
THE BRECHNER REPORT

Volume 27, Number 3 ■ 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
March 2003

Court rules records in harassment case are public

TAMPA – The Florida Supreme Court ruled on Feb. 13 that memos and e-mails involving sexual harassment allegations against former Hillsborough Circuit Judge Ed Ward are public records and should have been released to the media organizations that requested them.

The ruling reverses a prior decision in a case brought by *The Tampa Tribune* to obtain records kept by former Chief Justice F. Dennis Alvarez, who investigated the harassment claims against Ward.

Alvarez denied the request, saying the records were confidential. The decision

was upheld by the 2nd District Court of Appeal, stating the documents were not official judicial records and therefore not public.

The Supreme Court reversed the decision, ruling that the documents were judicial records generated in the course of Alvarez's official courthouse business.

"When an individual complains to a chief judge about judicial misconduct involving sexual harassment or sexually inappropriate behavior, any records made or received by the chief judge constitute public records," according to the Court.

Ward was accused of sending sexually explicit e-mails to Circuit Judge Claudia R. Isom and judicial assistant Michelle Boylan in 1998. He was also accused of kissing Circuit Judge Vivian C. Maye and inviting her judicial assistant to drink beer in his chambers in 1999.

Ward resigned in 2000 after the Judicial Qualifications Commission charged him with misconduct.

Ward's successor, Manuel Menendez Jr., said many of the requested records have already been released by the Judicial Qualifications Commission. (2/14/03)

ACCESS RECORDS

Official records on Internet

CITRUS COUNTY – As of Jan. 13, the Citrus County Clerk of Courts Office has made images of official records available to the public on the clerk's Web site, www.clerk.citrus.fl.us.

The initiative is the result of a law passed during the 2002 Florida legislative session, which requires the clerk to place the images of official records on a publicly available Web site.

Additional law provides for the removal of Social Security numbers from an image or copy of an official record if a person requests the clerk to do so.

The official records available include liens, agreements, satisfactions and documents pertaining to land transactions, such as mortgages and deeds. (1/10/03-1/12/03)

City commissioners reach plea deal

KISSIMMEE – Two city commissioners charged with violating the Sunshine Law accepted a deal to plead no contest to misdemeanor charges, a state attorney's official said.

Commissioner Wendell McKinnon and former Commissioner Bob Makinson both made last minute pleas to avoid a criminal record. Instead they pleaded guilty to civil violations and will face \$50 fines and

court costs.

The two men were charged in October after failing to notify the public about meetings in which they discussed providing sister city Santa Maria, Peru, with city support.

In a separate investigation, both McKinnon and Makinson were cleared by the state Ethics Commission. (1/25/03)

ACCESS MEETINGS

Transit decisions to be televised

PINELLAS COUNTY – The Pinellas Suncoast Transit Authority will join other major government entities in Pinellas County which televise their meetings so that the taxpaying public has an alternative to attending public meetings.

Until the televised meetings of the transit authority, those interested in the multimillion dollar decisions made by the PSTA had to attend the meetings on the third Wednesday of the month at 9 a.m.

"We make a lot of decisions that affect mass transit in Pinellas County and spend a huge amount of money," said

John Bryan, a PSTA board member and a St. Petersburg council member. "We need to let the citizens see what we are doing."

To allow for the taping of meetings, an outside vendor must come in to set up cameras and microphones. Then a production company will create a TV-ready tape to distribute to every municipal agency that has a contract with cable television.

After the meetings are taped, it's up to individual cities to make sure the PSTA meetings get on the air. (1/7/03)

SPECIAL REPORT

A preview of open government issues to be considered by the Florida Legislature during the 2003 session, p. 4-5.

Religious group sues for access to library room

TAMPA – An Orlando-based religious group filed a lawsuit in federal court in Tampa after a public library in Dunedin denied the group use of its meeting room.

The library's policy makes the room available on a first-come, first-serve basis to non-profit tax-exempt groups or organizations of an educational or cultural nature. It does not allow political, religious and formal social meetings and programs to use the room, exercising separation of church and state.

