
THE BRECHNER REPORT

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New report recommends sealing crime files

TALLAHASSEE --Crime investigators should be allowed to keep their reports secret for three years, according to the Florida Public Corruption Commission appointed by Gov. Jeb Bush. The commission filed a report with the Governor's office in mid-

December, making a number of recommendations to current practices.

In addition, the panel proposed making it a crime for anyone in government to leak word of investigations to members of the press. The

commission recommends sealing investigation files as a way to protect whistleblowers.

However, watchdog groups and media advocates believe these initiatives may further erode the public's trust in government. (12/15/99)

**ACCESS
RECORDS**

Conflict Resolution Act allows private settlements

ST. PETERSBURG-- Although less than a year old, the new Conflict Resolution Act is creating controversy and making the law's sponsor review the law's wording. One provision of the new law allows city and county governments to settle lawsuits without disclosing the details to the public until settled.

The law was intended to implement a mediation process for government agencies. But in the process, it also

repealed a provision that city and county governments approve any lawsuit settlements for more than \$5,000 at public hearings.

State Rep. Lee Constantine, R-Altamonte Springs, the sponsor of the bill, has asked legislative attorneys to research the effect of the bill. The bill was not intended to allow local government to hide anything from the public, according to the legislator.

**ACCESS
MEETINGS**

Following the review, "amended legislation may be proposed," according to Chris Stewart, a legislative aide to Rep. Constantine. (12/12/99)

Florida AG and watchdog group join in access fight

TAMPA--The Florida Attorney General and the Florida First Amendment Foundation are going to court to support *The Tampa Tribune* and the *St. Petersburg Times* in their public records fight with Tampa General Hospital.

The two papers have challenged the once public, now turned private, hospital over access to records and meetings. (*Brechner Report*, December, 1999) Last fall, the papers won their case in Hillsborough Circuit Court, but the hospital appealed to the 2nd District Court of Appeals in Lakeland.

Briefs supporting the two papers will be filed by the Florida Attorney General and the First Amendment Foundation. An additional brief supporting Tampa General Hospital will be filed by Bayfront Medical Center in St. Petersburg. (12/29/99)

Lakeland approves surveillance cameras

LAKELAND--Without holding a public hearing on the matter, the Lakeland City Commission has approved the installation of surveillance cameras in public housing areas as a way to deter crime. The cameras will be installed on public property, which means that no prior individual approval for monitoring is required.

Residents were contacted for support of the cameras and an overall "Safe Neighborhood" plan designed to cut down on crime, according to Lakeland City

Commissioner Don Gifford. The Commission purchased the 16 cameras with a grant from the U.S. Department of Housing and Urban Development.

"We're going to keep those cameras in public areas," said Lakeland police chief Sam Baca, "That's always a controversial issue because nobody wants to be watched."

Lakeland officials are treating the tapes as public record and will make them available for viewing at the police department's communications office. (12/4/99)

PRIVACY

E-mail exchanges OK for city manager and assistant

CLEARWATER--No public record laws were broken by the Clearwater city manager and his assistant in e-mail exchanges, according to a former federal judge called in to review the case.

At issue was correspondence via a private e-mail account established by City Manager Mike Roberto, which he used to

communicate with his assistant Bill Horne. Bradenton attorney H. Hamilton "Chip" Rice, Jr., the former Manatee County attorney and federal judge, was hired by the City Commission to review the incident. The investigation was prompted by a request from a *St. Petersburg Times* reporter who requested copies of

Roberto's e-mail.

According to Rice's report, "There was insufficient evidence to conclude that there was intentional, inappropriate use of private e-mail accounts for public business." While his investigation clears the two men, it may prompt development of an employee e-mail policy. (12/22/99)

Hospital trustee asks for support with Sunshine legal fees

INDIAN RIVER--Public funds will not be available to help an Indian River County Hospital trustee in his potential defense for violating the state's Sunshine Law. Last December, hospital trustee Richard Aldrich asked the Board to allocate up to \$2,500 per board member to defray any legal costs stemming from the State Attorney's on-going investigation. (*Brechner Report*, March,

1999)

The matter was tabled to allow Alan Polackwich, the hospital's attorney, to review the legal implications of such an allocation. According to Polackwich, he wrote to board members telling them that funds can only be allocated following a favorable ruling that clears a board member of any changes and at the discretion of the board.

