
THE BRECHNER REPORT

Volume 40, Number 7 ■ 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 2016

Judge rules Orlando must release Pulse 911 calls

ORLANDO – An Orlando judge has ordered the city to release more 911 call records from the Pulse nightclub shooting that occurred on June 12, the Orlando Sentinel reported.

The order came several weeks after the court dismissed the city's lawsuit in September, which sought to keep the 911 records from public release, according to the paper.

More than two dozen news organizations sued the city for release of 603 calls made to Orlando police

**ACCESS
RECORDS**

emergency services during the shooting, the paper reported. In response, the city sought a court order to declare the records were exempt from the Public Records Law because they were part of an ongoing FBI investigation or depicted moments of death, according to the paper.

Circuit Judge Margaret Schreiber's dismissal of the city's declaratory action effectively forced the city to release recordings between police negotiators and shooter Omar Mateen, the paper reported. The court subsequently ordered the remainder of the calls to be released, with a few exceptions, according

to the paper.

One attorney representing the media, Mark Caramanica, said, "I think ultimately the court recognized the public interest in these calls and that they will shed light on how law enforcement responded that night and how things unfolded," the paper reported.

Caramanica said, however, the battle between the news media and the city isn't over yet because the judge must still rule on whether it was appropriate for the city to withhold the records to begin with, according to the paper.

Source: Orlando Sentinel

Media sues FBI for records on shooter's iPhone

WASHINGTON, D.C. – A trio of news outlets have filed a Freedom of Information lawsuit against the FBI over records pertaining to the agencies acquisition of an unlocking mechanism to access data on the San Bernardino, Calif., shooter's iPhone.

The lawsuit arose six months after the FBI announced that it had found a third party that agreed to unlock the iPhone that belonged to Syed Farook, the man who killed 14 people at the Inland Regional Center in San Bernardino on Dec. 2. The acquisition of the unlocking mechanism

effectively ended the conflict between Apple and the FBI over digital privacy rights.

The Associated Press, USA Today, and Vice subsequently submitted records requests to uncover information about the third party and how much the FBI paid for the unlocking mechanism. The FBI has denied the requests, however, citing an exemption that allows agencies to withhold information when it is part of an ongoing

investigation.

The media, on the other hand, argued in their complaint that "understanding the amount that the FBI deemed appropriate to spend on the tool, as well as the identity and reputation of the vendor it did business with, is essential for the public to provide effective oversight of government functions and help guard against potential improprieties."

Source: Associated Press v. FBI, Case No. 16-cv-1850

**FREEDOM
OF INFORMATION**

Supreme Court allows subpoena of sex ad website

WASHINGTON, D.C. – The Supreme Court declined to block a congressional subpoena seeking information on how the classified advertising website Backpage.com screens ads for possible sex trafficking, CNN reported.

The Senate Permanent Subcommittee on Investigations issued the subpoena more than a year ago after suspecting that the website's classified ads are linked to sex trafficking cases, including child trafficking, according to The Guardian.

The website's CEO, Carl Ferrer,

requested an injunction of the subpoena, arguing the "case highlights a disturbing and growing trend of government actors issuing blunderbuss demands for documents to online publishers of content created by third parties (such as classified ads) in a manner that chills First Amendment rights," CNN reported.

Ferrer has since been arrested on a 10-count complaint, charging him of pimping conspiracy, pimping, pimping of a minor and attempted pimping of a minor, according to Politico. Two of Backpage.com's shareholders have

also been charged with criminal pimping conspiracy, the website reported.

California Superior Court Judge Michael Bowman said in a preliminary ruling that the Communications Decency Act, a federal law that insulates websites from liability for content posted by third parties, might protect the website operators from being prosecuted on the pimping conspiracy charges, Bloomberg News reported. A final ruling on the matter is slated for Dec. 9, according to the website.

Sources: CNN, The Guardian, POLITICO, Bloomberg

**FIRST
AMENDMENT**

Court rules FDOC did not violate Public Records Law

TALLAHASSEE — Florida's First District Court of Appeal ruled that the Florida Department of Corrections did not violate the state's Public Records Law when it redacted prison documents and records without detailing the corresponding exemption for each redaction, The Miami Herald reported.