The religious group, Liberty Counsel, filed two requests in August and November to hold a lecture on America's Christian Heritage in the library's meeting room. Meeting room coordinator Dorothy Noggle denied both requests in writing, citing the library's policy.

The Liberty Counsel is seeking to bar the library from prohibiting religious groups from using its meeting space.

"One of the clearest issues in constitutional law is the concept of equal access to public facilities," said Mathew D. Staver, president and general counsel for the Liberty Counsel. "Of all places, a public library should welcome diverse views."

City Attorney John Hubbard defends Dunedin's policy.

"The city still believes in separation of church and state, and that's how we run our city facilities," said Hubbard. (1/10/03)

Right to question jurors appealed

WASHINGTON – The Reporters Committee for Freedom of the Press, along with several other media organizations, filed a friend-of-the-court brief Jan. 21 with the U. S. Supreme Court requesting review of a New Jersey Supreme Court decision upholding a judge's right to prohibit the press from interviewing jurors after trial proceedings.

The case involves Fred Neulander, a rabbi and former community leader, who was accused of murdering his wife in Camden County, N.J.. Neulander faced the death penalty, and when the first trial ended in November 2001 with a hung jury, the judge prohibited the press from interviewing or contacting the discharged jurors.

The *Philadelphia Inquirer* challenged the judge's order and lost at the trial court level. On appeal to the New Jersey Supreme Court, the lower court decision

was affirmed. The appellate court expanded the order to prohibit communications with the press initiated by the discharged jurors. This order remained in effect until after Neulander's retrial and conviction one year later.

The brief urging the U. S. Supreme Court to review the decision contends that the order prohibiting juror interviews is unconstitutional and serves as a prior restraint that "severely restricts the First Amendment rights of the press and limits the exchange of information about the administration of justice in our society." The brief also states the order is contrary to the right to open public trials and the public's right to receive information.

"We hope the Supreme Court will use this case as an opportunity to reinforce the First Amendment rights of journalists and jurors," said Lucy A. Dalglish, Reporters Committee Executive Director. (1/21/03)

Confederate symbols banned from school

JACKSONVILLE – The School Advisory Council at Kirby-Smith Middle School voted 8-1 at a special meeting to impose a ban on students, faculty and staff from wearing clothing decorated with the rebel flag.

The ban comes after students made comments about racial tensions in the school.

"Apparently comments were made by both black and white students and some of them went to a guidance counselor saying the two factions were planning to fight one another after school," Principal Elnora Atkins said. "The guidance

counselor came to me and said we had a problem."

According to Atkins, heated words were exchanged at the SAC meeting and some parents argued that Confederate symbols are part of their Southern heritage.

"Some parents said they were opposed to the ban and I think one of them said something about filing a lawsuit," Atkins said.

Incidentally, the Jacksonville school is named after Confederate Gen. Edmund Kirby-Smith, whose statue represents Florida in the U.S. Capitol. (1/30/03)

DECISIONS ON FILE

Copies of case opinions, Florida 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, P.O. Box 118400, University of Florida, Gainesville, FL 32611-8400, (352) 392-2273.

COURTS

Judge will not bar public from hearing

PUNTA GORDA – A judge decided to allow the public to attend a DUI pre-trial hearing involving the death of a popular Port Charlotte bar owner despite defense objections.

Dabney H. Young III is accused of driving under the influence when he hit and killed motorcyclist Tim Spieldenner, co-owner of Gatorz Bar & Grill, last year.

Young's attorney, Mark De Sisto, asked Judge Sherra Winesett to bar the public and press from a hearing to suppress evidence about his blood-

alcohol level, arguing that further press coverage might hinder Young's chance of a fair trial.

Judge Winesett ruled against De Sisto, saying he had not shown that closing the court was imperative, and that she did not think it necessary to prevent an imminent threat to justice.

"There is little justification for closing this hearing," Winesett said in the decision.

