

newsletter
on
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no genre safe on 2012 'most challenged' list

A charming picture book, a Pulitzer Prize winner, a memoir, and a beloved children's series—no genre was safe from complaints from offended readers in 2012. *Captain Underpants*, *Fifty Shades of Grey*, and *Beloved* were among the most “challenged” books last year, according to the American Library Association's Office for Intellectual Freedom.

The top ten most controversial books, which the ALA released April 15, was determined by the number of “formal, written complaints filed with a library or school requesting that a book or other material be restricted or removed because of its content or appropriateness.” In total, 464 complaints were reported in 2012, up from 326 in 2011.

“One reason we think the number went up in 2012 is that we made challenges easier to report by including a portal on our web page,” said Barbara M Jones, director of the OIF.

So how do the authors feel about landing on this list? “It's pretty exciting to be on a list that frequently features Mark Twain, Harper Lee, and Maya Angelou,” said Dav Pilkey, author of the *Captain Underpants* series, in a statement. (The middle grade series has actually landed on the list before in 2002, 2004, and 2005.) “But I worry that some parents might see this list and discourage their kids from reading *Captain Underpants*, even though they have not had a chance to read the books themselves.”

The ten most-challenged books in 2012 were:

Captain Underpants series, by Dav Pilkey. “Offensive language,” and “unsuited for age group” were among the reasons readers wanted this popular kids' series banned.

The Absolutely True Diary of a Part-Time Indian, by Sherman Alexie. This National Book Award winner drew complaints for offensive language, racism, sexually explicit content, and content unsuited for its age group.

Thirteen Reasons Why, by Jay Asher. Readers listed “drugs/alcohol/smoking,” “sexually explicit,” “suicide,” and “unsuited for age group” as reasons to restrict this dark bestseller.

Fifty Shades of Grey, by E. L. James. Not surprisingly, library goers decried the raunchy bestseller for offensive language and sexually explicit content.

And Tango Makes Three, by Peter Parnell and Justin Richardson.

Library patrons wanted this children's picture book about two male penguins hatching an egg removed from shelves, citing “homosexuality” and unsuited for age group” as the rationale.

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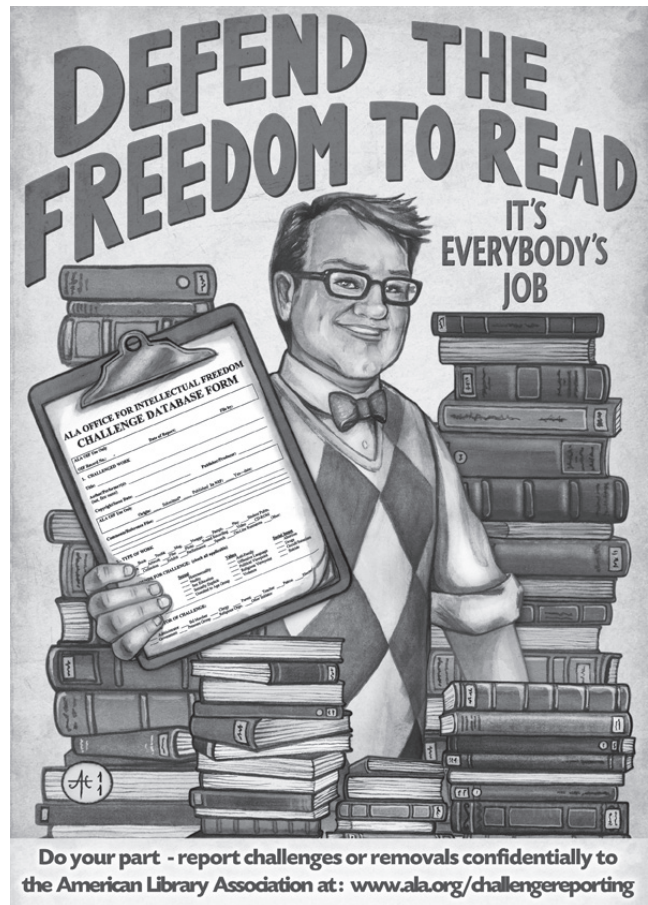
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Views of contributors to the *Newsletter on Intellectual Freedom* are not necessarily those of the editors, the Intellectual Freedom Committee, nor the American Library Association.

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state of America's libraries

The following is an edited version of the executive summary of ALA's annual report on The State of America's Libraries for 2012. For the text of the full report go to <http://www.ala.org/news/sites/ala.org.news/files/content/2013-State-of-Americas-Libraries-Report.pdf>

After an economic recession that has left about 12 million Americans unemployed and millions more underemployed, libraries continue to play a transformative role in their communities.

The more than 16,000 public libraries nationwide “offer a lifeline to people trying to adapt to challenging economic circumstances by providing technology training and online resources for employment, access to government resources, continuing education, retooling for new careers, and starting a small business,” Maureen Sullivan, president of the American Library Association, said in an open letter published July 10, 2012. Three-fourths of public libraries offer software and other resources to help patrons create résumés and find employment materials, and library staff help patrons complete online job applications, Sullivan wrote, responding to a June 8 post about the value of a library and information science master's degree on the *Forbes* website.

“More than ever, libraries are community hubs, and it is the librarian who works to maintain a safe harbor for teens, a point of contact for the elderly, and a place to nurture lifelong learning for all.”

The economic and social challenges that libraries and their patrons face are aggravated by the automatic federal budget cuts known as sequestration that went into effect on March 1, 2013, after Congress and the White House were unable to reach an agreement on tax reform and deficit reduction.

The full effects of sequestration on libraries and their patrons will become known only as time passes, but the library community and the ALA continued to explore various opportunities to secure funding for libraries. The ALA Washington Office in particular met with members of Congress and reached out to congressional staff to keep them informed about the services libraries provide to help everyday Americans.

Outlook especially gloomy for school libraries

Sequestration promised to aggravate an already bleak situation for school libraries, where the number of school librarians has declined.

“Budget cuts have eliminated support for many school library programs and the librarians who work in them,” John Palfrey, president of the Digital Public Library of America Board of Directors, wrote January 22, 2013, in *School Library Journal*. “These types of cuts to school libraries are short-sighted.”

As federal spending to the states shrinks, the states—many

already in a budget bind of their own—begin to cut aid to education, and that often means funding for school libraries.

ALA President Sullivan spelled out why this is a bad idea in her July 2012 open letter to *Forbes*:

“In schools across the country, librarians support teaching by providing students access to the tools and resources necessary to gain 21st-century learning and digital literacy skills to enable them to compete in a global economy,” she wrote. “Librarians are teaching students how to navigate the Internet and how to conduct research. They foster a love of reading and prepare them for college, where specialized academic and research librarians then continue to support and guide their education.”

Digital content: A focus, and an area of contention

“Digital content and libraries, and most urgently the issue of ebooks, continues to be a focus [of the library community],” ALA Executive Director Keith Michael Fiels wrote in the January/February 2013 issue of *American Libraries* magazine.

A Pew Internet and *American Life* study published at the end of 2012 indicated that the proportion of all Americans age 16 and older who read ebooks had increased from 16 percent to 23 percent, while the proportion of those who had read a printed book in the previous 12 months fell from 72 percent to 67 percent. The shifts coincide with an increase in the ownership of electronic book reading devices.

“The growth of electronic reading holds significant opportunities and threats for both public libraries and publishers,” David Vinjamuri wrote January 16, 2013, in *Forbes*. Public libraries may seem like a thorn in the side of embattled publishers, who are always on the lookout for the next *Fifty Shades of Grey* or *Hunger Games* and would prefer that the current fight over ebook pricing quietly disappear, according to Vinjamuri.

But he got it right when he wrote: “There is another side to public libraries in America: They are dynamic, versatile community centers. . . . More than half of young adults and senior citizens living in poverty in the United States use public libraries to access the Internet to ‘find work, apply to college, secure government benefits, and learn about critical medical treatments,’” among other things. “For all this, public libraries cost just \$42 per citizen each year to maintain.”

Meanwhile, libraries and publishers of ebooks continued to seek some middle ground that would allow greater library access to ebooks and still compensate publishers appropriately. So far, the progress has been slow, as some publishers either still flatly refused to make ebooks available to libraries or made them prohibitively expensive.

ALA President Sullivan was among those who strongly criticized the lack of progress by the largest publishers that were not yet making ebooks available to libraries. “It's a

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phone records of journalists seized by U.S.

Federal investigators secretly seized two months of phone records for reporters and editors of The Associated Press in what the news organization said May 13 was a “serious interference with A.P.’s constitutional rights to gather and report the news.”

The A.P. said that the Justice Department informed it on May 10 that law enforcement officials had obtained the records for more than twenty telephone lines of its offices and journalists, including their home phones and cell phones. It said the records were seized without notice sometime this year.

The organization was not told the reason for the seizure. But the timing and the specific journalistic targets strongly suggested they are related to a continuing government investigation into the leaking of information a year ago about the Central Intelligence Agency’s disruption of a Yemen-based terrorist plot to bomb an airliner.

The disclosures began with an Associated Press article on May 7, 2012, breaking the news of the foiled plot; the organization had held off publishing it for several days at the White House’s request because the intelligence operations were still unfolding.

In an angry letter to Attorney General Eric H. Holder Jr., Gary Pruitt, the president and chief executive of The A.P., called the seizure, a “massive and unprecedented intrusion” into its news gathering activities.

“There can be no possible justification for such an overbroad collection of the telephone communications of The Associated Press and its reporters,” he wrote. “These records potentially reveal communications with confidential sources across all of the news gathering activities undertaken by The A.P. during a two-month period, provide a road map to A.P.’s news gathering operations, and disclose information about A.P.’s activities and operations that the government has no conceivable right to know.”

The development represented the latest collision of news organizations and federal investigators over government efforts to prevent the disclosure of national security information, and it comes against a backdrop of an aggressive policy by the Obama administration to rein in leaks. Under President Obama, six current and former government officials have been indicted in leak-related cases so far, twice the number brought under all previous administrations combined.

Justice Department regulations call for subpoenas for journalists’ phone records to be undertaken as a last resort and narrowly focused, subject to the attorney general’s personal signoff. Under normal circumstances, the regulations call for notice and negotiations, giving the news

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U.S. maintains vast database of phone calls

The United States government has been compiling a huge database of calling logs of Americans’ domestic communications under a hotly debated section of the USA PATRIOT Act for at least seven years, the top lawmakers on the Senate Intelligence Committee said June 6. But before any particular caller can be scrutinized, the lawmakers said, counterterrorism officials must seek additional permission from a secret national security court.

Responding to the disclosure the previous evening of a highly classified court order seeking all of the customer communications logs of a subsidiary of Verizon Communications, Senator Dianne Feinstein of California and Senator Saxby Chambliss of Georgia said the order appeared to be a routine reauthorization as part of a broader program that lawmakers have long known about.

“As far as I know, this is an exact three-month renewal of what has been the case for the past seven years,” said Feinstein, the top Democrat on the Intelligence Committee. It was carried out by the Foreign Intelligence Surveillance Court “under the business records section of the USA PATRIOT Act,” she said. “Therefore, it is lawful. It has been briefed to Congress.”

The program appears to warehouse and analyze calling “metadata”—time and number logs showing when communications have been made, but not their content or the name of any subscriber—that the government analyzes to try to identify terrorists. Chambliss, the intelligence panel’s top Republican, said that under the rules of the program, when a computer program flags a number as suspicious, the authorities return to the national security court for permission to scrutinize that person more closely.

“It’s metadata only and it’s what we call minimized,” Chambliss said. “All of these numbers are basically ferreted out by a computer, but if there’s a number that matches a terrorist number that has been dialed by a U.S. number or dialed from a terrorist to a U.S. number, then that may be flagged. And they may or may not seek a court order to go further on that particular instance. But that’s the only time that this information is ever used in any kind of substantive way.”

Senator Lindsey Graham, Republican of South Carolina, told reporters that he did not have a problem with the surveillance program because it was imperative in the war on terror. “If we don’t do it,” Graham said, “we’re crazy.”

Representative Mike Rogers, Republican of Michigan and the chair of the House Intelligence Committee, said that the National Security Agency program helped stop a significant domestic terrorist attack in the United States in the last few years. He did not give more information on the

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NSA said to have collected data from Internet firms

The National Security Agency and the FBI are tapping directly into the central servers of nine leading U.S. Internet companies, extracting audio and video chats, photographs, e-mails, documents, and connection logs that enable analysts to track one target or trace a whole network of associates, according to a top-secret document obtained by *The Washington Post*.

The program, code-named PRISM, has not been made public until now. It may be the first of its kind. The NSA prides itself on stealing secrets and breaking codes, and it is accustomed to corporate partnerships that help it divert data traffic or sidestep barriers. But there has never been a Google or Facebook before, and it is unlikely that there are richer troves of valuable intelligence than the ones in Silicon Valley.

Equally unusual is the way the NSA extracts what it wants, according to the document: "Collection directly from the servers of these U.S. Service Providers: Microsoft, Yahoo, Google, Facebook, PalTalk, AOL, Skype, YouTube, Apple."

PRISM was launched from the ashes of President George W. Bush's secret program of warrantless domestic surveillance in 2007, after news media disclosures, lawsuits and the Foreign Intelligence Surveillance Court forced the president to look for new authority.

Congress obliged with the Protect America Act in 2007 and the FISA Amendments Act of 2008, which immunized private companies that cooperated voluntarily with U.S. intelligence collection. PRISM recruited its first partner, Microsoft, and began six years of rapidly growing collection beneath the surface of a roiling national debate on surveillance and privacy. Late last year, when critics in Congress sought changes in the FISA Amendments Act, the only lawmakers who knew about PRISM were bound by oaths of office to hold their tongues.

The court-approved program is focused on foreign communications traffic, which often flows through U.S. servers even when sent from one overseas location to another. Between 2004 and 2007, Bush administration lawyers persuaded federal FISA judges to issue surveillance orders in a fundamentally new form. Until then the government had to show probable cause that a particular "target" and "facility" were both connected to terrorism or espionage.

In four new orders, which remain classified, the court defined massive data sets as "facilities" and agreed to occasionally certify that the government had reasonable procedures in place to minimize collection of "U.S. persons" data without a warrant.

Several companies contacted by *The Washington Post*

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ALA Council Calls for Reforms To Support Privacy, Open Government, Government Transparency, And Accountability in Wake of NSA Surveillance Disclosures

On July 2, 2013, the ALA Council adopted a resolution addressing the issues raised by Edward Snowden's disclosures of secret court orders and other documents detailing how the National Security Agency (NSA) has engaged in mass surveillance of U.S. person's phone calls and Internet activities. In particular, the resolution sought to respond to the revelation that the Foreign Intelligence Surveillance Court (FISC) has every three months, for seven years, been renewing an order issued pursuant to Section 215 of the USA PATRIOT Act order to obtain phone records of all Verizon customers.

The use of the Section 215 authority to authorize broad surveillance programs targeting all Americans rather than single surveillance warrants pertaining to an individual represents an abuse of the law that has eroded everyone's fundamental rights and civil liberties.

The full text of the resolution is included below:

RESOLUTION ON THE NEED FOR REFORMS FOR THE INTELLIGENCE COMMUNITY TO SUPPORT PRIVACY, OPEN GOVERNMENT, GOVERNMENT TRANSPARENCY, AND ACCOUNTABILITY

Whereas, Public access to information by and about the government is essential for the healthy functioning of a democratic society and a necessary predicate for an informed and engaged citizenry empowered to hold the government accountable for its actions;

Whereas, "The guarding of military and diplomatic secrets at the expense of informed representative government provides no real security for our Republic,"

Whereas, The ALA values access to the documents disclosing the extent of public surveillance and government secrecy as access to these documents now enables the critical public discourse and debate needed to address the balance between our civil liberties and national security;

Whereas, These disclosures enable libraries to support such discourse and debate by providing information and resources and for deliberative dialogue and community engagement; and

Whereas, The American Library Association remains concerned about due process for the people who have led us to these revelations; and

Whereas, Libraries are essential to the free flow of ideas and to ensuring the public's right to know;

Whereas, Since 1939 the American Library Association

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2013 Hugh M. Hefner Awards

On May 22 the winners of the 2013 Hugh M. Hefner First Amendment Awards gathered in Los Angeles. Christie Hefner established the Awards in 1979 in conjunction with *Playboy* magazine's 25th anniversary to honor individuals who have made significant contributions in the vital effort to protect and enhance First Amendment rights for all Americans in the fields of journalism, government, book publishing and education. The winners received a cash award of \$5,000 and a commemorative plaque.

This year's Lifetime Achievement Award went to Norman Lear for his unwavering defense of the fundamental values laid out in the Bill of Rights, and his commitment to nurturing a new generation of young leaders fighting for the American Way. Lear has enjoyed a long career in television and film and as a political and social activist and philanthropist. Concerned about the growing influence of radical religious evangelists, Lear formed People for the American Way, a nonprofit organization designed to speak out for Bill of Rights guarantees and to monitor violations of constitutional freedoms.

Additional Award winners, many of whom are unsung heroes, came from various walks of life and include Jessica Ahlquist, a Rhode Island high school student, who is being honored with a Hugh M. Hefner First Amendment Award in the Education category for her courageous and successful lawsuit over a prayer banner in her high school, a clear violation of the Establishment Clause of the First Amendment.

Four distinguished journalists responded to the urgent need for cutting-edge transparency journalism to create the Freedom of the Press Foundation to support those organizations and individuals that publish leaks in the public interest. These four share an award in the Journalism category:

John Perry Barlow, cofounder of the Freedom of the Press Foundation and the Electronic Frontier Foundation, is a former Wyoming cattle rancher who also wrote songs for the Grateful Dead. His 1993 *Wired* essay, "The Economy of Ideas," was the first announcement that the music industry (as we then knew it) was doomed. He is currently working on turning sewage into jet fuel.

Daniel Ellsberg is a cofounder of the Freedom of the Press Foundation. He is best known as the whistleblower who released the *Pentagon Papers* to the *New York Times* in 1971. He receives a Hugh M. Hefner First Amendment Award for his indefatigable defense of a free and uncensored press and creating an organization to promote and fund aggressive public-interest journalism.

Rainey Reitman is a cofounder and chief operating officer of Freedom of the Press Foundation. She's also a founder and steering committee member for the Bradley Manning Support Network, a network of individuals and organizations advocating for the release of accused

WikiLeaks whistleblower Pfc. Bradley Manning. She serves on the board of the directors for the Bill of Rights Defense Committee, a nonprofit whose mission is to organize and support an effective, national grassroots movement to restore civil liberties, and on the steering committee for the Internet Defense League, which organizes Internet users to combat imminent threats to online rights.

Trevor Timm is the cofounder and executive director of the Freedom of the Press Foundation, which supports and funds independent journalism organizations dedicated to transparency and accountability in government. Since 2011, he has also been an activist and writer at the Electronic Frontier Foundation. He has contributed to *The Atlantic*, *Foreign Policy*, *The Guardian*, *The New Inquiry*, *Al-Jazeera* and *Harvard Law and Policy Review*.

Colonel Morris Davis, is former Assistant Director and Senior Specialist in National Security, Congressional Research Service, Library of Congress. Despite great risks, he expressed his personal views on the Guantanamo Military Commissions, a matter of intense public interest and debate, thus inspiring others to speak out. He received an award in the Government category.

