THE
# BRECHNER
## REPORT

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***June 2001***

# Appeals court reinstates Records Law conviction

TALLAHASSEE – Florida's 1st District Court of Appeal reinstated a Public Records Law conviction against former Escambia County School Board member Vanette Webb.

Webb was convicted of a first-degree misdemeanor in 1999 for withholding records. Webb was fined $1,000 and sentenced to 11 months and 15 days in jail, which was suspended to 30 days. Gov. Jeb Bush removed her from office. (*Brechner Report*, July 1999)

ACCESS RECORDS

Escambia County Judge William White Jr. reversed her conviction, saying that prosecutors failed to admit the records in question into evidence or adequately identify the public records Webb reportedly withheld. He released Webb from jail after she served seven days of her sentence. Webb also was reinstated to the school board, but she later lost a re-election bid. (*Brechner Report*, December 1999)

An appeals court panel reinstated the conviction and remanded the case back to Escambia County, saying that Webb admitted the files she withheld were public records and that other witnesses who reviewed the files also said they were public records. White has several options in the case: granting a motion for a new trial, sending Webb to jail to serve the remaining 23 days of her original sentence or entertaining new motions. (3/2/01 – 4/12/01)

# Newspaper gets support in photo fight

GAINESVILLE – The Society of Professional Journalists donated $1,000 to Campus Communications Inc., publisher of the *Independent Florida Alligator*, to help the newspaper pay for its fight to re-open autopsy photographs.

In addition, the closure of the autopsy photographs is creating problems with training for doctors, medical students and police, and at least one defense attorney has argued the new law bars jurors from viewing autopsy photographs.

The *Alligator*, a student-run newspaper, was allowed to challenge an agreement that sealed NASCAR driver Dale Earnhardt Sr.'s autopsy photographs. The paper also is challenging a new law that exempts autopsy photographs from public records disclosure. (*Brechner Report*, May 2001)

The *Orlando Sentinel* and the *South Florida Sun-Sentinel* also are challenging the law. (*Brechner Report*, May 2001) SPJ plans to file a friend of the court brief in that case.

The records closing has meant that the Miami-Dade Medical Examiner's Office has put its educational programs for doctors, medical students, nurses, forensic photographers and law enforcement on hold. The office had to get a court order before showing photos to a group of crime investigators from around the nation.

In Fort Lauderdale, Assistant Public Defender Bill Laswell filed a motion in a rape and murder trial to keep autopsy photographs from the jury, arguing that the law blocking public access includes members of a jury. (4/18/01 – 4/20/01)

# Lawsuit challenges sewer contract

KEY LARGO – A circuit court judge ruled that an evaluation panel that selected a company to provide Key Largo with sewers was subject to the state's Sunshine Laws, paving the way for a lawsuit that challenges a $59 million sewer contract.

Chief Judge Sandra Taylor, 16th Judicial Circuit, ruled in a partial summary judgment on March 6 that the Technical Evaluation Panel acted as an advisory board to the Monroe County Commission and not in a staff advisory role.

ACCESS MEETINGS

The ruling meant a lawsuit to challenge the county's contract with Ogden Water Systems could proceed to trial. Taylor now will have to determine if the panel violated the state's Open Meetings Law by discussing the sewer project outside of a public meeting and holding conference calls that were not advertised to the public.

If she finds the law was violated, Taylor could invalidate the contract and order the county to restart the selection process. (11/14/00 – 3/24/01)

# Councilman settles case by paying $500 fine

GOLDEN BEACH – The Miami-Dade State Attorney's Office has settled a Sunshine Law case against Golden Beach town councilman Adalberto Paruas.

Paruas had a resident ejected from a meeting where a committee reviewed applications for the town manager and clerk positions. Paruas said he didn't realize the meeting was public. The State Attorney's Office agreed to drop the charge in exchange for the councilman paying a $500 fine. The town voted in December to pay Paruas' legal fees, expected to be about $7,000. (*Brechner Report*, March 2001) (1/28/01)

# Town faces investigation into charges

CALLAHAN – The Callahan Town Council voted in March to reverse a 1999 ordinance that raised the price of public records above that set by state law, but still faces a probe into several allegations of Public Records Law violations.

