O/A 3-3-88.

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IN THE

SUPREME COURT OF FLORIDA

CASE NO. 70,910

DEMPSEY J. BARRON,

Petitioner,

vs.

FLORIDA FREEDOM NEWSPAPERS, INC.,

Respondent.

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BRIEF OF AMICUS CURIAE,

SENTINEL COMMUNICATIONS COMPANY

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INTRODUCTION

SENTINEL COMMUNICATIONS COMPANY ("Sentinel") is the publisher of The Orlando Sentinel, a daily newspaper of general circulation throughout the state of Florida. Sentinel's reporters regularly write news stories on civil court cases, and, in doing so, Sentinel's reporters rely upon access to pre-trial and trial proceedings to gather the information necessary to accurately report on these civil cases. Sentinel's reporters similarly rely upon continuing access to court records to gather information about civil cases which are of interest to the public. For instance, The Orlando Sentinel was the recipient of The Florida Bar Association's 1987 Media Award for the publication of a series of articles on the medical malpractice crisis; those articles were in large part based upon statistics regarding medical malpractice cases which were compiled from a review of court files.

Sentinel has a substantial interest in the court's decision in the instant case because the decision will impact upon Sentinel's right to attend civil court proceedings and to review civil judicial records. It is for this reason, therefore, that Sentinel respectfully submits to the court this Amicus Curiae Brief in support of the position of the Respondent, Florida Freedom Newspapers, Inc.

FACTUAL AND PROCEDURAL STATEMENT

Sentinel adopts the factual and procedural statement as set forth in the answer brief of the Respondent, Florida Freedom Newspapers, Inc.

SUMMARY OF ARGUMENT

Sentinel requests this court to join the First District Court of Appeal in rejecting the concept of "private civil litigation," a dangerous premise which saw its genesis in the case of Sentinel Communications Company v. Smith, and which was applied by the trial court in the instant case to deny public access to the court records and proceedings here. The concept of "private civil litigation" is flawed in the first instance because it relies upon a constitutional right of privacy which attaches only when there is a reasonable expectation of privacy; however, there is no reasonable expectation of privacy in court files. Additionally, the public judicial system is different from private dispute resolution forums (such as arbitration proceedings) in that the public pays for its judicial system. The judicial system maintains the court records sought in this case. The power of the state can be brought to enforce civil court orders. The public therefore has a right to monitor the efficiency and effectiveness of its judicial system, particularly with regard to divorce proceedings, since marriage is an institution of central importance to our society.

Another cornerstone behind the theory of "private civil litigation" is that the public has less of an interest in access to civil judicial records and proceedings than it does in access to criminal judicial records and proceedings. This argument has no legal basis, as it has been held that not only is there a strong common law right of access to civil proceedings, but

there is also a First Amendment right of access to civil proceedings. Access to civil proceedings allows for public checks on the judicial system and promotes public understanding of the judicial process in the same manner that public access to criminal proceedings does. The public's interest in ensuring the integrity of the fact-finding process and judicial decisionmaking process is as great in civil proceedings, including divorce actions (in which it has been said that the State is a third party to the litigation), as it is in criminal proceedings.

In a civil case in which a party seeks to deny public access to court records or proceedings, a trial court should place the burden of proof on the party seeking closure to meet the three-pronged standard of Miami Herald v. State. Adoption of the three-pronged standard is appropriate in civil cases because the policy reasons for public access to civil cases are the same as the reasons for access to criminal cases. Additionally, recent developments in cases before the United States Supreme Court and the Federal appellate courts lead to the conclusion that there is a First Amendment right of access to civil documents and proceedings, both pre-trial and trial. Even if the right of access is held to be based upon the common law rather than the First Amendment, this court has still held that the three-pronged test is applicable when the right of access is non-constitutional.

The concept of "private civil litigation" threatens to eviscerate the strong tradition of public access to the judicial

system which this court has promoted. Such access leads to increased public confidence in, and heightened public understanding of, the judicial system, whether it be in the criminal or civil context. This court should protect that tradition by firmly rejecting the premise of "private civil litigation," and by adopting the three-pronged standard for application to public access issues in civil cases.

ARGUMENT

I.

