
THE BRECHNER REPORT

Volume 37, Number 11 ■ 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
November 2013

Circuit judge lifts gag order imposed on media

JACKSONVILLE – A Jacksonville circuit judge lifted a gag order prohibiting the media from publishing details regarding a suspect’s confession to an attempted murder, according to The Florida Times-Union.

Judge Adrian Soud originally imposed the ban on local media from reporting about an attack on a 9-year-old girl in a Best Buy restroom after a TV station briefly broadcast a redacted portion of the suspect’s confession, The Times-Union reported.

Ed Birk, attorney for WJXT TV-4, the station which broadcast the confession, said that the gag order was an “unconstitutional prior restraint of the news media which the Sixth

Amendment does not require and the First Amendment cannot tolerate,” The St. Augustine Record reported.

Birk also argued that since the police report was released as a public record, it was not the media’s job to determine what portions to publish, according to

The Record.

“Once the government has placed such information in the public domain, ‘reliance must rest upon the judgment of those who decide what to publish or broadcast,’” Birk said, quoting a U.S. Supreme Court case, *Cox v. Cohn*.

Judge Soud’s opinion ended the gag order, finding that “there are other arrows in the quiver of this court available to ensure and protect the defendant’s right to a public and speedy trial before an impartial jury.”

Sources: The Florida Times-Union, The St. Augustine Record

FIRST AMENDMENT

Committee meetings raise Sunshine Law issue

SARASOTA – A Sarasota development committee that excluded the public from planning meetings has raised Sunshine Law questions from several open government advocates, according to the Sarasota Herald-Tribune.

The Sarasota Development Review Committee, which helps facilitate city development projects, has meetings that are advertised and open to the public, but their initial planning sessions are closed, the paper reported. The sessions occur twice a month and discuss plans that will

be voted on in the future.

Deputy City Attorney Mike Connolly said the meetings are to ensure that details and technical issues are dealt with before public meetings. City Attorney Bob Fournier said the Sunshine Law does not apply to the committee because they are “fact finding” rather than “exercising discretion,” according to the Herald-Tribune.

Michael Barfield, vice president of the

Florida American Civil Liberties Union said that closing these preliminary meetings does not comply with the Sunshine Law, the paper reported.

“Getting their act together to have a seamless meeting is precisely what the Sunshine Law was designed to avoid. Democracy is messy and the public is entitled to watch the sausage-making process from beginning to end,” Barfield said.

Source: Sarasota Herald-Tribune

ACCESS MEETINGS

Senate committee approves federal shield bill

WASHINGTON, D.C. – The Senate Judiciary Committee approved a federal shield bill which would protect journalists from being compelled to testify about their sources, according to the Los Angeles Times.

The bill defines a journalist as someone who reports or gathers information for a news organization or service, the Times reported. The bill also allows judicial discretion in expanding the definition to cover other “legitimate

newsgathering activities,” according to the Times.

To minimize national security threats, the bill would not cover those who publish sensitive documents without authorization, the Times reported. Almost every state has a reporters’ shield law, but recent concerns over

leaks have prevented a federal bill from passing, according to the Times.

The bill will still require disclosures in extenuating circumstances, such as information pertaining to preventing crimes

or threats to national security, the Times reported.

“We’re closer than we’ve ever been before to passing a strong and tough media shield bill,” said Sen. Charles Schumer, D-N.Y. “Thanks to important bipartisan compromises, we’ve put together a strong bill that balances the need for national security with that of a free press.”

The bill passed 13-5 in the committee and will be sent to the Senate floor before moving to the House of Representatives, according to the Times.

Source: Los Angeles Times

REPORTER'S PRIVILEGE

Facebook 'like' now considered protected speech

RICHMOND, VA – The 4th Circuit Court of Appeals ruled that “liking” something on Facebook is considered free speech protected by the First Amendment, according to Florida Today. The court ruled that it is similar to having a campaign yard sign.

The decision overturned a lower court’s finding that clicking the “like” button was not a statement and could not be protected as speech, Florida Today

reported. Facebook posts, however, have been interpreted by other courts as protected speech.

The case concerned six sheriff’s office employees who were fired, allegedly because they “liked” the sheriff’s opponent on Facebook, according to the paper. The employees filed a lawsuit where they claimed their free speech protections were infringed.

The appellate court agreed with

the employees, finding that “liking a political candidate’s campaign page communicates the user’s approval of the candidate and supports the campaign by associating the user with it. In this way, it is the Internet equivalent of displaying a political sign in one’s front yard, which the Supreme Court has held is substantive speech.”

Source: *Florida Today*, *Bland v. Roberts*, 2013 U.S. App. LEXIS 19268

Court rules NSA program constitutional

WASHINGTON, D.C. – The Foreign Intelligence Surveillance Court released an opinion which held that collecting Americans’ cell phone records is constitutional, The New York Times reported. The opinion revealed the most extensive public explanation for the program to date.

