

THE BRECHNER REPORT

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Paper appeals verdict, damages in defamation case

PENSACOLA – Attorneys for the *Pensacola News* have requested that a circuit judge overturn an \$18.28 million verdict against the newspaper.

The case arose after the newspaper published a 1998 article that businessman Joe Anderson Jr. claimed placed him in a false light by

implying that he murdered his wife.

Anderson, who owns a road-paving company in Lake City, asserted that although he had fatally shot his wife, the phrase “shot and killed” in the article implied that it was murder. Two sentences later in the story, it was reported that she died as a result of a hunting accident.

The jury awarded the sum for actual damages in December 2003, but it could not agree on a punitive damage award. A new trial was ordered to determine the punitive award.

Defense attorneys contend that the entire case should be thrown out because Anderson failed to prove the statement was false.

LIBEL

Originator of state Sunshine Law dies at 91

TAMPA – Former Democratic state senator J. Emory Cross, known as the “Father” of the state Sunshine Law, died in late March.

Cross introduced the open government legislation multiple times,



J. Emory Cross

garnering the support of only one other senator. Initially, the bill never made it out of committee.

But, the legislator continued to fight for more than a decade to pass the legislation in 1967, which requires

government meetings to be open to the public.

The law was the first of its kind in the nation and has since become the model for similar acts nationwide.

“I just feel very strongly about the people’s right to know,” he once told reporters.

Cross represented Gainesville while in both chambers of the state legislature and served as the prosecuting attorney for Alachua County.

He was inducted into the Florida Freedom of Information Hall of Fame, housed in the Brechner Center, in 1997.

Citizens suits not allowed under federal open meetings provision

SAN FRANCISCO – The open meetings provision in the Federal Advisory Committee Act does not allow for lawsuits by private citizens, according to a recent ruling by the U.S. Court of Appeal for the Ninth Circuit.

The decision affirmed a federal trial court’s dismissal of a lawsuit by California attorney Patrick J. Manshardt, who was seeking access to

meetings of the Federal Judicial Qualifications Committee.

A unanimous court ruled that a 2001 U.S. Supreme Court decision, which held that courts may not assume that individuals may sue unless Congress has clearly expressed that such a remedy exists, controlled the

case.

Manshardt has not decided whether he will appeal the decision.

ACCESS MEETINGS

Committee ready to recommend electronic access to court records

TALLAHASSEE – Electronic access to court records should be available to the public, according to the draft report of a committee appointed by the Florida Supreme Court.

The group, composed of judges, attorneys and court clerks, preliminarily recommends that the public be allowed to access records via the Internet despite recent investigations into information misuse by data wholesale companies such as ChoicePoint, Inc.

However, the committee has suggested that limits be placed on the amount of

information available via the World Wide Web. This includes Social Security numbers, credit card information and medical records.

The responsibility of redacting exempt information will fall on attorneys, clerks and anyone who seeks to file information with the court.

Other confidential, but not exempt information, such as trade secrets or divorce allegations, would be released subject to a judge’s ruling.

The committee’s final report to the Supreme Court is due on July 5.

COURTS

Appeals court ruling favors Key West publisher

KEY WEST—A Florida law prohibiting the release of information from internal investigations of law enforcement officers is unconstitutional, according to a ruling by the U.S. Court of Appeals for the 11th Circuit.

As a result of the court's decision, Key West publisher Dennis Reeves

Cooper, who edits a weekly newspaper, will be able to continue a civil rights suit against former Key West Police Chief "Buz" Dillon.

Cooper was arrested after he published an article about an investigation by the Florida Department of Law Enforcement and an editorial

criticizing Dillon for not reprimanding an officer who had lied under oath.

The court said that the law is unconstitutional because it discriminates against speech regarding pending investigations of law enforcement officers merely because of its content, in violation of the First Amendment.

Judge restricts access to photos of autopsy, scene

DAYTONA BEACH—Circuit Judge J. David Walsh ruled that photographs and video from the crime scene of the Deltona mass murders should be withheld from the public.

Walsh reserved his ruling, allowing the attorneys time to compile a list of materials to be sealed in the case.

In his decision, Walsh acknowledged that public disclosure was important.

"I can't keep this case sealed forever," he said. "There's a right of access."

The pictures, which showed the dead victims after they were brutally beaten and stabbed, would likely be prejudicial to both the state and defense, according to attorneys for both sides.

Motions had been filed by both parties to seal the records. State Attorney John Tanner claimed that release of the photos would re-victimize the families of the deceased while defense attorneys argued that some videotapes and documents would make it difficult to find an impartial jury.

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.

LIBEL

Pennsylvania neutral reportage case will not be heard by Supreme Court

WASHINGTON—The U.S. Supreme Court declined to hear a Pennsylvania case involving the neutral reportage privilege.

Neutral reportage is recognized by courts in several states, including those in Florida, as a defense for journalists involved in defamation cases.

It provides reporters the ability to accurately and fairly report defamatory statements made by a reputable public figure or organization without fear of a lawsuit.

