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# THE BRECHNER REPORT

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Volume 29, Number 3 ■ A monthly report of mass media law in Florida  
Published by The Brechner Center for Freedom of Information ■ College of Journalism and Communications ■ University of Florida  
March 2005

## Watchdog group re-files Sunshine violation lawsuit

CAPE CORAL – A citizen group amended its lawsuit against the Cape Coral Commission, claiming that city leaders violated the state’s Sunshine Law by failing to notify property owners about water and sewer expansions.

The group, Cape Coral Watchdogs, originally filed the case in federal district court in 2003, but a judge said the court

### ACCESS MEETINGS

lacked jurisdiction to hear the case. In 2004, the group re-filed the case in state court, where a judge dismissed the suit in November to allow the group time to amend its complaint.

The lawsuit alleges that the city failed to provide adequate notice, which resulted in an unconstitutional taking of property from city residents without compensation.

The lawsuit is a result of the city’s 2003 expansion of existing sewer and water lines in southwest Cape Coral.

## Protestor, city settle obscenity case

GAINESVILLE – A protester who was arrested for “exposing minors to obscene material” will receive more than \$17,000 from the Gainesville City Commission.

Charles Chiodo settled the lawsuit, which stemmed from a May 2004 protest of President Bush.

Gainesville police arrested Chiodo for displaying a sign depicting the American flag protruding from the buttocks of an animated character after they noticed children glancing in Chiodo’s direction.

Chiodo spent the night in jail, but

### FIRST AMENDMENT

## Senator’s records remain under seal

TALLAHASSEE – Administrative Law Judge Jeff Clark ruled that state Sen. Alex Diaz de la Portilla’s financial records from the previous four years will remain closed.

The Florida Elections Commission requested copies of his tax returns, credit-card bills, bank statements and investment listings in late 2004.

The request to examine Diaz de la Portilla’s finances arose from a dispute

over campaign-law violations.

The republican senator, who is from Miami, faces more than \$17,000 in fines as a result of the violations.

The Elections Commission uses a politician’s assets as one of the determining

factors when assessing fines.

Diaz de la Portilla’s attorney asked the judge to refuse disclosure of the records to prevent the “embarrassment of having his personal financial records made public.”

### COURTS

## Court declines school records petition

TALLAHASSEE – A ruling by the 5<sup>th</sup> District Court of Appeals that exempted school bus videotapes and student records from the state’s Public Records Law will stand after the Florida Supreme Court refused to take the case.

The lawsuit, WFTV v. Seminole County School Board, began in 2001 after the television station requested school disciplinary records and surveillance tape from the buses for a story on disciplinary

problems on Seminole County buses.

After the school district denied requests, WFTV filed suit to get access to the records. After losing at trial, the station appealed to the 5<sup>th</sup> District.

The appeals court ruled that student records are confidential and exempt from the Florida Public Records Law because a state statute says “every pupil or student shall have a right of privacy with respect to the educational records kept on him or her.”

### ACCESS RECORDS

## Judge dismisses suit against paper

DAYTONA BEACH – Circuit Judge J. David Walsh dismissed the second of two defamation lawsuits filed against the Daytona Beach *News-Journal*.

Randy Brewer took action against the paper after it reported that he and Dean

Gast acted as conduits for the Ormond Beach City Commissioners in non-public discussions about the firing and rehiring of City Manager Isaac Turner.

Brewer’s lawsuit was dismissed with prejudice, meaning he is not able to re-file.

### LIBEL

## District settles free-speech suit by ex-employee

LEE COUNTY – A legal battle between the Lee County School District and a former employee, who accused the district of firing him because he criticized the district, has ended.

The district settled with Ernie Scott, the former safety director, for about \$565,000, after he claimed his First Amendment right to free speech and his due process rights were violated when he was terminated for blowing the whistle on safety violations.

Incoming Superintendent James Browder fired Scott in 2003, shortly after he reported problems with air quality, fire safety concerns and the presence of asbestos in the district's schools.

A jury in the case awarded Scott more than \$400,000 in damages, but the school district initially balked at the sum. The parties reached the compromise, which included \$232,000 in attorney's fees and \$333,000 in damages, shortly before an appeal was scheduled to be heard.

## Abortion providers desire buffer zone around clinic

WEST PALM BEACH – Abortion provider Mona Reis has asked city officials to enact a 30-foot buffer zone at the entrance of her clinic.

The designated area would provide space to allow patients room to walk without being physically approached by other persons seeking to dissuade them from having an abortion.

## Supreme Court refuses to hear lawsuit regarding anti-abortion license plates

WASHINGTON – The U.S. Supreme Court declined to consider whether state license plates with anti-abortion messages are constitutional.

The case started as a result of the South Carolina Supreme Court's decision that anti-abortion plates were unconstitutional without the option of a pro-choice counterpart.

The decision leaves lower courts in nearly a dozen states, including Florida, divided about whether the plates violate the First Amendment rights of pro-

choice drivers.

In most states, the license plates, which often read "Choose Life," do not have a pro-choice counterpart for drivers to select.

