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# THE BRECHNER REPORT

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## Attorney says commissioners violated law

SAN CARLOS PARK – Some board members of the San Carlos Park Fire Protection & Rescue Service District violated the Sunshine Law after meeting in a private executive session, according to the district's attorney.

Board members went into a private executive session after a scheduled open meeting to discuss Fire Chief Nat Ippolito's contract. Members said at the time they thought the meeting was legal because of an exemption that allows officials to hold private meetings for

### ACCESS MEETINGS

collective bargaining negotiations. Board attorney

Terry Lewis said the commissioners misinterpreted the exemption which covers collective bargaining for union officials, but not for the fire chief, who is not part of the union, he said.

The commissioners who attended the meeting said they understood the statute to include the chief's contract.

"It was done so unconsciously with no thought of breaking the law," said board Chairwoman Mary Lou Garofalo. "It was just something that took us all by surprise."

Lewis said the commissioners will correct the action in an August meeting by attempting to recreate the discussion that occurred.

"It will come before the board at a regularly scheduled meeting," he said. "They will bring both items up and have a full discussion."

Chere Avery, communications director for the state attorney's office, said the office would investigate a claim if someone files a complaint. (7/15/03)

## Sunshine Law case will not be retried

PENSACOLA – State Attorney Curtis Golden has decided against retrying former Escambia County school board member Vanette Webb, the first Florida politician jailed for violating the Sunshine Law.

Webb served seven days of a 30-day jail sentence in 1999 after being convicted of violating the Public Records Law. A judge later ordered a new trial after questioning whether Webb knew if the files she refused to release to a parent were public records.

Golden dropped the charge against Webb stating that another trial would serve no purpose because the constitutionality of the Public Records Law had been upheld in appeals that followed Webb's conviction, she was

no longer in office, and she had served jail time.

"Charges were dropped five years too late," Webb said in an e-mail to the *Pensacola News Journal*. "Justice delayed is justice denied."

Jon Kaney, general counsel for the First Amendment Foundation, said

Webb's case has already served a valuable purpose.

"The name Vanette Webb will be remembered by the public officials,

lawyers and the press in this state for a long time," Kaney said. "A point was made rather emphatically when she was prosecuted and convicted."

Former Commissioner W.D. Childers is the only other official to serve jail time for violating Florida's Sunshine Law. (7/22/03)

### ACCESS RECORDS

## Three men arrested at rally file lawsuit

MIAMI – Three men arrested for protesting at a 2002 Gov. Jeb Bush campaign rally at the University of South Florida have filed suit against the Secret Service and others, arguing that their First Amendment rights were violated.

The three men, Joe Redner, Adam Elend and Jeff Marks, were arrested because they would not move into areas designated by the Secret Service as "free speech zones." The men said they were attending the rally specifically to protest the zones, with signs reading "Don't let these crooks fool you" on one side and a quote from a Supreme Court First Amendment decision on the other.

Elend said USF officials ordered them to a designated zone about a half-mile away.

"There were a couple hundred people

there (at the protest zone), but you couldn't see it from where the event was happening," Elend said.

The suit names the Secret Service, the sheriff's office, USF and Sun Dome Inc., which operates the arena.

Elend said the Secret Service and deputies discriminated at the rally by allowing those with pro-Bush and neutral signs nearby, but sending anti-Bush protestors to the zone.

Bruce Winick, a professor at the University of Miami School of Law, said the courts have traditionally allowed restrictions that are reasonable as to time, place and manner. But he said the restrictions must be applied equally to protestors and supporters.

The three men said they've been protesting both Democratic and Republican rallies for years, calling their act "a freedom thing." (8/4/03)

### FIRST AMENDMENT

## Attorney clears confusion over suicide records

PINELLAS PARK – State Attorney Bernie McCabe has found that the original police records concerning city manager Jerry Mudd’s suicide have not been shredded as police had suggested.

On Feb. 11 when Mudd died, Pinellas Park officials denied requests made by the *St. Petersburg Times* for copies of original police records and Mudd’s suicide note. After the paper sued for release of the documents, police Sgt. Dan Levy testified that he had been ordered to have Donna Saxer change the police report to omit a verbatim copy of Mudd’s suicide note. When asked what he did with the report, he testified that it was put in his shred pile.

McCabe said Levy then testified that things on the pile “ultimately get shredded,” not “got shredded” as was reported in the *Times*. McCabe also said that Levy told a state attorney’s investigator that “it was not shredded.”

“At some point in time, he was somehow directed to go find it. ... Basically, he hadn’t gotten around to shredding the pile,” McCabe said. “My investigator’s report says, ‘I determined that the original report... was not shredded but in the possession of (Pinellas Park police) Chief (Dorene) Thomas.’”

It is still unclear why the city did not turn over the documents since they had not been shredded, according to a story in the *St. Petersburg Times*. (6/3/03)

## 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.*

## State Attorney clears city of Public Records Law complaint

WESTMELBOURNE – After investigating an official Sunshine Law complaint, the Brevard State Attorney’s Office has concluded that no law was violated by West Melbourne’s city government when it released a former clerk’s personal information into public record.

