
THE BRECHNER REPORT

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Supreme Court denies access to death photographs

WASHINGTON – The Supreme Court rejected a lawyer’s request for postmortem photos of Clinton administration lawyer Vince Foster, claiming privacy concerns supersede public disclosure when it comes to death pictures.

Attorney Allan Favish sought the photos, claiming they might prove Foster was murdered as part of a White House cover-up.

PRIVACY The Court’s decision weakened the

Freedom of Information Act, which allows reporters and others to obtain some unclassified federal records.

Justices ruled for the first time that a part of the law that allows the government to withhold records applies to survivors. When requested information contains visuals or details that could cause pain to someone’s survivors, there must be proof of government wrongdoing to justify the invasion of privacy, the Court said.

Family members have a “personal stake in honoring and mourning their dead” without intrusion, Justice Anthony M. Kennedy wrote for the majority.

Both Foster’s family and the Bush administration battled to keep the pictures private. They were supported by Teresa Earnhardt, widow of NASCAR driver Dale Earnhardt, who has fought access to his autopsy photos.

Foster’s family said they hoped “other grieving families will benefit from the Court’s decision.”

Five government investigations had concluded that a depressed Foster shot himself in the head at a Virginia park in 1993.

(3/31/04)

Commission fails to notify public of meeting, violates state Sunshine Law

BRADENTON – Manatee County Port Authority officials acknowledged that they failed to adequately notify the public of a Manatee County Commission meeting, in violation of the state’s open meetings law.

Florida’s Sunshine Law requires that public boards provide reasonable notice of meetings. Advisory opinions from the Attorney General’s Office have stated that reasonable notice for special meetings should be at least 24 hours in advance.

David McDonald, Port Manatee’s executive director, said officials posted a notice of the meeting on the port’s Web site the night before, but did not inform the media or release an agenda prior to

the meeting. In addition, meeting notices weren’t posted on the doors of the commission chambers or the Manatee

County Government Administration Center.

As a result, actions during the committee meeting could be legally challenged and will have

to be taken up again during the commission’s next meeting.

“We just fell down and didn’t give enough notice in advance,” McDonald said. “The best way to correct it is to go back, place it on the [commission] agenda and make sure it’s properly notified.”

“We will be reviewing our procedures to make sure it doesn’t happen again.” (5/06/04)

Court rules county panel violated law

WEST PALM BEACH – The 4th District Court of Appeal ruled that a Palm Beach County grievance panel violated the state Sunshine Law when it decided to fire a senior secretary behind closed doors.

The appellate decision reversed a ruling in the Palm Beach County Circuit Court and, according to *The Palm Beach Post*, could change the county’s firing procedures by requiring that all disciplinary committee hearings be open to the public.

The ruling stemmed from the firing of Lee Ellen Dascott, a former secretary in the county’s Department of Community Services. According to court filings, Dascott was suspended by a county grievance committee in 1998 for allegedly using “conduct unbecoming of a public employee.” She was left out of the committee’s deliberations, the county’s first violation, according to her lawsuit.

In 2002, Dascott was given notice that the county was going to fire her for insubordination and for allegedly tape-

recording a meeting with her supervisor. After a review panel questioned her on the allegations, Dascott was again asked to leave while the group deliberated. Ultimately, her department head, Ed Rich, fired her.

Dascott asked a circuit judge to reinstate her and stop the county panels from having termination deliberations in private. The county argued that the group discussing her termination didn’t qualify as a committee defined in the Sunshine Law because its opinion was only advisory. The circuit court agreed with the county.

But, the appellate panel decided the groups “exercised decision-making authority,” which made them subject to the Sunshine Law. As a result, Dascott will get her job back and will be entitled to back pay, her attorney Frederick Ford said.

“Any employee who has been fired by the Palm Beach County in the last four years has the right to file an action,” he added. (4/23/04)

**ACCESS
MEETINGS**

Two activists sue News-Journal Corp., claim libel

DAYTONA BEACH – Two men sued the *Daytona Beach News Journal*'s parent company, accusing it of libel for publishing stories two years ago about alleged violations of Florida's open government laws.

