
THE BRECHNER REPORT

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One suit against Cheney dismissed; one goes forward

WASHINGTON—One federal judge has rejected an attempt by the legislative branch's General Accounting Office (GAO) to access records on Vice President Dick Cheney's energy task force, but another federal judge has ruled that Cheney must turn over the records to the Sierra Club and Judicial Watch.

The GAO, the investigative arm of Congress, has repeatedly requested

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records on the participants in and the topics of the energy policy task

force without success. David Walker, the GAO's comptroller general, filed a lawsuit against the White House to get the records—a first in GAO history.

Judge John D. Bates, citing separation of powers issues, dismissed the lawsuit. "No court has ever before granted what the comptroller general seeks," Bates wrote. The comptroller general "does not have the personal, concrete and particularized injury required" necessary to make the case.

The Sierra Club and Judicial Watch, a public interest organization, also filed lawsuits seeking similar information on the people who participated in the energy task force.

U.S. District Judge Emmet G. Sullivan ruled that Cheney must turn over the records or issue a clearer explanation of why they should be withheld from the public.

The administration appealed the decision, and a federal appeals court delayed a deadline set by Sullivan for release of the documents. The appeals court will set a date to hear arguments in the case. (10/20/02–12/10/02)

Judge lifts restraining order

TAMPA—A county judge has lifted a temporary restraining order that kept a television reporter from coming within 300 feet of a man with multiple drunk-driving arrests.

Steve Andrews, an investigative reporter with WFLA in Tampa, featured Tampa resident Minh Ben Ross in series of stories about DUI arrests.

Andrews and a cameraman followed Ross out of court, asking him questions. The cameraman then videotaped Ross driving despite a suspended driver's license.

Ross requested a restraining order, saying that Andrews stalked and

harassed him by asking "unwarranted questions." Ross claimed he cannot sleep or work and is afraid to go outside.

Judge Eric Myers granted the temporary injunction and refused to rescind it until after a more formal hearing. Attorneys for Andrews asked the 2nd District Court of Appeal to strike down the restraining order, but the court would not overturn the restraining order.

Myers heard arguments on Dec. 19 and then lifted the temporary restraining order and dismissed the case, saying that Ross had not proven that violence or stalking was involved.

(12/12/02–12/20/02)

Oak Hill commissioners charged

OAK HILL—The State Attorney's Office has charged two city commissioners with violating the state's Open Meeting Law by talking about city matters in private.

State Attorney John Tanner filed civil Sunshine violation charges against Robert L. Jackson, the 74-year-old former mayor, and Ronald Mercer, 64.

The charges carry a potential \$500 fine.

Prosecutors said the two men admitted to discussing city business in private on several occasions. The two men are

charged with talking privately about a state grant application, the appointment of city officials, and licensing of a restaurant. These matters were later brought before the City Commission.

"It is a surprise to me," Jackson told the *Daytona Beach News Journal*. "I didn't maliciously do anything wrong. However, if I did something out of stupidity, I'll take the blame."

Mercer lost his commission seat during the September elections and refused to comment on the charges. (11/14/02–11/15/02)

Bunnell businessman files lawsuit

BUNNELL—Businessman Rusty Richard filed a lawsuit against the City of Bunnell, claiming the city violated the state's Public Records Law.

In August, Richard requested an audiotape from a meeting of city police officials and any written records from the meeting. Richard says the records were not released and city officials did not cite any exemption explaining why the

records could not be released so he filed a lawsuit.

Sid Nowell, an attorney representing the city, told the *News Tribune* of Bunnell that the city had "no objection" to the records request and would be happy to turn over the tape to Richard.

"It sort of slipped through the cracks, that's what happened," Nowell said. (10/6/02)

Panel rules material released in error

MIAMI – The 3rd District Court of Appeal has reversed a ruling that allowed photographs and statements in a battery case to be released.