The hearing will be open to the public and is set for March 7. (2/12/03)

Prosecutors challenge statute in high school hate speech case

PUNTA GORDA – A Charlotte High senior who wrote a racially inflammatory letter and handed it out at school was arrested and accused of violating a Florida statute that makes it a first degree misdemeanor to publish anonymously any written materials that expose individuals or religious groups to hatred, contempt, ridicule or abusive language. Prosecutors are currently challenging that statute, however, claiming it was ruled unconstitutional several years ago.

The letter written by 17-year-old Daniel W. Lynn uses racist terms and asks “rednecks” to unite in an attack against black students. Lynn then anonymously distributed 150 copies of the letter at school.

Charlotte County sheriff’s deputies arrested Lynn, charging him with publishing a hate document, disrupting a school function and violation of probation.

The statute Lynn was accused of

violating was ruled unconstitutional in a Broward County case in which an anonymous letter was sent to the Broward commissioner in 1999 including anti-Semitic comments. The 4th District Court of Appeal upheld the decision, ruling that the statute “violates the First Amendment because it is impermissibly content-based, overbroad and vague.”

“We’re bound to follow that (ruling),” assistant state attorney Daniel Feinberg said. “We can’t charge any individual under that statute.”

The Sheriff’s Office spokeswoman Sgt. Donna Black said deputies consult the most recent statute books before making arrests, and the statute in question is still on the books.

There is a right to speak anonymously, said University of Florida law professor Lyrissa Lidsky. “It’s very hard for a statute to regulate hate speech.”

(1/18/03-1/30/03)

ACCESS RECORDS CONTINUED

Circuit judge denies request to keep Alliance records secret

TALLAHASSEE – A Leon County Circuit judge turned down a request by Alliance Capital, a New York based investment firm accused of losing more than \$300 million in Florida state pension money during the Enron crash, to keep some records secret.

The state sued Alliance in May, claiming mismanagement by the company when it purchased nearly 3 million Enron shares for the state’s pension fund, resulting in serious losses. *The Tampa Tribune* and the *St. Petersburg Times* joined the state in December in pursuing access to documents Alliance has provided to the state as part of the trial. The state is also seeking release of documents as part of its lawsuit to force Alliance to pay the state at least some of the money that was lost.

Florida’s State Board of Administration claimed the documents being sought by the *Tribune* and the *Times* should be publicly available

because they are related to Alliance’s work for the state. But Alliance argued the documents are confidential since they were provided for the lawsuit and not the state contract.

Alliance also claimed the documents should remain secret because they contain information concerning the company’s decision-making and could harm its competitive advantage.

“They have essentially argued that this is like the formula for Coca-Cola,” state board attorney Guy Burns said.

Circuit Judge Nikki Ann Clark denied Alliance’s request to keep documents secret, saying any claims Alliance wants to make about trade secrets will have to be dealt with one document at a time. The judge also said the board is a government agency and the trial involves official business, which makes trial documents in the board’s possession public records.

(1/11/03-1/30/03)

COPYRIGHT

Extension Upheld

WASHINGTON – In a 7-2 court ruling, the U.S. Supreme Court upheld the 20-year copyright extension act, declaring the extension fell clearly within Congress’ constitutional authority.

Congress passed the Copyright Term Extension Act in 1998 which extended copyright terms from 50 years after the death of the work’s author to 70 years after the author’s death. In 1999, Eric Eldred, who archives digitized works by long-dead authors, challenged the new law as unconstitutional, claiming it is not only an infringement on free speech, but also a violation of the clause in the constitution authorizing copyrights.

Delivering the majority opinion, Justice Ruth Bader Ginsberg said that Congress does have the authority to extend copyrights.

“As we read the Framers’ instruction, the Copyright Clause empowers Congress to determine the intellectual property regimes that, overall, in that body’s judgment, will serve the ends of the Clause,” she said. “We are not at liberty to second-guess congressional determinations and policy judgments of this order, however debatable or arguably unwise they may be,” she added.

