

THE BRECHNER REPORT

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Judge: Paper can't publish story

NAPLES – The *Naples Daily News* is fighting a judge's order not to publish stories on a case involving a defendant charged with nearly two dozen felonies.

Circuit Judge Frank Baker banned the publication of the defendant's name, details of the case or a plea agreement involving the defendant's cooperation with law enforcement authorities.

When Baker refused to lift the ban, the *Daily News* decided to publish details of the case already

available in public records.

Both the prosecutor and defense attorney requested the pre-publication ban, citing concerns for the safety of the defendant and undercover law enforcement agents, according to the *Daily News*.

No further proceedings have occurred since the details were published.

The criminal case involved a man arrested last December on charges including trafficking cocaine and operating a chop shop.

PRIOR RESTRAINT

Secret docket investigations lead to consideration of new rules

MIAMI – In the wake of several news stories about secret dockets and sealed cases, the Florida Supreme Court is poised to adopt new rules for sealing cases.

The issue first drew attention in Broward County, where more than 400 civil cases have been sealed since 1989. Current rules do not require a hearing prior to sealing a case.

Hillsborough, Pasco, Pinellas, Palm Beach and Sarasota counties also have been the subject of reports of sealed cases, some of which were kept off court dockets as well.

COURTS

Florida Supreme Court justices were shocked when they read the articles, according to Chief Justice Fred Lewis. "Their chins hit the table," Lewis said.

The Florida Association of Court Clerks and Comptrollers submitted proposed rules to the justices, which would require judges to hold a hearing and give advance public notice prior to sealing a case.

The Court plans to adopt new rules once the public is given an opportunity to comment, Lewis said. "We're putting this one on the front burner because of the nature of what's happening," Lewis said.

Council members face charges

SEBASTIAN – Two city council members face noncriminal charges for violating the Sunshine Law. Andrea Coy and Sal Neglia could face fines of up to \$500 each and potential liability for attorney's fees.

"They talked about an issue – that could foreseeably come before the (council) for action – outside of a public meeting," Assistant State Attorney

Chris Taylor said.

At a Jan. 25 televised council meeting, Neglia said he recently called Coy to discuss a dispute between tennis players and lawn bowlers over the use of tennis courts.

The council later agreed to ask the city manager to review whether the lawn bowlers should be allowed to use the courts. Sebastian officials decided to allow the use.

ACCESS MEETINGS

News Journal appeals false light verdict

TALLAHASSEE – The *Pensacola News Journal* appealed an \$18 million verdict against the paper in a false light lawsuit.

Businessman Joe Anderson won the suit based on a story published in 1998 about his wife's death.

Lawyers for the *News Journal* and its parent company, Gannett, argued that Anderson did not prove the information published in the story was false.

The article said Anderson shot and killed his wife. Two sentences later, it said the shooting was determined a hunting accident.

"What they said was literally true in every paragraph, but they used the truth to create a false impression and the false impression was that Mr. Anderson murdered his wife," Bruce Rogow, an attorney for Anderson, said.

Gannett lawyers argued that other state courts have ruled that falsity is essential to support a false light claim.

First District Court of Appeal Judge Philip J. Padovan expressed concern about Florida's false light statute during oral arguments.

"Do you think there's some danger in it that we're going to hold newspapers and media outlets liable now for impressions that they've created?" Padovan said. "I mean where would that stop?"

The \$18.28 million verdict was for actual damages Anderson claimed he suffered when state regulators delayed permits for a cement plant he wanted to build, according to the *News Journal*.

COURTS CONTINUED

Candidate's lawsuit remains sealed before election

SARASOTA — A sealed lawsuit involving a Republican candidate for Congress remained out of public view prior to a Sept. 5 primary election. Vern Buchanan won the primary election in the 13th Congressional District.

Circuit Judge Nancy Donnellan ruled Sept. 1 that although the media and the public have a right to determine whether the lawsuit was properly sealed, an evidentiary hearing would be required. The decision prevented the court documents from being released prior to

the primary election.

Media attorney Carol Jean LoCicero argued that an evidentiary hearing should not be required, since one did not take place at the time the case was sealed, according to *The Bradenton Herald*

"It's a shame the public won't see it before (the primary election)," LoCicero said. "We will make every effort to have it before the general election in November."

The lawsuit related to Buchanan's involvement in developing the Sarasota

Ritz-Carlton. The other parties to the suit agreed to release the information, but attorneys for Buchanan objected to the release.

Tramm Hudson, one of Buchanan's Republican opponents, criticized Buchanan for fighting to keep the lawsuit sealed despite assurances that he had nothing to hide.

Buchanan's campaign said it fought the release of the lawsuit in order to prevent more "baseless" attacks by Hudson, according to *The Herald*.

Judge demands reporters' names in Trump trial

MIAMI — Lawyers for Donald Trump were scolded and given 10 minutes to tell a circuit judge the names of reporters they leaked information to regarding a subpoena against Broward Sheriff Ken Jenne.

