
THE BRECHNER REPORT

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Lawsuit against commissioners dismissed

PARKLAND – A lawsuit claiming city commissioners violated Florida’s Open Meetings Law during contract negotiations was dismissed.

ACCESS MEETINGS

In March, commercial transaction lawyer Marilyn Bonilla Krantz

filed the suit on behalf of her husband, Stuart, Amy Conza, Michael Lucente and Natalie Jankowski Bigio.

The suit accused former Vice Mayor Ricky Gordon and Commissioners Michael Udine and Diane Weissman of privately discussing police services.

During these alleged meetings, the commissioners hired the Broward Sheriff’s Office to take over policing.

The Sunshine Law makes it illegal for elected officials to discuss public business in private.

The lawsuit sought to overturn the contract with the sheriff’s office and grant attorney’s fees to the plaintiffs.

In September, Bonilla Krantz proposed dismissing the case in exchange for an agreement by the city not to pursue legal fees or further legal action, which the city accepted.

Judge dismisses defamation lawsuit against newspaper

DAYTONA BEACH – A judge dismissed the second of two lawsuits filed against *The Daytona Beach News-Journal* for defamation.

In 2002, *The News-Journal* filed a lawsuit against three Ormond Beach county commissioners for violating the state’s Open Meetings Law during the firing and rehiring of City Manager Isaac Turner.

In its story about the lawsuit, the paper alleged that Randy Brewer and

Judge upholds restriction against reporters after journalist’s arrest

WEST PALM BEACH – A circuit judge refused to override an election supervisor’s rule that restricted reporters from standing within 50 feet of voters outside her office.

During early voting in October for the presidential election, Palm Beach County

Supervisor of Elections Theresa LePore enacted a rule that prohibited reporters from interviewing or photographing voters lined up outside the polls, according to *The Palm Beach Post*.

On Oct. 31, freelance journalist James S. Henry was arrested by Deputy Al Cinque while photographing early voters. According to witnesses, when Cinque tried to grab Henry’s camera, the journalist ran about 100 feet before he was tackled by the deputy. After pinning Henry on the pavement, Cinque yelled at him to “Hold still, stop moving,” punched the journalist in the back and grabbed his left arm to put a handcuff on his wrist, several witnesses said.

Following the incident, the People for the American Way Foundation filed an immediate injunction, arguing LePore did not have the authority to restrict free speech so blatantly.

Dean Gast acted as “conduits or liaisons” for the defendants in their private discussions. Both Brewer and Gast filed defamation lawsuits against the paper.

According to Jake Kaney, the newspaper’s attorney, Brewer’s suit was dismissed on grounds that Florida law allows media to report the content of public records, including judicial records. The story accurately reported those

The state law allows elections officials to bar non-voters from being in an area 50 feet from polling places. But, according to the foundation’s lawsuit,

LePore illegally ordered deputies to bar volunteers and journalists from areas outside the 50-foot zone around the polls.

Assistant County Attorney Leon St. John argued that LePore had the authority to do whatever was necessary to protect voters from intimidation and keep the voting process running smoothly.

Judge David Crow agreed with St. John, saying the law gives elections supervisors wide discretion when trying to run a proper election.

“The supervisor...does have the power to exercise her reasonable judgment in maintaining a 50-foot perimeter around those who are standing in line,” Crow said. “I think this would define the legislative purpose of the statute we have.”

He added that granting the foundation’s request to eliminate a buffer zone would create an unfair situation for voters whose polling locations had longer lines.

records, Kaney said, and, therefore, “Randy Brewer has no claim for defamation against *The News-Journal*.”

Last month, Walsh dismissed the defamation claim of Gast’s lawsuit, but Gast was allowed to amend his claim and the matter is still pending a decision, Kaney said.

Likewise, Brewer’s suit was dismissed without prejudice, meaning he can also amend his claim.

FIRST AMENDMENT

LIBEL

Judge declares computer records open to inspection

BUNNELL—Complying with a circuit judge’s ruling, Flagler County sheriff’s office officials opened their computers to a public records search.

In February, county officials had sent a public records request to the sheriff’s office for access to records detailing the production and distribution of its controversial calendars and holiday greeting cards. After not getting an adequate response from the office, officials filed a lawsuit.

Attorneys for Sheriff Jim Manfre argued they gave county officials all necessary documents and the law does not mandate access to computer terminals, particularly because the computers contain confidential information.

Circuit Court Judge Kim Hammond disagreed and gave Manfre 10 days to allow county officials access to the records or explain to the court why he could not comply. Manfre’s attorney, Sid Nowell, had talked about appealing the ruling, but then decided to give up the fight.

“We just decide to move on with our lives,” he said.

County Attorney Carl Kern and Deputy County Attorney Pat McCormack were pleased with the decision, but said it shouldn’t have taken so long.

“This should have been resolved within three days of our Feb. 3 public records request,” McCormack said. “Today was a large step forward.”

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.

