
THE BRECHNER REPORT

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News Journal wins appeal of false light verdict

PENSACOLA – The First District Court of Appeal reversed an \$18.28 million verdict against the *Pensacola News Journal*, ruling that the plaintiff's false light invasion of privacy claim was governed by the two-year statute of limitations for defamation actions.

Joe Anderson sued the *News Journal* for false light in 2001, three years after

a story stated that he shot and killed his wife. Two sentences later, the story stated that the death had been ruled an accident.

Though Anderson admitted the story was true, he claimed it created the false impression that he murdered his wife.

Anderson initially sued for libel but later amended his suit to sue for false light invasion of privacy.

In Florida, the statute of limitations for unspecified torts is four years, and Anderson's lawyers argued the four-year limit should apply.

However, the First District held that Anderson's claims weren't materially distinguishable from a defamation claim, so the two-year statute of limitations applied. Because Anderson did not file his suit within the two-period, his verdict was reversed.

PRIVACY

Officials cleared of wrongdoing

SEBASTIAN – Two Sebastian city council members were cleared of Sunshine Law violations. Indian River County Judge Joe Wild ruled that Councilman Sal Neglia did not violate the law when he called a fellow council member to ask about a conflict between tennis players and lawn bowlers over use of the city's new tennis courts.

ACCESS MEETINGS

Prosecutor Chris Taylor withdrew the charge against Councilwoman

Andrea Coy after Neglia was found not guilty. Each member could have faced a fine of up to \$500 for the civil infraction.

"The communication was not a meeting where discussions were had on matters on which foreseeable action may be taken by the city council," Wild said.

Neglia mentioned the January phone call during a meeting that same month. The tennis court dispute was discussed at the meeting. The city council asked the city manager to review the issue. City officials agreed to continue to allow the lawn bowlers to use tennis courts.

"I think the Sunshine Law is great," Coy said. "It prohibits the backroom wheeling and dealing, which was not the case here."

Deputy city manager penalized

FORT PIERCE – Deputy City Manager David Recor will pay a fine and attend public records training after pleading no contest to a Public Records Law violation.

The civil infraction will cost Recor \$100, and he must attend a public records management seminar. He could have been fined up to \$500.

Recor was charged with failing to properly retain public records. The charge stems from a racial discrimination investigation of Fort

Pierce's Building and Code Enforcement Department.

Four black code enforcement officers complained that they received negative marks on their evaluations. Two white officers hired around the same time received positive marks.

Recor said the evaluations weren't done correctly and shredded the originals. Florida law requires original copies of personnel records to be retained for 50 years past termination of employment.

ACCESS RECORDS

Center seeks top FOI stories

In preparation for its 30th anniversary, the Brechner Center is preparing several projects that enhance and celebrate the Center's mission to advance understanding, appreciation and support for freedom of information.

The "Story Behind the Stories" project will take an in-depth look at 30 stories that have impacted Florida and were made possible by using freedom of information in the reporting process.

The Center is soliciting suggestions for stories that used freedom of information or open government laws in the reporting process and created community response, consequent legislation, formation of

new practices or other impact. Story suggestions will be accepted through January 17, 2007.

The stories may be based on the federal Freedom of Information Act or Florida's Sunshine Laws, but must have been published in a Florida publication.

The project will be released in October 2007 in conjunction with the Brechner Center's anniversary activities and will be presented in a multi-media Web package and a reference guide handbook.

You may submit story suggestions via e-mail at brechnerreport@jou.ufl.edu. Please include the story's headline, author, publication and date.

Top justice seeks review of cases

TALLAHASSEE – The chief justice of the Florida Supreme Court wants judges across the state to review sealed cases.

Chief Justice R. Fred Lewis' letter to Florida's 20 chief judges follows a series of media reports on improperly sealed cases throughout the state.

Lewis gave the judges 10 days to report back to him on what they planned to do to address the issue of sealed cases.

Lewis also asked the Florida Bar to expedite its review of proposals to prevent future sealing of cases. The Florida Association of Court Clerks

and Comptrollers drafted the proposals, which would require judges to hold a public hearing before sealing a court record.

A written explanation would be required for all decisions to seal information.

In Broward, Pinellas and Sarasota counties, courts have already taken some steps to remedy concerns about secret dockets.

"I almost swallowed my tongue when I read about this," Lewis told *The Miami Herald*. "To have such hiding occur – that's not America, is it?"

Judge invalidates exit poll law

MIAMI – A federal judge struck down a Florida law that would have prevented exit poll takers from standing within 100 feet of voting places.

The Associated Press and five television networks challenged the law, claiming it violated the First Amendment.

U.S. District Court Judge Paul Huck noted in his opinion that reporting on political news would be difficult and incomplete if the media's ability to interview voters was not protected.

The state argued that the law served

the purpose of protecting voter's ability to vote.

