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# THE BRECHNER REPORT

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## Judicial group releases judge's financial records

LARGO – After initially denying a public records request, a local judicial group released Pinellas County Judge Sonny Im's financial records.

### ACCESS RECORDS

John Carballo, who is running against Im for a Pinellas

County judicial seat, had requested information including the financial portion of Im's recent application for a circuit court seat.

But the Pinellas-Pasco Judicial Nominating Commission (JNC) would not allow Carballo to view the financial part of the application. In addition, he was not allowed to make copies of other portions of the application, even though he was allowed to view nonfinancial information.

JNC chairwoman Sallie Skipper acknowledged the fact that the Florida Constitution guarantees JNC records are open to the public.

"But am I to provide copies to anybody who asks for them?" she said. "I think the answer is no. We allow anyone to look at the application. Once the copies are put out there, it's kind of hard to bring them back."

According to Skipper, she contacted Gov. Jeb Bush's staff for guidance after Carballo made his request, but they did not respond.

Soon after, she denied the lawyer's request to access Im's financial records. She also denied a request from the *St. Petersburg Times* for copies of the same information requested by Carballo.

But, following the *Times*' request, Bush's general counsel's office told Skipper that Im's full application, including financial material, was a public record and must be released.

## Judge opens some discovery material about Brucia murder in Smith case

SARASOTA – The judge in the case against Joseph P. Smith released some discovery material about the kidnapping and murder of Carlie Brucia.

Smith's lawyer had asked Circuit Judge Andrew Owens to keep all the records sealed, but attorneys for several media outlets argued for a compromise between the defendant's right to a fair trial and the public's right to know.

Owens gave lawyers for the media, prosecution and defense a six-page inventory of the 1,906 pages of discovery material, detailing what should and should not be made public. Later, prosecutors released 526 pages of information including the incident report, some investigative reports, witness statements and transcripts of the 911 call.

Information such as the medical examiner's report, statements from

Smith's relatives and any DNA evidence that might link Smith to Carlie's death remained sealed.

### ACCESS RECORDS

Lawyers for the media, prosecution and defense commended Owens for conducting such a careful and detailed review of the documents.

"My overall position is that I wanted to restrict all the information, barring that...his proposed order seems to strike a good balance," Assistant Public Defender Adam Tebrugge said.

Owens said it was in everyone's best interest to release the information quickly so there would be less of a chance of having problems seating a fair and impartial jury. He is still considering the release of names of people who gave leads or tips to law enforcement.

He may keep them sealed to protect the privacy of tipsters who were promised anonymity.

## Judge dismisses suit against mayor

DELRAY BEACH – A judge dismissed a lawsuit against Delray Beach Mayor Jeff Perlman over a publishing contract with the school district, saying that his business' records are private.

The suit, filed by Delray Beach resident Deborah Bennett, argued that all documents related to the \$70,000 contract and publication of *Education Today* newsletter were public information because Perlman produced it for the Palm Beach County School Board. Circuit Judge Kenneth Stern upheld Perlman's argument that he is a private contractor and, despite the fact he was paid public money for his services, the records contained proprietary information.

"The public funds received by the firm were no different than those received from any other client," he wrote. "The firm's motivation for rendering professional services was clearly to

receive compensation, not to provide a public service."

He added that the list of documents Bennett sought was too broad and would not have been public under Florida's Sunshine Law, even if he had ruled the case could proceed.

The dispute stemmed from a 2002 contract between the school board and Perlman's company, Magnum Publishing, which gave Perlman \$69,140 to produce and circulate six editions of *Education Today*. According to *The Palm Beach Post*, Bennett sought access to the records to hold Perlman and the school board accountable for the public money used to produce the newsletters.

Perlman claims he complied with every records request Bennett made, until she asked for personal and private financial information, at which point he sought legal advice.

