
THE BRECHNER REPORT

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Pompano officials charged with Sunshine violation

POMPANO BEACH—Four city commissioners have been charged with violating the state's Open Meetings Law after they met to discuss their investigation of the Broward Sheriff's Office.

State Attorney Michael Satz filed the non-criminal charges as a

result of a June 2004 meeting in which the commissioners discussed their investigation into inflated crime statistics.

The breakfast meeting with Sheriff Ken Jenne was held without notice and no minutes were taken, according to the charges.

The state Sunshine Law requires that

any meetings between two or more members of the same elected or appointed body be properly noticed and open to the public. In addition, minutes of the proceedings must be recorded.

Vice Mayor Susan Foster and commissioners George Brummer, Lamar Fisher and Kay McGinn face \$500 fines for the violation.

ACCESS MEETINGS

Citizens angered by mayor's plan to limit public input at meetings

FORT MYERS—Local residents wishing to speak to the city council about a non-agenda item are finding it more difficult to be heard after the mayor initiated a new public input procedure.

Mayor Jim Humphrey temporarily banned non-agenda comments from the meetings, while city attorneys review a policy that would end the open input period.

Although Humphrey said he would like to bring the comment period back, he said city leaders need time to figure out

how to deal with people who are abusing the time.

His decision came after two residents continued to talk beyond their allotted time period during an early May council meeting.

The men were using part of their speaking time to accuse the city leaders of misconduct.

At the meeting, Humphrey had staff members turn off the microphone and threatened to call the police to remove one of the citizens.

Study determines journalists above average in ethics

COLUMBIA, MO—Professional journalists are considerably more ethical than the average American adult, according to a recent study by two former journalists.

University of Missouri professor Lee Wilkins and Louisiana State University professor Renita Coleman spent two

years interviewing 249 print and broadcast journalists around the country for the study.

The researchers administered the Defining Issues Test, which is widely used to evaluate moral development, to draw their conclusions.

Their findings place journalists fourth on the list of most ethical professionals, behind top-ranked seminarians or philosophers, medical students and practicing physicians.

"We did not really think that journalists would come out as high as they did," Coleman told *The Associated Press*.

The results of the study are contained in their new book, "The Moral Media: How Journalists Reason About Ethics," which was released earlier this year.

ETHICS

Legislators enact 13 new exemptions

TALLAHASSEE—The 2005 legislative session concluded with 13 new exemptions to the state's open government laws. The bills require the governor's signature before they become law.

The exemptions restrict public access to a variety of information, including hurricane damage information that is collected by insurance providers and used to calculate loss projection models.

Several of the proposed exemptions were for personal information, including names and addresses of parties involved in the justice system. These

included exemptions for juvenile court personnel and medical examiner's staff members, which did not pass.

In addition to the new exemptions, the legislators also renewed seven exemptions that were up for review under the Open Government Sunset Review. Passed in 1995, the OGSR requires that the Legislature review and reenact all exemptions within five years of their passage or the provisions will automatically sunset.

A detailed breakdown of the exemptions discussed during the 2005 legislative session is included inside this issue of the *Brechner Report*.

ACCESS RECORDS

State enhances Web site to track sex offenders

TALLAHASSEE—Floridians will now be able to use the state's sex-offender tracking Web site to determine the whereabouts of sex offenders within any 5-mile radius.

The Florida Department of Law Enforcement began the Web site several years ago, but until recently, users could only search via ZIP code.

"There could be a sexual offender across the street from you but if they are in a different ZIP code they won't show up," said Attorney General Charlie Crist.

The new program was developed free of charge by software company Pitney Bowes and allows residents to enter a specific street address. The search engine will turn up any hits within 5 miles

of the address entered, allowing residents to check their own address or even the address of their children's schools.

Currently there are about 35,000 registered sex offenders in the state's database, which is accessed via the FDLE Web site. That site received more than 3 million hits last month alone.

County will post mug shots in Hernando parks

BROOKSVILLE—Hernando County residents will be able to see more than flora and fauna the next time they visit a county park.

County commissioners voted unanimously in late May to display the mug shots of sexual predators residing in the county on the bulletin board at the county's parks.

Five sexual predators and 215 sexual offenders are residing in the county, according to the Florida Department of Law Enforcement database.

The commission decided to only post pictures of the predators, citing 215 as a unwieldy number.

Sexual predators are repeat offenders who have been classified as such by the court after a finding of specific criteria that are based on their recidivism.

The county's legal department is also looking into the possibility of banning all sex offenders and predators from the county's parks.

