
THE BRECHNER REPORT

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Judge stops Sunshine trial of suspended officials

FORT LAUDERDALE – Two members of the Coral Springs City Commission have been reinstated by Gov. Charlie Crist following a suspension over Sunshine Law charges. Vince Boccard and Tom Powers were suspended in March after each being charged with a misdemeanor violation of the Open Meetings Law.

The charges stemmed from a meeting of Powers, Boccard and two police union officials at a sports bar.

The commissioners' trial on the Open Meetings violation was halted by the presiding judge just prior to presentation of closing arguments on Aug. 18.

Judge Fred Berman dismissed the charges, telling prosecutor David Schulson that he was "assuming the appearance of impropriety creates impropriety." Berman determined that the

commissioners did not commit a crime. Boccard and Powers maintain that they

only discussed past issues with the union officials. Prosecutors allege that the group discussed issues that would likely come before the commission: a police salary freeze and the city manager's annual review.

Gov. Crist's office reviewed the case and rescinded the suspension order nine days after the trial. If convicted, Boccard and Powers could each have faced up to 60 days in jail and a \$500 fine.

Source: South Florida Sun-Sentinel (Fort Lauderdale)

**ACCESS
MEETINGS**

Wauchula city commissioners reach plea deal

BARTOW – The entire Wauchula City Commission has reached a plea agreement after the seven commissioners were charged with violating the Open Meetings Law. The charges relate to two private meetings on Sept. 14, 2009 and March 1, 2010.

Six of the commissioners, Jerry Conerly, Daniel Graham, Delois

Johnson, Valentine Patarini, David Royal and Yeavone Spieth, each face two misdemeanor counts of intentionally violating the Sunshine Law. Commissioner Clarence Bolin attended one meeting and only faced one count.

Each commissioner pleaded no contest to a single count of violating the Open Meetings Law and was ordered to pay

\$325 for fines and court costs as part of their plea agreement. Royal, the mayor, must also pay \$500 for prosecution costs; the remaining members must each pay \$300 for prosecution costs.

Adjudication of guilt was withheld. Each charge carried a maximum penalty of up to 60 days in jail and a \$500 fine.

Source: The Ledger (Lakeland)

Hospital merger negotiations start anew after Sunshine suit

NEW SMYRNA BEACH – The Southeast Volusia Hospital District will start over a nearly two-year long negotiation process for a possible hospital merger after *The Daytona Beach News-Journal* and a lawsuit drew attention to a series of closed meetings.

On June 30, the District finalized its plan to merge publicly-owned Bert Fish Medical Center with Florida Hospital, a deal worth more than \$80 million.

Bert Fish Medical Center's indigent care is funded by property taxes and therefore the meetings, 21 over a period of 16 months, should have been open, according to the lawsuit filed by the foundation that donated the medical center in the 1960s.

The Bert Fish Foundation now wants

the merger deal set aside, with a new board reviewing whether the Bert Fish Medical Center should merge with another healthcare facility. The foundation's attorney, Jon Kaney of Cobb Cole, says that the new meetings with the same board will not affect the Open Meetings suit.

An attorney for Bert Fish Medical Center, Mayanne Downs, defended the do-over decision. "Rather than fight over whether a technical violation of the sunshine may have occurred, we throw open the process to the sunshine," Downs said. Bert Fish Medical Center officials have also established a document room where the public can view documents related to the merger negotiations.

Source: The Daytona Beach News-Journal

Special Feature

This issue of *The Brechner Report* features a special Q&A with the candidates for Florida Attorney General regarding open government and transparency. See page two for their take on open government.

ATTORNEY GENERAL CANDIDATE Q&A

Pam Bondi is the Republican candidate for Florida Attorney General.



The Florida Attorney General is in a unique position to influence open government. The AGO administers the voluntary mediation program, issues legal opinions on open government issues, and often implements transparency initiatives within the AGO. Here, the candidates respond to The Brechner Report's questions on open government.



Dan Gelber is the Democratic candidate for Florida Attorney General.

The Attorney General has historically played a major role in promoting Florida's strong open government and transparency laws. As AG, where would you put open government on your list of priorities?

Bondi: I have spent the last two decades as a prosecutor in Hillsborough County, and for the last ten years I acted as the public information officer for our office, with the responsibility of handling requests for public records and information. I whole-heartedly believe that Florida's open government laws are paramount to ensuring transparency in the public process and providing citizens with

a means to hold government accountable and that the people have the right to know. As Florida's Attorney General, it will be a top priority to support efforts and advance policies that protect and guarantee transparency at all levels of government.

Gelber: Among the most important things I do. First, I believe sunlight is a terrific antiseptic. I have already indicated I would push a public corruption task

force that would include lawyers from the AG office designated to help prosecute open government violations. I will also continue to push to bring a more open and transparent government to state government (where it is currently lacking) like Senate Joint Resolution 440, which requires the Legislature to abide by much of the open-government laws that govern local governments.

Are there any exemptions to the Open Meetings or Public Records Laws that you feel should be passed? Repealed?