A former chief prosecutor for the military commissions at Guantanamo Bay, Cuba, from 2005 to 2007, Davis resigned over political interference in the trials by the Bush administration and pressure to use evidence obtained by torture. He retired from the Air Force as a Colonel in 2008 before taking the position of senior specialist in national security and head of the Foreign Affairs, Defense and Trade Division at the Congressional Research Service from 2008 to 2010, when he was fired for writing opinion pieces critical of the Obama administration's Guantanamo policies for the *Wall Street Journal* and *Washington Post*. He currently is an assistant professor at the Howard University School of Law.

Marjorie Heins is a civil liberties lawyer, author and teacher. She is being honored for her book *Priests of Our Democracy: The Supreme Court, Academic Freedom, and the Anti-Communist Purge*, a chronicle of the history, law and personal stories behind the struggle to recognize academic freedom as "a special concern of the First Amendment." Marjorie is the founding director of the Free Expression Policy Project (www.fepproject.org). From 1991-98, she directed the American Civil Liberties Union's Arts Censorship Project, where she was co-counsel in several major First Amendment cases, including *Reno v. ACLU* (invalidating a law that criminalized "indecent" communications on the Internet). She has been a fellow at the NYU Frederic Ewen Academic Freedom Center, the Brennan Center for Justice at NYU School of Law, and the Open Society Institute. In 1991-92, she was chief of the Civil Rights Division at the Massachusetts Attorney General's Office. She is also a member of Committee A on Academic Freedom and Tenure of the American Association of University Professors.

censorship dateline



libraries

Delanco, New Jersey

The book has a cutesy, cartoon-style cover. It's called *The Middle School Survival Guide*, but the Delanco school district thinks its students at the Walnut Street School can survive without it.

When a parent brought the book to the school board meeting May 8 saying she thought the book provided too much information about sexual issues for middle school students, board members and Superintendent Barbara Behnke took a look at the content and agreed.

"Thank you for bringing it to us. We will make sure all copies are out of circulation," Behnke said.

"At first, I thought I was being paranoid," said the mother, who would not disclose her name. But she said the more she looked at the book, the more she thought it didn't belong in the school library. The school teaches sixth-through eighth-graders ages 12 to 14.

"We all agree," said board President Dennis Bryski as he and other members perused the book.

The Middle School Survival Guide offers no-nonsense instruction to the challenges faced by preteens and teens in social and family situations and discusses sexual relations, including pregnancy and serious sexually transmitted diseases. But board members thought it provided too much information on such subjects as "making out," oral sex, sexual intercourse, pregnancy and abortion for the intended readers.

The book states that "many religious groups believe sex should occur only between married couples, and that its function is to create children." It does warn students against getting pregnant and having an abortion. "No matter what your stance on abortion is—religious, political or otherwise—it is a decision that you should want to avoid having to make at all costs. And the only way to do that is to avoid

getting pregnant," author Arlene Erlbach advises.

The book jacket said the guide is intended for 10- to 14-year-olds. It was published by Walker & Co., a subsidiary of Bloomsbury Publishing. Emily Easton, publisher of Walker & Co., said it was the school board's prerogative to pull the book, but she thought that was not fair to parents who may want their children to have the knowledge.

"We feel children at that age are being exposed to a lot of risky behavior, and knowledge gives them power to know what they're facing and make an informed decision," she said.

Easton said some middle schoolers are engaging in sexual behavior that won't get them pregnant but can lead to dangerous, sexually transmitted diseases, and they should know what they are facing.

Erlbach is a teacher and the author of forty books. The *Survival Guide* has sold 15,000 copies since its publication in 2003. Behnke said the book received good reviews on book-selling websites. "It does have a good review from the School Library Association," she noted.

When board members asked how the school district approved books, Behnke said the administration did not approve library books, just books used for curriculum. Board member Harry Litwack said he was concerned about books that people donate to libraries and whether they are appropriate for children. Reported in: phillyburbs.com, May 10.

Lincoln City, Oregon

A parent's concern about a library book at Taft High 7-12 has sparked concerns about age-appropriate materials in Lincoln County schools and has opened discussion on what parents can do if they object to such materials.

Lincoln City resident Bridget O'Donnell said she was horrified when she found out her daughter had brought the book, *The Little Black Book For Girlz* home from school. "A classmate of my daughter checked the book out of the Taft High library and gave it to her," said O'Donnell. "All her friends had been talking about the book and when she brought it home she was kind of hiding it."

O'Donnell described the book as "very graphic."

"It is simply too graphic for a seventh grader and for my daughter," said O'Donnell. O'Donnell took her concerns to Taft High 7-12 administrators, requesting that the book be removed from the library shelves. "I want to make sure they have no other books like this at the school library," O'Donnell said.

Taft High 7-12 Principal Scott Reed said he was reviewing O'Donnell's request. Because O'Donnell had not returned the book to the school as of May 14, Reed had not looked through the book to make any decision.

"From the research I have done on the Internet about this book, people seem to be on extreme sides about it," said Reed. "It is a book about girls written by young adults, so

it's about all sorts of sexual issues like body parts, sexual things from a young adult's perspective."

According to Reed, the book is not being used as a teaching tool. "I try to keep my thumb on what the kids are reading," said Reed. "I haven't seen this book. The reviews that I have read seem to make sense that it is appropriate for students around eighth grade and older."

Reed, a parent with a seventh-grade daughter at Taft High, said he could relate to other parents' concerns. "Our librarian does a very thorough job and we run each book by a district committee made up of district staff and community members," said Reed. "If there is an issue, a parent can contact the librarian who would take the concern to the committee to decide if the book should be removed."

Reed said O'Donnell's concerns illustrate the processes the district has in place to deal with teaching materials. "We want to meet the needs of all our kids," said Reed. "There is a process in place in how books are chosen for our schools. If parents are uncomfortable with a particular book, they need let us know and we will support them. The book can be taken out of circulation. Our goal is to increase student learning and support our kids. We will do our best to protect her (O'Donnell's) child and to protect other students to access information."

Reed said parents might not know that they can have input about what their kids can check out at the school library. "The parent can put in an electronic note at the library with instructions about what can and can not be checked out by their child to help guide the kids," he said. Reported in: thenewsguard.com, May 15.

schools

Palmer, Alaska

Art students at Palmer High School are claiming censorship after school officials covered up an annual art show.

Over the last year, sixteen students in the International Baccalaureate program at Palmer High worked diligently to make sure their year-end art show was ready for display. Their works—a mix of paintings, drawings and sculptures—went on display early in April in the school's upper commons area—the school's main lobby.

Despite some graphic elements, most students accepted the work—until one school visitor didn't. The school, citing that people using the school had no choice to opt out of the show, placed a red paper barrier around the works before later taking them down.

Students claimed censorship, while Palmer principal Reese Everett called that characterization "inaccurate."

"For a variety of things, an issue arose out of respect for individuals that might use facilities in the evening," Everett said. "They didn't have a chance to have the option of viewing the works or not viewing the works because of where the display is located."

Everett said he and the school district worked to come to a solution that included moving the show to the school's library—an area where people could make a conscious decision to subject themselves to the show's controversial elements, which include depictions of nudity, homosexual relationships, school violence, gender/transgender identity and cultural taboos.

But students said their First Amendment rights were being violated. "We worked all year for this," said junior Lindsey Barbee, "This is not an art seclusion, this is an art show. We deserve an explanation, we don't deserve to be shoved in a corner somewhere."

The show itself isn't anything new for Palmer High School. It's part of the school's International Baccalaureate (IB) diploma program—an educational program designed to help students prepare for college that Palmer High has participated in for the last eleven years. The program prides itself as giving students a balanced, comprehensive education. Art is a critical component.

As part of an IB visual arts course, students must create a body of work, documenting the process and influences, with the entire process culminating in a public art show. That show went up on April 5 with little outcry. According to Palmer High Art Instructor Shelli Franckowiak, issues over the show arose when a parent who attended a basketball awards event earlier in the week was offended by some of the imagery in the show and emailed the principal, school district superintendent and local lawmakers.

By April 10 the red paper was up surrounding the exhibition. The next day students learned they had two options—either move the show to library or take the art down. Students, upset, went with the latter option, but placed posters in place of their art in demonstration.

"The protest was to bring awareness that we aren't going to go down without a fight and we deserve to have our voices heard," Barbee said.

Franckowiak noted students get to decide the content of their work. While many of them connect studio pieces to a common theme of their own choosing, the IB program does not limit what students create. "Their art is so personal, it's essentially extensions of them as people," Franckowiak said. "To censor them or to put it in a less popular space, is sending a strong message to who these are as kids."

Junior Jordan Brooke's 6-foot-long drawing of an AR-15 rifle was inspired by the slew of recent mass shootings in the U.S., in particular, the Sandy Hook Elementary School massacre. She created the work to promote awareness, not violence. Brooke has a 7-year-old sister, and the deaths of 26 students deeply affected her.

Brooke was disappointed that instead of talking to students, administrators were quick to react to works by covering them up. "Art is not an argument, we want to deal with (the censorship) in the most professional way," Brooke said. "It's really hard to not be angry, especially with them saying they don't want it without talking to us."

Artist Lee Post, best known for his “Your Square Life” comic, was one of a handful of professional artists who offered to help with the students’ year-end portfolio review. He said it was clear from talking to students that their artwork was reflective of the influences they absorbed in their research and things they felt passionate about.

“Some of their work included nudity and some had images of violence, but it was all done with purpose and not simply to shock or see what they could get away with,” he wrote.

It’s not the first time the Matanuska-Susitna Borough School District has dealt with controversial art in its schools. Last year, administrators at Wasilla High School placed a tarp over a statue commissioned as part of the state’s One Percent for Art program after some complained it resembled female genitalia. The tarp was eventually removed, and the statue still stands at the entrance to Sarah Palin’s alma mater.

Franckowiak said she discussed the Wasilla incident with her students last year as a lesson in censorship. She was disappointed that it hit close to home this year. “The bigger question mark is what precedent does it set?” she said. “As an educator that is my big question. What is OK in our English classes for students to read? What masterworks can I show with my art history students? Where does it stop?”

The Palmer High students will still get their show, as they’ve been allowed put the works back up in their original spot for an opening night from 6 to 8 p.m. Where the show will go from there is unclear. But for Barbee and the rest of the students, it’s been a first-hand lesson in the power of ideas.

“It’s extremely unacceptable and it’s violating the right of artists,” she said. “Administrators are completely disregarding (the First Amendment) and doing what one person thought was right.” Reported in: *Alaska Dispatch*, April 12.

Glen Ellyn, Illinois

The Glen Ellyn School District 41 Board of Education on May 6 nixed a recommendation to keep a controversial novel in eighth-grade classrooms at Hadley Junior High School after two parents requested to have it removed because of its mature content.

The book, *The Perks of Being a Wallflower*, by Stephen Chbosky, has been available to eighth graders in literacy classrooms for independent reading. Per the school’s literacy curriculum, students could choose to read a book and put it down at any time.

Hadley parents Jen and Brian Bradfield submitted their request after their daughter stopped reading the book because of its disturbing content, including references to bestiality and coupons for free oral sex. Upon reviewing the request, researching reviews of the book and hearing from the Bradfields and the teacher who recommended the book,

a committee composed of Hadley teachers and administrators, one parent and a district administrator recommended the district keep the book at Hadley. The recommendation also included an increase in communication with parents to remind them of the importance of parental awareness of students’ book choices.

“We can’t even describe to you how hurt we are that this was allowed, or recommended to her,” Jen Bradfield told board members. “There are specifics of a boy making a fake coupon advertising a free blowjob—this is what our daughter read,” she said. She read from the book, “‘There was a guy Carl Burns and everyone called him C.B. and one day he got so drunk at a party, he tried to (have sex with) the host’s dog.’ I don’t see a place for this for 13-year-olds,” she said.

Brian Bradfield said the book’s content—bestiality, homosexuality, heterosexuality, oral sex for money—raised questions an eighth grader shouldn’t have to ask. “I didn’t want to have this conversation with my daughter in eighth grade,” he said. “It’s hard not to get emotional and upset because we’re here talking about things we never thought we’d talk about... Our innocent child has already been tainted.”

According to a publisher’s description on Amazon, the book is a “haunting novel about the dilemma of passivity vs. passion... the story of what it’s like to grow up in high school. More intimate than a diary, Charlie’s letters are singular and unique, hilarious and devastating.”

Hadley literacy teacher Lynn Bruno said while many Hadley students have supportive and caring parents like the Bradfields, there are students facing issues similar to those depicted in the book and don’t have supportive parents to look to for guidance.

“Like it or not, your daughters and sons in eighth grade heard the word ‘blowjob,’” Bruno said. “I’ve been at this for thirty years... What they are exposed to in terms of dialogue, in terms of media... I don’t like it any more than you do, but it’s (out) there.”

She added books like *Perks of Being a Wallflower* are valuable because of the lessons students can learn from characters’ decisions in difficult situations. “I have children in my classroom who need this knowledge now because they’re facing those issues... You cannot take away from children who need to have those conversations... just because it upsets some other children.”

Board member Sam Black said while he’s reluctant to censor material, he agreed the issues addressed in the book have no place in a middle school. Board member Terra Costa Howard said her two daughters, in eighth and ninth grade, have both read the book and that she couldn’t support removing the book from classrooms.

“The book was a suggestion (to my child) and she brought it home and we looked at it and talked about it, and she read it. ...As a parent, that is my responsibility,” she said. “We, as parents and as board members who have

been around, cannot in today's day and age put our heads under the sand and think our children don't know, and are not exposed to, (these) things... We live in an age where these kids are exposed to things much sooner than we want them to be."

Board president Erica Nelson, who also voted in favor of the recommendation to keep the book, said the issue is subjective. "This book might not even be appropriate for someone in ninth or tenth depending on their maturity level, but it might be appropriate for somebody at the end of eighth grade (with a different maturity level)," she said.

The board voted 4-2 against the recommendation. Board member John Kenwood was not present for the vote.

Following the vote, District 41 parent Betsy Pringle suggested Hadley staff implement a rating system for books, so parents could be made aware of potentially controversial books available to students. Reported in: *Glen Ellyn Patch*, May 7.

student press

Sherwood, Oregon

Sherwood High School administrators axed a controversial article from the high school newspaper in April, raising questions about the scope of Oregon's student expression law. Administrators feared the op-ed, which criticized the school board for not renewing the lacrosse coach's contract, would cause a disruption and said that it contained inaccuracies.

The issue was particularly sensitive because the coach's wife, a teacher at Sherwood High, was put on leave following allegations of inappropriate sexual conduct with a student. She has not been charged and the investigation is continuing.

When students learned the coach lost his position in January, they passed petitions, talked of organizing a walk-out and a trip to the school board meeting and posted on Twitter and Facebook. That justified pulling the article to prevent further disruption, said associate principal Ken Bell.

The newspaper's editors say they don't buy that rationale. Neither do some First Amendment activists.

The lacrosse coach, Adam Keese, is a Sherwood police officer and was the school's resource officer until December. Keese sent lacrosse players and families an email on January 14 to say the district did not renew his coaching contract after he refused instructions to resign.

More than a dozen students and players testified at the January school board meeting to protest the decision. The school board declined to say why Keese's contract was not renewed, but cited concerns for student safety and potential liability. Neither Sherwood Police nor the Washington County Sheriff's office has investigated Adam Keese, authorities said.

Parker Ward, an editor-in-chief at the *The Arrow*

newspaper and varsity lacrosse player, wrote an opinion article defending his former coach. "We thought that it was completely unfair for him to be stripped of the coaching position, and, if anything, the school should have been supporting him because he was our resource officer, and he was a successful lacrosse coach," Ward said.

As usual, students submitted page proofs to administrators for final approval. Bell and Brian Bailey, also an associate principal, had issues with the op-ed. "We felt like the printing of this article would be a disruption to the educational environment," said Bell, who will be the school principal next year.

Students and administrators dispute what happened next. Ward says that Bailey said he was upset about the article's tone, so the paper ran a softer, revised version. Bell says the students were told not to run the article at all and pointed out problematic passages.

When administrators discovered that *The Arrow* published April 22 without final permission, they prevented the staff from distributing it. The issue was reprinted and distributed three days later with Ward's article replaced by a critique of dumb photos shared on Facebook.

Under a 2007 Oregon law, school administrators can block articles if they create a clear and present danger of a "material and substantial" disruption, a nationwide standard adopted by the U.S. Supreme Court. Oregon's student free-speech protections are stronger than those of many other states, requiring school officials to rely on past experiences to demonstrate student speech would cause such a disruption.

That's a high standard, First Amendment advocates say. "A disruption has to be a physical event that prevents the operation of the school," said Adam Goldstein, an attorney with the Virginia-based Student Press Law Center.

For example, an Arizona court upheld a school's decision to confiscate signs supporting a fired English teacher because of a planned walkout. Courts have upheld confederate flag bans at schools with histories of racial-tension-fueled fistfights.

Bell said multiple teachers had complained that the students were disrupting the learning environment by organizing and posting on social media during class. But petitions and tweets don't amount to a substantial disruption, some First Amendment attorneys said. They were also dubious if an article could reignite those passions four months later.

"If students were tweeting and handing out petitions in classes, that's against school rules. Those are separate actions that can be dealt with separately," said Mike Hiestand, a First Amendment attorney from Washington.

Bell said the administration will ask to see articles further in advance to prevent similar last-minute changes. He said the school doesn't discourage students from writing about controversial issues, pointing to other "edgy" articles in the paper, including an editorial critical of the district's proficiency learning policy in March and a spread about

drug and alcohol use in April.

The Arrow's other editor-in-chief, Talea Stashin, said the newspaper has a responsibility to address controversial issues. "If they are talked about in the hallway, they need to be talked about and set straight in our paper," Stashin said.

Student papers play an even more important role in age where student gossip spreads quickly on social media, said Gene Policinski, executive director of the First Amendment Center, a nonprofit based out of Vanderbilt University and the Newseum in Washington, D.C. "Do you want a discussion in which there's an open exchange of ideas, some of which you won't like," Policinski said. "or do you want an underground discussion in which rumor and misstatements might run rampant, and no one might be held accountable?" Reported in: *Portland Oregonian*, May 15.

colleges and universities

New Brunswick, New Jersey

A long-simmering feud between the prominent evolutionary theorist Robert Trivers and a colleague at Rutgers University took a strange turn in April, when Trivers revealed that he had been banned from the New Brunswick campus for five months last year for violent and threatening behavior.

He said the accusations were trumped up, prompted by his efforts to bring an alleged academic fraud to light. Trivers said he was allowed back on the campus last fall, provided that he stay at least twenty feet from the office of a colleague he'd argued with.

In "Fraud at Rutgers," an angry post on his Web site, he explicitly contrasted his treatment with that of the men's basketball coach, Mike Rice, who—at first—received a mere three-game suspension when the university became aware of his beaming players with basketballs and shouting slurs at them. (Rice was subsequently fired.)

"Rutgers turns a blind eye to real violence by its basketball coach but uses its antiviolence policy to harass a professor with no violent tendencies but who is acting as a whistle-blower," Trivers wrote.