Then-Miami Mayor Joe Carollo was charged with battery after he allegedly threw a box of tea at his then-wife Mari Carollo. WPLG-TV Channel 10 requested a copy of photographs taken of the alleged injuries and a statement made by Mari Carollo. (*Brechner Report*, July 2001)

The Miami Police Department originally denied the request, saying the materials were exempt from disclosure because they were part of an ongoing criminal investigation. The TV station sued for access to the records, saying that a discovery motion filed by the mayor to see the statement and the

photographs made the items public court documents.

The mayor withdrew his discovery motion, but Circuit Court Judge Bernard S. Shapiro ordered the release of the photographs and statement.

The appeals panel, in a 2-1 decision issued more than a year after the requested materials were released to the press, ruled that Shapiro had erred because the discovery motion was withdrawn and the materials were never given to the mayor's attorney. Because they were never given Carollo, the materials should have remained exempt from public disclosure, according to the court ruling.

The charges were later dismissed, but Carollo lost his bid for re-election. (10/11/02)

Court: Development records are private

TAMPA – A state appellate court has upheld a lower court ruling that lease agreements and other documents in the possession of private developers do not have to be released.

The Weekly Planet sued to access leases and other documents being held by Concorde Companies and Tampa Westshore Associates in relationship to the development of the International Plaza shopping center.

International Plaza is being developed on land owned by the Hillsborough County Aviation Authority. The authority leased the raw land to Concorde who in turn leased the property to Tampa Westshore for development of the shopping center.

While the lease between Concorde and the aviation authority was a public record, the paper wanted to see the lease agreement between Concorde and Tampa Westshore and other leases that were part of the development.

The companies refused, saying the leases were private business matters. A trial court judge agreed, and the 2nd District Court of Appeal upheld the decision to keep the secondary leases private. The appeals panel ruled that the aviation authority did not delegate any governmental duties or a government project when it leased the land to Concorde.

"In the final analysis, the fact that this private enterprise is situated on land leased from a governmental authority does not transform Concorde's agreement with other private entities into public record documents," according to the decision. (11/2/02 – 11/3/02)

Judicial Watch files two records lawsuits

MIAMI – The watchdog group Judicial Watch filed lawsuits against Gov. Jeb Bush and other state officials in an attempt to get records about the state's dealings with Cuba and records related to the Florida Department of Children and Families (DCF).

Judicial Watch filed requests for state records concerning Cuba, Cuban-Americans, Cuban-American and Hispanic voting patterns, Cuba-U.S. trade policy, Fidel Castro and Elian Gonzalez. The organization also requested copies of the communications exchanged between Gov. Bush and the White House.

When it did not get the requested records, Judicial Watch filed a lawsuit, seeking a court order to have state officials turn over the documents.

Spokeswoman Jill Bratina told the Associated Press that the state made several attempts to contact Judicial

Watch to get the organization to narrow its requests. "Their request is so sweeping and broad that it would be impossible to respond in any systematic way," she said. "You're talking about something that goes back to 1998 and covers six areas of extreme interest in this state and would have quite a bit of e-mail exchange and documentation. It would be impossible within a two-week period to fully comply."

The group filed a second lawsuit against Bush, then-Attorney General Bob Butterworth, and the DCF, saying the DCF failed to fulfill a records request made in August for the number of children under state care who are considered missing. The request also asked for documents related to the resignation of DCF director Kathleen Kearney and to the death and disappearance of two children under state supervision. (10/17/02).

Newspaper sues not-for-profit hospital board

BAKER COUNTY – *The Baker County Press* filed a lawsuit to get records from the Baker County Medical Service Inc., a not-for-profit organization that manages a hospital and a nursing home.

The newspaper filed a lawsuit once before to access records, but a judge denied the paper access. However, since the 1994 lawsuit was decided, several similar lawsuits filed by newspapers against not-for-profit boards have been

successfully appealed and other not-for-profit hospital boards have been ordered to operate in the Sunshine.

