
THE BRECHNER REPORT

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Activist banned from council meetings sues city

JACKSONVILLE – An activist banned by the Jacksonville City Council from attending meetings has filed a lawsuit against the city, alleging her civil rights were violated.

Jackie Brown was arrested at a Nov. 22 council meeting when she addressed the council in an Aunt Jemima outfit and criticized the city's small business incentive law. Brown, president of the Jacksonville Coalition of Black Contractors, was ordered to leave by council President Kevin Hyde and

escorted out by a police officer.

When Brown returned to the meeting, she was arrested on misdemeanor charges of causing a disturbance at a lawful assembly and resisting arrest. Using a council rule that allows him to ban non-council members who make "personal, impertinent or slanderous remarks or who shall become boisterous while the council is in session," Hyde barred Brown from attending meetings until April 2006.

Along with the city, Hyde is named

personally in the lawsuit, filed in federal court. Brown's suit seeks a declaration that the ban is unconstitutional. Brown's suit alleges the ban is an "unconstitutional prior restraint" and violates her First Amendment right to free speech.

Brown also wants an injunction on the ban so that she may attend council meetings until the matter is resolved by the court. The suit seeks unspecified damages and attorney's fees.

Michael Wedner, assistant general counsel for the city, said the city will oppose the injunction.

ACCESS MEETINGS

County attorney recommends outside counsel for officials

ENGLEWOOD – Charlotte County commissioners should seek independent counsel in a case alleging Sunshine Law violations, according to County Attorney Janette Knowlton.

Page Development filed a lawsuit against the county in June 2005, claiming that Charlotte County violated Florida's Open Meetings Law while developing Manasota Key's community plan.

Knowlton said there would be a conflict of interest if her office were to also represent individual commissioners and members of the Manasota and Sandpiper Key Advisory Committee, according to *The Charlotte Sun*.

The lawsuit alleges that prior to

its appointment by commissioners in October 2005, the advisory committee was an official county committee and failed to give notice of the meetings at which it formulated the community plan.

The lawsuit also alleges commissioners met improperly with advisory committee members, making the plan illegal. The county maintains that prior to October 2004, the committee was only a steering committee consisting of interested residents.

Page Development's lawsuit claims that Page V and Smith Cove, LTD were irreparably injured by the county. The two entities planned to build a 10-unit condominium on the key. However, the plan does not allow the 10 units.

Ocoee leader receives fine for Sunshine charge

OCOEE – Danny Howell, former Ocoee city commissioner, pleaded no contest to a civil violation of the Sunshine Law. He was fined \$500 plus court costs.

The charges stem from a 2004 phone call to fellow commissioner Rusty Johnson, where the two allegedly discussed a proposed real estate transaction that would come before the commission.

Howell was also charged with a second-degree misdemeanor for allegedly violating the Sunshine Law, but prosecutors dropped that charge.

Howell resigned in October 2005 after the charges were announced. Johnson was not charged in the incident.

Republican Party boots reporters from speech

LAKE BUENA VISTA – Reporters were removed from a speech Gov. Jeb Bush delivered to the Florida Republican Party in January. The party called security to eject the reporters, who were listening to the governor through an open door at the side of a hotel ballroom.

Party leaders said they wanted to keep party functions private. "We wanted to be able to have a private meeting where folks were not worried about being on the record," said Executive Director Andy Palmer.

Gov. Bush denied responsibility for

the reporters' removal. "I apologize for that if I'm indirectly responsible, which I'm not," Gov. Bush said. "I would have loved to have you in there... I wouldn't have said anything different if you were there," Gov. Bush remarked after the meeting.

Pinellas County ordered to release settlement

ST. PETERSBURG – Pinellas County is violating the Public Records Law by refusing to release a settlement agreement with an ex-employee, a circuit judge ruled. Judge Mark I. Shames ordered the county to disclose the settlement to the *St. Petersburg Times*. The newspaper sought access to records relating to an agreement between the county and fired assistant administrator Rick Dodge.

Though the county was given 48 hours to turn over the documents, the county is expected to appeal. The appeal could

delay release of the settlement for several weeks, according to the *Times*.

According to one county commissioner, Dodge received \$300,000 to settle a whistle-blower lawsuit he initiated against Pinellas County in 2003. Other county leaders have declined to confirm details of the settlement, according to the *Times*.

The county cited an exemption in the Public Records Law that allows the government to keep records private if they reveal legal tactics about an ongoing

case. The *Times* argued that since the settlement has been reviewed by both sides, the need for secrecy no longer exists.

Pinellas County officials said the settlement is only an agreement to agree, and that once unspecified conditions are met in coming weeks, it will be released.

“Since the terms of the settlement agreement have been fully disclosed to the opposing litigants and counsel,” wrote Shames in his decision, “the only interested party being kept out of the loop is the public!”

Judge denies media request for accused priest's records

MIAMI – An attempt by *The Miami Herald* and the *Daily News* (Naples) to access closed records in a civil case against a Catholic priest was rejected by Judge Scott Bernstein in Miami-Dade Circuit Court.

