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# THE BRECHNER REPORT

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## Former comptroller violated Sunshine Law

Pensacola — The Florida Supreme Court, in an advisory opinion, ruled that an Escambia County \$4.8 million computer lease purchase deal violated the state's Sunshine law.

According to the court's advisory opinion, Escambia County Comptroller Joe Flowers acted

### ACCESS MEETINGS

without proper authority from the county commission and violated the state's Sunshine laws by contracting with Unisys Leasing Company for what turned out to be obsolete computers. In 1994, Flowers was charged with malfeasance in a four-count indictment. He plead no contest and resigned from office.

In 1995, Frankenmuth Mutual Insurance Company sued the county for non-payment on the lease deal. In reviewing the case, the Supreme court found that Frankenmuth's no substitution contract clause was unconstitutional. The court has ordered that the case be returned to the 11th Circuit Court of Appeals in Atlanta for final resolution. (9/23/00)

## State director cleared of records violation

Tallahassee — The head of the state's Fish and Wildlife Conservation Commission has been cleared of allegations of a Public Records Law violation by a state investigation.

The Florida Department of Law Enforcement found no evidence to support allegations made against Allan J. Egbert by attorney J. Patrick Floyd.

He accused Egbert of destroying

### ACCESS RECORDS

computerized public records relating to a net restriction experiment. Egbert denied Floyd's accusations and asked the FDLE to examine the hard drive of his personal computer to verify his claims.

"No evidence or testimony was found to indicate that Dr. Egbert participated in, engineered or ordered others to destroy the information on the...server," according to the FDLE report. (10/7/00)

## Records show state attorney's activities

Tampa — Following several media requests, the state attorney's office has released a computer record list that shows a recently deceased state attorney used his office computer to visit online betting sites.

The list shows that Harry Lee Coe used his office computer to visit at least two online gambling sites in January 2000. But, it is not clear whether he placed bets or visited the sites to gather information about games or races. In televised interviews, Coe denied using the Internet to place gambling bets.

On July 12, following the broadcast, Gov. Jeb Bush had ordered the Florida Department of Law Enforcement to look into allegations of illegal loans and alteration of public records by Coe and his office. The next day, Coe's body was found with a fatal self-inflicted gunshot wound.

Coe's suicide is being investigated by the Pinellas-Pasco State Attorney's office. The office also is reviewing the public records alteration charges, but would not speculate on Coe's visits to gambling sites. "At this point, I don't know what it shows," said Bernie McCabe, the investigating state attorney. (9/30/00)

## NEWS NOTES

### Editor wins Sunshine award

Jacksonville — A local editor is the recipient of the National Sunshine Award from the Society of Professional Journalists (SPJ).

Florida Times-Union editorial writer Joe Adams earned the award for his book, *The Florida Public Records Handbook*, a book designed to promote open government in Florida (*Brechner Report*, March 2000). The handbook has been recognized by the Society as the only public records manual of its kind in the nation.

"One of the most important contributions we can make as journalists is to inform the citizenry about their rights and to help them understand their right to know," said Ian Marquand, SPJ Freedom of Information Committee chairman.

The book, which also includes details on the state's public records laws, is published by the First Amendment Foundation in Tallahassee. (10/29/00)

## Residents object to Commission's closed door meetings

New Smyrna Beach — Following objections by residents over a closed door meeting, the Utilities Commission reaffirmed its \$7.6 million purchase of 1,100 acres as part of a court settlement with a private landowner at a specially called public meeting.

In 1996 and 1998, the city used its powers of eminent domain to acquire 85 acres from Samson Land Trust. The group sued the city, alleging that the taking and construction of a wastewater treatment plant damaged its marketing ability.

In a closed door session, the Utility

Commission approved the settlement purchase. Following concerns raised by attorney Jon Kaney, representing *The News-Journal*, the County agreed to reaffirm its settlement decision at a special public meeting. (10/5/00)

## Cable company defends council broadcast

Miami — A local cable operator is refuting claims from community activists that segments were deleted from a televised city council meeting.

Residents claim that the city "doctored" the broadcast of a Sept. 5 council meeting to edit out a private conference between council members and the city manager held during a break. That meeting was not included in the

meeting's broadcast the following night.

The cable company has a policy to stop taping during breaks, said an AT&T Broadband spokesperson. "I'll show fights, curses, breakouts. If they look stupid, that's their problem," said Kateva Reed, AT&T program coordinator. "But once they break, we break, we're not going to run five minutes of black," said Reed. (9/28/00)

## State attorney denies review of hospital

Marathon — The State Attorney's office has declined to review a state representative's request to investigate a local hospital, finding no basis for a Sunshine law violation claim.

In a Sept. 18 letter, state Representative Ken Sorensen requested that the state attorney review for potential open meeting violations by the Lower Florida Keys Health System, Inc. during negotiations for a 30-year hospital lease.