Lee Cronk, the anthropology professor from whose office Trivers has been banned, said that when Trivers confronted him in March 2012, he felt genuinely disturbed. The university declined to comment on the subsequent investigation, which—according to documents provided by Trivers in which he responded to the charges—found a pattern of violent or threatening behavior by Trivers.

The professor's reference to whistle-blowing opens the door to a complex saga of academic infighting, one that involves both substantive and personal issues. Since 2008, Trivers has contended that one of his six co-authors on a 2005 paper, "Dance Reveals Symmetry Especially in Young Men," published in *Nature*, had doctored the data, leading

to a bogus result.

That researcher, William M. Brown, a statistical specialist and onetime Rutgers postdoc who left the university in 2005, now teaches at the University of Bedfordshire, in England. Cronk was another co-author, and he and Trivers had disagreed about how the case should be pursued, with Trivers pushing for a retraction and a declaration of fraud, and Cronk apparently defending Brown and the paper. Cronk said that only on Trivers's side did what might have remained an intellectual exchange turn into a bitter feud.

Out of frustration that *Nature* would not retract the paper, Trivers in 2009 self-published, with two new co-authors, a short book, *Anatomy of a Fraud*, making the case against Brown's work. The book, however, was little noticed, and the original paper continues to be cited.

In April 2012, more than two years after the university started an investigation of the matter, a Rutgers committee largely upheld Trivers's view of the paper: "Substantial (clear and convincing) evidence exists that research fraud has occurred in several areas," it concluded, rejecting defenses mounted by Cronk and Brown.

"The university sinned in resisting revealing the fraud for as long as possible," said Trivers.

Rutgers reported its findings to the National Science Foundation, which had paid for the study. Both Brown and Cronk said they would not comment on the methodological debate until an NSF review was completed.

The dispute over the *Nature* paper erupted at Rutgers last March in an encounter in Cronk's office, after Trivers read a draft of the committee's report. According to documents provided by Trivers, university officials established the following: "When [Cronk] asked [Trivers] to send an e-mail and leave his office, Professor Trivers refused to leave and started yelling at his colleague, at one point referring to him as a 'punk.'" Trivers "continued to yell" even as Cronk threatened to call the campus police.

Trivers said he sought out his colleague because Cronk, as acting chair of the Center for Human Evolutionary Studies, had not replied to two e-mails. He also said Cronk picked up the phone to dial the police even before he'd asked Trivers to leave.

The "you punk" comment, Trivers contended, was a last-second jibe on his way out the door—it was how he capped off a pointed comment to the effect that the university had sided with him on the fraud question. Given that four graduate students were in the room at the time, Trivers wrote last fall in a response to the university, "in no way was Cronk isolated or under any threat."

"In retrospect," Trivers said, "I would have preferred to have left off the 'you punk,' but he richly deserved it."

Cronk disputed Trivers's account, saying he mentioned calling the police only as a last resort, when Trivers, with whom he hadn't spoken in three years, refused to leave the room while shouting abuse at him. As a condition of taking over the leadership of the evolutionary-studies center,

Cronk said, he was exempted from decisions involving Trivers. Still, he said, there was only one e-mail from Trivers to which he did not reply, a routine one that didn't demand a reply—a year before the encounter. And there were two graduate students in the room, not four, both of whom backed his version when interviewed by the university, he said.

Trivers is widely recognized as a difficult genius. After a mental breakdown derailed him from law school—he has acknowledged a bipolar disorder—he entered graduate school at Harvard University in biology, and within a year began to write widely influential papers on how natural selection, at the genetic level, fuels competition between parents and offspring, and on the dynamics of so-called reciprocal altruism.

In a 2004 symposium on Trivers's work, the Harvard psychologist Steven Pinker said that “the fields of sociobiology, evolutionary psychology, Darwinian social science, and behavioral ecology are in large part attempts to test and flesh out Trivers's ideas.”

Trivers failed to earn early tenure at Harvard, however, and his productivity since then has been mixed. Since arriving at Rutgers, in 1994, he has had two breakdowns, he said, the more recent in 2000.

Trivers and his friends, however, say his condition is well managed now. He has published not only the fraud book but also *The Folly of Fools: The Logic of Deceit and Self-Deception in Human Life* (Basic, 2011).

“He's been so stable for the last two years that it just reeked of ulterior motives,” said Amy Jacobson, a research associate in anthropology at Rutgers, speaking of his recent punishment. She was also a co-author on the 2005 paper, although she mostly managed the lab, she said. She added that Trivers was not violent even during his breakdowns.

He can be abrupt and gruff at the best of times, she says—“Anyone who tells you he's a pleasure and a dream to deal with doesn't know him”—but “that's the price of genius.” In interviews he quickly switches from calm to irritated and back, and he swears epically.

Trivers made the news in 2007, when his hosts at Harvard canceled a talk upon learning that he'd sent a harsh letter to Alan Dershowitz, the Harvard Law School professor, about the Israeli-Palestinian conflict. It read, in part: “If there is a repeat of Israeli butchery toward Lebanon and if you decide once again to rationalize it publicly, look forward to a visit from me.” Trivers told *The Boston Globe* that he had in mind a nonviolent confrontation.

Cronk said Trivers's past behavior contributed to his feeling of being threatened in his office.

The paper on dance and symmetry grew out of a long-term research project concerning symmetry and evolution based in Jamaica and directed by Trivers. The researchers used motion-capture technology to isolate the movements of dancers whose bodily symmetry had been measured in a number of ways.

Among other findings, more-symmetrical people were rated by observers as better dancers, and the association was stronger in men than women. Evolutionary biologists have theorized that symmetry is a signifier of physical robustness, and that people have long subconsciously used it to evaluate potential mates.

Soon, though, other researchers examining the 2005 paper started asking skeptical questions. Trivers dug into the data with the help of others, including Brian G. Palestis, an associate professor of biological sciences at Wagner College. They found suspicious patterns.

One example: Before the dancers were rated by Jamaican participants, they were rated by one or two Rutgers undergraduates—information to which Brown had access. In putting together the “high symmetry” and “low symmetry” groups, Brown, the data showed, excluded dancers who were symmetrical but rated at Rutgers as low-ability—and excluded unsymmetrical but good dancers. That helped to create the result that was ultimately “discovered,” concluded the authors of *Anatomy of a Fraud*.

The Rutgers committee agreed. It also found evidence that the ratings of symmetry had been systematically altered.

Cronk contested some of the allegations, although he himself was never accused of misdeeds. Indeed, Trivers thinks the split among the authors is one reason that *Nature* has not acted.

Citing the NSF's pending review, Brown made only a brief comment: “I disagree with Professor Trivers's accusations. I feel that a full investigation needs to be conducted where the original data is re-entered by an unbiased party for reanalysis.”

The other co-authors on the symmetry paper worked only on the motion-capture technology. Zoran Popovic, a computer-science professor at the University of Washington, said they were “pretty miffed that all that work will mainly be remembered for the controversy that emerged from the botched analysis of collected data.”

Richard Wrangham, a professor of biological anthropology at Harvard and a friend of Trivers, said he was “totally persuaded” by *Anatomy of a Fraud*. “It's been incredibly frustrating to Trivers to not see this come into the full light of examination,” he says.

Of the allegations of violence, he said: “My sense of what's going on at Rutgers is that there have been very strong defensive reactions on the part of people who have been implicated.”

The incident in Cronk's office was not the only one cited in the investigation of Trivers's behavior, according to a document he wrote last September to defend himself before the university administration. He was accused of having carried a knife into class. He says he was just cutting open boxes. Cronk said, “He makes it well known—because he boasts about it—that he carries a large knife.” Trivers denied that allegation.

Trivers was also accused of “verbally disseminat[ing] stories that emphasize his willingness to engage in physical altercations.” Trivers said he merely spoke of a few dangerous encounters in Jamaica. As a high-school student, he was a boxer at the Phillips Andover Academy, and today he practices a Filipino martial art known as arnis.

Rutgers also accused him of physically accosting a female visitor from Harvard late at night in a New Brunswick restaurant, while drunk, just hours after his encounter with Cronk. In his rebuttal, Trivers quoted the following official account: “[Mr. Trivers] grabbed the hand and shoulder of a female potential postdoctoral fellow and would not let go. When a faculty colleague, who was visibly pregnant, attempted to separate them, Professor Trivers pushed the pregnant colleague away by putting his hand on her stomach and pushing her away.”

But both the visitor, Rachel Carmody, now a Harvard postdoc, and the then-pregnant colleague, the assistant professor Erin Vogel, confirmed that they told the university that they had not felt at all threatened. “It might have been slightly inappropriate,” Vogel said. “There have been several times when I saw him with my pregnant belly and he says, ‘Hey, pregnant mama!’ and touches my belly.” On that night, she says, “he gently pushed me out of the way and said, ‘Oh, get out of here.’”

Trivers does admit to being intoxicated that evening, but not violent. “Surely,” he said, with typical irritation, “I am allowed to get drunk on my own time.” Reported in: *Chronicle of Higher Education* online, May 3.

foreign

Canberra, Australia

Australia’s government is under fire after it appears to have introduced web censorship without warning and expanded already controversial powers to block access to child pornography into a wider web filtering system.

The reluctance of the government to release information about who has requested sites be blocked, and lists of those sites, has also alarmed many Australians. Two convenors from Melbourne Free University (MFU), whose site was blocked without warning or explanation on April 4, have described it as a “glimpse [of] the everyday reality of living under a totalitarian government.”

For a country that perhaps has a reputation for taking it easy, Australia’s governments have been particularly keen on web censorship. In 2008 a web filter was proposed that would have potentially blocked as many as 10,000 sites by placing them on a blacklist. Years of criticism from industry, political and public groups—including Anonymous “declaring war” on it, and Wikileaks publishing the confidential blacklist to show it included some sites that were only, contrary to government assurances, subjectively offensive—led to the idea being dropped in November 2012.

That might have been the end of it, but instead of going through legislative channels, it looks like web censorship is back and taking advantage of a legal loophole. On April 4 more than 1,200 sites were suddenly unavailable to Australian web users

One of those sites that was blocked was that for the MFU, which is a nonprofit organization that runs talks and workshops about “radical equality” and other activist topics. Jasmine-Kim Westendorf and Jem Atahan, convenors at MFU, wrote a blog post about their Kafkaesque experience of finding their site blocked for nine days and struggling to find any kind of answer why:

“After persistent questioning, our local Internet supplier reluctantly told us that the Internet address of our website had been blocked by the ‘Australian Government.’ Even more alarmingly, they said they were legally unable to ‘provide the details regarding who has blocked the IP or why.’ Our first thought was, what have we done to draw the eye of the authorities? Who have we had speak at the MFU that might be on a blacklist? In that instant, we glimpsed the everyday reality of living under a totalitarian government.”

The fact that someone, somewhere in the Australian government has been blocking websites didn’t go unnoticed because journalists and advocacy bodies like the Electronic Frontier Foundation and even politicians began demanding answers. Eventually Aussie tech website Delimiter broke the story that the sites had been blocked at the request of Australia’s financial regulator, the Australian Securities and Investments Commission (ASIC).

The issue relates to the Telecommunications Act 1997, clause 313 of which describes the “obligations” of service providers “to prevent telecommunications networks and facilities from being used in, or in relation to, the commission of offences against the laws of the Commonwealth or of the States and Territories.”

When the more draconian web filter was dropped last November its main proponent, communications minister Stephen Conroy, instead switched attention to the Telecommunications Act. He described a “voluntary” filtering system that he would like ISPs and other service providers to sign up for, and the system would only seek to block sites which had been blacklisted by Interpol—the vast majority of which host child pornography.

However, it appears that using clause 313 of the Telecommunications Act in this way has set a worrying precedent (something that had been foreseen by some experts at the time). ASIC has been submitting lists of sites to the filter blacklist to try and crack down on financial scams. One of those sites was hosted on an IP address shared by those 1,200 other sites that were blocked in early April, alerting Australian web users to the silent creep of internet filtering proceeding on without their knowledge.

Government ministries being able to ask ISPs to take down sites without any kind of legal or regulatory oversight

has, unsurprisingly, angered a lot of opposition politicians. Australian Greens senator Scott Ludlam told the *Australian Financial Review*: “It’s extraordinarily difficult to find who has issued these notices and on behalf of whom, for what categories of content, or what you do if you find yourself on a block list. We’ve got a very serious problem and it’s not at all clear whether the government knows what it’s actually doing.” Reported in: arstechnica.com, May 17.

Cairo, Egypt

The Committee on Academic Freedom of the Middle East Studies Association has written a letter to the president of Egypt’s Suez Canal University protesting its investigation and informal suspension without pay of an English professor variously accused of “contempt of religion” and “insulting Islam.” As the letter details, Mona Prince is accused by a student of making “untoward” statements about Islam in a lecture on sectarian tensions in Egypt.

The letter described the incident as a misunderstanding or disagreement between Prince and a student complainant. “It seems to us, indeed, that Dr. Prince acted precisely as a professor should, particularly in a discussion section of a course designed to teach critical thinking skills,” stated the letter, signed by MESA’s president, Peter Sluglett. “She encouraged her students to tackle matters that, while sensitive and unpleasant, are among the most pressing socio-political issues in contemporary Egypt.”

“We are quite disturbed, therefore, that the university has opened an investigation at all,” the letter continues.

“The mere fact that the university deems this innocuous incident worthy of inquiry could exercise a chilling effect upon academic freedom.” Reported in: insidehighered.com, May 10.

Rome, Italy

Italian authorities have recently ordered that two dozen file-sharing websites be blocked in Italy, the largest such move since American authorities seized over 80 domain names in 2010.

The blockage—which occurred at the DNS level and can be routed around—was ordered by the Public Prosecutor of Rome. It appears to have been instated as the result of the alleged illegal downloading of the 2011 French film *A Monster in Paris*, which was released in Italian cinemas late last year and has since popped up on some file-sharing sites.

“The complainant company will naturally have their reasons, but one wonders why 27 [sites] that bring together millions and millions of users have been rendered inaccessible in their entirety,” wrote Fulvio Sarzana, an Italian attorney who has represented similar sites in the past. The full list of blocked sites includes cyberlocker.ch, megaload.it, uploaded.net, rapidgator.net, and 23 others.

The United States’ “Operation in Our Sites” spear-headed similar domain seizures in 2010, and at least one senator raised serious questions about the legitimacy of the program. Reported in: arstechnica.com, April 16.

from the bench



U.S. Supreme Court

The Supreme Court ruled April 29 that states were free to let only their own citizens make requests under their Freedom of Information Act (FOIA) laws.

The decision came in a case, *McBurney v. Young*, 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 sought information concerning child support payments. They sued after Virginia refused to comply with their requests under its freedom of information law based on their citizenship.

Justice Samuel A. Alito Jr., writing for a unanimous court, said that provisions of the Constitution meant to ensure that citizens of different states are treated the same in many settings did not apply to what he called a noncommercial service whose fixed costs were borne by state taxpayers. Much of the information was available in other ways, he added. “Requiring noncitizens to conduct a few minutes of Internet research in lieu of using a relatively cumbersome state FOIA process,” he wrote, “cannot be said to impose any significant burden.”

Justice Alito wrote that at least seven other states had laws limiting requests for information to their citizens. The Virginia 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.

The unanimous decision was a significant setback to journalists and researchers who use the tool to gather information from public agencies. Dozens of media organizations—including the Associated Press, Bloomberg News, *The New Yorker*, *The New York Times*, National Public Radio, *The Washington Post*, etc.—filed an amicus brief in favor of the two men who challenged the restriction.

The case’s first petitioner is a man who used to live in Virginia, Mark J. McBurney, whose ex-wife is a Virginia citizen. After the woman did not fulfill her child support obligations, McBurney asked a state public agency to file a petition for child support on his behalf—the Division of Child Support Enforcement took nine months to comply. In order to ascertain the delay, McBurney filed a FOIA request, seeking “all e-mails, notes, files, memos, reports, letters, policies, [and] opinions” regarding his family’s case. His request was denied on the grounds that he was no longer a citizen of the state. The case’s second petitioner, Roger Hulbert, lives in California. He was hired by a land and title company to obtain real estate tax records in Virginia. He filed a FOIA request and was denied on similar grounds.

In the unanimous opinion, Justice Samuel Alito wrote: “The Virginia FOIA’s citizen/noncitizen distinction has a non-protectionist aim. Virginia’s FOIA exists to provide a mechanism for Virginia citizens to obtain an accounting from their public officials; noncitizens have no comparable need. Moreover, the distinction between citizens and noncitizens recognizes that citizens alone foot the bill for the fixed costs underlying recordkeeping in the Commonwealth. Any effect the Act has of preventing citizens of other States from making a profit by trading on information contained in state records is incidental.”

This ruling will almost certainly make it more difficult for journalists covering the entire country to file requests under state-level FOIAs, or as they are sometimes known, Requests for Information (RFI). For example, if Ohio had enacted such a restriction last year, it may have been more difficult for the website *Ars Technica* to obtain license plate reader-related documents from the Ohio State Police, as it does not have any staffers in the Buckeye State.

Several other states, including Alabama, Arkansas, Delaware, Montana, New Hampshire, New Jersey, and Tennessee, impose similar geographic restrictions. Reported in: *New York Times*, April 29; *arstechnica.com*, April 29.

The Federal Communications Commission’s high-profile attempt to defend its net neutrality rules against a court challenge got major support May 20 from the Supreme Court, which ruled in a separate case that regulatory agencies should usually be granted deference in interpreting their own jurisdictions.

In a 6-to-3 decision, Justice Antonin Scalia wrote that in cases where Congress has left ambiguous the outlines of a regulatory agency’s jurisdiction, “the court must defer to the administering agency’s construction of the statute so long as it is permissible.”

That has big implications for *Verizon v. FCC*, in which Verizon challenged the FCC’s Open Internet Order, its rules on net neutrality. Those rules said that an Internet service provider must treat all traffic on its system roughly equally, not giving priority to any one type of data or application as it moves through the provider’s Internet pipes.

The net neutrality case is pending before the United

States Court of Appeals for the District of Columbia Circuit. The appeals court was expected to hear arguments in that case this spring, but deferred the case until next fall. Court watchers have speculated that the delay may have been spurred by anticipation of a decision in *Arlington v. FCC*.

“This case just gave the FCC’s argument a lot more weight,” said David Kaut, a telecommunications regulatory analyst at Stifel, Nicolaus & Company in Washington. Kaut cautioned, however, that the differing facts of the two cases made it uncertain whether the precedent in the Arlington case was sufficient to validate the FCC’s argument that it has authority to regulate Internet service providers.

Edward S. McFadden, a Verizon spokesman, said the company did not “anticipate that today’s decision in *Arlington v. FCC* will have any effect on our appeal” in the net neutrality case.

That decision will be parsed for months, particularly because in explaining his reasoning, Justice Scalia constructed a hypothetical example that sounded very much like the Verizon net neutrality case. Using two options of how Congress might have written a telecommunications law, Justice Scalia asked under which of those options the FCC could legitimately claim jurisdiction over Internet service providers. The answer, he said, was both.

“The question in every case is, simply, whether the statutory text forecloses the agency’s assertion of authority, or not,” he wrote.

The precedent applied by Justice Scalia in the Arlington case was *Chevron U.S.A. v. Natural Resources Defense Council*, in which the court held that courts must defer to an agency’s interpretation of its statutory jurisdiction unless it exceeds the specific bounds set by Congress.

