
THE BRECHNER REPORT

Volume 24, Number 1 ■ A monthly report of mass media law in Florida
Published by The Brechner Center for Freedom of Information ■ College of Journalism and Communications ■ University of Florida
January 2000

Herbert: search for UF president should be public

TALLAHASSEE – University system Chancellor Adam Herbert said he is committed to making the ongoing searches for presidents at the University of Florida and University of South Florida the most public in the state's history, reported the *St. Petersburg Times*.

Herbert said he hopes to find a permanent president at UF by next fall. The next USF's president could be named as early as March.

However, critics of the public search claim that it may discourage many of the best candidates from applying. UF's former

Court imposes \$250 fine for law violation

ANNA MARIA – Judge Doug Henderson, 12th Judicial Circuit, ordered Anna Maria mayor Chuck Shumard to pay a \$250 fine after Shumard pleaded no contest to one count of a non-criminal Public Records Law violation. Henderson did not record Shumard as guilty of the offense.

The charge stems from the complaint filed last spring by *The Island Bystander* that accused the mayor of withholding applications for a vacant city clerk position. On April 15, a circuit judge ordered Shumard to release the records, and the mayor complied.

Earlier this fall, Henderson acquitted Shumard of another Public Records Law violation. (*Brechner Report*, November 1999) Anna Maria resident James Conoly claimed the mayor did not respond timely to his request to inspect applications for a city clerk position. In that case, Henderson held Shumard turned over the requested records within a reasonable time. (10/28/99)

president John Lombardi said the state's emotional commitment to open searches only drives the real evaluation underground, according to the news story.

Under the state law, the university "search committees" must operate in public. The law provides an

ACCESS MEETINGS

exemption for the activities of a search committee for the State University System Chancellor up to the point of transmitting the list of nominees to the Board of Regents.

Herbert was selected chancellor two years ago in a search where only the names of finalists were subject to the state access laws. (10/24/99)

Investigation completes without charges

INDIAN RIVER COUNTY – The State Attorney's Office cleared several Indian County School Board members of alleged Open Meetings Law violations. Assistant State Attorney Chris Taylor said there was no evidence that two or more board members discussed the addendum to the superintendent's contract when they signed it.

Vero Beach resident Brian Heady claimed that the board violated the state law last November, when it signed an addendum extending superintendent Roger Dearing's contract behind closed doors. Dearing

argued that the meeting was housekeeping for an action that took place four months earlier, when the board approved the contract.

In September, the State Attorney's Office started the investigation after the circuit court dismissed Heady's civil complaint for the lack of specificity. (*Brechner Report*, October 1999)

Taylor wrote in his report that the signing of the addendum did not constitute formal action, but rather "reflected what had already occurred." (11/10/99)

Webb sues school board for legal fees

PENSACOLA – An Escambia County School Board member, who spent seven days in jail for Public Records Law violations before being acquitted by an appellate judge, sued the school board to recover \$188,000 in legal fees.

In May, Vanette Webb was convicted of knowingly withholding public records from a parent Susan Watson who had been critical of Webb. Gov. Jeb Bush also suspended Webb from her office. (*Brechner Report*, July 1999)

However, in October, Judge William

ACCESS RECORDS

White, 1st Judicial Circuit, reversed Webb's conviction saying prosecutors failed to admit into evidence any public record she allegedly withheld from Watson. (*Brechner Report*, December 1999) Prosecutors have asked the court of appeals to reinstate Webb's conviction.

The school board refused to pay Webb's legal fees on grounds that the appeal is still pending and that she did not perform a public service when she incurred the legal bills.

Webb's lawyer argued that her defense served a public purpose by returning Webb to the office. (11/19/99)

Judge orders power company to disclose settlement terms

LEON COUNTY— Judge Terry Lewis, 2nd Judicial Circuit, ordered a group of municipal utilities to make public the terms of its legal settlement with the Florida Power & Light Group (FPL).

The settlement ended an eight-year-old legal battle between the Orlando-based Florida Municipal Power Agency and the

FPL Group of Juno Beach, which provides electricity to 3.8 million customers in Florida. The Florida Municipal Power Agency claimed that FPL broke its contract to sell electricity to the utilities including power companies in Clewiston, Fort Pierce and Vero Beach.

Under the agreement reached in October,

FPL will pay the utilities a cash settlement and enter into a new power-buying agreement, giving the city utilities the right to buy power at a specific price.

The Palm Beach Post sued the power company for access to the settlement, and the circuit judge ruled in the newspaper's favor. (11/24/99)

Zoning expert claims county attorney withheld records

PASCO COUNTY – A consultant working for several Pasco County adult clubs filed a complaint with the State Attorney's Office claiming that former

Assistant County Attorney R.C. Burnette violated the Public Records Law by withholding a study on regulating adult businesses.

