
THE BRECHNER REPORT

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Single-justice opinion pleases members of media

WASHINGTON – Justice Anthony Kennedy denied the petition of a Florida broadcaster seeking a review of a prior restraint against publication.

However, his opinion did contain strong language criticizing the issuance of prior restraints.

“A threat of prosecution or criminal contempt against a specific publication raises special First Amendment concerns, for it may chill protected speech much

like an injunction against speech by putting the party at an added risk of liability,” Kennedy wrote.

The decision rejected *First Coast News’* challenge to two lower court injunctions, which were issued to prevent the media company from publishing a transcript of grand-jury testimony.

Kennedy’s opinion, called an in-

chambers opinion, allowed the injunctions to remain in place because there is little chance that the organization can be punished for a violation.

The judge who issued the injunctions has retired from the bench, and the state Attorney General’s Office has said it would not prosecute the news organization because it did not violate the law in obtaining the transcript.

COURTS

Mayor cleared in Sunshine Law investigation

VERO BEACH – An investigation by the State Attorney’s Office into charges that Vero Beach Mayor Mary Beth McDonald violated the Sunshine Law failed to uncover enough evidence for prosecution.

The investigation included secretly wiring City Manager David Mekarski with a monitoring device while he met with McDonald.

ACCESS MEETINGS

Investigator Edward Arens began gathering evidence after allegations surfaced that McDonald had violated the state’s Open Meetings Law by secretly meeting with Mekarski and asking him to resign in exchange for a \$60,000 severance offer.

The law prohibits members of the same elected or appointed advisory board from privately meeting to discuss issues the group might take action on.

After obtaining no probable cause from a poor-quality recording and interviewing two City Council members about possible private conversations, Assistant State Attorney Nikki Robinson decided there was not enough evidence to pursue charges.

Poll: Public worried about secrecy

WASHINGTON – More than 70 percent of Americans are concerned about government secrecy, according to a poll conducted by Ipsos-Public Affairs.

Additionally, 5 in 10 Americans believe that the government should provide access to its records because good government requires openness to the public.

The poll confirms what open-government advocates have been arguing: that government secretness has increased since the September 2001 terror attacks. Government officials responded by saying that the

secrecy was necessary to protect national security.

Interestingly, the public attitudes favorable to openness and access to records were similar to results from an earlier poll conducted in February 2000, which leads researchers to believe that Americans still value accountability in government.

Along the same lines, the bi-partisan legislative support continues in the U.S. Senate for a bill that would revisit the federal Freedom of Information Act to address the complaints of many access advocates.

ACCESS RECORDS

Crist says Open Meetings Law applies to junior college foundations’ records

TALLAHASSEE – Florida Attorney General Charlie Crist recently issued an opinion stating that the state’s Government in the Sunshine Act applies to “direct support organizations” of community colleges.

These school foundations that support the state’s higher education institutions will no longer be able to work under the assumption that they are

exempt from the state’s Sunshine Law.

Crist’s opinion, which covers only community colleges, has been interpreted by some to apply to organizations and foundations that support universities and school districts as well.

Most of these foundations operate as the institution’s fund-raising arm, channeling millions of dollars into the education system.

DCF must release records in Terri Schiavo case

TAMPA – A Pinellas Circuit judge ordered the state Department of Children & Families to release reports concerning alleged abuse of Terri Schiavo, a severely brain-damaged woman who died in March after her feeding tube was removed.

The order mandated the release of

nine confidential reports summarizing 89 complaints of alleged abuse that the agency received from 2001 to 2004.

All the complaints, sought by Tampa Bay media outlets, were eventually determined to be unfounded.

The judicial order does not cover reports of approximately 30 calls that DCF

received in February, which include charges that a proper guardianship plan had not been filed and that Schiavo's interests were not adequately represented by legal counsel. The records came to light in February, when the agency unsuccessfully tried to intervene in the legal battle between Schiavo's parents and husband.

Bill would force universities to publish fire data

WASHINGTON – A bill proposed in Congress by Rep. Bill Pascrell (R-N.J.) would require colleges and universities to release information about their fire safety and prevention measures.

The proposed legislation joins several other campus fire-safety bills that are being discussed in Congress.

The Campus Right to Know Act, as it is titled, was originally introduced in the House of Representatives in 2000.

The legislation was drafted after a fire at Seton Hall University in New Jersey killed three students and injured 58 others. This March, a residence hall fire occurred at George Washington University, injuring one.