The newspaper published stories on Feb. 1 and Mar. 31, 2002 about its lawsuit

LIBEL that accused Ormond Beach Commissioners Jeff Boyle, Joyce High and Jim Privett of orchestrating the firing and rehiring of City Manager Isaac Turner in January 2002. The lawsuit claimed the politicians conducted this city business privately, in violation of the Sunshine Law.

The stories also identified three political activists who served as liaisons between the commissioners. Two of those activists, Randy Brewer and Dean Gast, are now suing.

In his suit, Brewer called the statements "fictional and untrue" and published with "actual malice and with wrongful and willful intent to injure" him. Gast said, in his suit, the stories exposed him to "public wrath, hatred, contempt and ridicule."

Both men are demanding a jury trial and damages in excess of \$15,000.

Attorney Jake Kaney, who is representing the News-Journal Corp., said newspapers have the right to "republish" or "fairly summarize" official court records.

"Neither suit has merit and both should be dismissed," he said. (2/04/04)

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.

AGO: Anonymous letters are public

NORTH PALM BEACH – Attorney General Charlie Crist said state law requires village of North Palm Beach officials to disclose anonymous letters alleging employee misconduct, even if the author is unknown and village leaders say the accusations are false and malicious.

Crist issued the opinion in response to an inquiry from the village attorney asking if "anonymous letters containing allegations of misconduct of village employees constitute public records that must be maintained by the village."

According to Village Clerk Kathleen Kelly, the letter that instigated the inquiry was placed into the village's

public records file as soon as she received Crist's opinion. The two-page, typed letter claimed to be from "a large group of public service employees" who alleged morale "is so bad everyone wants to quit."

The authors made vague discrimination allegations and also accused Village Manager Dennis Redmond of ignoring their concerns. Redmond called the claims "unsubstantiated, proven to be untrue and egregious."

He said he wanted an expert opinion before placing the letter in the clerk's file of public letters because it personally criticized village employees. (5/06/04)

Judge says company contract is private

BREVARD COUNTY – A judge ruled that Brevard County Commissioner Nancy Higgs doesn't have to disclose her company's contract with lobbyist Guy Spearman.

According to *Florida Today*, Chuck Maxwell, publisher of a Web site called *brevardwhistleblower.com*, tried to force Higgs to disclose the terms of The Paxen Group's contract with Spearman, who was hired as the county's lobbyist. The company, owned by Higgs and her husband, Patrick, provides training programs funded by state and local government agencies in Florida and other states.

Maxwell wanted access to the contract to see how much Paxen was paying Spearman, in addition to other details.

Brevard Judge George Turner said the contract is a private document, but

Maxwell argued it is public.

"The question I'm going to pursue is: 'Why is she hiding the contract?'" he said. "I just think there's too much closeness between her private business interests and her public role as an elected official."

According to Maxwell, the dispute came about when he asked Higgs to disclose the contract under the Florida Public Records Law, but she failed to respond. Higgs said she wasn't involved with Spearman's contract with Paxen. She claimed Patrick, the company's chief executive officer, handled it.

According to Higgs, at her request, county commissioners filed a lawsuit that asked the judge to declare the contract a private document. Maxwell filed a counter-complaint asking the judge to make the contract public. (5/05/04)

Flagler County Commission sues sheriff

BUNNELL – The Flagler County Commission sued Sheriff Jim Manfre for access to public records on the costs of calendars and holiday greeting cards he sent to residents.

The suit alleges that Manfre didn't provide access to these records, in violation of Florida's Sunshine and Public Records laws. County attorneys believe that some of the disputed records are on computers at the Sheriff's Office.

According to the *Daytona Beach News-Journal*, the commission requested access to the records after residents complained about the calendar, asking about the costs involved and whether it was an election-year tactic by the sheriff.

The calendar included the agency's annual report of finances, which the Sheriff's Office claimed was a way to get residents to keep the report. Officials in the Sheriff's Office claim the calendar is a political issue, not a violation of the law.

