O/a 3-3-88

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IN THE SUPREME COURT OF FLORIDA

CASE NO. 70,910

DEMPSEY J. BARRON,

Petitioner,

v.

FLORIDA FREEDOM NEWSPAPERS,

Respondent.

_____/

FILED
SID J. WHITE
JAN 27 1988
CLERK, SUPREME COURT
By _____
Deputy Clerk

ON REVIEW OF A DECISION OF THE DISTRICT COURT OF APPEAL, FIRST DISTRICT

RESPONDENT'S BRIEF ON THE MERITS

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PRELIMINARY STATEMENT

The Petitioner was the appellee and the respondent was the appellant in the First District Court of Appeal. In this appeal, the parties will be referred to as "petitioner" or Barron, and "respondent" or Florida Freedom Newspapers, Inc.

STATEMENT OF THE CASE AND FACTS

On January 28, 1986, Lauverne Barron filed her Petition for Dissolution of Marriage in the Bay County Circuit Court. In late September, after several inquiries at the Clerk's office, Florida Freedom Newspaper's reporters learned on request for the court file that it had been sealed pursuant to the court's order of September 9, 1986. Counsel for Florida Freedom Newspapers on September 30, requested the file from the Clerk's office and was also denied access. Upon verbal instruction from the Honorable Don T. Sirmons, the Clerk's office furnished Florida Freedom Newspapers, the Respondent, and their counsel with a copy of the order (appendix 1) sealing the file and closing further proceedings. The Court, stating that the supporting grounds for closure would reveal the basis of the closure, denied the Respondent's counsel's oral request for a copy of the motion requesting the sealing of the file and closure of further proceedings.

Respondent's counsel then formally made a written demand upon Harold Bazzel, Clerk of the Circuit Court, to allow inspection of the file. (appendix 2) Mr. Bazzel denied the request in writing citing the Court order of September 9 as the only basis for this denial. (appendix 3)

Florida Freedom Newspapers filed their Motion to Intervene (appendix 4) in to the dissolution action on September 30, 1986 and their Motion to Set Aside Order of

September 30, 1986 and their Motion to Set Aside Order of closure of files and proceedings on October 2, 1986. (appendix 5). Both matters were noticed for a hearing which was held on October 13, 1986. At the hearing on October 13, the Court heard argument of counsel for the parties, and on October 15, 1986, entered an order granting Respondent's Motion to Intervene and denying their Motion to Set Aside Order. (appendix 6)

On October 16, attorneys for Respondent Florida Freedom Newspapers, through the use of the Clerk's public access computer, were able to get a printout of the pleadings filed up to that period of time. (appendix 7)

As a result of the Court's denial of the Motion to Set Aside Order of closure, Respondent on October 16, 1986, filed a Motion to Stay Further Proceedings. (appendix 8) A hearing was held before the Court on October 17, 1986, and again Florida Freedom Newspapers were denied the relief sought. (appendix 9)

Respondent then filed with the First District Court of Appeal on October 24, 1986 its Petition for Review of Order Excluding Press and Public from Access to Judicial Records pursuant to Florida Rule of Appellate Procedure 9.100(d), wherein the Respondent not only contested the trial court's order of closure, but also requested a stay of the dissolution proceedings. (appendix 10) The Petitioner filed a cross-petition for review of order excluding press and

motion to intervene on November 3, 1986. (appendix 11)

On November 19, 1986, the First District Court of Appeals granted Respondent's emergency motion to stay the dissolution proceedings. (appendix 12)

On March 6, 1987, the First District Court of Appeal issued an order affirming the trial court and lifting the stay (appendix 13)

On March 30, 1987, the trial court entered a Final Judgment (appendix 14). This was made public by the court, however, the findings of fact supporting the judgment were not.

On June 1, 1987, the First District Court of Appeal issued an opinion reversing itself and the trial court's order to close the file in the trial court. Florida Freedom Newspapers, Inc. v. Sirmons, 508 So.2d 462 (Fla. 1st DCA 1987). (appendix 16)

SUMMARY OF THE ARGUMENT

The First District Court of Appeal was correct when it dismissed the idea of "private civil litigation." There is a strong basis in common law for open judicial proceedings. The public has a right to monitor the judicial proceedings and this can only be done if the court's records are public.

