
THE BRECHNER REPORT

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10 Polk board members face Sunshine violations

BARTOW — Ten members of the Polk County Opportunity Council Board of Directors have been charged with violating the Sunshine Law. Each member could pay up to a \$500 fine if convicted of the civil infraction.

The charges stem from a closed September meeting during which the board discussed former executive director Carolyn Speed.

Following the closed meeting, the board returned to the public meeting, where they voted to reprimand Speed for accepting a controversial training trip to Las Vegas. Speed was later forced to resign.

The PCOC board members said they were exempt from Florida's Sunshine Law since they were discussing business with lawyers. Even with an exemption, officials are required

by law to record closed meetings. There is no tape of the Sept. 15 meeting.

The members charged were Patricia Hunter, Collins Smith, Morris Chestang, Booker Young, Beverly Howell, Jessie Kirby, Annie Bryant Phyll, Ben Graham, Dennis Goosby and Ozell Wilson.

"I really can't say anything," Wilson said. "But we all have to face the music. We have to do what we have to do. We have to do whatever the law requires."

ACCESS MEETINGS

Commission rejects comment ban

FLAGLER BEACH — The Flagler Beach City Commission rejected a ban on public comment during commission meetings.

Commissioner Bob Mish offered the plan to eliminate public comment during the general business portion of meetings, when commissioners hear reports, spend money and make policy.

Mish cited lengthy meetings as the reason behind his plan.

Mish's fellow commissioners will continue with their current policy of

allowing the commission chairman to decide when the public may speak during the general business portion of the agenda.

Many Flagler Beach residents who protested the ban attended the November meeting, though none were allowed to address the commission on the issue.

Mish also proposed a five-minute time limit on the amount of time commissioners can speak during public hearings.

The commissioners also rejected that idea.

University of Miami newspaper defends use of Facebook photos

MIAMI — The University of Miami student newspaper is under fire after it published comments and photos posted on the popular student Web site Facebook.

The material, posted online by UM students and subsequently published in *The Miami Hurricane*, implied that three drunken students jumped into Lake

Osceola. Swimming is prohibited in the lake, located in the center of the campus.

Lawyers for the college-oriented Web

site contacted the paper, stating the photographs were used without permission.

Hurricane staff and faculty associated with the paper defended the article, citing the news value of the Web site material.

Facebook spokesman Chris Hughes told *The Miami Herald* that the incident marked the first time the Web site led to a campus newspaper investigation.

Facebook is one of the 10 most visited sites on the Internet, according to Hughes.

NEWSGATHERING

Indian River official cleared of allegation

INDIAN RIVER COUNTY — The State Attorney's Office has determined that a school board member did not violate the Sunshine Law at a September meeting.

Indian River County School Board Vice Chairman Craig McGarvey had been the target of a complaint that alleged he had a conversation with a fellow board member outside of a public meeting.

Government critic Brian Heady filed the complaint.

Assistant State Attorney Christopher Taylor found that the alleged conversation between McGarvey and board member Ann Reuter did not take place.

In a memorandum to State Attorney Bruce Colton, Taylor wrote that Reuter responded "I am allowed to have my own opinions" to statements made by McGarvey about the school district's budget and plans to build a high school.

Taylor determined that Reuter's response did not transform the comments into a "discussion, deliberation or formal action," according to a story by the *Vero Beach Press Journal*.

McGarvey has maintained that the statements were made during the school board meeting.

Lawmaker urges probe into denial of voucher record

TALLAHASSEE — Rep. Shelley Vana (D-Lantana) plans to pursue an investigation into a denial by Gov. Jeb Bush's press office that a proposal to restructure a school voucher program existed.

The Palm Beach Post requested the document on three occasions in early November and was told by Bush spokes-

woman Alia Faraj that she checked with the alleged recipient of the proposal and that it did not exist.

When *The Post* directly contacted the recipient, Deputy Chief of Staff Patricia Levesque, she acknowledged she had the 11-page proposal.

Faraj attributed the denial to miscommunication.

Attorney General Charlie Crist rejected Rep. Vana's request to investigate the matter, citing a lack of authority to investigate or prosecute alleged violations of Florida's public records laws.

Rep. Vana told *The Post* that she would continue to pursue an investigation into the public records practices of the governor's office.

Clerk won't be charged for data release

FERNANDINA BEACH — City Clerk Cassandra Mitchell will not face criminal charges for inadvertently releasing employee Social Security numbers.

The Fernandina Beach Commission requested the investigation after it suspended Mitchell for 30 days.

Every city employee's Social Security number was included in an e-mail sent to a private citizen seeking employee salary data.

A clerk's office employee discovered the release of the exempt information and reported it to the city human resources department.

Assistant State Attorney Granville "Doc" Burgess declined to file criminal charges, but said he would withhold a decision on filing a civil infraction pending further investigation.