The three-judge panel concluded that the Public Records Law does not require an agency to specifically explain each redaction, according to the paper.

The Herald submitted public records requests to the FDOC in 2014 and 2015 as part of its investigation, "Beyond Punishment," which uncovered abuse and corruption in the state's prison system, the paper reported. However, the department refused to produce the requested videos and turned over heavily redacted

documents, according to the paper. The FDOC also attached a standard check-box form identifying the exemptions that justified the redactions, the paper reported.

The Herald filed a complaint asking the court to compel the FDOC to specify which exemptions applied to each redaction and to undo the redactions that were unjustified, according to the paper.

Writing for the court, Judge T. Kent Wetherell said the Public Records Law doesn't require an agency to explain "each redaction," the paper reported.

"The statute simply requires the agency to 'state the basis of the exemption that [the agency] contends is applicable to the record' and to provide a statutory citation for the exemption," Wetherell wrote in the ruling.

Source: The Miami Herald

Court rules UCF must hand over unredacted financial records

ORLANDO — An Orange County Judge has ruled that the University of Central Florida must turn over records indicating how the school's student government spent school activity and service fees, the Orlando Sentinel reported.

The case arose after UCF cited privacy concerns for refusing to provide the documents to Knight News, an online student publication, according to the paper.

Judge John Jordan ordered the school to provide an unredacted financial

spreadsheet, including the names of students involved in student government, the paper reported. UCF is also required to pay for the student newspaper's legal expenses and attorney's fees, according to the paper.

The fight over records has resulted in three different lawsuits between Knight News and UCF, which have already racked up a \$220,000 bill for the school, the paper reported.

Source: Orlando Sentinel

State to release lethal injection documents

TALLAHASSEE — A federal magistrate judge has ordered the Florida Department of Corrections to hand over documents regarding the state's lethal injection system to the lawyers of seven Arizona death row inmates, WJXT Jacksonville reported.

The lawyers, along with the First Amendment Coalition of Arizona, filed a subpoena for records spanning almost a decade about Florida's three-drug lethal injection protocol, including the types of drugs, the strength and dosage of the drugs, the expiration dates of the drugs and the drug suppliers, the network reported.

The focus of the request was to discover whether the first step of the lethal injection cocktail violates the Eighth Amendment's protection against cruel and unusual punishment, according to the network.

Despite the state's argument that those documents should remain secret, Magistrate Judge Charles Stampelos ordered the state to provide the records, while redacting exempt information, the network reported.

The judge's order, however, is limited to providing the lawyers with the requested documents, and does not require the agency to disclose the documents to the general public, according to the network.

Source: WJXT (Jacksonville)

Reporters Committee launches FOIA Wiki

WASHINGTON, D.C. — The Reporters Committee for Freedom of the Press launched a collaborative digital resource, called a Wiki, on the Freedom of Information Act, according to an RCFP news release.

The beta version of the FOIA Wiki features entries on FOIA exemptions, fees and administrative issues, a Q&A forum and pages about federal agencies and departments, including relevant contact information.

**FREEDOM
OF INFORMATION**

The Wiki encourages community-based contributions to explain FOIA provisions and allows members of the public to share information that can promote the public's right to know, according to the news release. It complements the RCFP's existing public records guides, such

as the Open Government Guide and will evolve with any changes made to the law.

RCFP Litigation Director Katie Townsend said the FOIA Wiki will

"make it easier for people interested in government transparency, including journalists and lawyers, to stay up to date on the latest developments in FOIA."

"Bringing together the expertise of reporters, the open government community, and everyone who is passionate about FOIA benefits all of us who rely on this law to hold the government accountable," said Adam Marshall, the Knight Foundation Litigation Attorney at the RCFP.

