
THE BRECHNER REPORT

Volume 30, Number 3 ■ A monthly report of mass media law in Florida
Published by The Brechner Center for Freedom of Information ■ College of Journalism and Communications ■ University of Florida
March 2006

Former North Bay commissioner faces probation

NORTH BAY VILLAGE — A former commissioner of North Bay Village has pleaded no contest to two Sunshine Law violations. Armand Abecassis, 67, was arrested in April 2004 on charges of conspiring with then-Mayor Alan Dorne to remove the city manager.

Abecassis received six months of probation as part of his plea agreement for the two second-degree misdemeanor charges. He is also required to perform 50 hours of community service, pay court costs and donate \$1,000 to the United Way.

“There aren’t that many occasions of Sunshine Law violations in the state,” said Joseph Centorino, chief of the Public

Corruption Unit of the State Attorney’s Office. “This was probably one of the most serious violations. Any matter [commission-

ers] are going to vote on, they should not discuss privately.”

Dorne pleaded no contest to three counts of violating Florida’s Open Meetings Law in March 2005. Dorne’s plea deal to the second-degree misdemeanor charges included six months probation, a

300-hour community service requirement and an order to pay over \$20,000 in court and investigation costs.

Abecassis is the fourth convicted North Bay Village public official in two years, according to *The Miami Herald*. All of the officials lost their position as a result.

Former Commissioner David Fleischer received four years of probation for charges of bribery and corruption.

Robert Drugger left the commission and is serving two years of probation for charges of conflict of interest and failure to comply with financial disclosure requirements.

ACCESS MEETINGS

Web posts remain anonymous

TAMPA — Comments on a law enforcement Web site’s message board will remain anonymous, according to a decision by Hillsborough County Circuit Judge Marva L. Crenshaw.

The Hillsborough County Sheriff’s Office sought the identities of people who posted critical remarks on the Web site www.leoaffairs.com. The Sheriff’s Office’s interest in the names was to identify possible employee posts, according to the *St. Petersburg*

Times. Employee comments that are disruptive to the work of the agency have already been ordered removed.

Judge Crenshaw ruled that the Web site postings were mostly opinions.

The Sheriff’s Office previously sought names of Web site visitors who posted comments related to the Sabrina Aisenberg missing baby case. The identities of those individuals who posted the comments were also protected on First Amendment grounds.

FIRST AMENDMENT

Jet fuel company sues Sanford

SANFORD — A former airline fuel company is suing the city of Sanford and the Sanford Airport Authority, claiming secret meetings cost the company millions.

Jett Aire alleges the defendants violated a 1994 agreement establishing Jett Aire as the Fixed Base Operator providing jet fuel at the Sanford airport. The now defunct company seeks damages

in excess of \$100 million, alleging that the city violated the agreement by doing business with another fuel company.

The meetings that led to the business with the other company were done in secret and were in violation of the Sunshine Law, Jett Aire alleges.

City officials declined to comment on the litigation, according to *The Sanford Herald*.

School board scrutinized for passing notes

INDIAN RIVER COUNTY — The State Attorney’s Office is investigating possible Sunshine Law violations by members of the Indian River School Board.

Complaints received by the office stemmed from the board’s recent vote to fire Superintendent Tom Maher.

The complaints allege that board members talked about the vote prior to the Dec. 13 meeting and that board member Ann Reuter tried to pass a note regarding the vote during the meeting.

Board Chairman Bill Hughes refused to pass the note from Reuter to Vice Chairman Kathryn Wilson, according to the *Vero Beach Press Journal*.

Reuter denied the allegations.

Assistant State Attorney Chris Taylor did not have an estimate of how long it would take to complete the investigation.

Florida’s Sunshine Law prohibits two or more members of the same board from privately discussing an issue that could come before them in a vote.

College board's vote is challenged a second time

OKALOOSA COUNTY — A community college board's vote to sell land to developers has been called into question for the second time.

The Okaloosa-Walton College Foundation board's first vote, at a closed meeting in January 2005, was questioned after Attorney General Charlie Crist ruled that "direct support organizations" of community colleges are subject to Florida's Sunshine Law.

The board met again in May 2005 to comply with the Sunshine Law and voted for a second time to sell the land.

But an environmental advocacy group now claims that the second meeting also violated the Sunshine Law.

Pensacola Gulf Coast Keepers argued before Okaloosa County Judge Patricia Grinsted in December.

"There was not a full discussion of the motion," argued the environmental

group's attorney, Steve Medina. "There was like zippo discussion of the motion," Medina said.

The college's attorney, Bruce Culpepper, said the foundation board was in full compliance with the Sunshine Law.

"The public was in attendance, as was the press, television, everybody," Culpepper said. "It was a very public meeting."

Judge Grinsted said she will study the motions and then issue a ruling.

ACCESS RECORDS

Watchdog organization questions prison operator's records status

PALM BEACH COUNTY — A prison watchdog organization has filed suit against a Florida prison operator, alleging Public Records Law violations.

Prison Legal News filed a public records complaint against the Boca Raton-based Geo Group.

