
THE BRECHNER REPORT

Volume 31, Number 12 ■ A monthly report of mass media law in Florida
Published by The Brechner Center for Freedom of Information ■ College of Journalism and Communications ■ University of Florida
December 2007

District Court overturns restraint on documents

ORLANDO - An Orlando television station prevailed in a lawsuit challenging a trial court's order prohibiting it from airing stories about a political consultant. The 5th District Court of Appeal ruled that consultant Doug

PRIOR RESTRAINT

Guetzloe did not prove that his privacy concerns outweighed WKMG-TV's First Amendment rights. The station received documents belonging to Guetzloe after he failed to pay rent on a self-storage unit. Guetzloe was at the center of an election-law scandal

related to a 2003 mayoral election.

The trial court first barred the station from broadcasting any stories on the documents, but later limited the restraint to documents related to Guetzloe's medical history and attorney communications.

The case, *Post-Newsweek v. Guetzloe*, is available at <http://www.5dca.org>.

Paper wins access to settlement

FORT MYERS - *The News-Press* (Ft. Myers) prevailed in a public records lawsuit against a city councilman, winning the right of access to a settlement agreement.

Fort Myers City Councilman Warren Wright sued the city and a developer over the construction of a 14-story tower near a lot Wright owned in a historic district. Wright later settled the suit, but the agreement was not made public.

The News-Press sought the settlement agreement under the Public Records Law, contending it was a record made in connection with official business. Circuit Judge Margaret O. Steinbeck sided with

the newspaper, finding that Wright cited his status as councilman as a basis for bringing the suit.

After Steinbeck ordered Wright to give a copy of the agreement to *The News-Press*, it reported that Wright settled the suit for \$100,000. Wright said most of that money will go towards legal fees he spent bringing the suit.

Wright also said that it was the developer who wanted the agreement kept private, not him. "I totally understand and respect *The News-Press*' position," Wright said. "I'm relieved that it's out there. I don't want the public to feel like I am hiding anything."

Judge denies bid to close hearing

ATLANTA - A federal judge denied a request to bar the news media from a suppression hearing in a terrorism case.

U.S. Magistrate Judge Gerrilyn Brill ruled that the news media have a First Amendment right to attend the suppression hearing of terrorism suspect Syed Ahmed. Ahmed's lawyer filed a motion seeking to have the media barred from the hearing, which would consider whether to suppress statements Ahmed made to law enforcement. The government planned to play 12 hours of recorded conversations with Ahmed.

"Defendant's motion does not come close to giving the court grounds to make

the specific findings required by the law before a criminal hearing may be closed to the public," Brill wrote in her order.

Ahmed and co-defendant Ehsanul Sadequee, both U.S. citizens, are accused of training to carry out a "violent jihad" against civilian and government targets.

"Judge Brill was right to recognize that if we close the courtroom every time significant evidence gets considered, we would quickly undermine the meaning of an open court system," said attorney Tom Clyde, who represented *The Associated Press* and other news organizations in the case. "This is an important hearing and it's important for it to be open."

COURTS

Judge decides records suit in favor of county

BUNNELL - A judge's grant of summary judgment in favor of Flagler County may end a lawsuit by *The Flagler Times* seeking e-mail correspondence addressed to a county commissioner at his personal address. *The Times* sued for the e-mails that were not submitted to

ACCESS RECORDS

the county for record retention.

At one point, the county

used commissioners' personal e-mail addresses to communicate electronically, according to *The Times*. Commissioner James Darby's aol.com address was the one at issue in the suit against the county.

"The documents in question certainly relate to public issues, unfortunately Judge [Raul] Zambrano has ruled that we cannot rely upon Florida's public records laws to discover them and any related correspondence that may exist," said Eric Gayton, publisher of *The Times*.

The newspaper is appealing the judge's decision.

NBA player's case remains open

SARASOTA COUNTY - The trial and related documents involving an NBA athlete's child support obligations will be open to the public, even though both sides argued for closure. The *Manatee Herald-Tribune* argued that the desire of the parties to litigate in private did not meet the heavy burden required to close the case, and Circuit Judge Donna Berlin agreed.

Tracy McGrady, 28, is a guard for the Houston Rockets. He and Pearl Vega,

35, of Bradenton, are in court over how much child support he should pay for their daughter.

McGrady's attorney, Mark Sessums, first argued to close the proceedings after a reporter for the *Herald-Tribune* entered the courtroom to watch the trial.

Sessums said McGrady's endorsement contracts could contain trade secrets. Both sides also argued that closure of the case would protect the best interests of the child involved.

ACCESS RECORDS

Polk sheriff's office investigates disappearance of 1,000 e-mails

POLK COUNTY - The disappearance of 1,000 archived e-mails from Eagle Lake City Hall has prompted an investigation by law enforcement. The Polk County Sheriff's Office is looking into the missing e-mails, apparently from former Mayor Suzy Wilson to city officials.