In order for there to be a constitutional right of privacy claimed, there must be an expectation of privacy. There is no such expectation in a judicial proceeding.

The court should have used the three-prong test outlined in Miami Herald Publishing Co. v. Lewis, 426 So.2d 1 (Fla. 1982) before closing any of the records or the proceedings. Instead, the court sealed seven months of pleadings (which had previously been open) and all further proceedings in the case. This was certainly overkill and was an abuse of discretion by the trial court. Such "private civil litigation" leads to a distrust and lack of public confidence in the judicial system and should be rejected.

POINT ONE

TRIAL COURTS ARE AFFORDED THE POWER TO SEAL THEIR RECORDS AND CLOSE PROCEEDINGS IN CIVIL CASES WHEN THERE IS AN IMMEDIATE THREAT TO THE ADMINISTRATION OF JUSTICE.

Respondent, Florida Freedom Newspapers, while admitting the inherent power of the Court to seal records and close proceedings in certain extraordinary situations, contends that such action must be taken only after weighing such actions against the limitations of Article I, Section 4 of the Florida Constitution and the First Amendment of the United States Constitution. After weighing these limitations then such closure may be used in only exceptional situations.

Initially, Petitioner contends that the law of Florida is settled in that the press is not allowed access to pre-trial discovery materials of the parties. Respondent will not dispute this statement but would complete the reasoning for this statement of the law by looking at how such a statement is not applicable to the dissolution records of Senator Barron. The press in Palm Beach Newspapers, Inc. v. Burk, 504 So.2d 378 (Fla. 1987) was not allowed access to pre-trial discovery depositions which had not yet been filed with the court. The court did not allow public inspection under the Public Records Act, Sec. 119, Fla.Stat. (1985) until after the depositions were made a part of the court file. In the instant case, Florida Freedom Newspapers seeks

only those records which have been made part of the official court records and thus would not qualify for application of the protection under the law as to pre-trial discovery information as the Petitioner contends as a basis for denying access to the public and the press.

The press and the public have individual rights emanating from the Constitution which must be considered prior to the court closing files or proceedings. In Florida, the public and press have rights to know and be informed as to the proceedings in civil and criminal courtrooms. State ex rel Miami Publishing Company v. McIntosh, 340 So.2d 904, 908 (Fla. 1977) and Goldberg v. Johnson, 485 So.2d 1386, 1388 (Fla. 4th DCA 1986). Respondent's position is that these First Amendment rights are protected . See Globe Newspaper Co. v. Superior Court of Norfolk County, 457 U.S. 596, 102 S.Ct. 2613, 73 L.Ed.2d 248 (1982) and Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555, 100 S.Ct. 2814, 65 L.Ed.2d 973 (1980) where both cases hold that the First Amendment offers protection not only to those rights specifically enumerated but also to those ancillary rights which are necessary to insure the enjoyment of those specific rights.

It is incumbent on the party seeking closure to meet that heavy burden which is required to justify such restrictions to access. Respondent contends this burden is the three-pronged test announced in Miami Herald Publishing Co.

v. Lewis, 426 So.2d 1 (Fla. 1982), in Bundy v. State, 455 So.2d 330 (Fla. 1984), and in Miami Herald Publishing Co. v. State, 363 So.2d 603 (Fla. 4th DCA 1978).

Petitioner has attempted to argue that the test as announced in Bundy was only applicable to criminal cases. A review of the Court's language does not support Petitioner's theory of limited application. The Court at page 337, noted,

> ...Florida courts have held that denial of access to court proceedings and records for the purpose of protecting the interests of parties to litigation may only be ordered after finding that the following three-pronged test has been met. It must be shown that (1) the measure limiting or denying access (closure of sealing of records or, both) is necessary to prevent a serious and imminent threat to the administration of justice; (2) no less restrictive alternative measures are available which would mitigate the danger; and (3) the measure being considered will, in fact, achieve the court's protective purpose.