Geo Group is a private company that builds and manages prisons throughout the country. The company has contracts with the state of Florida to run three prisons, according to *The News Herald* (Panama City).

In April, *Prison Legal News* requested documents related to lawsuits against Geo Group, contract audits, violations and court-ordered injunctions.

Prison Legal News, which publishes

a monthly newsletter on prison issues, claims the company responded with limited information.

The nonprofit group argued that because of Geo Group's contracts with the state, the company falls under Florida's Public Records Law.

"Without the...public records, the (publication) cannot determine whether or not the taxpayers and the prisoners at Geo facilities are receiving a fair return and the services required," the suit stated, according to *The Palm Beach Post*.

The Post also reported that spokesman Pablo Paez said Geo Group hasn't taken a position on whether it falls under the Public Records Law.

Family of man killed in raid seeks Sunrise SWAT records

SUNRISE — The family of a 23-year-old man killed during a SWAT team drug raid is suing the city of Sunrise for allegedly violating Florida's Public Records Law.

Anthony Diotaiuto was fatally shot at his home while the SWAT team executed a search warrant.

Lawyers for Diotaiuto's family claim the city of Sunrise illegally denied parts of a public records request and ignored three other requests.

The documents requested included SWAT policies and training manuals as

well as strategy notes and records specific to the Aug. 5, 2005 raid.

Attorneys for the city defended the city's actions, arguing that the documents were not public because they were part of an ongoing investigation or would reveal police secrets.

The State Attorney's Office in Broward County is still investigating whether Diotaiuto's death was justified.

Police thought Diotaiuto was selling drugs in his home, according to the *South Florida Sun-Sentinel*. Diotaiuto was shot 10 times during the raid.

Manatee clerk experiments with redaction software

MANATEE — The first county in Florida to post court documents online is also one of the first counties to test software that redacts sensitive information from records.

Manatee County Clerk of the Circuit Court R.B. "Chips" Shore volunteered his office to serve as a pilot program for "ID Shield" software.

The move came in response to state legislation passed in 2005 that mandates county clerks of court to redact Social Security numbers, bank account numbers, credit card details and other sensitive information from all online records.

Shore's office must go through approximately 18-million pages of official records and court documents.

The software, which costs a one-time licensing fee of \$21,890, was used to redact about 400,000 pages of documents as of late December.

ID Shield scans the documents and searches for patterns, such as "SSN" or "SS#," to redact.

Linda Proffitt-Sprindis, director of technology services, said non-redacted images will be kept on file in case non-sensitive information is mistakenly redacted.

In 1994, Manatee County was the first county in Florida to post court documents online.

BROADCASTING

FDLE shuts down popular South Florida radio station

MIRAMAR — A popular South Florida radio station has been pulled off the airwaves for operating without an FCC license.

The Florida Department of Law Enforcement (FDLE) shut down the Caribbean-themed Vibe radio station, which has been broadcasting for almost five years.

The station's parent company, In Vibration, won construction permits from

the FCC in 2004 but later defaulted on a down payment and lost the permits.

The FDLE has closed about four stations since a new anti-piracy law took effect last summer, according to FDLE spokeswoman Paige Patterson-Hughes.

The law makes it a third-degree felony to broadcast without a license or to interfere with signals of other stations.

Equipment was seized from Vibe, but no one was arrested.

DEFAMATION

Developers sue project critics

MAITLAND — Developers of condominium-retail projects in Maitland and Winter Park have sued critics of their projects for libel, conspiracy and tortious interference.

Critics describe such actions as strategic lawsuits against public participation, or SLAPP suits.

Broad Street Partners and an affiliated company, Central Park Station Partners, have each filed suit against critics in Maitland and Winter Park, respectively.

"People say things without any responsibility for what they say," said Central Park Station Partners' attorney, Hal Kantor. "This suit says we're going

to hold you responsible for what you say."

Kantor's suit targets two officers of OneWinterPark, a group critical of some recent development.

"I do think the lawsuit was filed to intimidate individuals and for no other reason," said David Strong, a board member of the group who is named in the suit.

Several more defendants are expected in each case. Florida is one of 25 states with some form of anti-SLAPP legislation. Florida's anti-SLAPP statute only applies in situations in which a government agency sues a citizen.

ACLU, Polk reach truce in speech zone

BARTOW — The ACLU and Polk County have reached a temporary agreement in their battle over a free speech zone. The ACLU filed suit in federal court against the county, claiming the county's requirements to use the zone are unconstitutional.

As part of a temporary agreement, the county will suspend its requirements of \$500,000 worth of insurance, a "hold harmless" waiver and a 21-day application period to use the free speech zone.

ACLU and the county were given 30 days to reach a permanent agreement or return to court.

Requirements that remain in effect

FIRST AMENDMENT

include a \$100 deposit and no profanity when using the site, which is located near the county administration building.

The ACLU challenged the county's policy after it was denied use of the site because it did not have the required insurance.

The free speech zone was designated in 2004 after a nativity scene placed on the lawn in front of the county administration building sparked controversy.