How that applies to the Verizon case remains uncertain, however, because of a previous decision by the District of Columbia Circuit itself, in *Comcast v. FCC*. In that case, which involved a net neutrality enforcement proceeding, the circuit court said that the FCC did not have authority over Comcast’s Internet service, because it was not ancillary to the authority laid out by Congress in the Communications Act. Reported in: *New York Times*, May 20.

The Supreme Court on May 20 agreed to decide a case concerning prayers at the start of town meetings. The case, *Town of Greece v. Galloway*, came from Greece, N.Y., a town near Rochester. For more than a decade starting in 1999, the Town Board began its public meetings with a prayer from a “chaplain of the month.” Town officials said that members of all faiths, and atheists, were welcome to give the opening prayer.

In practice, the federal appeals court in New York said, almost all of the chaplains were Christian. “A substantial majority of the prayers in the record contained uniquely Christian language,” Judge Guido Calabresi wrote for a unanimous three-judge panel of the court, the United States Court of Appeals for the Second Circuit. “Roughly two-thirds contained references to ‘Jesus Christ,’ ‘Jesus,’ ‘Your

Son’ or the ‘Holy Spirit.’”

Two town residents sued, saying the prayers ran afoul of the First Amendment’s prohibition of the government establishment of religion. The appeals court agreed. “The town’s prayer practice must be viewed as an endorsement of a particular religious viewpoint,” Judge Calabresi wrote.

In 1983, in *Marsh v. Chambers*, the Supreme Court upheld the Nebraska Legislature’s practice of opening its legislative sessions with an invocation from a paid Presbyterian minister, saying that such ceremonies were “deeply embedded in the history and tradition of this country.”

David Cortman, a lawyer for the town, said its practices were consistent with that tradition. “Americans today should be as free as the founders were to pray,” he said in a statement. “The founders prayed while drafting our Constitution’s Bill of Rights.”

The Rev. Barry W. Lynn, the executive director of Americans United for Separation of Church and State, the group behind the lawsuit, said the Supreme Court should bar prayers in governmental settings like town meetings.

“A town council meeting isn’t a church service, and it shouldn’t seem like one,” he said in a statement. “Government can’t serve everyone in the community when it endorses one faith over others. That sends the clear message that some are second-class citizens based on what they believe about religion.” Reported in: *New York Times*, May 20.

schools

Roswell, New Mexico

A New Mexico school district did not violate the rights of students when it barred them from distributing small “fetus dolls” accompanied by an anti-abortion message, a federal appeals court ruled April 8. School administrators in the Roswell district could have reasonably forecast that the two-inch rubber dolls would cause a disruption in two high schools, and a distribution of some of the dolls in fact did disrupt school, the court held.

A three-judge panel of the U.S. Court of Appeals for the Tenth Circuit, in Denver, ruled unanimously that restrictions on the dolls and policies requiring students to obtain approval before distributing non-school-sponsored materials did not violate the First Amendment rights of five students.

The students are members of a religious youth group called Relentless, which is affiliated with a Christian congregation in Roswell called Church on the Move. Relentless members frequently shared their religious beliefs and anti-abortion views with fellow students at school, court papers say, with no interference from administrators. The group had also distributed food and other items, such as “affirmation rocks,” with religious messages to students or faculty

members, usually with administrators invoking a preapproval policy.

On January 29, 2010, Relentless members planned to distribute some 2,500 rubber fetus dolls at Roswell High School and Goddard High School. The dolls were meant to suggest the actual size of a fetus at 12 weeks of gestation, which the group's card described as a "12-week-old baby" and contained other religious messages.

At Goddard High, court documents say, some 300 dolls were given to students before administrators shut down the distribution. Meanwhile, some students tore the small heads off the dolls and bounced them around classrooms like rubber balls. Some students used the dolls to plug toilets, while a few of the dolls were covered in hand sanitizer and lighted on fire. And other students found lewd uses for the rubber dolls.

Teachers complained of the substantial disruption caused by the items themselves, while at least one class was disrupted, with a scheduled test requiring postponement, because students became embroiled in name-calling over abortion, court papers say. Meanwhile, a security officer at Roswell High described the effects of the doll distribution at the school as a "disaster."

After the students were barred from further distribution of the dolls, they sued alleging violations of their First Amendment free speech and free exercise of religion rights. A federal district court granted summary judgment to the school district.

In its April 8 decision in *Taylor v. Roswell Independent School District*, the Tenth Circuit court panel upheld the district court.

The fetus doll distribution "conveyed a political and religious message and would likely merit First Amendment protection outside the school context," the court said. "Inside the school walls, however, we must consider whether the expression was, or was reasonably forecast to be, disruptive."

Based on the disruption described above, the answer was yes, the court said. "The sheer number of items ... created strong potential for substantial disruption," the court said. "Furthermore, these fetus dolls were made of rubber—a material that could easily be, and was, pulled apart, bounced against walls, and stuck to ceilings. The dolls' small size made them tempting projectiles and toilet-clogging devices. This scenario carries more potential for disruption than the passive, silent act of wearing a T-shirt or a black armband. And that potential quickly came to fruition."

The fact that the disruption was caused not by the students who distributed the dolls but by others might carry weight outside of the school context, but in school "the government has a compelling interest in protecting the educational mission of the school and ensuring student safety," the court said.

The appeals court also rejected arguments aimed at the school district's preapproval policies for non-sponsored

items and the religious students' free-exercise claim. The court noted that only one of the five students who challenged the district's actions is still in school in Roswell, and that student graduates from high school in May. Because the students sought only injunctive relief and not damages on their claims, that would seem to make a U.S. Supreme Court appeal unlikely to survive mootness once the last plaintiff graduates. Reported in: *Education Week*, April 8.

Kountze, Texas

A Texas state judge has held that allowing high school cheerleaders to display religious messages on banners at football games is not an unconstitutional government establishment of religion.

"The evidence in this case confirms that religious messages expressed on run-through banners have not created, and will not create, an establishment of religion in the Kountze community," Judge Steven Thomas of Hardin County District Court said in his May 8 decision in *Matthews v. Kountze Independent School District*.

The decision was largely in line with a preliminary ruling Judge Thomas issued in October that granted a temporary injunction allowing the cheerleaders at Kountze High School northeast of Houston to continue to display banners with messages referring to God and Christ. The cheerleaders sued the Kountze district and then-Superintendent Kevin Weldon, who had said he felt bound by U.S. Supreme Court precedent, particularly in *Santa Fe Independent School District v. Doe*, to prohibit the religious messages on public school grounds.

The disagreement escalated to a controversy attracting nationwide attention and the involvement of outside legal organizations on both sides, as well as a friend-of-the-court brief filed on the cheerleaders' side by Gov. Rick Perry.

With the injunction in place and a trial scheduled for this summer on the merits, the Kountze school board evidently took action changing the district's views. During the winter, the school board passed a resolution concluding that occasional references to religion or quotes from religious texts on the football banners, when chosen by students, would not create an establishment of religion. Actions by then-Superintendent Weldon, the board said in a March 1 release, while taken in good faith, "may have inadvertently given the appearance of hostility to religion or of preference for irreligion over religion."

That shift evidently led the school district to side at least partially with the cheerleaders in seeking summary judgment in the case. In his decision, the judge did just that, granting motions of both the cheerleaders and the school district.

"Neither the Establishment Clause nor any other law prohibits the cheerleaders from using religious-themed banners at school sporting events," the judge said, adding that nothing in law requires the school district to prohibit religious-themed banners.

The judge's decision was lauded by the Liberty Institute, a Plano, Texas-based group which represented the cheerleaders. It issued a statement calling the decision a victory for "religious liberty of student leaders across the country."

The Kountze district issued a statement welcoming the ruling, saying it was in line with the school board's resolution on the banners. The district said, however, that it would seek clarification from the judge of certain "unsettled" matters.

The Madison, Wisconsin-based Freedom From Religion Foundation, which had started the controversy by complaining about the banners on behalf of an anonymous Kountze resident, said in a statement that the judge's "misguided" decision "makes Christianity the official school religion in Kountze, Texas."

"The high school in Kountze is not a Christian high school, Kountze is not a Christian city, Texas is not a Christian state and the United States is not a Christian nation," foundation Co-President Annie Laurie Gaylor said in the statement. "Proselytizing messages by cheerleaders representing the school, wearing the school uniform, at the official start of a public school football game, inevitably carry the appearance of school endorsement and favoritism, turning Christians into insiders and non-Christians and nonbelievers into outsiders."

It's not clear whether the decision is likely to be appealed, since both actual parties—the cheerleaders and the school district—seem to welcome the ruling. Reported in: *Education Week*, May 9.

colleges and universities

Louisville, Kentucky

Students say plenty online that their professors might find unprofessional, offensive or irresponsible. And in most cases, if students are at a public institution and they are using social media platforms that aren't connected to their colleges, the First Amendment protects those Facebook pages and Twitter feeds.

But a new federal appeals court ruling is part of a trend in which courts are permitting limits on students' social media use (and punishment for violations) in fields in which part of the instruction is training in professional ethics (especially in the health professions) that include confidentiality obligations.

The U.S. Court of Appeals for the Sixth Circuit has ruled that the University of Louisville had the right to dismiss a nursing student who blogged about a patient's experience giving birth. Further, the court found that this action by the university was academic in nature, as the university argued, and not disciplinary, as the student argued. The distinction is important because students are entitled to considerably more due process for disciplinary dismissals at public institutions than they are for academic dismissals.

Nina Yoder sued Louisville when she was dismissed from the nursing program in 2009. In a sign of how long this case has been in the courts, her blogging platform was MySpace. While there have already been several rulings in the case as it has moved between district and appeals courts, the new findings focus directly on First Amendment issues.

Yoder claimed that she had a First Amendment right to share her reflections on a pregnant woman she observed as part of her training, and she also asserted that pledges she signed to honor patient confidentiality were themselves unconstitutional. But the appeals court rejected those arguments. Yoder also gave the pregnant woman a release form in which Yoder pledged to use the patient's experiences "only for written/oral assignments."

What Yoder did was write about the patient on MySpace, describing the birth as "The Popping," criticizing myths about pregnancy making women glow, and generally expressing views that might not be in the hospital brochures for those expecting. She described having children as being "like being ripped apart by rabid monkeys." Much of this alone would not have been grounds for dismissal, the court ruling suggests, as the Louisville comments did not bar blogging about medical issues generally.

But the blog post also described specific medical procedures witnessed on an individual who had consented only to be observed for Yoder's classwork. The blog described the mother receiving an epidural, the reaction of the father to parts of the process, the mother throwing up at one point, and the eventual arrival of a healthy baby girl, whom Yoder called "The Creep."

The appeals court panel noted the absence of a Supreme Court ruling on the question of off-campus digital speech. But it noted that other appeals courts have ruled that First Amendment rights of students are not absolute, and that there may be legitimate reasons for educational institutions to avoid "disruption." The appeals court stressed the nature of the education Yoder had been receiving and said that there were "unique circumstances posed" in health-related education.

No court ruling, the appeals panel ruled, "undermines a university's ability to take action against a nursing (or medical) student for making comments off campus that implicate patient privacy." The ruling further noted that Yoder had access to the pregnant woman only because she was a nursing student, and that this created an obligation to abide by the university's rules to protect patient privacy.

Even if Yoder had a First Amendment right to blog about her experience watching childbirth, the judges added, the university was entitled to believe that Yoder "affirmatively waived that right" by signing the various agreements she made with the university.

Another part of the ruling may also be significant. Louisville said that it dismissed Yoder as an academic matter, but she argued that this was a disciplinary ruling. The appeals court said that it is incorrect to suggest that only

questions about academic work (for example, failing too many courses) would be considered an academic dismissal. Issues having nothing to do with grades can be academic, the court ruled.

The court noted that nursing students were required to sign agreements pledging to respect patient confidentiality to advance to the clinical portion of their education. Further, the nursing school taught students why confidentiality mattered. In this context, the appeals court said, “the required conduct was a component of Yoder’s coursework, not part of a general student code of conduct.”

For these and other reasons, the court upheld a dismissal of Yoder’s claims.

In another recent case covering some similar issues, the Minnesota Supreme Court last year upheld the right of the University of Minnesota to punish a mortuary science student for posts on Facebook that made fun of a cadaver. Reported in: insidehighered.com, June 6.

Boston, Massachusetts

A federal appeals court on May 31 handed an important victory to scholars—especially those who engage in or rely on oral history—by reducing from 85 to 11 the number of oral history interviews Boston College must provide to British authorities. In doing so, however, the appeals court rejected (as it did in an earlier review of the case) the idea that confidential materials collected for scholarship were entitled to a heightened level of protection from outside subpoenas than would be most other documents.

The U.S. Court of Appeals for the First Circuit said that some “balancing” of conflicting rights could still be in order, and rejected the U.S. government’s contention that there was no need for a court review of the appropriateness of the the subpoenas.

“[W]e rule that the enforcement of subpoenas is an inherent judicial function which, by virtue of the doctrine of separation of powers, cannot be constitutionally divested from the courts of the United States,” said the ruling.

And the appeals court then did just that, reviewing the requests for the 85 documents that a lower court had ordered turned over. Only 11 of those records, the appeals court found, were relevant enough to law enforcement needs to justify turning them over. Because both the lower court and the appeals court reviewed the individual records privately, and the decisions in the case don’t disclose why the appeals court decided to order some records but not others turned over, the decision refers to interview subjects by letters (A, B, C and so forth) and is deliberately vague on the subject matter of the interviews.

Chris Bray, a historian who has written extensively on the case, called the decision “very important” because the appeals court “sharply narrowed the archival material to be handed over” and “aggressively rejected” the Department of Justice’s argument that the courts need not review the subpoenas.

The papers at issue are oral history interviews—held in Boston College’s library—that make up what is known as the Belfast Project. The interviews are of figures involved in the violence in Northern Ireland during “the Troubles,” a period from the 1960s through the 1980s. Many of the interview subjects agreed to discuss the roles they played (not all of which may have been legal) based on the idea that they thought the interviews would remain confidential during their lifetimes or for other specified periods of time.

British authorities are still investigating some of the incidents of that period, and sought to have the U.S. government subpoena them under the terms of a treaty between Britain and the United States on mutual assistance on crime fighting. British officials have said that they believe the interviews may point to the culpability of specific individuals in violent crimes.

Due to the subject matter of the interview subjects, the case has attracted attention from scholars in the United States, Britain and Ireland. But the questions about oral history’s legal status go well beyond topics such as the violence in Northern Ireland. Subjects of oral history interviews routinely seek confidentiality for specified periods of time, so that they can talk frankly about political rivalries, personal matters and a range of other issues. And researchers in disciplines beyond history in which scholars need to grant confidentiality to interview subjects have also been concerned about the precedent of the government enforcing a broad subpoena against Boston College. The American Sociological Association backed those trying to protect the confidentiality of the records.

Courts have never granted oral history the same confidentiality rights as discussions someone has with a lawyer or member of the clergy. Some courts have suggested more deference for academic-related records than Boston College’s oral history records ever were granted.

But Bray said that they key victory was that a very broad request for documents (initially for 170 records) was first cut by one court to 85 and then by the appeals court to 11. Many researchers said that the broad nature of the British government requests made them particularly threatening to oral history. If such broad requests were granted, without court review, they said, people would have been particularly reluctant to tell their stories to historians for fear someone could subpoena the records.

Boston College issued a statement praising the ruling. “We are pleased with the appeals court ruling which affirms our contention that the district court erred in ordering the production of 74 interviews that were not relevant to the subpoena. This ruling represents a significant victory for Boston College in its defense of these oral history materials,” said the statement.

Susan Michalczyk, president of the American Association of University Professors at Boston College, said that “11 interviews is better than 85” in terms of what may be given up. But she said that “the principle of the issue remains.”

The AAUP at the college has been asking administrators for more information about how the original agreement was made to house to oral history interviews, and whether more could have been done to protect confidentiality. Michalczyk said that, to date, faculty members do not believe they have received satisfactory answers, and that they will continue to push. Reported in: insidehighered.com, June 3.

Auburn Hills, Michigan

A former student who created a website that harshly criticized Thomas M. Cooley Law School is protected by the First Amendment and should not have his identity revealed, a Michigan state appeals court ruled this month. Cooley, a freestanding law school in Michigan, had sued the former student in state court, saying that the site the ex-student created, Thomas M. Cooley Law School Scam, defamed the institution. Cooley officials obtained a California subpoena compelling the company that hosted the website to reveal his identity, and a lower state court refused to block the subpoena. But the appeals court ruled that Michigan law protects such speech, and sent the case back to the lower court for further review. Reported in: insidehighered.com, April 22.

Internet

Menlo Park, California

A federal judge has ruled that Google must comply with the FBI's warrantless requests for confidential user data, despite the search company's arguments that the secret demands are illegal.

U.S. District Judge Susan Illston in San Francisco rejected Google's request to modify or throw out nineteen so-called National Security Letters, a warrantless electronic data-gathering technique used by the FBI that does not need a judge's approval. Her ruling came after a pair of top FBI officials, including an assistant director, submitted classified affidavits.

The litigation taking place behind closed doors in Illston's courtroom—a closed-to-the-public hearing was held on May 10—could set new ground rules curbing the FBI's warrantless access to information that Internet and other companies hold on behalf of their users. The FBI issued 192,499 of the demands from 2003 to 2006, and 97 percent of NSLs include a mandatory gag order.

It wasn't a complete win for the Justice Department, however: Illston all but invited Google to try again, stressing that the company has only raised broad arguments, not ones "specific to the nineteen NSLs at issue." She also reserved judgment on two of the NSLs, saying she wanted the government to "provide further information" prior to making a decision.

NSLs are controversial because they allow FBI officials to send secret requests to Web and telecommunications companies requesting "name, address, length of service," and other account information about users as long as it's relevant to a national security investigation. No court approval is required, and disclosing the existence of the FBI's secret requests is not permitted.

Because of the extreme secrecy requirements, documents in the San Francisco case remain almost entirely under seal. Even Google's identity is redacted from Illston's four-page opinion, which was dated May 20 and remained undisclosed until revealed by C-NET May 31. But, citing initial filings, Bloomberg disclosed in April that it was Google that had initiated the legal challenge.

While the FBI's authority to levy NSL demands predates the USA PATRIOT Act, it was that controversial 2001 law that dramatically expanded NSLs by broadening their use beyond espionage-related investigations. The USA PATRIOT Act also authorized FBI officials across the country, instead of only in Washington, D.C., to send NSLs.

Illston, who is stepping down from her post in July, said another reason for her decision is her desire not to interfere while the U.S. Court of Appeals for the Ninth Circuit is reviewing the constitutionality of NSLs in an unrelated case that she also oversaw.

