
THE BRECHNER REPORT

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Court rules city meeting was illegal

CHIEFLAND—A circuit court judge has ruled that the Jan. 17, 2002 meeting of the Chiefland City Commission violated the Florida Constitution and the Florida Sunshine Law.

Circuit Judge Robert P. Cates issued the ruling on Nov. 26, saying the meeting was illegal and all official acts taken at the meeting are null and void.

At its Jan. 14 regular meeting, the commission voted to suspend its police chief search process to conduct negotiations for a sheriff's department takeover of

city police functions. A

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MEETINGS**

vote at the illegal Jan. 17 meeting changed the decision to continue the search while investigating other options.

Commissioner Sunshine Baynard filed suit claiming the vote should be void because proper notice had not been given for the meeting. The city argued they provided 16 or 17 hours notice on the evening of Jan. 16 for the 10 a.m. meeting, but Baynard said actual time of notice was only a few hours because notices had been posted after business hours in only a few locations.

University of Florida Law Professor Joe Little represented Baynard in the case and believes the order will become an important part of Florida case law.

"I think it's important because of the determination that the amount of notice time was unreasonable," Little said. "This case helps establish a baseline." (12/5/02)

Camera rule change dropped

TALLAHASSEE—A judiciary committee has dropped a proposed change to Florida court rules that would have given judges greater discretion in limiting the use of still and video cameras in the courtrooms.

The change was proposed in October by the Florida Bar Rules of Judicial Administration Committee, but was abandoned late

November after much criticism from open government advocacy groups.

The proposed plan would have amended a court rule concerning media coverage of trials and would have allowed judges to prohibit members of the media from photographing or taping jurors without first holding a hearing as a means of protecting jurors.

The committee was supposed to have submitted a recommendation to the Florida Supreme Court by the end of last year before the issue was dropped.

Reactions were mixed among local judges.

"It's a balancing act between the public's right to know and the privacy of jurors," said Circuit Judge Shawn Briesse. "What goes

on in a courtroom is open to the public. It's part of the way our republic operates."

Under current Florida law, courts allow cameras in the courtroom so long as their presence does not deprive criminal defendants of a fair trial or otherwise adversely affect judicial proceedings. (11/27/02)

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COURTS**

Judge reverses warrant order

PUNTA GORDA—In response to criticism, 20th Judicial Circuit Chief Judge William Blackwell has rescinded an administrative order that made access to executed search warrants more difficult.

The new order allows members of the public to request executed search warrants that are kept on file with the Clerk of the Circuit Court.

Blackwell issued his original order in May when confusion arose about the procedure for filing a search warrant once it is executed. In clarifying the procedure, Blackwell went further in ordering that members of the public must receive a signed court order before gaining access to the records.

The new order, issued Dec. 17, states that anyone wanting to see an executed search warrant should apply for access with the Clerk of the Courts.

"The Clerk of the Courts shall thereupon disclose these records unless the State Attorney's Office or the law enforcement agency involved in the search warrant contends that it is part of an ongoing criminal investigation," Blackwell's order states.

"I welcome the judge's reconsidering his initial order and putting the search warrants where they're most easily accessible by the public—that is, with the Clerk of Courts," *Naples Daily News* editor Phil Lewis said. (12/28/02)

**ACCESS
RECORDS**

County to appeal Sunshine ruling

BROOKSVILLE—County commissioners agreed to appeal a ruling by a 5th Circuit Court judge, who found the Development Review Committee had violated state open meeting laws by closing its meetings to the public.

Committee members also agreed to postpone DRC meetings until the 5th Circuit Court of Appeal makes a decision.

The decision the commissioners are appealing involves the Coalition for Anti-Urban Sprawl and the Environment, Wal-Mart Corp. and the county.

On Nov. 22, Judge John Booth ruled that a permit issued to Wal-Mart through the DRC to build at a new location was valid, despite having been considered during meetings that were illegal. Judge Booth further ordered the DRC to hold future meetings in the open.

The county asked for a stay of Booth's order, which would allow the DRC to continue holding closed meetings. The DRC will not meet while the stay is pending, officials said. (12/1/02-12/4/02)

New committee will not be open to public

LEE COUNTY - The Lee County School Board voted unanimously to create an appointed Procedural and Financial Audit Committee to examine the school district's financial decision-making procedures in an effort to boost community taxpayer confidence. But it

Renewed challenge to Earnhardt law

WEST PALM BEACH—Two Tribune Co. newspapers have filed an appeal challenging the constitutionality of a Florida law restricting the access of autopsy photographs.

The two newspapers, the *Orlando Sentinel* and the *South Florida Sun-Sentinel*, filed a brief in the 4th District Court of Appeal challenging the Family Protection Act which a circuit judge upheld last July.

The law protects families from seeing relative's autopsy photos published or placed on the Internet. But newspapers argue the law is too broad and would restrict the use by medical examiners who

wish to use such photos for teaching purposes.