## AGO: PRIDE is subject to Open Meetings Law

TALLAHASSEE—Florida's Open Meetings Law applies to Prison Rehabilitative Industries and Diversified Enterprises (PRIDE), a nonprofit corporation established by the legislature to lease and manage the correction work programs of the Department of Corrections, according to a recent Florida Attorney General Opinion.

The ruling came in response to a question by Florida Department of Corrections Secretary James Crosby about whether board meetings were subject to the requirements of the state's Open Meeting Law.

"Reasonable notice must be given, the meeting must be open to the public and minutes must be taken and promptly recorded," Attorney General Charlie Crist wrote.

PRIDE's activities came under scrutiny recently when the *St. Petersburg Times* raised questions about millions of dollars in loans to a spin-off company PRIDE created and the corporation ousted its two top executives after meeting in closed session in Tampa.

In addition, PRIDE may not close their meetings when considering proprietary confidential business information in the absence of a specific exemption or exception, according to the opinion.

However, Crist recognized that proprietary confidential business information sent to Crosby as a member of the PRIDE board remained exempt from the Public Records Law. (AGO2004-44, 9/14/04)

## 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.*

## AGO: Open Meetings Law applies to volunteer fire department meetings

TALLAHASSEE—The Florida Attorney General issued an opinion saying the state Sunshine Law applies to meetings of local volunteer fire departments, but not to a county firefighters' association.

Escambia County Attorney Janet Lander asked Attorney General Charlie Crist to determine the applicability of the state's Open Meetings Law to two separate groups.

The first was individual boards of directors of volunteer fire departments that provide services to and are paid by the county.

The other was the Escambia County Volunteer Firemen's Association, Inc., established by the county's volunteer fire departments to discuss firefighting issues.

Crist said the Sunshine Law applied to the board of directors of volunteer fire departments because they hold "official

corporate governance meetings" and "provide firefighting services to and use facilities and equipment acquired with public funds from Escambia County."

According to Crist, the departments are not subject to the law merely because they receive county funding, but because their purpose is accomplished through an arrangement with the county to provide a service to county citizens.

Conversely, the attorney general said the Firemen's Association is "an organization providing an opportunity to network and discuss common concerns, however, [its] forum would not by itself be subject to the Open Meetings Law."

John Reble, chairman of the Santa Rosa County Emergency Services Advisory Committee, said the opinion about volunteer fire department boards "will probably come as quite a surprise to various fire departments." (AGO2004-32, 6/25/04)

## Power Trips investigates congressional leaders' privately-funded trips

WASHINGTON—In the past four years, more than \$14 million was spent by corporations, outside interest groups and universities to send members of Congress on trips, according to *Power Trips*, an investigative report published by *Marketplace*, *American RadioWorks* and a group of graduate students at Northwestern University's Medill School of Journalism.

These "information gathering and fact-finding trips" often took representatives around the world to locations such as South Africa, Singapore and Zurich for weeks at a time.

Some less-lucrative gifts included all-expenses-paid excursions to universities and institutions for key note speeches and graduation ceremonies.

In 1995, congressional reforms were enacted to limit members from accepting gifts worth more than \$50.

Although that rule remains, representatives and senators can accept travel-related gifts worth much more, as

long as they remain in the realm of what is considered "reasonable and necessary expenses."

According to the *Power Trips* report, most of the funded trips were designed

to keep officials informed of the effects of policy on their sponsor's particular industry.

But the trips also included a great deal of informal engagements, social events and meetings, which were always paid for and staged by the interest groups.

The data shows that Democrats traveled expense-free the most, taking 2,730 trips and amassing a total bill of nearly \$7.9 million between January 2000 and May 2004.

Republicans followed closely, ringing up a tab of more than \$6.5 million on a total of 2,095 trips. Independents went on 22 trips at a cost of \$53,830.

For more information on the report, including trip record searches by representative and state, longest trips, most expensive trips, top destinations and top trip takers, visit the American RadioWorks Web site at <http://americanradioworks.publicradio.org/>.

