

The Reporters Committee for Freedom of the Press

2009 Legal Defense Report

(through October 11)

PUBLICATIONS RELEASED

Access to Electronic Communications

In May, we released a new state-by-state legal guide covering public officials' use of electronic communications, including e-mail and other messaging, and to what extent those communications are covered by both open records and meetings laws.

A summary of media-related decisions by Supreme Court nominee Sonia Sotomayor

In May, we released a report on the First Amendment and FOIA related decisions of Judge Sonia Sotomayor. Even with all her federal judicial experience — more than any Supreme Court nominee in a century — we concluded that no clear standard on First Amendment issues has emerged from her many cases.

Secret Justice: Jury Proceedings and Records

In February, we released a new guide as part of the Secret Justice series that examines the difficulties in gaining access to information about jurors in the federal and state courts.

Sunshine Inc.: The basics of covering business organizations

In August, we released a legal guide covering the state and federal access issues involved in all aspects of covering businesses.

CONFIDENTIALITY

Federal shield bill

Throughout the new session of Congress, we have been actively involved in the effort to get a federal shield law enacted, including through compiling research and developing position papers.

Proposed Wisconsin shield law

In July, we submitted comments urging the state legislature to adopt a shield law that protects reporters' rights to keep sources confidential.

***Maxon v. Ottawa Publishing Company* (Ill.)**

In March, we joined an amicus brief before an Illinois appellate court urging the court to adopt a high standard protecting the anonymous speech of Web site commenters, before allowing a libel plaintiff to compel the site to disclose identifying information.

Texas shield bill

We continued to actively support efforts in Texas to pass a reporter's shield law, through means such as compiling research and statistics on aspects of the privilege for use in the state media's lobbying efforts.

***The Mortgage Specialists v. Implode-Explode Heavy Industries* (New Hampshire)**

In June, we wrote a brief urging the state Supreme Court to recognize a privilege protecting the identity of the confidential source of a news Web site.

FREEDOM OF INFORMATION

ACLU v. Dep't of Defense (U.S. Supreme Court)

In September, in the longstanding battle with the government over release of images depicting torture and abuse of detainees held in U.S. custody, we submitted an amicus brief urging the court not to accept review of the case, and thus to recognize that the photos are not exempt under FOIA.

Associated Press v. Canterbury (W.Va.)

We filed an amicus brief in the West Virginia Supreme Court of Appeals on behalf of the Associated Press urging the court to allow access to e-mail of a former Supreme Court Justice under the state's open records law. The particular messages in question were between the justice and the CEO of the party to a case over which he was presiding.

Comments to the Federal Aviation Administration

We submitted comments to the FAA in April in response to a proposal to shield from public view the National Wildlife Strike Database. The Secretary of Transportation stepped in after comments were received and the FAA proposal was withdrawn.

Comments to the National Archives

In April we submitted comments to the National Archives and Records Administration in response to an invitation to provide ideas for improving the management of presidential libraries. NARA had proposed drastically limiting the ability of researchers to make Freedom of Information Act requests for documents.

Lorenzo v. City of Venice (Florida)

In August, we submitted a brief before a trial court arguing in favor of a grant of attorney fees to plaintiffs in a FOIA suit, stating that the lawsuit served the public interest by exposing

violations of the law. In late September, a Florida judge increased the fee award to a total of approximately \$1.4 million.

Nebraska v. Kinyoun (Nebraska)

We filed an amicus brief in the Nebraska Supreme Court in January, urging the court to release burial records of people buried on the grounds of a state mental hospital. We argued the trial court had misunderstood the relationship between the federal law, HIPAA, which protects medical information and the state's open records law.

Rangra v. Abbott; Rangra v. Brown (5th Cir.)

In May, we urged the 5th Circuit to reconsider its ruling that the Texas Open Meetings Act needed to pass a strict scrutiny standard of First Amendment review. The court held that city councilors who had exchanged emails in violation of the state open meetings law had a First Amendment right to communicate with one another and the law should be declared invalid unless it could pass strict scrutiny. The court ruling could call into question the constitutionality of many state open meetings laws.

In September, after the full appellate court agreed to reconsider the case, we wrote a brief arguing that the law was constitutionally sound and actually promoted First Amendment interests, and an adverse decision would have widespread implications for government accountability. The full court subsequently dismissed the case as moot since the plaintiffs were no longer members of the city council.

Testimony to the Legislature of the State of Maine

In April, we filed written testimony with Maine's legislature arguing against a bill that would halt public access to the salaries allocated to government positions.

LIBEL & PRIVACY

Noonan v. Staples (1st Cir.)

In March, we joined an amicus brief urging a panel of the First Circuit to reconsider its decision in a private-matter libel case holding that truth is not a defense to libel if the statement was made with malice, in the sense of ill-will. The court based its decision on a century-old exemption in a libel statute, and did not consider whether the statute was unconstitutional in light of the last half-century of First Amendment case law.

NEWSGATHERING

In re Sony BMG Music (1st Cir.)

In January, we joined an amicus brief urging the appellate court to uphold a district judge's decision to allow video cameras in a civil trial.

PRIOR RESTRAINTS

U.S. v. Stevens (U.S. Supreme Court)

In July, we wrote a brief urging the high court to strike down a federal statute that criminalizes possession, creation or sale of a wide variety of depictions of cruelty to animals, arguing that the scope and vagueness of the restriction would interfere with gathering and reporting news.

SECRET COURTS

Citizens United v. FEC (U.S. Supreme Court)

In January, we wrote an amicus brief urging the U.S. Supreme Court to rule that campaign finance rules may not be used to suppress political documentaries without abridging press freedom.

In July, after the Court asked for supplemental briefing on the broader question of whether the law restricting corporate

communications during elections was unconstitutional, we submitted a brief arguing that the law is constitutionally sound if the court recognized an expansive, First Amendment-based news media exception that would cover the plaintiff.

Comments on draft rule on Confidentiality of Juror Personal Information (Virginia)

In September, we wrote comments urging the Virginia Supreme Court's Advisory Committee on Rules of Court to reconsider a rule that would introduce sweeping secrecy into the jury system.

In re NHC-Nashville Fire Litigation (Tenn.)

In March, we wrote an amicus brief urging the Tennessee Supreme Court to find a presumptive right of access to discovery materials filed with motions in court.

In re September 11 Litigation (S.D. N.Y.)

In March, we joined the New York Times Co. in intervening in the remaining litigation by victims' families against the airlines to argue for greater public access to information in the case. The parties had earlier signed a sweeping confidentiality agreement, which the families later felt was allowing the airlines to keep important information about public safety and airline negligence secret.

Presley v. Georgia (U.S. Supreme Court)

In August, we wrote a brief urging the Court to review a Georgia Supreme Court decision allowing Georgia judges to bar the public from courtrooms during jury selection.

Sam v. Ossiginac (Little River Band of Ottawa Indians Court of Appeals)

In July, we wrote a brief urging an American Indian court to vacate a prior restraint issued against a journalist in violation of the Tribal Constitution, the First Amendment, and the Indian Civil Rights Act.