Education* online, February 25. □

is it legal? ...from page 122)

statute of limitations or too stale to pursue, that involved cases outside FCC jurisdiction, that contained insufficient information, or that were foreclosed by settled precedent.”

“The bureau is also actively investigating egregious indecency cases and will continue to do so,” the notice said, however.

In its notice, the FCC also said it is seeking comment on whether the agency should continue with current policies or leave or ignore “isolated expletives,” focusing instead on “deliberate and repetitive use [of expletives] in a patently offensive manner.”

“Should the commission treat isolated [non-sexual] nudity the same as or differently than isolated expletives?” the commission asked.

“While we build a record for the full commission’s consideration, the aforementioned directive to the bureau to focus its indecency enforcement resources on egregious cases remains in force and the commission and/or bureau may take enforcement actions during the pendency of this public notice,” the FCC said.

The FCC’s action is a response, in part, to the Supreme Court’s invitation in the *FCC v. Fox Television Stations* decision last June. In its decision in the Fox case, the high court vacated key FCC indecency enforcement actions that had been based on a beefed-up enforcement policy under which the agency was cracking down on even “fleeting expletives” and brief glimpses of nudity.

The high court said the FCC had not given broadcasters adequate notice that fleeting expletives and nudity would be subject to sanctions. The high court did not strike the regulations down as unconstitutional in Fox, opening the door for the agency to try to come up with an enforcement regime that could pass court muster.

“Because the commission failed to give Fox or ABC fair notice prior to the broadcasts in question that fleeting expletives and momentary nudity could be found actionably indecent, the commission’s standards as applied to these broadcasters were vague,” the high court said in its 8-0 Fox ruling.

The Fox case stemmed from the challenges of that network and other broadcasters to a 2004 decision by the FCC to adopt the stricter enforcement standard. The Supreme Court later combined the Fox case with another stemming from the appearance of actress Charlotte Ross’ bare buttocks on a 2003 episode of ABC’s *NYPD Blue*.

The FCC originally adopted the stricter standard—barring even “fleeting” indecencies—after entertainers Cher and Nicole Richie said “fuck” during Fox’s 2002 and 2003 broadcasts of the Billboard Music Awards.

Last September, Genachowski directed the agency’s staff to focus its enforcement efforts on only the most egregious of the more than 1.5 million pending complaints.

Parents Television Council President Tim Winter said in a statement: “On behalf of millions of families, the PTC firmly believes that the FCC should not limit indecency enforcement only to ‘egregious’ vs. isolated instances. The FCC is supposed to represent the interests of the American public, not the interests of the entertainment industry. Either material is legally indecent or it is not. It is unnecessary for indecent content to be repeated many times in order to be actionable, and it is unwise for the FCC to pursue a new course which will guarantee nothing but a new rash of new litigation.” Reported in: tvnewscheck.com, April 1. □

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