THE CONCEPT OF PRIVATE CIVIL LITIGATION HAS NO BASIS IN THE COMMON LAW OR IN THE CONSTITUTION, AND THIS COURT SHOULD REJECT THIS DANGEROUS PREMISE.

As the First District Court of Appeal explained in its opinion in the instant case, the trial judge's initial ruling was based upon the right to privacy contained in Article I, Section 23 of the Florida Constitution, and upon the Fifth District Court of Appeal's decision in Sentinel Communications Company v. Smith, 493 So.2d 1048 (Fla. 5th DCA 1986), rev. den., 503 So.2d 328 (Fla. 1987). See Florida Freedom Newspapers v. Sirmons, 508 So.2d 462, 463 (Fla. 1st DCA 1987). In the Smith case, the appellate court affirmed an order denying a motion to unseal a domestic relations file, partly upon the basis that "if the privacy rights of the litigants and third persons in this case are not recognized and respected, then no citizen has any right of privacy in private litigation." 493 So.2d at 1049.

The court's opinion that civil litigants have privacy rights in such litigation was based upon the following rationale:

> It is an essential governmental function to provide citizens with an impartial forum in which they may present and resolve their private disputes and controversies. In order to fairly resolve many such private controversies it is necessary for the litigants and witnesses to assert and admit embarrassing intimate details of the private lives of the litigants and of innocent third persons. If this cannot be done without the deterrence of unwanted publicity the legal system cannot meet the basic need for which it is established.

493 So.2d at 1048. No cases were cited by the Fifth District Court of Appeal in support of this premise.

The trial judge's decision in the instant case demonstrates the danger of allowing the Fifth District Court of Appeal's opinion to remain a compelling common law force in this state. In the case at bar, the First District Court of Appeal, after initially affirming the trial court order, attempted in vain to conform its decision to the Fifth DCA's holding in Smith. It could not do so, because there is neither a constitutional nor a common law basis for the concept of "private civil litigation to which the general public -- the State -- is not a party." Sentinel respectfully requests this court to affirm the decision of the First District Court of Appeal in the instant case, and in so doing, to join the First District in rejecting the premise of "private civil litigation."

The so-called concept of "private civil litigation" is based upon two premises. The first is that the constitutional right of privacy gives a party a substantive right to have judicial

proceedings to which he is a party closed from public view. The second is that the public has less of an interest in access to civil trials and records than to criminal trials and records.

A. THERE IS NO CONSTITUTIONAL RIGHT OF PRIVACY IN CIVIL JUDICIAL RECORDS.

In the instant case, Senator Barron claims that the Federal and State Constitutions provide to him a right of privacy which justified the closing of the trial and the sealing of the judicial records, based upon the proposition that "one has a privacy interest in avoiding the public disclosure of personal matters." Petitioner's Initial Brief at p. 23, citing Nixon v. Administrator of General Services, 433 U.S. 425, 97 S.Ct. 2777, 53 L.Ed.2d 867 (1977) and Whalen v. Roe, 429 U.S. 589, 97 S.Ct. 869, 51 L.Ed.2d 64 (1977). Similarly, in the Sentinel Communications Company v. Smith case, the Fifth District Court of Appeal based its concept of the privacy rights of the litigants upon Griswold v. Connecticut, 381 U.S. 479, 85 S.Ct. 1678, 14 L.Ed.2d 510 (1965), and Article I, Section 23 of the Florida Constitution. 493 So.2d at 1049 n.1. However, as the First District Court of Appeal correctly recognized, constitutional rights of privacy are not properly applicable in this case, or in any other civil case, for the same reason that Senator Barron's (and the Fifth DCA's) central premise is incorrect: the right of privacy does not apply to "personal matters" which are contained in a public court file.

In Palm Beach Newspapers v. Burk, 504 So.2d 378 (Fla. 1987), this court recognized that once deposition transcripts which

are attendent to a case are filed with the court pursuant to Rule 1.400 Fla.R.Civ.P., the transcripts are open to public inspection. 504 So.2d at 384, citing Tallahassee Democrat, Inc. v. Willis, 370 So.2d 867, 870-871 (Fla. 1st DCA 1979). As the First District Court of Appeal correctly noted in the instant case, the right of privacy in the Florida Constitution precludes intrusion into private lives, not public proceedings. 508 So.2d at 463. Thus, as public documents, judicial records are not the type of records to which a right of privacy attaches.

