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# THE BRECHNER REPORT

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## Judge stays order to release names of terrorist investigation detainees

WASHINGTON—A U.S. District Court judge has issued a stay for an order that would have made public the names of many of the detainees held in the government's terrorist investigations.

The Center for National Securities Studies and 27 other civil rights and public interest groups sued the Department of Justice to get the names under the Freedom of Information Act. Judge Gladys Kessler ruled on Aug. 2 that the government should release the names of detainees unless the detainees themselves "opt-out" from disclosure.

The Justice Department appealed the ruling and asked for a stay of the order. Judge Kessler agreed to issue a stay, which will remain in effect until a federal appeals court rules in the case.

Judge Kessler rejected the government's arguments that the names should be automatically withheld for privacy or safety reasons, and cited great public interest in disclosure. "The

government's power to arrest and hold individuals is an extraordinary one," the judge said. She said she believed the groups involved in the suit had expressed "grave concerns" over the potential abuse of the government's broad powers, including denial of counsel, discriminatory and arbitrary detention and mistreatment in custody.

In addition, she rejected the government's assertion that the release of names would interfere with ongoing investigations and the withholding of names under a broad court order. She said that any names held under court order must be specific.

However, the judge did allow the government to retain some secrets, including the dates and locations of arrest, detention and release of detainees.

She also rejected the argument that the First Amendment requires full disclosure of those details. (8/2/02)

**ACCESS  
RECORDS**

## Rumsfeld wants to find employee who leaked plans for invasion of Iraq

WASHINGTON—Defense Secretary Donald Rumsfeld suggested at a press briefing that Pentagon employees who leaked an alleged U.S. plan to invade Iraq to the *Los Angeles Times* and the *New York Times* "ought to be in jail."

He also encouraged Pentagon employees to reveal the name of the official who leaked the documents.

"I think that anyone who has a position where they touch a war plan has an obligation to not leak it to the press or anybody else because it kills people," he said.

In a separate memo attached to an

unclassified CIA assessment of leaks since the launch of the "war on terrorism," Rumsfeld said, "I have spoken publicly and privately, countless times, about the danger of leaking classified information. It is wrong. It is against the law. It costs the lives of Americans. It diminishes our chances for success."

The CIA report indicated that Al-Qaeda operatives monitor the United States and foreign media, and have learned a great deal about U.S. counterterrorism strategies through them. (7/25/02)

## Third official pleads no contest

PENSACOLA—Another Escambia County Commissioner charged with violating the Sunshine Law pleaded no contest to two misdemeanor violations. Two other commissioners have already been convicted and are awaiting sentencing.

In exchange for agreeing to testify for the prosecution, Mike Bass was allowed to plead no contest to the Open Meetings misdemeanor charges, and prosecutors dropped all felony bribery, money laundering and racketeering charges.

Commissioners W.D. Childers and Mike Smith are scheduled to be sentenced on Sept. 18. Childers, a former state Senate president who was convicted on one count of violating

**ACCESS  
MEETINGS**

Florida's Open Meetings Law in June, (*Brechner Report*, July 2002) also has requested a new trial. Childers' lawyers claim Childers was convicted on weak, tenuous and inconclusive evidence.

They said that only one witness could recall a telephone conversation in which Childers discussed redistricting with another commissioner. Additionally, they said that they objected to Okaloosa County Judge T. Patterson Maney's interpretation of the Sunshine Law.

Childers was acquitted of two other Sunshine Law violations, and the jury was unable to reach a verdict on a fourth charge. Childers faces an Oct. 7 retrial on the fourth Open Meetings Law violation, and a Feb. 10 felony trial for bribery, money laundering and unlawful compensation for official behavior. The prosecutors have asked that Smith, who was convicted on two counts of violating the Sunshine Law, be sentenced to 60 days in jail. (7/12/02–8/20/02)

# AGO: Public golf courses must operate in the Sunshine

TALLAHASSEE—Attorney General Bob Butterworth issued an Advisory Legal Opinion stating that the activities of a not-for-profit corporation that leases property from Martin County for the purpose of operating a public golf course are subject to the requirements of Florida's Government in the Sunshine and Public Records Laws.

Stephen Fry, an attorney for Martin County, requested the opinion about the Martin County Golf and Country Club, Inc., a not-for-profit corporation that operates solely for the purpose of operating a public golf course in Martin County.

Butterworth noted that the state Supreme Court has recognized a distinction between private entities that provide services to a public body, and those that provide services in place of

the public entity. The activities of the club "take place on publicly-owned property and the private corporation is performing a service that would otherwise presumably be provided by the county," said Butterworth.

Additionally, the lease agreement between Martin County and the golf club states, because of the public nature of the golf club, "any and all of the Country Club's records, including but not limited to contracts, agreements, employment contracts, loan documents, mortgages, memorandum, reports, studies, court records, or any other type of record, shall be fully accessible to the County's review."

Butterworth said this combination of factors subject the not-for-profit organization to the Sunshine Laws. (8/9/02)

# FBI monitoring reading habits

WASHINGTON—Using provisions of the USA Patriot Act, the FBI is monitoring the reading habits of people it considers dangerous.