Judge Claire Eagan found that the collection program was lawful and the scope and existence of the program was a political question. The program’s existence was publicized by former NSA contractor Edward Snowden, according to The Times.

PRIVACY

“This court is mindful that this matter comes before it at a time when unprecedented disclosures have been made about this and other highly sensitive programs designed to obtain foreign intelligence information and carry out counterterrorism investigations,” the opinion said. “In the wake of these disclosures, whether and to what extent the government seeks to continue the program discussed in this Memorandum Opinion is a matter for the political branches of government to decide.”

The opinion also noted that no cell phone company has objected to the collection of records, which it has a right to do, The Times reported.

Source: *The New York Times*

Secular group asks DeLand to remove symbols from city seal

DELAND – A group focused on the separation of church and state recently criticized DeLand’s 131-year-old city seal on the grounds that it endorses Christianity, according to The Daytona Beach News-Journal.

Americans United for Separation of Church and State sent a letter to the city asking it to remove the cross, anchor and heart symbols from the seal, which are commonly associated with Christian values, according to The West Volusia Beacon.

Ian Smith, an attorney for the Americans United group, said the city has 30 days to respond to the letter or face potential

litigation, according to The News-Journal. Smith said that he knew the letter would be unpopular.

“We certainly understand it, but the fact of the matter is the function of the Bill of Rights is to protect the rights of the minority against the majority in a lot of cases,” Smith said.

City Attorney Darren Elkind said he is working on a response to the group, clarifying that the city does not endorse any religion and explaining the history of the seal, The News-Journal reported.

Source: *The Daytona Beach News-Journal*, *The West Volusia Beacon*

Justice Dept. did not investigate FISC misconduct allegations

WASHINGTON, D.C. – The Justice Department never investigated criticism from federal judges that they were misled by officials regarding NSA surveillance, according to USA Today. The paper submitted a Freedom of Information Act request to determine whether the Justice Department’s Office of Professional Responsibility (OPR) had responded to complaints in Foreign Intelligence Surveillance Court opinions.

The OPR told USA Today that it had no record of investigating any judicial criticisms published in declassified opinions from 2009 to 2011. That office investigates judicial claims of misconduct by Justice Department lawyers, according

to USA Today.

The judicial concerns stemmed from language in Foreign Intelligence Surveillance Court opinions regarding the scope of the NSA’s domestic surveillance program, according to the paper. There are no specific names or direct accusations mentioned in the opinions.

Former OPR attorney Leslie Griffin said that the office should have investigated the opinions, according to USA Today.

The judges suggested that Justice Department lawyers should oversee the NSA’s surveillance practices to assure that misrepresentations do not occur in the future, the paper reported.

Source: *USA Today*

FREEDOM OF INFORMATION

Orlando Expressway Authority allegedly broke Sunshine Law

ORLANDO – State Attorney Jeff Ashton said he plans to investigate possible violations of the Sunshine Law by board members of the Orlando Expressway Authority, according to the Orlando Sentinel.

Chairman Walter Ketcham accused three board members of privately planning to oust Executive Director Max Crumit. Crumit resigned from the authority after the three board members

voted against him, according to the Sentinel. The three board members have denied violating Florida's Open Meetings Law.

Ketcham asked the board's attorney, Joe Passiatore, to investigate the alleged Sunshine Law violation, the Sentinel reported. Passiatore forwarded the complaint to Ashton.

Source: *Orlando Sentinel*

Guantanamo interrogation images remain classified

NEW YORK, NY – A federal judge ruled images and videos of a Guantanamo prisoner's interrogation do not have to be released, according to The Miami Herald.

The Center for Constitutional Rights sued the Department of Defense, the Department of Justice and the CIA to release information about Mohammed al-Qahtani. Qahtani is currently being detained because authorities believe that he would have participated in the Sept. 11 attacks had he not been denied entry to the United States one month before the attacks, The Herald reported.

Naomi Buchwald, U.S. District Judge for the Southern District of New York, viewed a summary of the images and

opined that they did not indicate abuse or other illegal behavior. Judge Buchwald determined that the images should remain classified because they may spark anti-American feelings among terrorist groups, according to The Herald.

Shayana Kadidal, attorney for the Center for Constitutional Rights, told the Herald that the center "almost certainly" will appeal the ruling. Kadidal said the ruling was "very disappointing" and "under-weighted benefits to basic democratic values..." Kadidal believes the release of the images and videos "...could promote a more robust public debate over detainee treatments and torture."

Source: *The Miami Herald*

Right to speak at meetings law in effect

TALLAHASSEE – A new law giving people the right to speak at public meetings is now in effect, according to the Naples Daily News. The new law requires public officials give citizens a reasonable opportunity to speak.

