At the Local Level

Middle District of Florida Man: Where the Bizarre Florida Memes Come From and More Fun Under the Sunshine Laws

by Richard J. Cole III

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Conventioneers, welcome to Tampa, Fla., one of the Middle District of Florida’s many homes. Did you know that, in 1898, Teddy Roosevelt and his Rough Riders trained under the minarets of the ersatz-Moorish Tampa Bay Hotel, now the University of Tampa? While the architecture may have you taking a second look at Edward Said’s Orientalism, at that time Florida’s federal courts played an important role in the Spanish-American War and the United States’ own expanding colonial empire, considering such seminal cases as The Paquete Habana. Previously, Florida’s federal courts had been mostly famous for “wrecking” laws that covered the salvaging of commercial sailing vessels and transformed the United States and Caribbean economies during the early and middle 19th century. Judge William Marvin of the U.S. District Court for the Southern District of Florida wrote the leading treatise on that area of law from the federal court at Key West.

These days, Florida is often seen in the news regarding other, less salubrious matters: toilet humor, massacres, voting snafus, and graft, to name a few. You may have heard about Tampa before; or maybe you haven’t, and it might be better that way. Because if you have heard of lovely Tampa, it was likely through a bit of internet humor such as “Florida Man Calls 911 to Check on His Tax Return” or “Florida Man Steals 36,000 Pounds of Crisco.” Florida Woman has fun, too. For instance, she once blamed the cocaine in her purse on a “windy day.” Why are the men and women of post-modern Florida so strange and wacky? Is there something in the water other than the brain-eating amoebae, flesh-eating bacteria, jellyfish, stingrays, snapping turtles, lightning, alligators, and sharks?

The answer, it turns out, is that Floridians are not all that different from your neighbors in those other, colder states. Rather, Florida’s unique laws enable journalists to cover Floridians in ways that just aren’t possible elsewhere. Since 1905, and with additional laws passed in 1909 and 1967, Florida’s civil servants and citizens have labored under the Government in the Sunshine Act. The “Sunshine Laws” have nothing to do with the burning ball of nuclear fusion in the sky that can make wearing a wool suit in Tampa unsuitable, but rather ensure our state and local governments, plagued by corruption and malfeasance, operate in an open manner. The laws impact on some federal matters in the state, too, and for public servants, citizens, and private corporations the laws have serious consequences—at least as to public relations. Additionally, many states look to Florida’s Sunshine Laws when crafting their own.

The most obvious of these consequences, to any internet user, is that Florida police reports are public record. In other states, a journalist may have to wait for an arrest report to become public, if it ever does, but here they do not. This creates a cottage industry of reviewing police reports for the most salacious and titillating to turn into another Florida Man meme or click-bait article. Someone has probably stolen Crisco in your state, too, and no doubt the wind is accused of blowing bags of drugs into the purses of Chicago. You just don’t often hear about it.

While ordinary citizens may find it impossible to avoid the pain of internet stardom inflicted by the Sunshine Laws, Florida’s political establishment has done much to avoid them. Former Florida Attorney General Pam Bondi once stated that “in Florida, transparency is not up to the whim or grace of public officials. Instead, it is an enforceable right.” Her words were prescient. In one 2015 lawsuit, Bondi, the chief financial officer, the agriculture commissioner, and then-Gov. Rick Scott were accused of using staff members as conduits to avoid the Sunshine Laws by having off-record communications in connection with the forced resignation of the commissioner of the Florida Department of Law Enforcement. Gov. Scott and the three named cabinet members settled the matter, paying $55,000 each to attorney’s fees to the plaintiffs and promising to institute reforms to cabinet meeting procedures.
Jacksonville City Council recently breathed a sigh of relief when no charges were brought against them for their frequent phone calls between each other after a year-long investigation. As charges under the laws can only be misdemeanors, state attorneys cannot issue search warrants or wiretaps and, if a council member were subpoenaed, they would be immune from prosecution. Federal officials can be ensnared in the Sunshine Laws, too. While agencies created under federal law operating within the state do not come under the law, committees or boards that are created by the state and include federal agencies or officials are subject to the law. Therefore, any federal agency working with the state government must be fully aware of and advised on the application of the Sunshine Laws. It must also be prepared to comply with the sometimes-onerous requirements, as the Sunshine Laws spread to places many public servants think are shrouded in darkness or, at the very least, exempt.

A federal congressperson, when meeting with city council members, must typically hold the meeting open, even if it is only to discuss federal budgeting matters. So too must meetings be held open regarding matters of compliance with federal laws such as desegregation. The Florida Office of the Attorney General has taken the position that an exchange of views among members of a board through comments on a Facebook post were a meeting subject to the open meetings law, meaning that federal and state officials alike must be careful in all use of social media.

Exemptions are narrowly construed, even where they exist. For instance, while federal privacy laws, like those prohibiting disclosure of certain identifying information, may trump the Sunshine Laws, in most instances a meeting must still be held open and then, subsequently, efforts made to comply with federal privacy laws. A Catch-22 if there ever was one.

So, the next time Netflix disappoints, just remember there is a judge deciding if you will soon get to sit down with the popcorn to watch a purported Robert Kraft being “massaged” by alleged sex slaves at the now-infamous Orchids of Asia Day Spa. But never fear, your eyes will be safe from the horrors of the Parkland massacre thanks to a special exemption ensuring there is no Sunshine there. And whenever you see a Florida Man or Woman story, just remember, dear visitors, it could even be you.

Endnotes

1ALEJANDRO M. DE QUESADA, THE SPANISH AMERICAN WAR IN TAMPA BAY 20 (1998). A visit to the Henry B. Plant Museum at 401 W. Kennedy Blvd., Tampa, FL 33606, is recommended for history buffs of all stripes.

2EDWARD W. SAID, ORIENTALISM (1978).

3The Paquete Habana, 175 U.S. 677 (1900).

4Key West Wreckers (PBS broadcast Oct. 11, 2016), https://www.pbs.org/video/wrm-history-key-west-wreckers.


13Chance & Locke, supra note 10, at 247.


15Eagleton, supra note 14, at 22.


18Eagleton, supra note 14, at 23.


who—all things being equal—will not have leanings one way or the other about the case at hand.

Both of these approaches, as well as the myriad other ways to pull out and combat implicit bias through voir dire, take creative thinking from lawyers, as well as time and patience from judges on the bench. As the research around implicit bias becomes more readily known, lawyers and judges will hopefully take (and be given) creative license in voir dire to ensure fairness to all participants in a trial.

Endnotes

1To take a test to learn more about your own implicit biases, visit PROJECT IMPACT, https://implicit.harvard.edu/implicit/takeatest.html (last visited Apr. 8, 2019).
2Lisa Blue has recovered $350 million in jury verdicts (and hundreds of millions more in settlements) and is a leading expert on jury selection—something she credits to her background, which includes two master’s degrees and a Ph.D. in psychology.
4Cortez v. HCCI-San Antonio Inc., 159 S.W.3d 87 (Tex. 2005).
5Jury Analyst, Get in the Game Podcast - Bruises Matter in Court with Keith Mitnik - Trial Lawyer and Educator, YouTube (Sept. 6, 2018), https://www.youtube.com/watch?v=B7B5u8ewg.