Without the protection of extended copyrights, movies such as “Casablanca,” “The Wizard of Oz” and “Gone With the Wind” would be at risk, as well as the original version of Mickey Mouse. (1/16/03)

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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.

Court rules phone records are open

TALLAHASSEE – An appeals court has ruled that cellular phone records of work-related calls made by state employees are public records, even if the phone and cellular services were paid for by a third party.

The ruling comes after *The Tampa Tribune* and the *Orlando Sentinel* sued the then-House Speaker Tom Feeney, R-Oviedo, in 2002 after the Republican Party of Florida took over payments for cellular service of five upper-level House employees.

Feeney argued that since the phones were no longer being paid for by the state, they should not be open to

taxpayer scrutiny.

Shortly before a trial court hearing in 2002, House attorney Barry Richard agreed to provide the *Tribune* with House employee's cellular phone records. But all of the phone numbers were redacted, as well as the calls deemed to be personal.

The decision written by Judge Ricky Polston said the *Tribune* is entitled to the phone numbers made in the course of state business, but personal phone calls could remain redacted.

The issue arose during last year's legislative session when it was reported that Feeney aide Bridgette Gregory was

using taxpayer-financed phones and computers to assist in Feeney's campaign for Congress. Feeney denied any wrongdoing, and Gregory reimbursed the state \$350 for personal calls made on a state phone.

Media attorneys said the ruling sets an important precedent for access to public records.

"In so many public-records cases, principle is paramount," said Gregg Thomas, attorney for the *Sentinel* and the *Tribune*. "What the court now says is that all the calls that were of governmental business are available to us. That is really what we wanted." (2/22/03)

LEGISLATIVE PREVIEW

Legislature to debate more than 30 Sunshine bills

TALLAHASSEE - The state legislature will consider more than 30 bills dealing with Florida's Sunshine law during this year's session, which convenes on March 4.

Below is a list of bills which were taken from the Florida Legislature's home page, Online Sunshine, at <http://www/leg.state.fl.us>. Chief sponsors of the bills are in parentheses next to the bill numbers.

SB 74 (Campbell, D-Tamarac)

SB 76 (Campbell, D-Tamarac)

Pharmaceutical Adverse Incidents – SB 76 would create a public records exemption for information of pharmaceutical adverse incident reports to the Department of Health. SB 74 defines "pharmaceutical adverse incident" and would require the pharmacists to report adverse incidents to the Department of Health.

SB122 (Smith, D-Gainesville)

Child Abuse Public Records – Would amend Florida Statute 39.202 to expand the list of persons to whom child abuse, neglect and abandonment records held by the DCF may be granted to include staff of child advocacy centers.

SB 126 (Campbell, D-Tamarac)

Victims of Sexual Offense – Would exempt any photograph, videotape, digital image, electronic image, recorded

image or other visual image of any part of the body of a sexual offense from Public Records Law.

SB 142 (Smith, D-Gainesville)

Criminal Records – Would prohibit the Department of Law Enforcement from expunging criminal history records that concern a defendant who was found guilty of, or who pled guilty or nolo contendere to the offense of voyeurism.

SB 192 (Lynn, R-Ormond Beach)

HB 251 (Patterson, R-DeLand)

Library Records – Would reverse confidentiality provisions of public library registration and circulation records to authorize disclosure of information to parents or guardians of library patrons under the age of 16 for the purpose of collecting fines or recovering overdue materials.

SB 238 (Saunders, R-Naples)

Ethics Commission – Would exempt proceedings relating to information or referrals received by the Commission on Ethics regarding ethics code violations from public records and public meetings requirements.

SB 252 (Comprehensive Planning Committee)

Accidental Release Prevention Program - Would amend and reenact the public records exemption for information

that constitutes a trade secret and is submitted as part of a risk management plan or found in records or reports obtained during an investigation, inspection, or audit under the Accidental Release Prevention Program.

SB 254 (Comprehensive Planning Committee)

Municipal Personnel Records – Would amend and reenact the public records exemption for personnel records of a municipal employee's participation in certain alcohol, drug or mental health programs.