Sorensen believes that lease

negotiations were held by a "buffer board" that met with Health Management Associates and "kept their meetings secretive and closed to the public."

But, according to Chief Assistant State Attorney Jon Ellsworth, the hospital system had been cleared of any potential violation in a previous investigation. They found that the final lease was approved in the sunshine, following a series of public meetings and under close scrutiny by the state's Attorney General's office. (9/23/00)

## COURTS

### Tire safety subject of suit

West Palm Beach — Lawyers representing a major tire manufacturer have agreed to a partial disclosure of company records in a personal injury suit, but opposing counsel is asking for a complete and open review. Jeff Liggio, who represents the families of two women who died in a van accident, wants to open the records for review with other attorneys who may have similar cases.

Attorney Martin Reed, representing *The Palm Beach Post*, is requesting that Judge Catherine Brunson open the records, claiming that under state law, the courts cannot withhold information about safety hazards. "We are arguing that the effect of the order is to conceal from the public a public hazard and information that would be of use to the public," said Reed.

The company has agreed to allow the family's attorneys to review 79 boxes and 103 rolls of microfilm which contain complaints filed by buyers of Uniroyal light truck tires between 1983 and 1989. (9/29/00)

## DEFAMATION

### Judge dismisses suit against Democrat

Tallahassee — A judge has dismissed a libel suit filed by a state official against the *Tallahassee Democrat* on the grounds that the article did not identify her.

Denise Smith, director of the Florida State Hospital's finance office, filed suit against the paper and reporter Bill Cotterell, alleging that a 1998 article was libelous.

In a written order, Judge Nikki Clark, 2nd Judicial Circuit, ruled that Smith was not identified in the article which "was

not of and concerning Smith."

Additionally, Clark ruled that as a public official, Smith would be required to prove actual malice, and that since the article was not falsely published, there was no cause of action. "Dismissal with prejudice is appropriate because of the chilling effect these types of cases have on freedom of speech and freedom of the press," wrote Clark.

Smith plans to appeal the ruling, according to Michael Glazer, an attorney representing the newspaper. (10/23/00)

## DECISIONS ON FILE

Copies of case opinions, attorney general opinions, or legislation reported in any issue as on file may be obtained upon request from the Brechner Center for Freedom of Information, College of Journalism and Communications, 3208 Weimer Hall, University of Florida, Gainesville, FL 32611-8400, (352) 392-2273.

## Pres. Clinton vetoes official secret act

Washington, D.C. — One of Washington's best-kept secrets is no more. President Clinton vetoed an official Secrets Act passed by Congress in November.

The bill would have criminalized the leaking of government secrets. In vetoing the bill, the President said that the legislation might "chill legitimate

activities that are at the heart of a democracy."

Five of the nation's largest news organizations - CNN, *The Washington Post*, *The New York Times*, the Newspaper Association of America and the Radio Television News Directors Association, had asked President Clinton to veto the bill. (11/6-10/00)

## REPORTER'S PRIVILEGE

### Reporter must testify, rules judge

New Port Richey — A judge's ruling compelling a reporter to testify about a jailhouse interview became a moot point after the suspect plead guilty in the slaying of Larry Pollack.

On Oct. 12, Judge Craig C. Villanti ordered Tamara Lush, a reporter with the *St. Petersburg Times* to testify to her jailhouse interview with Robbie Robinson in May.

State prosecutors argued that Robinson provided Lush with details that could have bolstered the state's efforts for a death sentence.

But on Oct. 13, Robinson plead to murder in the first degree, thus making Lush's testimony a moot point. "Displaying the better part of valor, Mr. Robinson plead to the lesser degree," said Allison Steele, an attorney representing the newspaper.

Steele finds the judge's ruling troubling. "It signals that conducting jailhouse interviews possibly invites subpoenas," said Steele. "Even if the interview occurs after the fact, courts seem inclined to call a reporter to testify." (10/12-11/27/00)

## ADVERTISING

### St. Petersburg Times refiles legal suit

Inverness — The *St. Petersburg Times* has refiled its suit against Citrus County, alleging that they did not follow proper bidding procedures when it awarded a legal advertising contract to a competing publication.

The paper's original suit was dismissed in September. In its amended complaint, the paper alleges county officials destroyed public records kept

during a meeting, then improperly negotiated a contract with the *Citrus County Chronicle*. The complaint asks the judge to void the current contract and to reopen the bid process.

The county's attorney called the paper's allegations "complete fiction." "There is no fact or testimony to support this complaint, to my knowledge," said Larry Haag. (10/7-11/00)

### Pompano Ledger must pay legal fees

Pompano — A judge has issued a summary judgment against a Pompano Beach newspaper who must pay \$103,000 in attorney fees.

Four years ago, the *Pompano Beach Ledger* filed suit against the Pompano Beach Chamber of Commerce, Commissioner Kay McGinn and former Chamber president Al Siefert, alleging that they had been instrumental in causing some advertisers to discontinue their ads in the paper. (*Brechner Report*,

July 2000).