In Winfield v. Division of Pari-Mutual Wagering, 477 So.2d 544 (Fla. 1985), cited by the Petitioner in support of his privacy arguments, this court stated that before the constitutional right to privacy can attach, a reasonable expectation of privacy must exist. id. at 547. However, traditionally, there is no expectation of privacy in court files. Forsberg v. Housing Authority, 455 So.2d. 373, 375 (Fla. 1984) (Overton, J., specially concurring). In that case, indigents who applied for public housing assistance were required to submit "information of a personal and confidential nature concerning their family status and relationship, income, expenses, assets, employment and medical history as a condition to obtaining decent, safe and sanitary housing at a price that they could afford." id. at 374-375 (emphasis supplied by court). Because the right of privacy in the Florida Constitution does not apply to public records, this court found that it offered the tenants no relief from public access to the records. id. at 374. In analyzing the application

of the privacy right to those records, Justice Overton stated that "it must be recognized that the question presented by the complaint in this case does not concern records in which there is traditionally no expectation of privacy, e.g., court files and public documents such as deeds, judgments, and marriage records." 455 So.2d at 375. Therefore, the right of privacy as enumerated in the Florida Constitution cannot be used as a basis for denying public access to judicial records since the cornerstone to the exercise of the right, an expectation of privacy, is not present.

The absurdity of basing a party's right to deny public access to civil judicial proceedings and records upon the right of privacy clause of the Florida Constitution becomes even clearer when one realizes that there is no provision in Article I, Section 23 which would limit the application of such right to civil proceedings, as opposed to criminal proceedings. Given the long-standing recognition of the values furthered by public access to criminal proceedings (to which even Senator Barron accedes), it cannot seriously be contended that the right of privacy contained in the Florida Constitution would allow a criminal defendant to argue, and prevail in his argument, that his trial, or any pre-trial hearings in his case, should be held in private. There is simply no reasoned basis upon which the right of privacy could be applied in civil proceedings, but not in criminal proceedings. Given this fact, and that, as explained infra, the public has as great an interest in access to civil proceedings

as to criminal proceedings, reliance upon the right of privacy enumerated in the Florida Constitution as grounds for denial of public access to civil judicial proceedings and records is not justified.

Similarly, there is no generalized right of privacy based upon the Federal Constitution which would allow participants in a judicial proceeding to deny the public access to judicial records or proceedings. See In re Application of CBS, 828 F.2d 958, 960 (2nd Cir. 1987)(no right of privacy exists which would create an exception to the common law right to inspect and copy a videotaped deposition); U.S. v. Posner, 594 F.Supp. 930 (S.D. Fla. 1984) (holding that once documents were admitted into evidence, they became part of the public record, and entered the public domain, so that any right to privacy regarding the information contained in the documents was lost.)

The constitutional right of privacy applied in Griswold v. Connecticut, supra, cited by the Fifth District Court of Appeal in the Smith case, is both factually and legally distinguishable from the case at bar. In Griswold, the Supreme Court held invalid a state law prohibiting the use of contraceptives, as applied to "aiders and abettors" who operated a birth control clinic. The Court indicated its concern that the right to privacy would be violated by a law which permitted governmental intrusion into a marital bedroom to search for evidence of a violation of the anticontraceptive law. There is an obvious distinction between the governmental intrusion in that case and the public's contitutional and common law right of access to court records. Furthermore, Griswold dealt with

the facet of the privacy right which is concerned with an individual's right to make decisions as to whether he or she should perform certain acts (in that case, use contraceptives) or undergo certain experiences -- the "constitutional protection of individual autonomy," See Carey v. Population Services International, 431 U.S. 678, 687, 97 S.Ct. 2010, 52 L.Ed.2d 675 (1977). The right of privacy sought to be applied here, on the other hand, is "the individual interest in avoiding disclosure of personal matters." See Whalen v. Roe, supra, 429 U.S. at 599 & nn. 24-25, 97 S.Ct. at 876. This right of privacy has not been applied by the United States Supreme Court to deny public access to civil judicial records.