The law follows the death of NASCAR racer Dale Earnhardt and was championed by his wife, Teresa. The law makes it a felony for unauthorized people to view or copy autopsy photos and carries a fine of \$5,000.

The appeal is one of two pending court challenges to the law. The student-run *Independent Florida Alligator* that covers the University of Florida appealed to the Florida Supreme Court in July of last year.

The Court has not decided whether it will hear the appeal. (12/13/02)

Parent denied child's library record

PORT ORANGE—When James Paris wanted to know which overdue books his 10-year-old son checked out from the library before paying the late fines, he discovered the FBI had a better chance of finding out.

In 1978, the Legislature exempted public library records from Florida Sunshine Law requirements. The exemption did not make a distinction between adults' and childrens' records and unintentionally prevented parents from viewing their child's library records.

Volusia County Library Director Mike Knievel said state lawyers have advised

librarians that revealing registration information or circulation records to anyone other than a patron, even parents, is illegal.

"We know that explanation won't satisfy all parents," Knievel said. "But because of Florida state constitutional protections of privacy of individuals, it's about the best we can do."

State Sen. Evelyn Lynn, R-Ormond Beach, will push for an amendment to the privacy law next Legislative session, which will allow parents to view library records of children younger than 16 when inquiring about fines and overdue materials. (12/18/02 - 12/21/02)

Sheriff plans to appeal gag order ruling

BARTOW—Polk County Sheriff Lawrence W. Crow Jr. will appeal a ruling that allowed a newspaper to print the name of an undercover officer.

The Sheriff's Office asked a judge to prevent *The Ledger* of Lakeland from printing the name of an undercover deputy who shot and killed a suspect during a drug raid.

Judge Ron Herring denied the request for a permanent injunction and lifted a temporary injunction granted by another

won't operate under Florida's Sunshine Laws that mandate open, noticed public meetings.

The committee avoids falling under state open meeting laws because it will not make recommendations to the board. Instead, committee members will act only

judge, saying the Sheriff's Office had not proven the need for a gag order.

(*Brechner Report*, October 2002) The newspaper then printed the deputy's name.

Now, Crow wants to appeal the ruling even though the deputy's name has already been printed several times. The Sheriff's Office thinks a similar situation could arise again and wants to stop future publication of undercover officers' names, Col. Gary Hester told *The Ledger*. (10/25/2002)

PRIOR RESTRAINT

ACCESS RECORDS

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.

Airport committee must disclose interests

LEE COUNTY - Lee County commissioners unanimously decided that the seven members of the Southwest Florida International Airport Special Management Committee must now disclose business ties and primary and secondary sources of income.

The nine-member Tourist Development Council that recommends where and how to spend millions of tourist-tax dollars may also be required to make disclosures.

The decision to require disclosures came after *The News-Press* of Ft. Myers revealed that the two advisory boards have not made the disclosures that 31 other county committees must make regarding sources of income, business

associations and land holdings.

Commissioners told *The News-Press* they were unaware they had not required disclosures from the two committees.

"I think this is something that should be done in the entire county," Airport Special Management Committee member Hugh Thimlar said. "If some people have to do it everyone should have to do it. I have no problem with it."

The required disclosures provide the public with information regarding conflicts of interest among the political appointees on the committee who influence how to spend public funds.

The disclosures must be filed with the Lee County Elections Office and are due each July. (12/15/02 - 12/18/02)

State Attorney clears Public Records violation

PUNTA GORDA - Following an investigation, the State's Attorney Office has decided not to file charges against City Manager Willard Beck.

City Clerk Sue Selner alleged that Beck had violated the state's Public Records Law. A local reporter began requesting all records from the city manager's office on a weekly basis. In order to comply with the expected requests, Selner started compiling records and paperwork in advance for the reporter.

Selner realized during this process that Beck had not disclosed all of his e-mails.

However, prosecutors determined no violation had occurred because "the

media was asking in advance for records that were not in existence and as such are not covered by the Public Records Law," according to a State Attorney's Office report.

The State Attorney's Office also determined Beck did not violate the Public Records Law when he asked Police Chief Dan Libby to place a document in his car. The document was an unflattering caricature of the police chief that had been placed in the department's suggestion box. Libby put the caricature in Beck's car at Beck's request.

Prosecutors determined the caricature was not a public record and decided not file any charges. (9/26/02)

Judge denies motion for "gag" order

TALLAHASSEE - A circuit judge denied a defense motion for a gag order in the case of Coy Evans, who is accused of shooting a Tallahassee Police sergeant. Judge Thomas Bateman, 2nd Judicial Circuit, acknowledged extensive print and broadcast coverage of the case, but said the coverage was based, in part, on information in the public records and extrajudicial statements by law enforcement.

"Time and events will tend to dissipate any adverse impact of information that may have been improperly disclosed already," according to the judge's order.

