



THE OLD STAR CHAMBER, WESTMINSTER

THE JUDICIAL SWAMP OF IMPRACTICAL OBSCURITY

Chief Judge of Palm Beach Circuit declines online access to case of significant public interest

February 2, 2012

Editorial by David Arthur Walters

MIAMI BEACH—David Johnson v. Allen H. Libow, a case filed in the Palm Beach Circuit Court, is certainly a case of significant public interest to the nation because it purportedly exposes one of the worst examples of the abusive and malicious practice of law tolerated by a court system that claims the sole and inherent power to discipline itself. It is definitely a case the public should scrutinize to see if the allegations of the plaintiff have merit.

Yet what could be one of the most egregious cases of unethical conduct by lawyers and gross negligence of the Florida Bar in failing to discipline them will barely see the light of day in order for the consuming public to decide for itself whether the allegations are true or false. Apparently the lawyers in question are untouchables. The mainstream press, the much vaunted fourth branch of government, is loath to alienate the profession that has a virtual stranglehold on every walk of life therefore it ignores the potentially scandalous case. Most importantly, Florida's judicial system is deliberately antiquated in respect to the absence of complete open Internet access to its so-called public records.

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One of the principles that distinguish our English law as it is rooted in Germanic custom is the ancient Rule of Publicity. The Anglo-Saxon court was held in the open air and could be attended by anyone who wanted to witness the battles, overseen by the wisest men in the neighborhood who could be mustered for the decision. Even the inquisitive courts of the executive power, such as the King's Council sitting in the Starry Chamber, forsook secrecy and competed with the common law courts for popular favor. Indeed, before the Star Chamber became notorious for its malicious prosecutions and arbitrary processes, it was popular among the people because it protected them from the abuses of nobility, circumvented the unwieldy and obtuse legal system, and, most importantly, chastened lawyers who had managed to place the interest of their profession above the common good.

Today the numbers interested in the legal contests cannot fit into a brick-and-mortar courtroom, but technology permits millions to have immediate access. If we had that access, we could discover whether or not there is wisdom in crowds, as democracy maintains. We may not count on the collective wisdom, but we can count on the fact that there are among us lay people who have enough wits about them to understand from online public access to judicial records including records of the court's disciplinary arm that influential attorneys have placed themselves above the law and evaded justice for many years with the help of judges and an integrated bar that does not publish acquittals and destroys files a year later to cover up what may be its own misconduct, negligence, and ignorance. The little guy gets disbarred for stealing client funds while the untouchables who resort to massive legalized theft become the most influential and trusted attorneys in the state, until they get too greedy, step over the line and are arrested by the F.B.I.

If only the public could keep an eye on the unfaithful or miscreants, now that God is dead, the damage they do to society could be mitigated by the crowd's all-seeing eyes. Of course lawyers are not the only culprits to be recognized and exposed by public observation. The greater the number of people watching, the greater the justice that may be done as some of them come forward with evidence for or against the litigants.

With the glorious exception of the Manatee County Circuit Court, which has just brought its case records including document images online, cases in the circuit courts of Florida are obscured by the Florida Supreme Court's blanket moratorium on open access by the public, although an electronic filing system has been installed for attorneys in many of the circuits. The reason given for the snail's pace to online public access, for which there is no deadline, is the need for privacy, although a recent judicial administrative order already mandates that the lawyers and pro se litigants must not include in their filings certain private information exempted by the public records law.

In the good old days, something called "practical obscurity" allowed the courts to keep the identities of the actors and their behavior in court relatively secret. Only the most thoroughgoing investigator could determine exactly what records the court had and what was really going on in a case. If someone was keenly interested in a case, they might have to travel a great distance at considerable expense to attend hearings and trials and pore over all sorts of documents to get an understanding of a case. It was assumed that records would only be used for proper purposes given that practical obscurity. Reporters from the established press, the press with adequate resources, had to establish a cooperative relationship with the clerks or else their access would be

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impeded. They decided what cases to report on. In other words, the established press manufactured the news.

The practical obscurity was also impractical. The grinding old system was expected to change in a revolutionary manner with the advance of the Internet. It has indeed changed at the federal level, where dockets and documents can be accessed via a system called PACER. Many county courts in Florida provide online access, but not the circuit courts where civil cases must exceed \$15,000. Again, the pioneering Manatee County Circuit Court is the exception.