Gelber: I don't see the need for more exemptions. I would support (see above) a change that would bring more sunshine to the state legislature. In the early 1990s, as various citizen forces and Florida's attorney general were pushing for more oversight and transparency in government, legislative leaders negotiated a compromise that would impose lesser open-government

standards for the Legislature. Legislators argued that the nature of a 60-day session and the practicalities of noticing all communications among legislators would make it unrealistic to apply the same notice requirements as imposed on other levels of government. I would support legislation that would change these exemptions and require the Legislature to operate with

greater sunshine. This means opening up the budget process, requiring that any budget allocations be made in public and greater scrutiny over the amendatory process.

Bondi: As Attorney General, I will continually review our state's open government laws to ensure that any exemptions are truly necessary and properly justified.

What is your position on the use of Blackberries, PDAs, text messaging and other mobile technologies by public officials?

Bondi: We are living in a highly technological age where electronic communications are commonly used to conduct business in industries, including government. I believe in

order to uphold Florida's century-long commitment to open government our laws must stay current with evolving technology, in order to ensure continued transparency and accountability in

government.

Gelber: I believe communications of public officials related to official acts should be disclosed to the extent they can be memorialized (including texts).

Do you have any specific open government initiatives that you would like to implement if elected?

Gelber: The most important unit of government that is in desperate need of greater transparency and sunshine is the Florida Legislature. While I cannot put laws

in place to bring such transparency and openness, I will use my office to push for reforms in hopes that recent incidents of misappropriations compels the legislature

to advance such proposals.

Bondi: As attorney general, I will be an advocate for openness and transparency at every level of government.

Are there any other comments you'd like to make on open government?

Bondi: Florida has a long-standing tradition of enacting laws that require government to operate in the sunshine, so that citizens can hold government accountable for its actions. If given the honor to serve as our state's next Attorney General, I will continue to make these efforts a priority and make certain that my administration works to increase transparency and provide the people with

access to their government.

Gelber: Although it might be easier to govern with limited citizen involvement, it is not better or healthier for a democracy. For that reason, I have been a leading advocate for more transparency and openness. I appreciate that many will raise the same arguments that were raised when the Legislature initially exempted itself from Florida's demanding

open-government laws. Perhaps if, in the nearly two decades that followed, the legislature would have governed themselves better, such an argument should prevail.

But regrettably, most Floridians view state government as more beholden to special interests than the interests of citizens. Sunshine is an antiseptic sorely needed in Tallahassee.

Judge tosses surveillance libel lawsuit

TAMPA – A law enforcement officer’s defamation suit against Tampa area television station WTSP-Ch. 10 and reporter Mike Deeson has been dismissed.

Steven Dickey, a corporal for the Hillsborough County Sheriff’s Office, filed the suit after a February 2008 story aired about a quadriplegic

LIBEL man who was dumped out of his wheelchair by law enforcement personnel after being booked on a traffic stop. A surveillance video of the incident shows Dickey smiling.

Deeson remarked that Dickey “appears to think it’s funny.” Dickey then sued, alleging the video was edited to make it appear that he was complicit in the incident and thought it was funny.

Hillsborough Circuit Judge William P. Levens ruled in favor of 10 Connects and Deeson, finding that the broadcast was “a fair report of a public record, Deeson’s statement was an opinion, the report was substantially true and there was no evidence of actual malice,” according to the *St. Petersburg Times*.

Source: *St. Petersburg Times*

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Citizens groups appeal baseball ruling to Fla. Supreme Court

SARASOTA – Two citizens groups are appealing the ruling of a circuit judge in their open government case involving the Baltimore Orioles spring training deal in Sarasota.

Judge Robert Bennett ruled this summer that although there were unintentional violations of the Open Meetings Law in the negotiation of the spring training contract, the contract and issuance of \$26 million in bonds to improve a stadium can both proceed.

Citizens for Responsible Government and Citizens for Sunshine filed an appeal with the Florida Supreme Court. A key

issue in the case is the county’s delegation of negotiations to Deputy County Administrator David Bullock, according to the *Pelican Press*.

Bullock and his staffers maintain that they were operating as an economic development agency. Records of an economic development agency are exempt from the Public Records Law. However, meetings of such agencies are not exempt from the Open Meetings Law.

The Florida First Amendment Foundation has filed a friend of the court brief on behalf of the citizens groups.

Source: *Pelican Press*

After failed Senate bid, Greene sues two newspapers for libel

MIAMI-DADE – Democratic U.S. Senate hopeful Jeff Greene lost the Florida primary and has now filed a defamation suit against two newspapers, alleging their coverage damaged his reputation.

Greene is suing *The Miami Herald* and the *St. Petersburg Times* for \$500 million in damages, alleging that two stories were “knowingly based on false information,” according to the complaint filed Sept. 1. The stories were written and edited by *Times* staffers but also published in *The Herald*.

The first story looked at Greene’s real estate dealings in California. The second story addressed boxer Mike Tyson’s ties to Greene and Tyson’s admission of using drugs on a yacht. A correction was run by both papers in which Tyson clarified the

drug use did not occur on Greene’s yacht. Tyson was the best man in Greene’s 2007 wedding.

