
THE BRECHNER REPORT

Volume 24, Number 5 ■ 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

May 2000

Trustees charged for violating Sunshine Laws

INDIAN RIVER — Two former Indian River County Hospital trustees have been indicted for violating the state's Open Meeting Law and perjuring themselves before the County Grand Jury in March.

Allen Seed and Richard Aldrich

turned themselves in to the Indian River County jail where they were booked on felony perjury and misdemeanor Sunshine Law violations. Both men posted \$3,000 bonds and were released by county jail officials. In a written plea, Seed pled not guilty to the charges. His case will be heard on June 2. Aldrich will be arraigned on Apr. 19.

The charges stem from testimony presented by the former trustees to the grand jury about several discussions between them and other trustees following board meetings last year. As previously reported, (*Brechner Report*, Feb. 2000) the state attorney's office has been investigating this matter since last November. (3/11/00)

Smear campaign victim wins \$6 million

GAINESVILLE — A former University of Florida student, who was the subject of a smear campaign while running for campus president, received a \$6 million jury verdict against one of the defendants in his defamation lawsuit. Peter Vlcek must pay \$1 million in compensatory and \$5 million in punitive damages for his involvement.

ACCESS
MEETINGS

LIBEL

In 1995, Charles Grapski ran for student body president and lost. In his lawsuit, he alleged that he lost the election due to false accusations. In 1998, a jury awarded Grapski \$250,000 in damages against Florida Blue Key, a UF honor society, and John McGovern, the successful candidate. Blue Key settled for \$85,000. (*Brechner Report*, August, 1998)

Vlcek, who at the time was a law student, did not appear at the trial and did not have an attorney. (3/15/00)

Judge rescues self in access lawsuit

TAMPA — A 13th Circuit Court judge has recused himself from a lawsuit filed by *The Tampa Tribune* against Tampa General Hospital (TGH) following the hospital's motion to remove him from the case. In a written order, Judge Edward Ward recused

ACCESS
RECORDS

himself, saying that no bias or impropriety exists, but that the hospital's request was legal.

According to an affidavit filed by TGH president Ron Hytoff, the hospital feared that the judge ruled for the paper in an attempt to keep it from printing embarrassing stories about him. Ward is the subject of a judicial investigation stemming from allegations of inappropriate behavior with female colleagues. The newspaper, along with *WFLA-TV*, filed suit to open the investigation records.

In January (*Brechner Report*, March 2000), the judge ordered the hospital to pay \$227,131 in attorney fees to the *Tribune* and \$65,000 to *The St. Petersburg Times* for their successful public records suits against the hospital. The case has been reassigned to Circuit Judge Manuel Menendez. (3/19/00)

Paper settles for defamatory column

GREEN COVE SPRINGS — A former county commissioner agreed to a \$500,000 settlement with *Clay Today* for printing reader comments about false child abuse accusations.

In 1998, Charles "Buddy" Griffin and his wife sued the paper, accusing it of printing inflammatory and unverified remarks. The suit stemmed from anonymous telephone responses to false accusations by Rebecca Lancaster Adams, the daughter of another county commissioner. Adams had called state officials and said that the Griffins had abused their young son.

The paper published the anonymous and unverified responses in its public comment column, prompting the lawsuit. Adams later admitted in court that she fabricated the abuse complaint and was sentenced to six months probation and community service.

It appeared that some of the comments were planted by Griffin's political enemies, according to Paul Kritzer, general counsel for Journal Communications Inc, in Milwaukee, *Clay Today's* parent company.

Griffin also blamed the paper for his unsuccessful attempt to retain his city council seat, which he lost by 355 votes. (2/28/00) [Editor's Note: See related article on back page.]

Councilman tries to open meetings by opting out

NAPLES — Saying he's had it with city business being conducted out of the public eye, a city councilman walked out of a joint meeting with other city agencies after the director of the South Florida Water Management District declined to allow him to tape record the

meeting.

Councilman Fred Tarrant feels that members of the public have the right to know what is said during meetings and if they can't be present, an audiotape of the discussions should be made. Since the meeting was not recorded, it would have

been hypocritical of him to stay at the meeting, he said.

Tarrant has previously filed amendments to the city policy to allow such recordings, but they have never made it to the full city council body for consideration. (3/10/00)

Commissioners abandon plans to recover fees

BARTOW — Polk County commissioners have dropped their pursuit of legal fees following a favorable verdict in a recent Open Meetings Law violation suit filed by a local community activist group.

The suit, filed by the Citizens for

Truth in Government, was dismissed by 10th Circuit Court Judge Cecelia Moore in January (*Brechner Report*, April 2000).

The community group is appealing the judge's decision.

Following the judge's ruling, County

Attorney Mark Carpanini petitioned the judge to award \$1,300 in attorney fees to the county.