While most assuredly Bundy was a criminal case, the Court affirmatively elected to use the words "parties to litigation" in contrast to "criminal defendants." Respondent contends the plain meaning of the words used in the opinion includes litigants in the civil arena as well. Likewise, the Fourth District Court of Appeal believes, apparently, this interpretation to be correct. In Goldberg v. Johnson, 485 So.2d 1386 (Fla. 4th DCA 1986), that court said that parties moving to close a guardianship file must meet the test as stated in Bundy. It is interesting to note in Goldberg that the party seeking access was an individual and therefore

there was not the added issue of an impingement on First Amendment Rights.

Respondent would also note that the procedure whereby the motion to seal was heard, does not comport with that procedure indicated for such action. The trial court, by granting Respondent's Motion to Intervene, acknowledges that the press has standing to question the issue of access. The existence of standing indicates that the media, individually and as a representative of the public, has a very real interest at stake. It follows, therefore, that if one seeks to extinguish or curtail this interest, they should afford the affected party (the media in this case) the opportunity to defend their interest. Respondent, and others similarly situated, can only defend their interest upon receipt of notice and an opportunity to be heard.

The Petitioner proposes that the press and the public is not entitled to notice prior to closure of files and proceedings. Respondent posits that the holdings of Globe, Richmond Newspaper, Sturgis, Goldberg, and Bundy, supra, demand that the right of access is deserving of protection and is to be judged by strict scrutiny standards. Additionally, Lewis, holds that notice to the media must precede closure.

The Florida Supreme Court recognized this common-sense issue in Lewis, supra, at page 7 where they held:

> "The news media has been the public surrogate on the issue of courtroom closure. Therefore, the

> news media must be given an opportunity to be heard on the question of closure prior to the court's decision. Implicit in the right of the members of the news media to be present and to be heard is the right to be notified that a motion for closure is under consideration. This procedure will avoid unnecessary appeals that will otherwise eventually occur."

At the October 13, 1986 hearing, opposing counsel argued that the above principle was not applicable in that Lewis was a criminal case. That attempt to distinguish Lewis from the case at bar is a gossamer argument as the issue is balancing the press' right of access against the litigant's rights, be these litigants in the civil or criminal arena. See also, Palm Beach Newspapers, Inc. v. Cook, supra, Times Publishing Co. v. Hall, 357 So.2d 736 (Fla. 2nd DCA 1978), and the cases cited therein.

Petitioner implies that the announcement from the bench as to the nature of the hearing and its ruling satisfied any notice requirement. Respondent contends that there can be no notice given when no one is present to hear and receive the notice. This lack of an opportunity to be heard was violative of the Respondent's right to due process. Palm Beach Newspapers, Inc. v. Nourse, 413 So.2d 467 (Fla. 4th DCA 1982).

The Petitioner submits that since Respondent has not stated a justifiable reason for unsealing the files that it can be assumed that the information if obtained would be used for gratifying private spite or promoting public scandal. Petitioner's speculation as to the potential use of

the material sought is an improper foundation on which to base the court's decision of closure of files or proceedings. Regardless of the basis justifying access to the material, it is the right to access and not the reason for access which is to be evaluated. Goldberg, supra, at 1389, State ex rel Gore Newspaper Co. v. Tyson, 313 So.2d 777 (Fla. 4th DCA 1975).

The closure of the file and proceedings cannot be based on some speculative, or even probable, basis but must pose a real and immediate threat to the administration of justice. Sentinel Star Co. v. Booth, 372 So.2d 100 (Fla. 2nd DCA 1979), Town of Lantana v. Pelczynski, 290 So.2d 566, (Fla. 4th DCA 1974), Palm Beach Newspapers, Inc. v. Cook, 434 So.2d 355 (Fla. 4th DCA 1983) and Miami Herald Publishing Co. v. Morphonios, 467 So.2d 1026 (Fla. 3rd DCA 1985). Respondent contends the litigants have not met the burden of showing that the administration of justice in the dissolution action was impaired to the point to justify closure.