"There is no legitimate Sunshine Law [or] Public Records Law issue here," Sheriff's Office attorney Sid Nowell said. "We have attempted and complied with every request they made."

The county legal staff argued that the issue is about the county's right to go to the Sheriff's Office and inspect the documents themselves, not about providing the commission with documents. (5/06/04)

Resident sues county, claims violation

DELAND – A resident sued Volusia County claiming the county council illegally appropriated public funds for an arts center in Daytona Beach.

Computer consultant Tanner Andrews filed a suit against the county, saying that private meetings in September 2003 between Lively Arts Center, Inc. members and individual council members violated the state's open meetings law.

The council voted in October 2003 to give Lively Arts Center, a nonprofit group, \$600,000 a year for four years under the county's ECHO program. The \$2.4 million would help the group construct a \$29-million performing and visual arts center near the Halifax River.

The ECHO program, which is a taxpayer-supported fund, provides money for environmental, cultural, historical and outdoor projects.

Andrews' suit claims council members violated Florida's Sunshine Law when

they "effectively decided the issue and voted in secret," in their private meetings with Lively Arts Center board members, prior to voting in the October meeting.

Andrews also alleged the private sessions "were not advertised to the public, nor was the public permitted to attend and be heard."

The Sunshine Law says the public must be notified of any meeting between two or more members of the same board or commission.

The suit seeks a court decree declaring the October vote on the appropriation for the Lively Arts Center void, and an injunction against "perfunctory re-adoption of its decision to fund" the project.

According to Julie Rand, director of the Lively Arts Center, the suit will not delay construction of the arts center, which is expected to be completed in winter 2005. (4/11/04)

Committee meetings opened to public

BROOKSVILLE – School superintendent Wendy Tellone decided to open the meetings of all committees that have memberships beyond district employees.

Her decision came after disputes with the *St. Petersburg Times* over whether two separate committees should conduct business privately or publicly.

Specifically, the newspaper challenged district plans to allow an advisory panel to privately discuss the appropriateness of Judy Blume's novel *Deenie* in elementary libraries. The *Times* also opposed the closed meetings of the

district attendance zone review committees.

"We don't need to be fighting," Tellone said. "It's not appropriate to keep [deliberations] in the shade."

The new procedure means that residents can attend many meetings from which they were excluded in the past.

According to Tellone, school-based administrators will be responsible for advising the public about the meetings in advance. The district is currently working on an advertising system to notify citizens of meetings. (4/08/04)

New city resolution opposes Patriot Act

TAMPA – The Tampa City Council voted 4-3 for a resolution asking Congress to amend the USA Patriot Act.

The decision followed President Bush's request that Congress reauthorize the act, which was passed after the Sept. 11, 2001 terrorist attacks. The council joined about 289 other communities, including Broward and Alachua county, in symbolically protesting the Patriot Act, asking Congress to repeal parts of it and ensure that future laws protect basic civil rights.

"[The] Patriot [Act] greatly expands the government's ability to invade our privacy," Tampa citizen and retired army colonel Mike Pheneger said. "It allows

the government to obtain virtually any record, even those of people who are not suspected or accused of any crime."

Council members Linda Saul-Sena, Mary Alvarez, Gwen Miller and Kevin White agreed that the Patriot Act erodes basic American freedoms.

"We will not suffer or let our civil liberties suffer and we will not let [the national government] infringe upon our privacy any further than it is," White said. "...I think we need to go step by step as far as encroaching on people's civil liberties and their rights."

Council members Shawn Harrison, Rose Ferlita and John Dingfelder voted against the resolution. (4/16/04)

Judge refuses to impose gag order, seal trial records

LEE COUNTY – A U.S. magistrate judge denied Lee County School Board's request to seal records and impose a gag order in a pending civil suit.

Magistrate Judge Sheri Polster Chappell signed an order denying the school board's requests in its motion for a protective order.

Robert Shearman, the attorney defending the school district in a wrongful termination case filed by former safety director Ernest Scott, filed the motion for the protective order.