The U.S. Supreme Court's decision not to hear the case has no direct effect on the Florida license plates.

Choose Life, Inc., the Ocala-based nonprofit who created the design for the South Carolina license plates, said it was disappointed with the Supreme Court's refusal to grant certiorari.

## Filter blocks RateMyTeachers.com

MANATEE COUNTY – School district officials in Manatee County have admitted that the district's filtering software has restricted access to a teacher-rating Web site created by Michael Hussey.

Hussey accused the district of stifling students' free-speech rights by intentionally blocking the site, where

students can post comments about classes and teachers.

However, district officials say the Web address, RateMyTeachers.com, was not specifically targeted.

Although the filtering software has blocked one address, students can still access the site through a second address that has not been picked up by the filter.

## 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.*

## LEGISLATIVE PREVIEW

TALLAHASSEE – The following proposed legislation for the 2005 session would create new exemptions to the state Public Records and Open Meetings laws. Copies of the legislation are available at the Florida Legislature's Web site, Online Sunshine, at [www.leg.state.fl.us](http://www.leg.state.fl.us). Chief sponsors of the bills are in parentheses next to the bill numbers.

**SB 306** (Fasano, R – New Port Richey)

Law Enforcement Officer/Public Records – Provides that a law enforcement officer's personal and

private records which are in possession of a law enforcement agency because of a complaint investigation, are exempt from the public records law.

**SB 676** (Saunders, R – Naples)

Public Records and Meetings – Exempts from public disclosure certain personal information concerning child fatalities investigated by State Child Abuse Death Review Committee, local committee, or panel or committee assembled by state committee; provides that information made confidential under act retains its confidential status.

**SB 698** (Sebesta, R – St. Petersburg)  
Fla. Consumer Finance/Public Records – Creates exemption from public records requirements for information obtained by Financial Regulation Office of Financial Services Commission in connection with active investigations and examinations under Florida Consumer Finance Act.

**SB 896**  
Fla. Prepaid College Program/Public Records (Open Government Sunset Review) – Revises public records exemption provided for information that identifies purchaser or beneficiary of said program; eliminates reference to advance payment account activities; clarifies that such records are exempt from specified provisions; amends provisions of Florida College Savings Program to revise public records exemption provided for information that identifies beneficiary of program.

**SB 942** (Peaden, R – Crestview)  
Public Records Exemption – Expresses legislative intent to revise laws regarding the public records exemption.

**SB 1028**  
School Readiness Records – Specifies that exemption from public records requirements provided for records of children in school readiness programs applies to personally identifiable records of children enrolled in programs; extends

exemption to records held by certain contractors of early learning coalitions.

**SB 1082** (Miller, D – Tampa)  
**HB 449** (Ambler, R – Tampa)  
H. Lee Moffitt Center/Public Records – Clarifies exemption for proprietary confidential business information owned or controlled by not-for-profit corporation operating H. Lee Moffitt Cancer and Research Institute and its subsidiaries regarding trade secrets.

**SB 1098** (Smith, D – Gainesville)  
Child Abuse/Neglect Cases/Public Records – Amends provision regarding confidentiality requirements for reports and records in cases of child abuse or neglect to provide that staff members of child advocacy center who are providing services of center to child may have access to records.

**SB 1142** (Argenziano, R – Crystal River)  
Trade Secrets/State Agency/Public Records – Exempts trade secrets held by state agencies from public records requirements; requires that written declaration be submitted to state agency verifying that information is trade secret; specifies requirements for such declaration; exempts any portion of meeting at which information concerning trade secret is discussed from public meetings requirements; provides for application of exemptions.

**SB 1144** (Argenziano, R – Crystal River)  
Public Records and Public Meetings – Transfers general exemptions from requirements regarding inspection and copying of records not otherwise transferred by this act to specified provision; reorganizes and classifies exemptions under headings of “agency processes,” “agency personnel identifying information,” “other personal identifying information,” and “security”; revises standards and guidelines for review and repeal of exemptions.

**SB 7000**  
Seaport Security Plans (Open Government Sunset Review) – Postpones until Oct. 2, 2010, expiration for exemptions from public records disclosure provisions for Seaport Security Plans.

## **SB 7046**

Domestic Security Oversight/Public Records – Provides that portions of meetings of Domestic Security Oversight Council are exempt from public meetings law if information is discussed which concerns active criminal investigations, intelligence activities, or security plans; requires that chair of council disclose reason for closing meeting of council; requires that closed session be recorded.

**HB 185** (Harrell, R – Port St. Lucie)  
Public Records and Public Meetings Exemptions – Provides an exemption from public records requirements for information contained in specified records that relate solely to child fatalities and are created by the State Child Abuse Death Review Committee, a local child abuse death review committee, or a panel or committee thereof; provides an exemption from public meetings requirements for specified portions of meetings or proceedings of the State Child Abuse Death Review Committee, a local child abuse death review committee, or a panel or committee thereof.