The newspapers allege that the closed records may show the Catholic Church failed to protect children from ex-priest William Romero, who worked at a school and church in Naples during the mid-1970s.

Bernstein ruled that he could not grant access to the records since the original lawsuit, alleging Romero sexually abused an altar boy in 1975,

was settled and dismissed.

That suit was settled for an unknown amount in November 2005.

The Archdiocese of Miami and the Venice Diocese were ordered by the court to turn over personnel files to the accuser's attorney during the civil case, but those records were never made public, according to the *Daily News*.

“The court system should always strive for openness,” said *Daily News* Editor Phil Lewis. “The public is the loser here. If we keep letting the court system work behind closed doors, we're going to be in trouble as a nation.”

News groups successful in lawsuit for boot camp video

TALLAHASSEE – The Florida Department of Law Enforcement has released a video showing several boot camp guards hitting a 14-year-old boy who died the next day.

The release was the result of a public records lawsuit filed by *The Miami Herald* and CNN. The FDLE initially refused to release footage of the Jan. 5 incident, citing a public records exemption for records related to an ongoing investigation.

The 30-minute videotape was intentionally blurred by the FDLE to disguise the images of other juveniles at the Bay County facility. The teen, Martin Lee Anderson, was participating

in exercises that were part of the camp's intake procedures.

The Florida Department of Juvenile Justice oversees the boot camp programs. Bay County Sheriff Frank McKeithen told the department in February that the county will end its contract with the state to run the camp.

Bay County Chief Medical Examiner Charles F. Siebert Jr. ruled that Anderson died of natural causes as a result of internal bleeding and respiratory distress caused by sickle cell trait. However, experts in the field have questioned this finding, according to *The Herald*.

The FDLE is conducting a criminal investigation of the boy's death.

ACCESS MEETINGS CONTINUED

Judge: Sunshine Law applies to PCOC members

BARTOW – Ten Polk County council members charged with violating the Sunshine Law are indeed subject to that law, according to County Judge Anne Kaylor.

The Polk County Opportunity Council is a nonprofit agency that aims to help the area's poor with its \$13-million annual budget.

Ten council members were charged with violating the Sunshine Law by holding a secret meeting to discuss the firing of their executive director. Each civil infraction carries a maximum penalty of a \$500 fine.

The PCOC's lawyer filed a motion to dismiss the charges, arguing that the Sunshine Law did not apply to members because they are volunteers, not public officers.

Kaylor, however, sided with prosecutors' arguments that the PCOC operates with the help of public funds and “is functioning for the benefit of the poor and underprivileged public,” according to *The Ledger* (Lakeland).

The members charged are Patricia Hunter, Collins Smith, Morris Chestang, Booker Young, Beverly Howell, Jessie Kirby, Annie Bryant Phyll, Ben Graham, Dennis Goosby and Ozell Wilson.

Principal sues station, alleging damage to reputation

SARASOTA – The principal of an elementary school is suing a news station, alleging the assignment manager and news director defamed him.

Eddie Hundley alleges Ric Russo, assignment manager for WWSB-TV, ABC7, and Kay Miller, the station's news director, attacked his reputation. The station never aired a report on Hundley.

The suit stems from Hundley's 2002 arrest for stalking his girlfriend.

Prosecutors later dropped the charge.

Hundley claims that Russo spread misinformation about the arrest, according to the *Sarasota Herald-Tribune*. Russo's son attends Palmetto Elementary School, where Hundley is principal.

Hundley's suit states that Russo recruited other parents to stand in front of the school and pass out copies of the police report from Hundley's arrest.

His suit alleges that Russo knew the

charge was not prosecuted, but failed to tell other parents or provide documents showing the charge was dropped.

Hundley also alleges that Miller contacted local school officials in October 2005 and told them Hundley had recently been arrested for stalking.

A copy of an e-mail from Miller to a school official, in which she apologizes for her calls on the three-year-old matter, is included in the suit, according to the *Herald-Tribune*.

ACCESS MEETINGS CONTINUED

Mayor admits to private meeting

GLEN ST. MARY – The mayor of a small town in Baker County apologized to the news media for apparently conducting a town council workshop without giving notice of the meeting.

Juanice Padgett, mayor of Glen St. Mary, told *The Standard* (Baker County) she forgot to advertise the Feb. 7 workshop between the Glen St. Mary Town Council and the town engineer.

Padgett said the workshop would be rescheduled with proper notice.

She also stated that City Attorney Phyllis Rosier would tell the office of Attorney General Charlie Crist about the unadvertised meeting.

Court stands behind public grant for News-Journal center

VOLUSIA COUNTY – Circuit Court Judge Edwin Sanders ruled that Volusia County Council members did not violate the law when they met individually with Lively Arts Center board members prior to approving the \$2.4-million grant.

The board members are involved in the construction of the News-Journal Center, a performing arts facility in Daytona Beach.

Despite allegations that the vote to approve a public grant for an arts center was not conducted in accordance with a Sunshine Law, the

center will go ahead as planned.