SB 256 (Comprehensive Planning Committee)

County Personnel Records – Would amend and reenact the public records exemption for personnel records of a county employee's participation in certain alcohol, drug or mental health programs.

SB 274 (Committee on Health, Aging and Long-Term Care)

AHCA Adverse Incident – Would amend a public records provision exempting information contained in notification of adverse incident provided to the Agency for Health Care Administration by a facility licensed under Hospital Licensing & Regulation laws, authorizing the use of the information as part of certain disciplinary

proceedings.

SB 282 (Committee on Banking and Insurance)

Employee Records – Would repeal a public records exemption concerning information identifying an ill or injured employee which is contained in a report of injury or illness held by the Department of Insurance.

SB 284 (Committee on Banking and Insurance)

Workers' Compensation Law – Would amend a public records provision exempting investigatory records of the Department of Insurance concerning an employer's compliance with the Workers' Compensation Law, clarifying that a record containing personal identifying information of a confidential source remain confidential after an investigation is complete.

SB 288 (Committee on Governmental Oversight and Productivity)

Employee Assistance Program Records – Would create a public records exemption for personal identifying information contained in records relating to a state employee's participation in an employee assistance program.

SB 290 (Committee on Governmental Oversight and Productivity)

Housing Assistance Program Records – Would revise a public records exemption concerning information furnished by an applicant for or participant in a housing assistance program. It would also delete an exemption for bank account numbers, credit card numbers and telephone numbers.

SB 298 (Committee on Health, Aging and Long-Term Care)

Florida Kidcare – Would reenact a public records exemption for information that identifies applicants of the Florida Kidcare program, expanding the exemption to include records that identify any applicant or enrollee in the program. Also would authorize confidential information to be disclosed to another governmental entity if the receiving agency maintains the confidentiality of the information.

SB 304 (Argenziano, R-Crystal River)

HB 451 (Hogan, R-Jacksonville)

Public Utility Customers –

Would create a public records exemption for information held by public utilities of their customers' personal identifying information.

SB 306 (Committee on Health, Aging and Long-Term Care)

Provider and Subscriber Assistance Program – Would create a public records exemption for information that identifies a subscriber under the Statewide Provider and Subscriber Assistance Program. Would also remove the exemption that includes information identifying the spouse, relative or guardian of a subscriber.

SB 462 (Committee on Agriculture)

Rabies Vaccinations – Would reenact the public records exemption for confidential information contained in a rabies vaccination certificate that identifies the owner of the animal vaccinated.

SB 1026 (Committee on Criminal Justice)

Videotaped Statements – Would create a public records exemption for information in a videotaped statement held by a law enforcement agency that reveals the identity of certain minors. It would provide for disclosure to other governmental entities, but that entity must maintain the confidentiality.

SB 1028 (Committee on Criminal Justice)

Executioner I.D. – Would clarify a public records provision exempting an executioner's identity and other persons involved in an execution from public disclosure.

SB 1052 (Smith, D-Gainesville)

Autopsy Records – Would allow survivors of the deceased to designate an agent to view or obtain autopsy records from a medical examiner.

SB 1074 (Crist, R-Tampa)

Sexual Predators – Would require the Department of Law Enforcement to classify sexual predators according to five levels of dangerousness.

SB 1082 (Smith, D-Gainesville)

Criminal Records – Would expand the list of offenses that cannot be expunged or sealed to include such offenses that meet the statutory criteria of sexual predator, sexual offender and career

offender designation.

SB 1182 (Dockery, R-Lakeland)

Security System Plans – Would create an exception to the public records exemption of security system plans for any property owned by or leased to the state or any of its political subdivisions or for any privately owned or leased property for which the security system plan is held by an agency.

HB 3 (Gelber, D-Miami Beach)

Honest Government – Would create "Citizens' Right to Honest Government Act" which provides criminal penalties for official misconduct, criminal misuse of official position, disclosure or use of confidential criminal justice information, and bid tampering.