The state cited citizen complaints of "various individuals soliciting or offering information."

However, Huck said the complaints were not about poll takers.

Huck did not strike down the ban on those

passing out campaign materials or electioneering communications within 100 feet of voting places.

The following week, *The AP* and five news networks successfully challenged a similar law in Nevada.

FIRST AMENDMENT

Prosecutor tries to expel media from courtroom

SEBRING – Three sentencing hearings were postponed after a prosecutor asked to expel a *Highlands Today* reporter from a Sebring courtroom.

Assistant State Attorney Richard Castillo made the motion as three people were to be sentenced on charges of practicing pharmacy without a license.

Circuit Judge Peter Estrada postponed

the hearing to a later date so that the newspaper's attorneys could argue the motion. Castillo said the motion was not "that big a deal," according to *Highlands Today*.

Castillo did not explain in court why he wanted the media removed from the courtroom.

"We are dealing with the First Amendment of the United States

Constitution, so to me it is a big deal," Estrada said.

Castillo eventually chose not to pursue the motion, according to attorney Gregg Thomas, who represents *Highlands Today*.

The defendants pleaded no contest to the charges in exchange for probation. Their attorney, a Highlands County commissioner, did not object to the media's presence at the sentencings.

South Florida tribe files suit for water records

MIAMI – The Miccosukee Indian Tribe sued the South Florida Water Management District (SFWMD) to obtain records it claims are public information.

The suit, filed in Miami-Dade County circuit court, seeks the release of records relating to an Environmental Protection Agency proposed amendment titled "Regulations Implementing the Clean

Water Act."

The tribe requested the records in August 2006, but the SFWMD said it was not required to release the information, according to the tribe's

ACCESS RECORDS

Candidate drops access objection

SARASOTA – The winner of a Congressional race who successfully kept details of a lawsuit sealed prior to the September primary election finally dropped his objections to opening the suit.

Vern Buchanan, a Sarasota businessman who narrowly won Katherine Harris' vacant seat in the U.S. Congress, settled the suit in 2001. Details were made public prior to the midterm elections.

Buchanan sued developers of the Sarasota Ritz-Carlton condominium and hotel project for unfairly cutting him out of the deal, according to the *Sarasota Herald-Tribune*.

Buchanan received \$1.35 million as a result of the settlement. Fearing his opponents would use the case to damage his reputation, Buchanan fought to keep the case sealed until after the Republican primary, according to the *Herald-Tribune*.

The developers claimed that Buchanan misrepresented his ability to secure financing for the \$122 million project.

Buchanan said he could have gotten as much as \$9 million in the suit but settled after the *Herald-Tribune* wrote a story about the dispute in 2001, according to the newspaper.

"My reputation is more important than a few dollars," Buchanan said.

Judges suspend order to release visitor logs

WASHINGTON D.C. – An appellate court suspended a ruling that ordered visitor logs for Vice President Dick Cheney’s White House office and residence to be produced by the Secret Service.

U.S. District Judge Ricardo M. Urbina had directed the government to process a Freedom of Information Act request made by *The Washington Post*, but the appeals

judges granted the federal government’s request for a stay. The federal appeals judges said the “stringent standards required for a stay” were satisfied by the government.

Urbina also had ordered visitor logs for 12 of Cheney’s senior staffers to be released, according to The Reporters Committee for Freedom of the Press.

The Post had asked for expedited

processing of the request in order to inform the public before the midterm elections about lobbyists’ potential impact on White House policy decisions.

Lawyers for the government argued the visitor records belonged to the Office of the Vice President and were not subject to the FOIA. Urbina ruled that the records were controlled by the Secret Service and should be considered records of a federal agency.

Effort to recall commissioner won’t proceed

DEERFIELD BEACH – Efforts to recall a city commissioner for allegedly violating the Sunshine Law failed after organizers missed the deadline to file the required 1,600 petition signatures.

Deerfield Beach City Commissioner Steve Gonot will remain in office, and Gonot describes the recall effort as backlash from his attempt to fire the city manager last year.

Recall election organizers accused Gonot of violating the Sunshine Law by talking privately with another commissioner about an appointment to a city board.

The Broward State Attorney’s Office found no evidence of wrongdoing.

New law changes handling of sensitive security information

WASHINGTON D.C. – Information the federal government deems “sensitive security information,” or SSI, is now subject to a review process after three years, according to a new law.

After three years, agencies must determine “in a timely manner” if SSI is too much of a security threat to be made public. The automatic review period is similar to the automatic review process required for classified information.

The new law applies to all agencies but is aimed at the Transportation

Security Administration. Some critics say the Transportation Security Administration overuses the SSI designation.

The law also allows for lawyers in civil cases to access some SSI information if they show “substantial need” and obtain security clearances.

This change is expected to impact a lawsuit against the airlines and the government brought by the families of Sept. 11 victims. So far, the TSA’s citing of SSI rules has made it difficult for plaintiffs’ lawyers to obtain information.