Source: Reporters Committee for Freedom of the Press

Mayor sued for Facebook blocked list

MIAMI BEACH – A local radio host filed a lawsuit against Miami Beach Mayor Philip Levine and City Hall for the list of people Levine has blocked on social media, The Miami Herald reported.

The legal battle arose after Levine tweeted a photo of himself with Hillary Clinton and her then-running mate Tim Kaine, according to the paper. Grant Stern, a mortgage broker and radio broadcaster, claims Levine blocked him on Twitter for responding to the tweet, “@MayorLevine hope that @HillaryClinton @timkaine advised you to fix the #MiamiBeach water pollution problem you caused,” the paper reported.

Stern says he subsequently requested a list of Levine’s tweets directly from him in a comment on the mayor’s Facebook page, but Levine blocked Stern from that platform as well, according to the paper.

Stern filed the lawsuit when the city refused to hand over a list of Levine’s blocked Facebook accounts, audio recordings of a satellite radio show hosted by Levine and a month’s worth of Levine’s tweets, the paper reported.

Source: *The Miami Herald*

Court orders hearing on release of UF animal research records

GAINESVILLE – Florida’s First District Court of Appeal has ordered a hearing to determine whether the University of Florida must release records related to research conducted on animals.

Karen Kline, an investigator for animal-rights group Eleventh Hour for Animals, filed the lawsuit, seeking to force the university to disclose images of animals, veterinary records and research protocols. UF claimed the research protocols were exempt from the state’s Public Records law, denied the existence

of any images of animals, and did not address the request for veterinary records.

At the university’s request, Circuit Court Judge Robert E. Roundtree conducted an in-camera, or private, inspection of the university’s documents and ultimately denied Kline’s petition.

District Court Judge Lori S. Rowe, however, overturned the decision, explaining that the trial court prematurely ruled on the petition without a hearing, in violation of the Public Records Law.

Source: *Kline v. University of Florida, No. 1D15-4216*

Penn State loses \$7.3 million in McQueary defamation case

WEST CHESTER, Pa. – A jury awarded \$7.3 million to Mike McQueary, Penn State University’s former assistant football coach, in a defamation case against the university, The New York Times reported.

In 2001, McQueary told then-Head Coach Joe Paterno that he witnessed Jerry Sandusky sexually abusing a child in the locker room shower, according to the paper. McQueary’s testimony to a grand jury subsequently helped convict Sandusky in 2012 for sexually abusing 10 boys, the paper reported.

The jury found that Penn State defamed McQueary with a statement in

2011 that defended its former athletic director and vice president against a charge of perjury related to McQueary’s 2001 report on Sandusky, the paper reported.

The university has since filed a motion for post-trial relief, seeking to overturn the jury verdict, CBS Philly reported.

Judge Thomas Gavin, who presided in the case, must also still rule on McQueary’s accusation that Penn State unlawfully retaliated against him after he testified at Sandusky’s 2012 trial, according to The New York Times.

Source: *The New York Times, CBS Philly*

LIBEL

Bradenton Beach commission settles Sunshine Law suit

BRADENTON BEACH – Bradenton Beach city commissioners agreed to settle a lawsuit that claimed the city violated the state’s Sunshine Law by negotiating a restaurant’s lease agreement in closed meetings, the Anna Maria Islander reported.

The Bradenton Beach Marina and its owners, Allan and Mike Bazy, filed the lawsuit in November 2015 against the city, alleging then-Mayor Jack Clarke and city attorney Ricinda Perry negotiated with Anna Maria Oyster Bar owner John Horn,

the paper reported.

The closed-door negotiations set the terms of the lease for the restaurant and two new city-owned buildings, according to the paper.

The settlement agreement closed the lawsuit, but required the city to pay \$15,000 in attorney’s fees, the paper reported.

Source: *Anna Maria Islander*

ACCESS MEETINGS

THE BRECHNER REPORT

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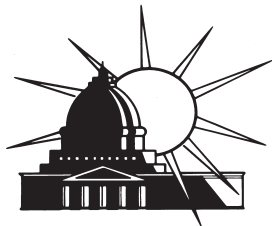
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The Brechner Report is published 12 times a year under the auspices of the University of Florida Foundation. The Brechner Report is a joint effort of The Brechner Center for Freedom of Information, the University of Florida College of Journalism and Communications, the Florida Press Association, the Florida Association of Broadcasters, the Florida Society of Newspaper Editors and the Joseph L. Brechner Endowment.