Since last November, the State Attorney's office has been investigating Aldrich and fellow trustee Allen Seed for potential Sunshine law violations, including exchanging memos outside a public meeting. (12/17/99)

School phone calls on the record says state AG

WEST PALM BEACH--Telephone calls made using school district phones are public record, even if the call is personal and the employee pays or reimburses the school district for the call, according to a recent legal opinion by the state Attorney General's office.

"The records of calls made on such equipment are retained by the school district in the course of normal operations," said state Attorney General Bob Butterworth. "As such, these records constitute public records." (AGO 99-74, 12/20/99)

Council members spend time in "Sunshine"

JACKSONVILLE --Members of the Jacksonville City Council received a marathon-training session in legal procedures, just days after a possible violation of the Sunshine law. According to State Attorney Harry Shorstein, Council President Ginger Soud and Councilmember Jerry Holland may have violated the law by providing one-word summaries of public meetings held in their offices with other

elected officials.

In the six-hour session, city lawyers reviewed compliance with the state open meetings and records laws and proper ethics for elected officials. They also provided tips and pointers on recording meetings. "Minutes are not that hard," said Assistant General Counsel Steve Rohan. "A little common sense will get us there." (12/14/99 and 12/18/99)

Judge unseals materials in abortion trial

TALLAHASSEE--A 2nd Judicial Circuit court judge in Tallahassee has released training materials used by the National Abortion Federation after removing the names of patients and clinics. The *St. Petersburg Times* filed a motion to unseal the materials which was evidence in a trial over Florida's parental notice abortion law.

COURTS

"I believe that whatever I have in

evidence everybody should be able to see, but I don't think I need to know the identities of the people to be able to consider the evidence," said Judge Terry Lewis. "That's not what's important."

The law, approved last year, was blocked by a temporary injunction issued by Lewis. (*Brechner Report*, September, 1999) That injunction is on appeal to the 1st District Court of Appeal. (12/11/99)

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.

FIRST AMENDMENT

East Lake teacher wins settlement in Starr Report suit

PINELLAS --The debate on whether or not to allow the classroom review of the Kenneth Starr report was settled in December by the Pinellas County school district and an East Lake High School teacher. The settlement established a district review committee to judge whether

a controversial issue is too racy for a classroom.

Last year, high school teacher Linda Manning wanted to show selected videotape highlights from President Clinton's grand jury testimony about the Monica Lewinsky affair. (*Brechner*

Report, February, 1999) She was prevented from showing the tape by a county-wide ban on the controversial material. Manning filed suit, claiming that the ban violated her right to free speech and was blocking academic freedoms guaranteed by the First Amendment. (12/4/99)

Sheriff wants equal radio air time

PINELLAS -- A Pinellas County sheriff seeking re-election has requested equal time after a popular morning radio disk jockey filed campaign papers with the Pinellas Supervisor of Elections office and wrote to him requesting a debate.

Sheriff Everett Rice's campaign has written Clear Channel Communications, the corporate owners of WXTB-FM,

claiming that Bubba the Love Sponge Clem (his legal name) is using his morning show to promote his candidacy. In a letter written by political consultant Wayne Garcia, they say that Clem "routinely advertises his candidacy on your station. He frequently solicits campaign money from his listeners and promotes his campaign events and literature." (12/22/99)

New web site messages may incite activist ire for Lee County official

LEE COUNTY -- A Lee County law enforcement officer has posted another controversial essay on his Web site, saying he did not give up his First Amendment rights when he became Sheriff. John McDougall is confident that it will bring another suit from a national rights group.

The sheriff's new message touches on a number of topics, from his opposition to abortion, to attacking the President, gays, lesbians and the press. He says that he feels compelled to speak out on national

issues. McDougall anticipates another suit filed by Americans United for the Separation of Church and State, who threatened to sue him when he posted his first web message last September.