There are exceptions to the guaranteed right to speak when discussing a matter at the same meeting that matter is to be decided and when public comment would prevent an official from maintaining order at a meeting, according to the law.

The bill was introduced because

ACCESS MEETINGS

the right was never explicitly stated in Florida's

Open Meetings Law. Courts have recently acknowledged the public is only guaranteed notice of a meeting, not the right to comment, the Daily News reported.

Sources: *Naples Daily News*, *Florida Statute 286.0114*

Venice accused of repeated Public Records Law violation

VENICE – The city of Venice has been accused again of violating the Public Records Law and the terms of the settlement of a previous lawsuit, according to the Sarasota Herald-Tribune.

Citizens for Sunshine filed a motion for an injunction against the city for failing to issue government emails to a group of citizens and officials that has been meeting to make recommendations to the city council on behalf of the utilities department, according to The Venice Gondolier Sun. Citizens for Sunshine believes the private emails are not being kept as public records.

Activist Anthony Lorenzo sued the city

in 2008 for using private emails to discuss a new airport plan, according to the Herald Tribune. The city settled the lawsuit for approximately \$1.5 million.

Citizens for Sunshine attorney Andrea Mogensen said the recent use of emails violates the terms of the city's agreement, the Herald-Tribune reported.

"They made an agreement to settle litigation," Mogensen said. "And it's their responsibility to live up to the terms of the settlement."

The motion has not yet been ruled on, according to The Gondolier Sun.

Source: *Sarasota Herald-Tribune*, *The Venice Gondolier Sun*

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

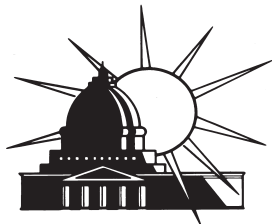
Sandra F. Chance, J.D., Exec. Director/Exec. Editor
Sarah Papadelias, Editor
Alana Kolifraith, Production Coordinator

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.

THE BRECHNER REPORT

University of Florida
Brechner Center for Freedom of Information
3208 Weimer Hall, P.O. Box 118400
Gainesville, FL 32611

November 2013



UF UNIVERSITY of
FLORIDA

Non-Profit Organization
U.S. POSTAGE
PAID
Permit No. 94
Gainesville, FL

Freedom of speech is America's favorite freedom

What is America's favorite freedom? It's freedom of speech by a wide margin, according to the annual State of the First Amendment survey.

About 47% of those polled in the First Amendment Center survey said freedom of speech is the most important right, almost five times the number citing second-choice freedom of religion, named by 10%.

Next came freedom of choice (7%), the right to bear arms (5%), the right to vote (5%) the right to life, liberty and the pursuit of happiness (3%) and freedom of the press (1%).

The result may not be all that surprising; after all, freedom of speech is the best known of our First Amendment rights.

But it's also a reassuring affirmation of how important speaking your mind is in a democracy.

This was the 17th annual survey on First Amendment rights, but the first time we've asked broadly about all rights.

Some would clearly differ on America's paramount freedom.

At a time when limits on gun ownership are being widely debated, many would argue that being armed is the single most important defense against potential government tyranny.

Calling the right to bear arms "America's first freedom," National Rifle Association spokesman Charlton Heston famously said, "There can be no free speech, no freedom of the press, no freedom to protest, no freedom to worship your god, no freedom to speak your mind, no freedom from fear, no freedom for your children and theirs, for anybody, anywhere without the Second Amendment right to fight for it."

Others point to the right to vote as the most important liberty, and it is certainly the lifeblood of a democracy.



Ken Paulson

Still, in our last presidential election, just 58% of voting-age Americans cast a ballot.

Others would see our Fourth Amendment right against unreasonable search and seizure – and by extension, our right to privacy – as most critical.

The rights to a fair trial and protection against self-incrimination didn't show up in the top results of our survey, probably because most Americans see themselves as law-abiding. But there's no underestimating how those checks on government power help ensure justice for all.

Members of the news media may take comfort in the fact that 1% of Americans say freedom of the press is the single most important freedom. You can argue that the watchdog role of a free press is critical to keeping government in check and our rights intact.

I came across a textbook from 1961 not long ago that devotes considerable space to a lesser-known liberty: the freedom of enterprise. That's essentially the right to make a buck. It doesn't get much more American than that.

My own sense is that the plurality of those polled in the survey got it right. I respect the right to bear arms, the right of privacy and the guarantee of due process, but I also believe that the very best check against government misconduct is the right of all Americans to raise their voices, demanding accountability by those in power and insisting on liberty and justice.

Still, it's important to recognize that our core freedoms, regardless of their relative popularity, complement and reinforce one another. Unless we daily reaffirm our right to America's core liberties and speak out against government encroachment upon any of them, our collective freedom is at risk. "United we stand" is not just a motto.

Ken Paulson is the president of the First Amendment Center at the Newseum and dean of the College of Mass Communication at Middle Tennessee State University.