Defamation lawsuit targets Miami newspaper for article about jockey

MIAMI—The owners of 2003 Kentucky Derby winner Funny Cide, along with the horse's victorious jockey, have filed suit against *The Miami Herald*.

The suit stems from a May 2003 article that suggested jockey Jose Santos may have had an illegal object in his hand.

The article was based on a photograph and interviews with Santos, another jockey, a steward and a jockey's agent.

In the article, the newspaper reported that Santos described the blurred image in the photo as a "cue ring" and then the story went on to report that "some jockeys have been known to use illegal battery-operated

devices."

However, the quote from Santos arose out of a miscommunication due to language differences, in which the jockey was attempting to describe a Q-ray ionized bracelet.

The newspaper ultimately ran a correction after the statutory correction period had expired, so it will not receive legislative protection from punitive damages in the suit, according to Ft. Lauderdale attorney Bruce Rogow, who represents the plaintiffs.

The suit was originally filed in federal district court in Kentucky but was dismissed for lack of jurisdiction.

It is now pending in circuit court in Broward County.

LIBEL

SHIELD LAWS

Court refuses to hear privilege case despite conflict among lower courts

WASHINGTON—A friend-of-the-court brief by the attorneys general of 34 states, including Florida's Charlie Crist, was not enough to convince the U.S. Supreme Court to take the case of reporters Judith Miller and Matthew Cooper.

It asked the Court to recognize a qualified privilege for reporters, which would have allowed reporters to maintain the confidentiality of their sources.

The Supreme Court's denial of certiorari, in the form of a one-line order, allows the current ruling to stand.

Reporters may be forced to reveal in

federal court the names of their sources, even if they have promised their source confidentiality.

If journalists refuse to do so, they can be held in contempt of court and subject to fines or jail time.

Because the High Court refused to hear the case, it now returns to a federal district court in Washington, D.C., where Judge Thomas Hogan will hear arguments about when and where the reporters should serve their jail time.

The case stems from the reporters' refusal to cooperate with a federal investigation regarding leaked information about CIA operative Valerie Plame.

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.

Journalist arrested while covering unrest at park

ST. PETERSBURG—A *St. Petersburg Times* reporter spent several hours in the Pinellas County Jail after police arrested her while she was covering disturbances in a local park.

Reporter Candace Rondeaux posted \$250 bail to be released after she was

jailed for obstruction while reporting about several violent outbursts in the St. Petersburg park.

Police officials say she was told several times to get out of the street.

Rondeaux maintains that she was wearing her press credentials and moved

to the sidewalk when officials asked.

No charges have been filed.

“We’re kind of in cautiously optimistic limbo,” said *Times* Executive Editor Neil Brown. “We have registered our concerns with the police and the state attorney personally.”

DEFAMATION

Court declines to hear case of libel-by-parody

WASHINGTON—The U.S. Supreme Court declined to hear a Texas case involving a satirical news story.

The case, filed by a Texas judge and district attorney, stems from a fictional 1999 *Dallas Observer* piece that details the arrest and detention of a child because a book report she wrote contained “terroristic threats.”

The satire contained fabricated quotes by a Texas Juvenile Court judge and district attorney. The story was a parody of the real-life detention by the two officials of a teen-ager over a violent Halloween story.

The Texas Supreme Court dismissed the case in 2004, saying no one would believe the story contained actual facts. Additionally, the ruling said actual malice would have to be proven.

Justices overturn speech restraint issued against Cochran’s client

WASHINGTON—The U.S. Supreme Court held that a gag order against a former client of Johnnie Cochran’s was an unconstitutional restraint on speech.

Although Cochran passed away one week after oral arguments in the case, the majority held that the gag order, initially designed to prevent the client from attempting to extort money from Cochran by publicly defaming him, was no longer necessary.

“Consequently, the injunction, as written, now amounts to an overly broad prior restraint against speech, lacking

plausible justification,” Justice Stephen Breyer wrote for the majority. “As such, the Constitution forbids it.”

Legal scholars, including Duke Law School professor Erwin Chemerinsky, who represented Cochran’s former client, believe the ruling signals the court’s reluctance to uphold restrictions against speech in defamation cases.

Justice Clarence Thomas, along with Justice Antonin Scalia, dissented because they believe that the Court should have dismissed the case because they felt that an appeal had been “improvidently granted.”

LEGISLATIVE REVIEW CONT’D.

