
THE BRECHNER REPORT

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Florida Supreme Court reviews records procedures

TALLAHASSEE – The Florida Supreme Court has agreed to review the issue of whether a local Palm Beach judge, instead of a Tallahassee-based judge, should have been allowed to rule in a case involving the release of Department of Children and Families' (DCF) records.

The case stems from a record request made by the *South Florida Sun-Sentinel* to get investigative files involving a West Palm Beach couple in a neglect case. The Department of Children and Families delayed the request, and a South

Florida judge later denied the request.

The newspaper's failed request has since spurred a legal dispute in the state Supreme Court, questioning whether the Palm Beach judge rather than a judge in Tallahassee, where the DCF is based, should have been allowed to decide on the request.

Lawyers for the DCF and other state agencies told the Court that if local judges around the state were given such decision-making power, chaos, expense and hassle could ensue.

Florida Solicitor General Christopher Kise said he fears the Palm Beach case set a precedent that could destroy a 50-year-old legal doctrine mandating that

petitions for public records be brought only to the courts closest to an agency's headquarters.

Attorneys for the *Sun-Sentinel* and other newspapers said the "home venue privilege" is outdated, and in cases like this one, makes it too easy for government officials to hide investigative files. (11/5/03)

**ACCESS
RECORDS**

Official fined for Sunshine violation

NEW SMYRNA BEACH – Former Oak Hill City Commissioner Ron Mercer was ordered to pay a \$500 fine for violating

the state's open meetings law nearly two years ago.

Mercer was fined for a conversation he had with Commissioner Bob Jackson, stating that he would not support him as the city's mayor. While Mercer claimed he never violated the law intentionally, County Judge Mary Jane Henderson ordered the fine for the noncriminal infraction.

"I believe the state Legislature specifically established a noncriminal penalty for Sunshine Law violations because it realized officials might unintentionally break the law in casual conversation and they need to be aware of that danger," Henderson said.

Mercer's attorney James Markel plans to appeal the decision. Jackson, the other commissioner, pleaded no contest to the violation in May and was fined \$250 and ordered to attend a Sunshine Law class.

Jury decides newspaper must pay \$18.28 million in false light lawsuit

PENSACOLA – The *Pensacola News Journal* was ordered to pay \$18.28 million to a road paver who claimed a newspaper article portrayed him in a false light.

A jury awarded the money to Joe Anderson Jr. after deciding that an article published in the *News Journal* led to the Florida Department of Environmental Protection (DEP) denying Anderson a permit for a cement plant.

The article was part of a five-day investigative series on Anderson Columbia Co., the Lake

City-based road-paving company founded by Anderson. Although Anderson conceded the article was factual, he complained that the first sentence about a hunting accident where he had "shot and killed" his wife didn't note the death was an accident until two sentences later.

Anderson claimed that the article's overall effect was to depict him as a murderer with political connections to get away with it.

Attorneys for the newspaper argued that it would be unfair to hold the paper

at fault for publishing information that Anderson acknowledged was true. One attorney for the paper, Dennis Larry, noted that the reader would have to stop reading after the sentence that said Anderson "shot and killed" his wife to consider the death anything but an accident.

Anderson claimed that because of the article, he was denied a permit for a Suwannee County cement plant in 1999 because DEP Secretary David Struhs thought he was a murderer.

Anderson also claimed that GE Capital withdrew plans for \$90 million in financing for the cement plant after reading the article.

The jury was unable to decide whether punitive damages should be awarded to Anderson. Circuit Judge Michael Jones declared a mistrial on the issue of punitive damages and said he would conduct a hearing later on how to proceed. Larry said the defense team might ask for a mistrial in the entire case, and not just on the issue of punitive damages. (12/13/03)

PRIVACY

**ACCESS
MEETINGS**

AIM supporters file complaint against city

NEWPORTRICHEY-Florida American Indian Movement (AIM) supporters James Wright and Daniel Callaghan filed a complaint in Pasco County Court to see how much the city spent this year to host the Chasco Fiesta festival. Both the city of New Port Richey and Mayor Frank Parker are named in the complaint.

Local members of the AIM are critical of the Chasco Fiesta, saying it promotes stereotypes and is demeaning to American Indians.

The two men are seeking records that detail how much it cost the city and taxpayers to provide police, fire services, parks, cleanup and advertising for the event. City staff said there is no report tallying labor costs for special events.

Callaghan filed a written request in January 2003 asking how much the city spent on the 2002 festival. The city produced the information, but City Manager Gerald Seeber claimed Callaghan did not pick it up. That request did not ask for a tally of man hours, as the request for the 2003 event did.

"We can go back and research and add it up from payroll accounts," said city finance director Rick Snyder. "As far as having a public record for this type of event, we don't."

Only the city manager or City Council can direct the finance department to research and produce a tally of man hours for the event. As of yet, the council and manager have not asked the department to do this. (11/14/03)

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.