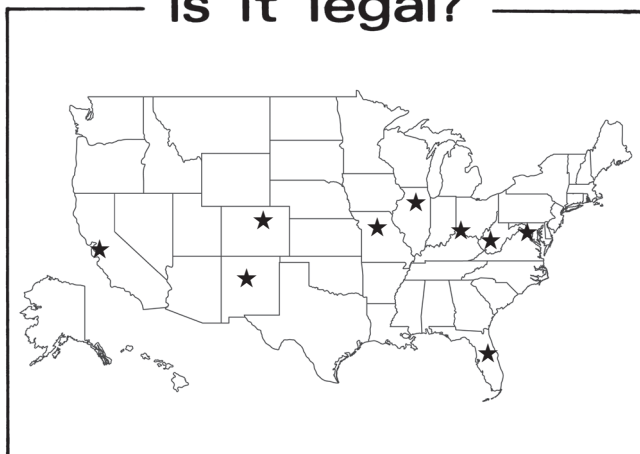
In that separate lawsuit brought by the Electronic Frontier Foundation on behalf of an unnamed telecommunications company, Illston dealt a harsh blow to the bureau's use of NSLs. EFF had challenged the constitutionality of the portion of federal law that imposes nondisclosure requirements and limits judicial review of NSLs. Illston ruled that the NSL requirements "violate the First Amendment and separation of powers principles" and barred the FBI from invoking that language "in this or any other case." But she gave the Obama administration ninety days to appeal to the Ninth Circuit, which it did on May 6.

These aren't the first cases to tackle whether NSLs, including gag orders, are constitutional or not. In a 2008 ruling the U.S. Court of Appeals for the Second Circuit handed down a mixed decision. A three-judge panel of the Second Circuit took an odd approach: the judges agreed that the "challenged statutes do not comply with the First Amendment" but went on to rewrite the statute on their own to make it more constitutional. They drafted new requirements, including that FBI officials may levy a gag order only when they claim an "enumerated harm" to an investigation related to international terrorism or intelligence will result.

Illston's decision in the Google NSL case said that the FBI had submitted "classified" evidence "intended to demonstrate that the nineteen NSLs were issued in full compliance with the procedural and substantive requirements imposed by the Second Circuit." That includes classified

(continued on page 171)

is it legal?



libraries

Denver, Colorado

Jeffrey Beall is a metadata librarian at the University of Colorado at Denver, but he's known online for his popular blog Scholarly Open Access, where he maintains a running list of open-access journals and publishers he deems questionable or predatory. Now, one of those publishers intends to sue Beall, and says it is seeking \$1 billion in damages.

The publisher, the OMICS Publishing Group, based in India, is also warning that Beall could be imprisoned for up to three years under India's Information Technology Act, according to a letter from the group's lawyer. Beall received the letter May 14 from IP Markets, an Indian firm that manages intellectual-property rights.

"I found the letter to be poorly written and personally threatening," Beall said. "I think the letter is an attempt to detract from the enormity of OMICS's editorial practices." Beall believes he has documented all the statements he made about OMICS.

The blog and the list, which is known to librarians and professors simply as "Beall's List," has led to Beall's being featured in *The New York Times*, *Nature*, and the *Chronicle of Higher Education*. The list now features more than 250 publishers that he considers to be "potential, possible, or probable predatory" companies, which take advantage of academics desperate to get their work published. In separate blog posts, Beall details why he believes the companies are misleading.

The OMICS Group's practices have received particular attention from Beall and some publications. In 2012, the *Chronicle of Higher Education* found that the group was listing 200 journals, but only about 60 percent had actually published anything. The owner of OMICS, Srinu Babu

Gedela, said then that his company was not a "predatory publisher" and was ramping up to be a "leading player in making science open access." IP Markets said OMICS was started six years ago and has 500 employees.

On his blog, Beall accused OMICS of spamming scholars with invitations to publish, quickly accepting their papers, then charging them a nearly \$3,000 publishing fee after a paper has been accepted. He also alleged that the publisher uses the names of scholars without their permission to entice participants to attend scientific conferences and then promotes those conferences by using names "deceptively similar" to well-known, established conferences. For example, just one hyphen separates OMICS's Entomology-2013 conference from the Entomological Society of America's Entomology 2013 conference.

The rambling, six-page letter argues that Beall's blog is "ridiculous, baseless, impertinent," and "smacks of literal unprofessionalism and arrogance." The letter also accused Beall of racial discrimination and attempting to "strangle the culture of open access publications."

"All the allegation that you have mentioned in your blog are nothing more than fantastic figment of your imagination by you and the purpose of writing this blog seems to be a deliberate attempt to defame our client," the letter reads. "Our client perceive the blog as mindless rattle of a incoherent person and please be assured that our client has taken a very serious note of the language, tone, and tenure adopted by you as well as the criminal acts of putting the same on the Internet."

Ashok Ram Kumar, a senior lawyer with IP Markets, repeatedly mentioned the criminality of Beall's blog posts. In India, Section 66A of the Information Technology Act makes it illegal to use a computer to publish "any information that is grossly offensive or has menacing character" or to publish false information. The punishment can be as much as three years in prison.

The letter makes several demands, including telling Beall to remove the blog posts and to send e-mails denouncing his own blog to the publications that have featured his work. Even if Beall complies, however, Kumar said, his client still intends to sue and to have Beall face criminal proceedings.

"What he has written is something highly inappropriate," Kumar said. "He should not have done something like this. He has committed a criminal offense."

While Kumar said he and his client are "very serious" about the \$1 billion amount, Jonathan Bloom, a lawyer with Weil, Gotshal & Manges, in New York, said it seemed more like a publicity stunt. "Sometimes people just want to puff their chests, indicate their reputation, and try to intimidate people that criticize them," Bloom said.

Bloom said the effectiveness of the suit would differ depending on whether it was filed in the United States or India, a decision OMICS has yet to make. If the suit was filed in a U.S. court, Beall would probably win if his

statements were true. If it was filed in India, the outcome would be less clear, Bloom said, though it is still not likely he would have to pay \$1 billion.

“But even if you come out on top in the end, being forced to litigate is a problematic thing,” he said. “It’s costly and can still damage your reputation.”

It is also not likely that Beall would face three years in prison, said Mark Wu, an assistant law professor at Harvard University. The vagueness and allegations of misuse surrounding Section 66A of India’s Information Technology Act have led to a public outcry in India, Wu said, and, last November, the Indian government modified the rules to make them stricter. Now, in order for a complaint to be registered under Section 66A, it must be approved first by a police deputy commissioner or inspector general.

“Given this change, I have a very hard time believing that it would be used in this case,” Wu said.

Regardless, OMICS is “definitely going to proceed” with the suit, Kumar said, adding that it was only a matter of time before further action was taken.

This isn’t the only time Beall has been threatened with a lawsuit because of his list. In February, the Canadian Center of Science and Education threatened to sue him after he included the center and three of its related companies on the blog. He said he was not sure yet if the center had proceeded with the lawsuit.

Beall said that when he started the list, in 2010, he never thought about a journal publisher’s suing him. A university lawyer later told him such actions were likely. Indeed, a librarian in Canada remains embroiled in a similar lawsuit after criticizing a scholarly-book publisher on his blog in 2010.

Even so, Beall said, the size of the damages the OMICS Group says it will seek was unexpected. “The amount is silly—I haven’t done any damage to their operation,” he said. “The case has no merit, in my opinion.” Reported in: *Chronicle of Higher Education* online, May 15.

schools

Batavia, Illinois

John Dryden, a social studies teacher at Batavia High School, faces disciplinary action after he advised students to consider their Constitutional right against self-incrimination before answering an April 15 school survey on their behavior. The surveys, which had each student’s name printed on them, asked questions about drug, alcohol and tobacco use.

Dryden said the issue is whether school officials considered that filling out the survey is a form of self-incrimination. Students and parents who support Dryden started an online petition to “Defend and Support” Dryden. The petition calls Dryden an “uncharacteristically engaging educator who sees it his duty to make his students aware of their rights as citizens.”

“He encourages critical thinking, problem solving strategies, and educational stewardship from all of his students. His learning objectives go beyond mandated standards and bring student awareness to real-world concerns,” the petition says. “If it is Batavia Schools’ mission to be ‘Always Learning, Always Growing,’ then that mission is embodied by the rigor and passion of Mr. John Dryden.”

This was the first year the Batavia school district administered this survey. The surveys were meant to be reviewed by school officials, including social workers, counselors and psychologists. Chief academic officer Brad Newkirk said the survey asked about tobacco, alcohol and drug use as well as emotions. He said it was not meant to be a diagnostic tool, but that it was a “screener” to identify students who would need specific help.

“We can’t help them if we aren’t aware of their needs,” school superintendent Jack Barshinger said. He said teacher support for the survey stems from recent student suicides.

Dryden said he read the survey before giving it to students because he noticed each had a student name printed on them, unlike surveys in the past. “I made a judgment call. There was no time to ask anyone,” Dryden said. He picked up the surveys the day they were supposed to be completed. If he had more time, he said, he would have taken up the issue with an administrator.

As the petition says, Dryden is not in danger of losing his job, rather he will be issued a “letter of remedy” that will go in his file. The letter indicates Dryden exhibited improper conduct that could have led to dismissal. Reported in: opposingviews.com, May 27.

Columbia, Missouri

A Columbia high school student faces a possible felony charge after her arrest for changing a classmate’s name in the school yearbook to a sexually suggestive term.

The 17-year-old Hickman High School junior was arrested May 14 after she allegedly changed a student’s last name from Mastain to “masturbate” in the 100th edition of the Hickman Cresset yearbook. She could be charged with first-degree property damage, a felony, and harassment. Assistant Boone County prosecutor Spencer Bartlett said that the case remains under review. No charges had been filed against the teenager as of May 28.

The school decided against reprinting more than 700 yearbooks and instead placed stickers on the altered pages with the student’s correct surname, said yearbook adviser Kim Acopolis. The school estimated the costs of reprinting 720 yearbooks at \$41,000.

“I do not think (she) had any sense of the consequences that would come,” Acopolis said, referring to the student purportedly behind the prank gone awry.

Both Acopolis and the girl whose name was changed, Raigan Mastain, an aspiring graphic designer, called the last-minute change by another yearbook staff member an

act of immaturity, not malice. "I hardly knew her at all," said Mastain, who graduated from Hickman in May. "I barely worked with her. We weren't friends. But I didn't think I had any problems with her."

The student also faced unspecified school punishment, Hickman Principal Tracey Conrad said.

Mastain, a student government leader who also worked on the school newspaper and its literary review, said she didn't even notice her altered name on page 270 until a friend alerted her by text message once she arrived home after school. She expressed shock that her younger school-mate faces a possible felony but also supports the school's no-nonsense position.

"At some point, when someone makes a mistake, there needs to be a consequence," said Mastain, who is headed in the fall to the University of Central Missouri. "I do think it's appropriate. It's bullying. The property damage is an enormous amount of money. It's not to be taken lightly." Reported in: kshb.com, May 28.

Cincinnati, Ohio

A jury found that an Ohio archdiocese discriminated against a teacher fired after becoming pregnant via artificial insemination, leaving legal experts expecting an appeal they say could have a much wider legal impact.

Christa Dias, who was fired from two schools in the Roman Catholic Archdiocese of Cincinnati in October 2010, was awarded more than \$170,000 June 3 after winning her federal anti-discrimination lawsuit against the archdiocese. Dias' attorney, Robert Klingler, argued she was fired simply because she was pregnant and unmarried, a dismissal he said violated state and federal law.

Steven Goodin, the attorney for the archdiocese and the schools, contended Dias was fired for violating her contract, which he said required her to comply with the philosophies and teachings of the Catholic church. The church considers artificial insemination immoral and a violation of church doctrine.

The case, viewed as a barometer on the degree to which religious organizations can regulate employees' lives, was the second lawsuit filed in the last two years against the archdiocese over the firing of an unmarried pregnant teacher.

While Goodin said a decision would be made later on whether to appeal the verdict, legal experts believe it will definitely end up in an appeals court.

Jessie Hill, a professor of civil rights and constitutional law at Case Western Reserve University School of Law in Cleveland, believes the "ministerial exception" issue could be raised on appeal. The archdiocese argued before trial that Dias, who was a computer technology teacher, was a "ministerial employee," a position that has not been clearly defined by the courts.

The Supreme Court has said religious groups can dismiss those employees without government interference.

But Klingler insisted Dias had no such ministerial duties, and the Cincinnati court found she was not a ministerial employee and that the issue couldn't be argued at trial. Hill said the Supreme Court has left "uncertainty about who is and who isn't a ministerial employee," and she expects the case would be "closely watched at the appellate level."

David Ball, co-chairman of the Religious Organizations Subcommittee of the American Bar Association, doesn't think Dias fits the definition of a ministerial employee. He believes an appellate court may have to decide whether the case involves "impermissible pregnancy discrimination or permissible religious discrimination, when in fact it's both."

Ball believes the case could potentially be precedent-setting at the appellate level in dealing with "the conflict of religious employers' rights versus the rights of women seeking to reproduce."

Dias said after the verdict that she was "very happy and relieved" with the outcome of the lawsuit she said she pursued for the sake of other women who might find themselves in a similar situation. She said she also pursued it for "my daughter's sake, so she knows it's important to stand up for what's right."

The jury said the archdiocese should pay a total of \$71,000 for back pay and compensatory damages and \$100,000 in punitive damages. Dias had also sued the two schools, but the jury didn't find them liable for damages.

Klingler had suggested damages as high as \$637,000, but Dias said she was satisfied with the jury's award. "It was never about the money," she said. "They should have followed the law and they didn't."

Archdiocese spokesman Dan Andriacco said that for the archdiocese, it was "a matter of principle" and about "an employee who broke a contract she signed."

Dias, who is not Catholic, had testified she didn't know artificial insemination violated church doctrine or her employment pact. She said she thought the contract clause about abiding by church teachings meant she should be a Christian and follow the Bible.

Klingler said the case shows jurors are willing to apply the law "even to churches and religious organizations when non-ministerial employees are discriminated against." But Goodin said he thinks the verdict could result in churches and religious organizations making their contracts "lock in" employees so specifically that it could be "hard to bring these types of lawsuits in the future."

Goodin had argued that Dias, who is gay, never intended to abide by her contract. She kept her sexual orientation a secret because she knew that homosexual acts also would violate that contract, he said.

Neither Dias nor the archdiocese claim she was fired because she is gay, and the judge told jurors that they could not consider sexual orientation in determining motivating factors for the firing. Dias, formerly from a Cincinnati suburb, now lives in Atlanta with her partner and 2-year-old daughter, who she said "means everything to me."

Dias vowed to continue her fight “for what’s right,” even if the case is appealed. Reported in: talkingpointsmemo.com, June 4.

Charleston, West Virginia

A student at George Washington High School asked for an injunction in Kanawha Circuit Court against the school’s principal April 15, after she alleged he threatened to call the college where she’s been accepted and tell them she has “bad character” for speaking up against an abstinence-only assembly held at the school the previous week.

Katelyn Campbell, the school’s student body vice president, refused to attend an assembly where Christian speaker Pam Stenzel told GW students “condoms aren’t safe” and warned that any type of sexual contact would lead to sexually transmitted diseases and cause women to be infertile, according to an audio recording of her presentation.

In her YouTube videos, Stenzel shouts and says things such as women who take birth control are “ten times more likely to contract a disease . . . or end up sterile or dead.” She allegedly told GW and Riverside students, “If your mom gives you birth control, she probably hates you.”

Since the assembly, Campbell and other students and parents have voiced their concern with the school’s allowance of Stenzel’s presentation, which was sponsored by Believe in West Virginia, a religious organization. Campbell was featured on CNN to talk about the assembly, which she referred to as “slut-shaming.”

Campbell wants GW Principal George Aulenbacher to resign and apologize to the GW community, she said during a news conference at the office of Charleston attorney Mike Callaghan, who is representing her. Aulenbacher “knowingly psychologically abused students” by allowing the assembly, where Stenzel used scare tactics that left some students crying and wanting to leave, Campbell said.

“West Virginia has the ninth highest pregnancy rate in the U.S.,” Campbell said. “I should be able to be informed in my school what birth control is and how I can get it. With the policy at GW, under George Aulenbacher, information about birth control and sex education has been suppressed. Our nurse wasn’t allowed to talk about where you can get birth control for free in the city of Charleston.”

Aulenbacher called Campbell to the principal’s office after she contacted media outlets about the assembly and said, “I am disappointed in you” and “How could you go to the press without telling me?” according to the complaint.

He then allegedly threatened to call Wellesley College, where Campbell has been accepted, and tell them about her actions. “How would you feel if I called your college and told them what bad character you have and what a backstabber you are?” he said, according to the complaint.

“I said, ‘Go ahead,’” Campbell said. “He continued to berate me in his office. I’m not an emotional person, but I

cried. He threatened me and my future in order to put forth his own personal agenda and made teachers and students feel they can’t speak up because of fear of retaliation.”

Aulenbacher said that he did not think any of what Stenzel said in the assembly was inappropriate and that, “Any time you talk about sex with any teen student, it can be uncomfortable. The only way to guarantee safety is abstinence.”

The injunction was filed to prohibit Aulenbacher from retaliating against Campbell for exercising her right to free speech. “We simply want to make sure that my client’s and the other students expressing their opinions are protected for exercising their First Amendment rights. No student should be concerned for their future for publicly expressing their opinion,” Callaghan said.

Campbell said fliers about the event were passed out to students a day prior and promoted “God’s plan for sexual purity.” Typically, students are allowed to stay in class with a teacher’s supervision if they do not want to attend an assembly, she said, but it was insinuated that students had to attend this assembly.

Aulenbacher and members of the school’s staff blocked the gym entrance and told students who tried to leave that they had to stay the entire time, according to the complaint.

Stenzel also visited Riverside High School but Principal Valery Harper said she received no complaints and had researched Steintel and watched her YouTube videos prior to allowing her to visit the school. Riverside freshman Lindsey Hawks said that the presentation made her feel “really uncomfortable.”

“She was attacking and bashing the girls more. She was saying that it was all our faults. She was just crazy,” Hawks said. “She said things like, ‘It’s your parents fault for putting you on birth control’ and that birth control makes you more sexually active and more likely to get STDs.”

Cierra Henderson, a Riverside freshman who also attended the event, said Stenzel said, “If you’re on birth control, your parents hate you. I was like, ‘Oh my gosh.’ It was like she was preaching,” she said. “It was so personal.”

Kanawha County Board of Education President Pete Thaw said principals have the power to choose who they bring into their school for assemblies—especially when it doesn’t involve school money.

Believe in West Virginia is a faith-based organization dedicated to “improving the economic attitude and future of West Virginia through biblical guidance and dogged determination,” according to the group’s website. Reported in: *Charleston Gazette*, April 15.

colleges and universities

Orlando, Florida

The University of Central Florida has placed an accounting instructor on paid administrative leave while the

university and its police department investigate a reference he made to “a killing spree” in talking with students.

Hyung-il Jung, a lecturer in the university’s Rosen College of Hospitality Management, has expressed regret about the remark and characterized it as a joke. Nevertheless, the incident was not being taken lightly by the university, which had a major scare in May when a former student killed himself before carrying out a planned attack there with guns and explosives.

The university’s administration barred Jung from coming to the campus or having any contact with students, and it asked another faculty member to administer Jung’s final examinations, according to Chad Binette, a university spokesman.

“The student who reported the comment to us interpreted it as a threat to her class, and we will always take any reported threat very seriously,” the university said a statement issued by Binette. “This is not an acceptable topic to joke about, particularly in light of recent events around the country and on our campus.”