Internet defamation lawsuit nets \$11 million verdict for plaintiff

FORT LAUDERDALE – A Broward County jury awarded a woman \$11.3 million in damages for being defamed by Internet postings.

Sue Scheff, a children’s services referral provider, won the suit after a mother called her a “con artist,” “fraud” and “crook” on a Web site aimed at parents with children at boarding schools.

LIBEL

The defendant, Carey Bock, did not appear for the trial. Bock, of Louisiana, told *USA Today* that she temporarily relocated after Hurricane Katrina and

wasn’t aware of the trial date after returning to her home. Bock sought Scheff’s help to withdraw her sons from a school in Costa Rica. After a disagreement, Bock posted the critical messages.

Jewell libel suit set to advance

ATLANTA – A libel suit against *The Atlanta Journal-Constitution* got the go-ahead from a state court judge, 10 years after the Olympic park bombing that led to the suit.

Former Olympic security guard Richard Jewell can proceed with his defamation suit against the newspaper, although most of Jewell’s defamation claims against the paper were thrown out.

Judge John R. Mather ruled that a jury could decide whether *The Journal-Constitution* was wrong to report that

Jewell was suspected of placing a 911 call warning the bomb would go off in Centennial Olympic Park.

Other media outlets have settled with Jewell, but *The Journal-Constitution* stands by its reporting.

Jewell, now a deputy sheriff in Georgia, was first praised as a hero for finding a backpack that contained the bomb and helping clear spectators from the area. But it was later reported that the FBI suspected Jewell. In 2005, Eric Rudolph pleaded guilty to setting the bomb.

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“Sunshine Sickness” may call for an intervention

There’s a 12-step program to help one recover from just about every form of destructive behavior these days.

They have 12-step programs for drinking, drugs, smoking, promiscuity, pornography, eating disorders, gambling . . .and so on.

I’ve decided it’s time to create a program designed to help government officials who have demonstrated an unwillingness or an inability to follow the state’s Sunshine Laws.

These poor souls suffer from the dreaded Sunshine Sickness, and they are in desperate need of a support group to help them come out from the dark holes where they’ve been hiding and into the public light.

The Back Page

By Robyn Tomlin

Step one: Admit you are a Sunshine Sinner and that you have done wrong.

Step two: Accept that no government body or public official is above the state’s open records and meetings laws, which were designed to give the public the ability to scrutinize the decisions of those elected, appointed or hired to represent them.

Step three: Learn exactly what these laws really say, how the courts have interpreted them and how to better comply with them.

Step four: Make a list of all of those harmed by your past deeds, and ask for forgiveness.

Step five: Question and defy anyone who exhibits signs of Sunshine Sickness.

Step six: Transform yourself from a Sunshine Sinner into a Sunshine Saint by reaching out to others in need of help and support.

I know you think I’m joking - but I’m really serious. Sunshine Sickness is a wretched disease, and when it is allowed to go unchecked it can become contagious.

Given recent events in Ocala, I can think of a few people who should join the inaugural session of this new support group.



Robyn Tomlin

In case you missed it, a Marion County grand jury indicted Munroe Regional Health Systems Inc. on charges that it violated the state’s open records and open meetings laws during the search for a new chief executive officer.

The grand jury opted to charge the corporate entity instead of any individuals, since the board members involved are all community volunteers and they were following the advice of their attorney, Gary Simons.

Now, those accused are, of course, innocent until proven guilty - but the six-page indictment issued by the grand jury lays out a compelling case, going so far as to say “it is clear to us that the entire process of selecting a new CEO was done in a fashion designed to thwart public scrutiny as much as possible.”

They later add that they are concerned that “if such extreme measures were taken to avoid public scrutiny in this matter, they may have been used, or may be used, in other aspects of the hospital’s operation.”

Given this unfortunate turn of events, I’d like to nominate a few board members and at least one attorney to serve as founding members of Sunshine Sinners Anonymous.

But somehow I don’t think that’s likely, since the first step in the healing process is admitting you’ve made a mistake.

When hospital board member Malcolm Duggan was asked for his reaction to the indictment, he blamed the *Ocala Star-Banner* and denied any wrongdoing. He went on to say that calling the release of the names of the candidates for the top job at this community’s public hospital a matter of public interest is (and I’m paraphrasing here) a pile of horse manure.

That doesn’t sound like someone ready to take the first step, does it?

I think an intervention may just be in order.

Robyn Tomlin is the executive editor of the Ocala Star-Banner. This editorial is reprinted with permission of the Star-Banner. Tomlin came to Ocala in April 2005 from the TimesDaily in Florence, Ala., where she served for two years as executive editor and a year as managing editor. She is a 1996 graduate of the School of Journalism and Mass Communication at the University of North Carolina at Chapel Hill.