In light of these other court cases, *The Press* has filed another lawsuit against Baker County Medical Services.

"We have been consistent in our position that the public has a right to know what is going on with any entity that leases land and other assets from a public hospital authority," said Publisher Jim McGauley. (9/12/02)

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.

Appeals court says board cannot prevent taping of meetings

CLEARWATER—The Pinellas County School Board cannot bar a private company from filming public meetings, a state appeals court panel ruled.

SunCam, a private company, tapes school board meetings when the board discusses bids for building projects, and then sells the tapes to potential bidders.

Pinellas County School Board officials

did not want the meetings filmed because they felt the taping would interfere with the bid review process, but allowed SunCam to tape after the company sued for access to the meeting.

SunCam sued to get the school board to pay the company's legal fees. A judge denied the request and said the company had no right to film the meeting. SunCam brought the case to trial, and a second

judge, James Case, ruled that SunCam had a right under the state's Open Meetings Law to tape the meetings and that the school board should pay the company's legal fees. The appeals panel upheld Case's ruling, saying the board violated the Sunshine Law in denying the taping request. The appellate court sent the case back to the trial court to award attorney fees and court costs. (11/16/02)

AGO: Disabled may take part electronically

TALLAHASSEE—Physically disabled members of a city board can participate and vote electronically during meetings as long as a quorum of other members is physically present at the board meetings, according to an opinion from interim Attorney General Richard E. Doran.

Miami Beach City Attorney Murray Dubbin requested the official Advisory Legal Opinion asking if disabled members of the city's Barrier-free Environment Committee, a board designed to tackle issues related to accessibility and the disabled, could participate in meetings

without being physically present.

"This office has been reluctant to extend the participation in public meetings of public officials by electronic means to situations other than those involving a serious medical condition and the presence otherwise of a quorum at the public meeting place," Doran wrote. However, he said that physically disabled members of the Miami Beach committee could participate and vote via electronic means as long as a quorum is physically present at the designated meeting place. (AGO 2002-82; 12/11/02)

Suit claims fire district violated Sunshine Law

NORTH NAPLES—A community member has amended her lawsuit against North Naples Fire District to claim that officials violated the Sunshine Law when they negotiated a settlement with former Fire Chief James Tobin.

Tobin was set to receive a \$300,000 settlement, but resident Janet Vasey filed a lawsuit against the district to stop payment of the settlement. She amended

her complaint to say that the payout should be voided because officials violated the Open Meetings Law in negotiating the amount of the settlement with Tobin. The lawsuit claims that Ed Maguire, chair of the fire commission, held a closed-door meeting with Tobin, his attorney and the fire district's attorney and settled on the price of the payout. (11/8/02)

Hospital requests ruling on openness

DAYTONA BEACH—Memorial Hospital Inc., which operates Florida Hospital DeLand, asked a circuit court judge to determine whether it must continue to operate under the state's Public Records and Open Meetings laws.

Memorial, which formerly leased the hospital, bought the hospital outright.

A court ordered Memorial to operate in the Sunshine while it was leasing the hospital because the company was acting on behalf of the West Volusia Hospital Authority, a governmental agency that used to run the hospital.

The company claims it should be exempt from state Open Meetings and Public Records laws once it purchased the hospital outright. (9/18/02)

ACCESS RECORDS CONTINUED

Judge refuses to close juvenile's hearing

FORT MEYERS—A Collier County judge refused to close the hearing for a 17-year-old who is serving time in a juvenile detention facility for killing a 3-year-old she was baby-sitting.

The attorney and family of Sarah Sciandra requested the news media be barred from a hearing on whether Sciandra should be released. Sciandra was convicted of the 1998 beating death.

Her attorney argued that media coverage of the hearing could adversely affect Sciandra's mental health.

"Allowing media access to the hearing would serve no purpose other than to

expose very sensitive psychological treatment notes to the general public, which would cause harm to the child," attorney David M. Goldberg argued.