Moreover, a divorce proceeding is one type of civil action in which "the general public -- the State" does have an interest. An "action for divorce is not a mere controversy between private parties." Danner v. Danner, 206 So.2d 650, 654 (Fla. 2d DCA 1968), citing Hancock v. Hancock, 45 So.2d 1020 (Fla. 1908). "Since marriage is of vital interest to society and the state, it has frequently been said that in every divorce suit the state is a third party whose interests take precedence over the private interests of the spouses." Posner v. Posner, 233 So.2d 381, 383 (Fla. 1970).

To accept the Petitioner's argument that there is a substantive constitutional right of privacy which allows court records to be sealed and judicial proceedings to be closed would effectively destroy the force of the well-settled principles

of public access to court records and proceedings which have been developed through the common law of this state. In a very real sense, such an application of the right to privacy would constitute an immediate threat to the administration of justice in this state, as one can scarcely imagine the number of civil litigants who hold positions of public trust in our society (doctors, judges, insurers, government officials, manufacturers, etc.) who would begin filing routine closure motions to keep their civil disputes "private."

Furthermore, by attempting to persuade this court that the right of privacy should be weighed in the balance of all its access decisions, the Petitioner ignores the many aspects of the civil judicial system which differentiate it from available alternative forums (such as arbitration), in which he would have a reasonable expectation of privacy. In the public judicial system, established by the State of Florida for its residents, the public -- collectively through the state -- pays for courthouses, judges, and support personnel. The state possesses and maintains the records sought in this case. Most importantly, the power of the state can be brought to bear to enforce court decisions against the litigants. The public's right to monitor the efficiency and effectiveness of this system should not be eviscerated by a constitutional right of privacy which has no traditional or reasoned application to court records and proceedings. "The courts belong to the people; 'they have been established by the people for the administration of justice

according to law and are not to be considered as the private domain of any person or group of persons.'" State ex rel. Gore Newspapers Co. v. Tyson, 313 So.2d 777, 784 (Fla. 4th DCA 1975), reversed on other grounds, English v. McCrary, 348 So.2d 293 (Fla.1977), quoting E.W. Scripps Co. v. Fulton, 125 N.E.2d 896, 909 (Ohio App. 1955).

B. THE BENEFITS DERIVED FROM PUBLIC ACCESS TO CRIMINAL JUDICIAL RECORDS AND PROCEEDINGS APPLY EQUALLY TO CIVIL JUDICIAL RECORDS AND PROCEEDINGS.

Senator Barron contends that the public's right of access is diminished in the instant case because this case involves a civil proceeding. Similarly, the Fifth District Court of Appeal in the Sentinel Communications Company v. Smith case based its concept of "private civil litigation" upon the premise that the general public is not a party to such litigation, and therefore, presumably, the public does not have as great an interest in the proceedings. 493 So.2d at 1049.

Attempts to limit public access to judicial records and proceedings on the basis that the action is civil rather than criminal are grounded in neither history nor logic. Not only is there a common law right of access to civil proceedings, Publicker Industries Inc. v. Cohen, 733 F.2d 1059, 1067 (3rd Cir. 1984), there is also a First Amendment right of access to civil proceedings. id. at 1070; Westmoreland v. CBS, 752 F.2d 16, 23 (2nd Cir. 1984).

The right of public access to judicial trials has historically been as applicable to civil proceedings as it is

to criminal proceedings. Cohen, 733 F.2d at 1068-1069. "Historically both civil and criminal trials have been presumptively open." Richmond Newspapers Inc. v. Virginia, 448 U.S. 555, 580, n.17, 100 S.Ct. 2814, 2829 n.17, 65 L.Ed.2d 973 (1980).

Perhaps even more importantly, the policy reasons for granting public access to criminal proceedings are equally applicable to civil cases. See Brown & Williamson Tobacco Corp. v. F.T.C., 710 F.2d 1165, 1177-79 (6th Cir. 1983). See also Richmond Newspapers Inc. v. Virginia, supra, 488 U.S. at 580, 100 S.Ct. at 2829 (Opinion of Burger, C.J.); id. at 596, 100 S. Ct. at 2838 (Opinion of Brennan, J.); id. at 596, 100 S.Ct. at 2839 (Opinion of Stewart, J.). Allowing for public access to civil proceedings furthers the following interests:

1) It enhances the quality of justice dispensed by officers of the court and thus contributes to a fairer administration of justice. Publicker Industries, 733 F.2d at 1070; In re: Matter of Continental Illinois Securities Litigation, 732 F.2d 1302, 1314 (7th Cir. 1984);

2) It "provides information leading to a better understanding of the operation of government as well as confidence in and respect for our judicial system." Publicker Industries, 733 F.2d at 1070; Continental Illinois Securities Litigation, supra, 732 F.2d at 1314. See also Globe Newspaper Co. v. Superior Court, 457 U.S. 596, 102 S.Ct. 2613, 73 L.Ed.2d 248 (1982).