Pam Waters, who filed the complaint, claimed that the city violated an exemption clause of the Public Records Law that allows her personal contact information to remain private. According to the exemption, Waters is eligible to have her address, telephone number and Social Security number withheld from public access because she is married to a law enforcement officer.

Waters’ information was released as part of her application for the city clerk’s position during a council meeting. Waters, however, was the one solely responsible for putting together the meeting agenda packet which included her application.

City Manager Mark Ryan told police that Waters’ husband never sent a written request that the information be exempt, as required by law.

Assistant State Attorney Wayne Holmes said that evidence suggests Waters had time to prevent her personal information from becoming public. The State Attorney’s Office also said that the release of her Social Security number, which is a crime, was done inadvertently by Waters.

“It can be a crime if there is a knowing and willful dissemination of a Social Security number,” Holmes said. “So what you had was a clerk who released these inadvertently. So there is no crime.”

The exemption, which includes law enforcement officers’ addresses and telephone numbers, also extends to Department of Children and Families investigators and local government tax collectors to protect employees and their families from retribution. (7/31/03)

## Dinner cancelled for county commissioners at last minute

CLEARWATER – A social dinner organized for county commissioners from Pinellas, Pasco and Hillsborough counties was called off two hours before the event to avoid breaking Florida’s Sunshine Law.

Pinellas County Commission Chairwoman Karen Seel planned the dinner to acquaint the 19 commissioners. She invited them along with their spouses, but realized the public had not been invited.

An hour before the dinner was called off, a *St. Petersburg Times* reporter had inquired if the meeting had been advertised as required by the law.

Seel called the oversight a mistake and said she had left instructions with her staff to advertise the dinner. She said she was surprised to learn that never happened.

After consulting with the county attorney, Seel decided to call the dinner off rather than risk a possible Sunshine

Law violation.

“I didn’t want to break the law,” Seel said. “I respect the law. I have always complied with it, and do not want to put any of the commissioners in a situation in which they would be breaking the law.”

Hillsborough Commission Chairman Tom Scott said he was looking forward to casually meeting with other commissioners.

“The original intent was so we could get together and kind of get to know one another,” Scott said. “It was kind of more of a get-acquainted thing. I want that and have asked staff to look at rescheduling.”

Jim Bennett, deputy Pinellas County attorney, said he thinks the get-together can be rescheduled.

“But perhaps not as a dinner,” Bennett said. “In a public setting where the public will feel more comfortable.” (7/25/03)

## ACCESS MEETINGS

# FIRST AMENDMENT

## Judge rules street vendors can be fined

MIAMI – A judge has ruled that newspaper vendors can be ticketed for selling papers in the street, rejecting a claim that banning vendors violates the First Amendment.

*The Miami Herald* and the *South Florida Sun-Sentinel* took the city of Hollywood to court seeking a preliminary injunction against the city for enforcing a ban on street newspaper vendors. The two papers filed suit against the city claiming that police were interfering with newspaper distribution when they issued citations to three *Sun-Sentinel* vendors and at least one from *The Herald* on March 25. The suit also insists that vendors acted legally by standing on

medians and sidewalks unless going into the street to sell the newspaper.

U.S. District Judge Patricia Seitz refused the newspapers' request for a preliminary injunction after viewing videotapes of vendors walking between cars stopped at signals and being told three vendors have been killed in recent years. Seitz said that the Florida law used to ticket the vendors is content neutral and promotes a significant interest in public safety.

City attorney Daniel Abbott said if the newspapers decide against an appeal, the city would ask to have the lawsuit dismissed. (7/24/03-7/30/03)

## ACCESS MEETINGS CONTINUED

### Officials charged for Sunshine violation

PALM COAST – After a three-week investigation, the State Attorney's Office has concluded that a private discussion between Flagler County School Board Chairman Edward Herrera and board member Jim Guines about their superintendent's raise violated the Sunshine Law.

The findings also determined that the discussion between the men was an unintentional violation. Because of this, both officials have been charged with non-criminal civil violation, usually bringing a \$500 fine.

Herrera said he never meant to violate the law when he called Guines to discuss a \$44,000 raise for Superintendent Robert Corley before the issue was discussed at a public meeting.

The State Attorney's Office said the

phone conversation was unlawful because the two officials discussed "issues that could...come before the School Board of Flagler County."

Jon Kaney, general counsel for the First Amendment Foundation, thought the decision could have been a lot worse for the two officials.

"I would have called that a willful violation," Kaney said. "They got a slap on the wrist when they should have got a spank on the butt."

A conviction for an intentional violation is a criminal offense with a possible jail term, loss of elected position and up to \$500 in fines.

Herrera has apologized to Guines and Flagler County residents for his actions. Neither Herrera nor Guines intend to challenge the decision. (7/10/03-7/12/03)

### Fire commissioners did not violate law

PINELLAS COUNTY – After looking into a Sunshine Law complaint, a Pinellas County sheriff has concluded that two fire commissioners did not violate the law when they got together with community activists after a meeting.

