THE
BRECHNER REPORT

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Escambia commissioner sentenced to jail for sunshine violation

ACCESS MEETINGS

PENSACOLA – Suspended Escambia County Commissioner W. D. Childers was sentenced to 60 days in jail, the maximum penalty, for one count of violating the state's Sunshine Law. Childers is the first elected official to be jailed for violating the open meetings section of the law.

On a second count, Judge T. Patterson Maney also ordered Childers to pay a $500 fine along with $376 for court costs and $3,227.85 for the cost of the state's investigation and prosecution.

A Pensacola jury last year convicted Childers of discussing redistricting in a telephone call with the county election supervisor while another commissioner listened on a speaker phone. He later pled no contest to speaking with two commissioners about county building projects while reserving the right to appeal both counts.

Former Escambia Commissioner Mike Bass was also sentenced for two sunshine offenses, but avoided jail time and ordered to pay $4,143.69 in total costs.

Assistant State Attorney Bobby Elmore called Maney's decision to jail Childers courageous.

"I'm pleased that the judge imposed a sentence that shows that men of wealth and power and position are not above the law," Elmore said.

Vanette Webb, another Escambia official, was the first official to be jailed for violating the public records section of the Sunshine Law. She served a week of her 30-day sentence before being released, pending her appeal. (5/12/02 – 5/13/03)

Student newspaper comes to a halt

FIRST AMENDMENT

DELAND – Stetson University shut down its student newspaper and fired the entire editorial staff because of an April Fools' Day issue including profanity, racist jokes and a sex column advocating rape and domestic violence.

The school's newspaper, *The Reporter,* has traditionally poked fun at itself, faculty members and students with an April Fools' edition renamed *The Distorter*. School officials say students went too far this year.

The university suspended publication of *The Reporter* for the rest of the school year and gave editorial staff members 15 minutes to clear their belongings from the office.

"There's not much in this year's *Distorter* that you can laugh about," Michelle Espinosa, dean of students, said.

The fake issue satirized a lecture series designed to promote racial dialogue with an article about a racist Civil War enthusiast, and included a weekly sex column written in Ebonics and phony advertisements with profanity.

Some students said they thought the punishment exceeded the crime.

"It was a little offensive, but it was obviously a joke," said Liz Burdett, a freshman. "What happened to the First Amendment?"

School officials said they believed in students need for autonomy. However, "students do assume responsibility for their editorial decisions," according to Espinosa. (4/11/03-4/12/03)

Man arrested at county meeting

PINELLAS COUNTY – Ozona resident John Schestag was handcuffed and arrested after speaking out at a public Pinellas County meeting under new decorum rules. He was held in jail in lieu of $1,000 bond.

Schestag called the county commissioners' new rules censorship and called the county attorney a liar. He initially refused to stop speaking after Commissioner Susan Latvala told him to be quiet or be removed.

Schestag started to leave the meeting, but once he was out of the assembly room, he stopped in the foyer and would not move when deputies told him to keep going. He was arrested and charged with disorderly conduct, resisting arrest without violence and disrupting a public assembly.

The arrest was the first test of the county's new rules, which were approved in April. Commissioners said they proposed the rules after a group of critics began appearing at county meetings.

Commissioner Ken Welch denied that the new rules limit free speech.

"You can say anything you want to say, but only once every 30 days," he said. "He continued with the personal attacks…At some point, you just have to draw the line."

The new rules also say people can't make "irrelevant, impertinent or slanderous remarks." If they do, they can be removed or asked to stop. (5/7/03)

ACCESS RECORDS

Ruling gives public more potential access to records

NEW JERSEY – A federal magistrate judge's ruling in a class action suit against the New Jersey Division of Youth and Family Services gives the public and the media potential access to material kept secret by protective orders.

The decision by U.S. Magistrate Judge John Hughes found that *The New York Times* and the *Star-Ledger* of Newark demonstrated a public interest that overcame the protective order and a statute barring the release of documents in the case.

"[The defendants] need to do more than assert nonbinding state confidentiality statutes to support their contention that release of case records may compromise the privacy interest," Hughes wrote in the decision.

As a result, when the state enters litigation in federal court, the public will have potential access to more documents, regardless of exemptions in the Open Public Records Act or individual regulations that would otherwise keep them secret, according to a report in the *Miami Daily Business Review*.

Judge seals records

PANAMA CITY – Bay County Judge Thomas Welch ruled that search warrants issued in the arrests of "Girls Gone Wild" video producer Joe Francis and three of his employees remain sealed.

In his ruling, Welch cited a 1998 1st District Court of Appeal opinion citing that the warrants and accompanying sworn statements must remain closed to the public because they are part of an open investigation.

The News Herald of Panama City and a private investigator asked to view the documents relating to the April 3 arrests of Francis and his employees. Francis was charged with racketeering related to prostitution and commercial sexual exploitation of children, and trafficking in hydrocodone.

