

THE BRECHNER REPORT

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Appeals panel OKs suit against CBS

PORT CHARLOTTE – A Florida appellate court has reinstated a libel suit against CBS's "60 Minutes."

John Heekin, an attorney, sued the television news magazine for a false-light invasion of privacy, claiming the show portrayed him as an abuser during a segment on men who abused and killed their domestic partners.

Judge James S. Parker, 12th Judicial Circuit, dismissed the lawsuit, saying that the two-year statute of limitations for libel had run out and that CBS was protected by the fair report privilege because it accurately reported information contained in public records.

A three-judge panel of the 2nd District Court of Appeal reinstated the lawsuit. It ruled that the statute of limitations should have been four years and said fair report privilege doesn't apply because Heekin was suing for false-light invasion of privacy and not public disclosure of private facts.

Heekin's ex-wife filed an abuse complaint with Charlotte County officials, but Heekin was never arrested or prosecuted. According to police, officers found no evidence of battery. An attorney for "60 Minutes" said CBS plans to appeal. (5/18/01 – 6/20/01; *Heekin v. CBS Broadcasting Inc.*, 29 Media Law Reporter 1795, June 19, 2001)

Sanford board settles lawsuit over Open Meeting violations for \$24,000

SANFORD – The Sanford Housing Authority Board agreed to settle a lawsuit with two tenants who claimed the board violated the state Open Meetings Law.

The two tenants sued the board, claiming the Open Meetings Law was

**ACCESS
MEETINGS**

Charges against publisher dropped

KEY WEST – Prosecutors have dropped the misdemeanor charges against a newspaper publisher arrested for revealing information from an internal police investigation before it was made a public record.

Dennis Reeves Cooper, editor and publisher of *Key West the Newspaper*, published a series of articles about the alleged mishandling of an internal investigation by the Key West police. Cooper also filed a complaint with the Florida Department of Law

Enforcement, which began its own investigation.

Key West police arrested Cooper after he published articles about the investigation. The police said the publisher violated a law that prevents anyone from revealing information about an internal police investigation before it becomes public record. A federal judge declared the law unconstitutional in 1990, but it remains on the books. Prosecutors dropped the case against Cooper on July 3. (6/26/01 – 7/9/01)

NEWSGATHERING

Judge refuses to dismiss records suit

BUNNELL – A judge has refused to dismiss a public records lawsuit filed by *The News-Journal of Daytona Beach* against the Flagler County Sheriff's Office.

The News-Journal requested jail transportation logs in late January to find out where the department had taken an inmate. The department refused to release the complete record because the logs revealed that the inmate had been taken to a mental health facility. The department claimed releasing the transportation logs would have violated the confidentiality of the inmate's

medical records.

The department released the records after the inmate's attorney revealed the inmate's medical condition to the media, but the newspaper continued its lawsuit in order to clarify the Public Records Law. Attorneys representing the Sheriff's Office said the case should be dismissed since the records had been released.

Kim Hammond, 7th Judicial Circuit, refused to dismiss the lawsuit and ordered Sheriff Jim Manfre to provide an explanation of why he delayed in releasing jail records. (2/1/01 – 6/22/01)

**ACCESS
RECORDS**

violated when the city and the board hammered out an agreement behind closed doors that allowed four former housing board members to resign.

The tenants will split \$5,000, and the housing board will pay \$19,000 in attorney's fees as part of the

settlement agreement.

Although the board did not admit to an Open Meetings violation, the settlement also declares the resignation agreement null and void.

The U.S. Department of Housing and Urban Development still must approve the settlement. (4/24/01 – 6/22/01)

Newspaper won't have to pay opponent's legal bills

BARTOW – *The Ledger* of Lakeland does not have to pay attorney's fees to the Polk County Sheriff's Office over a public records lawsuit, a judge ruled.

The Ledger originally sued the Sheriff's Office and its health-care provider, Prison Health Services, for not turning over records concerning a settlement with a prisoner's family.

A judge ruled against Prison Health Services in 1997, saying the company withheld public records from the newspaper. Prison Health Services agreed to pay *The Ledger* \$22,500 in legal fees.

The Sheriff's Office asked Chief Judge Charles Curry, 10th Judicial Circuit, to force the newspaper to pay its

legal bills, arguing that the newspaper should only have sued the Prison Health Services and never involved the Sheriff's Office in the suit.

Curry refused to require *The Ledger* pay the Sheriff's Office's fee, ruling that the lawsuit was not frivolous and that public records requests did not have to be put in writing. (5/31/01 – 6/15/01)

Judge rules absentee ballots are open

PANAMA CITY – A judge has ruled that absentee ballot envelopes and voter precinct registers are subject to the state's Public Records Law.

The ruling came as part of John Braxton's legal challenge of the 2000 election, during which Braxton lost the race for Holmes County sheriff by a four votes.

Judge Clinton Foster, 14th Judicial Circuit, ruled the absentee ballot envelopes and precinct records are open to public records requests

because the state legislature did not pass a special exemption for the material.