Jung made the remark in question April 23 during a review session with about 25 students in his class on accounting in the hospitality industry. He said that he had intended his statement “purely as a joke,” in reaction to students who appeared to be struggling with the material.

Jung told a reporter, “What I said was: ‘This question is very difficult. It looks like you guys are being slowly suffocated by these questions. Am I on a killing spree or what?’” The newspaper quoted him as saying, “I thought all of the students laughed together with me.”

He expressed confidence that he would be exonerated. “I am fairly certain that the people who will handle this will be reasonable and intelligent enough,” he said.

Jung was the latest of several college instructors to face severe consequences for remarks perceived as threatening, as institutions crack down on such speech in response to actual campus violence. Among the other colleges that have recently disciplined faculty members accused of threatening comments are the University of Oregon, the University of Wisconsin at Whitewater, and Widener University. Reported in: *Chronicle of Higher Education* online, April 25.

Albuquerque, New Mexico

An evolutionary psychology professor sparked an uproar June 3 after he told his Twitter followers that overweight students are not cut out for Ph.D. programs.

Geoffrey Miller, an associate professor at the University of New Mexico who is teaching this summer at New York University’s Stern School of Business, tweeted this message June 2: “Dear obese PhD applicants: if you didn’t have the willpower to stop eating carbs, you won’t have the willpower to do a dissertation #truth.”

The tweet was quickly deleted, but not before others had

the chance to take screen shots of Miller’s message and circulate the image on social media. And now the professor is facing #backlash—from the general public as well as from academics. Many are shocked that a professor whose job would include teaching students of all sizes would express such bias.

New York University journalism professor and media critic Jay Rosen tweeted, “Astonishing fatshaming tweet, since deleted, from an academic, @matingmind. The mind boggles,” to his 117,200-plus followers.

A new blog was launched in response to the furor. The blog is called Fuck Yeah! Fat Ph.D.s and features those proud of being “fatlicious in academia.”

Chris Chambers, a psychologist and neuroscientist at Cardiff University’s School of Psychology in Wales, wants to know whether Miller’s tweet reflects the policy of University of New Mexico regarding admissions criteria for Ph.D. students. On his Twitter account, Chambers posted Miller’s tweet along with an e-mail message he wrote to the University of New Mexico psychology chair, Jane Ellen Smith.

“I would also like to know what assurances you can provide that his previous student appointments were not based upon the body mass index of applicants,” Chambers said in his e-mail.

A statement released by the University of New Mexico said that when Smith learned of the tweet, she contacted Miller. According to the statement, Miller told Smith his comment on Twitter “was part of a research project.” In apologies Miller subsequently posted on Twitter, he did not mention any such research project. And Chambers said that he did not see how this could have been a properly run research project since the public did not give informed consent to participate in such an experiment.

In Smith’s statement, she said of the claim that this was a research project: “We are looking into the validity of this assertion, and will take appropriate measures. As members of the UNM community, we are all responsible for demonstrating good judgment when exercising our academic freedoms regardless of the format,” the statement said. It added that the tweet, “in no way reflects the policies or admission standards of UNM.”

Following Miller’s original tweet, he retweeted a Sophocles quote from @Patrick_Clarkin, which read, “All men make mistakes, but a good man yields when he knows his course is wrong, and repairs the evil. The only crime is pride.”

Miller then sent out an apology tweet saying, “My sincere apologies to all for that idiotic, impulsive, and badly judged tweet. It does not reflect my true views, values or standards.” One hour after that, he added, in another tweet, “Obviously my previous tweet does not represent the selection policies of any university, or my own selection criteria.” (He has since made all of his tweets private.)

But many people aren’t buying his apology. Linda

Bacon, a nutrition professor at the University of California Davis and the City College of San Francisco, said Miller's tweet was "reprehensible." Not only is it "offensive to his students who may be overweight, but it also sets a negative tone for what is acceptable in his classrooms," Bacon said, by showing support for other students "who may have discriminatory attitudes."

She said that even though Miller made his statement through a personal Twitter account, it is "still not acceptable" because it was specifically about what should happen at the university. She added that she believes both the University of New Mexico and New York University should take disciplinary action.

In an e-mailed statement, New York University spokeswoman Jessica Neville said Miller's tweet "was regrettable. Professor Miller apologized for the tweet and deleted it. NYU considers the matter closed."

When asked whether or not he thinks there ought to be social media policies adopted for university faculty members, NYU's Rosen had a simpler idea: "My social media policy for media organizations is four words: don't be a jerk. I think that applies here," Rosen said in an e-mail. "We don't need specific policies dealing with discrimination. We need professors who understand why you cannot be a jerk on social media." Reported in: insidehighered.com, June 4.

copyright

Mountain View, California

Google has asked an appeals court to deny class status to a group of authors who claim in a \$3 billion lawsuit that the company's project to digitally copy millions of books from libraries violates their copyrights.

Lawyers for Google and three writers, including Jim Bouton, the author of *Ball Four*, argued their case May 8 before a three-judge panel of the U.S. Court of Appeals for the Second Circuit in Manhattan. Google is seeking to overturn a lower-court order that let the authors proceed as a class on behalf of other writers.

"Plaintiffs cannot claim to represent the many class members who benefit from and approve of Google Books," Seth Waxman, a lawyer for Mountain View, California-based Google, told the judges, who said they would issue a ruling later.

The Authors Guild, which represents writers, and individual authors sued in 2005, alleging that Google, owner of the world's most popular search engine, was making digital copies of books from libraries without seeking permission from copyright owners or paying fees.

Judge Denny Chin rejected a negotiated settlement by the parties in 2011. Attempts to renegotiate the deal failed, and the litigation resumed. Chin granted class certification last year to all authors residing in the U.S. who have at least one book in Google's project.

Class certification makes it possible for all those who meet specified criteria to sue together rather than separately, increasing the chances of a settlement. "Let's get it adjudicated on a class basis, not piecemeal, book-by-book," Robert LaRocca, a lawyer for the authors, told the judges.

Google said in court papers that it has scanned more than twenty million books worldwide and that Internet searchers would be able to view "snippets" of each book online. Its defense relies on the fair-use provision of copyright law, which allows the use of copyrighted materials without permission for educational, research and news purposes.

U.S. Circuit Judge Pierre Leval suggested that defense might be worth adjudicating first. "The big question is: Is Google going to succeed with its fair-use defense?" he said to the company's lawyer. "The class-action question raises interesting and challenging points, but I wonder if you're out of sequence."

Leval said the appeals court might send the case back to the district court to consider the fair-use argument and the parties could return later to the appeals court on the class-action matter.

"I don't want to litigate fair-use issues with one hand tied behind my back," Waxman replied.

Last July, the parties filed motions for judgment without a trial. Chin halted action on the case in district court until the appeals court rules.

The authors are seeking statutory damages of \$750 for each book. Court papers state that more than 4 million English-language books have been digitally copied. That would mean damages of at least \$3 billion, a figure named by Waxman in court.

The other authors in the appeal are Betty Miles and Joseph Goulden. The Authors Guild, still a plaintiff in the case, isn't a party to the appeal because it's not a member of the class. The case is *Authors Guild v. Google*. Reported in: Bloomberg News, May 8.

privacy and surveillance

Washington, D.C.

The Obama administration, resolving years of internal debate, is on the verge of backing a Federal Bureau of Investigation plan for a sweeping overhaul of surveillance laws that would make it easier to wiretap people who communicate using the Internet rather than by traditional phone services, according to officials familiar with the deliberations.

The FBI director, Robert S. Mueller III, has argued that the bureau's ability to carry out court-approved eavesdropping on suspects is "going dark" as communications technology evolves, and since 2010 has pushed for a legal mandate requiring companies like Facebook and Google to build into their instant-messaging and other such systems a capacity to comply with wiretap orders. That proposal, however, bogged down amid concerns by other agencies,

like the Commerce Department, about quashing Silicon Valley innovation.

While the FBI's original proposal would have required Internet communications services to each build in a wiretapping capacity, the revised one, which must now be reviewed by the White House, focuses on fining companies that do not comply with wiretap orders. The difference, officials say, means that start-ups with a small number of users would have fewer worries about wiretapping issues unless the companies became popular enough to come to the Justice Department's attention.

Still, the plan is likely to set off a debate over the future of the Internet if the White House submits it to Congress, according to lawyers for technology companies and advocates of Internet privacy and freedom.

"I think the FBI's proposal would render Internet communications less secure and more vulnerable to hackers and identity thieves," said Gregory T. Nojeim of the Center for Democracy and Technology. "It would also mean that innovators who want to avoid new and expensive mandates will take their innovations abroad and develop them there, where there aren't the same mandates."

Andrew Weissmann, the general counsel of the FBI, said in a statement that the proposal was aimed only at preserving law enforcement officials' longstanding ability to investigate suspected criminals, spies and terrorists subject to a court's permission.

"This doesn't create any new legal surveillance authority," he said. "This always requires a court order. None of the 'going dark' solutions would do anything except update the law, given means of modern communications."

A central element of the FBI's 2010 proposal was to expand the Communications Assistance for Law Enforcement Act—a 1994 law that already requires phone and network carriers to build interception capabilities into their systems—so that it would also cover Internet-based services that allow people to converse. But the bureau has now largely moved away from that one-size-fits-all mandate.

Instead, the new proposal focuses on strengthening wiretap orders issued by judges. Currently, such orders instruct recipients to provide technical assistance to law enforcement agencies, leaving wiggle room for companies to say they tried but could not make the technology work. Under the new proposal, providers could be ordered to comply, and judges could impose fines if they did not. The shift in thinking toward the judicial fines was first reported by *The Washington Post*, and additional details were described to *The New York Times* by several officials who spoke on the condition of anonymity.

Under the proposal, officials said, for a company to be eligible for the strictest deadlines and fines—starting at \$25,000 a day—it must first have been put on notice that it needed surveillance capabilities, triggering a 30-day period to consult with the government on any technical problems.

Such notice could be the receipt of its first wiretap order or a warning from the attorney general that it might receive a surveillance request in the future, officials said, arguing that most small start-ups would never receive either.

Michael Susmann, a former Justice Department lawyer who advises communications providers, said that aspect of the plan appeared to be modeled on a British law, the Regulation of Investigatory Powers Act of 2000.

Foreign-based communications services that do business in the United States would be subject to the same procedures, and would be required to have a point of contact on domestic soil who could be served with a wiretap order, officials said.

Albert Gidari Jr., who represents technology companies on law enforcement matters, criticized that proposed procedure. He argued that if the United States started imposing fines on foreign Internet firms, it would encourage other countries, some of which may be looking for political dissidents, to penalize American companies if they refused to turn over users' information. "We'll look a lot more like China than America after this," Gidari said.

The expanded fines would also apply to phone and network carriers, like Verizon and AT&T, which are separately subject to the 1994 wiretapping capacity law. The FBI has argued that such companies sometimes roll out system upgrades without making sure that their wiretap capabilities will keep working.

The 1994 law would be expanded to cover peer-to-peer voice-over-Internet protocol, or VoIP—calls between computers that do not connect to the regular phone network. Such services typically do not route data packets through any central hub, making them difficult to intercept.

The FBI has abandoned a component of its original proposal that would have required companies that facilitate the encryption of users' messages to always have a key to unscramble them if presented with a court order. Critics had charged that such a law would create back doors for hackers. The current proposal would allow services that fully encrypt messages between users to keep operating, officials said.

In November 2010, Mueller toured Silicon Valley and briefed executives on the proposal as it then existed, urging them not to lobby against it, but the firms have adopted a cautious stance. In February 2011, the FBI's top lawyer at the time testified about the "going dark" problem at a House hearing, emphasizing that there was no administration proposal yet. Still, several top lawmakers at the hearing expressed skepticism, raising fears about innovation and security. Reported in: *New York Times*, May 7.

Washington, D.C.

New documents from the FBI and U.S. Attorneys' offices paint a troubling picture of the government's email surveillance practices. Not only does the FBI claim it can

read emails and other electronic communications without a warrant—even after a federal appeals court ruled that doing so violates the Fourth Amendment—but the documents strongly suggest that different U.S. Attorneys’ offices around the country are applying conflicting standards to access communications content.

In April, in response to a Freedom of Information Act request, the American Civil Liberties Union (ACLU) received IRS documents indicating that the agency’s criminal investigative arm doesn’t always get a warrant to read Americans’ emails. On May 8, the ACLU released additional documents from other federal law enforcement agencies, reinforcing the urgent need for Congress to protect privacy by updating the laws that cover electronic communications.

The documents from the FBI don’t flat out reveal whether FBI agents always get warrants, but they strongly suggest that they don’t.

In 2010, the U.S. Court of Appeals for the Sixth Circuit decided in *United States v. Warshak* that the government must obtain a probable cause warrant before compelling email providers to turn over messages to law enforcement. But that decision only applies in the four states covered by the Sixth Circuit, so the ACLU filed its FOIA request to find out whether the FBI and other agencies are taking advantage of a loophole in the Electronic Communications Privacy Act (ECPA) that allows access to some electronic communications without a warrant. The FBI appears to think the Fourth Amendment’s warrant requirement doesn’t always apply.

The FBI provided the ACLU with excerpts from two versions of its Domestic Investigations and Operations Guide (DIOG), from 2008 and 2012. One of the Guides was from before *Warshak* was decided and the other one is from after, but they say the same thing: FBI agents only need a warrant for emails or other electronic communications that are unopened and less than 180 days old. The 2012 Guide contains no mention of *Warshak*, and no suggestion that the Fourth Amendment might require a warrant for all emails. In fact, the 2012 Guide states:

“In enacting the ECPA, Congress concluded that customers may not retain a ‘reasonable expectation of privacy’ in information sent to network providers. . . . [I]f the contents of an unopened message are kept beyond six months or stored on behalf of the customer after the e-mail has been received or opened, it should be treated the same as a business record in the hands of a third party, such as an accountant or attorney. In that case, the government may subpoena the records from the third party without running afoul of either the Fourth or Fifth Amendment.”

Confirmation that the FBI is reading some emails without a warrant can be found in a recent opinion issued by a federal magistrate judge in Texas. Most of the opinion concerns whether the FBI is allowed to surreptitiously infect a computer with spyware (the judge refused to grant the FBI a

warrant to do so). But tucked inside the opinion is this revelation: “the Government also sought and obtained an order under 18 U.S.C. § 2703 directing the Internet service provider to turn over all records related to the counterfeit email account, including the contents of stored communications.”

In addition to the FBI documents, the ACLU also received records from six U.S. Attorneys’ offices (in California, Florida, Illinois, Michigan, and New York), and from the Justice Department’s Criminal Division, which provides legal advice to federal prosecutors and law enforcement agencies. The Criminal Division withheld far more documents than it released. The U.S. Attorneys’ office documents reveal some information, but paint a confusing picture of federal policy.

The ACLU received two paragraphs from the U.S. Attorney for the Southern District of New York—part of an unidentified document stating that law enforcement can obtain “opened electronic communications or extremely old unopened email” without a warrant. Perplexingly, the agency has not released the cover page or other contextual information from this document, so we don’t know whether it reflects the current policy of that office.

Excerpts from an October 2012 document released by the U.S. Attorney for the Northern District of Illinois show that at least one part of the government understands that the Fourth Amendment protects private electronic communications. The document, a chart titled “Procedures for Obtaining Certain Forms of Electronic Surveillance and Related Evidence,” contains entries setting out the procedures for obtaining text messages, voicemails, and emails stored by Internet service providers, as well as stored communications on Facebook and “private tweets” on Twitter. The document says a warrant is required for each of these forms of communication. It even explains that “The Sixth Circuit in *Warshak* held that the non-warrant methods of obtaining stored emails to be [sic] unconstitutional.” Again, because the document lacks a cover page or other explanatory information we don’t know whether it constitutes binding policy for prosecutors or how broadly it applies. This lack of context is frustrating, but at least the document gets the law right.

The six U.S. Attorneys’ offices also said that since *Warshak*, they have not authorized a request to a court for access to the contents of electronic communications without a warrant. But according to the recent Texas magistrate judge’s opinion, one U.S. Attorney’s office apparently authorized such a request this year. Even with the new documents, the government’s actual position is far from clear.

If nothing else, these records suggest that federal policy around access to the contents of our electronic communications is in a state of chaos. The FBI, the Executive Office for U.S. Attorneys, and DOJ Criminal Division should clarify whether they believe warrants are required across the board

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success stories



schools

Northville, Michigan

Students in middle schools in Northville will continue to have the opportunity to read and study the definitive edition of Anne Frank's *A Diary of a Young Girl*. A district reconsideration committee voted to retain the book, which was challenged by a parent because of anatomical descriptions in the book.

When announcing the decision, the district's assistant superintendent, Bob Behnke, wrote that to remove the book "would effectively impose situational censorship by eliminating the opportunity for the deeper study afforded by this edition."

Before the vote, ten free speech organizations signed a letter to Northville School District urging them to keep the definitive edition in classrooms. The letter, which was sent to the Superintendent and Board of Education Members, emphasized the power and relatability of Frank's diary for middle school students. Frank's honest writings about her body and the changes she was undergoing during her two-year period of hiding from the Nazis in Amsterdam can serve as an excellent resource for students themselves undergoing these changes.

Anne Frank's diary has been made available in its unexpurgated totality in the years since the death of her father, Otto Frank, who censored the diary during his lifetime. Her cousin, Buddy Elias, president of the Anne Frank Foundation, said of the full translated work: "It's really her. It shows her in a truer light, not as a saint, but as a girl like every other girl. She was nothing, actually; people try to make a saint out of her and glorify her. That she was not.

She was an ordinary, normal girl with a talent for writing." Reported in: ncaac.org, May 13.

foreign

Melbourne, Australia

The Federal Court of Australia has ordered Royal Melbourne Institute of Technology to reinstate a professor who had been unfairly dismissed after complaining about alleged bullying and intimidation by her supervisor.

It found that Judith Bessant, a sociology and youth studies professor, had been "vindicated" and could be entitled to about \$2 million in compensation if she weren't reinstated. RMIT has also been fined \$37,000, payable to the National Tertiary Education Union that had joined Professor Bessant in the court action.

Justice Peter Gray rejected evidence from RMIT's vice chancellor, Margaret Gardner, that Bessant had been dismissed for financial reasons, finding that Gardner had failed to be "exhaustive" in her evidence.

Gray said that Gardner had been well-aware of the bullying allegations against Bessant's supervisor, David Hayward, but had failed to investigate whether Hayward was seeking to use financial justifications as a pretext to simply get rid of Bessant for reasons of his own.

Despite the university's own redundancy review committee previously finding that Bessant's dismissal had been unfair, Gray said that Gardner had been "committed" to making Bessant redundant. "Professor Gardner's approach was not that of the impartial decision-maker," Gray said in his judgment.

Noting that Gardner had shown no contrition, Gray said "the need for specific deterrence was quite high."

"In effect, RMIT made use of its redundancy processes to rid itself of an employee, who was considered to be troublesome, at least partly because she was prepared to exercise her workplace rights by making complaints about the behavior of her immediate supervisor. The process was conducted unfairly, with an attempt to narrow the focus of consideration to a financial situation which was alleged to exist, but not established by a rigorous process and not in accordance with reality," Gray wrote.