Welch said before he became aware of the appellate court's ruling, he considered the documents to be public records and routinely allowed them to be copied. The Florida Supreme Court had accepted an appeal of the district court decision, but *The Florida Times-Union* of Jacksonville, the newspaper that initiated the action, withdrew the complaint before justices could address the issue. (4/10/03).

Police officer testifies to shredding records

PINELLAS PARK – A police sergeant testified under oath that he was asked to change a police report and shred original documents pertaining to the suicide of City Manager Jerry Mudd.

Mudd died the morning of Feb. 11 after stabbing himself in the chest. The *St. Petersburg Times* requested copies of the suicide note and other records from the day. They filed suit when the city refused.

Pinellas Park police Sgt. Dan Levy said that he gave a superior officer copies of all records in the Mudd file, except for one report. The report in question included a list of people in the Mudd home the morning he killed himself. His testimony also revealed that the city applied different rules when the media request public records.

Officer Donna Saxer and Detective Mike Lynch also testified that they had collected their notes about the suicide as required by a subpoena, but higher-ranking officers took possession of those records. It is unclear where the records are.

Levy testified he helped Saxer change the official police report to omit wording from the suicide note. He then took the original report and a copy Saxer turned in and "they went in my shred pile…They ultimately got shredded," he testified.

Pinellas-Pasco State Attorney Bernie McCabe said he will conduct a preliminary investigation to see if there is any criminal activity when the report was changed and shredded.

It's a misdemeanor to destroy or alter public records punishable by a fine of up to $1,000 and up to a year in jail. (4/27/03-5/11/03)

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.

PRIVACY

Hospice sued for releasing information

LARGO – A lawsuit was filed against Hospice of the Florida Suncoast claiming the non-profit company violated state laws by intentionally releasing medical and personal information about thousands of patients and their families.

The suit was filed by Jonathan Alpert, the same attorney who filed a suit in February accusing Hospice of diverting charitable donations to its for-profit software company, Hospice Systems Inc.

The current lawsuit claims that Hospice released patient information over the last several years to help demonstrate, market, sell and train people to use a software product developed to be used by other hospices around the nation.

"They've released names, diagnoses, Social Security numbers," Alpert said. "And instead of fixing the problem, they're trying to cover it up. It's becoming Hospice-gate. It's sad and unfortunate." Some of the information was put on the Internet and is still accessible, according to Alpert.

Hospice spokesperson Michael L. Bell said Hospice works hard to protect patient information.

"The one thing I would stress," he said, "is confidentiality of patient and family information is now and has always been a basic value of hospice. In response to this ongoing legal action, we've gone to even greater lengths to assure that our systems and procedures safeguard the privacy of those we serve."

Bell declined to respond when asked if patient information had ever been released to those not authorized to see it. (5/2/03)

ACCESS RECORDS CONTINUED

Aisenberg transcript records remain sealed on appeal

TAMPA – A U.S. district judge lifted a stay that was preventing the release of records in the Aisenberg case. Federal prosecutors, however, filed a motion with the appeals court asking for a stay to delay the release of the records.

The motion asks for a stay until the 11th U.S. Circuit Court of Appeals upholds or overturns U.S. District Judge Steven Merryday's order to release the transcripts in the Aisenberg case.

Prosecutors argue that releasing the transcripts will compromise the ongoing investigation of the disappearance of the Aisenberg's daughter, Sabrina. Prosecutors also want the transcripts to remain sealed until the appeals court can rule on issues raised by Merryday's order to pay $2.87 million in legal expenses to the couple.

Barry Cohen, attorney for the Aisenbergs, said federal prosecutors are using the idea of an ongoing investigation "to continue to hide the truth. There is no investigation. That's a joke."

After the Aisenberg's daughter disappeared in 1997, the couple became the main suspects, and investigators received a judge's permission to place listening devices in their home. A federal judge later questioned the government's evidence and how it was collected, and the tapes were thrown out as evidence.

It could be weeks or months before the appeals court makes a decision on whether or not to allow the records to be open. (5/6/03-5/14/03)

COURTS

Judge refuses to close hearings in Miami conspiracy trial

MIAMI – A district judge rejected a defense request to close all hearings during deliberations in the corruption trial of 11 Miami police officers.

However, U.S. District Judge Alan Gold warned he might close the court to all spectators because of complaints from the jurors about someone claiming to be a journalist contacting them.

"I have received a number of notes from the jury…complaining about contacts at their homes during the deliberative process," Gold said on the eighth day of deliberations.

Media attorney Sandy Bohrer said *The Miami Herald*'s subscription department made two calls to one of the deliberating jurors and denied any journalists made the disputed calls.