The Petitioner would have the court look to the "no-fault" divorce statute, Sec. 61.001, Fla.Stat. (1985) as a basis on which to support their contentions. (at page 18) Petitioner erroneously supports closure of judicial files on language in Linda v. Linda, 352 So.2d 1208 (Fla. 4th DCA 1978) which stands for the proposition that in a dissolution action on the issue of alimony it is not proper to force the wife to give the name of her adulterous lover when the

evidence of her misconduct had been proven. Such requirement to give the name of the lover is the dirty linen the court sought to eliminate and not information in the court records which could be viewed by the press and public.

Mistakenly, the Petitioner believes that Senator Barron is not a public figure for all issues which touch and concern his life. Needless to say, Senator Barron is a public figure and a well-known one.

It is his position as a public official that is most important to the issues before the Court, for by virtue of this office, Senator Barron has chosen to live in the proverbial glass house. Florida has been on the leading edge of openness in government with the passage of laws relating to public records, open meetings, financial disclosure and conflicts of interests. Section 112.311(6) Florida Statutes (1985) outline the policy of this state as it relates to public officials.

> It is declared to be the policy of the state that public officers and employees, state and local, are agents of the people and hold their positions for the benefit of the public. They are bound to uphold the Constitution of the United States and the State Constitution and to perform efficiently and faithfully their duties, under the laws of the federal, state and local governments. Such officers and employees are bound to observe in their official acts, the highest standard of ethics consistent with this code and the advisory opinions rendered with respect thereto regardless of personal considerations, recognizing that promoting the public interest and maintaining the respect of people in their government must be of foremost concern.

This case has a "necessary third party", Terri Jo Kennedy, which further warrants openness, as she too is a public employee. Not only is she a public employee, but she apparently works in Barron's office and is under his direct supervision. While the allegations in the dissolution action linking Senator Barron and Ms. Kennedy are not known to the Respondent, to close the entire file can do nothing but cause public distrust as to the operation of the court system. This distrust can only fester as one notes the sequence of the filing of certain pleadings. In fact, the "public" final judgment found fraudulent a transfer from Senator Barron to Ms. Kennedy of a life estate in property in Sublette County, Wyoming, and, further, found as fraudulent a contract to convey a remainder interest to her at his death. The basis for such a finding remains sealed in the court file.

An examination of the docketing print-out shows the filing on August 27, of the motion to add the "necessary party" and assumedly the attendant notice of hearing. The following day a motion of unknown issue and the attendant notice of hearing for September 2 is filed. As September 2 was the day of the hearing on the Motion to Seal, one cannot but feel the effort to join this necessary party may have prompted the motion to seal. Regardless of the accuracy of this conclusion, the continued closure of the file and proceedings can do nothing but cause the seeds of distrust,

suspicion, and innuendo to germinate. It will not be the truth of accuracy of the conclusion that will be the true issue, but rather the perception by the public of something improper.

The Petitioner noted that Sentinel Communications Co. v. Smith, 493 So.2d 1048 (Fla. 5th DCA 1986) discounted the fact that one of the litigants was a judge. While Respondent agrees with that characterization of the opinion, they take issue with that opinion. Respondent contends that a more accurate consideration to be given to the litigants' status can be found in Firestone v. Time, Inc., 271 So.2d 745 (Fla. 1972) and State ex rel Gore Newspaper Co. v. Tyson, 313 So.2d 777 (Fla. 4th DCA 1975), reversed on other grounds, English v. McCrary, 348 So.2d 293 (Fla. 1977).

In the Firestone case, at page 750, the Court noted,

> "...if one by his own volition thrusts himself on the passing scene to the extent that he knowingly and consciously wants and needs publicity or public support for his endeavors or activities, he surely submits himself to public scrutiny, which oftentimes may justly expose his private affairs as they might relate to the activities or endeavors for which he is seeking public approval.
>
> "...one...who makes his living dealing with the public or otherwise seeks public patronage, submits his private character to this scrutiny of those whose patronage he implores, and that they may determine whether it squares with such a standard of integrity and correct morals as warrants their approval." (Emphasis, Court's own).