County commissioner Marlene Young initiated the request to withdraw the motion. "I'm afraid it might appear to be punitive," said Young (3/8/00).

ACCESS RECORDS CONTINUED

Mayor turns over city records from home computer

NEPTUNE BEACH — Copies of public records kept on a home computer by the Neptune Beach mayor have been turned over to the city following a request by a former campaign supporter.

Harriet Pruette filed the records request in October, saying that citizens had a right to review the information since it involved city business (*Brechner Report*, April 2000).

On the advice of City Attorney Chris White and his private attorney, Mayor George Vaughn complied and turned over eight computer diskettes in February. (3/1/00)

FIRST AMENDMENT

Federal court upholds graduation prayer policy

JACKSONVILLE — High school seniors can continue to vote for a graduation message that may include prayer, according to a recent ruling by the 11th Circuit Court of Appeals in Atlanta.

Families of several Duval County students filed the suit, challenging a policy that allows students to vote for a

student who will deliver a two-minute message at graduation. The families questioned whether this policy violated the First Amendment.

In a 10-2 decision, the court upheld the policy. "The total absence of state involvement in deciding whether there will be a graduation message, who will speak, or what the speaker may say,

combined with the student's complete autonomy over the content of the message, convinces us that the message delivered, be it secular or sectarian or both, is not state-sponsored," according to the majority opinion written by Judge Stanley Marcus. (3/16/00)

Former victim advocate receives \$75,000

DELAND — A former victim advocate coordinator received a \$75,000 settlement from Volusia County after she filed a claim that her free speech rights were violated and that she was the victim of retaliation following her court testimony against the local sheriff.

Sandra Campbell testified against

Sheriff Bob Vogel in court following a suit filed by Gus Beckstrom, a Winter Park police lieutenant. Beckstrom had run and lost against Vogel in 1996 and sued to challenge the results of the election.

Campbell testified that deputies joked about illegally re-marking absentee ballots in the election, which Vogel won. (3/25/00)

DECISIONS ON FILE

Copies of case opinions, 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.

Gag order lifted just hours before verdict in tobacco trial

MIAMI — A federal judge lifted a gag order hours before a jury awarded a multi-million dollar settlement in a class-action lawsuit against the tobacco industry. Five publishing companies, including *USA Today*, *The Wall Street Journal*, *The Miami Herald*, *The Tampa Tribune* and *The Richmond (VA.) Times-Dispatch*, had petitioned the federal court to lift the gag order.

U.S. District Judge Adalberto Jordan ruled that the gag order imposed by state 11th Circuit Court Judge Robert Kaye and upheld by an appellate court, was a “broadly sweeping injunction on speech” that silenced the parties since October 1998, and was “facially unconstitutional.”

In his 20-page opinion, Jordan noted that the gag order was overbroad and never-ending. He also wrote that the trial was

newsworthy, based on the “unprecedented scope of the plaintiff class (of smokers) and the staggering amount of money at stake.”

In early April, a jury awarded three defendants in the case \$12.7 million in compensatory damages. The next step in the trial is the consideration and awarding of punitive damages. (4/8/00).

Judge unseals gag order in child pornography case

MIAMI — Shortly after issuing a gag order in a case involving the son of a wealthy philanthropist facing 188 charges of child pornography, an 11th Circuit Court judge rescinded his order.

According to the Miami-Dade Police and Hillsborough County Sheriff's Department, detectives posing as minors in Internet chat rooms engaged in sexual conversations with Ross Furman. According to police, Furman allegedly sent explicit photos

and made plans to meet for a sexual encounter. In addition, the Miami-Dade police department later seized his home computer, which allegedly contained 183 explicit photos of young children being sexually abused.

Through their attorney, Miami philanthropists Jerrold and Nancy Blair had sought to keep their son's name private.

The family's attorney, Steven Potolsky, argued that Furman's name

should be kept sealed since the publicity might hurt their ability to raise money for nonprofit children's organizations.

Following an emergency order requested by attorneys for *The Miami Herald*, Judge Stanford Blake lifted the gag order. “I have no legal basis to do it. I did something because I thought it was appropriate,” said Blake.

Furman was released on \$150,000 bond and ordered to stay with his parents on house arrest. (3/10/00)

NEWS NOTES

City employees reprimanded for talking to press

OAK HILL — Three city employees have received letters of reprimand after talking to a reporter from *The News Journal* in Daytona Beach.

After they discussed the initial trial of the city's random drug-testing policy with the paper's reporter, Police Chief Tom Ling, City Clerk Kim Cherbano and Deputy City Clerk Jessie McClaine

received letters of reprimand which will be placed in their personnel files.

“It was a breach of confidentiality that is much more serious than the employee refusing to take the drug test,” according to City Attorney Gayle Graziano.

