

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?¹ While the architecture may have you taking a second look at Edward Said's *Orientalism*,² 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*.³ 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.⁴ 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.⁵

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"⁶ or "Florida Man Steals 36,000 Pounds of Crisco."⁷ Florida Woman has fun, too. For instance, she once blamed the cocaine in her purse on a "windy day."⁸ 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?⁹

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 1967,¹⁰ Florida's civil servants

and citizens have labored under the Government in the Sunshine Act.¹¹ 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,¹² operate in an open manner.¹³ 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.¹⁴ Additionally, many states look to Florida's Sunshine Laws when crafting their own.¹⁵

The most obvious of these consequences, to any internet user, is that Florida police reports are public record.¹⁶ 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.¹⁷ 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."¹⁸ 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.¹⁹ Gov. Scott and the three named cabinet members settled the matter, paying \$55,000 each in attorney's fees to the plaintiffs and promising to institute reforms to cabinet meeting procedures.²⁰

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.²¹

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,²² committees or boards that are created by the state and that include federal agencies or officials are subject to the law.²³ 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.²⁴

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.²⁵ So too must meetings be held open regarding matters of compliance with federal laws such as desegregation.²⁶ 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,²⁷ meaning that federal and state officials alike must be careful in all use of social media.

Exemptions are narrowly construed, even where they exist.²⁸ 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.²⁹ 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.³⁰ 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.³¹ 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).

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

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

⁵WILLIAM MARVIN, *A TREATISE ON THE LAW OF WRECK AND SALVAGE* (1858). The Middle District of Florida was created in 1962, carved out of the sprawling Southern District of Florida. JAMES M. BENHAM, *FIFTY YEARS OF JUSTICE: A HISTORY OF THE U.S. DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA* 1 (2015).

⁶Colleen Wright, *Deputies: Drunk Man Called 911 to See if Tax Return Had Come In*, TAMPA BAY TIMES (Feb. 10, 2014), <http://www.tampabay.com/news/publicsafety/crime/deputies-drunk-man-called-911-to-see-if-tax-return-had-come-in/2164927>.

⁷Times staff, *Truck Stolen with 36,000 Pounds of Crisco Inside*, TAMPA BAY TIMES (Oct. 13, 2014), <http://www.tampabay.com/news/publicsafety/crime/truck-stolen-with-36000-pounds-of-crisco-inside/2201875>.

⁸WFLA 8 On Your Side staff, *Florida Woman Blames Cocaine in Purse on 'Windy Day,' Police Say* (Apr. 7, 2018), <https://www.wfla.com/news/florida/florida-woman-blames-cocaine-in-purse-on-windy-day-police-say/1106340624>.

⁹Richard Tribou, *Memorial Day Marks Beginning of Florida's Deadly Summer Threats*, ORLANDO SENTINEL (May 25, 2018), <https://www.orlandosentinel.com/opinion/audience/richard-tribou/os-ae-memorial-day-marks-beginning-of-floridas-dangerous-summer-20180525-story.html>.

¹⁰Sandra F. Chance & Christina Locke, *The Government-in-the-Sunshine Law Then and Now: A Model for Implementing New Technologies Consistent with Florida's Position as a Leader in Open Government*, 35 FLA. STATE L. REV. 245, 246-48 (2008).

¹¹Government in the Sunshine Act, Pub. L. 94-409, 90 Stat. 1241 (enacted Sept. 13, 1976) (codified at 5 U.S.C. § 552b).

¹²Ashley Harrell, *Florida Gets D-Grade in 2015 State Integrity Investigation*, CTR. FOR PUB. INTEGRITY (Nov. 9, 2015), <https://publicintegrity.org/accountability/florida-gets-d-grade-in-2015-state-integrity-investigation> (updated Nov. 21, 2015, 9:11 AM).

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

¹⁴The U.S. Supreme Court has limited the application of the Sunshine Law in multiple cases. Joseph T. Eagleton, *Walking on Sunshine Laws: How Florida's Free Press History in the U.S. Supreme Court Undermines Open Government*, 86 FLA. BAR J. 22 (2012). Penalties for violation of the Sunshine Laws range from second degree misdemeanor to \$500 fines depending on type. Fla. Stat. §§ 286.011(3)(b), (c).

¹⁵Eagleton, *supra* note 14, at 22.

¹⁶Fla. Stat. § 119.011(12).

¹⁷Kyle Munzenrieder, *How Florida's Proud Open Government Laws Lead to the Shame of "Florida Man" News Stories*, MIAMI NEW TIMES (May 12, 2015, 1:31 PM), <https://www.miaminewtimes.com/news/how-floridas-proud-open-government-laws-lead-to-the-shame-of-florida-man-news-stories-7608595>.

¹⁸Eagleton, *supra* note 14, at 23.

¹⁹*Matthew Weidner et al. v. Rick Scott et al.*, Case No. 2015 CA 000283 (Fla. 2d Cir. Ct. Feb. 3, 2015); Michael Van Sicker & Steve Bousquet, *Lawsuit Alleges Gov. Rick Scott and Florida Cabinet Violated Sunshine Law*, TAMPA BAY TIMES (Feb. 5, 2015), <http://www.tampabay.com/news/politics/stateroundup/lawsuit-alleges-gov-rick-scott-and-florida-cabinet-violated-sunshine-law/2216337>.