That Court in the two pages preceding the above excerpt noted those topics of real public or general concern which might be discussed and which should be afforded protection.

Many of those topics dealt with issues which might arise in a dissolution action.

The Fourth District Court of Appeal in State ex rel Gore Newspaper Co. v. Tyson (Jackie Gleason's dissolution action) noted that a person by virtue of "his accomplishment, fame or mode of life, or by adopting a profession or calling" may forfeit at least a portion of his right to privacy.

Senator Barron, and to a lesser extent, Ms. Kennedy, have achieved this status, not by virtue of this divorce action but as a result of their jobs. The positions of trust which they both hold, subjects them to a higher degree of scrutiny and merits that additional openness. Failure to hold them to a higher degree of scrutiny, therefore openness, will adversely affect the public's respect for governmental employees and public officials at all levels. This state has elected to have a policy of openness; and this coupled with the rights of, and need for, a free press must prevail.

POINT TWO

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

In an effort to coordinate and save the court time, respondent adopts as its argument to petitioner's point two the argument of Sentinal Communications Company, amicus curiae, as written beginning on page 6 of its brief under the argument I(A) "THERE IS NO CONSTITUTIONAL RIGHT OF PRIVACY IN CIVIL LITIGATION."

POINT THREE

THE DECISION AS TO ACCESS IS ONE WHICH RESTS IN THE SOUND DISCRETION OF THE TRIAL COURT.

Respondent does not dispute that the trial court has in its discretion the right to deny access to court records and proceedings after balancing the rights of the parties under the United States and Florida Constitutions, the Public Records Act, and the Miami Herald Publishing Co. v. Lewis standard and its progeny. Understandably the trial court has supervisory power over its own records and proceedings as posited by the Petitioner. The Respondent asserts only that the trial court must follow proper procedure in outlining the reasons for closure.

The trial court's order of September 9, is, by the trial court's own admission in its order of October 15, lacks specificity as to the basis for the court's closure of the files. While the trial court's candor is admirable, it does not cure the defect. The courts of Florida and the U.S. Supreme Court have all held that orders such as those under review must spell out the reasons for closure. Miami Herald v. Lewis, supra, News Press Publishing v. State, 345 So.2d 865 (Fla. 2nd DCA 1977), Press-Enterprise Company v. Superior Court of California, Riverside County, 104 S.Ct. 819 (1984) at 824, Goldberg v. Johnson, supra.

The court's closure order of September 9, 1986 because of its overbreadth can not be enforced. United States v.

Columbia Broadcasting Co., 497 So.2d 102 (5th Cir. 1974), and State ex rel Miami Herald Publishing Co. v. McIntosh, 340 So.2d 904 (Fla. 1977). As previously noted, the order is extreme as it seals the entire file and all further proceedings in the dissolution action. The trial court's order of October 15, says that there is some information that is "uniquely private". A cursory review of the docketing print-out (appendix 16) reveals numerous items that even under the "worst-case scenario" cannot constitute a matter that is "uniquely private". To assume that all further proceedings are to be totally consumed by this "uniquely private" matter is too far beyond common sense. A dissolution action, just as the parties affected by it, multi-faceted. All further proceedings can not just focus on the "uniquely private" material which Senator Barron seeks to protect from accessibility. Just as a gardener carefully prunes a plant, excising only the bad wood, so must the court tailor its order to protect that information, if any, which truly merits closure.

Judge Sirmons in his order of October 15, states he cannot set forth the basis for closure without revealing the "uniquely private" information. Respondent relies on State ex rel Tallahassee Democrat, Inc. v. Cooksey, 371 So.2d 207 (Fla. 1st DCA 1979) where the Court expressed a belief that specificity of reasons in closure is both possible and required.

The Second District Court of Appeal has concurred and states that a mere recital of the existence of a "cogent reason" (appendix 18) is not legally sufficient. News-Press Publishing Co. v. State, supra at 867.