Under the legislation, schools would have to publish information about campus fires.

Currently, unless a fire is arson, it does not have to be reported under the Clery Act, which requires colleges and universities receiving federal funds to disclose campus crime statistics.

Legislation would allow recording devices in the federal court system

WASHINGTON – Cameras and other recording devices could make their way into federal courtrooms if Congress passes a bill introduced by Sen. Chuck Grassley (R-Iowa).

The proposed legislation, known as the "Sunshine in the Courtroom Act of 2005," would give a presiding judge the discretion to allow recording devices in federal trial and appellate courtrooms.

"I believe that the First Amendment requires that court proceedings be open to the public, and by extension, the news media," Grassley said on the Senate floor.

"The sun needs to shine in on the federal courts. ... There are many benefits and no substantial detrimental effects to allowing greater public access to the inner workings of our federal courts."

The legislation would also extend to the U.S. Supreme Court. However, it is unlikely

the justices would allow cameras. Current U.S. Supreme Court Justice David Souter was quoted in 1996, saying "I can tell you the day you see a camera come into our courtroom, it's going to roll over my dead body."

Grassley and co-sponsor Sen. Charles Schumer (D.-N.Y.) proposed similar legislation in 2001 and 2003.

ACCESS COURTS

SHIELD LAWS

D.C. Circuit refuses en banc hearing in case involving reporter's privilege

WASHINGTON – Journalists Matthew Cooper and Judith Miller will now have to petition the U.S. Supreme Court if they want their contempt citations overturned.

The U.S. Court of Appeals for the D.C. Circuit denied their request for a rehearing in front of the entire court.

A three-judge panel of the appellate court upheld a civil contempt citation that could send the two to jail for refusing to disclose the names of sources who disclosed to them the identity of CIA operative Valerie Plame.

Judge David Tatel, writing a separate opinion from the appellate court, said

that review by the entire court was inappropriate because only the U.S. Supreme Court could overturn its 1972 plurality opinion in *Branzburg v. Hayes*, which said reporters do not have a privilege to refuse to testify before federal grand juries.

Since then, many federal appellate courts have relied on a dissenting opinion by Justice Potter Stewart in the case to provide such a privilege to journalists in certain situations.

Both journalists have filed petitions asking the U.S. Supreme Court to take their cases. Several media organizations have filed friend-of-the-court briefs in the cases.

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.

Center Director wins national teaching award

GAINESVILLE -- Sandra Chance, Executive Director of the Brechner Center for Freedom of Information at the University of Florida, was named 2005 National Journalism Teacher of the Year by the Scripps Howard Foundation.

The award recognizes outstanding contributions in the field of journalism education both in and out of the classroom.

Chance has taught both undergraduate and graduate media law courses at the UF College of Journalism and Communications for 12 years.

"My classroom extends beyond the walls of Weimer Hall," she said. "A large part of my work at the Brechner Center involves teaching."

As the executive director, she lectures internationally on open government and freedom of information issues to citizens' groups, attorneys, judges and media professionals.

"She does it all ...," wrote Terry Hynes, dean of UF's College of Journalism and Communications, "with the highest degree of professionalism, enthusiasm and skill."

Chance was selected from more than 50 candidates nationally for the award, which was presented at the Scripps Howard Foundation's National Journalism Awards Program on April 15 in Washington, D.C.

In addition, Chance received \$10,000 and the college received \$5,000.

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ACCESS MEETINGS CONTINUED

Law says Sebastian interviews can be conducted in private

SEBASTIAN – The state Attorney General's Office said the Sunshine Law would allow the Sebastian City Council to keep private the one-on-one interviews of five candidates for city manager.

Pat Gleason said that the Sunshine Law, which requires two or more members of an elected or appointed public body to meet in public when discussing or taking action on official business, would not apply to the interviews.

Several members of the council, including Vice Mayor Brian Burkeen, said they would not mind members of the public attending the interviews.

However, the mayor and other council members expressed concern that large numbers of people would disrupt the interview process.

Members of the council planned to interview the finalists in private and then conduct a public meeting to rank the top three candidates and schedule negotiations.

PRIVACY

Parties unsuccessful in lawsuit against makers of storm movie

TALLAHASSEE – The Florida Supreme Court ruled 6-1 that a Florida law prohibiting the unauthorized use of a name or likeness for commercial purposes did not apply to movies.

The decision came after a group of Floridians sued Warner Brothers over its 2000 release of "The Perfect Storm," which portrayed the sinking of a ship during a large storm.