Greene, who is represented by Atlanta attorney L. Lin Wood, filed the defamation suit in Miami-Dade circuit court. “It’s very unfortunate,” Greene told *The Herald* in a phone interview. “I was ahead 15 percent and when the stories ran, I was down 10 percent. It just snowballed after that.”

Times Editor Neil Brown denied the suit’s allegations. “Democracy won’t work if we let lawsuits full of baseless charges from a political candidate inhibit us from providing voters with the independent information that they need and rely on,” Brown said.

Source: *The Miami Herald*

Cape Coral seeks records ruling

CAPE CORAL – The Cape Coral City Council has agreed to seek a court ruling on whether records of a company it contracted with for utilities projects in 1999 should be public.

The documents will assist in the completion of an audit to determine whether the city was overcharged for the work.

The company, MWH Americas, has thus far refused to provide the records, according to *The News-Press* (Fort Myers). Mayor John Sullivan voted in

favor of seeking the court ruling, pointing to assessments of \$30,000 and more paid by residents for the utility expansion.

City attorney Dolores Menendez told the city council that even if the documents were made public and gave rise to a cause of action against MWH,

the statute of limitations may have passed. An initial audit was completed in 2007 but stalled due to the auditor’s claims of a lack of documents.

Source: *Cape Coral Breeze, The News-Press*

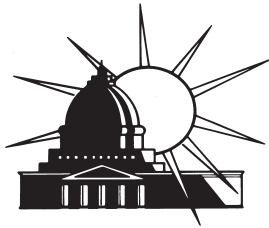
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Shield laws create odd alliance with government

Whenever there's a conflict between government and news media, I reflexively side with my guys. But we seem blind to human failings in the media's collective support for a reporter "shield law" at the national level. It's as if the press, naturally skeptical of anything big business and government do, happily makes an exception when the business is us and the government purports to help us — and not just to help, but to protect us. Huh? The government is going to shield us from the government? It's not hard to figure out whose side the government will take when a close call arises.

If everything works as planned, the bill pending in the U.S. Senate sounds good. And if the press behaves responsibly — every time, every story — the shield would be needed only when the public's legitimate right to know is thwarted for political, bureaucratic or illegal purposes. That's in a perfect world.

The Back Page

By Bill Cotterell

The best Florida example is the courage of the late Tim Roche. He was a reporter for a Southeast Florida newspaper when someone showed him

the legally sealed file of a child-custody case. He wrote a story that may have prevented a toddler from being returned to a life-threatening situation. Acting out of either a genuine concern that a felony occurred when a courthouse employee leaked the file, or out of revenge for a story that showed the child-protection system failing, a prosecutor demanded that Roche identify his source. He refused, was cited for contempt and served 18 days of a 30-day sentence.

I've been threatened with jail twice in far less-important circumstances. Both times I knew the threats were spurious, and my employers' lawyers got them quashed quickly, without embroidering any new language into the First Amendment.

The trouble with shield laws is that, with the best of intentions, they put us in partnership with the government. If we're exempt from a contempt-of-court citation, whenever we decide we're defending the public's right to know, what other laws should we be allowed to ignore? Might we speed to the scene of a crime or accident, so as not to miss important news by obeying the speed limit? It's a felony to secretly record phone calls in Florida, but



Bill Cotterell

should reporters do it when they reasonably believe the public officials they're interviewing wouldn't use such language if they knew they were being taped?

If Congress authorizes "get out of jail free" cards, maybe we need to start licensing reporters? There'd be a bit of a First Amendment problem with that, but how do you distinguish between *The Washington Post* and some celebrity gossip website?

Don't get me wrong. I've never given up a source and, although the threats I've encountered were mild, I admire reporters like Roche. Every reporter I know would honor a promise, once given, to never identify a source.

But very few cases involve a child's life, or Watergate or the Pentagon Papers. More frequently, more cynically, we see cases like former *New York Times* reporter Judith Miller, going to jail to protect Scooter Libby's right to mislead the country about Iraq.

The media prefer to cite those kinds of cases, but the day-in, day-out impact of a shield law would involve junk news. Suppose a Las Vegas jailer leaks Paris Hilton's private medical data — not her booking photo or arrest report, which are public documents, but a rundown of any physical conditions they check for every newly arrived inmate. "Hard Copy," "Nancy Grace" and "Inside Edition" — not to mention hundreds of blog sites — would probably pay for such a scoop. No big deal, perhaps, in the grand scope of journalism from John Peter Zenger to Wikileaks. But if journalists can claim privilege about a source of titillating dirt on Paris Hilton or Lindsay Lohan, they can do it with you or your kid, or anybody else who lands in jail.

The saving feature of the pending Senate bill seems to be the provision that a judge can quash a subpoena for a reporter's notes or sources. If an agency just wants to root out a whistleblower so it can continue hiding its mistakes, that's one thing. If the media want carte blanche to decide what the public needs to know, immune from the criminal sanctions covering everybody else, that's another thing.

There will be some judges who reflexively side with the government, some who pander to the press. But it's better that a judge weigh the validity of a subpoena, rather than having the government — or us — decide what the public needs to know.

Bill Cotterell is Senior Political Writer for the Tallahassee Democrat.