HB 11 (Mahon, R-Jacksonville)

Paternity Records – Would create a public records exemption for information contained in paternity registry maintained by CFS Department.

HB 69 (Rich, D-Sunrise)

Firearm Records – Would create a public records exemption for specified records pertaining to buyer or transferee of firearm and duty of the Department of Law Enforcement with respect to maintaining such records do not apply to pawnbroker transaction forms that record a transaction involving a firearm.

HB 123 (Dean, R-Inverness)

Law Enforcement Personnel – Would create a public records exemption for electronic mail address, cellular telephone numbers, electronic pager numbers, specified ID numbers and access codes, and billing records of active or former law enforcement personnel, including correctional and correctional probation officers, and specified personnel of government agencies.

HB 387 (Ambler, R-Tampa)

Moffitt Cancer Center – Would revise the public records exemption for proprietary confidential business information owned or controlled by not-for-profit corporation which governs and operates H. Lee Moffitt Cancer Center and Research Institute or subsidiaries of corporation to include specified materials, potential trade secrets, potentially patentable material, actual trade secrets, business transactions, or proprietary information.

Commitment to keep Florida in the Sunshine

Florida's heritage of open government is a tradition in the Sunshine State. The Florida Constitution and statutes provide a guarantee of public access that is unique in breadth and scope. However, while the vast majority of public officials support our strong open government laws, this support is not

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By Charlie Crist

uniform. Some argue that the broad reach of the Sunshine Law eliminates the opportunity for private informal debate among board members that could foster solutions to problems outside the glare of publicity. For example, it is argued that if two members of a city commission are concerned about the city manager's performance, they should be able to meet privately to discuss their concerns rather than air their misgivings at a public meeting.

Thirty years ago, Florida Supreme Court Justice James C. Adkins responded to the concern that the Sunshine Law could be an impediment to the efficient performance of agency responsibilities. He warned that "even though their intentions may be sincere, such board and agencies should not be allowed to circumvent the plain provisions of the statute [because] [t]he benefit to the public far outweighs the inconvenience of the board or agency."

As Justice Adkins forcefully emphasized in a series of key court decisions, the desire of government officials to meet in secret to handle difficult issues is fundamentally at odds with principles of accountability and full public participation in governmental processes. The open government laws may make governmental decision-making a more cumbersome procedure, but they also make it more democratic. The key to democracy is an informed citizenry. Private discussions among public officials about public business may be the rule in other jurisdictions, but it is not the way we do business in Florida. Our Sunshine Laws demand accountability and give the public the right to know at all levels of the decision-making process.

As attorney general, I will be on the side of open government and I urge all public officials to do the same. The next four years will bring many challenges in Florida, but the steadfast



commitment to open government will remain unchanged. We will continue to prepare the Government in the Sunshine Manual as a guide to the open government laws on an annual basis. In addition, the open government mediation program will be available as an alternative for those seeking to resolve public access disputes. Last year dozens of public access disputes between citizens and public agencies were resolved through the mediation program.

Those wishing to contact my office about open government issues may reach the Attorney General's Office at 850-487-1963. For more information about the Sunshine Manual, please contact the First Amendment Foundation at (850) 224-4555. For more on open government mediation you can contact General Counsel Pat Gleason at 850-245-0157.

Charlie Crist is Florida's 35th Attorney General. Prior to becoming Attorney General in January 2003, he served as Florida's Commissioner of Education.

EDITOR'S NOTE:

Attorney General Crist demonstrated support of a strong open government by clarifying his position on the 2/3 vote requirement and its application to reenactment of exemptions under Florida's Open Government Sunset Review Act (OGSR). According to Pat Gleason, General Counsel for the Attorney General's Office, General Crist clearly and unequivocally stated that he believes that the 2/3 vote requirement applies to all proposed open government exemptions, including reenactment of current exemptions under the OGSR Act. "This is the will of the people and the right thing to do," General Crist said, commenting on the 2/3 vote requirement.