3) It furthers the public's right of access, guaranteed by the First Amendment, to information before a court relating to matters of public interest. Continental Illinois Securities Litigation, supra, 732 F.2d at 1314; and

4) It fosters an appearance of fairness. Globe Newspaper Co., supra, 457 U.S. at 606, 102 S.Ct. at 2620.

Permitting the public to "participate in and serve as a check upon the judical process (is) an essential component in our structure of self-government." id. Allowing for public checks on the integrity of the civil judicial system is as important to the functioning of our society as allowing for public checks on the integrity of the criminal justice system. In numerous civil cases -- medical malpractice lawsuits, which allegedly affect health care costs and insurance rates; sex, race, and age discrimination cases; police brutality cases; and product liability cases, such as litigation involving the Dalkon Shield and Agent Orange, in which large segments of the American population are claiming redress for injuries allegedly sustained due to the negligence or intentional conduct of some of our country's largest manufacturers -- the public's interest in ensuring the integrity of the fact-finding process and judicial decisionmaking process is as great as the interest which the public holds in being similarly informed about criminal trials.

What is true of these types of civil proceedings is no less true of divorce proceedings such as the case at bar. In the Sentinel v. Smith case, the court stated that the public should

not have access to the divorce file of a sitting circuit court judge "merely because the assertions and details have been disclosed in a judicial forum in a case involving private civil litigation to which the general public --the State-- is not a party." 493 So.2d at 1049. Yet, this statement -- unsupported by any citation of authority -- blatantly ignores the years of precedent developed by this court that "the State of Florida or the general public, in a broad sense, is a silent party to divorce litigation." Schuberth v. Schuberth, 52 So.2d 332, 333 (Fla. 1951); Hancock v. Hancock, 45 So. 1020 (Fla. 1908).

In a civil divorce case the trial judge's rulings have a direct impact on the families that appear before him. "[A] court's power to dissolve a marriage carries the responsibility for close scrutiny before so serious a matter as divorce and custody should be resolved." Wall v. Wall, 134 So.2d 288, 289 (Fla. 2d DCA 1961). The public has an interest in ensuring that trial court judges are exercising this responsibility in a fair and even-handed manner, and are in fact applying to divorce proceedings the close scrutiny which they deserve. See e.g., State v. Tyson, supra, 313 So.2d at 784 ("Marriage and dissolution proceedings are unique in the particularity that the state has a continuing interest in perpetuating the marital relationship as well as in regulating dissolution proceedings.") As the First District noted in the instant case, it is the very fact that the public may monitor such proceedings which assures "a fair and impartial judiciary." 508 So.2d at 464. Since marriage

and family relationships are institutions which are of central importance in our society, the public's interest in divorce proceedings is certainly equal to, if not greater than, other types of civil litigation.

Moreover, in Florida, parties seeking closure of divorce proceedings have been accorded no special deference.

> In some jurisdictions, divorce proceedings are routinely closed from public view by rule or by statute. (citations omitted). However, in Florida dissolution cases are treated no differently than other civil cases, regarding the right of access of the press or public to hearings or to judicial records. (citation omitted).

Sentinel v. Smith, supra, 493 So.2d at 1051 (Sharp, J., dissenting).

Against this background, it is obvious that the concept of "private civil litigation" -- developed by the Fifth DCA in the Smith case, relied upon by Senator Barron and the trial court in the instant case, and rejected by the First DCA in the case at bar -- has no basis in law or reason.

II.

THE FIRST DISTRICT COURT OF APPEAL CORRECTLY APPLIED THE MIAMI HERALD v. STATE STANDARD IN THE INSTANT ACTION.