Petitioner contends the applicable standard is the "cogent reason test". Respondent would represent that anything short of compliance with the three-prong test enunciated in Miami Herald Publishing Co. v Lewis is not a sufficiently cogent reason. The burden is on Senator Barron to meet this three-pronged test prior to the court ordering any closure of files or procedures.

The Petitioner defends the trial court's failure to include specific findings to support its order of October 15, declaring it to be "totally irrelevant". Such an assertion clearly ignores the decisions on this point. Miami Publishing Company v. Lewis, 426 So.2d 1 (Fla. 1982), News-Press Publishing Company v. State, 345 So.2d 865 (Fla. 2nd DCA 1977), Press Enterprises Company v. Superior Court of California, Riverside County, 104 S.Ct. 819 (1984), Tallahassee Democrat, Inc. v. Cooksey, 371 So.2d 207 (Fla. 1st DCA 1979), Goldberg v. Johnson, supra.

Petitioner incorrectly applies Canakaris v. Canakaris, 382 So.2d 1197 (Fla. 1980) in analyzing the inherent discretion of the trial court in dissolution proceedings. The Petitioner misconstrues the court's discretionary power by arguing that there could be no doubt but that reasonable

minds could differ as to whether the trial court should have sealed the court files in the instant case. Further the Petitioner contends that "under Canakaris and the laws of Florida the trial court did not and could not have abused its discretion by preventing the press from harassing the petitioner by public washing of dirty linen". The Petitioner's statement is a gross misstatement of both the law and the facts. Petitioner would have this Court believe that Canakaris is similar to the facts of the instant case when in fact this Court held in Canakaris that the trial court has "broad discretionary authority to do equity between the parties and has available various remedies to accomplish this purpose, including lump sum alimony, permanent periodic alimony, ...". Never did this Court refer to anything in its opinion other than alimony and attorney's fees in light of the discretionary power of the court. When the two parties in a dissolution action such as in Canakaris disagree over the property settlement as awarded by the court the appellate court uses the test as presented by the Petitioner in reviewing the trial court's discretionary power. On the other hand, when the trial court's discretionary power is reviewed by the appellate court in a court record and proceeding closure situation then the Canakaris holding of review of discretionary power is misplaced and misapplied due to the balancing of the Constitutional rights of persons not present in the Canakaris fact situation.

Were Canakaris applicable the Respondent contends that the trial court's failure to first comply with the established rules of law under Miami Herald Publishing Co. v. Lewis, supra, should be the subject of review. The Court in Canakaris v. Canakaris, 382 So.2d 1197 (Fla. 1980) noted that failure to follow a rule of law does not equate to an abuse of discretion. As the trial court's initial hearing on closure was conducted by erroneous standards, the Respondent need not show an abuse of discretion. The burden is on the Petitioner to show the proper procedures were used and the appropriate burden was met to justify closure.

POINT FOUR

THE PRESS DID HAVE THE RIGHT TO HAVE ITS PETITION HEARD PURSUANT TO FLORIDA RULE OF APPELLATE PROCEDURE 9.100(d).

Petitioner's last point that the Respondent has no right to bring this appeal is meritless. Meritless in that it ignores the clear language of Rule 9.100 which in pertinent part reads as follows:

> A petition to review an order excluding the press or public from access to any proceedings, any part of a proceedings, or any judicial records if the proceedings or records are not required by law to be confidential...

The wording of the above makes it clear that any denial of access is suspect and subject to immediate review unless there is a statutory basis for closure. (Bastardy, certain juvenile matters, etc.)

While Respondent feels the test as announced in Miami Herald Publishing Co., Bundy and applied by Goldberg is the correct standard in all closure cases, the additional issue of a restraint on a free press surely requires the application of the three-pronged test to the instant facts.

Petitioner contends that the press has no right in the gathering of news. The trial court's order of closure before this Court for review is not an order of prior restraint in the classic sense as the trial court has not prohibited the publishing of the news, but rather it is a barrier to the news-gathering process. The consequences are the same.