The reprimands followed an internal inquiry to discover the identities of city employees who discussed the details of the

drug-testing with the media. “The reporter was doing a job, but the (three) employees should have known better and not responded,” said Graziano. (3/11/00)

ADVERTISING

Billboard bans raising concerns

TAMPA/BROOKSVILLE — Outdoor media companies are raising concerns about efforts to regulate the locations of new billboards.

Maverick Media filed suit against the city of Tampa over new ordinances, alleging violation of their First Amendment rights and discrimination against billboard companies since the laws still allow smaller signs to be posted near residential areas and roadways.

In a similar effort, Hernando County

councilmembers are considering billboard bans on the county's major roads, but loosening regulations on the number and type of signs, flags, balloons and banners allowed at businesses such as subdivisions and car dealerships.

Major sign companies are speaking out against the ban. “This is overkill as far as regulation to protect the community for four or five locations,” said Rob Hicks, a spokesman with Eller Media, a national outdoor advertising firm. (3/22/00)

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.jou.ufl.edu/brechner/>
e-mail: jthomas@jou.ufl.edu

Jane Inouye, Editor
Jackie Thomas, Production Coordinator
Meghan McShane, Production Assistant
Sandra F. Chance, J.D., Director/Executive Editor
Bill F. Chamberlin, Ph.D., Founding Director

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.

How to libel a politician: a textbook study

[Editor's Note: In his professional career as a journalist and journalism educator, Ralph Lowenstein had never testified against the press. The following case was so compelling that he agreed to become the chief witness for the plaintiff, at no charge. His court testimony was not necessary, since the case was settled by mediation before the trial date.]

Journalism teachers have long taught students that it is almost impossible to libel a politician. However, in what will probably become a textbook case of how this can be done, *Clay Today*, a newspaper in Orange Park, Florida, proceeded to libel a Clay County commissioner in such unmitigated fashion that it resulted in one of the largest libel settlements — \$500,000 — in the history of Florida.

Other newspapers might take note that the cause for the libel suit was the sort of public comment column that has become popular with newspapers throughout the country. *Clay Today*, a then semi-weekly owned by Journal Communications Inc. in Milwaukee, called its column Speakout! and invited readers to submit comments to a *Clay Today* answering machine. Although anonymity was promised, Speakout! rules required those calling to leave their names and telephone numbers on the tape.

In 1996, a number of the callers wanted to comment pro and con about a situation involving Clay County Commissioner Buddy Griffin. A tip to the state “hotline” had accused Griffin of abusing his six-year-old son. When the Florida Department of Health and Rehabilitative Services investigated the charge and found it to be so obviously false, it traced down the caller.

The caller turned out to be Rebecca Lancaster, 23-year-old daughter of Clay County Commissioner Larry Lancaster, an adversary of Griffin’s on the commission. *Clay Today* ran Rebecca’s court appearances in proper fashion, reporting that Rebecca was sentenced to six months probation, 120 hours of community service and \$1,500 in court costs and administrative fees.

The most damaging Speakout! comment about Griffin was this one: “Finally, maybe Becky Lancaster attends the same

church as the commissioner. And when she was at a very impressionable age, maybe she heard that commissioner ask the congregation for forgiveness for beating his wife. Becky is a nurse, and when she says she saw the child with bruises, she did what she’s been trained to do. Where there is smoke, there is often fire.”

**Ralph
Lowenstein**

Each issue of *Clay Today* published a box that stated Speakout! rules; among them: “Messages will be edited to accommodate space restrictions. Slandorous messages and those containing factual errors or profanity will not be printed.”

The “forgiveness” incident never occurred. There were no bruises. Rebecca was not a nurse.

On October 1, 1998, Griffin lost his re-election bid in a primary runoff by 355 votes, out of 7,757 cast. In December 1998, he filed suit for libel through two local attorneys, Stewart and Priscilla Harris.

What locked *Clay Today* into a libel suit that left it virtually no wiggle room?

It did not check on the accuracy of “facts” stated in the Speakout! columns, as it promised in the rules. It did not determine even that the calls were legitimate, and apparently erased the answering machine tape once it filled up. It was not rushing to meet a deadline, since it was a semi-weekly. It had reason to know in advance that some of the comments were lies, because it had printed the truth in its news columns earlier. It refused to print a retraction or apology.

Partly because of *Clay Today*, some people in Clay County will always think of Buddy Griffin as a child abuser and wife beater. His livelihood as an insurance salesman will be affected. Through its ignorance, indolence or indifference, *Clay Today* not only adversely affected the reputation of this decent man and his wife, it also screwed up the political process in Clay County.

The case was settled through mediation on February 25, 2000. The Associated Press reported that Paul Kritzer, general counsel for Journal Communications, apologized to the Griffins and said: “It was a situation where our editorial controls failed to do the job.”

Ralph Lowenstein is dean emeritus of the University of Florida College of Journalism and Communications.