The absence of the archived e-mails came to light when local attorney Thomas Saunders made a public records request for all e-mails from Wilson from Jan. 1, 2004 through the present. Saunders requested the e-mails in connection with

his objections to a proposed development in Eagle Lake, according to *The Ledger* (Lakeland).

While detectives questioned city officials and commissioners, Saunders sued the city in hopes of ensuring that data are not destroyed when the city installs new equipment.

The Sheriff's Office said that its information technology specialist is working to find the deleted e-mails. It is not known whether the e-mails were intentionally deleted or are missing because of a computer problem.

First phase of GAP finds online presence of records is lacking

TALLAHASSEE - Florida Attorney General Bill McCollum has released the results from the first stage of the "Governmental Accountability Project" (GAP), developed in partnership with The Brechner Center.

GAP was launched earlier this year to encourage government entities to provide citizens with more information, especially regarding government spending and contact persons for public records issues.

Researchers at the University of Florida, led by Dr. Cory Armstrong and Prof. Sandra Chance, performed a content analysis of the Web sites of Florida's 67 counties. School district Web sites

were also analyzed by the seven-person research team.

The results showed that 75 percent of counties and school districts have public records available on their Web sites. However, only 8.8 percent of counties and 21 percent of school districts post individual contracts online.

The study also found an overall absence of clearly labeled information regarding a particular person in charge of public records.

Phase Two of GAP will include a series of citizen forums. The full GAP report and links to government contracts are available at www.myfloridalegal.com.

Independent paper prevails, but at a price

TALLAHASSEE - An independent publisher who successfully fought back after the Florida Elections Commission tried to shut down her newspaper is still stuck with legal fees, although the ACLU and Tallahassee lawyer Robert Rivas stepped in to help.

Julia Hanway, publisher of the *Wakulla Independent Reporter*, fought the Commission's decision accusing her paper of being an "electioneering communication" and putting her on notice that if she continued to publish, she would face fines.

The Commission later backed off their decision, promising U.S. District Judge Robert L. Hinkle

that it would not pursue a case against Hanway and the *Reporter*.

Hinkle eventually dismissed Hanway's First Amendment lawsuit against the Commission, based on its promise not to pursue a case against her.

However, Hinkle did not allow Hanway to recover the \$80,000 in legal fees it took to fight the Commission's original decision.

"It's a mystery to me how Hinkle could have come up with this determination, because the [Commission] would never have relented if I had not had attorneys who were willing to fight the [Commission's] original decision," Hanway told the *St. Petersburg Times*.

Hanway's attorney, Robert Rivas of the law firm Sachs & Sax, was still pleased with the overall outcome of the case.

"At least we accomplished shining a light on the lack of competence and integrity of the Florida Elections Commission," Rivas said, according to the *Times*.

**FIRST
AMENDMENT**

Federal judge invalidates part of Bush order

WASHINGTON, D.C. - Former presidents and vice-presidents don't have indefinite power to review executive records before they are released under FOIA, according to a ruling by a federal judge.

U.S. District Judge Colleen Kollar-Kotelly's ruling invalidates part of President Bush's 2001 executive order allowing for what could be indefinite delays in releasing executive records.

The ruling was the result of a lawsuit brought by the consumer-advocacy group Public Citizen on behalf of several academic organizations, including the American Historical Association and the National Security Archive.

Current law gives the National Archives final approval of when presidential records are released.

"The Bush Order effectively eliminates the Archivist's discretion to release a former president's documents while such documents are pending a former president's review, which can be extended - presumably indefinitely - upon the former president's request," Kollar-Kotelly wrote.

A former president's review causes an average six-month delay in the release of the records.

Coast Guard's new policy limits access to identities of rescued

WASHINGTON, D.C. - The U.S. Coast Guard has issued a new policy on disclosing names of rescued persons, erring in favor of secrecy in order to protect the privacy of those rescued.

Prior to the nationwide policy, Coast Guard policies varied among districts, according to the *First Amendment Center Online*. The new policy requires a request under FOIA in order to obtain the names of rescued persons. "We wanted to balance the privacy

right of individuals with the public's need to know when search-and-rescue cases are active," said Coast Guard spokeswoman Angela Hirsch. "[O]nce a case is resolved, it is no longer open, and names are then not releasable without an FOI request."

The new policy was a result of a two-year review following the Cleveland *Plain Dealer's* unsuccessful attempt to learn about names of individuals repeatedly saved by the Coast Guard on Lake Erie, according to the *Navy Times*.

Hillary Clinton papers stuck in backlog of library's FOIA requests

LITTLE ROCK, Ark. - Requesters of information regarding Hillary Clinton's time in the White House will probably have to wait until after the 2008 presidential election to look at phone logs, schedules and other documents from Clinton's tenure as first lady.

The documents are held at the Clinton Presidential Library in Little Rock, which is operated by the National Archives. There are nearly 2 million pages of logs, schedules and similar files at issue, the *Los Angeles Times* reported.