Journalism group seeks access to terrorist suspect's case records

MIAMI- A national journalism group has filed a friend-of-the-court brief urging the U.S. Supreme Court to open sealed records in the habeas corpus case of Deerfield Beach resident Mohamed K. Bellahouel.

The Reporters Committee for Freedom of the Press claims that the press and public have the right to know why Bellahouel has been detained and now deported. The brief also states that the case "could spark a healthy debate about the means by which the government is conducting the war on terrorism."

Bellahouel was detained by authorities

in 2001 and 2002 in connection with the government's post-Sept. 11 terrorism investigation. In March 2002, he was released after filing a habeas petition. A ruling by the 11th U.S. Circuit Court ordered that the Bellahouel case be kept secret.

In the 12-page document, the Committee asks justices to overturn the 11th Circuit's sealed judgment. It encourages the court "to clarify that the public has a constitutional right to access to habeas corpus proceedings and records."

(11/5/03)

Sunshine lawsuit to go forward

TALLAHASSEE—Circuit Judge Janet Ferris refused to dismiss a lawsuit claiming a state agency allowed a Suncoast Parkway 2 advisory group to violate the Sunshine Law.

Ferris denied a motion by the Florida Department of Transportation (FDOT) to dismiss a suit filed by community members Teddi Bierly and Robert Roscow. The two alleged that the Environmental and Resource Agency Group (ERAG), a branch of the state's Turnpike Enterprise, met privately in violation with the state's Sunshine Law.

FDOT is conducting a study to

determine if a suitable route can be identified to build Suncoast Parkway 2, a toll road constructed entirely in Citrus County. Bierly and Roscow

argue that ERAG is a multi-agency group that will greatly influence whether to build the Suncoast Parkway and where it will go. The

FDOT claims that ERAG is not a decision-making body and is, therefore, exempt from the law.

The ruling by Judge Ferris allows Bierly and Roscow's lawsuit to move forward in their quest to be admitted in ERAG meetings.

(11/7/03)

ACCESS MEETINGS

City Council complaint investigated

MAITLAND CITY—A complaint filed by two city residents has prompted state prosecutors to launch an investigation of the Maitland City Council to determine if its members violated the state's Open Meetings law.

One of the complainants is former Maitland Mayor Homer Hough, who found four of five Maitland council members dining with top staffers before a scheduled meeting. They were seated in a small conference room visible from the Maitland City Hall lobby, but the doors leading to

the back of the room were locked.

Maitland Mayor Sascha Rizzo said the council did nothing wrong and that the doors were accidentally locked and that members never brought up city business during the dinner. Maitland's city attorney, who attended the dinner, said it amounted to a social event and is exempt from Florida's Sunshine Law.

Rizzo would not comment on the investigation although he said that "it's entirely plausible" the council will review the practice of pre-meeting dinners. (11/4/03)

Judge rules city did not violate law

MIAMI – Miami-Dade Circuit Judge Gill Freeman ruled that the city of Miami Beach did not violate Florida’s Sunshine Law when it awarded a \$7.8 million contract to Motorola for an emergency communications system.

Freeman rejected competing bidder M/A Com’s demand for a temporary injunction to halt the project, accusing the city of negotiating the deal with Motorola behind closed doors. It claimed that a specially appointed city committee cut the deal with Motorola after M/A Com’s bid for an emergency system was lower.

Freeman said the city did not violate the Sunshine Law, a key burden to meet if the injunction was to be upheld.

“The evidence shows that the [city] staff was not delegated any decision-making authority, but was merely to negotiate the contract itself,” Freeman said. “Further, there was no evidence that the staff was acting as a board or appointed to a committee or had any recommendations to the City Manager.”

While it lost its injunction bid, M/A Com continues to demand damages against the city and Motorola, according to court documents. (11/27/03)

Florida Supreme Court restricts electronic access to public records

TALLAHASSEE – The Florida Supreme Court issued an administrative order for circuit court clerks to put a halt to the electronic dissemination of court records.

The court fears that too much privacy and confidential information might be available over the Internet. Records will remain available for public viewing under state open records statutes, but only in the clerk’s offices.

The order, effective immediately, will change legal operations and make it more difficult for the public to access information about civil and criminal

cases.

“Current regulation of confidential information is minimal at best,” Chief Justice Harry Lee Anstead said.

“Because it will take time to develop a uniform policy, I am directing that bulk electronic distribution of court records cease temporarily.”

Among exceptions to this order are “chief judges of the courts to authorize distribution of documents that have been properly screened and are of significant public interest,” Anstead said.

Clerks have until Jan. 1, 2004 to comply with the order, which will be in effect for at least 19 months. (11/26/03)

ACCESS RECORDS

Ashcroft defends Patriot Act at UF

GAINESVILLE – Attorney General John Ashcroft spoke to an audience of about 550 at the University of Florida about the U.S.A. Patriot Act, while more than 100 demonstrators gathered on campus.

Ashcroft spoke of the benefits of the controversial legislation that expanded government surveillance capabilities, saying it is one of the keys to the successful war on terrorism.

Numerous students and members of local civil liberties groups, however, disagreed.