Burgess referred the matter to the Fernandina Beach Commission.

In a memorandum, Burgess wrote that Mitchell's actions following the e-mail were "inexcusable."

He cited the number of violations, Mitchell's denials when confronted and her failure to take action when the mistake was discovered.

Burgess described most criminal public records violations as involving knowing and willful acts, and Mitchell's was not.

Burgess also said the Attorney General's Office has "never known of an employee to be prosecuted for mistakenly transmitting exempt information."

Crist backs off on photo fight

SARASOTA — Attorney General Charlie Crist has ended his fight to keep autopsy photos of Carlie Brucia sealed. Crist withdrew his petition for a full U.S. Supreme Court review of a state appellate court's decision to allow the media to view the photos.

The photos were presented as evidence in the trial of Joseph P. Smith, the 39-year-old man convicted of the abduction, rape and murder of Brucia, 11. Circuit Judge Andrew D. Owens Jr.

sealed the photos during the trial, citing privacy concerns.

The Second District Court of Appeals overturned Owens' decision, stating that the Florida law barring the disclosure of autopsy photos does not apply to exhibits formally introduced in a criminal trial.

Crist then unsuccessfully requested that the Florida Supreme Court step in. U.S. Supreme Court Justice Anthony Kennedy also declined to take up the matter. Crist's last option was to petition the full Court.

Letter-writing teacher sues two newspapers, demanding source

ORLANDO — Two newspapers face legal action from an elementary school teacher who wants to know how the papers obtained a letter she wrote to a congressman.

Teacher Jan Hall, 59, filed a petition claiming a possible violation of her privacy. Hall resigned after a letter she wrote disparaging Hispanics was published in the *Orlando Sentinel* and the Spanish-language *El Nuevo Dia*.

Among other things, the letter stated that Hispanics and other Caribbean natives were harmful to schools and that the United States should not accept immigrants.

The Orange County School Board suspended Hall without pay in August after the letter was published. She resigned later that month.

Hall also plans to seek damages from the school board in connection with her suspension, according to court records.

REPORTER'S PRIVILEGE

New settlement in defamation case

BIRMINGHAM, Ala. — Former Alabama football coach Mike Price and Time Inc. reached a second settlement in the coach's defamation lawsuit.

The suit stemmed from a *Sports Illustrated* article about Price's night of drinking at a topless bar in the Florida Panhandle.

According to reports, the original settlement's confidentiality provisions were violated by Price and his lawyer. Details of the new agreement weren't made public.

CORRECTION

The December 2005 issue of *The Brechner Report* stated that Time Inc. would pay former Alabama football coach Mike Price \$20 million to settle a defamation lawsuit. This part of the report is retracted. While Price asked for \$20 million damages in his complaint, the terms of the settlement were not disclosed by Time or Price.

Bush Executive Order could speed FOIA requests

WASHINGTON — President Bush signed an Executive Order Dec. 14 with the intent of streamlining Freedom of Information Act (FOIA) requests.

The order requires federal agencies to designate chief FOIA officers and establish service centers within each agency. A public liaison at each service center will field concerns from requesters.

The order calls for a “citizen-centered

and results-oriented approach” to handling FOIA requests. Titled “Improving Agency Disclosure of Information,” the order cites improved performance, stronger compliance and the potential to avoid litigation as reasons for the measure.

Agencies have six months to report their current FOIA operations to the Attorney General and the Office of Management and Budget (OMB). These reports

will be made available online when possible.

The chief FOIA officer at each agency will also be required to develop a plan to reduce the backlog of requests and increase awareness of FOIA processing.

The order does not appear to change the 2001 John Ashcroft memorandum outlining the administration’s stance that all FOIA exemptions with a legal basis would be defended.

FIRST AMENDMENT

Deltona drops prayer from city commission meetings

DELTONA — The Deltona City Commission has decided to replace the traditional prayer before its meetings with a moment of silence, acting on the city attorney’s advice.

“We should try to follow the law and the constitutional mandates as much as we can,” advised City Attorney Roland Blossom.

Blossom said that he had received no complaints about the practice, but urged the commission to omit the invocation as “the right way to go.”

Commissioner William Harvey supported the move, fearing that an invocation would be interpreted as a

prayer of a particular faith.

Harvey said the moment of silence would be better for the purposes of promoting diversity.

“We’re a nation of all kinds of people,” Harvey said. “Diversity is good, and if we say diversity is good, then we have to leave it open.”

Public bodies such as the U.S. Congress and the Florida Legislature begin their meetings with a prayer.

In 1983, the U.S. Supreme Court ruled that opening governmental meetings with prayer does not violate the First Amendment’s ban on the establishment of religion.

Parts of leak decision open

WASHINGTON — The special counsel in the investigation of the leak of a CIA operative’s name has indicated in a court filing that portions of the decision ordering Matthew Cooper of *Time Magazine* and former *New York Times* reporter Judith Miller to testify before a grand jury are no longer classified.