U.S. Supreme Court won’t consider Aisenberg’s appeal for transcripts

WASHINGTON—The U.S. Supreme Court refused to consider an appeal by Steve and Marlene Aisenberg, who wanted the Court to release grand jury transcripts in a case where they were wrongfully prosecuted.

The couple said the release of the transcripts would expose the misconduct of local authorities and federal prosecutors.

Prosecutors have admitted they wrongfully prosecuted the couple in connection with the disappearance of their daughter, Sabrina, according to *The Tampa Tribune*.

The Aisenbergs were charged with lying to investigators, but judges later dismissed the charges.

Instead, they concluded that local investigators and federal prosecutors had lied about the contents of tape

recordings of wiretapped conversation with the couple.

In 2003, U.S. District Judge Steven D. Merryday ordered the government to pay \$2.9 million in legal fees and open the grand jury transcripts to the public, saying the public had a right to know about the facts of the failed prosecution.

The 11th Circuit Court of Appeals overturned Merryday’s decision, ruling that the transcripts should remain sealed. In addition, the court lowered the award for legal fees to \$1.5 million.

The nation’s highest court declined to consider the appeal, without comment.

“It’s a sad day for the American justice system when there can be such a travesty of justice and the people are denied their right to know how this could happen in America,” Barry Cohen, the Aisenberg’s attorney, said.

Computer error makes confidential files on child welfare cases publicly available

MIAMI—A reporter for *The Miami Herald* notified local child welfare authorities of a computer glitch that made thousands of confidential child abuse and foster care records available to anyone with Internet access.

The documents contained information about nearly 4,000 children under the watch of Kids Central, a private welfare agency that handles foster care service for at-risk children in the Department of Children & Families’ (DCF) District 13.

The agency has been criticized in the past over the security of their records.

According to *The Herald*, names of foster children, birth dates, Social Security numbers, photographs, case histories and directions to children’s foster homes, were all accessible with a password that had been posted on Kids Central’s Web site.

Following the reporter’s tip about the security breach, DCF officials immediately shut down the site.

“We take very, very seriously the confidentiality of client information,”

said Janice Johnson, chief executive officer of Kids Central. “It is paramount to what we do. We are resetting every password, and we are changing the process by which we

give out passwords.” Apparently, some caseworkers had trouble

accessing the state’s child welfare database, so the technology staff added a link to the Web site where people could post and read help requests without using a password.

According to *The Herald*, some replies to help requests contained specific log-in identities and passwords.

The newspaper’s reporter used that information to gain access to the confidential records.

A spokesman for Edmetrics, the company that developed the computer system, said security logs showed the reporter “was the only unauthorized access into the system.”

“We are making sure that our information is protected and that this never happens again,” Johnson added.

PRIVACY

Resident claims committee broke Sunshine Law with private meeting

DELRAY BEACH—A West Palm Beach resident filed a complaint with the State Attorney's Office, claiming the Delray Beach City Commission violated Florida's Open Meetings Law.

Mike Tague claims an ad-hoc committee of home and business owners and bicycle riders led by Bill Wood, the city Chamber of Commerce president, met privately to discuss adding bike paths along State Road A1A. The committee made recommendations and sent them to the Florida Department of Transportation (DOT).

"The complaint is that these people were assembled privately and without including interested people on their meetings," said Tague. "The mayor was specifically guiding the members of the

ad hoc committee prior to their meeting in public."

Wood and Mayor Jeff Perlman deny any laws were broken.

"It was a recommendation that came from an ad hoc committee that came from the Chamber of Commerce, which is not subject to the Sunshine Law," Perlman said.

In its report, the committee made recommendations for traffic speed control, parking, pedestrian sidewalks and crosswalks, landscaping and street lighting, in addition to creating bike paths and shoulders along A1A.

The DOT considered the recommendations and ultimately proposed to create 5-foot-wide bike lanes on the state road.

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American president.

The more-important questions center on the more-fundamental promises of journalism — promises that reporters make every time we pick up a phone. It is a debate to be settled in newsrooms, not courtrooms.

I was forced to confront these questions eight years ago, when I was sentenced to 70 days in jail for refusing to testify about a jailhouse confession given to me by a child killer.

I was bombarded with reasons to testify. Media lawyers said that the case could further weaken what little protections we had from subpoenas. Editors warned that our readers would perceive us as protecting a child killer. Fellow reporters reasoned that there is no difference between "on the record" and "on the stand." Others suggested that reporters cannot hold themselves above the law. In the end, for me, it came down down to the fundamental obligations of journalism.

We interview accused killers because it isn't fair to write stories based only on police accounts, because experience tells us that police make mistakes.

If journalists allow themselves to be used as government snitches, our promises of fairness and impartiality are meaningless. People should feel free to call us collect from the jail, just as confidential sources should feel safe

with our promises — no matter how distasteful or inconvenient it might be for the government.

I went to jail to protect not a child killer but my credibility with the next guy and the woman after that — one of whom will be the victim of police errors or abuse, one of whom will be innocent, one of whom could be you.

I spent 15 days in jail before a federal judge let me out to fight my appeals. The child killer was convicted without me.