According to a letter written by Assistant State Attorney Granville C. Burgess, the alleged violations include: records were not made public in a timely manner; requesters were required to give reasons for their requests before records were released; requesters were required to make the requests in person and in writing; individuals were denied access to review records; and requesters were charged a per-page price of 30 cents, double the 15 cents that state law generally sets for public records.

The town voted to change the records charge back to 15 cents, but officials have denied any other violations. (3/8/01 – 3/21/01)

# Judge refuses request to monitor active case

BARTOW – A circuit court judge refused a newspaper's request to monitor an investigation into the shooting death of a police officer.

*The Ledger* of Lakeland filed a lawsuit to gain access to records about the killing of Officer David McCall. McCall was killed in 1981, and police informants told the newspaper that a suspect in the case had died in 1991.

Claiming the investigation was no longer active, *The Ledger* filed suit, but Judge J. Dale Durrance ruled the investigation was still active. (*Brechner Report*, February 2001) The newspaper then requested that the judge review the investigation periodically to make sure it was still active. Durrance denied the request, saying it wouldn't be productive for him to monitor the police. (2/24/01)

# AGO: E-mails are public, not a Sunshine breach

TALLAHASSEE – E-mails containing factual material that are exchanged between city council members are subject to the Public Records Law but are not a violation of the Open Meetings Law, according to an attorney general's opinion.

Attorney General Bob Butterworth responded to a question from Port Orange City Attorney Margaret T. Roberts, which asked if e-mails from one council member to another that offered information, but not opinions, were a violation of the Sunshine Law.

As long as the e-mails provided information only and did not ask for opinions or ask board members to take action, they would not be a violation of the Sunshine Law, according to the opinion. As public records, e-mails would have to be maintained for 10 years, Butterworth wrote.

In an opinion answering another Port Orange question, Butterworth said preparing and distributing position papers to other council members would not be a violation as long as the council members avoided discussion or debate, and the papers were not responses to other commissioners' statements. However, the attorney general "strongly discouraged" circulating position papers because of the potential for violations. (AGO 2001-20; AGO 2001-21)

## 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, University of Florida, Gainesville, FL 32611-8400, (352) 392-2273.*

# Opinion: Information on ballots not exempt

TALLAHASSEE – Voter information on the back of absentee ballot envelopes, including voter and witness signatures, is not exempt from the state's Public Records Law, according to two attorney general opinions.

Attorney General Bob Butterworth issued the opinions in response to questions from officials in Hillsborough and Sarasota counties.

Voter registration material is exempt from the state's Public Records Law.

However, Butterworth said the exemption, as written, applies only to registration material and not to absentee ballot envelopes. (AGO 2001-07; AGO 2001-16)

# Paving company files $1.5 billion lawsuit

STUART – A Lake City-based road paving company filed a $1.5 billion defamation lawsuit against the *Pensacola News Journal* and Gannett Co., the paper's corporate parent.

Anderson Columbia claims in its lawsuit that the newspaper's 1998 investigative series about the company damaged the company's reputation and the reputation of the Anderson family.

LIBEL

Willie Gary, the attorney representing Anderson Columbia in the suit, told the *Lake City Reporter* that the *News Journal* "compiled a laundry list of innuendo, half-truths and misinformation." A company spokesman said the stories interfered with the company's ability to do business in the Panhandle. (3/22/01)

# Planning director acquitted of disclosure violations

FORT MYERS – A Lee County judge found the county planning director not guilty of failing to disclose meetings with lobbyists.

Lee County Judge John Dommerich, 20th Judicial Circuit, ruled that prosecutors failed to prove that Planning Director Paul O'Connor ever talked with lobbyists during the six years he reportedly ignored the county's disclosure law, which requires staff members and commissioners to note the times, names and dates of meetings with lobbyists.

