
THE BRECHNER REPORT

Volume 30, Number 1 ■ 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
January 2006

Media win right to examine photographs

TALLAHASSEE – The Florida Supreme Court refused to review a decision by the 2nd District Court of Appeals that grants members of the media access to photographs in the Carlie Brucia murder case.

Attorneys for four Florida media outlets had fought the trial judge's closure order, which prevented the media and the public from being able to view crime-scene and autopsy photos that had been entered into evidence in the case.

The attorneys did not request the right to publish or broadcast the photographs, but instead sought access merely to inspect the pictures.

The Court of Appeals agreed with media attorneys that access to the evidence was an important element of a public trial.

"The broadest issue in this case is whether the State can rely upon secret evidence to obtain a conviction for a capital offense," Judge Chris Altenbernd wrote for the Court

of Appeals. "Although Mr. Smith's trial has been broadcast on television and conducted in an open, public courtroom, these specific items of evidence have been concealed from all members of the public and the press."

The photographs, used by the state in its capital murder case against Joseph

P. Smith, contained nude images of the young victim.

The trial judge sealed the photographs after the victim's father requested they be confidential and shown only to the jury.

The Court of Appeals ordered that each of the four petitioning media outlets be allowed to send one journalist to view the photographic evidence.

After the state Supreme Court refused to hear the case, Florida Attorney General Charlie Crist made an emergency appeal to the U.S. Supreme Court requesting a stay of the photographs' release.

Associate Justice Anthony Kennedy reviewed the emergency appeal and denied the state's request for a stay.

ACCESS RECORDS

Dow Jones seeks limits on order

WASHINGTON – Dow Jones & Co. Inc., which publishes *The Wall Street Journal*, asked a federal district court to limit a protective order that would prevent I. Lewis "Scooter" Libby from publicly disclosing materials obtained in his prosecution.

Libby was indicted in late October on counts of perjury and obstruction of justice that arose out of a federal prosecutor's investigation into the leak that uncovered CIA operative Valerie Plame.

The prosecutor's proposed protective order would limit access to all "material produced by the government in preparation for or in conjunction with any state of the proceedings" in the case.

The Federal Rules of Criminal Procedure require that a protective order in a criminal case be supported by "good cause," which Dow Jones' attorneys argue is not present.

Attorneys for the media company assert that Fitzgerald has made no showing to justify secrecy of the documents.

Hospital reviews now available in online database

TALLAHASSEE – A new Web site will allow customers to investigate the safety and quality of Florida's more than 280 hospitals.

State health officials unveiled the site, which lists a hospital's performance in 20 areas. Included among the information are the death rates for patients undergoing common surgeries.

The site also details complications of hospitalization, such as bed sores and blood clots, incurred by patients who are treated at the facility.

The site – www.floridacomparecare.gov – attracted so much use during its first days that it was unavailable at times. More than 75,000 Web surfers logged on in the first hour alone.

Officials created the site at the direction of the Legislature, which passed a law in 2004 requiring public disclosure of infection rates and other key information related to medical care.

UF instructor demands e-mails

GAINESVILLE – After heavily amending his complaint, University of Florida instructor Charles Grapski re-filed his lawsuit against UF President Bernie Machen.

He seeks the release of records relating to the financing of Gator Growl, a pep rally during UF's Homecoming.

Grapski's earlier suit was dismissed after a judge ruled that he had misled the

court by failing to inform the court that some documents had been provided.

Grapski re-initiated his actions, amending his complaint with information obtained from the records UF had provided.

Grapski now seeks the release of numerous e-mails to Machen, which Grapski claims Machen improperly deletes after he reads them.

County agrees to release local official's records

JACKSONVILLE – Mayor John Peyton's public records will soon be available to the public after remaining out of the sunshine for up to 18 months.

Duval County officials had been withholding documents that are normally accessible to the public, including the mayor's marriage license, deeds, mortgage forms and property records.

The records were unavailable both in person and online, unlike those of other officials.

Peyton's records were marked confidential after law enforcement officials received threats against the mayor.

After reporters at the Jacksonville *Times-Union* pressed officials for the documents, they agreed to release them.

Both Duval County Clerk of Court Jim Fuller and Property Appraiser Jim Overton said that withholding the records was a mistake.

Peyton was unaware that his records were not available and had listed his property on financial disclosure forms.

"I think full disclosure is appropriate," he said.

Ruling allows FEMA records to remain out of public view

FORT MYERS – The names and addresses of hurricane victims who received federal aid will remain under seal, according to a recent federal ruling.

U.S. District Court Judge John Steele denied a request from Florida newspapers for access to 2004 hurricane records from the Federal Emergency Management Agency.