ACCESS RECORDS

## News reporters held in contempt for refusing to reveal confidential sources

WASHINGTON – In three recent cases, judges have held journalists in contempt of court for refusing to reveal their anonymous sources, setting up a showdown between the government and reporters, according to free press advocates.

In August, a district judge held five journalists in contempt of court for refusing to identify their sources for stories about Dr. Wen Ho Lee, a former nuclear weapons scientist once suspected of spying. U.S. District Judge Thomas Penfield Jackson imposed a \$500-a-day fine on five journalists, which he immediately suspended, pending the reporters' appeals.

Lawyers for the defendants, Jeff Gerth and James Risen of *The New York Times*; Robert Drogin of the *Los Angeles Times*; H. Josef Hebert of the Associated Press; and Pierre Thomas, formerly of CNN and now of ABC News, said they intend to appeal the judge's order to the U.S. Court of Appeals in Washington.

A federal judge also held reporter Matthew Cooper, of *Time* magazine, in contempt of court for refusing to name the government officials who revealed the identity of an undercover CIA officer to him. Judge Thomas F. Hogan, chief judge of the U.S. District Court in Washington, ordered Cooper to jail and fined *Time* \$1,000 a day.

The orders were dismissed when Cooper agreed to give a deposition after his source, Lewis "Scooter" Libby, Vice President Dick Cheney's chief of staff, personally released him from a promise of confidentiality about a conversation the two men had last year.

## New regulations create access barriers

WASHINGTON – New federal regulations may limit access to information about the nation's seaports, according to a group of access advocates.

In addition to protecting security information, the new rules could block the release of criminal and driving records of hazardous-waste haulers, and the safety history of vessel and railroad operators, making it more difficult to monitor the safety and environmental conditions of these facilities.

"The regulations are an attempt to

Meanwhile, a federal court assessed a \$1,000-a-day fine against Jim Taricani, a reporter for Providence's NBC affiliate WJAR.

In March, the reporter was held in contempt for refusing to reveal a source who gave him a secret FBI tape during an investigation of corruption in Providence City Hall. Taricani appealed to the 1<sup>st</sup> U.S. Circuit Court of Appeals in Boston, which upheld the district judge's ruling.

According to Lucy Dalglish, executive director of the Reporters Committee for the Freedom of the Press, the number of journalists that are facing possible jail terms or major fines for refusing to disclose confidential sources is "unprecedented, it's crazy."

The media have long relied on a concurring opinion in a 1972 Supreme Court case to protect them from testifying in some cases. That opinion held that journalists do not have to testify about confidential material unless the information is central to the case and cannot be obtained from anywhere else.

Recently, federal judges seem more reluctant to recognize a First Amendment privilege for journalists to shield their sources and notes and "prosecutors are getting more aggressive in going after journalists," Dalglish said.

"[But,] these are journalists with national stature working for mainstream, well-respected publications and broadcast entities...so, I don't think they're going to be intimidated into revealing their confidential sources," she said. "I think we're setting up a real showdown here."

prevent transportation security information from reaching the wrong hands and being used to plan another 9/11 attack," according to the Congressional Research Service, which issued a report.

The new rules are "too broad and vague, allowing the government to stamp 'secret' on something just because it's a public embarrassment," said Rick Blum, director of OpenTheGovernment.org, a coalition of advocacy groups. "This actually undermines public safety."

## ACCESS RECORDS

## U.S. Rep. Hastings sues election opponent for libel

PALM BEACH – Two days after the U.S. House District 23 primary election, U.S. Rep. Alcee Hastings filed a lawsuit against his election opponent for libel.

Hastings is suing Keith Clayborne and his newspaper, *The Broward Times*, claiming the publisher printed defamatory and malicious lies about him during the campaign.

Hastings won the election, capturing 74 percent of the vote to win his seventh term.

In the suit, Hastings accuses Clayborne of damaging his reputation as a "reputable and distinguished U.S. congressman and an international statesman of great repute."