Trump's suit alleges his former friend,

Richard T. Fields, and developers of the Seminole Hard Rock Hotel and Casino cheated him out of a lucrative contract.

Trump's lawyers gave Circuit Judge Jeffrey Streitfeld the names of two reporters at the Aug. 24 hearing.

The subpoena was withdrawn during

the hearing. It sought testimony and records from Jenne regarding his interactions with Fields, the casino developers, or the Seminole's security firm.

Jenne had been working as a paid consultant for the security firm, according to *The Miami Herald*.

Documents released, then sealed in Ocala murder case

OCALA — A circuit judge temporarily sealed public documents in the case of a man accused of murdering two college students in the Ocala National Forest.

For 60 days, documents related to Leo Boatman's case will be closed so that Boatman's attorney can review the documents and decide if he will argue

against the release of any items.

The *Ocala Star-Banner*'s attorney, Rachel Fugate, agreed with a temporary closure, but asked that all materials be released once a jury is sworn in.

Circuit Judge Sue Robbins previously released portions of Boatman's statements to police at the request of the *Star-Banner*.

FIRST AMENDMENT

Newsletter publisher removed from bus for taking photographs

BLOOMINGDALE — A Tampa area man was ordered off a public bus for taking photos on the bus. Norbert Gobin was not taking photos at the time he was asked to leave, according to *The Brandon News*.

Gobin rides the bus to and from his job at MacDill Air Force Base. He also publishes an electronic newsletter, "Bus-Chat," about transportation issues.

For the past four years, Gobin has sent the newsletter to about 300 riders

on his route and senior staff at Hillsborough Area Regional Transit Authority (HART).

Both Gobin and HART spokesperson Jill Cappadoro suggested the removal may have occurred because of security concerns on the MacDill bus line.

Cappadoro said HART has no policy allowing or prohibiting taking photos on buses.

Gobin said he tells passengers before he is going to take a photo and gives them the option to turn away.

Brechner.org

Visit The Brechner Center's Web site for more information about media law in Florida. You can find:

- How Florida lawmakers voted on open government laws in recent years.
- A history of cases in which public officials were convicted of criminal or civil charges under the Public Records or Open Meetings laws.
- A listing of cases in which plaintiffs obtained attorney's fees in legal actions filed under Florida's Open Meetings or Public Records laws.
- Past copies of *The Brechner Report*, along with a topical index.
- The 2006 *Citizen's Guide* to open government laws in Florida.
- Sample public records request letter.

ACCESS MEETINGS CONTINUED

Deltona city commissioner avoids charge

DELTONA — The State Attorney's Office won't pursue charges stemming from a private tour of the city by City Commissioner Janet Deyette, Mayor Dennis Mulder and four candidates for city manager.

State Attorney's Office spokeswoman Linda Pruitt said there was not sufficient evidence to find Deyette violated the Sunshine Law.

A complaint against Deyette was filed in May by Tammy Horn, daughter of a former commissioner who was recently defeated by Mulder, according to *The Orlando Sentinel*.

Deyette denied discussing city business during the van tour. But two of the candidates told *The Sentinel* that topics discussed during the tour included economic development and road projects.

Mulder said he was not surprised by the outcome of the probe.

"I don't think it's a problem until someone crosses the line," Mulder said. "I do agree that it causes you to take a hard look at what you do. I learned to be more careful."

Former City Commissioner Joe Perez said Deyette is new to politics. "I think that because they're all so new, there was the potential to err innocently," he said.

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"Technical violations" don't garner charges for officials

NASSAU COUNTY — Lunchtime gatherings of Nassau County Commissioners and the county administrator may have been "technical" Sunshine Law violations, but prosecutors won't be pursuing charges unless the conduct continues.

An anonymous complaint prompted a "preliminary review" by the Florida Department of Law Enforcement.

The FDLE forwarded its findings to the State Attorney's Office.

A subsequent complaint by two Fernandina Beach police officers alleged they overheard commissioners talking about county business at a local restaurant.

"While there appears to be technical violations...there is no indication of any sinister intent, personal profit or other illicit gains by any of the alleged participants," Assistant State Attorney Jay Taylor said.

Taylor said that commissioners can eat lunch together, but must refrain from discussing county business.

Resident is found not guilty of disrupting commission meeting

OAK HILL — A man charged with disrupting a public meeting was found not guilty by a county judge.

Ron Mercer interrupted a Feb. 27 city commission meeting to ask if commissioners followed proper procedure, according to *The Daytona Beach News-Journal*.

Former City Attorney Mary Hansen filed the charge against Mercer, saying Mercer "waved his cane" and was

threatened with removal.

Merger was unaware the flag salute, prayer and roll call had taken place earlier.