“He’s taken away our civil liberties with the Patriot Act,” said Erika Gubrium, a UF graduate research assistant.

Some protestors carried signs that read “Stop fascism” and “How many innocents have you deported or imprisoned” before Ashcroft’s speech at the annual banquet of Florida Blue Key.

Ashcroft noted that no U.S. court has cited an abuse to the act.

“While there has been much misrepresentation of the Patriot Act, today Americans are engaged in a great debate about the preservation and protection of our liberty,” Ashcroft said. “We are asking good and necessary questions about how best to defend our freedom in the face of a very real threat.” (11/7/03)

FIRST AMENDMENT

Supreme Court passes on speech issue

WASHINGTON – The U.S. Supreme Court declined to rule on whether judges should review libel evidence during a pretrial, in a case involving negative road test ratings.

Justices declined to stop a lawsuit against the publisher of *Consumer Reports* magazine, therefore refusing to clarify free-speech protections for journalists who have been sued after criticizing people or products. Automobile company Suzuki had filed a lawsuit against the magazine after it published negative road test ratings on the Suzuki Samurai.

Given that the Supreme Court declined

to hear the case, “virtually any product evaluation is at risk and this valuable journalistic genre is seriously compromised,” news groups told the court in a filing.

Previously, the 9th U.S. Circuit Court of Appeals ruled that Suzuki had the right to argue that the magazine acted maliciously to damage its reputation. Suzuki attorneys claimed that *Consumer Reports* employees designed road tests to get the Samurai to tip.

Jim Guest, president of Consumer Union, the nonprofit publisher of the magazine, said that the company stands by its magazine’s report. (11/4/03)

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SARS epidemic offers valuable lesson in secrecy

Early in 2003, rumors started flowing from the south China city of Guangzhou of a new form of avian flu that was killing hundreds of people

On Feb. 9, the Swiss pharmaceutical company Hoffmann-La Roche Ltd., held a press conference in Guangzhou to announce it had a new drug that

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accused Roche of promoting the drug by starting rumors of hundreds of deaths. Only when free and independent Hong Kong reporters began to press did truth start to emerge. By then, it was too late.

As Dan Kubiske, co-chair of SPJ's International Journalism Committee and a former resident of Hong Kong, notes: "Because the Chinese government banned all reporting of any flu-like epidemic, no one knew what he/she had. They were then allowed to travel and spread the disease...." Even then, it took two more months before China acknowledged how big the problem really was. SARS had spread around the world.

There is a moral in this story for the Bush administration. Openness is good. The more information in people's hands, the more they can protect themselves - or insist that their government do the things it should to protect them. Protecting our rights to access information is also good.

While the Bush administration may not go to the extremes of the Chinese, it shows the same tendency to believe that secrecy is best. It was on that path before Sept. 11, 2001, and the attacks on the World Trade Center and the Pentagon only accelerated the trend.

Consider that one of the first reactions to the attacks was to pull information off the Internet. Information on the safety of dams was yanked. So were reports that detailed which chemicals were stored at industrial plants, or how much toxic material they emitted each year.

I suppose it's possible that terrorists might have plotted an attack using that information. But it's no less likely now that the information has been pulled from sight. For instance, it's common knowledge that sewage plants store a lot of chlorine, a deadly gas. What else does a terrorist need to know?



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Hiding information about such chemicals hurts the public far more than it protects us. When the data was on a Web site, people living downwind from a plant could do their research and press the plant to use less toxic alternatives or use the information to press for tighter security.

Congress sure isn't. As National Public Radio recently reported, the Senate rejected a measure that would have required industries to beef up security and begin substituting less deadly chemicals.

And it's just going to get worse. In November 2002, Congress railroaded to passage a bill creating the Department of Homeland Security. The bill includes what Sen. Patrick Leahy, D-Vt., termed the biggest hole in the Freedom of Information Act in 35 years. The law promises confidentiality to companies that voluntarily submit "information" to the department regarding vulnerabilities in critical infrastructure.

In April 2003, the Homeland Security Department released its proposed rules for implementing the law. Bad got ugly. Although the law defines what will be considered critical infrastructure information, the proposed rule indicates the department will let the company submitting information decide whether it meets the act's definition.

The department also intends to stretch the law farther than Congress intended. Other federal agencies that receive critical infrastructure information from businesses would be required to give it to the Homeland Security Department, where it would become subject to the law even if it was immediately returned to the other agency. This flies directly in the face of legislative intent. During debate on the bill, the House voted down an amendment that would have made all federal agencies subject to the FOI exemption.

SPJ and other journalism groups submitted comments against these anti-openness rules. We will speak against them at every opportunity. I urge you to do the same.

"Democracy dies behind closed doors," Helen Thomas reminds her audiences. There is no democracy in China. If Bush keeps closing doors, it will be endangered here, too.

Robert Leger is the immediate past president of the Society of Professional Journalists and editorial page editor of the Springfield (Mo.) News-Leader. The article was originally printed in the May 2003 issue of Quill magazine.