In a later hearing on the closure issue, Gold said the defense request to close everything short of the verdicts was "overly broad" and "without justification." Gold also rejected the idea of sequestering the jury in the middle of the deliberation process.

The officers in the case are accused in the conspiracy trial of allegedly planting guns on unarmed suspects after four police shootings and then covering up the alleged misconduct. The shootings left three men dead and one wounded from 1995 to 1997. (4/4/03-4/8/03)

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Secrecy gives false sense of security

The list goes on and on.

Unfortunately, the Bush administration has reversed the presumption of openness, starting with a policy that information should be withheld in order to protect the public. If the question is posed as to whether information can be used maliciously, then it will be nearly impossible to ever achieve an open society since inevitably someone could use information to cause harm.

In a democratic society, we recognize openness can create risks – and we take steps to limit such risks without undermining the democratic tenets that we believe in, such as the public's right to know. Thus, we must always start from the principle that government information should be publicly accessible, putting the onus on those who demand otherwise. After all, information is the currency of democracy.

Yet the government has used the tragedy of 9/11 to broaden its penchant toward secrecy. While the public tires of close-door, back-room deals like those of the Vice President's energy task force, the Bush administration persists in its antipathy towards openness. For example, the President has issued an executive order making it more difficult to obtain past presidential papers. Even the White House daily press briefings are very guarded.

As Scott Armstrong, a writer and advocate for sunshine in government, puts it, reporters, sharp-eyed critics, and the general public have a right to ask questions and obtain responses from their government. These conversations are crucial to making ourselves safer. Only then can we get to the problems before the terrorists do.

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Secrecy gives false sense of security

The Back Page

By Gary D. Bass and Rick Blum

Gary D. Bass

Rick Blum

An open society that promotes the public's right-to-know produces a safer environment than one that relies on secrecy. Put another way: you can withhold information about vulnerabilities in our communities, but the vulnerabilities will still exist. If you don't agree, just ask a few dozen nuclear plant security guards who because of disclosure about work conditions now have a safer plant.

It started with security guards at nuclear plants complaining about the long hours they were putting in to meet increased security needs, but government officials dismissed the guards' complaints. At the same time, published media reports were highlighting that nuclear facilities, including one at Indian Point near Manhattan, New York, pose an enormous threat to human lives if a worst-case accident occurred at one of them. One story included a map showing the human casualties expected in the communities around Indian Point if there was an accident.

The Project on Government Oversight, a watchdog organization based in Washington, DC, set up meetings with officials at the Nuclear Regulatory Commission where security guards told stories of how fatigue made them ill-prepared to defend the plants. Only then did government officials recognize the safety problems created by an under-trained and over-tired security workforce and decide to reduce workload and strengthen training for security guards.

Ironically, interventions like this one – along with concrete safety improvements – are much less likely when information is not disclosed. Since the attacks of 9/11, federal and state officials are putting in place restrictive policies designed to stem the free flow of information. The logic is that safety demands secrecy.

Nonetheless, the federal government has vastly expanded the zone of secrecy. A questionable doctrine that secrecy makes us safer is quietly replacing years of progress on the free flow of information about decisions affecting our safety and the public's ability to prevent wrongdoing and hold government accountable.

For example:

- Roughly a year ago, White House Chief of Staff Andrew Card instructed federal agencies to re-examine public availability of information on weapons of mass destruction and "other information that could be misused to harm the security of our nation and the safety of our people." Using language that has alarmed press groups and national security experts, agencies were asked to carefully consider disclosure of "sensitive but unclassified" information without defining the term. The Office of Management and Budget plans to publish additional clarifying guidance, which it now calls "Homeland Security information."

- Attorney General John Ashcroft issued a memorandum on October 12, 2002, urging federal agencies to exercise greater caution in disclosing information under the Freedom of Information Act. In general, the Ashcroft memo has helped to establish a culture of secrecy in federal agencies.

- The Environmental Protection Agency removed from its web site information about chemical plant worst-case scenarios, which is exactly what industry had been lobbying for even before 9/11 – and is exactly the type of information that helped reduce the vulnerabilities at the Blue Plains plant in Washington D.C.

- At the urging of the Bush Administration, Congress passed a new FOIA exemption as part of the law that creates the Department of Homeland Security. Not only is "voluntarily submitted" critical infrastructure information withheld from disclosure, but the same information is protected in civil liability cases, preempted from state disclosure, and can be shared in *ex parte* communications with the Department. Moreover, whistleblowers who disclose this information can face criminal penalties. This was a wish list of industry and will lead to much greater secrecy. (CONTINUED ON PAGE 3)

Gary D. Bass is the Founder and Executive Director of OMB Watch, and Rick Blum is the Director of the Freedom of Information Project. OMB Watch is a nonprofit research and advocacy organization that promotes increased citizen participation in public policy and greater government accountability.