In two separate hearings, Judge Robert Anders, 17th Judicial Circuit, ruled that the newspaper's case was without merit and authorized the recovery of attorney fees. "They failed to produce either the 'somebody' who had been causing the advertisers to abandon the paper as well as an advertiser who would testify on its behalf," said John Gillespie, the attorney for the Chamber. (10/16/00)

## University police resist code sharing

Gainesville — The University of Florida Police Department remains the lone law enforcement standout in sharing codes with the media that would allow them access to signals on a new dispatching system, claiming that releasing the codes would stifle their operations.

"We could not communicate freely over the UHF frequencies because technology allowed scanning of it," said Maj. Tony Dunn. He said that news media access would hamper efficiency because officers would have to continue to use the telephone when discussing confidential information.

"The claim of convenience - I'm not sure that's justified given that is what they have historically been doing," said Sandra Chance, director of the Brechner Center. "I don't think it's asking a whole lot to continue using telephones if there is a need for confidentiality given the importance of access to this public information," she said.

The new digital communications system is being phased into use by all public safety agencies, including law enforcement, fire and rescue. The Gainesville Police Department and Alachua County sheriff's office support releasing their codes. (11/19/00)

Brechner Center for Freedom of Information  
3208 Weimer Hall, P.O. Box 118400  
College of Journalism and Communications  
University of Florida, Gainesville, FL 32611-8400  
<http://www.jou.ufl.edu/brechner/>  
e-mail: [jthomas@jou.ufl.edu](mailto:jthomas@jou.ufl.edu)

Sandra F. Chance, J.D., Director/Executive Editor  
Jane Inouye, Editor  
Jackie Thomas, Production Coordinator  
Michel Lester, Production Assistant  
Bill F. Chamberlin, Ph.D., Founding Director

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# Online voting debate raises privacy issues

Voting may be the least demanding obligation of citizens in a democracy, but voting—at least, in the American imagination—represents a core belief in the democratic process. Ask a room full of Americans the

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By Melinda McAdams

requirements for a democratic system of government, and one of the first

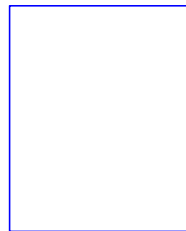
items on the list will be the right to vote for their leaders.

Until this year's national election, most people paid little attention to the mechanics of voting in a country with more than 140 million registered voters. Now that the mechanical aspects have become a widespread topic of conversation, some Americans have speculated that using computers would provide a more reliable system for recording and counting the popular vote.

The idea of voting online is not new. In March 2000, the first official online vote in the United States took place in the Arizona Democratic presidential primary: 39,942 people cast ballots online, out of a total 86,907 votes.<sup>1</sup> The success of the Arizona primary has encouraged other states to consider online voting with the expectation that it would increase voter turnout.

Online voting raises questions about security, as well as voters' confidentiality, fair representation of all groups in the society (including those who are poor or less well educated), and the potential for short-term mass manipulation of public opinion (concerning binding referenda). Given the events of the recent election, I will limit my remarks here to security.

The key security issues in online voting are actually similar to those in other ballot-counting systems and can be boiled down to one question: How can the public know whether the votes were counted accurately—or at all? A related question is, How can the public know whether the votes were submitted honestly—or at all? Computer-network tampering could come from within the government, or from outside—from an enemy



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government, or from home-grown opponents to the current government.

Each online voter needs a unique ID code to ensure that no one votes more than once. The same ID code also proves that the person is allowed to vote in a particular election. Developing a coding system and assigning a unique code to each voter does not pose a significant problem. What's hard is guaranteeing that the ID code is used *only* by the person to whom it

belongs and no one else. What's also hard to guarantee is *privacy*. If my unique ID code is submitted along with my vote, then my vote is not confidential. It can be stored in a database and retrieved many years from now—along with my name.

If online voting comes into wide use, what will be the effect on the public trust? That will be more important than the technical details. If the voters lose confidence in free and fair elections, the democratic system will be compromised.

One way to ensure public confidence in the system would be to publish openly all programming and hardware details of the voting system and its security measures. This would make possible oversight and criticism by intermediaries, with expertise in computer programming and encryption, who are not on the government's payroll. Another possibility is to provide a printed "receipt" to each voter (although that would be no guarantee that the vote transmitted through the network matched what appeared on the printout).

Perhaps it will be necessary to implement two redundant systems—a typical failsafe measure for computer technology. By having two parallel voting systems and comparing the results from each, the integrity of the democracy might be maintained.

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<sup>1</sup> Of the 39,942 Internet ballots, 35,768 were cast remotely, and the remaining 4,174 were cast at polling places using Internet terminals, according to the Arizona Democratic Party ([www.azdem.org](http://www.azdem.org)).

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*Melinda McAdams, serves as professor and Knight Chair, journalism technologies and the democratic process, at the University of Florida. She joined the UF faculty in 1999.*