The judge also ruled that the state didn't prove that O'Connor lied to investigators when he claimed he didn't know he was required to file disclosures.

The charges stemmed in part from an investigation by *The News-Press* of Fort Myers, which found that O'Connor and then-Commissioner John Manning failed to file lobbyist disclosures over a period of several years. Manning later pleaded no contest for failing to disclose his meetings with lobbyists and paid a $500 fine. (4/12/01)

## Judge hears case against commission

NASSAU COUNTY – A Jacksonville judge will decide if Nassau County officials violated state Sunshine Laws, after hearing testimony in a lawsuit filed by resident Clark V. Hoshall Jr.

The lawsuit claimed the officials violated the state's Public Records Law and the Open Meetings Law in deciding to move the county's courthouse from Fernandina Beach to Yulee. His attorneys argued that commissioners met secretly to make decisions about the move, failed to give proper notice of other meetings and discussed issues not on the agenda during special meetings.

The commissioners denied the allegations and testified they didn't talk about motions regarding the courthouse before they were presented at public meetings. If Judge L. Haldane Taylor, 4th Judicial Circuit, rules against the county, all of the commissioners' actions regarding the courthouse move could be voided. (3/24/01 – 4/4/01)

## Crystal River meeting probe dropped

CRYSTAL RIVER – A lack of evidence has prompted the State Attorney's Office to drop an investigation into charges that members of the City Council violated the Open Meetings Law.

Council members voted at a November meeting not to renew City Manager David Sallee's contract but didn't explain their decision at that meeting. Sallee supporter Bud Kramer claimed the lack of explanation meant the council discussed the matter outside of a public meeting.

Assistant State Attorney Mark Simpson announced in April that there was no proof the council members had talked together before the meeting and said his office was dropping the complaint. (4/3/01– 4/4/01)

## Investigation turns to gap in tape

MINNEOLA – The State Attorney's Office said the Minneola City Council did not violate the Sunshine Law during a March meeting, but the office is investigating why a tape recording of the meeting is missing 30 minutes.

The investigation was launched after Deputy Mayor Sylvester Julien alleged that council members violated the Sunshine Law by discussing his contract with each other outside a public meeting. Council members also were accused of violating the Sunshine Law by agreeing to continue a contract with the Lake County Sheriff's Office for police services.

Mark Simpson, of the State Attorney's Office, said that the contract discussions did not violate the Open Meetings Law. However, the State Attorney's Office has begun interviewing people about the missing minutes on the tape to determine if the missing time resulted from a mistake or tampering. (3/20/01 – 3/29/01)

# NEWSGATHERING

## Appeals court won't reinstate tribe's lawsuit

TAMPA – Florida's 4th District Court of Appeal refused to reinstate a lawsuit filed against the *St. Petersburg Times* by the Seminole Tribe.

The lawsuit stems from a series of stories the *Times* wrote in 1997 about the tribe's business practices. The tribe claimed the *Times'* quest for confidential information interfered with the tribe's business relationships with its employees. The suit also alleged the stories were motivated by racism. (*Brechner Report*, November 1999)

A lower court dismissed the suit in April 2000. (*Brechner Report*, July 2000) The three-judge panel upheld the dismissal in March 2001, saying that the articles were not racist and were about newsworthy public concerns. The opinion said that asking sources questions was part of routine newsgathering and doesn't interfere with the tribe's relationship to its employees. (3/22/01; Decisions on file: *Seminole Tribe of Florida v. Times Publishing Co. Inc*. Case no. 4D00-1717)

# REPORTER'S PRIVILEGE

## Newspaper doesn't have to turn over letter

LONGBOAT KEY – A circuit court judge ruled that the *Sarasota Herald-Tribune* does not have to turn over a letter from a man charged with second-degree murder.

Suspect Jameson Smith wrote the newspaper a letter in which he claims he fatally stabbed theater director Jamie Brown in self-defense. Prosecutors wanted a copy of the letter as part of their evidence against Smith because they say it provides a connection to a murder motive.