However, an administrative order of the Florida Supreme Court allows the chief judge of a jurisdiction to make non-confidential records in a case of significant public interest electronically available. ¹ Therefore I asked Chief Judge Peter D. Blanc to make the Johnson v. Libow case available on the basis of its public significance. ² My plea stated that “Johnson v. Libow is of significant public interest inasmuch as its subject matter appertains to the ability of officers of the court to pervert judicial process to intimidate, silence, and punish members of the public who file complaints against them with The Florida Bar. And the case is significant because it appertains to the Bar's failure to restrain all attorneys from doing so, despite the Bar's opinion, in one case of selective enforcement, that such conduct is unethical inasmuch as its interferes with the administration of justice.”

Amy S. Borman, General Counsel to the 15th Judicial Circuit, responded on his behalf: “I spoke with the Chief Judge, and, as a policy, he does not designate specific cases for the Clerk & Comptroller to make available electronically. Circuit civil case files are available for inspection and review at the Clerk & Comptroller's office in West Palm Beach.”

I responded to Ms. Borman's letter with a request for the judge's reasoning: “Now the law is mysterious to those of us who do not practice it, and we are often troubled by judicial decisions when they are not explained. I pray that you will, with my apologies for the interruption, ask the honorable judge to give his reason for his general policy and for his unwillingness to make an exception in this remarkable case. And whatever you might say that will serve to educate the public on the matter will also be naturally appreciated.” ³

Judge Blanc kindly responded on September 28, 2011:

Dear Mr. Walters:

Amy Borman has advised me that you are seeking a better understanding of my reasons for denying your request that I issue an administrative order making all docket filings electronically accessible to the public free of charge in the case of David Johnson v. Allen H. Libow, Case No: 502011CA001121XXXXMB.

You have asked that I take this action based upon your belief that this case is “of significant public interest”. Many cases that come through our court system are of significant public interest and the courts and court filings are open to public scrutiny. However, I have never previously taken the action that you are requesting in relation to a particular case and choose not to do so now. I believe there is an inherent conflict between the courts remaining impartial and the courts

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rating in advance the relative importance to the public of the cases that come before it. It is not appropriate for the court to determine that any one case is worthy of more public scrutiny than another. Although there is an appellate process for trial judges to certify cases of great public importance, those are done primarily in situations where the case raises a conflict in the application of existing laws.

The decision that a case is of significant public interest should be made by the public and/or the media, not by the court. It is important to note that the records you seek are all available for review at no charge to you and to all members of the public through the clerk's office.

Sincerely,

Peter D. Blanc, Chief Judge

Judge Blanc has left us where we started, with the vestiges of practical obscurity. Members of the public can get in their cars or fly to Palm Beach, where they can inspect the records at the courthouse. And they will have a considerable hotel expense given the fact that they will have, in this case and the underlying case it is brought upon for malicious prosecution and an abuse of process that includes dilatory tactics and obfuscation of the issue by clogging the court with massive filings, over 32,000 pages of documents to digest and take notes on. Of course the clerk will be glad to send images of the documents to a member of the public at a rate of \$1 per page, so that would run \$32,000.⁴

The established press might be reluctant to spare a journalist for a few weeks to research the case and fully comprehend the issues involved, even if it were willing to take on Florida's integrated bar. The professional bar is "integrated" with the Florida Supreme Court, meaning that the same public branch that licenses and disciplines the profession also represents its political-economic interests. That is an integrated conflict of interest: the fox is guarding the henhouse. Great Britain, the mother country of our English law, has in its infinite wisdom disintegrated its bar, severing the responsibility for disciplining solicitors and barristers from the judiciary function and placing it in the executive under the purview of non-lawyers with legal assistance. Even if an American publisher or editor wanted to expose the constitutional corruption of the Florida Bar and its consequences in particularly egregious cases, they would be reluctant to do so. Although the situation is outrageous when understood, the issues are complex and would require an extraordinary attention span from an audience that already "knows that lawyers are liars and crooks"—which is of course untrue.

On the other hand, if the documents in this case and the underlying case were online, several thousand heads would prove far better than one. Moreover, dozens who have had experience with the lawyers involved might be glad to come forward to relate their experience with good effect.

We might ask, "If a judge will allow a proceeding to be televised nationwide, wherein a mother is accused of murdering her baby, and she accuses her father of incest and covering up the cause of the baby's death, why will not Judge Blanc allow online access to the Johnson v. Libow case?"