Bessant said she was relieved by the judgment, which came just over a year after she was dismissed. She said she was happy to return to RMIT. "I'd hope that everyone one can put this behind them and focus on teaching students, doing research and contributing to the community," Bessant said.

The education union said the judgment was a warning to all employers not to use "sham redundancies" to unfairly fire people. "Although this case involved RMIT, the approach taken by the university to getting rid of someone who is prepared to speak out will be all too familiar to university staff across Australia," said NTEU's Victorian secretary, Colin Long. Reported in: insidehighered.com, May 21.

no genre safe . . . from page 135

The Kite Runner, by Khaled Hosseini. Topping the *New York Times* bestseller list and becoming a feature film didn't stop this novel from offending readers for "homosexuality," "offensive language," "religious viewpoint," and "sexually explicit" content.

Looking for Alaska, by John Green. This chart-topping teen novel won a slew of awards, including the Michael L. Printz Award, but still drew grumbles for "offensive language," "sexually explicit" content, and being "unsuited for age group."

Scary Stories (series), by Alvin Schwartz. You'd think the title of this collection of ghost stories would be warning enough, but readers objected that it's "unsuited for age group" and contained too much "violence."

The Glass Castle, by Jeanette Walls. Readers disapproved of this best-selling memoir's "offensive language" and "sexually explicit" content.

Beloved, by Toni Morrison. That this classic won the Pulitzer Prize didn't deter some library goers from bemoaning its "sexually explicit" content, "religious viewpoint," and "violence." Reported in: *Parade*, April 15.

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rare thing in a free market when a customer is refused the ability to buy a company's product and is told its money is 'no good here,'" Sullivan wrote September 24, 2012, in *American Libraries*' E-Content blog.

Transformation extends to the community

But the transformation of libraries of all types involves much more than just the digital revolution. It also extends to community relationships, user expectations, library services, physical space, library leadership, and the library workforce, according to ALA Executive Director Fiels. Brett W. Lear, director of the Martin County Library System in Stuart, Florida, said that as the library profession pursues transformation, ongoing budget pressures will force individual library systems and the profession as a whole to sharpen their responses.

"We'll have to become better and better at planning and prioritizing," said Lear, author of *Adult Programs in the Library* (ALA Editions, 2012). "We'll have to be sure to deliver the services that bring about value and change in our communities. We'll have to get better at ending services that have run their course. We'll have to make partnership-building a top priority so that we can work with others to

deliver services that we can't deliver on our own."

Another voice: "People are looking for trusted organizations in their communities to come together, to focus on our shared aspirations and not just our complaints," Rich Harwood, founder and president of the Harwood Institute for Public Innovation, said in a panel discussion, "The Promise of Libraries Transforming Communities," held at the 2013 ALA Midwinter Meeting in Seattle. "I think libraries are uniquely positioned in the country to do this."

And another: "You are on the front lines of a battle that will shape the future of our country," Caroline Kennedy said in a speech at the Carnegie Corporation of New York/*New York Times* I Love My Librarian Award ceremony in New York City in December 2011. "It is a battle that is fought out of view, and the heroes are people who didn't seek a career of confrontation but who live lives of principle and meaning—understanding that the gift of knowledge is the greatest gift we can give to each other. Whether it is providing a social environment for seniors, a safe space for kids after school, or a makerspace to unleash the talent in the community, libraries are becoming more important than ever."

Libraries are responding in many ways. As the ongoing economic slump leads many Americans to reexamine their financial circumstances, public and community college libraries, for example, continue to provide patrons with reliable financial information and investor-education resources and programs, many of which target teens and young adults. The effort is funded in part by the FINRA Investor Education Foundation and receives management support and training from ALA's Reference and User Services Association.

Some libraries are also seeking new partners within the library community; three founding members of a joint-use college-public library in Houston wrote *Joint Libraries: Models That Work* (ALA Editions, 2012), which scrutinizes the successes and failures of the joint-use model. And as librarians work to define their roles in a digital age, some even see an opportunity to fill the void created by the loss of traditional bookstores.

The ALA's new Libraries Matter portal provides access to information on hundreds of studies that document the impact of public, academic, and school libraries on local economies, community development, and literacy and education. And the ALA's rapidly growing Transforming Libraries site provides "one stop" access to information on resources, publications, webinars, and online discussion groups and communities—all created by librarians.

On the front lines of the battle against censorship

Meanwhile, the struggle against censorship continues unabated, and the ALA remains on the front lines. For example, Banned Books Week, an annual event sponsored by the ALA and other organizations, celebrates the freedom to read and the importance of the First Amendment. Held during the last week of September, Banned Books Week

highlights the benefits of free and open access to information while drawing attention to the harms of censorship by spotlighting actual or attempted banning of books across the United States.

A perennial highlight of Banned Books Week is the Top Ten List of Frequently Challenged Books, compiled annually by the ALA Office for Intellectual Freedom (OIF).

The most-challenged items in 2012 ranged from the mischievous Captain Underpants series, which made the list in 2002, 2004, and 2005, to newcomers *Thirteen Reasons Why* and *Looking for Alaska*.

For a list of the Top Ten frequently challenged books, see page 135.

Elsewhere in the online version of this report on *The State of America's Libraries*, you can learn that:

- As colleges and universities sharpen their focus on outcomes, including assessing student learning and graduation rates, academic librarians are looking for new ways to help students analyze information and apply it to new contexts, reflect on what they know, identify what they still need to learn, and sort through contradictory arguments.
- Technology marches relentlessly on, and communication and marketing rely more and more on social media. Can libraries keep up? In a word: Yes.
- The fact that libraries still bring solid economic dividends to the communities they serve found ample expression in bricks and mortar in 2012, though there was somewhat of an increased emphasis on renovation as opposed to new construction.
- The library profession still faces the challenge of increasing its diversity, which has grown only slightly since the 2000 Census. The ALA has supported 700 Spectrum scholars, but ALA Executive Director Fiels and others agree that much work still lies ahead. Among those concurring is Brett W. Lear: "Somehow we need to figure out how to get young people interested in pursuing a career in libraries, so that we see more diversity in terms of graduates with an MLS," he said. This will be particularly challenging because of the "monumental budget and staff reductions in recent years."

phone records. . . . from page 138

organization a chance to challenge the subpoena in court.

First Amendment experts and free press advocates portrayed the move as shocking in its breadth.

The Newspaper Association of America issued a statement saying: "Today we learned of the Justice Department's unprecedented wholesale seizure of confidential telephone records from the Associated Press. These actions shock the American conscience and violate the critical freedom of the press protected by the U.S. Constitution and the Bill of Rights."

A spokeswoman for Dow Jones, which owns *The Wall Street Journal*, said the company was concerned about the "broader implications" of the action.

Jay Carney, a White House spokesman, said the White House was not involved in the subpoena. "Other than press reports, we have no knowledge of any attempt by the Justice Department to seek phone records of The A.P.," he said, adding "we are not involved in decisions made in connection with criminal investigations."

The A.P. said that it first learned of the seizure of the records when its general counsel, Laura Malone, received a letter from the United States attorney. The letter to Holder said the seizure included "all such records for, among other phone lines, an A.P. general phone number in New York City as well as A.P. bureaus in New York City, Washington, D.C., Hartford, Connecticut, and at the House of Representatives."

On May 24, 57 civil liberties, digital rights, press freedom and public interest groups sent a letter to Attorney General Holder demanding a full, transparent account of the Justice Department's targeting of journalists and whistleblowers.

The groups include the American Library Association, the American Civil Liberties Union, the Communications Workers of America, the Electronic Frontier Foundation, the Society of Professional Journalists, the Sunlight Foundation and the Writers Guild of America East. (The full list of signers can be found below.)

In addition, more than 16,000 petition signatures were delivered to the Justice Department urging the department to protect press freedom.

The full text of the letter and the list of signers:

May 24, 2013
Attorney General Eric Holder
Deputy Attorney General James M. Cole
U.S. Department of Justice
950 Pennsylvania Ave.
Washington, D.C. 20530

Dear Sirs:

More than 50 journalism and press organizations recently wrote you to voice grave concerns about the Justice Department's subpoena of telephone records belonging to Associated Press reporters and editors. We write today as a coalition of civil rights, public interest, transparency and media reform groups to express similar concerns.

Your actions have threatened press freedom—and endangered the health of our democracy. As groups working to strengthen democratic institutions and foster more open government, we are deeply concerned that your agency’s actions will hinder efforts to make government more transparent and accountable to the public.

Following years of aggressive leak investigations, the Justice Department’s overreaching subpoena of AP phone records sets a dangerous precedent. Furthermore, it appears to violate the Department’s own rules and guidelines. The impact of the Justice Department’s actions is already being felt. AP CEO Gary Pruitt reports that sources are now less willing to talk to reporters. And journalists from newsrooms large and small have noted the chilling effects on their coverage of the government.

The latest news suggests that the subpoenas were even broader than initially reported. In addition, details are emerging about a case in which the Justice Department also seized phone records from reporters at Fox News and labeled one of its journalists a “co-conspirator” for simply doing his job.

These troubling developments raise real questions about the scope of the Department’s surveillance of journalists. At a recent congressional hearing, Mr. Holder, you couldn’t recall how many times the Justice Department has subpoenaed journalists’ records. We need to know the full extent of your Department’s crackdown against journalists.

In the digital age, reporting is no longer confined to America’s traditional newsrooms. As such, threats to press freedom threaten anyone who seeks to share information about official actions using a cellphone, social media service or website. The Obama administration promised a new era of openness and transparency. Your actions, which expand secrecy and intimidate those trying to shed more light on our government, run counter to that promise.

We demand a full accounting of the Justice Department’s targeting of journalists and whistleblowers. We need this information so that we can advocate for appropriate action to protect everyone’s constitutional rights and push for stronger legal standards to protect all types of information gathering and sharing.

The Justice Department must explain its overreach in this matter. Furthermore, we call on the Department to stop violating its existing rules and cease targeting of individuals and organizations reporting on government activity.

Sincerely,
ACCESS
Alliance for Women in Media
American Booksellers Foundation for Free Expression
American Civil Liberties Union

American Library Association
The Banyan Project
Brave New Films
Center for Democracy and Technology
ColorOfChange.org
Common Cause
Communications Workers of America
CREDO Action
CultureStrike
Defending Dissent Foundation
Digital Media Law Project
Electronic Frontier Foundation
Fairness & Accuracy In Reporting
Freedom of the Press Foundation
Georgia First Amendment Foundation
IndyMedia
Investigative News Network
iSolon.org
Katy’s Exposure Blog
Knowledge Ecology International
LAMP: Learning About Multimedia Project
Media Alliance
The Media Consortium
Media Mobilizing Project
Mine Safety and Health News
MuckRock
National Alliance for Media Arts and Culture
National Coalition Against Censorship
National Freedom of Information Coalition
National Priorities Project
Native Public Media
The Newspaper Guild-CWA
OpenTheGovernment.org
Park Center for Independent Media
Participatory Politics Foundation
PEN American Center
Personal Democracy Media
Project Censored
Project On Government Oversight
Prometheus Radio Project
Public Record Media
RootsAction.org
Society of Professional Journalists
Sunlight Foundation
Tully Center for Free Speech at Syracuse University
United Republic
Utah Foundation for Open Government
Washington Civil Rights Council
Women In Media & News
Women, Action & the Media
Women’s Media Center
WRFN, Radio Free Nashville
Writers Guild of America, East
Reported in: *New York Times*, May 13; *North County Gazette*, May 24.

possible nature of the attack.

But some Democrats and Republicans greeted the news of the program with alarm. Senator Richard Durbin of Illinois, the No. 2 Democrat, said he and other senators initially learned of the government's review of phone records in an earlier classified briefing, and although they were concerned by what they had heard, they were limited in what they could publicly criticize.

"There's been a concern about this issue for some time," he told reporters in the Capitol. "That's why I think sunseting many of these laws is appropriate because circumstances change in terms of America's security. And our information and knowledge change in terms of threats to America."

The comments by the lawmakers provided significant context to the disclosure by the *Guardian* newspaper June 5 of a court order in April to a Verizon subsidiary that provides telecommunications services to corporations. It directed the firm to turn over to the National Security Agency, "on an ongoing daily basis" until July, logs of communications "between the United States and abroad" or "wholly within the United States, including local telephone calls."

It was not clear whether similar orders have gone to other subsidiaries of Verizon or to other telecommunications firms; such orders, issued by the Foreign Intelligence Surveillance Court, gag their recipients from talking about them. But the comments by the lawmakers suggested that the order was just one of many that have enabled the National Security Agency to create a vast library of communications logs for data-mining purposes.

As the scope of the government's collection of logs of Americans' domestic communications started to come into greater focus, privacy groups erupted. Anthony Romero of the American Civil Liberties Union said that group—a client of Verizon's business unit—was considering filing a lawsuit to challenge the "dragnet" surveillance, and said liberals would be furious had such a program been disclosed under a Republican administration.

"A pox on all the three houses of government," he said. "On Congress, for legislating such powers, on the FISA court for being such a paper tiger and rubber stamp, and on the Obama administration for not being true to its values."

But a senior Obama administration official asserted that its surveillance activities "comply with the Constitution and laws of the United States and appropriately protect privacy and civil liberties."

A spokesman for President Obama, Josh Ernest, told reporters that the surveillance is subjected to a strict legal

review that "reflects the president's desire to strike the right balance between protecting our national security and protecting constitutional rights and civil liberties." Still, Ernest said, "The president welcomes a discussion of the tradeoffs between security and civil liberties."

Following the comments by Feinstein and Chambliss, Senator Ron Wyden, Democrat of Oregon, issued a statement confirming that the program was the one that he and Senator Mark Udall, Democrat of Colorado, have been cryptically warning about for years each time the USA PATRIOT Act has come up for renewal. He said he hoped the disclosure would "force a real debate" about whether such "sweeping, dragnet surveillance" should be permitted or is necessary.

"I believe that when law-abiding Americans call their friends, who they call, when they call, and where they call from is private information," Wyden said. "Collecting this data about every single phone call that every American makes every day would be a massive invasion of Americans' privacy."

The Justice Department was spearheading a multi-agency effort to declassify parts of the program in order to release information about it to the public, according to a senior government official. The official said that administration officials were fearful that if parts of the program were not declassified, they would not be able to share information about it, stoking skepticism about the program.

But a former senior intelligence official who was involved in early efforts by the government to track communications with terror groups said that the order appeared to be part of a long-running effort by the United States to create a database of communications, which investigators could dip into if they had identified one terrorist and were trying to find his or her hidden compatriots.

There are several clues inside the FISA court authorization that suggest a running database was, in fact, the objective. The order contains no "mitigation clause," requiring the FBI or the NSA to destroy data they were not using or that was not relevant. That clause would be common, two officials said, if the FISA court had permitted the monitoring of a specific individual or group. "The normal course of events is to say you have to destroy data unless it's helpful to a specific investigation," one official said.

Such a database would ensure that records would be retained as a library, even if the telecommunications companies deleted them after a period because there was no more business reason to retain them. But the fact that the Justice Department has continued to issue subpoenas for specific call logs—like the controversial one for Associated Press reporters' records that came to light last month—suggests that the National Security Agency may have strictly limited access to the database only for the purpose of foreign-intelligence investigation.

The reference by Senator Feinstein to a program that

has been operating for seven years suggested that the activity traces back to 2006, when the Bush administration was struggling over the disclosure by *The New York Times* that it had erected a constellation of domestic surveillance programs that did not comply with federal statutes after the September 11, 2001 attacks.

Aspects of the program had been controversial even inside the Bush administration. In a well-known March 2004 confrontation, Justice Department officials decided one aspect was illegal and the deputy attorney general, James B. Comey, refused to reauthorize it. In response, President Bush sent his chief of staff and his White House counsel, Alberto Gonzales, to the hospital room of the then-ailing attorney general, John Ashcroft, in an effort to get him to overrule Comey's decision.

In 2008, *Newsweek* reported that the hospital room encounter had been about a program in which the National Security Agency was vacuuming up communications metadata. By then, however, the program—or at least its legal justification—had changed. In early 2007, Gonzales, who was now the attorney general, announced that after months of extensive negotiation, the Foreign Intelligence Surveillance Court had approved “innovative” and “complex” orders bringing the surveillance programs under its authority.

One part of that deal, Feinstein's comments suggested, was to begin collecting communications metadata under orders issued by the court under Section 215 of the USA PATRIOT Act. The provision, which was enacted shortly after the September 11 attacks, allowed the FBI to seek business records deemed “relevant” to an investigation; as part of a 2006 reauthorization, lawmakers had removed any need for the bureau to establish to the court why the requested items were relevant.

Later, some aspects of the deal with the Foreign Intelligence Surveillance Court came under question from one of the judges, prompting Congress to enact the Protect America Act of 2007 and the FISA Amendments Act of 2008. One provision protected recipients of Section 215 orders from being subject to civil lawsuits for complying with such orders going forward.

Later that year, *The New York Times* filed a Freedom of Information Act lawsuit seeking access to a report that Wyden and Udall had disclosed that described the government's interpretation of the statute. The Obama administration successfully fought the lawsuit.

While the lawsuit was pending in early 2012, Wyden and Udall wrote a letter to Attorney General Eric H. Holder Jr. criticizing the Justice Department's stance in the litigation and further raising their alarms over the program.

“We believe most Americans would be stunned to learn the details of how these secret court opinions have interpreted Section 215 of the USA PATRIOT Act,” they wrote. Reported in: *New York Times*, June 6.

NSA said to have collected data. . . . from page 139

said they had no knowledge of the program and responded only to individual requests for information. “We do not provide any government organization with direct access to Facebook servers,” said Joe Sullivan, chief security officer for Facebook. “When Facebook is asked for data or information about specific individuals, we carefully scrutinize any such request for compliance with all applicable laws, and provide information only to the extent required by law.”

“We have never heard of PRISM,” an Apple spokesman said. “We do not provide any government agency with direct access to our servers, and any government agency requesting customer data must get a court order.”

Government officials and the document itself made clear that the NSA regarded the identities of its private partners as PRISM's most sensitive secret, fearing that they would withdraw from the program if exposed. “98 percent of PRISM production is based on Yahoo, Google and Microsoft; we need to make sure we don't harm these sources,” the briefing's author wrote in his speaker's notes.

An internal presentation of 41 briefing slides on PRISM, dated April 2013 and intended for senior analysts in the NSA's Signals Intelligence Directorate, described the new tool as the most prolific contributor to the President's Daily Brief, which cited PRISM data in 1,477 articles last year. According to the slides and other supporting materials obtained by *The Post*, “NSA reporting increasingly relies on PRISM” as its leading source of raw material, accounting for nearly 1 in 7 intelligence reports.

That is a remarkable figure in an agency that measures annual intake in the trillions of communications. It is all the more striking because the NSA, whose lawful mission is foreign intelligence, is reaching deep inside the machinery of American companies that host hundreds of millions of American-held accounts on American soil.

The technology companies, which knowingly participate in PRISM operations, include most of the dominant global players of Silicon Valley, according to the document. They are listed on a roster that bears their logos in order of entry into the program: “Microsoft, Yahoo, Google, Facebook, PalTalk, AOL, Skype, YouTube, Apple.” PalTalk, although much smaller, has hosted significant traffic during the Arab Spring and in the ongoing Syrian civil war.

