Opinion

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EDITORIAL

Progress on public records

Ginger McCall did Oregonians a service in pointing out some of the serious flaws in the state's public records law before she resigned last week as Oregon's first public records advocate.

But the problem is even more fundamental than McCall implied.

She made fine suggestions on her final day at work, including prohibiting public agencies from charging exorbitant attorney fees, of $180 per hour or more, to pore over requested records for potentially exempt material before releasing them to the person who asked for them.

McCall also highlighted the ridiculous provision in the law in which a person whose request for a record is denied by an elected official, rather than an appointed one, can only pursue the matter by filing a lawsuit.

These are problems the Legislature should address, ideally when it convenes for a short session early in 2020.

But the greater problem with the records law is that it allows public agencies, which are the holders of these records, to proceed as though most, if not all, records are likely to contain the sorts of private information that rightfully could be redacted before the record is released.

But a considerable percentage of records contain nothing of the sort, and by law they should be readily available to anyone who asks for them.

Yet the current system seems all but designed to discourage people from even asking, lest they be presented with the sort of cost estimate typically associated with the purchase of a car or a home.

This is nonsensical.

We're talking here about mundane documents prepared with taxpayers' dollars, and in many cases showing how those dollars were spent. These aren't nuclear weapon launch codes.

Much as our justice system is based on the presumption that the accused is innocent, the public records law should be based on the presumption — which in this case also happens to be true — that public records, by and large, are not exempt from disclosure

In many cases — and probably in most cases — a clerk could determine quickly that a record contains no exempt information. No need to threaten to hire a lawyer to do the same task at 15 times the cost.

McCall's revelations about the pressure exerted on her by state officials were valuable, and so are her recommendations for making public records more accessible.

Ideally the attention that her resignation has focused on the law will also lead the Legislature to take a more comprehensive look at what the vast majority of records actually contain — and what they don't contain.

Until public agencies and their employees understand that they shouldn't treat every record requested as if it's the likely repository of secret data on which national security depends, the law is apt to remain more an obstacle to public access than the guarantor of access it's supposed to be.

— Jayson Jacoby, Baker City Herald editor

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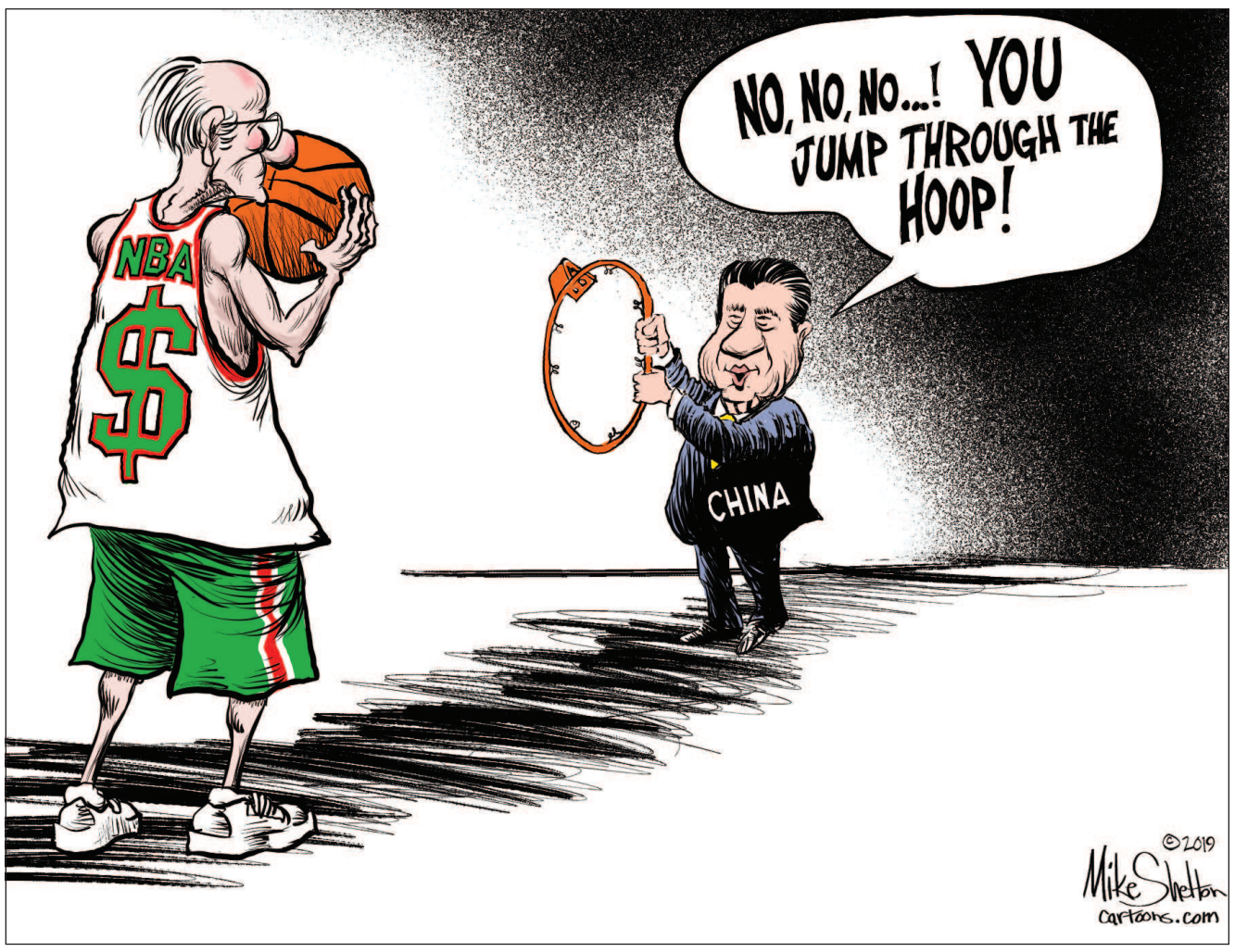

Higher ed is anti-conservative

RICHARD E. VATZ

Higher education prides itself on two overarching values: supporting the marketplace of ideas and academic freedom. But there has been an increasing and unremitting effort to eliminate conservatives and conservative thought in the humanities and social sciences in the American academy.