Bruce McLaughlin filed the complaint after the county commission passed a new zoning ordinance in October, which requires adult entertainment establishments to locate only in industrial parks. (*Brechner Report*, December 1999)

The complaint focuses on a study allegedly considered by the city of Detroit when it enacted its adult-use ordinance. McLaughlin claims that Burnette failed to allow public inspection of the study because the study does not exist. By bringing the study into evidence, Burnette misled county commissioners, McLaughlin alleges in his complaint. (11/30/99)

Judge keeps murder records confidential

BRADENTON – Judge Scott Brownell, 12th Judicial Circuit, denied *The Bradenton Herald's* request to open law enforcement records related to a triple homicide.

In September, Sherry Brannon and her two young daughters were found murdered in their Panther Ridge home. Police arrested one suspect, but said it was still investigating the possibility that others may have been involved.

Brownell ruled that materials related to the homicide, including search warrants, affidavits and inventories of the detectives' searches, should remain sealed because they pertain to an active criminal investigation. (11/02/99)

School Board changes records policy

BARTOW – The Polk County School Board changed its policy on releasing student information, barring access to commercial entities.

Under the new policy, information may be released only for purposes that could be considered part of the educational program or as a function of the school's guidance

services. For instance, the military and prospective colleges or universities could receive the information which will be unavailable for department stores.

In July, a group of parents challenged the school district's practice of releasing student names and addresses to retailers advertising school uniforms. (10/27/99)

ACCESS MEETINGS CONTINUED

City Councilman admits possible violation

OVIEDO – The Oviedo City Council closed an investigation into possible Open Meetings Law violations by newly elected city councilmen Tom O'Hanlon and Chris Jepson after O'Hanlon admitted that he may have violated the spirit of the law.

Several Oviedo residents requested the council launch a two-week investigation after the council's Oct. 4 meeting. At the meeting, both O'Hanlon and Jepson called for the dismissal of City Manager Williford, saying they heard complaints about his services during their campaign.

Residents claimed the two councilmen met privately to discuss the move to oust Williford.

O'Hanlon and Jepson, who have been friends for 12 years, admitted to meeting privately multiple times after they had been elected, but said they did not discuss public matters.

City Attorney urged the council to drop the investigation after O'Hanlon admitted in a written statement that, "it is possible that I may have unintentionally violated the spirit of the Sunshine Law." (11/2/99)

DECISIONS ON FILE

Copies of case opinions, attorney general opinions, or legislation reported in any issue as on file may be obtained upon request from the Brechner Center for Freedom of Information, College of Journalism and Communications, 3208 Weimer Hall, University of Florida, Gainesville, FL 32611-8400, (352) 392-2273.

Jail interview halted because of prosecutor's taping

TAMPA – A defense attorney halted a murder suspect's interview with a WFLA news crew after learning that state prosecutors also were taping the interview, with the reporters' knowledge.

Hillsborough County sheriff, who heads

the jail, said news organizations are not allowed to conduct on-camera interviews with suspects unless they agree to taping by law enforcement authorities.

WFLA news director, Dan Bradley, said he wasn't sure he had an obligation to

notify the public defender about the prosecutor's camera, reported *The Tampa Tribune*.

Valessa Robinson, 16, is charged with murdering her mother in June 1998. (10/28/99)

Court throws out \$10-million libel suit

ST. PETERSBURG – Actress Mimi Rogers has dropped her \$10-million libel suit against Home Shopping Network and

LIBEL the *National Enquirer* after a federal district court held that the tabloid's account of her behavior at the St. Petersburg TV network was essentially true.

In May 1998, Rogers took badly the news that the network cancelled two of her appearances, in which Rogers promoted her line of exercise devices. An unknown network employee leaked an internal report to the *National Enquirer*, which published a story saying that Rogers "cursed like a sailor" and trashed a TV studio room.

The California federal district court ruled that the network and the tabloid did not defame Rogers because the published story was largely true. (11/19/99)

Court upholds federal law against child porn

ELEVENTH CIRCUIT – The U.S. Court of Appeals for the 11th Circuit upheld the constitutionality of the federal Child Pornography Prevention Act of 1996.

Jack Acheson pleaded guilty to charges of possessing more than 500 computer images of child pornography.

However, he claimed that the Act violated the First Amendment by not providing a clear definition of what constitutes "virtual" child pornography.

Under the Act, any visual representation that depicts or appears to depict a minor engaging in a sexually explicit conduct

Henley files suit over domain names

SARASOTA – Ex-Eagles drummer, Don Henley, sued a Sarasota man for violating copyright law by

using web addresses that include Henley's name and the name of his former band, The Eagles.