Dropbox, the cloud storage and synchronization service, is described as “coming soon.”

“I would just push back on the idea that the court has signed off on it, so why worry?” said Jameel Jaffer, deputy legal director of the American Civil Liberties Union. “This is a court that meets in secret, allows only the government to appear before it, and publishes almost none of its opinions. It has never been an effective check on government.”

PRISM is an heir, in one sense, to a history of intelligence alliances with as many as 100 trusted U.S. companies since the 1970s. The NSA calls these Special Source Operations, and PRISM falls under that rubric.

The Silicon Valley operation works alongside a parallel program, code-named BLARNEY, that gathers up “meta-data”—address packets, device signatures and the like—as it streams past choke points along the backbone of the Internet. BLARNEY’s top-secret program summary, set down alongside a cartoon insignia of a shamrock and a leprechaun hat, describes it as “an ongoing collection program that leverages IC [intelligence community] and commercial partnerships to gain access and exploit foreign intelligence obtained from global networks.”

But the PRISM program appears to more nearly resemble the most controversial of the warrantless surveillance orders issued by President George W. Bush after the al-Qaeda attacks of September 11, 2001. Its history, in which President Obama presided over exponential growth in a program that candidate Obama criticized, shows how fundamentally surveillance law and practice have shifted away from individual suspicion in favor of systematic, mass collection techniques.

The PRISM program is not a dragnet, exactly. From inside a company’s data stream the NSA is capable of pulling out anything it likes, but under current rules the agency does not try to collect it all.

Analysts who use the system from a Web portal in Fort Meade, Md., key in “selectors,” or search terms, that are designed to produce at least 51 percent confidence in a target’s “foreignness.” That is not a very stringent test. Training materials obtained by *The Post* instruct new analysts to submit accidentally collected U.S. content for a quarterly report but add that “it’s nothing to worry about.”

Even when the system works just as advertised, with no American singled out for targeting, the NSA routinely collects a great deal of American content. That is described as “incidental,” and it is inherent in contact chaining, one of the basic tools of the trade. To collect on a suspected spy or foreign terrorist means, at minimum, that everyone in the suspect’s inbox or outbox is swept in. Intelligence analysts are typically taught to chain through contacts two “hops” out from their target, which increases “incidental collection” exponentially. The same math explains the aphorism, from the John Guare play, that no one is more than “six degrees of separation” from any other person.

Senators Ron Wyden (D-Oregon) and Mark Udall (D-Colorado), who had classified knowledge of the program as members of the Senate Intelligence Committee, were unable to speak of it when they warned in a December 27, 2012, floor debate that the FISA Amendments Act had what both of them called a “back-door search loophole” for the content of innocent Americans who were swept up in a search for someone else.

“As it is written, there is nothing to prohibit the

intelligence community from searching through a pile of communications, which may have been incidentally or accidentally been collected without a warrant, to deliberately search for the phone calls or e-mails of specific Americans.”

In exchange for immunity from lawsuits, companies such as Yahoo and AOL are obliged to accept a “directive” from the attorney general and the director of national intelligence to open their servers to the FBI’s Data Intercept Technology Unit, which handles liaison to U.S. companies from the NSA. In 2008, Congress gave the Justice Department authority for a secret order from the Foreign Surveillance Intelligence Court to compel a reluctant company “to comply.”

In practice, there is room for a company to maneuver, delay or resist. When a clandestine intelligence program meets a highly regulated industry, said a lawyer with experience in bridging the gaps, neither side wants to risk a public fight. The engineering problems are so immense, in systems of such complexity and frequent change, that the FBI and NSA would be hard pressed to build in back doors without active help from each company.

Apple demonstrated that resistance is possible when it held out for more than five years, for reasons unknown, after Microsoft became PRISM’s first corporate partner in May 2007. Twitter, which has cultivated a reputation for aggressive defense of its users’ privacy, is still conspicuous by its absence from the list of “private sector partners.”

“Google cares deeply about the security of our users’ data,” a company spokesman said. “We disclose user data to government in accordance with the law, and we review all such requests carefully. From time to time, people allege that we have created a government ‘back door’ into our systems, but Google does not have a ‘back door’ for the government to access private user data.”

Like market researchers, but with far more privileged access, collection managers in the NSA’s Special Source Operations group, which oversees the PRISM program, are drawn to the wealth of information about their subjects in online accounts. For much the same reason, civil libertarians and some ordinary users may be troubled by the menu available to analysts who hold the required clearances to “task” the PRISM system.

There has been “continued exponential growth in tasking to Facebook and Skype,” according to the PRISM slides. With a few clicks and an affirmation that the subject is believed to be engaged in terrorism, espionage or nuclear proliferation, an analyst obtains full access to Facebook’s “extensive search and surveillance capabilities against the variety of online social networking services.”

According to a separate “User’s Guide for PRISM Skype Collection,” that service can be monitored for audio when one end of the call is a conventional telephone and for any combination of “audio, video, chat, and file transfers” when Skype users connect by computer alone. Google’s offerings include Gmail, voice and video chat, Google Drive files,

photo libraries, and live surveillance of search terms.

Firsthand experience with these systems, and horror at their capabilities, is what drove a career intelligence officer to provide PowerPoint slides about PRISM and supporting materials to *The Washington Post* in order to expose what he believes to be a gross intrusion on privacy. “They quite literally can watch your ideas form as you type,” the officer said. Reported in: *Washington Post*, June 6.

ALA council calls for reforms . . . from page 139

(ALA) has affirmed the right to privacy in its Code of Ethics, which currently states, “We protect each library user’s right to privacy and confidentiality with respect to information sought or received and resources consulted, borrowed, acquired or transmitted”; and

Whereas, In “Principles for the Networked World” (2002) the ALA included among the “principles of privacy” the fact that “privacy is a right of all people and must be protected in the networked world” and the recognition that “the rights of anonymity and privacy while people retrieve and communicate information must be protected as an essential element of intellectual freedom”; and

Whereas, In “Privacy: An Interpretation of the Library Bill of Rights” ALA recognized that “privacy is essential to the exercise of free speech, free thought, and free association”; and

Whereas, In 2003 ALA criticized the “USA PATRIOT Act and other recently enacted laws, regulations, and guidelines” on the grounds that they “increase the likelihood that the activities of library users, including their use of computers to browse the Web or access e-mail, may be under government surveillance without their knowledge or consent;” and

Whereas, Since 2010 ALA has sponsored “Choose Privacy Week,” a campaign designed to raise public awareness about personal privacy rights by encouraging local libraries to provide programming, online education, and special events to help individuals to learn, think critically and make more informed choices about their privacy, especially in an era of pervasive surveillance; and ALA has created a website, www.ala.org/liberty, that provides substantive information about privacy, surveillance, open government, and overclassification as well as civic engagement tools to facilitate deliberative dialogues to help support libraries and librarians who create opportunities for public dialogues addressing these topics; and

Whereas, The public recently learned that the National Security Agency (NSA) is collecting the telephone call metadata of millions of U.S. customers of

Verizon Business Services, AT&T, and Sprint pursuant to an order issued by the Foreign Intelligent Surveillance Court (FISC) under Section 215 of the USA PATRIOT Act; and

Whereas, Pursuant to a court order issued by the FISC under Section 702 of the FISA Amendments Act (FAA) the NSA is operating a program called PRISM that is collecting and retaining vast quantities of data on Internet usage, including Internet search histories, email, video and voice chat, videos, photos, voice-over-IP chats, file transfers, and social networking details, from Internet service providers in the United States. Though intended to target communications of foreign persons, the NSA admits that it collects and stores Internet data from U.S. persons; now, therefore be it

RESOLVED, THAT THE AMERICAN LIBRARY ASSOCIATION (ALA):

1. Reaffirms its unwavering support for the fundamental principles that undergird our free and democratic society, including a system of public accountability, government transparency, and oversight that supports people’s right to know about and participate in our government;
2. In light of present revelations related to NSA’s surveillance activities conducted pursuant to orders issued by the Foreign Intelligent Surveillance Court (FISC) under Sections 215 and 702 of the USA PATRIOT Act, the American Library Association calls upon the U.S. Congress, President Obama, and the Courts to reform our nation’s climate of secrecy, overclassification, and secret law regarding national security and surveillance, to align with these democratic principles;
3. Urges the U.S. Congress and President Obama to provide authentic protections that prevent government intimidation and criminal prosecution of government employees and private contractors who make lawful disclosures of wrongdoing in the intelligence community;
4. Calls upon the public to engage in and our members to lead public dialogues discussing the right to privacy, open government and balancing civil liberties and national security;
5. Encourage the public to support bills and other proposals that both secure and protect our rights to privacy, free expression and free association and promote a more open, transparent government and be further resolved, that
6. Expresses its thanks and appreciation to the members of Congress who work to protect our privacy and civil liberties.

from the bench . . . from page 154

declarations submitted by Stephanie Douglas, executive assistant director of the FBI's national security branch, and Robert Anderson, assistant director of the counterintelligence division at FBI headquarters.

A 2007 report by the Justice Department's inspector general found "serious misuse" of NSLs, and FBI director Robert Mueller pledged stricter internal controls. Mueller has also called the investigative technique invaluable. Reported in: *cnet.com*, May 31.

Elizabeth, New Jersey

In a decision that could impact bloggers across New Jersey, a Superior Court judge ruled April 12 that a self-declared citizen watchdog who writes stinging critiques of Union County government has the same legal protections as a professional journalist.

While questioning the quality and tone of the writing in Tina Renna's blog posts, Judge Karen Cassidy concluded Renna "obtained material in the course of professional news-gathering activities" with the aim of disseminating it over the Internet. As such, Cassidy wrote in her opinion, Renna should be covered by the state's shield law. Under that law, one of the most powerful of its kind in the country, journalists generally cannot be forced to reveal their sources or other sensitive information to law enforcement or grand juries.

The judge's ruling quashed a subpoena served on Renna by the Union County Prosecutor's Office, which wanted the names of sixteen county employees Renna claimed had improperly used county-owned portable generators after Hurricane Sandy. Renna made the allegation in a December blog post but did not name the employees.

Renna, 51, of Cranford, called the decision a victory for the public. "I'm happy for me and the others who stand up to the machine—the prosecutor's office and Democratic Party," she said.

Later, in a blog post on her site, *countywatchers.com*, Renna declared she was not "an arm of law enforcement" and accused Prosecutor Theodore Romankow of using his office to "harass" her.

Renna, the wife of a former independent candidate for Union County freeholder, has been a thorn in the side of county officials since 2005, blasting what she sees as injustice and sometimes uncovering juicy news items through sources and the Open Public Records Act. Some posts are merely snarky. Others are full-throated partisan attacks that have characterized county employees as "psychopaths" and "Nazis."

Those comments notwithstanding, the judge ruled Renna and other bloggers on her site "do in fact author posts about alleged occurrences and issues relative to Union County

governance and politics."

Seton Hall University law professor Thomas Healy, who specializes in First Amendment issues, said the ruling appears to stretch the coverage provided by the state shield law. That's probably good for the public discourse, he said.

"If we don't cover any electronic media, then you're not going to get a lot of people engaged in what we would consider journalism," Healy said. With more people writing, however, the definition of journalism becomes blurred. "There's not a clear division between blogs and electronic media and traditional media," Healy said. "There's a whole spectrum out there."

Renna's lawyer, Bruce Rosen, contends the prosecutor wanted his client's sources—not just the names of employees who allegedly used generators—in an attempt to dissuade others from talking to Renna. "The prosecutor was trying to silence her," Rosen said.

Romankow disputes the claim. In a statement, he also questioned whether Renna fabricated the blog post about the generators, then invoked the shield law so she would not be unmasked. "Personally, I believe she was caught in a lie and chose to waste time and money by hiding," the prosecutor said. Reported in: *Newark Star-Ledger*, April 12.

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when accessing people's email. It has been clear since 1877 that the government needs a warrant to read letters sent via postal mail. The government should formally amend its policies to require law enforcement agents to obtain warrants when seeking the contents of all emails too, the ACLU contends.

More importantly, the ACLU argues that Congress also needs to reform ECPA to make clear that a warrant is required for access to all electronic communications. Reform legislation is making its way through the Senate now, and the documents released by the U.S. Attorney in Illinois illustrate that the law can be fixed without harming law enforcement goals. Reported in: *aclu.org*, May 8.

Washington, D.C.

A secretive federal court last year approved all of the 1,856 requests to search or electronically surveil people within the United States "for foreign intelligence purposes," the Justice Department reported.

The report, released April 30 to Harry Reid, the Senate majority leader from Nevada, provides a brief glimpse into the caseload of what is known as the Foreign Intelligence Surveillance Court. None of its decisions are public.

The 2012 figures represent a 5 percent bump from the

prior year, when no requests were denied either.

The secret court, which came to life in the wake of the Watergate scandal under the President Richard M. Nixon administration, now gets the bulk of its authority under the FISA Amendments Act, which Congress reauthorized for another five years days before it would have expired last year.

The act allows the government to electronically eavesdrop on Americans' phone calls and e-mails without a probable-cause warrant so long as one of the parties to the communication is believed outside the United States.

The legislation does not require the government to identify the target or facility to be monitored. It can begin surveillance a week before making the request to the secret court, and the surveillance can continue during the appeals process if, in a rare case, the spy court rejects the surveillance application.

All the while, the government has interpreted the law to mean that as long as the real target is al-Qaeda, the government can wiretap purely domestic e-mails and phone calls. That's according to David Kris, a former top anti-terrorism attorney at the Justice Department. In short, Kris said the FISA Amendments Act gives the government nearly carte blanche spying powers.

Kris, who headed the Justice Department's National Security Division between 2009 and 2011, writes in the revised 2012 edition of *National Security Investigations and Prosecutions*:

"For example, an authorization targeting 'al Qaeda'—which is a non-U.S. person located abroad—could allow the government to wiretap any telephone that it believes will yield information from or about al Qaeda, either because the telephone is registered to a person whom the government believes is affiliated with al Qaeda, or because the government believes that the person communicates with others who are affiliated with al Qaeda, regardless of the location of the telephone."

The Supreme Court in February turned away a challenge to the spy law. The high court concluded 5-4 that, because the eavesdropping is done secretly, the ACLU, journalists and human-rights groups have no legal standing to sue because they have no evidence they are being targeted by the FISA Amendments Act.

The same Justice Department report said the government issued 15,229 National Security Letters last year, down from 16,511 in 2011. The letters 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.

The letters were declared unconstitutional in March, a decision that was stayed ninety days pending the President Barack Obama administration's expected appeal. Reported in: wired.com, May 2.

access and transparency

Washington, D.C.

President Barack Obama issued an executive order May 9 that aims to make "open and machine-readable" data formats a requirement for all new government Information Technology (IT) systems. The order would also apply to existing systems that are being modernized or upgraded. If implemented, the mandate would bring new life to efforts started by the Obama administration with the launch of Data.gov four years ago. It would also expand an order issued in 2012 to open up government systems with public interfaces for commercial app developers.

"The default state of new and modernized Government information resources shall be open and machine readable," the president's order reads. "Government information shall be managed as an asset throughout its life cycle to promote interoperability and openness, and, wherever possible and legally permissible, to ensure that data are released to the public in ways that make the data easy to find, accessible, and usable."

The order, however, also requires that this new "default state" protect personally identifiable information and other sensitive data on individual citizens, as well as classified information.

The president's mandate was initially pushed forward by former Chief Information Officer of the United States Vivek Kundra. In May of 2009, Data.gov launched with an order that required agencies to provide at least three "high-value data sets" through the portal.

However, the data sets initially published through Data.gov were in a vast assortment of formats and were entirely static "dumps." There was a great deal of resistance from agencies initially, in part because the new requirements came without any funding to produce the open sets from systems that were largely built on a patchwork of legacy systems and custom-formatted data. In August of 2010, the Obama administration created the position of "Data.gov evangelist" to push forward publishing efforts; the position was given to Jeanne Holm, former chief knowledge architect at NASA's Jet Propulsion Laboratory.

After the departure of Vivek Kundra, new federal CIO Steven VanRoekel took point on open data, pushing to expose live government data rather than static data sets. Last May, the White House ordered agencies to create public Application Programming Interfaces (APIs) that could be used by government and private developers to tap in to data and make specific "applicable Government information open and machine-readable by default."

At that time, VanRoekel said in an Office of Management and Budget blog post, "To make sure there's no wrong door for accessing government data, we will transform Data.gov into a data and API catalog that in real time pulls directly from agency websites." This February, the Obama administration pushed open requirements forward on the scientific

front and moved to make more federally funded research data available to the public to preserve “digitally formatted scientific data” for public use.

But these orders, and the efforts by federal IT leaders, have thus far not opened up much of the core of federal data to daylight. With the new executive order issued May 9, the Obama administration is pushing the goal posts back further for agencies in the hopes of greater IT efficiency and transparency—and of creating an ecosystem of businesses that turn mashups of government data into a profitable business.

The order calls for the Office of Management and Budget to issue an Open Data Policy and sets a three-month timeline for it to be incorporated into the performance goals for all the government agencies affected by the order. Independent agencies, such as the Federal Communications

Commission, are “requested to adhere” to the order.

Within thirty days of the publication of that policy, the order requires VanRoekel’s office and Federal Chief Technology Officer Todd Park to publish “an open online repository of tools and best practices” to help agencies integrate open data standards into their systems. Within ninety days of the issuance of the policy, it will be integrated into the Office of Management and Budget’s rules governing the way agencies purchase IT systems and services

Just how effective this order will be in the face of the government’s ongoing budget crisis is unclear. With sequestration cutting back many programs, there’s little maneuvering room for agencies to make significant changes to the systems that this order would affect. Reported in: arstechnica.com, May 9.

The Merritt Fund

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intellectual freedom bibliography

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- Albanese, Andrew Richard. "A Textbook Case: What Does *Kirtsaeng v. Wiley* Mean for the Industry?" *Publishers Weekly*. Vol. 260, no. 12, March 25, 2013, pp. 7-8.
- Ginley, Jacqueline. "Fighting the Good Fight: Ruling Against Small-Town Publisher Carries Broad Ramification for Freedom of the Press." *Editor & Publisher*. Vol. 146, no. 3, March 2013, pp. 25-27.
- Heinecken, Dawn. "'All of Her Changes Have Made Me Think About My Changes': Fan Readings of Phyllis Reynolds Naylor's Alice Series." *Children's Literature in Education*. Vol. 44, no. 2, June 2013, p. 104-119.
- "Michigan School District Faces Anne Frank Challenge." *Library Hotline*. Vol. 42, no. 20, May 20, 2013, pp. 2-4.
- Moore, Adam D. "Privacy, Speech, and the Law." *Journal of Information Ethics*. Vol. 22, no. 1, Spring 2013, pp. 21-43.
- Schwartz, Meredith. "Alleged Defamation Worth \$1B." *Library Journal*. Vol. 138, no. 11, June 15, 2013.
- Yelchin, Eugene. "The Price of Truth." *The Horn Book Magazine*. Vol. 89, no. 2, March/April 2013, pp. 41-45.
- Zimmer, Michael. "Patron Privacy in the '2.0' Era: Avoiding the Faustian Bargain of Library 2.0." *Journal of Information Ethics*. Vol. 22, no. 1, Spring 2013, pp. 44-59.

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