The Supreme Court's decision lets stand a ruling by the Pennsylvania Supreme Court, which held that no such

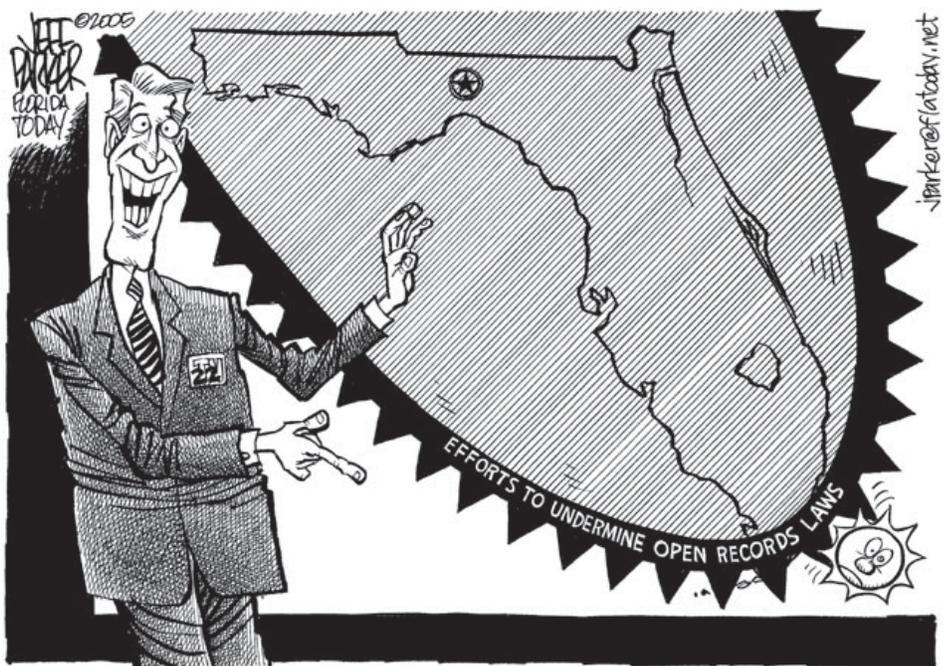
privilege exists in Pennsylvania.

In the case, two elected officials sued a local newspaper after it published another elected official's allegations that the two were homosexual.

In October, the Pennsylvania High Court ordered a new trial to determine the liability of the newspaper's owners, publishers and reporters for publishing the defamatory statement.

The newspaper had originally asserted neutral reportage as a defense to liability in the case.

A jury had already ordered the elected official to pay \$17,500 each to both of the defamed officials.



"A COLD FRONT IS PUSHING DOWN FROM TALLAHASSEE, WHICH COULD BLOT OUT THE SUNSHINE LAWS AND CAST THE ENTIRE STATE INTO DARKNESS..."

School officials trash censored student paper

PALM BEACH – Custodians at Wellington High School collected copies of the student newspaper, the *Wave*, in garbage bags after the school principal ordered that students be prohibited from possessing copies of the February issue.

Principal Cheryl Allgood asked the newspaper staff to remove an article on virginity, saying it was disruptive and inappropriate in a school environment.

In protest, the students distributed copies of the original, uncensored newspaper along with copies of the censored version.

School officials decided that any student caught with a copy of the newspaper would be suspended.

They ordered custodial staff members to confiscate all copies of the banned newspaper that were on school property.

Since the incident, school officials have instituted a prior review policy.

In 1987, the U.S. Supreme Court upheld the constitutionality of prior review for legitimate pedagogical concerns in high schools in *Hazelwood School District v. Kuhlmeier*.

Officer settles records lawsuit

NEW PORT RICHEY – A former police officer will receive more than \$45,000 to settle two lawsuits he filed against the city.

The city council agreed to pay former employee Arnold Uttley the sum after he alleged that city officials did not address his public records requests.

He also filed a separate suit claiming that the city violated the Open Meetings law when it settled a 1999 lawsuit he filed after he was not reinstated as a

police officer because of a 1997 conviction for drunk driving.

Uttley argued that the city failed to provide access to the settlement negotiations of the 1999 lawsuit, which he claimed violates the Sunshine Law.

Neither Uttley nor the city council admitted to any wrongdoing in their agreement.

In addition to paying Uttley the damages, the city will provide employees with training on the Sunshine Law.

SHIELD LAWS

U.S. Supreme Court refuses to hear case regarding reporter's privilege

WASHINGTON – A decision to quash subpoenas issued to two journalists involved in a civil rights case will stand after the U.S. Supreme Court refused to hear the case.

In *Donohue v. Hoey*, the U.S. Court of Appeals for the 10th Circuit affirmed a lower court ruling, saying that the plaintiffs had failed to explain how the trial court erred in quashing the subpoenas.

The plaintiffs, parents of the murdered Buffy Rice Donohue, sued the former police chief, claiming a violation of their

civil rights for failure to adequately investigate the murder.