He claimed the order was justified because attorney inquiries in the civil suit had gone beyond the scope of the complaint and had "initiated scandals and embarrassed, humiliated and held members of the Lee County School Board open to public scorn."

Among several requests, the order asked the court to issue a gag order and requested that certain materials be sealed.

Chappell rejected each of the requests, saying that the school board had failed to show "good cause" in why the discovery should be limited.

Because the citizens of Lee County have a "substantial interest in the actions taken by the school board, the public's interest outweighs the private interest of individual members of the school board," Chappell said. (4/07/04)

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Civics 101: A Lesson In Basic American Principles

When I travel around the country on Reporters Committee business, I often am astonished at how often I'm asked to speak about what can only be described as "Civics 101."

I've come to the conclusion it's time for a civics lesson for all of us – politicians and pundits, journalists and citizens. All of us, apparently, have forgotten the principles upon which this country was founded. How

The Back Page

By Lucy Dalglish

else can one explain the secret federal court case of Mohamed Kamel Bellahouel? Bellahouel is an Algerian-born waiter who was arrested in 2001 after he apparently waited on two of the Sept. 11 hijackers at a Delray Beach, Fla., restaurant. He was jailed in a federal detention center and brought an action for a *writ of habeas corpus*, which is essentially a petition asking the court to order the government to justify his detention or let him go. After five months, Bellahouel was released, but he continued his action by asking the court to order the records of his detention to be publicly released. Every document in his U.S. District Court in Miami and U.S. Court of Appeals case is sealed. We almost didn't even know there was a file because there was no public docket of the case.

Unfortunately, the Bellahouel case is not an aberration. Lately, federal judges seem to have deliberately ignored established law that bans secret imprisonment. It's time they reacquaint themselves with the law.

Founding Father Alexander Hamilton wrote in 1788 in *The Federalist No. 84* that a government policy that allows "confinement of the person, by secretly hurrying him to jail, where his sufferings are unknown or forgotten" is a "dangerous engine of arbitrary government." Hamilton didn't pull that notion from thin air; he was quoting from the 18th Century commentaries of English lawyer Sir William Blackstone, who called the habeas corpus act "the bulwark of the British Constitution."

Building on that notion, in 1980, the U.S. Supreme Court found in *Richmond Newspapers v. Virginia* that the public has a presumptive right of access to criminal trials. In 1984, it further developed the law by declaring that a judge may close access to criminal proceedings only after making specific on-the-record



Lucy Dalglish

findings that "closure is essential to preserve higher values (than the public's right of access) and is narrowly tailored to serve that interest."

So how did we get to a point in this country where more than a thousand men were secretly arrested, jailed and deported on immigration violations? How can Arab and Muslim men be secretly arrested, indicted, convicted and imprisoned in secret?

How can the U.S. Supreme Court be deciding a case that does not publicly identify who the petitioner is or what courts the case came from, and in which not one word of the Solicitor General's response to the petition is publicly available?

Some of the problem comes from the way the government has handled terrorism cases. The *Richmond Newspapers* line of cases dealt with criminal trials. While some courts have extended protections for the public's right to know civil and administrative proceedings, the Supreme Court has not yet addressed the breadth of the constitutional right of access to all types of court proceedings.

The Justice Department has taken full advantage of the system by handling more than 750 of the detainee cases as immigration cases, administrative proceedings conducted entirely by the executive branch and, according to the Justice Department, not subject to constitutional protections afforded by the courts.

But we also know that some felony terrorism and drug prosecutions, particularly in Florida and Washington, D.C., have been conducted entirely in secret. None of the closures has followed the procedures required by the Supreme Court.

The public cannot object to secret justice if they don't know about it. Reporters must scour federal court dockets and look for suspicious entries. They should contact local criminal defense attorneys and ask whether entire cases are being conducted in secret. And they should contact immigration organizations to ask whether any local immigrants have disappeared.

We don't live in a dictatorship where people mysteriously disappear from the streets. This is our country. And we should start acting like we own it.

Lucy Dalglish is the Executive Director of the Reporters Committee for Freedom of the Press in Arlington, Va.