CS/HB 379 - Student Assessment Instruments
HB 475 and SB 1828 - Access/DCFS Records
SB 504 and HB 713 - Electronic Voting Systems
SB 682 - Adverse Medical Incidents
SB 942 - Shell/Adverse Medical Incident Reports
CS/HB 947 and CS/SB 1810 - Exemption/Court Monitors
SB 1092 - Exemption/Unemployment Compensation Records
CS/HB 1135 and CS/SB 1982 - Exemption/Collection Practices Investigations
CS/SB 1142 and CS/HB 1919 - Exemption/Trade Secrets
CS/SB 1144 and HB 1721 - Chapter 119 Reorganization
SB 1226 - Shell/Domestic Security
HB 1307 and CS/SB 2142 - Exemption/Library Donors
SB 1332, HB 1571, and CS/HB 1903 - Exemption/Slot Machine Licensee

Applications
CS/HB 1387 and CS/SB 2056 - Offender and Murderer Registration
CS/HB 1411 and SB 2526 - Exemption/Florida Transport Authority
HB 1491 and CS/SB 1922 - Exemption/Municipal Ethics Commission
HB 1509 and SB 2034 - Exemption/Vaccine Research Institute
CS/HB 1591 and CS/SB 2178 - Exemption/Voter Registration Records
SB 1594 - Exemption/Shell Bill
SB 1596 - Exemption/Shell Bill
HB 1609 - Patient Records
CS/SB 1628 - Exemption/Home Addresses – Juvenile Probation Officers
HB 1695 and CS/SB 2220 - Exemption/PreK Education Program Record
HB 1851 and CS/SB 2644 - Exemption/Legislative Information Services.
SB 1896 - Exemption/Shell Bill – Education
SB 1898 - Exemption/Shell Bill
SB 1946 - Exemption/Ethics Violations
SB 2248 - Exemption/Private Donations

—THE— BRECHNER REPORT

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LEGISLATIVE REVIEW

TALLAHASSEE – The following bills enacted during the 2005 legislative session 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 <http://www.leg.state.fl.us>. Chief sponsors of the bills are in parentheses at the end of the bill descriptions.

CS/HB 185 Exemption/Child Abuse Death Review Committees: Creates a public record exemption for information identifying a deceased child's surviving siblings, family members or others living in the home of the deceased, in records held by the State Child Abuse Death Review Committee or local committees. Provides a penalty for the knowing or willful disclosure of exempt information. (*Harrell, R-Port St. Lucie*)

CS/HB 449 Exemption/H. Lee Moffitt Cancer Center: Expands the current exemption for proprietary confidential business information in Section 1004.43 of the Florida Statutes to also exempt information relating to methods of manufacture or production, potential trade secrets, potentially patentable material or proprietary information received, generated, ascertained or discovered during the course of research by the Center. (*Ambler, R-Tampa*)

HB 627 Exemption/Florida Consumer Finance Act: Creates a public record exemption for investigative and examination information held by the Office of Financial Regulation of the Financial Services Commission until the investigation is complete or no longer active. (*Detert, R-Venice*)

CS/HB 729 Exemption/Florida Self-Insurers Guaranty Association: Creates a public record exemption for claims files of the Florida Self-Insurer Guaranty Association, stipulating that the records become public upon termination of all litigation and settlement of all claims arising out of the same incident. Also creates an exemption for medical records and other information relating to the medical condition of a claimant that are part of a claims file. Creates an exemption for those portions of association board meetings during which exempt claims files are discussed, requiring that the closed portions be recorded and transcribed. Finally, exempts the minutes of all closed meetings until settlement of the claim and termination of all litigation. (*Goodlette, R-*

Naples)

CS/SB 798 Exemption/Parental Notification: Amends Section 390.1116 of the Florida Statutes, making minor changes to the public record exemption for information in records held by a court that could identify a minor seeking a waiver of parental notification of abortion requirements.

CS/HB 1091 Exemption/Independent Education Commission: Creates a public record exemption for all investigatory records held by the Independent Education Commission in conjunction with investigations into complaints, including minutes and findings of exempt probable cause panel meetings convened in conjunction with such investigations. Stipulates that such information will be exempt for no more than 10 days after the panel makes a determination regarding probable cause. Also creates an exemption for portions of meetings of the probable cause panel at which exempt records are discussed. (*Greenstein, D-Coconut Creek*)

SB 1098 Exemption/Guardians Ad Litem: Creates a public record exemption for any information held by a guardian ad litem that is related to the best interests of a child. Also exempts information maintained by a guardian ad litem that is otherwise confidential or exempt. Creates a public record exemption for the home address, telephone number, place of employment and photographs of current or former guardians ad litem, as well as the names, home address, telephone

number, and place of employment of the spouses and children of such persons if the guardian ad litem provides a written statement that he or she has made reasonable efforts to protect such information from being accessible through other means available to the public. Finally, allows disclosure of information exempt under Chapter 39 of the Florida Statutes to the director, or the director's designee, of a child's advocacy center. (*Smith, D-Gainesville*)