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November 2016



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Teens use free speech in absence of voting rights

I wonder what this election season would have been like if 16- and 17-year-olds could vote, like they do in Argentina, Brazil, Austria and other countries.

Would we have learned why kids are more likely than others to live in poverty? Would students finally have a voice in education policies like curriculum, testing and budgets? Would the effects of lead-tainted water on learning be a national health priority?

Maybe some teens would have run for office or their school board. Out of about 9,000 school boards in the U.S., only two (Anne Arundel and Montgomery Counties in Maryland) have student members who actually vote.

The call for youth voting rights is growing. Two cities in Maryland — Tacoma Park and Hyattsville — have lowered the voting age to 16 for local elections. In 17 other states, 17-year-olds turning 18 by Election Day were allowed to vote in the primaries.

The Back Page

By Mary Beth Tinker

But until they do, they will have to rely on the First Amendment to advocate for their interests. Thankfully, many teens and children are doing just that.

I hear from them as I travel the country on a “Tinker Tour” that promotes civics education, the First Amendment and strengthening youth voices.

Emily was a senior at West Fargo High School in North Dakota when she testified at a state senate hearing in favor of a bill to protect the rights of student journalists, part of the “New Voices” campaign. North Dakota passed the bill unanimously. Maryland and Illinois followed after students testified there as well.

In Washington D.C., I stopped in the hallway of a senate office building to talk with students from Cesar Chavez Middle School wearing “Statehood” buttons. They had taken their civics lessons to heart, attending a hearing on whether D.C. citizens should form the 51st state.

“We need a voice,” they said.

Mariah wore a “Black Lives Matter” shirt to Buckeye Union High School in Arizona for photo day, but was stopped by an administrator. She held a rally with students and others,



Mary Beth Tinker

and questioned the policy online. The administration responded by working with the students, who are now allowed to wear the shirts. Students there are also planning Black and Hispanic Student Unions.

Nathan was a middle school student in Florida who rushed up to me after a program to share his passion for politics. He likes the First Amendment and uses it to speak against gay rights, which, he said, are “against the teachings of my church.” Students from Ponce de Leon, also in Florida, were excited that they had won the right to wear rainbows to school to advocate for gay rights.

Audrey and her friends jumped into a canoe in Iowa, not to float down the river but to stop the Dakota oil pipeline, with signs saying, “#WaterIsLife.” Don and Shaya, from the Chippewa tribe in Pennsylvania, joined a protest in Washington, D.C., saying “The oil could kill people if it gets in the water, and it would be hard to get it out.”

These students and many others are speaking out about policies that affect their lives. They want their rights, and they don’t mind taking action to gain them.

In 1965, when I was 13 in Des Moines, Iowa, I wanted rights, too. In 1963, the kids in Birmingham, Ala., inspired me. I saw the Vietnam war escalate on TV — huts on fire, flag-draped coffins, children running in terror.

At church and Quaker meetings, I learned the values of love and the “Golden Rule.” But we, as kids, didn’t see these values on the news. When we decided to wear black armbands to school to mourn the war’s dead and to call for a Christmas truce, we were suspended.

Our suspensions were challenged by a wonderful young lawyer, Dan Johnston, who eventually won a 7-2 ruling at the Supreme Court, which held that neither “teachers or students leave their... rights at the schoolhouse gate” (*Tinker v. Des Moines*, 1969).

We didn’t have the right to vote on issues concerning the war, and we didn’t succeed in ending the war. But we did win some First Amendment rights that students are still learning — and using — today.

And in these historic times, students are using those rights more and more.

Mary Beth Tinker was one of three plaintiffs in the landmark students’ rights case, Tinker v. Des Moines. She travels extensively to speak about the rights of youth.