He claims Clayborne lied about the situation surrounding Hastings' impeachment from the federal bench in 1989.

Additionally, he accuses Clayborne of misrepresenting his judicial records by claiming Hastings "went light on major drug traffickers-criminals." He is seeking more than \$50,000 in damages.

Clayborne said he checked with attorneys before publishing his columns that attacked Hastings' record. The columns were his opinion, which everyone is entitled to, he added.

"It may lead to speculation, but it's not libel," he said.

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## First Amendment Center Survey: Press falling short

*This article contains excerpts from Analysis: 2004 State of First Amendment survey report and Low Marks. They can be found in their entirety at [www.firstamendmentcenter.org](http://www.firstamendmentcenter.org) and [www.ajr.org](http://www.ajr.org), respectively.*

One theme persists over the eight years that the First Amendment Center has conducted the State of the First Amendment survey: In the minds of many Americans, there is a troubling



Paul McMasters

### The Back Page

By Paul McMasters

disconnect between principle and practice when it comes to First Amendment rights and values.

The 2004 survey presents yet another variation on the theme. This year's survey, conducted by the First Amendment Center in collaboration with the American Journalism Review, shows a recovery from a post-9/11 low in public support for the First Amendment in general, but Americans remain critical of the professionalism and ethics of the people and organizations that deliver the news.

Americans in significant numbers appear willing to regulate the speech of those they don't like, don't agree with or find offensive. Respondents said that the press is biased, that it routinely falsifies and fabricates stories, and that it abuses its freedom. The results indicate the press is falling short of what most journalists and Americans want it to be.

Furthermore, the survey showed solid evidence of confusion about, if not outright hostility toward, core First Amendment rights and values. A significant number of citizens were concerned about the extent of freedom guaranteed by the First Amendment. A number of questions posed repeatedly since 1997 indicate how wary some Americans can be about the notion of "too much freedom".

♦ 30 percent say the First Amendment goes too far in the rights it guarantees; although this is a significant drop from the 49 percent spike in 2002 (apparently related to fear and concern in the wake of Sept. 11, 2001), three in 10 is still an unsettling number.

♦ 42 percent say the "press in America has too much freedom," although that number drops to 36 percent when the

question is whether "Americans have too much press freedom."

♦ 41 percent disagree with the statement that newspapers should be allowed to freely criticize the U.S. military.

In addition, schools have failed to teach the importance of the First Amendment. Two-thirds of Americans give schools low grades, saying they have done a "poor" or "fair" job in teaching students about the First Amendment. Only 7 percent say the schools have done an excellent job.

So the educational challenge is great. Just how great is reflected in how poorly Americans do when asked to name the five fundamental freedoms the First Amendment guarantees. Freedom of speech was the most frequent response, but even then only 58 percent could cite it. The recognition or recall of First Amendment freedoms slides steeply down hill from there: 17 percent are able to list religion, 15 percent press and 10 percent assembly. Only one in 100 Americans could name petition.

The 2004 survey did have a couple of nuggets of good news. In a first-time question, 77 percent agreed that the news media should act as a "watchdog" on government. Also, a growing number of Americans appear to share the press' concern about increasing government secrecy and control of information. In this year's poll, 50 percent said that they have too little information about the government's war on terrorism; that figure was 40 percent in 2002. Still, the overall results indicate there is much room for improvement.

When the First Amendment Center began sampling public attitudes toward First Amendment freedoms eight years ago, the goal was to confirm, dispel or elucidate perceptions about the First Amendment and to provide data and track trends for scholars, policymakers, advocates and others.

This year's findings lend a new level of urgency to these leaders and their duty to educate and enforce the importance of First Amendment freedoms.

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*Paul McMasters is one of the nation's leading authorities on First Amendment and freedom-of-information issues. After 33 years in journalism, he joined the Freedom Forum and serves as the First Amendment ombudsman.*