CS/HB 1469 Exemption/Funeral, Cemetery & Consumer Services Board: Creates public meetings exemptions for the Funeral, Cemetery & Consumer Services Board when the board is meeting for the exclusive purpose of creating or reviewing licensure examination questions or answers. Also exempts meetings of the board's probable-cause panel. Creates a public record exemption for records of exempt meetings of the probable-cause panel, stipulating that such records become public 10 days after a determination is made regarding probable cause. Also creates public record exemptions for information held pursuant to a financial investigation until the investigation is complete or no longer active; an inspection until the inspection is complete or no longer active; and investigations of violations until the investigation is complete or no longer active or until 10 days after a determination is made regarding probable cause. Finally, creates a public record exemption for records revealing trade



secrets held by the board. (*Kreegel, R-Punta Gorda*)

HB 1591 Exemption/Voter

Registration Information: Creates a public record exemption for the Social Security number, driver's license number, and Florida identification number of a voter registration applicant or a voter. Prohibits copying voter registration applications and signatures. Stipulates that the exemption applies retroactively. (*Brown, R-DeFuniak Springs*)

HB 1695 Exemption/Voluntary Pre-K

Education Program: Creates a public record exemption for individual records of children enrolled in the Voluntary Pre-kindergarten Education Program held by an early learning coalition, the Agency for Workforce Innovation or a voluntary pre-kindergarten education program provider. Stipulates that such records include assessment data, health data, records of teacher observations and personal identifying information of an enrolled child and his or her parents. Stipulates that the exemption is retroactive.

HB 1801 Exemption/Domestic

Security Oversight Council: Creates an exemption for portions of meetings of the Domestic Security Oversight Council at which active criminal investigative or intelligence information is heard or discussed if the council chair announces at a public meeting the need to discuss such information and declares the specific need to close the meeting in writing. Stipulates that the entire closed session must be recorded and no portions may be off the record and limits who may attend the closed session. Also creates a public record exemption for audio or video recordings and any minutes or notes generated during closed meetings, until the criminal investigation is no longer active or the security system plan is no longer in use.

CS/SB 1922 Exemption/Municipal

Ethics Commissions: Amends Section 112.324 of the Florida Statutes to create a public record exemption for complaints and records relating to the complaint and any preliminary investigation held by a municipal ethics commission. Also exempts any proceedings conducted by such commissions. Stipulates that records and proceedings become public once the complaint is dismissed, the alleged violator requests the records and proceedings be made public or until the commission determines probable cause. (*Sebesta, R-St. Petersburg*)

HB 1939 Exemption/Hurricane Loss

& Exposure Data: Creates a public record exemption for "reports of hurricane loss data and associated exposure data" specific to a particular insurance company reported to the Office of Insurance Regulation or a state university for the purpose of developing a hurricane loss projection model. "Hurricane loss data and associated exposure data" is defined as the type, age, wind mitigation features, and location of each property insured; the amount and type of coverage written on each of those properties; the amount, date, and type of damage paid for by the insurer on each property; and the amount of any reserves held by an insurer for future payments or expenses on damages associated with the date(s) of occurrence of hurricanes. Also creates an exemption for trade secrets and for portions of meetings at which trade secrets are discussed.

The following exemptions were reviewed and reenacted during the 2005 session under the OGSR Act.

SB 288 Seaport Security Plans:

Reenacts, with technical modifications, Section 311.13 of the Florida Statutes, to provide a public record exemption for seaport security plans. Also exempts photographs, maps, blueprints, and similar material depicting critical seaport operating facilities if the items contain information that is not generally known and that could jeopardize security

HB 169 Interference with Custody:

Provides an exemption for information provided to a sheriff or state attorney by a person who takes a child under certain specified conditions. As amended, the name of the person taking the child and the current address and telephone number of the person and child contained in reports made to a sheriff or state attorney is exempt from public disclosure. The exemption must be reviewed and reenacted in 2006.

HB 1729 Florida Prepaid College

Program: Reenacts an exemption for records of the Florida Prepaid College Savings Program. As amended, provides a public record exemption for information identifying the purchaser and the beneficiary of any prepaid college program plan or any college savings program.