Judge Lawrence Martin refused the request and kept the hearing open to the public and the press. "The print and electronic media shall have the same access to the courtroom as previously existed in this case and as is usual in other cases," Martin said.

Following the hearing, Martin refused to release Sciandra and returned her to the maximum security juvenile facility. (11/26/02–12/11/02)

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Survey: Fear influencing views of First Amendment

Fear can short-circuit freedom.

From Abraham Lincoln's suspension of civil liberties during the Civil War to the internment of Japanese-Americans in World War II to the McCarthyism of the 1950s, our nation sometimes has lost sight of its commitment to freedom. Fear does that.

Little wonder, then, that security concerns and civil liberties have been both discussed and debated since the terrorist attacks of Sept. 11. We've all had to ask

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By Ken Paulson

ourselves some tough questions. Is our society too free for its own good? Can we be free and safe? Are we willing to trade some personal freedoms for greater personal security? At the First Amendment Center, we conduct an annual survey of Americans' attitudes toward the First Amendment. This year, we collaborated with *American Journalism Review* to take a closer look at how the nation sees the First Amendment after Sept. 11.

During the five years in which we've conducted the survey with the Center for Survey Research & Analysis at the University of Connecticut, we've seen willingness by many to exchange a little liberty for less interpersonal conflict. There's been growing support to limit expression when it upsets or insults others. In the wake of Sept. 11, Americans are afraid of more than just being offended. The results of the 2002 survey suggest that many Americans view these fundamental freedoms as possible obstacles to the war on terrorism.

That's not to suggest a monolithic response to these core First Amendment values — Americans are of multiple minds about it. While a majority indicate that they respect the First Amendment, a significant percentage seem inclined to rewrite it.

Among the key findings:

- For the first time in our polling, almost half of those surveyed said that the First Amendment goes too far in the rights it guarantees. About 49% said the First Amendment gives us too much freedom, up from 39% last year and 22% in 2000.

- The least popular First Amendment right is freedom of the press. More than 40% said newspapers should not be allowed to freely criticize the military about its strategy and performance.

- About half of those surveyed said government should be



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able to monitor religious groups in the interest of national security, even if that means infringing upon religious freedom.

Clearly, the terrorist attacks have taken a toll. Principles that sound good in the abstract are a little less appealing when your greatest fear is getting on a plane.

It's not entirely surprising that many Americans have had second thoughts about the First Amendment. After all, the First Amendment was designed to protect

minority viewpoints and faiths. That can be difficult to remember when there's an overwhelming public call for unity.

Still, there are signs that Americans do appreciate the fruits of First Amendment freedoms, particularly access to information. At a time of great national unease, we all want to know more about the challenges we face. About 40% of those surveyed said they have too little access to information about the war on terrorism, compared to 16% who said there's too much. Forty-eight percent of those surveyed said there's too little access to government records, compared to 8% who said there's too much.

While many Americans said that we have too much freedom and that the nation's news media have too many privileges, they understand and appreciate the value of news and information. The goal for all who support First Amendment freedoms should be to demonstrate how the free flow of ideas enriches our lives and in fact bolsters our collective security. Information gives us the power to make reasoned decisions at a difficult time.

When President Bush addressed the nation last Sept. 20, he cautioned us that "freedom and fear are at war." "The terrorists hate our freedoms: our freedom of religion, our freedom of speech, our freedom to vote and assemble and disagree with each other," the president said. In other words, the terrorists view our personal liberties with contempt and see them as a weakness.

The challenge for all Americans — today more than ever — is to truly embrace the freedoms of the First Amendment and show just how strong we really are.

Ken Paulson is executive director of the First Amendment Center with offices in Arlington, Va., and Nashville, Tenn. For a complete copy of the annual survey go to <http://www.freedomforum.org/templates/document.asp?documentID=16840>.