Attorney General Bob Butterworth earlier issued an opinion that the ballot envelopes should be considered public record. (*Brechner Report*, June 2001)

Foster said that election officials did not withhold the records "with ill intent or a disregard for their official duties" but because they believed the information was confidential and exempt. (6/13/01)

Appeals court won't reverse e-mail ruling

TAMPA – Despite a request from Florida's attorney general, Florida's 2nd District Court of Appeal refused to re-examine its ruling barring the release of a judge's e-mail.

The appeals court earlier denied a request by *The Tampa Tribune* and WFLA-TV for copies of e-mails held by the 13th Judicial Circuit's chief judge. The newspaper wanted copies of e-mails sent and received by Judge F. Dennis Alvarez regarding an investigation into the conduct of another judge.

A three-judge panel ruled that the e-mails were not part of Alvarez's official duties and therefore not subject to a public records request. (*Brechner Report*, July 2001)

Attorney General Bob Butterworth filed an appeal in June, asking the appeals court to reverse the ruling.

He argued that Alvarez received the e-mail in his capacity as chief judge so the e-mail should be considered judicial records. The appeals court refused to reverse its opinion but ruled that the attorney general could ask the Florida Supreme Court to review the case. (6/7/01 – 6/15/01)

Tape of spy's confession ordered released

TAMPA – The FBI was allowed to disguise the face and voice of an undercover agent before releasing a videotaped confession of a convicted KGB spy.

The Tampa Tribune, WTVT-TV and WFLA-TV requested a copy of the videotaped confession of George Trofimoff, a former U.S. Army Reserve colonel convicted of passing intelligence documents to the Soviets from 1968 to 1994.

Judge Susan C. Bucklew, U.S. District Court for the Middle District of Florida, ordered the unaltered tape, which was played in open court, sealed.

She then ordered the FBI to provide the media with the videotape that blurs the identity of the undercover agent because the agent still is working undercover in other cases. (6/28/01 – 6/29/01; Decisions on file: *U.S. v. George Trofimoff*, June 12, 2001)

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, University of Florida, Gainesville, FL 32611-8400, (352) 392-2273.

Judge to review video of wild boar's slaughter

TAMPA – An audiotape of the killing and castration of a wild boar during a radio show was released to the public, but a judge is still reviewing a videotape of the event.

Disc jockey Todd "Bubba the Love Sponge" Clem has been charged with third-degree animal cruelty for having a boar castrated and killed as part of a stunt for his radio show on Tampa's WXTB 97.9 FM.

In addition to broadcasting the killing, Clem had the killing videotaped. Authorities plan to use the tape

against Clem during his trial, and *The Tampa Tribune*, the *St. Petersburg Times*, and WFLA-TV have requested copies.

Defense attorneys argued that releasing the video would make it impossible to find an unbiased jury.

Judge Herbert Baumann, 13th Judicial Circuit, ruled that audiotape could be released but said he would review the videotape before ruling on its release.

A hearing in the case is set for Aug. 23. (6/12/01 – 6/25/01)

Former mayor sues city over 1994 removal from office

MASCOTTE – Odis Lee Thomas, a former Mascotte mayor removed from office for violating the state’s Sunshine Law, is suing the city and the Lake County Sheriff’s Department over his removal.

Elected in the late ’80s, Thomas was removed from office in 1994 by

Gov. Lawton Chiles after he was investigated for corruption and charged with felony grand theft, felony corruption, misdemeanor assault and four Sunshine Law violations.

The state attorney never prosecuted Thomas for the Sunshine Law violations, and a jury found Thomas not guilty of

the other charges. Now Thomas has filed a civil lawsuit against the city and Sheriff’s Department for malicious prosecution.

A judge granted the city summary judgment in an almost identical lawsuit in federal court, but Thomas says he plans to appeal. (4/19/01)

NEWS GATHERING CONTINUED

AP photographer arrested during hearing

TALLAHASSEE– An Associated Press photographer was arrested as he attempted to take pictures during a sentencing hearing in Leon County.

Mark Foley was photographing the sentencing hearing of Cedric Green, who first made headlines as the youngest teen-ager arrested in the 1993 murder of a British tourist and who was being sentenced for the armed robbery of a grocery store.

Deputies asked Foley to move from his position in a public gallery then arrested him after a brief exchange.

He was charged with battery on a law enforcement officer and resisting arrest with violence.

Foley was released later that day from the Leon County Jail on \$2,000 bail. “I’ve been charged with two felonies that I didn’t commit,” he told the Associated Press. (6/17/01)

REPORTER’S PRIVILEGE

Subpoena dropped in visitation case

MIAMI – A circuit court judge dismissed a subpoena of a journalist in a child visitation case, ruling that the parties failed to show enough evidence to overcome the reporter’s privilege against compelled testimony.

Attorneys for Jorge Garcia subpoenaed Patrick Fraser, an employee of WSVN Channel 7, to get access to a videotape Fraser made concerning Garcia’s visitation dispute with Lourdes Garcia.