In refusing to issue the gag order, the judge reminded the attorneys, law enforcement and others assisting and

investigating the case of Florida Bar Rule 4-3.6. The rule, in essence, says lawyers should not make extrajudicial statements which would impact on the defendant's right to a fair trial, nor counsel or assist others in making such statements.

In addition, the judge established "lesser restrictions," which he deemed

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appropriate under the circumstances presented in this case. Those restrictions include

temporary closure of any material filed in the court file for 60 days following receipt of the materials by defense counsel, during which time the parties can request an in camera inspection and ask the court to prohibit disclosure of specific material until trial or the case is resolved. (12/10/02)

Charges dropped against activist

PANAMA CITY - State Attorney Jim Appleman dismissed a criminal charge against Kevin Wood after he was arrested on Nov. 27 for recording a conversation between his teenage

daughter and the Panama City police.

Appleman said Wood, 45, had the right to record the conversation because it took place in a public place. Wood brought his tape recorder to a McDonald's restaurant where Panama City police were questioning his daughter about a hit-and-run accident.

Lt. Randy Squire said officers asked Wood to turn off the tape recorder. When he refused, they arrested him and charged him with illegal interception of oral communication.

"I told them, 'You guys are making a mistake here. You should go read this stuff before you do this,'" Wood said.

Appleman signed a "no information" document Dec. 4, which officially dropped the charge against Wood.

This is the third time Wood has been arrested for recording conversations and he plans to file a lawsuit. (11/29/02 - 12/5/02)

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Temporary restraining order chills TV reports

A Florida judge issued a temporary injunction preventing a reporter from contacting the subject of a news story. The temporary injunction was based upon allegations that the reporter asked the subject “unwarranted questions,” improperly broadcast information concerning the subject of the story, and videotaped the subject during his daily functions without his knowledge.



Gregg D. Thomas

At the December 19 hearing Ross called one witness – Andrews. He presented no other evidence to support his request for an injunction. Andrews testified that he briefly questioned Ross as he entered the courthouse for a court appearance. After Ross’s court appearance, Andrews asked Ross’s attorney questions. Andrews also testified that he did not videotape Ross, but a WFLA photographer did videotape Ross in a public parking lot driving to work.

The controversy stemmed from a story by Steve Andrews, an investigative reporter for WFLA-TV Channel 8, concerning a Tampa judge’s handling of DUI cases. Minh B. Ross was one of the DUI defendants mentioned in the story.

In the course of investigating the circuit judge’s handling of DUI cases, Andrews asked Ross and his attorney questions on a public street outside of the courthouse in Tampa. WFLA also obtained videotape of Ross driving to work while his license was suspended. On December 4, 2002, WFLA broadcast a news report concerning Ross’s DUI case.

On December 5, Ross filed a petition for injunction against repeat violence and asked a circuit court to enjoin Andrews from (among other things) having any contact with him. In the petition, Ross alleged that Andrews “or other persons associated with him filmed me, without my knowledge, during day to day functions.” He also accused Andrews of “improperly displaying information about me” during a “newscast” and of asking “unwarranted questions.”

That same day, the court granted the petition and entered a temporary injunction without a hearing or notice to Andrews. The court set the matter for a full evidentiary hearing on December 19, 2002. Andrews immediately filed an emergency motion to dissolve the temporary injunction.

On December 12, 2002, the court held a hearing on Andrews’ motion. The court denied Andrews’ request to dissolve the injunction and declined to stay the injunction pending the full evidentiary hearing on December 19. The court also refused to view a videotape of the actual encounter between Andrews and Ross until the December 19 hearing.

After hearing Andrews’ testimony and the argument of counsel, the court dismissed Ross’s petition from the bench and dissolved the temporary injunction. The court stated that the evidence demonstrated Andrews was engaged in routine, legitimate newsgathering. Such constitutionally protected activity cannot form the basis of a temporary injunction for repeat violence.

Although the circuit court ultimately lifted the temporary injunction against Andrews, the injunction was in place for fifteen days. Moreover, when provided the opportunity to dissolve the temporary injunction on December 12, the court left the injunction in place for an additional week. The result is that Andrews’ legitimate newsgathering activity was restrained for two weeks.

The possibility that a reporter could ever be enjoined simply for doing his or her job certainly chills such constitutionally protected activity. Therefore, Andrews has decided to maintain his appeal of the circuit court’s entry of the temporary injunction, which he filed immediately after the circuit court initially refused to dissolve the injunction.

One of the primary issues in the appeal is whether the temporary injunction, which on its face implicated constitutionally protected newsgathering activity, should have been entered prior to providing Andrews notice and the opportunity to rebut the allegations.

Andrews’ appeal is currently pending in the Second District Court of Appeal. Ross’s answer brief was due on January 16, 2003.

Gregg D. Thomas is the head of the media law department at Holland & Knight LLP. Mr. Thomas, James B. Lake and Rachel E. Fugate of Holland & Knight LLP are counsel for Steve Andrews.