CS/HB 1817 Certified Capital

Company Act: Reenacts public record exemptions for certain specified information relating to investigations or

reviews of certified capital companies by the Financial Regulation Office. Repeals the CAPCO Act as well as the public record exemptions effective December 31, 2010.

HB 1861 School Readiness Records:

Reenacts the exemption for individual records of children enrolled in school readiness programs held by the early learning coalition or the Agency for Workforce Innovation.

HB 1921 Domestic Violence

Fatalities: Reenacts and expands current exemptions for records of domestic violence fatality review teams to stipulate that any confidential or exempt information obtained by a domestic violence fatality review team retains its confidential or exempt status, and create a public record exemption for information that would reveal the identity of a domestic violence victim or the victim's children

HB 1923 Telecommunications –

Proprietary Business Information:

Amends and reenacts an exemption for proprietary confidential business information obtained from a telecommunications or franchised cable company by a local government for the purpose of imposing fees or assessing services taxes, to stipulate that such information will be exempt from public disclosure only if the information is treated by the company as confidential; would be reasonably likely to be used by a competitor to harm the business interests of the company; and is not otherwise readily ascertainable or publicly available "by proper means by other persons from another source in the same configuration as requested by the local government entity."

The following bills were introduced but not passed during the legislative session. Summaries of the bills are available at <http://www.leg.state.fl.us>.

SB 58, HB 217, and HB 1435 -

Exemption/Home Addresses – Medical Examiner Employees

CS/HB 111 and SB 654 - Exemption/ Arrest Records

CS/SB 284, CS/HB 481, and CS/SB 978 - Unlawful Use/Personal Information

SB 306 - Exemption/Accused Law Enforcement Officers

SB 322 and HB 429 - Outsourcing Contracts

CS/HB 365 and SB 2536 - Sinkhole Investigations Reports

Center builds strong foundation for access

Ten years ago this summer, I left the Brechner Center for Freedom of Information, Ph.D. in hand, a newly minted FOI warrior ready to defend the homeland from secretive officials.

Little did I know how much I had learned, how well I had been trained, or how important the little FOI center on the third floor of Weimer Hall had become. With the myopia of a doctoral student, I left UF determined to help as an FOI advocate in any way that I could.

Forgive me the moment of nostalgia, but it couldn't be helped. From my vantage point at the Missouri School of Journalism's Freedom of Information Center, and as the newly appointed executive director of the National Freedom of Information Coalition, I have a good grasp of

The Back Page

By Charles Davis

the FOI landscape. Now, more than ever, the Brechner Center's role in that landscape is apparent to all.

Few Brechner Report readers could know how influential the Center is in the intellectual life of access, of the dozens of doctoral researchers and attorneys nationwide who have worked in the Center and studied FOI law. The NFOIC – essentially the umbrella group of state FOI groups – is a case in point.

The NFOIC, founded in 1992, supports First Amendment and open government organizations from individual states as they seek to protect public access to information through the education of media professionals, attorneys, academics and citizens. The NFOIC nurtures start-up FOI organizations in the states and assists its members – state FOI groups – through joint fundraising, project planning and community outreach programs.

Go to an NFOIC meeting, and the Brechner Center's



Charles Davis

influence on the FOI community is unmistakable. Bill Chamberlin, the Brechner Center's founding director, played a major role in the NFOIC's creation. Professor Sandra Chance continues that leadership today as an NFOIC member. In Washington State, North Carolina, Pennsylvania and other states, Brechner alumni serve on the boards of state FOI groups.

Now, in a move designed to strengthen grass roots open government efforts nationwide, The Missouri School of Journalism's Freedom of Information Center is partnering with the National Freedom of Information Coalition. It's a dream come true for this Brechner alum, an opportunity to help launch FOI organizations and strengthen existing coalitions. It's a testament to the Brechner Center's importance nationally, as it helped create the NFOIC and plays a central role in its operation today.

The NFOIC works to initiate joint fundraising efforts with state organizations; to develop FOI education programs, projects and publications and to support the state FOI groups in obtaining funding.

The NFOIC co-hosts an annual conference on state FOI issues; serves as a resource to state coalitions and citizens through an active web site (www.nfoic.org); and operates a pass-through grant program to fund state FOI coalition activity. The generous support of the James S. and John L. Knight Foundation enables the NFOIC to distribute some \$84,000 annually to state FOI activities.

And it's safe to say that none of it would have happened without the Brechner Center.

Charles Davis is the executive director of the National Freedom of Information Coalition and an associate professor at the Missouri School of Journalism, where he teaches controls of information and regulation of cyberspace.