The newspapers sought the records to investigate FEMA's handling of the more than \$5.6 billion distributed throughout the state to victims of the

2004 storms.

Steele said in his opinion that the release of such information would constitute a "clearly unwarranted invasion of privacy."

Steele did order the agency to turn over records indicating how it advised President Bush regarding federal aid obligations.

Although recommendations made to Bush will remain secret, officials must release portions of the documents related to talking points, background information and facts.

Committee loses power for closing public meeting

NAPLES – Collier County commissioners voted to decrease the power of the Collier County Productivity Committee after it was found to be in violation of the state's Sunshine Law.

An internal investigation revealed that the Productivity Committee had excluded a candidate for a committee position from a public meeting in order to discuss the candidate.

As a result, the Productivity Committee will no longer rank candidates for open positions.

In the past, the group had screened candidates and made ranked recommendations to the County Commission.

The investigation began after the Chamber of Commerce complained about the committee's actions during its discussion.

The committee asked one candidate, Brad Boaz of Barron Collier Partnership, to leave a June meeting where the Productivity Committee was evaluating candidates to recommend to the County Commission.

Deputy County Manager Leo Ochs determined after the investigation that Boaz should not have been asked to leave the room during the Productivity Commission's discussion of candidates.

The Sunshine Law requires that meetings of publicly elected and appointed bodies be open to the public unless they are closed in accordance with exceptions to the law.

ACCESS MEETINGS

ACCESS COURTS

Courtroom camera legislation garners approval of House

WASHINGTON – The U.S. House of Representatives voted in favor of proposed legislation that would allow federal district and appellate court proceedings to be televised.

The proposal, which allows judges to maintain discretion with regard to the recording, passed 375-45.

Republicans voted 221-1 in favor of the amendment while Democrats were split 153-44.

The bill would amend the "Secure Access to Justice and Court Protection Act" to include provisions of the "Sunshine in the Courtroom Act."

The proposal would allow cameras and recording devices in federal courts on a three-year trial basis.

The legislation was backed by bipartisan support, including Reps. Steve Chabot (R-Ohio) and John Conyers (D-Mich.).

It attempts to extend camera access to federal courtrooms in much the same way that cameras have been allowed in the state courts.

Currently, cameras are allowed in some form of court proceeding in all 50 states.

More than 40 states allow coverage in both their trial and appellate court proceedings.

The bill now travels to the U.S. Senate, where similar legislation has been proposed by Sens. Chuck Grassley (R-Iowa) and Ted Stevens (R-Alaska).

Island publisher settles lawsuit over 2001 arrest

KEY WEST – The publisher of an island weekly newspaper will receive a \$40,000 settlement after he spent three hours in jail.

Publisher Dennis Reeves Cooper was arrested in June 2001 for publishing information about a complaint that he had filed against the island's police department.

Cooper published the information

about his complaint to the Florida Department of Law Enforcement for two weeks.

After publishing the information, Cooper was arrested on a warrant sworn out by Police Chief Buz Dillon, whose police department had been the subject of much criticism in *Key West The Newspaper*.

The settlement comes after the 11th

U.S. Circuit Court of Appeals ruled that the law under which Cooper was arrested was unconstitutional.

The state statute forbade people who filed a complaint against a law enforcement official from discussing the case.

In addition to Cooper's \$40,000 settlement, his attorney's fees will also be paid. That part of the settlement amounts to \$200,000.

ACCESS MEETINGS CONTINUED

City officials will face charges resulting from 2004 breakfast

POMPANO BEACH – Four city commissioners charged with breaking Florida's Open Meetings Law will have to defend themselves in court.

Circuit Judge Robert W. Lee denied their request to dismiss the non-criminal charges.

Their attorney will now have to respond to the complaint filed by the State Attorney's Office.

The charges stem from a June 2004 breakfast at the Mr. Latin Grill, where the four officials met with Broward Sheriff Ken Jenne to discuss crime reporting.

The meeting between Jenne and commissioners George Brummer, Kay McGinn, Lamar Fisher, and Susan Foster

had not been publicized.

The law requires that meetings of elected or appointed bodies be open to the public, that notice of the meeting be posted and that minutes of the meeting be taken.

The law prohibits closed discussions, whether formal or informal, between two or more members of the same board on a topic on which the board is expected to take action.

In March, city activist Ed Stanton, who has since run against McGinn, complained to the State Attorney's Office after he learned about the meeting.

The commissioners contend there was no discussion in violation of the law.

Clerk's release of information raises questions

FERNANDINA BEACH - City Clerk Cassandra Mitchell will be suspended with pay while the State Attorney's Office investigates the release of employee Social Security numbers.