"They only met separately with each individual member and basically just lobbied for the funding," said Randy Rowe, assistant county attorney.

Tanner Andrews of DeLand filed the lawsuit to block the grant.

Andrews had previously claimed that the grant to help build the \$29-million performing arts center would not serve a public purpose.

Sanders also dismissed that claim.

The News-Journal Center had its first opening night performance in January 2006.

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FIRST AMENDMENT

Polk County commissioners vote to end controversial speech zone

BARTOW – The Polk County Commission voted to end a controversial free speech zone, a move that will likely end a lawsuit filed against the county by the American Civil Liberties Union.

The ACLU had previously challenged the county's requirements to use the zone, claiming they were unconstitutional.

The requirements included \$500,000 worth of insurance, a "hold harmless" waiver and a 21-day application period.

As part of a temporary agreement, the county suspended those requirements. ACLU and the county were given 30 days to reach a permanent agreement or return to court.

Now, the Polk County Commission has authorized county officials to remove displays from county property.

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

Exemption leaves Capitol Police records in the dark

President Bush wasn't the only person who tried to get a message across at the January State of the Union address.

Two invited guests, one a congressman's wife, and the other an outspoken war protester, also made headlines.

Cindy Sheehan, mother of a U.S. soldier killed in Iraq, and Beverly Young, wife of a U.S. congressman, were ejected from the spectators' gallery of the House of Representatives because of the T-shirts they wore.

Both T-shirts made reference to U.S. troops. Sheehan's read: "2245 Dead. How many more?" It alluded to the number of American service members killed to date in the Iraq War. Young's shirt urged: "Support the Troops - Defending Our Freedom." Both T-shirts crossed the line, according to the Capitol Police, who ushered Sheehan and Young out of the House gallery and arrested Sheehan.

The Back Page

By Ana-Klara Hering

I watched in disbelief as the details surrounding their removal from the State of the Union address unfolded in the national media. Preliminary reports said the women violated a regulation that prohibits protests in the Capitol. Everything I had learned up until that point in my graduate studies told me that it wasn't Sheehan and Young who were in the wrong, but that the Capitol Police had unconstitutionally restricted their speech.

My suspicions were confirmed less than 24 hours after the initial incidents when Capitol Police Chief Terrance Gainer apologized for his department's actions and dropped the charges against Sheehan.

"The officers made a good faith, but mistaken effort to enforce an old unwritten interpretation of the prohibitions about demonstrating in the Capitol," Gainer told *The Associated Press*.

Since when did unwritten laws justify arrest?

I wanted to understand what broke down that night at the Capitol. Of all places, free speech should have found a safe haven within the very halls that serve to protect it.

The rationale offered by the police raised several questions about what is considered a form of protest versus protected expression.

Can a guest wear a yellow ribbon or a black arm band, or for that matter, an expression unrelated to the military, like a red ribbon for AIDS prevention or a yellow Lance Armstrong wristband for cancer research? How would the Capitol Police classify clapping – or not clapping – in response to the president's remarks?

According to D.C. Code, a protest constitutes "loud, threatening,



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or abusive language" and "disorderly or disruptive conduct" anywhere on the U.S. Capitol grounds or in any of the Capitol buildings. The law carries a maximum sentence of six months in jail.

For now, all we have is Sheehan's version of the events. She claimed on her blog that when she unzipped her jacket in the gallery and revealed her shirt, an officer yelled "Protester" and hauled her out of her seat.

I made repeated requests to the Capitol Police for the arrest report, hoping to shed light on the events leading to Sheehan's arrest. Instead of complying with my request,

Capitol Police officials gave me conflicting answers and confusing rationale. At one point, the Capitol Police public information officer told me the "report was unavailable." When asked what that meant, she said, "Unavailable means unavailable means unavailable."

Two attorneys with the Capitol Police Office of the General Counsel gave me conflicting information as to whether the report was public at all. What I thought could be attributed to overzealous protection of the president's reputation during his annual address actually had become worse.

My inquiry into the police report revealed a larger, systematic loophole that allowed the Capitol Police to go unphased by my appeal for transparency. Technically, the Capitol Police was able to refuse my requests for the Sheehan arrest report because it is part of the legislative branch, which is exempt from the Freedom of Information Act. The intent of the exemption, I doubt, was to group basic law enforcement functions, like a routine arrest of a so-called protester, with more sensitive security-related information that could make the Capitol building vulnerable.

The Capitol Police was able to take advantage of the vagueness of the law to avoid disclosing the official version of the events leading to Sheehan's arrest.

By the letter of the law, the Capitol Police acted in its full authority when it denied me a copy of Sheehan's police report.

But the law isn't doing the Capitol Police any favors when it comes to earning the people's trust.

Ana-Klara Hering is a joint Ph.D./J.D. student at the University of Florida. She interned in the office of Sen. Connie Mack at the U.S. Capitol in 1996 and 1997. She has been a frequent contributor to The Brechner Report and works for the Marion Brechner Citizen Access Project.