The First District Court of Appeal in the instant case held that the three-pronged test set forth in Miami Herald Publishing Company v. State, 363 So.2d 603 (Fla. 4th DCA 1978), is applicable to civil cases in which a party seeks to seal judicial records.

Florida Freedom Newspapers, Inc. v. Sirmons, 508 So.2d 462, 464 (Fla. 1st DCA 1987).[1] In Miami Herald Publishing Company v. State, supra, the court held that a record of a sentencing hearing could not be sealed absent a showing that (1) closure was necessary to prevent a serious and imminent threat to the administration of justice, (2) no less restrictive alternative measures were available, and (3) closure would in fact achieve the court's protective purpose. 363 So.2d at 606. In the instant case, the First District Court of Appeal found that the "cogent reasons" given by the trial court for sealing the file did not meet this standard and were not "sufficiently compelling to require the proceedings to be conducted in private, thereby denying the public, including the press, the right to attend these proceedings and the right to examine the court file." 508 So.2d at 464. Petitioner Barron argues that the First District Court of Appeal erred in applying the three-pronged test in the instant action. (Petitioner's Initial Brief, p. 12).

A. THE THREE-PRONGED TEST IS PROPERLY APPLIED TO CIVIL CASES.

The initial reason given by Petitioner in support of his argument that the three-pronged test should not apply in the

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[1] The Fourth District Court of Appeal has also adopted the three-pronged test for application in civil cases. Goldberg v. Johnson, 485 So.2d 1386, 1388-89 (Fla. 4th DCA 1986), citing Bundy v. State, 455 So.2d 330 (Fla. 1984).

instant case is that the rationale for application of the three-pronged test to a criminal case is not present in a civil case. However, as explained supra, the policy reasons for granting public access to criminal proceedings (and therefore placing the burden of proof to meet the three-pronged standard on any party seeking to deny public access) are equally applicable to civil cases.

Therefore, since the basis for access to civil cases is the same as the basis for access to criminal cases, the application of the three-pronged standard to civil cases is appropriate, and the First District Court of Appeal was correct in adopting it in this case.

B. THE THREE-PRONGED TEST IS PROPERLY APPLIED IN CASES DEALING WITH SEALING OF JUDICIAL RECORDS.

Petitioner Barron argues that the public's right of access to judicial records is based only upon the common law, and that therefore, under the rationale that the three-pronged test only applies where there is a constitutionally based right of access, the three-pronged test does not apply in this case. (Petitioner's Initial Brief, pp.10-11). Petitioner's contention is flawed because it is based upon two faulty presumptions: (1) that the public's right of access to judicial records is based only upon the common law, and (2) that the three-pronged test applies only when there is a constitutionally based right of access.

There is a First Amendment right of access to pre-trial proceedings in the criminal context. See Press-Enterprise Company

v. Superior Court of California, --U.S.--, 106 S.Ct. 2735, 92 L.Ed.2d 1 (1986)(preliminary probable cause hearings);In re: Washington Post Company, 807 F.2d 383 (4th Cir. 1986) (plea hearings); United States v. Brooklier, 685 F.2d 1162 (9th Cir. 1982)(supression hearings). "There is no reason to distinguish between pre-trial proceedings and the documents filed in regard to them." Associated Press v. United States District Court for the Central District of California, 705 F.2d 1143, 1145 (9th Cir. 1983). Therefore, the public and press have a First Amendment right of access to pre-trial documents in general. id. See also In re: San Juan Star, 662 F.2d 108, 112-13 (1st Cir. 1981)(Same); In re: Matter of Continental Illinois Securities Litigation, 732 F.2d 1302, 1308 (7th Cir. 1984)(Public's right of access to civil judicial records is of constitutional magnitude). And, this First Amendment right should be equally applicable to civil cases, since, as explained supra, there is a First Amendment right of access to civil proceedings. Publicker Industries, Inc., supra; Westmoreland, supra.

Since the right of access to the pre-trial documents in the instant case is constitutionally based, the three-pronged standard applies, as Petitioner admits. See In re: Washington Post Company, supra, 807 F.2d at 392, citing Press-Enterprise II; AP v. U.S. District Court, supra, 705 F.2d at 1146. (Application of similar three-pronged tests to criminal cases).