The Fernandina Beach Commission voted to take action against Mitchell

PRIVACY after she provided the information while filling a records request.

The numbers were included in an e-mail to a former city commissioner who had requested salary information.

City Attorney Debra Braga ruled the practice violated the law.

However, Mitchell said the release was inadvertent.

COURTS

Court considers prisoner news case

WASHINGTON – The U.S. Supreme Court will hear arguments this term in a case dealing with the free-speech rights of Pennsylvania prisoners.

The justices agreed to review *Banks v. Beard*, a case in which the 3rd U.S. Circuit Court of Appeals ruled that a ban on most reading materials and personal photographs violated their free-speech rights.

The inmates who challenged the ban were members of a segregation unit, where prisoners remain in their cells for 23 hours a day and are rarely allowed to communicate with others.

Attorneys for the state argued that the restrictions are only imposed on disruptive prisoners who have not responded to other punishments. As a part of their petition to the U.S. Supreme Court, state attorneys quoted a dissent by Supreme Court nominee Samuel Alito.

Alito dissented in the case, arguing that the state should be allowed to withhold the news and that prison officials could use reading materials as a reward to encourage good inmate behavior.

If Alito is confirmed, he will likely have to recuse himself and allow the eight other justices to decide the case.

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
Amy Kristin Sanders, Editor
Alana Kolfrath, Production Coordinator
Anaklara Hering, Production Assistant
Christina Locke, 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.

Online registries shouldn't be an easy way out

The term “sex offender” became a regular part of the news media’s vocabulary in 2005 as a series of high-profile abductions and slayings made headlines across the nation. In Florida, Jessica Lunsford, 9, and Sarah Lunde, 13, were each allegedly killed by a sex offender. Shasta Groene, 8, was allegedly abducted by a sex offender from a grisly murder scene at her Idaho home.



Christina Locke

But before Jessica, Sarah or Shasta, a little girl from New Jersey named Megan Kanka became the namesake for laws that require those who commit sex crimes to register with the government and for some of that information to be released to the public. Megan, 7, was killed by a neighbor who had twice been convicted of sex crimes against children. Her parents were shocked that he was allowed to live so close without their knowledge, and they lobbied the

The Back Page

By Christina Locke

federal government for a solution. Megan’s Laws, as they are commonly known, are in effect in every state and the District of Columbia.

Most states use the Internet as one way of releasing sex offender information to the public, and most states have incorporated this notification method into their statutes. Online sex offender registries allow users to search for offenders by name or within a certain county, ZIP Code or radius from a specified location. The search capabilities vary from state to state, as does the information posted about each offender. In general, the offender’s photograph, name and any aliases, home address, and the nature of his or her conviction are made available on the Internet.

Sex offenders in Alaska and Connecticut have challenged the publication of their personal information on the Internet all the way to the U.S. Supreme Court. In 2003, the Court struck down claims of unconstitutionality—specifically, ex post facto and due process violations—in *Smith v. Doe* and *Connecticut Department of Public Safety v. Doe*. Writing for the majority in *Smith*, Justice Kennedy described Internet registries as “efficient, cost effective, and convenient” for the public.

Sex offender registry Web sites have cleared both statutory and Supreme Court hurdles. But do they really work? The push for Internet registries is based on the premise that citizens will seek out information about offenders who live near them and be better able to protect themselves. One problem with this theory is that studies show most sex crimes against children are not committed by strangers who might move next door, but by individuals whom the children know—relatives, family friends, etc.

The online registries themselves can be problematic both in content and in substance. First, the information is not guaranteed to be accurate, as the disclaimers on many of these sites warn. So even if concerned parents check online registries, the information they glean from database searches may be inaccurate if public officials do not consistently update the registries. If parents don’t take this problem seriously, they may be lulled into a false sense of security of which researchers in the area of sex offender management warn.

The second problem facing the efficacy of online registries is the ability of the average citizen to understand the information he or she gets. For example, Florida’s Internet registry contains an entry for Johnny Evander Couey, the suspect in Jessica Lunsford’s death. His physical description and location are easy to understand, but the information about his prior offense is not. “Lewd, Lascivious Child U/16 (Principal In Attempt)” is the extent of information offered as to why Couey is a registered sex offender. The gender of his victim is listed as “unknown,” and the site visitor has no idea when the 47-year-old committed the crime. These details can be important in helping a parent gauge the type of a threat they may face.

If the privacy rights of a certain class of individuals are to be compromised, even justifiably so, it shouldn’t be just because it is “convenient” or because the laws are popular with the public – it should be because they work.

Christina Locke is the 2006 editor of the Brechner Report and a M.A./J.D. student at the University of Florida. She was a frequent contributor to the Report, and her research has focused on access issues.