In total, there are some 80 million

pages of documents and 20 million pages of e-mails from Bill Clinton's eight years as president.

"My sense is that it's going to be a very long time," said National Archives spokeswoman Susan Cooper. "We're working very hard on this . . . It's going to require a lot of work and there are other people with other requests who have been waiting longer."

The library began accepting FOIA requests in 2006, and has more than 250 currently waiting. Eleven archivists are sorting through the documents.

BROADCASTING

FCC fines cable company for VNR

WASHINGTON, D.C. - The Federal Communications Commission has issued an unprecedented fine on a cable company for airing a video news release without also airing sponsorship identification.

A video news release is a short production made to appear as a newscast but is actually an advertisement.

This is the first time the FCC has fined a cable station for airing a video news release. The FCC has historically avoided sanctioning the cable community.

CN8's parent company, Comcast Corp., is challenging the FCC's \$4,000 fine. Comcast argues that the FCC is not allowed to regulate cable programming,

and even if it is allowed to do so, the fine was improper because CN8 did not receive compensation for airing the video news release.

The Center for Media and Democracy initiated the complaint as part of its review of 140 video news releases and its subsequent request that the FCC review broadcasters and cable companies that failed to clearly identify sponsors.

The FCC has a rule requiring cable operators to announce sponsorship of programs when the operator receives compensation.

Comcast spokeswoman Sena Fitzmaurice said the cable company will appeal the fine.

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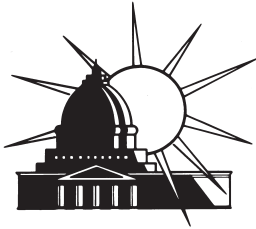
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The *Brechner Report* is published 12 times a year under the auspices of the University of Florida Foundation. The *Brechner Report* is a joint effort of The Brechner Center for Freedom of Information, the University of Florida College of Journalism and Communications, the Florida Press Association, the Florida Association of Broadcasters, the Florida Society of Newspaper Editors and the Joseph L. Brechner Endowment.

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Gainesville, FL 32611

December 2007



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“Sunshine” should shine just as bright on Florida Legislature

These days, lots of important decisions about your life are being made in Tallahassee. How much property tax you will pay, what kind of insurance you can buy, whether public education and health care will be funded adequately.

Increasingly, however, these decisions are being made in private, without the scrutiny of the public and the media.

The Florida Legislature needs to conduct more of its business in the sunshine. Nearly every day we hear a news report that legislators are “negotiating” some issue, or that some “agreement” has been reached about something important.

For instance, for months legislators have been negotiating whether the state’s no fault auto insurance law was going to end because the Legislature could not agree on what needed to be done about it.

And this fall, it was reported that the Legislature, after tumultuous “talks,” had agreed on how to cut Florida’s budget. Amazingly, all of these decisions and negotiations, and the talks that preceded them, were made in private. No media members were present to hold people accountable, or to report who was part of the decision. No one from the public was present to ask questions or testify whether these decisions were good for Floridians. More and more, this is the way the people’s business is being conducted in Tallahassee.

One of the great traditions in Florida is our Government-in-the-Sunshine Law.

According to Florida’s constitution, city and county commissioners cannot retreat to a back room - out of the view of the media and the public - to make decisions that impact the lives of our residents. All their discussions with each other about the public’s business must be in the open at a meeting that is available to the public.

Yet, when they voted to place the constitutional amendment mandating government in the sunshine on the ballot, the Florida Legislature opted to exempt itself from much of its reach. The argument was that the legislative process that is



Dan Gelber

usually compacted into a 60-day session is not suited for all the kinds of notices and requirements that other governmental bodies and commissions must abide by. Just because the Legislature exempted itself from a fully open and transparent process doesn’t mean it should avoid public scrutiny.

When the public and media are shut out of government, the vacuum is usually filled by special interests who perform best for their clients when no one is there to take notice. And when things are rushed through after the conclusion of secretive negotiations, as they have been in the property tax debates, mistakes are made usually at the expense of citizens.

I believe it is time for Florida to reconsider whether giving the Legislature a pass on compliance with Florida’s Sunshine Law is a good idea.

We need to level the playing field and change the rules so that citizens have the same opportunity to participate in the legislative process as special interests. This requires that the public get advance notice and opportunity for comment on final substantive changes to all legislation.

We need to change the rules governing the budget and appropriations process to afford greater transparency so Floridians can see how the legislature allocates the people’s money.

We also need to be sure that the proposed laws being discussed are available to interested parties and the public well in advance of the time they are discussed.

In sum, unless the Legislature can demonstrate it will not abuse its exemption to the sunshine laws, it should be held to similar standards of openness as local governments.

The bulwark of any democracy is an informed citizenry. Conducting business in the shadows may be easier sometimes, but it is neither better nor fairer, and it shortchanges the very people we seek to serve.

Dan Gelber is the Democratic leader of the Florida House of Representatives.