Channeling the late civil rights advocate President John F. Kennedy, who said "Are we to say to the world — and much more importantly, to each other — that this is the land of the free, except for the Negro?"

Today, he would have said of colleges and universities, "Are we to say to the world — and much more importantly, to each other — higher education today is for diversity and equity except for conservatives?"

Let me just cite a couple of survey results, revelatory of a consistent number of studies that have comparable findings: In 2017, Inside Higher Ed, in a comprehensive article about the threat to conservatives in higher education, highlighted a study in Econ Journal Watch that "considered voter registration of faculty members in selected social science disciplines (and history) at 40 leading American universities. The study found a ratio of 11.5 Democrats for every Republican in these departments," and in history, it was 33.5 to 1.

Let's look at ideological tolerance at public universities and major academic organizations.

I am very familiar with Towson University, having taught there for 45 years, but I am also familiar with many universities around the country, having spoken at many and having been on the Legislative Assembly at the National Communication Association and having been involved closely with the Eastern Communication Association — our top regional organization (trust me), along with the Southern States Communication Association.

The anti-conservatism is increasing at most national education venues. To be fair, there is an undercurrent of guilt or self-awareness among some, if not many, relating to the hypocrisy of ostensible support for supporting the free flow of differing ideas while perpetrating overt discrimination in hiring, promotion, tenure, college campus and convention participation and publishing of those on the right.

In the NCA, I have long been a conspicuous advocate of fairness to conservatives, despite the continuing and increasing bigotry against those who disagree with progressive points of view. I have had lengthy exchanges with the current president, the immediately former president and the executive director of the NCA concerning their need to rectify the current situation which led to more than a score of their limited number of open conservatives leaving the organization. The NCA couldn't care less.

Repeatedly, I have asked them to do something, and repeatedly I have requested they specifically "add the ensuring of ideological equity to the NCA presidential diversity statements." This act was recently accomplished at my behest to the diversity statement at Towson University, a university that is making some effort to assure a beginning to some political fairness.

The Eastern Communication Association has been open to consistent discussions, and it appears that they, too, are making some effort to assure a beginning and perhaps more to some political fairness.

Interestingly, when I have carped to the point that the NCA leadership will respond — after literally refusing to even address the issue — they answer that the "NCA is not in the business of advocating for conservatism or liberalism" (quote from the president) and that conservativism will have to wait.

The latter sentiment is precisely what African Americans historically have been told when they have experienced blatant, widespread discrimination.

Richard E. Vatz (rvatz@towson.edu) is a professor at Towson University and author of "The Only Authentic of Persuasion: the Agenda-Spin Model" (LAD Custom Publishing, 2019) and the co-editor of "Thomas S. Szasz: the Man and His Ideas" (Transaction Publishers, 2017).

OTHER VIEWS

Make it harder for the FBI to snoop

Editorial from The Los Angeles Times:

When Congress reauthorized a controversial program last year that allows the government to scoop up the emails and video chats of foreigners abroad with possible connections to terrorism, it included provisions to safeguard the privacy of Americans on the other end of those communications.

But a recently declassified opinion from the special court that oversees intelligence activities suggests that the FBI didn't take that mandate seriously enough. Congress needs to ensure that the bureau is following the law.

Section 702 of the Foreign Intelligence Surveillance Act allows the government to collect the electronic communications of foreigners living abroad. The program has been described by members of Congress, including former Senate Intelligence Committee Chairwoman Dianne Feinstein (D-Calif.), as a valuable counterterrorism tool.

But in today's electronically interconnected world, monitoring the communications of foreign "targets" inevitably collects some communications involving Americans.

To protect privacy rights, the current version of the law requires that government agencies keep records of how often they "query" (or search) the huge database of intercepted communications for information about "U.S. persons" — citizens and lawful permanent residents. Section 702 also requires that the queries be "conducted in a manner consistent with the 4th Amendment."

But in an opinion made public last week, Judge James Boasberg of the Foreign Intelligence Surveillance Court determined a year ago that the FBI hadn't fully adhered to the privacy safeguards. For example, he cited several instances in which the FBI searched for information about large groups of U.S. persons without satisfying the requirement that the search be "reasonably likely to return foreign-intelligence information or evidence of crime." Some of the searches involved using search terms apparently associated with people who worked for the FBI — presumably, an attempt to use foreign-intelligence information for personnel review.

Until checked by the court, the FBI seemed to have taken Congress' mandates to protect Americans' privacy as mere suggestions. Congress needs to demand that FBI Director Christopher A. Wray demonstrate that his agents aren't engaging in fishing expeditions in the sea of intercepted communications involving Americans.

The law may also need to be changed. Although the FBI must obtain a court order to read the contents of some communications turned up in a computer search under Section 702, the very act of searching without probable cause is a violation of privacy — even if the intention is to look for evidence of a crime.

If Section 702 were completely consistent with the Fourth Amendment, investigators would need to obtain a warrant based on probable cause before they even searched for any American's communications, as Sen. Ron Wyden (D-Ore.) has proposed. Congress needs to revisit that idea.

Letters to the editor

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