²⁰Jeremy Wallace, *Gov. Rick Scott and Cabinet Agree to Settle Sunshine Law Case*, TAMPA BAY TIMES (June 23, 2015), <http://www.tampabay.com/news/politics/stateroundup/gov-rick-scott-and-cabinet-agree-to-settle-sunshine-law-case/2234773>.

²¹Nate Monroe, *It's Easier Here: Why the Sunshine Law is Useless, Money Wars, Parkland Conversations*, FLORIDA TIMES UNION (Feb. 12, 2019), <https://www.jacksonville.com/news/20190212/its-easier-here-why-sunshine-law-is-useless-money-wars-parkland-conversations>; Memorandum from Mac D. Heavener III, Chief Ass't State Att'y, Florida State Attorney's Office, to Lisa Green, Office of the Inspector General, Re: Criminal Investigation Into Potential Florida Sunshine Law Violations (Feb. 11, 2019), and File No.

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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 IMPLICIT, <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.

³06 – Lisa Blue – A Psychologist’s View on Jury Selection, TRIAL LAW. NATION (2018), <https://triallawyernation.com/episode/06-lisa-blue> (last visited Apr. 8, 2019).

⁴*Cortez 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=B7B5ts-8ewg>.

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18SAO15842AD, Re: Closed Investigation (Feb. 8, 2019), <https://www.jacksonville.com/assets/pdf/staugustine/LK2010212.PDF>.

²²Fla. AGO 71-191.

²³Inf. Op. to Markham, Sep. 10, 1996; Inf. Op. to Green, Dec. 11, 1998; *Roscow v. Abreu*, No. 2003 CA 01833 (Fla. 2d Cir. Ct. Aug. 6, 2004); cf. *Brown v. Denton*, 152 So.3d 8 (Fla. 1st Dist. 2014) (finding that certain collective bargaining negotiations were not subject to the Sunshine Laws).

²⁴Since 1995, 269 exemptions to the Sunshine Law have been approved. Gray Rohrer, *Florida’s Renowned Sunshine Laws Took Another 12 Hits from the Legislature This Year*, MIAMI HERALD (Apr. 10, 2018, 6:06 PM), <https://www.miamiherald.com/news/politics-government/state-politics/article208393214.html> (updated Apr. 11, 2018, 6:43 AM).

²⁵Inf. Op. to Nelson, May 19, 1980.

²⁶*Freeman v. Times Publ’g Co.*, 696 So.2d 427 (Fla. 2d Ct. App. 1997).

²⁷Fla. AGO 2009-19.

²⁸*Canney v. Board of Pub. Instruction of Alachua Cty.*, 278 So.2d 260, 264 (Fla. 1973).

²⁹Fla. AGO 05-03.

³⁰Matt Vautour, *Robert Kraft Prostitution Charges: Potential Release of “Extremely Graphic” Video Tied Up After Motion*, MASS LIVE (Feb. 26, 2019), <https://www.masslive.com/patriots/2019/02/robert-kraft-prostitution-charges-potential-release-of-extremely-graphic-video-blocked-after-motion-from-defense-attorney.html>; *John Doe, Jane Doe v. The City of Jupiter Police Dep’t et al.*, Filing No. 85425813 (Fla. 15th Cir. Ct. Feb. 25, 2019) (Complaint for an Emergency Declaratory Judgment) (case number pending as of submission).

³¹The response to the Parkland massacre was codified by CS/CS/CS/ HB 165 (Ch. 2018-128) and the relevant subsections appear in Fla. Stat. §§ 16.555, 20.15, 30.15, 121.091, 394.463, 394.495, 397.6760, 790.065, 790.0655, 790.335, 794.056, 836.10, 921.0022, 938.085, 1002.32, 1006.04, 1006.07, 1005.12, 1006.13, 1011.62, 1013.64.

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¹National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755 (1986) (codified as amended at 42 U.S.C. §§ 300aa-1 to -34).

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Baby Evelyn was 15 weeks old when she was sexually assaulted by her father. She died in the process. This, recalls Judge Green, was probably the most emotionally and factually difficult case he prosecuted. He remembers presenting the case to the grand jury leaving most of them sobbing. The same thing was true at trial. Baby Evelyn’s mother was only 22 years old when she had to testify. She was brave, and Judge Green maintains great respect for her. Throughout the course of the investigation, they learned of other victims. Baby Evelyn’s father is where he belongs, in prison, serving a life sentence without the possibility of parole.

The words of wisdom Judge McMillan spoke to his naïve clerk all those years ago are woven into the fabric of the robe Judge Green wears today. He is a man of great faith. He is a devoted husband, father of five, and he is a judge. Every time Magistrate Judge Phillip J. Green leaves his chambers, he looks at baby Evelyn’s picture and a poem written for her, which hang next to the door that leads to his courtroom. She reminds him that his call to serve means he has to think about the people, consider what they go through, and have true compassion for all. ☉