The plaintiffs, who were relatives of those aboard the actual ship, asserted that the movie's depiction of their family

members was both inaccurate and without their consent.

The suit claimed that the ship's captain, Billy Tyne, played by actor George Clooney, was incorrectly depicted as an inept fisherman.

The Court ruled against them, saying that it was choosing to follow the interpretation of a federal appellate court.

The Court held that the word "commercial" could not be read to bar such a sweeping use of people's names in all contexts.

FDLE investigation clears sheriff of wrongdoing in driver's privacy claim

ORLANDO – Orange County Sheriff Kevin Beary was cleared of any wrongdoing by the Florida Department of Law Enforcement after he used driver's license records to contact a woman who criticized him in a local newspaper.

After the woman's letter to the editor was published, the sheriff responded with his own letter to the woman.

It accused the woman, Alice Gawronski, of slander for her comments about the department's use of Taser stun guns and other practices as well as the sheriff's physical fitness for duty.

Under the U.S. Driver's Privacy Protection Act of 1994, it is illegal to access a driver's license database to

obtain personal information.

An exception is made to allow uses in the case where a clear law enforcement purpose exists.

The FDLE investigation concluded that although Beary used the database to obtain an address to mail the letter to Gawronski, his action could have come within the permissible bounds of the law enforcement purpose exception.

"Because a law enforcement purpose is not specifically defined in statute, such use is generally left to the discretion of law enforcement officials," FDLE Commissioner Guy M. Tunnell wrote in a letter to Beary.

Gawronski said she believes Beary's letter was a form of intimidation.

Privatization closes doors to information

The Florida Legislature quietly chips away at the Sunshine State's open records laws every session, but over the past few years they've put up yet another barrier to open government.

The State Legislature is privatizing in many areas, shifting government chores to private operators who don't have to open their books to the public or the press. Privatization works great for cleaning buildings and cutting grass but when the welfare of people and especially children are in the balance, it's not such a great idea.

Privatization is supposed to save taxpayers money. The jury is still out on that hypothesis, but we do know some of the costs, namely in transparency and accountability.

We got wind last month that three foster children had been shifted out of a foster home where they had been placed for their

safety. Why had they been moved?

We called the nonprofit agency Kids Central. Well, actually we called the spokeswoman for that agency,

a subcontractor who works for Wragg & Casas Public Relations Inc. in Orlando. She said she could say nothing. "It's the law," she explained.

The law?

"That's right. We can neither confirm that the child is in the system nor comment on anything related to the child. It's the law."

So, I ask her, how can we check for our readers when we hear from reliable sources that they have been moved? Are we supposed to ignore what we hear?

She replied that Kids Central has subcontractors (like her) who work as case managers to make sure the children in state custody are treated well.

The law protecting the identity of juveniles was also frequently cited in past years when the Department of Juvenile Justice and their previous subcontractor stonewalled our efforts



Steve Arthur

to uncover misdoings at the Cypress Creek Juvenile Detention Center in Lecanto.

Since the death of Omar Paisley in Miami, and the governor's appointment of DJJ Secretary Anthony Schembri, the DJJ is, to everybody's relief, a lot more open. All without compromising the identity of the juveniles involved.

So do we have to stand by and wait until something really horrendous happens on the watch of Kids Central Inc.? They need permission to answer simple questions.

How can we be sure that children we know are in the DCF system are not being mistreated?

The PR woman repeated that a system is in place to meet all the needs of the children in state care. Unspoken were all the terrible blunders and tragedies on the part of DCF that have made headlines and sad reading across the state.

When bad things happen and word finally gets out, scapegoated people lose their jobs and laws are passed but in the meantime, children have sometimes died.

So without any help from Kids Central Inc., the story about the unexplained move of the foster children ran in the newspaper, based on the concerns of school district officials who wanted to help solve the perceived problem at the foster home. We were left wondering if something was wrong at that foster care home.

Almost a week later Don Thomas, district administrator from DCF District 13, cleared the air: "The foster family did a fine job and if they wish to continue being a foster family, we would be glad to place other children with them."

Now, was that so hard to say? Yes, we still don't know why the lives of these children were further disrupted; we've heard stories but without confirmation, we are asked to trust Kids Central Inc. as we were asked to trust DCF and DJJ. That's not an easy thing to do.

Steve Arthur is a columnist for the Citrus Country Chronicle. His column appeared in the paper as a part of Sunshine Week. It is reprinted with permission.