Patrick Fitzgerald’s motion comes in response to a motion by the publisher of *The Wall Street Journal*, Dow Jones Inc., to unseal eight pages of the 2004 decision.

Fitzgerald limited the release of the material to that relating to the indictment of I. Lewis “Scooter” Libby. Libby, chief of staff for Vice President Dick Cheney, was indicted in October on counts of perjury and obstruction of justice that arose out of a probe into the leak that uncovered CIA operative Valerie Plame.

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Lawyers argue privacy, public interest in FEMA records case

FORT LAUDERDALE — The *South Florida Sun-Sentinel* has taken the Federal Emergency Management Agency (FEMA) to court over disaster funds distribution records.

Lawyers for both sides argued before U.S. District Judge Kenneth Marra at a Dec. 7 hearing.

The newspaper’s attorneys argued that public interest outweighed individual privacy interests.

The *Sun-Sentinel* investigation of the disaster funds has lasted more than a year, and has revealed that FEMA paid millions to residents unaffected by the

2004 hurricanes.

FEMA has resisted the *Sun-Sentinel*’s requests for names and addresses of disaster aid recipients and other FEMA records.

The agency argued that details about disaster victims cannot be released without their permission, and that other reports and administrative e-mails requested should be kept confidential because they reflect policy-making decisions.

At the end of the two-hour hearing, Judge Marra promised a prompt decision.

Investigation reveals hundreds of secret pardons

Big stories are born of small ones.

In the daily deluge of information with which newspaper editors deal, there are these little bumps that push up through the canvas of our attention. Scraping away the top of the bump we often find gems of journalism – corruption, greed, compassion and awe – that make really good newspaper stories.

That's what happened at the *Argus Leader* in late January, 2003. Our veteran political reporter, David Kranz, heard that Native American activist Russell Means was pardoned by South Dakota Gov. Bill Janklow during his last days in office before heading off to Congress. Kranz confirmed the story with Means and Janklow. We put a story in the paper.

Pretty simple stuff. But in the course of reporting the story, Kranz asked the obvious question. "Who else did you pardon, governor?" The reply was a little shocking. "Lots," he said, though he wouldn't say who. Further inquiry revealed the pardons were on file with the secretary of state's office. However, the secretary of state told us, they were sealed. He wouldn't even tell us how many there were. That seemed an odd thing.

So we wrote another story – and called the lawyers.

In the meantime, we started looking around, trying to find out who received these pardons. We found some.

There was the former secretary of transportation, the prominent real estate developer, the Bureau of Indian Affairs school workers, and others. All were interesting in their own right but we knew there were a lot more. In fact, sources in state government told us they thought there were about 60 that we should have.

Seventeen months and several legal steps later we wrote a really big story. This one said the South Dakota Supreme Court found Janklow didn't properly follow the law – passed quietly in 1983 – that let him seal the pardons. In short, he didn't tell the Board of Pardons and Paroles that he pardoned people.

We were quite pleased we'd won our legal battle. But the court didn't give us the names right away. The justices said it



Patrick Lalley

would take about two weeks to get all the records in order. So we had some time to get ready. We decided pretty early on that we'd publish the list. But we had an obligation to let those people respond before we put their names in the paper.

We prepared for 60 names. In our relatively small newsroom – we've got about 60 total employees and a little over 20 reporters – that meant each person would get two or three people to track down. It all seemed pretty manageable really.

Then on release day, we got a shock. There were 218 secret pardons; all but four of them were issued by Janklow. We'd committed to at least trying to contact everybody on the list. If you publish one, you have to publish them all. The list included the former governor's son-in-law, the lawyer who ran his pardon program, that lawyer's girlfriend and his father, etc. It was clear we had to publish all the names.

Each of our 20 or so reporters suddenly had nine or ten names to track down. We used everything at our disposal including Lexis, Google, our own archives and tips from the general public. We didn't get everybody but we got a lot. Let's just say it was quite a day.

The Janklow pardons story had many of the classic elements of satisfying journalism – corruption, secrecy, violation of public trust. It let us fulfill our responsibility to the citizens of South Dakota in a way that brought pride to our newsroom. It's the kind of story that keeps you coming back for more.

But for me the lasting impression is less about the philosophical underpinnings of the First Amendment. If you're in journalism for the right reasons, you've already got an understanding of the constitutional mandate. Ultimately, the pardons story was a lesson in how you get there. It's paying attention, asking the right questions and maintaining tenacity in the face of nearly unchecked power.

It's remembering that big stories are born of small ones.

Patrick Lalley is the assistant managing editor for the Argus Leader (Sioux Falls, S.D.). The Argus Leader received the 2005 Joseph L. Brechner Freedom of Information Award for its series on secret pardons issued by former Gov. Bill Janklow.