The ordeal taught me that a free press doesn't belong to journalists; it belongs to our readers. It is not ours to squander with our excuses. I learned that we cannot earn respect for these principles by compromising them. I have a file folder containing more than a dozen subpoenas I received before going to jail. I don't need one for the subpoenas I've received since; there aren't any.

It's a terrible thing to ask a reporter to go to jail for doing her job. But the time has come to stand up and demonstrate that these principles — ones we mostly just argue in legal briefs and op-ed pieces — are worthy of that sacrifice.

The time has come to stop feeding the alligator.

Dave Kidwell is a staff writer for The Miami Herald. This article was originally printed in The Herald on Nov. 7.

FCC, Viacom settle indecency complaints about Howard Stern

WASHINGTON — Viacom agreed to pay a \$3.5-million fine to settle indecency complaints over remarks made by Howard Stern and other broadcasters over the last five years.

Federal Communication Commission (FCC) officials said the payment resolves investigations and fines involving 50 broadcasts on Viacom's CBS and UPN television networks, in addition to its Infinity radio subsidiary and related affiliates, according to *The New York Times*.

"This consent decree allows us to move forward and focus our efforts in this area by serving our viewers and listeners with techniques to safeguard live broadcasts," Viacom said in a statement.

FCC officials said the settlement was the largest in the commission's history.

As part of the settlement, the indecency complaints will not be considered when the spectrum licenses of the companies involved come up for renewal.

The settlement does not include the proposed \$550,000 fine for the incident at last year's Super Bowl, where singer Janet Jackson's breast was exposed during the halftime performance.

The half-time show, which was produced by MTV and also starred singer Justin Timberlake, aired on CBS television affiliates during prime-time viewing hours.

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First Amendment: Time to stop feeding the gators

There's a debate swirling in Washington, D.C., courtrooms about whether reporters should be legally allowed to keep their promises to confidential sources.

Reporters from some of the nation's largest news organizations are facing jail if they refuse to open their notebooks and share their sources with a high-profile

The Back Page

By David Kidwell

government leak inquiry. Newsrooms nationwide have responded with shock and alarm.

How could this happen in a country where freedom of the press and freedom of speech are fundamental civil rights vital to keep government accountable? In a country where a bedrock tenet is a media free from government interference?

The alarm is justified.

But anyone shocked by prosecutors and judges willing to make criminals out of journalists who defend these principles has not been paying attention. It has been coming for years, and the media have largely themselves to blame.

By the nature of their work, journalists' notebooks and phone conversations are replete with details that lawyers, prosecutors and police find useful. It's like having a small army of free investigators able to gain people's trust.

It is no surprise that newspaper lawyers are regularly employed to fight off subpoenas.

At first, the resistance is unequivocal and rooted in the lofty principles of an independent media.

But when it comes time to sacrifice for these principles, when the legal arguments fail and the choice is to compromise or face jail and fines, editors and reporters at news organizations large and small have quietly allowed the line to move as a matter of convenience.

Television stations routinely turn over unaired outtakes. Newspaper reporters rationalize themselves into cooperation deals. Lawyers encourage us to save the fight for another day, another subpoena. It's like feeding marshmallows to an alligator in the hopes that it will go away.

Matt Cooper of *Time* magazine learned this lesson. He was the first of five reporters to face jail at the hands of a federal



David Kidwell

prosecutor on a hunt for his sources. Someone in the Bush administration is suspected of leaking to them the name of an undercover CIA agent whose husband had been publicly critical of her bosses.

Ironically, none of the five reporters — from organizations including *The New York Times* and *The Washington Post* — published a story based on the information.

The right-wing talking head who did — *Chicago Sun-Times* columnist Robert Novak — won't say whether he cooperated with the inquiry.

Cooper cut a deal to testify after his source "released" him from his promise under orders from the White House, according to published reports. Cooper has said he was satisfied that his source's release was sincere and not coerced by the White House. So Matt Cooper threw the government a marshmallow and testified, hoping it would be enough.

The alligator is back.

Cooper has been subpoenaed again, ostensibly to talk about another source. After all, if you'll compromise on one — why not them all? Only one of the five — Judith Miller of *The Times* — has stood her ground. She faces an 18-month jail sentence for refusing to cooperate and is free while her lawyers appeal.

Miller understands the stakes. Journalism's most important responsibility is to challenge authority, not to allow itself to be co-opted by it; to expose the mistakes of those in power, not to help them.

The people who drafted the First Amendment understood that governments lie and cheat and steal, and that those in power are often unwilling to police themselves. So they handed the task to a free press.

Of course, we fail at this calling more often than we should.

It is a difficult job policing the government. Reporters can't subpoena bank records or tap phones or threaten someone's freedom. We don't have badges and guns. The only tool we have is our word, our promise. Without the strength of that promise, the residents of Washington, N.C., would still be drinking poisonous water, dozens of Catholic priests would still be shuffled from church to church after being caught molesting children, and Richard Nixon would still be viewed as a great

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