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Because it is not about what publishers believe the people are actually interested in, child-murder and incest?"

I am a member of the traditional press referred to in the Constitution, a one-man press or pamphleteer, and I say Johnson v. Libow is a case that should be of significant public interest and would be if the case were fully aired. Wherefore Judge Blanc, given that reasoning, should have opened up the process for online scrutiny.

But to be fair to Judge Blanc, and reading between the lines, I believe he may have washed his hands of this case because to vary from his general policy and to determine that it alone was worthy of significant public attention might imply a partiality prejudicial to justice being served in his circuit.

Obviously, Judge Blanc and his chief clerk should make open online access to all non-confidential court records their priority. That the Palm Beach court system is strapped for funds is no excuse. The savings of going paperless is a proven fact. In any case, justice would be better served by lifting her out of the swamp of impractical obscurity.

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NOTES

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No. AOSC07-49 INRE: REVISED INTERIM POLICY ON ELECTRONIC RELEASE OF COURT RECORDS: ADMINISTRATIVE ORDER.... This administrative order revises and supersedes the interim policy contained in Administrative Order AOSC06-21. After consultation with the Court, the revisions to the interim policy recommended by the Access Committee are approved. The revised interim policy continues to allow extensive docket information, as well as all final orders and judgments of the courts, to be made available electronically, such as on a publicly accessible internet website, as long as no confidential information is released. In addition, as originally provided, a chief judge of a jurisdiction can direct that all non-confidential records in a case of significant public interest may be made available electronically. To facilitate orderly access to records affecting real property, the revised interim policy continues to allow certain records affecting real property to be released. Further, any non-confidential Florida court record can be provided electronically in response to a request, provided the record has been manually inspected by the clerk of the court in order to ensure that no confidential information is released. DONE AND ORDERED at Tallahassee, Florida, on September 7, 2007.

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July 23, 2011

Honorable Peter D. Blanc, Chief Judge
PALM BEACH COUNTY COURT SYSTEM
c/o Sharon R. Bock,
Clerk & Comptroller
or Stephanie Lee
Judicial Assistant

RE: Case: 502011CA001121XXXXMB DAVID JOHNSON V ALLEN H LIBOW

Your Honor:

I respectfully request the court to issue an administrative order to make all the filings on the docket in the above-captioned case electronically accessible to the public free of charge.

Johnson v. Libow is of significant public interest inasmuch as its subject matter appertains to the ability of officers of the court to pervert judicial process to intimidate, silence, and punish members of the public who file complaints against them with The Florida Bar. And the case is significant because it appertains to the Bar's failure to restrain all attorneys from doing so, despite the Bar's opinion, in one case of selective enforcement, that such conduct is unethical inasmuch as its interferes with the administration of justice.

Broad public access to court records is increasingly limited to the minute portion of the public that have the means to visit the courthouse, Most often that would be members of the so-called legitimate press.

I have called attention to this important case to mainstream newspaper reporters in Florida, including but not limited to reporters with the Miami Herald and the South Florida Business Journal.

My effort to elicit "legitimate" coverage in this case has been in vain. Mainstream media reporters have informed me that, since this subject may very well involve criticism of The Florida Bar therefore the Florida Supreme Court of which the Bar is part and parcel, and since the Bar itself is notorious for its past prejudice in favor of influential attorneys, coverage would alienate a major source of "legitimate" news and would furthermore be a waste of time inasmuch as the court has "inherent powers" over lawyers that cannot be influenced by the press or public opinion not to mention the legislative and executive branches.

As for the judicial opinions the organized media does cover, I have often found its reports misleading and sometimes plainly wrong in fact and law, when I did manage to recover a copy of the judicial action reported on.

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Additionally, I have not always been able to get a complete case file in some cases because of costs, particularly where attorneys are involved whose practice is to file hundreds of pages at a time in hopes of bewildering the court and running up litigation costs.

I have done my best, as a member of the traditional Press, that being a "press of one" or "pamphleteer" sometimes critical of the judiciary, i.e. the "Press" for which the Constitutional Amendment was drafted, to cover this particular case, but at present can say nothing about it because the records are not available and the parties are silent due to pending litigation and my lack of status as a "legitimate" reporter.

It is with all that in mind that I reiterate my prayer for an order providing that the filings in this case - at least the pleadings themselves - be made electronically available to the general public free of charge.