Section 215 of the USA Patriot Act gives the FBI power to obtain library and bookstore records during investigations of international terrorism. To obtain warrants for these searches, the FBI does not need to present evidence of wrongdoing. Librarians and booksellers are prohibited from revealing that the FBI has requested records, under the threat of prosecution. The federal act

overrides state confidentiality laws.

The law stipulates that these investigations cannot be entirely based on activities protected by the First Amendment, such as speech and political organizing. However, they may be partly based on such activities, if some other terrorism connection is alleged.

The American Library Association is advising libraries to avoid keeping unnecessary records. "They can't find what we don't have," said Anne M. Turner, president of the California Library Association. (6/24/02)

## PRIVACY

# Law professor sues columnist, reader for defamation

ST. PETERSBURG—Law professor Gary Minda of Brooklyn, New York, sued *St. Petersburg Times* columnist Bill Maxwell and the Times Publishing Co. for libel, accusing the paper of "publishing written statements that falsely and maliciously accused" him of mental and physical abuse during a custody battle for his daughter. However, he also took the unusual step of naming another co-defendant: a woman who forwarded Maxwell's column via e-mail.

According to papers filed in Pinellas-Pasco County Circuit Court, Donna Marie Kostreva forwarded Maxwell's column to more than 120 people, including Minda's law school peers. Minda is asking for more than \$15,000 in damages.

"The column was largely an expression of opinion, which is protected by the First Amendment," said George Rahdert, an attorney for the *Times*. The newspaper plans to fight the suit.

The column centered around a custody battle between Minda and Theresa Noelle Ponce, a 33-year-old U.S. citizen of Mexican descent. When a DNA test proved that Minda was the father of her daughter, he sued for custody of the child and won.

In Maxwell's opinion, Minda's knowledge of the legal system gave him an unfair advantage in the lawsuit. Ponce was unsuccessful in appealing the custody award, and is allowed visitation with her daughter at the father's expense. (7/16/02)

## LIBEL

# FIRST AMENDMENT

## Fortune teller files suit against city

CLEARWATER—Sylvia Mitchell, a Madera Beach fortuneteller, filed a lawsuit in Pinellas County Circuit Court alleging Clearwater violated her First Amendment rights and cost her business by denying her the right to apply for a permit to operate a fortunetelling business within the city limits. The ordinance bans fortunetellers as well as professional palm readers, clairvoyants, astrologers, character readers, phrenologists and divine and mental

healers from operating in the city.

Clearwater's ordinance conflicts with county regulations, which allow such businesses to operate with a special permit.

In May 1998, City Attorney Pam Akin recommended lifting the ban, since it could violate protected free speech, but the commissioners chose to leave the ban in place. Clearwater commissioners are now said to be re-evaluating the ban. (8/3/02)

## DECISIONS ON FILE

*Copies of case opinions, Florida 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, P.O. Box 118400, University of Florida, Gainesville, FL 32611-8400, (352) 392-2273.*

## Attorney General says city needs to read or sign minutes in public

TALLAHASSEE—Municipalities cannot adopt a rule of procedure that authorizes approval of minutes of a prior public meeting without those minutes being read or signed at a subsequent meeting, according to an Advisory Legal Opinion issued by Attorney General Bob Butterworth. The opinion was released in response to a question from James W. Denhardt, Treasure Island city attorney.

Under current Treasure Island procedures, all meetings of the city commission are open public meetings, an official audiotape is made at each meeting, and the meetings are televised and replayed on local cable television throughout the week. The deputy city clerk prepares the minutes of the meeting, which are placed in the minute book, and

become public records upon their inclusion in the book. Individual commissioners then sign the minutes, and an agenda item for the subsequent meeting indicates that the minutes are approved unless there are objections from the commissioners, without being read.

Butterworth said the adoption of the minutes in a city commission meeting appears to be a step in the decision making process which would be of public interest. The opinion states, "a vote on the concurrence and revisions of the members should be taken at an open meeting with the minutes and any changes or revisions also discussed during an open meeting at the time the board adopts the minutes." (7/22/02)

## Remarks prompt Bar complaint

ESCAMBIA COUNTY—Santa Rosa County Attorney Tom Dannheisser has filed a Florida Bar complaint against Fred Levin for remarks Levin made about witness Willie Junior during the Sunshine Law trial of Escambia County Commissioner W.D. Childers.

Levin represented Childers during the misdemeanor trial. Junior, another Escambia commissioner under indictment for Sunshine Law and felony money laundering and bribery charges, testified

against Childers as part of a plea bargain with prosecutors.

In an interview with WEAR-TV, Levin called Junior a "rat fink." Levin told the *Pensacola News Journal* that, "If Willie was on the Titanic, he would dress like a woman and jump on the first life boat."

Dannheisser, who is not directly involved in the case, said that Levin violated Bar rules that prohibit lawyers from making out-of-court statements that would influence potential jurors. (7/2/02)

## NEWSGATHERING

### Speedway limits reporters' access

DAYTONA BEACH—Daytona International Speedway and its parent, International Speedway Corp., are limiting access to news reporters at its sporting events, including this July's Pepsi 400.