**SB 58** (Campbell, D – Tamarac)  
**HB 217** (Barreiro, R – Miami)  
Public Records – Creates an exemption from public records requirements for the home addresses, telephone numbers, social security numbers, and photographs of current or former personnel of a crime laboratory or medical examiner’s office and their spouses and children, and the names and locations of schools and day care facilities attended by the children of such personnel.

**HB 627** (Detert, R – Venice)  
Public Records – Creates an exemption from the public records requirements for information obtained by the Office of Financial Regulation of the Financial Services Commission in connection with active investigations and examinations conducted under the Florida Consumer Finance Act .

**HB 729** (Goodlette, R – Naples)  
Public Records and Meetings Exemptions – Exempts from the public records and public meetings requirements the records of the Florida Self-Insurers Guaranty Association, Incorporated, and meetings of the board of directors of the association or any subcommittee of the association’s board of directors.

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The Brechner Report is published 12 times a year under the auspices of the University of Florida Foundation. The Brechner Report is a joint effort of The Brechner Center for Freedom of Information, the University of Florida College of Journalism and Communications, the Florida Press Association, the Florida Association of Broadcasters, the Florida Society of Newspaper Editors and the Joseph L. Brechner Endowment.



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# Journalist uncovers America's underground courts

After years of covering the courts, I thought I knew the basics. Crimes are charged and prosecuted. Lawsuits are filed and fought, and every case is publicly accounted for on the court's docket.

But some federal courts keep a second set of dockets the public doesn't see. And as I discovered, these secret dockets have been used to hide newsworthy cases.

Super-sealing is the practice of withholding information about the existence of a case from the public record. Even case numbers are confidential.

No explicit legal authority exists to implement such extreme secrecy, and authorities have yet to explain the need for it. The use of a secret docket runs counter to the U.S. judicial system's long tradition of openness.

Judges seal sensitive matters every day – shielding grand jury proceedings, preserving trade secrets, protecting government informants – but the absolute, unexplained secrecy imposed when cases are super-sealed is more chilling. Reporters can no longer assume that every important case is disclosed.

We know about this because of the super-sealed habeas corpus case of Mohamed Kamel Bellahouel. Bellahouel, an Algerian living

## The Back Page

By Dan Christensen

in South Florida, was detained without criminal charge by federal agents in the aftermath of the September 2001 terror attacks. FBI agents investigating the dead September 11th hijackers took Bellahouel into custody. He was detained on an immigration charge — overstaying his student visa — and spent five months in federal custody in Miami. At some point the government considered him a material witness in the case, but he was eventually released around March 1, 2002, without any criminal charge being filed.

While in custody, Bellahouel had filed a habeas corpus petition seeking his release. Traditionally, such cases are open, but Miami U.S. District Judge Paul C. Huck immediately sealed his case. It would have remained secret had it not been for a mistake by an appeals court clerk a year later. Bellahouel's name and case number were included erroneously on a public hearing calendar. I noticed the clerk's attempt to cover up the mistake by deleting Bellahouel's name from a later edition of the calendar, and decided to go to the March 5, 2003 hearing.



Dan Christensen

That morning in Miami, a three-judge panel of the 11<sup>th</sup> U.S. Circuit Court of Appeals heard the scheduled cases and took a recess. During the break, the courtroom was closed, and U.S. Marshals were posted outside the courtroom doors. Inside, Bellahouel's hearing proceeded in secret. Gag orders prevented anyone from commenting. The Miami Federal Public Defender's Office wouldn't even acknowledge that they represented Bellahouel.

At that point, I didn't have Bellahouel's name because I had thrown away the early calendar. I plugged the case number into the court's electronic docket and got lucky: his name was listed. But it wasn't there for long. Within hours, his name was again underground.

Bellahouel's case went all the way to the U.S. Supreme Court. Along the way, it stirred a national debate. But last February, without explanation, the court declined to hear Bellahouel's case. Review of the Supreme Court file shows that virtually all of the pleadings that U.S. Solicitor General Ted Olson filed were under seal, something that's extremely rare.

Have federal prosecutors made these radical arguments elsewhere to hide other newsworthy cases? We don't know. Will they in the future? We may never know.

So, how widespread is the use of secret dockets? We know it's not confined to Florida and the 11th Circuit. In state courts, secret dockets have been exposed in Connecticut and Maine involving embarrassing civil matters such as divorces. A.J. Kramer, a federal public defender in Washington, D.C., told me a secret docket is in use there to hide the existence of cases in which the lives of cooperating witnesses who plead guilty may be in danger.

Secrecy has always been an occupational hazard for journalists. A court super-seal, though, casts a total information eclipse that's both extraordinary and pernicious. Reporters must combat it by becoming more aggressive. Judges and clerks should be put on the spot. Practicing attorneys should be asked if they are aware of any secretly docketed cases. Journalists should watch court records for clues that might flush important cases from the dark corners we now know exist in some of our nation's courthouses.

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*Dan Christensen won the 2004 Brechner Award for his series on the secret federal courts. He has been a reporter for 25 years and currently writes for the Daily Business Review.*