Yours truly,

David Arthur Walters
aka "The Miami Mirror"

cc:

Kenneth Marvin
Director of Lawyer Regulation
THE FLORIDA BAR

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Amy S. Borman
General Counsel
15th Judicial Circuit
205 North Dixie Highway
5th Floor
West Palm Beach, Florida 33401

Re: Electronic Availability of Judicial Records

Dear Ms. Borman:

Thank for your email of 24 August 2011.

I deeply appreciate that fact that you spoke to Chief Judge Blanc in response to my request to make a particular case of extraordinary public importance electronically available to the public.

Of course the public will never know how important this case is unless it is aired by the mainstream press, which that so-called legitimate press is not wont to do inasmuch as the

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judiciary is a primary source of the news that it filters for public consumption with its own corporate interests in mind, and the immediate and widespread revelation of the unclad subject matter in the instant pleadings may cause the public to hold the Florida Bar and the institution into which it is integrated in some contempt, from which the publishers may fear some retribution. In fine, this case may prove embarrassing to the legal profession and especially to its ruling elite. It is all about shutting people up who would complain about the misbehavior of lawyers.

I am naturally disappointed that Chief Blanc, as a matter of general policy, declined to make the case filings electronically available without providing his reasoning for that policy, especially since electronic records are court records subject to public access law, and the Florida Constitution may be applicable to a request for same.

Please correct me if I am mistaken here, but the privacy-versus-publicity controversy in respect to electronic access to case files was taken up for eventual settlement by the Florida Supreme Court. I recall that a moratorium on electronic access to records was declared, but with the proviso that the chief judge of a court could make records of public importance electronically available after the clerical staff redacted confidential information. And most lately I believe an order was laid down that placed the responsibility on officers of the court to make sure no pleadings were filed that reveals information confidential by law. Finally, I thought there was a deadline set after which all electronic records were to be made available, but to the best of my knowledge, and I suppose you would know the fact of the matter, the deadline has passed, leaving me to think, perhaps mistakenly, that the limbo period persists, so that the chief judge of each court has discretion, which Chief Judge Blanc now exercises in the negative as we watch trials telecast at no charge to millions of viewers.

I am aware of public statements by the Florida Supreme Court extolling the Court's willingness to bend over backwards to provide public access to records, and it seems to me that such graciousness might extend to the voluntary conduct of lower court judges.

I suppose you know, but I do not know, what the legal extent of Judge Blanc's discretion might be when the benefits of making the case records immediately available to the public worldwide far outweigh the cost of embarrassing a few people who hold some sway over the lives of countless individuals; particularly, in this case, when it comes to their right to petition the Florida Bar and other governmental agencies for redress of their grievances against lawyers without being punished for doing so.

Now the law is mysterious to those of us who do not practice it, and we are often troubled by judicial decisions when they are not explained. I pray that you will, with my apologies for the interruption, ask the honorable judge to give his reason for his general policy and for his unwillingness to make an exception in this remarkable case. And whatever you might say that will serve to educate the public on the matter will also be naturally appreciated.

Sincerely,

David Arthur Walters

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August 31, 2011

Subject: PRR - Response to PRR from The Justice Network (Gillespie) re: Johnson v. Libow, dated 08.29.11

Mr. Gillespie:

Please note that case dockets are available for public viewing on-line on our website at Court Records. The Supreme Court currently has a moratorium that prohibits clerks from posting images of pleadings on the internet. If you want copies of the actual pleadings, there are two options:

1. We can provide you with the cost and make arrangements for payment by credit card and transmit a pdf document via email or,
2. We can provide you with the cost, and once we have received your payment and a stamped, self-addressed envelope, we will mail the pleadings to you, or you can pick them up.

The cost of obtaining a copy of court records is set by Florida Statute and is listed in our General Fees. The cost for copying court records is \$1.00/page. The Complaint is 10 pages @ \$1.00/page, making the total amount due \$10.00. If paying by check, please make your check payable to: Clerk & Comptroller, Palm Beach County, and if mailing, please send to: Denise Coffman, Legal Counsel, Clerk & Comptroller, Palm Beach County, Post Office Box 229, West Palm Beach, FL 33402. Upon receipt of payment, we will forward the documents to you. If you are paying by credit card, please contact our office to make the necessary arrangements.

Thank you.

Nancy Jill Ardell
Legal Secretary

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