Judge Durand J. Adams, 12th Judicial Circuit, said that prosecutors had enough evidence to make the case against Smith without using the letter to the newspaper. He also wrote in his order that most of the information in the letter to the newspaper is also in another letter Smith wrote the judge.

Officials in the State Attorney's Office said they are considering whether to appeal the ruling. (3/20/01)

***Reminder***

*The Florida Bar will hold its 27th Annual Media-Law Conference from 9 a.m. to 5 p.m. on June 23 in Orlando. Registration material and details on the conference are available by contacting Toyca Williams of The Florida Bar at (850) 561-5766 or via e-mail at twilliam@flabar.org.*

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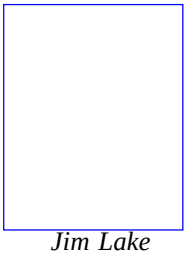
# Cameras in federal courts? Maybe soon.

The U.S. Supreme Court and a federal court in Miami refused to allow television camera coverage of hearings during last year's presidential election litigation. But the courts' treatment of the camera requests, proposals in Congress, and another federal court's approval of live audio coverage in a major antitrust case give reason to hope that the ban on electronic media access to most federal courts might be lifted in the future.

**The Back Page**

***By Jim Lake***



*Jim Lake*

The Supreme Court acted in response to a letter from C-SPAN Chairman Brian Lamb to Chief Justice William Rehnquist. Televised coverage of the Supreme Court proceedings, C-SPAN's chairman wrote, "would be an immense public service and would help the country understand and accept the outcome of the election."

In a letter from Rehnquist, the Court turned down C-SPAN's request. But by stating that the camera ban reflected the view of "a majority" of the Court's nine justices, Rehnquist's letter gave reason to believe that some minority on the Court favored television coverage. The Court also took the unprecedented step of releasing audiotapes of the proceedings within hours after they concluded.

Together, Rehnquist's letter and the prompt release of the audiotapes give access proponents reason to hope that the Court may someday retreat from the views of such camera critics as Justice David Souter.

In 1996, Souter told a congressional committee, "the day you see a camera come into our courtroom it's going to roll over my dead body."

Such hostility was notably absent from the response of Judge Donald Middlebrooks of Miami to a request for camera access to his federal courtroom during the election litigation.

"This is obviously a case of great public interest, and it does not appear that the presence of cameras would impact in any way upon the trial participants," Middlebrooks wrote in an order in *Siegel v. LePore*, Case No. 00-9002-Civ-Middlebrooks (S.D. Fla. Nov. 13, 2000).

Nevertheless, Middlebrooks concluded, court rules would not allow him to permit camera access to the hearing.

Three months after Middlebrooks and the Supreme Court considered camera access issues, a federal court authorized live audio coverage of proceedings in a major antitrust case.

The District of Columbia Circuit Court allowed the public to hear arguments as they happened in the federal government's case against Microsoft Corp. The proceedings took place over two days in February, and the audio portion of the argument was carried live on the ABC News Web site.

Congress also has taken up the question of media access to federal courts recently. The Senate Judiciary Committee heard testimony in September from a federal judge, a television news director, and other supporters of camera coverage. Bills introduced in the House and Senate in 1999 would give federal judges discretion to permit photographing, recording, broadcasting or televising of proceedings on a case-by-case basis.

The House bill would require judges to order that the face and voice of any witness be disguised if the witness so requests.

Since 1996, federal appeals courts have had the power to adopt their own rules allowing media access to their proceedings. Two appellate courts have such policies. The Ninth Circuit – which hears appeals from federal courts in nine western states, including California – allows electronic coverage of all its proceedings that take place in open court, although judges have discretion to block access in particular cases.

Similarly, the Second Circuit – which hears federal appeals from New York, Connecticut, and Vermont – permits media access to arguments in civil cases in which all parties are represented by lawyers. As in the Ninth Circuit, however, Second Circuit judges have discretion to ban cameras on a case-by-case basis.

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