Officials for the speedway say that only sports writers may visit with drivers in the pits, interview fans in the stands or attend press conferences in the media center.

The *Orlando Sentinel* applied for 20 media passes for the Pepsi 400 event. Those received by the three news reporters were restricted. News reporters

for the *Daytona Beach News-Journal* were also restricted.

Gene Policinski, former *USA TODAY* sports editor and now deputy director of the Freedom Forum's First Amendment Center, said the speedway's attempt to control the news related to the event was largely futile.

"If there's news, there's nothing preventing a sports reporter from covering it," he said.

ISC's main competitor, Speedway Motorsports Inc., places no restrictions on news reporters at its events. (7/4/02)

## City manager refuses to let firefighters hand out fliers

OCALA—Ocala City Manager Susan Miller says Ocala firefighters cannot distribute fliers explaining their position in a contract dispute.

"Any fliers handed out on city property have to be approved by the city manager," said Miller. "That's the code."

The code reads: "It shall be unlawful to distribute or cause to be distributed advertising or printed matter on any public sidewalk, street, public parking lot of city owned property unless prior permission is obtained from the City Manager or designee."

Miller will not give permission to distribute the flyers. However, Capt. Robert Altman, chief negotiator for the firefighters' union, said union members planned to hand out the flyers in spite of the ban. "Walking the sidewalks and handing things out, according to our attorney, it's not illegal to do," said Altman.

Union attorney Paul Donnelly said, "I suggest that the city attorney has an obligation to stop the city manager from this unconstitutional effort of prior restraint in violation of the right of freedom of speech." (7/17/02)

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## In fear of freedom: Access in the year following Sept. 11

In the days immediately following the Sept. 11 terrorist attacks, the United States government embarked on a path of secrecy unprecedented in recent years. The atmosphere of terror induced public officials to abandon this country's culture of openness and opt for secrecy as a way of ensuring safety and security. The U.S. media did little to question this threat to civil liberties. Indeed,

### The BackPage

By Lucy Dalglish

the international media often provided a more comprehensive report of the U.S. government's attempts to control information. For a few weeks after Sept. 11, the Reporters Committee was besieged with phone calls from foreign reporters seeking interviews. They asked potent questions: Why was the American media swallowing everything the U.S. government was handing them? Wasn't the American media free and independent? What did I think about the American media being the mouthpiece for George W. Bush? How could American television networks agree to censor Al-Qaeda videotapes just because Condoleeza Rice asked them to? The rest of the world was watching, and chiding the American media for its smug reliance on constitutional principles of a free and independent press. "Where is your First Amendment now?" they asked.

A sophisticated body of First Amendment law has evolved in this country over the past 200 years. But the basic values of First Amendment law are simple: Citizens are better able to make informed decisions at the ballot box when they have access to complete, unbiased information. The only way to provide that information is with a free and independent press that has the ability to openly question government actions.

Although the stunned American media initially resisted criticizing post-9-11 government secrecy, it was only a matter of time before it returned to its challenging, independent self. But by the time raging skepticism returned about eight weeks later, the government had taken actions that made it dramatically more difficult for the media to do its job. The Bush administration quickly took a variety of actions designed to restrict information from reaching the public, including:

- A directive from Attorney General John Ashcroft that changes the interpretation of the federal Freedom of Information Act to allow the agencies to deny access more often to public



Lucy Dalglish

records if a claim of invasion of privacy or a claim of breach of national security can be alleged.

- A proposal for secret prosecutions of non-American citizens by military tribunals.

- Secret imprisonment of more than 1,200 non-American citizens on alleged claims of immigration violations or as material witnesses.

- Disregard of a 1992 agreement between the media and the Pentagon that provided for pool coverage of military actions.

- An Executive Order governing the release of Ronald Reagan's White House records that circumvents the Presidential Records Act and illegally limits access to records.

- Restriction of access to reading rooms by several agencies.

- U.S. military's purchase of exclusive rights to satellite imagery of Afghanistan from Space Imaging, a Colorado-based company, even though the government's own satellites reputedly provide much greater resolution.

- Removal of material from agency web sites by the Office of Pipeline Safety, the Nuclear Regulatory Commission, the U.S. Geological Survey, the National Imagery and Mapping Agency of NASA and other agencies.

- Restrictions on news photographers preventing them from transmitting images of prisoners in Afghanistan.

- Creation of a new "Office of Strategic Influence" (since closed), created to try to influence public opinion abroad, that was to have planted disinformation in foreign and U.S. media.

Some of these actions, such as the FOIA directive and the Executive Order on presidential papers, probably would have happened even without 9-11. Other actions, such as the secrecy imposed on immigration courts, would have been unthinkable before Sept. 11. Somewhere along the line, the Administration and some members of Congress were able to convince themselves and some members of the public that secrecy equals safety. But no one has ever demonstrated that an ignorant society is a safe society.

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*Lucy Dalglish is Executive Director of the Reporters Committee for Freedom of the Press in Arlington, Va. The Reporters Committee has prepared Homefront Confidential, a extensive report on the access issues arising from September 11. It is available from <http://www.rcfp.org>.*