Henley filed the suit in a California federal district court against Mark Elsis,

who controls about 2,000 Internet domain names that he sells at prices ranging from \$5,000 to \$100,000.

COPYRIGHT Henley is seeking an injunction against Elsis' use of the domain names, the transfer of the names to Henley and the Eagles, and the payment of damages and attorney's fees. (11/4/99)

Judge steps down to avoid perception of bias

WEST PALM BEACH – Judge Peter Blanc, 15th Judicial Circuit, stepped down from a defamation suit filed against Riviera Beach Councilwoman Marilyn Moffitt in order to avoid a perception of bias.

Former Riviera Beach Councilman Bucky McGann sued Moffitt claiming that a political cartoon on a flier she circulated during the 1998 election campaign implied

he was corrupt. McGann lost his bid for reelection to Marge Callahan, who is Moffitt's political ally.

COURTS McGann asked Blanc to disqualify himself because the judge previously admitted he knew Moffitt, once sold a car to her, and had made negative comments about the case during a hearing. (10/28/99)

OBSCENITY

constitutes child pornography.

The federal court of appeals held that child pornography is unprotected speech which the government can regulate. The court held that the Act "defines the criminal

offenses with enough certainty to put an ordinary person on notice that possessing images appearing to be children engaged in sexually explicit conduct is illegal."

The court also stressed that the Act applies only to people who knowingly receive or distribute computer child pornography. (Decision on File, *U.S. v. Acheson*, No. 98-3559, Nov. 12, 1999)

THE BRECHNER REPORT

Brechner Center for Freedom of Information
3208 Weimer Hall, P.O. Box 118400
College of Journalism and Communications
University of Florida, Gainesville, FL 32611-8400
<http://www.jou.ufl.edu/brechner/brochure.htm>
e-mail: jthomas@jou.ufl.edu

Irina Dmitrieva, Editor
Jackie Thomas, Production Coordinator
Allyson Beutke, Prod. Assistant
Sandra F. Chance, J.D., Director
Bill F. Chamberlin, Ph.D., Founding Director

The Brechner Report is published 12 times a year under the auspices of the University of Florida Foundation. *The Brechner Report* is a joint effort of The Brechner Center for Freedom of Information, the University of Florida College of Journalism and Communications, the Florida Press Association, the Florida Association of Broadcasters, the Florida Society of Newspaper Editors and the Joseph L. Brechner Endowment.

Investigation by Indiana newspapers brings changes

We knew if we had a problem getting public records, everyone else did.

It was a simple enough statement to kick off a statewide project with an unprecedented coalition of seven newspapers in Indiana.

But it took months and months of planning before a single reporter went to a government agency for what has now become known as "the audit."

Ninety-two counties. Five public records in each county. Three different government offices to visit. You do the math.

Yet, nary an editor or reporter questioned the simplicity of the project. And no one questioned sharing stories, bylines,

The Back Page

By Kyle Niederpruem

publishing the results on the same day, or the division of the work load. That's not to say there weren't obstacles to overcome in investigating "The State of Secrecy."

We had our moments. We had our doubts. But several agreements ruled the day. The audit must be statewide. It must have key stories published by all papers as the main budget. Each of the newspapers could individually tailor an accompanying "local" budget. The series must include real people with real stories.

In the end, we believe it was the last element that caught the attention of elected officials and policy makers. While we certainly had an issue with government denials and non-compliance, others did, too. Many more than we could have anticipated. And as the stories were published, more citizens called us with their tales.

Results were swift. A legislative study committee heard such outrageous stories as to be unbelievable, such as local



Kyle Niederpruem

government agencies that used a dress code to deny those seeking public documents. A governor's task force met during the same months, taking its hearings on the road.

Several bills became law. One created the office of a public access counselor to mediate disputes over meetings and records. To date, she's responded to nearly 1,000 queries and complaints and has conducted 75 educational conferences in Indiana.

Copying fees, once as high as \$7 a record in some parts of the state, are now standardized. Local ordinances continue to be passed dropping fees to "actual costs" or as little as four cents a page.

Years of lobbying by media interests could not have brought about the same reforms in the Hoosier state.

And other states are taking notice.

Audits have been published in North Carolina, Virginia, Pennsylvania, Illinois, New Jersey and Arkansas. Three other audits are underway but have yet to be published. So far, none have found - or asked - broadcast organizations to be partners in these investigative stories. But imagine what would happen if a surly sheriff was caught on an undercover video by a local TV station.

I'd imagine it would take even less time for sunshine laws to be reformed.

Kyle Elyse Niederpruem is the president of the Society of Professional Journalists and a reporter for one of seven Indiana newspapers that won this year's Joseph L. Brechner Center for Freedom of Information award. The five-part series, titled "The State of Secrecy: Indiana flunks the test on access," detailed the abysmal compliance rate with the state's public record law.