County officials are critical of McDougall's use of the official Web site for expressing his personal views. "I would hope that the sheriff would stick to local law enforcement issues, but the sheriff is the sheriff," said County Commissioner John Manning. (12/12/99)

Ex-Miami mayor loses libel suit

MIAMI --A libel suit filed last September by former Miami Mayor Xavier Suarez against *The Miami Herald* was dismissed by a Miami-Dade Circuit Court judge last December.

In his suit, Suarez "complained about columnist Carl Hiaasen's characterization of him as 'loony,' 'deranged,' 'crazy' and 'paranoid' in a December 1997 **LIBEL** column."

(*Brechner Report*, November, 1999)

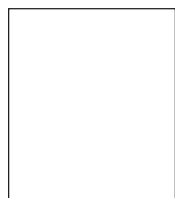
But according to Judge Amy Dean, "the words...are expressions of pure opinion in an opinion column in a newspaper, based on facts disclosed in the column or the newspaper or already generally known to the readers." (12/4/99)

NEWS NOTES

New Editor for Brechner Report

GAINESVILLE --Jane Inouye is the new editor for The Brechner Report. Inouye has an extensive print, broadcast and public relations background and has worked in Hawaii and Florida for over 12 years. She has also taught at the University of North Florida.

Inouye completed her undergraduate



Inouye

studies at the University of Hawaii and is currently working on her Master's program in Media Law at the University of Florida.

Please contact her with your comments, story ideas and changes you'd like to see in *The Brechner Report*. She can be reached at: (352)

392-2273.

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Supreme Court upholds federal privacy act to close records

After years of challenges from states questioning whether the Driver's Privacy Protection Act (DPPA) violated states' sovereign rights, the Supreme Court ruled in January that the enactment of the DPPA was not an unconstitutional use of congressional powers.

The Court held that because the legislation was a regulation of the sale of databases, which it considered an article of commerce, Congress did not violate 10th Amendment federalism principles by enacting the DPPA. Congress had the power to enact the legislation in accordance with the Commerce Clause. The Court reasoned that the DPPA does not require states in their sovereign capacities to regulate their citizens; instead it regulates states as the owners of databases.

The saga of the DPPA seems to be an example of how access to public information can be blocked by revising the intent of legislation. The DPPA was considered antistalking legislation until it was challenged in court, where it transformed into commerce regulation. If the Act was truly intended to regulate the sale and distribution of databases, it should have been narrowly tailored to that effect. Instead, it broadly blocks access to valuable public information.

The DPPA, which was part of the Omnibus Violent Crime Control and Law Enforcement Act of 1994, is federal legislation requiring every state to limit access to its motor vehicle records. It was intended to protect citizens from invasions of privacy and from the criminal misuse of their personal information. The DPPA limits access to motor vehicle records information such as photos, names, addresses, telephone numbers, medical or disability information, social security information and driver's identification numbers.

States had two choices, according to the DPPA: enact

legislation exactly the same as the DPPA or enact provisions similar to the DPPA and include opt-out provisions.

The opt-out provision allowed every person giving information to motor vehicles departments to request that information not be disclosed to third parties. In October 1999, Congress changed the opt-out provision to an opt-in provision, which made all records closed unless a citizen requested they be open to the public.

While all states responded to the DPPA by enacting legislation carrying out its mandates, four states –

North Carolina, Oklahoma, Wisconsin and Alabama – challenged the act on constitutional grounds, stating that the DPPA violated the 10th Amendment.

In each of the challenges brought forth by North Carolina, Oklahoma, Wisconsin and Alabama, the states claimed that the DPPA forced them to administer a federal regulating scheme. The Court rejected those arguments and said that the Act regulates the "Universe of entities that participate as suppliers to the market for motor vehicle information," and states happen to be the first stop in acquiring that information.

Had Congress intended to regulate the sale of database information, it should have developed legislation that focused on databases. The word database does not even appear in the DPPA. The Court said it did not completely resolve the constitutionality of the DPPA because the only issue before the court was whether the DPPA violated states' 10th Amendment rights. It did not weigh the balance between privacy and the access to government information. The Act's regulations are not limited to the "Universe" that participates in marketing information. Unfortunately, the Act also regulates anyone attempting to use the information for non-marketing activities.

Michele Bush is a doctoral student at the University of Florida's College of Journalism and Communications and former editor of The Brechner Report.

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By Michele Bush



Michele Bush