THE BRECHNER REPORT

Brechner Center for Freedom of Information
3208 Weimer Hall, P.O. Box 118400
College of Journalism and Communications
University of Florida, Gainesville, FL 32611-8400
<http://www.brechner.org>
e-mail: brechnerreport@jou.ufl.edu

Sandra F. Chance, J.D., Exec. Director/Exec. Editor
Christina Locke, Editor
Alana Kolfraath, Production Coordinator
Kimberly Lopez, Production Assistant

The Brechner Report is published 12 times a year under the auspices of the University of Florida Foundation. The Brechner Report is a joint effort of The Brechner Center for Freedom of Information, the University of Florida College of Journalism and Communications, the Florida Press Association, the Florida Association of Broadcasters, the Florida Society of Newspaper Editors and the Joseph L. Brechner Endowment.

BACK PAGE CONTINUED

another trait: They routinely censor themselves to some degree in their communications with others - in the name of civility as well as their own privacy. But there is a great difference in censoring ourselves for those reasons and censoring ourselves because we fear being caught up in a government investigation.

Too often, under the immutable scrutiny of government investigators, data don't lie. In government databases, such information is susceptible to a wide range of actions that expand the power to invade, deter, expose, harass, punish and chill.

The ready answer to such concerns, of course, is that if a person is not doing anything illegal, threatening or embarrassing, he or she shouldn't have

anything to worry about. That ready answer is too easy.

In today's world, these concerns would not be so real if government officials did not insist that they have the right to arrest citizens without charges and imprison them without access to counsel or the judicial system.

These concerns would not be so pressing if abuses of similar powers had not occurred as recently as the 1960s and 1970s.

These concerns would not be so urgent if government officials did not make mistakes, or overreach or have at their disposal billions of bits and bytes of data purporting to represent the real lives of ordinary Americans guilty of nothing more sinister than believing that the First Amendment means what it says.

Personal privacy is essential to freedom of speech

Most Americans are always ready to tick off any number of reasons they value their privacy.

They want to avoid junk mail, junk faxes, junk calls and junk e-mail. They want to maintain physical and financial security. They want to keep medical and psychological information confidential. They want to keep nosy neighbors and Big Brother out of their business.

One of the most important reasons does not come quickly to mind, however, and that is how important personal privacy is to freedom of expression. Because the Constitution guarantees their right to engage fully and freely in such activities, Americans should feel comfortable speaking out about issues, communicating by phone or e-mail, associating with whomever they choose, and going to the library or the Internet to

learn more about whatever interests them. But that comfort is compromised if they feel that the government is looking over their shoulders when they speak, correspond or associate. And increasingly, government law enforcement and intelligence agents not only are doing that but also tucking away vast stores of personal information in impersonal government databases.

Privacy advocates and ordinary citizens are alarmed when they learn of secret searches for private information under the Patriot Act, or of warrantless eavesdropping on telephone and e-mail communications by the National Security Agency, or of the gathering of information on peaceful citizens by the Pentagon and the FBI.

That unease has grown more palpable with news that the federal government has demanded from four popular Internet search engines data on search requests and Web-site destinations. Microsoft, Yahoo and AOL all complied in some form with the government request. But the world's largest such firm, Google, refused.

On Jan. 18, the U.S. Justice Department filed papers in a California federal court seeking to force Google to comply with its subpoena. Specifically, the government lawyers want random samplings of 1 million Internet addresses and of 1 million search requests. No personally identifiable information would be included in the data.



Paul K. McMasters

The Justice Department wants this data as part of its effort to argue the constitutionality of the Child Online Protection Act in a trial, scheduled to begin this October in Philadelphia. COPA is a 1998 law that would require operators of Web sites providing sexually explicit, but legal, content to take complicated and costly steps to prevent minors from accessing the sites.

The Supreme Court in 2004 refused to lift a lower court's injunction against enforcement of the law and sent it back down for trial. The high court said the government would have to establish a factual record

that the voluntary use of filters was no match for the criminal sanctions in COPA in deterring minors' access to adult Web sites.

The government says it needs the information to determine which Web sites are accessed via search engines, to get some idea of how much "harmful to minors" content exists on such sites and to see how well filters block such material.

So what are the concerns?

It is not the data in this instance. It is the environment in which the federal government has launched this particular initiative. It is the fear that once the practice of seeking private information from private Internet operations is established, the temptation for government officials will be to go back again and again for more and more until no personal information online is ever safe from invasion.

Further, there are real concerns that this data, innocuous as it may be from a privacy perspective, nevertheless could help the government make the case that voluntary filtering software won't do in making the Internet safer for users; instead government-enforced criminal sanctions must be used.

The threat to freedom of expression is three-pronged: for individual Internet users, for the search-engine companies, and for the sites that offer targeted content.

In addition to their love of privacy, most Americans share

Continued on Page 3

Paul K. McMasters is First Amendment ombudsman at the First Amendment Center. A veteran journalist and expert on First Amendment issues, he writes and speaks extensively on issues related to freedom of religion, speech, press, assembly, petition and freedom of information.