Volusia County Judge John Roger Smith watched a video of the meeting and concluded that Mercer's actions did not amount to "willful" disruption.

Oak Hill resident Julie Wood faces similar charges for the same meeting. Wood is awaiting a hearing, according to *The News-Journal*.

ACCESS RECORDS

Corps refuses to release Lake Okeechobee dike information

LAKE OKEECHOBEE — The Army Corps of Engineers won't release detailed information about weaknesses in the Herbert Hoover Dike, citing homeland security reasons.

The Palm Beach Post requested a copy of the corps' database and electronic maps of leaks in the dike.

"To reveal this type of information would only assist those who might seek to harm the residents downstream by damaging the dike," Patricia Morris, attorney for the corps, wrote to *The Post*.

More than 40,000 people live next to the lake.

Lake Okeechobee was the site of one of the deadliest natural disasters in U.S. history when a hurricane killed at least 2,500 people in 1928. The dike was constructed after that hurricane.

But U.S. Rep. Mark Foley (R-Fort Pierce) said he was "somewhat perplexed" by the corps' refusal to release the information.

Foley has promised to seek money from Congress to help with the corps' \$300 million dike repair project.

"How can I authorize help for them if they won't tell me where they're most susceptible?" Foley said.

Strong access laws helped expose boot camp flaws

Even as they yet again whittled away at the state's Public Records Law, Florida lawmakers earlier this year voted to disband a controversial juvenile justice boot camp program whose flaws had been laid bare largely through the use of that same Public Records Law.

In approving the Martin Lee Anderson Act, members of the Florida Legislature agreed to cease funding for all military-style boot camps, run by sheriff's offices, that use intimidation and force to gain compliance with rules and orders.

The move followed months of painstaking reporting into the Jan. 6 death of Martin, who stopped breathing after a gaggle of Bay County camp guards punched, kneed and dragged the youth around for at least 30 minutes — all while a video camera was running.

An autopsy performed by a Tampa medical examiner concluded Martin died of asphyxiation after guards held his mouth shut while forcing ammonia tablets up his nose.

Hillsborough County State Attorney Mike Ober has been investigating the incident since February, when Gov. Jeb Bush assigned him the case.

But Martin's ordeal, and the conditions of the five boot camps in Florida at the time, would not have come under legislative scrutiny if not for Florida's ever-threatened records law. *The Miami Herald*'s first story on Martin's death involving public records was published five days after the teen died.

We also asked almost immediately for all Inspector General reports for the Panama City boot camp, and reported Feb. 7 that in the two years before Martin's death, at least two other boys had complained they'd been choked during a restraint.

The story of Martin's death gained national attention two days later, when *The Miami Herald* convinced two state lawmakers to describe what they saw on a grainy 30- or 40-minute videotape of Martin's last moments at the boot camp. The state representatives said Martin had been "flung around like a rag doll."

The Feb. 9 story was of tremendous consequence for another reason: Relying upon an e-mail the newspaper obtained through Chapter 119 from Bay County Sheriff Frank McKeithen, *The Herald* argued — first in a public records request, and later in



Carol Marbin
Miller

a lawsuit the newspaper filed along with CNN — that state officials had made the videotape a public record by providing it to someone outside of the formal investigation.

The video was released by the Florida Department of Law Enforcement on Feb. 17, under a settlement with the newspaper and CNN. It was broadcast throughout the day, and over the weekend, to a national audience.

On March 2, we used the boot camp's own policies and procedures manual, as well as state records, to show that guards were to use physical force only when the kids were a threat to life or property or at risk of escape...and only as a "last resort."

A week later, on March 10, we quoted from the Panama City boot camp's own use-of-force report to describe exactly what happened to Martin. The restraint report, written by the guards, detailed every force technique that was used Jan. 5. The report quoted the youth as insisting he "couldn't breathe" while the physical force was being used.

On March 28, using e-mails we obtained through Florida's Public Records Law, we showed that the state's top state law enforcement officer, the head of the Florida Department of Law Enforcement, was sending cozy e-mails to the Bay County Sheriff even as he headed FDLE's investigation into Martin's death at the sheriff's boot camp. Commissioner Guy Tunnell was removed from the investigation, and later resigned.

Perhaps our most ambitious reporting involved an examination of every use-of-force report generated by the Panama City camp since 2003. We obtained the reports from the Sheriff's Office under a public records request, and entered important details of every record into a spreadsheet.

The story, published April 2, showed that, with very few exceptions, the teenagers in the Bay County boot camp were being restrained with painful, often banned techniques for minor infractions such as smiling, smirking and shrugging. And state juvenile justice officials were exercising virtually no oversight.

Carol Marbin Miller, a 20-year veteran of Florida newspapers, covers child welfare, juvenile justice and other social issues statewide for The Miami Herald, where she has worked since 2000. She also wrote for the St. Petersburg Times.

The Back Page

By Carol Marbin Miller