Fire board chairman Mike Brophy lodged the complaint in May, saying that John Frank and Bill Adams violated the Open Meetings Law when they met at Denny's restaurant with Ray Neri, director of the Lealman Community Association, and Mike Quinlivan, executive director of the Lealman Family Center.

Neri said it was a typical get-together where fire board business was not discussed.

Pat Gleason, general counsel for state Attorney General Charlie Crist said there is nothing wrong with two or more members of an elected board getting together to discuss purely social or community issues.

"The Sunshine Law wasn't intended to stifle discussion of communitywide issues," Gleason said. "The Sunshine Law doesn't prohibit those type of discussions when they're out of the scope of board business." (8/10/03)

# NEWS NOTES

## ACLU offers signs to inform public

MIAMI – The American Civil Liberties Union of Florida is offering hundreds of placards to county and university libraries warning patrons that their library records may be monitored by the government.

The placards will advise library users that the USA Patriot Act enacted after Sept. 11, 2001 can subject library records to government surveillance without their knowledge.

The 10-by-12-inch poster displays the Statue of Liberty with large, yellow lettering reading: "Attention. Under Section 215 of the federal USA Patriot Act records of the books and other materials you borrow from this library may be obtained by federal agents." The poster also informs users that librarians cannot tell patrons if their records have been seized by the government, and urges that any questions about the law be directed to Attorney General John Ashcroft.

Howard Simon, executive director of the Florida ACLU, said the signs are meant to inform the public of the law, as well as provoke outrage over what the ACLU considers an invasive law that tramples on basic First Amendment rights.

Libraries will use their own discretion to decide whether or not to post the signs. (7/31/03)

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# Time, healing bring renewed perspective on the First Amendment

Two years after the terrorist attacks in New York and Washington, D.C., our nation appears to have caught its breath — and regained some perspective.

Those horrific assaults took a tremendous toll, in lives as well as on our collective psyche. How could we prevent this kind of attack from happening again? Did we need to limit liberties in the interest of security?

## The Back Page

By Ken Paulson

That sense of freedom as an obstacle to the war on terrorism was reflected last year in our annual survey gauging public support for First Amendment freedoms. For the first time in our polling, 49 percent of respondents said they believed the First Amendment gives us too much freedom.

While reaction to fear is largely reflexive, the passage of time allows us to be reflective. The 2003 State of the First Amendment survey — conducted in collaboration with American Journalism Review — suggested that public support for First Amendment freedoms may be returning to pre-9/11 levels. About 61 percent of respondents indicated overall support for First Amendment freedoms, while 34 percent said First Amendment freedoms go too far.

While First Amendment advocates certainly can't regard it as a victory that one-third of Americans have misgivings about these fundamental freedoms, there are other signs that most Americans continue to embrace freedom of speech and religion. While respondents displayed less enthusiasm for freedom of the press, they did give high marks to the news media for their work during the war in Iraq.

Among the key findings:

- The least popular First Amendment right continued to be freedom of the press — 46 percent said the press in America has too much freedom to do what it wants, up from 42 percent last year.

- Sixty-five percent of those surveyed said they favor the policy of embedding U.S. journalists in individual combat units, and 68% said the news media did an excellent or good job in covering the war.

- Despite the positive perception of war coverage, more than two out of three surveyed said the government should be able to



Ken Paulson

review in advance journalists' reports directly from military combat zones.

- Americans indicated a hunger for more information about the war on terrorism. Forty-eight percent of those surveyed said they believed that Americans have too little information about the federal government's efforts to combat terrorism.

- When asked whether they believe the media have too much freedom to publish or whether there's too much government censorship, response was split: 43 percent said there's too much media freedom, and 38 percent said there's too much government censorship.

The war in Iraq put protests back on newspaper front pages and gave a number of Americans second thoughts about dissent. The war also fueled a new effort to rewrite the Constitution to ban burning of the American flag.

Overall, the 2003 State of the First Amendment survey results suggest some challenges for America's news media.

While most respondents gave the press high marks for Iraq war coverage and said they count on the news media to provide more information about the war on terrorism, they also said the press has too much freedom and indicated suspicion of those who own the nation's newspapers and broadcast stations.

Fortunately, Americans also recognize responsible and responsive news coverage when they see it. For all of the skepticism about news media ownership and excesses, the nation's journalists remain uniquely positioned to win support for a free press — and the First Amendment as a whole — by living up to the watchdog role envisioned by the founding fathers.

At a time when many remain tempted to roll back civil liberties in the name of security, a free press plays a crucial role.

The nation's news media truly honor the First Amendment when they ask the tough questions, fight to keep the public's business public and provide the kind of thorough and balanced reporting that is the lifeblood of a democracy.

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*Ken Paulson is the Freedom Forum senior vice president and executive director of the First Amendment Center in Nashville, Tenn. He is a veteran newspaper editor and lawyer, and writes on free speech and First Amendment issues. For a complete copy of this article, visit <http://www.firstamendmentcenter.org>.*