They sought the testimony of two journalists, including an Associated Press reporter, in connection with the civil suit.

The U.S. Supreme Court has not decided a case involving the reporter's privilege since its 1972 ruling in *Branzburg v. Hayes*. That decision left the federal courts split over whether the privilege should be recognized. The Court also disagreed on the scope of First Amendment protection for reporters who withhold the identity of confidential sources from the courts.

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proposed statute also covers any of the media firm's parent, subsidiary or affiliate entity. The persons covered by the proposed Act resemble the classes of protected persons named in virtually all of the existing state shield laws. But this kind of stated coverage for the company's parent, subsidiary and affiliate is rare. Nevertheless, its inclusion here recognizes the realities of a converged media environment, where sources and information may be shared by employees at several different closely related companies. Wisely, the authors of the bills have narrowed the coverage area of the privilege to include traditional news media outlets, which generally stand in the greatest need for a privilege because of their extensive transactions with confidential sources and information. That way, protecting

traditional journalists ensures that responsible news veterans who have an appreciation for news values and ethics will continue to disseminate news and information in the interest of the public. In addition, it ensures that there will be a privilege available to protect confidential relationships with sources so that information continues to flow freely from sources to journalists and from journalists to the public. Any attempt to broaden the scope of the privilege to include non-journalists opens the shield law to possible judicial nullification. A shield law extended to the masses can no longer rightfully be called a privilege.

Laurence B. Alexander is a Professor of Journalism in the College of Journalism and Communications at the University of Florida and has published numerous articles on shield laws.

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REPORT

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Federal proposal would protect journalists

Journalists could be getting at least the same protection in federal judicial proceedings that they enjoy in 31 states and the District of Columbia under bills filed during the current session of Congress. Additionally, if the proposals remain relatively intact, news gatherers could get an absolute privilege in federal courts, bringing greater protection than they enjoy in most state courts.

Over the last few months, separate bills have been filed in Congress to give journalists a privilege against having to reveal confidential sources and information.

In February, companion bills were filed in the House by Reps. Mike Pence (R-Ind.) and Rich Boucher (D-Va.) and in the Senate by Richard Lugar (R-Ind.). Both bills, titled the “Free Flow of Information Act,” would provide journalists with an absolute privilege against compelled disclosure of their sources. It would also protect journalists from being subpoenaed by any federal government entity to testify or reveal any other information unless all other sources for the information had been exhausted and the material was essential to the underlying court case or investigation.

Like virtually all of the state shield laws providing journalists a privilege to refuse to testify, the proposed federal shield law allows journalists to keep secret the identities of their sources and documents. Moreover, the federal bills would give substantial

protection for news gatherers’ sources that rely on confidentiality agreements when they pass valuable sensitive information to members of the working press. The specific terms of the proposed law would prohibit compulsory disclosure by a journalist “in any proceeding or in connection with any issue arising under federal law.” To get the court to make an exception to this rule, a federal official seeking the information would have to prove by clear and convincing evidence that the information could not be obtained elsewhere or that the information sought was essential to the underlying court case or investigation. The exception aside, applying the privilege to any proceeding apparently would enable journalists to escape testifying before federal grand juries when the sought-after information can be obtained from another non-news source. Such an exemption would go beyond the limits of the



Laurence Alexander

landmark U.S. Supreme Court decision in *Branzburg v. Hayes* in which the High Court refused to allow a journalist’s privilege to avoid grand jury testimony based on the First Amendment.

Altogether 31 states, including the Sunshine State, have passed statutes to protect journalists from revealing their sources in state courts and nearly all of the remaining states have allowed some semblance of a privilege in their courts. However, there is currently no statutory protection for journalists who are subpoenaed to testify in federal court, except in those circuits that expressly recognize a common law privilege for journalists.

To be sure, federal shield laws were proposed in Congress in the 1970s and 1980s, but to no avail. This time, federal lawmakers were prompted by a string of reporters who recently were threatened with jail sentences in at least three different federal jurisdictions. The bills’ sponsors feel that compelling reporters to reveal sources would be detrimental to the public interest in government access. “Without the promise of confidentiality, many important conduits of information about government activity would be shut down,” Pence has said.

The bill would also protect journalists from having other records held by third parties—such as telephone records held by a phone company or e-mail tracked by an Internet service provider—turned over without their knowledge. The bill would require that journalists be notified before such a subpoena is issued and be given an opportunity to contest it prior to the time the records must be turned over. The need for such a provision should be evident. Its absence would enable the subpoenaing entity the opportunity to circumvent the intent of the shield law by indirectly accessing the desired data through phone and e-mail records. Therefore, it is necessary to limit such a move initially before any valuable news sources are harmed.

The bill would cover traditional news media outlets, such as newspapers, magazines, books, periodicals, broadcasting, cable, satellite, news agencies and news wires. It specifically covers any person who works for any of these businesses, specifically someone who “gathers, edits, photographs, records, prepares or disseminates news or information for such an entity.” The

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