Fraser refused to testify. Judge Henry H. Harnage, 11th Circuit, ruled that Fraser did not have to testify or turn over the videotape. (*Garcia v. Garcia*, 29 Media Law Reporter 1657, May 22, 2001)

LIBEL

Panel upholds dismissal of libel lawsuit

DAYTONA BEACH – Florida’s 5th District Court of Appeal upheld the dismissal of a libel lawsuit against *The News-Journal* of Daytona Beach, ruling that the paper was protected by the fair report privilege.

Kevin “Kit” Carson, an attorney, sued the newspaper in 1998 after losing a judgeship election in Volusia County. Carson claimed that 14 statements made by the newspaper were defamatory, including information the newspaper gathered from the Bureau of

Unemployment Compensation records.

Circuit Court Judge Joseph Will, 7th Judicial Circuit, dismissed the case in June 2000, saying that the 14 statements were either not defamatory, protected as pure opinion, or protected as fair reports of a public document. (*Brechner Report*, September 2000) The three-judge appeals panel affirmed Will’s decision, commenting that the newspaper had accurately summarized state records and was entitled to the fair report privilege. (6/26/01)

FIRST AMENDMENT

Court overturns ban on soliciting wreck victims

TALLAHASSEE – The Florida Supreme Court overturned a ban that prevented businesses from soliciting car wreck victims, ruling that the 1977 law violated the First Amendment’s protections for commercial speech.

The law made it a third-degree felony for chiropractors, doctors and lawyers to contact accident victims.

The Court, however, overturned the charges against a chiropractor who was convicted of soliciting accident victims, saying that the chiropractor was seeking

patients and did not intend to defraud insurers.

The Court also ruled that the statute was “an impermissible encroachment upon First Amendment commercial speech rights.” The Court reasoned that the ban on solicitation did not substantially advance the government’s interest in controlling insurance fraud and that the statute was not sufficiently narrowly tailored. (6/1/01 – 6/5/01; *Florida v. Charles Bradford*, No. SC96910, May 31, 2001)

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First Amendment survey offers some good news

There's some good news for the media in The Freedom Forum's annual State of the First Amendment Survey: The American public continues to say that the media have a valuable watchdog role, keeping an eye on government. But there's a flip side: A majority of Americans also say that the government needs to keep

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By *Kenneth A. Paulson*

the media in check. That sentiment runs throughout our annual survey.



Kenneth Paulson

Americans respect the principles of free speech and free press but are often troubled by their practice.

A total of 82 percent of respondents say they believe it is important for the media to hold the government in check. Conversely, 71 percent say they believe it is important for the government to hold the media in check. When asked whether they have more concern about the media having too much freedom or the government imposing too much censorship, 41 percent say their concern lies with the media and 36 percent say they are more concerned about government censorship.

Of course, the word "media" encompasses a broad spectrum of news, education and information providers. When asked specifically about the freedom of the news media, 46 percent of Americans say the press has too much freedom to do what it wants. This is down slightly from last year's figure of 51 percent, but certainly not a source of comfort for America's newspapers and broadcasters.

It also appears that the 2000 presidential election has had an impact on how the American public perceives both the press and the U.S. Supreme Court. The incorrect prediction that Al Gore had won the election, coupled with a Supreme Court hearing in which, as usual, television cameras were barred, may have had a lasting impact on public opinion.

For example, we've asked in our last two surveys whether a news report projecting the winner of an election would tend to discourage people from voting. In two successive years, 64 percent of respondents have said that they believe people would be less likely to vote. But if the perception of a problem has remained steady, the solution for that problem has shifted dramatically. Eighty percent of those polled this year said television networks should not be allowed to project winners of

an election while people are still voting. This is up from 70 percent a year ago.

For the first time in our polling, we had a majority of respondents say they strongly believe that broadcasters should be allowed to televise the proceedings of the U.S. Supreme Court. Another 26 percent mildly agree with that proposition, making three out of four Americans in favor of television access to the most important court in the land.

The survey was based on telephone interviews with a random national sample of 1,012 adults, conducted between May 16 and June 6, 2001, by the Center for Survey Research and Analysis at the University of Connecticut.

The most startling result of the survey is also the one that may be the most difficult to explain. Each year, we ask Americans to agree or disagree with this statement: "The First Amendment goes too far in the rights it guarantees." In 2001, 29 percent strongly agreed with that statement, with another 10 percent mildly agreeing. That suggests that almost four in 10 Americans believe that the First Amendment provides too much freedom, up dramatically from just one in five last year.

The polling experts at the University of Connecticut say this sense of too much freedom is particularly strong among those who believe that there should be a law to prevent broadcasters from predicting election winners before the polls are closed.

If there is indeed that kind of cause and effect, there's a clear message for the news media here. A highly visible and reckless error — such as predicting the wrong winner in a presidential election — can have devastating consequences for the First Amendment. The challenge remains for the nation's press to restore faith in its role as a watchdog. It's clear that the public still respects that role, but in an era of happy-talk broadcasts, tabloidization and a dearth of investigative reporting, many Americans are left to wonder whether that watchdog is barking or simply howling at the moon.

More data from the survey and Paulson's complete analysis of the survey are available at <http://www.freedomforum.org>.

Kenneth A. Paulson is a senior vice president for The Freedom Forum and the executive director of the First Amendment Center.