Respondent's rights as guaranteed under Article I, Section 4 of the Florida Constitution and the First Amendment of the United States Constitution have been restricted by the trial court's order of closure. The Fifth District Court of Appeals noted this in Ocala Star Banner Corporation v. Sturgis, 388 So.2d 1367, (Fla. 5th DCA 1980) where, at page 1371, the court said:

> Prior restraint orders are acknowledged censorship orders. The press is permitted to gather that information, but is not allowed to print it. Limitation of access is likewise a form of censorship because the press is denied the right to gather the news, thus unable to print it. Although there is a distinction between the two types of orders, it appears to us to be a distinction without a difference. Under either order, the information is kept from the public and censorship results.

The court held that denial of access cases and prior restraint cases should be judged by the same three-pronged test announced in Miami Herald Publishing Company v. Lewis and State v. Bundy. Id. at 1371. The strict scrutiny standard, therefore, must judge any curtailment of the right of access to records and proceedings.

The U.S. Supreme Court has also noted that the First Amendment cannot be limited to only those rights specifically enumerated therein. A broad interpretation is required to insure the enjoyment of other First Amendment rights. Globe Newspaper v. Superior Court for the County of Norfolk, 457 U.S. 596 at 604, 102 S.Ct. 2613 at 2618, 73 L.Ed.2d 248 (1982). The nature of the adverse impact requires the Court

to look on the closure orders with the same suspect nature as would be applied in a classic prior restraint case. Bundy v. State, 455 So.2d 330 (Fla. 1984) at 337.

CONCLUSION

The Respondent, Florida Freedom Newspapers, does not dispute that the trial court has the discretion to supervise court records and court proceedings in order to protect the rights of all parties involved and to ensure that justice is not impaired. Disagreement arises, however, when the trial court does not follow the prescribed methods of closure of records and proceedings as outlined in Miami Herald Publishing Company v. Lewis and its progeny which requires that the party seeking closure has the burden proving that closure is necessary to avoid a serious and imminent threat to the administration of justice in the dissolution action before the court; that an alternative means which is less restrictive than closure is not available; and that the measure under the court's consideration will achieve the court's protective purpose.

Having shown that this standard is applicable to civil cases, Senator Barron has not met his burden of proving that the administration of justice in his dissolution action would be affected by the records and proceedings being opened for inspection by the press and his constituents in the public of Bay County. Nor has Senator Barron shown that a less restrictive alternative means of excising certain information from the files would not adequately serve his purpose.

The First Amendment to the United States Constitution

and Article I, Section 4 of the Florida Constitution guarantees Florida Freedom Newspapers certain rights which have been restricted in a number of ways by the trial court's order of closure. First, the Respondent is restrained from gathering information which results in a prior restraint order being placed on them by the trial court. Ocala Star Banner Corporation v. Sturgis, supra. Secondly, Respondent was denied due process when the court did not give adequate notice to the Respondent, who acts as the "public surrogate", prior to closure of the records and proceedings. Miami Herald Publishing Company v. Lewis, supra. Thirdly, Senator Barron as a public official for decades becomes a public figure for all issues which touch and concern his life and forfeits his right to privacy thus enabling the public to know or be informed by the press of the issues which relate to Senator Barron's position of integrity and trust over his constituent public who rely on his honesty and trustworthiness in his position as a public official for Florida and Bay County.

Florida Freedom Newspapers agrees that the trial court has the discretion in closing records, which are otherwise open to the public and the press. However, the court must properly close the records. The trial court by not following the established procedures of law did not properly close the record.

The Petitioner's speculation as to the usefulness of

the records' information to the public constituents of Bay County and to Florida Freedom Newspapers must not be considered as to whether the records should opened. To paraphrase the Court in Tyson, supra, it is not the public's reasons for wanting the information, but rather their right to that information that is to be evaluated.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished to Sharon Lee Stedman, Attorney at Law, P. O. Box 1873, Orlando, Florida 32802, this 25th day of January, 1988.

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