Moreover, even if the right of access is viewed as based upon the common law rather than the Constitution, the

three-pronged test still applies. In Miami Herald v. Lewis, 426 So.2d 1 (Fla. 1982), this court adopted a similar three-pronged test for analysis of access issues relating to pre-trial suppression hearings and sealed records. id. at 6. However, the court adopted the three-pronged test in spite of the fact that it held that there was no First Amendment right "to attend pre-trial suppression hearings as distinguished from the right to attend a criminal trial." id. As this court subsequently noted in the case of Palm Beach Newspapers Inc. v. Burk, 504 So.2d 378, 381 (Fla. 1987),[2] in spite of the rejection of the press' argument that it had a constitutional right to attend the pre-trial suppression hearing, the court "recognized a non-constitutional right of access and established a three-pronged test" to balance the right of access against the criminal defendant's constitutional right to a fair trial.

Therefore, contrary to the contention of the Petitioner, this court has in fact applied the three-pronged standard in cases in which the right of access was not held, at that time, to be constitutionally based. Furthermore, the right of access

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[2] The holdings in Burk and Sentinel Communications Co. v. Gridley, 510 So.2d 884 (Fla. 1987) are not contrary (as Petitioner would lead the court to believe) to the First District Court of Appeal's decision in the case at bar. Those cases dealt with access to unfiled deposition transcripts and discovery materials. In Burk, this court agreed that, once filed with the court, documents are open to public inspection. 504 So.2d at 384. In the instant case, Respondents seek access to the filed judicial records.

to judicial records advances interests in the same manner as the right of access to a trial. As the United States Court of Appeals for the District of Columbia stated:

> This common law right is not some archaic relic of ancient English law. To the contrary, the right is fundamental to a democratic state ... Like the First Amendment ... the right of inspection serves to produce 'an informed and enlightened public opinion.' Like the public trial guarantee of the Sixth Amendment, the right serves to 'safeguard against any attempt to employ our courts as instruments of persecution,' to promote the search for truth and to ensure 'confidence in ... judicial remedies.'

United States v. Mitchell, 551 F.2d 1252, 1258 (D. C. Cir. 1976), rev'd on other grounds sub nom. Nixon v. Warner Communications, 435 U.S. 589, 98 S.Ct. 1306, 55 L.Ed.2d 570 (1978). (footnotes omitted). See also Newman v. Graddick, 696 F.2d 796, 803 (11th Cir. 1983).

The First District Court of Appeal's adoption of the three-pronged test to balance the need for public access to the judicial records in the instant case against Senator Barron's asserted interest in avoiding public scrutiny of the documents was appropriate.

Additionally, the First DCA was correct in adopting the language of the three-pronged test as set forth in Miami Herald Publishing Company v. State, supra, as opposed to the language of the three-pronged test used by this court in Lewis, because the Miami Herald v. State language is generic and thus, more readily applicable to a civil case, whereas the language in the Lewis test is tailored to a criminal case. See e.g. Goldberg

v. Johnson, supra, 485 So.2d at 1389, in which the Fourth District Court of Appeal tailored for application in a civil case the three-pronged test as enumerated by this court in Bundy v. State, 455 So.2d 330 (Fla. 1984).

In summation, the salutary goals to be furthered by access to civil court records are as forceful as the goals furthered by access to criminal court records. This court has recognized that application of the three-pronged standard is appropriate even in cases where a non-constitutional right of access is weighed against a criminal defendant's constitutional right to a fair trial. Moreover, the right of access to judicial records has been held to be constitutionally based. The First District Court of Appeal's decision to adopt and apply the three-pronged test to the instant civil case was correct.

CONCLUSION

For the foregoing reasons, Amicus Curiae Sentinel Communications Company respectfully requests that this court affirm the decision of the First District Court of Appeal. Sentinel requests this court to protect Florida's laudable tradition of recognizing a strong presumption of public access to judicial proceedings and records by rejecting the concept of "private civil litigation," and by adopting the Miami Herald v. State three-pronged standard for use in civil cases.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished this 23rd day of January, 1988, by U. S. Mail to SHARON LEE STEDMAN, ESQUIRE, P. O. Box 1878, Orlando, Florida 32802; and to FRANKLIN R. HARRISON, P. O. Drawer 1579, Panama City, Florida 32402.

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