
THE BRECHNER REPORT

Volume 31, Number 1 ■ 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
January 2007

Police arrest speaker at meeting

RIVIERA BEACH – Police arrested a man addressing city council members during a meeting after he ignored a council member’s request to stop speaking.

Fane Lozman, who has sued Riviera Beach for its use of eminent domain, was commenting on the arrests of two government officials when Councilwoman Liz Wade told Lozman she did not want to hear any further comments.

Police escorted Lozman from the

podium, and he was charged with disorderly conduct and trespassing, according to *The Palm Beach Post*.

In his lawsuit against the city, Lozman claims that the city violated the Sunshine Law in reaching an agreement with Viking Inlet Harbor Properties to redevelop hundreds of acres.

After Lozman was arrested, council members voted unanimously not to use eminent domain in the project.

ACCESS MEETINGS

Florida governor-elect plans office for open government

TALLAHASSEE – Governor-elect Charlie Crist announced the creation of an Office of Open Government within his executive office.

The goal of the office will be to ensure compliance with the Public Records Law and Sunshine Law.

The office will also assist in training government agencies on government transparency.

“Respecting the public trust that is bestowed upon all of us who serve the people of Florida is a top priority for me and for my administration,” said Crist, who took office Jan. 2.

The office will be led by Director of Cabinet Affairs and Special Counsel

for Open Government Pat Gleason and Director of Open Government JoAnn Carrin.

Gleason and Carrin have worked for Crist during his tenure as Florida’s attorney general. Gleason was Crist’s general counsel and administered the attorney general’s open-government mediation program. Carrin was communications director.

“Pat Gleason, a longtime champion of open access to records and government for all residents, gives the new office credibility,” said John Bartosek, president of the Florida Society of Newspaper Editors and editor of *The Palm Beach Post*.

FEMA lawsuits await decision

ATLANTA – The battle for FEMA records has made its way to the 11th U.S. Circuit Court of Appeals, where a panel of judges will address two differing cases handed down by district court judges.

The *South Florida Sun-Sentinel* was successful in its bid to obtain addresses of hurricane aid recipients. The *Sun-Sentinel*’s suit was decided in the U.S. District Court for the Southern District of Florida.

Three Gannett papers, *The News-Press* (Fort Myers), the *Pensacola News Journal* and *Florida Today*, were denied their requests for similar information by a federal judge for the U.S. District Court for the Middle District of Florida.

The two cases have been combined on appeal, and the 11th Circuit is expected to hand down a decision in the next several months.

Media attorney Charles Tobin told the three-judge panel of the 11th Circuit that the public interest in obtaining information about how the government distributed money outweighs the privacy interests of applicants in keeping their addresses confidential.

FEMA attorney Mark Stern argued that disaster aid recipients are assured privacy at the time of application and that privacy should be protected.

Polk County board members appeal guilty verdicts

BARTOW – A lawyer for the Polk County Opportunity Council appealed the decision handed down by a county judge that 10 of the council’s board members had violated the Sunshine Law.

In April, the 10 were found guilty of civil infractions and fined \$250 each. The charges stemmed from a 2005 closed meeting during which the PCOC board

members discussed admonishing a former executive director.

In appealing to circuit court Chief Judge Ron Herring, attorney William Grob argued that the members were not public officers because they were not elected or appointed by the governor. Grob also maintained that Florida’s Sunshine Law did not apply because the board was

funded by federal funds, and because the meeting was not a meeting for the purposes of the Sunshine Law.

Assistant State Attorney Victoria Avalon argued that because the PCOC had assumed a government function and received the federal funds via the state, the board members were subject to the Sunshine Law.

HIPAA seminar highlights myths, realities of law

ST. PETERSBURG – The federal law that protects patient privacy is a source of confusion for both healthcare providers and journalists. A recent seminar brought together representatives from both fields in an attempt to clarify the myths and realities of the Health Insurance Portability and Accountability Act (HIPAA).

“It’s not HIPAA itself that is so frustrating, it’s HIPAA anxiety or HIPAA reflex,” said Lisa Greene, a medical reporter for the *St. Petersburg Times*. Greene was one of seven panelists at the seminar hosted by the First Amendment Foundation and The Poynter Institute.

Beginning in 2003, the Privacy Rule of HIPAA placed restrictions on how individuals’ healthcare information is released to the public. Violations of the Privacy Rule carry civil and criminal penalties, causing healthcare providers to become even more cautious of releasing information.

But Patricia R. Gleason, general

counsel at the Florida Attorney General’s Office, said that Florida law already protected much of the information covered by HIPAA. What HIPAA did do, Gleason said, was provide opportunities for agencies to use HIPAA as a tool to avoid giving out records.

HIPAA requires “covered entities” to keep “protected health information” private. Covered entities include hospitals and fire rescue services that provide medical services. For the most part, law enforcement agencies are not covered entities.

Captain Bill Wade of Tampa Fire Rescue described how he used sources from other agencies to provide information to the media and the public, without releasing confidential reports of paramedics.

The use of other sources to obtain similar information about crash victims, high profile medical cases or other health-related incidents was also emphasized

by George Rousis, compliance officer for Halifax Community Health System. Rousis encouraged reporters attending the seminar to look to non-covered entities first for information.

Familiarity with pertinent federal and state laws was also a solution to media HIPAA confusion, Rousis said.

Despite the fear of hefty fines for violating HIPAA, there have been no civil fines levied since the Privacy Rule went into effect, Rousis said. Of the 23,000 complaints, about 300 were referred to the Department of Justice, so there have been a few criminal convictions.

“We’re all struggling to understand the implications of this,” said Jim Kirley, a health writer for a daily newspaper in South Florida.

“It was helpful to note that it doesn’t impact us directly as reporters, as journalists, rather it impacts us indirectly as to what healthcare officials can and can’t say,” Kirley said.

Sunshine flaw voids tourism council’s deal

CITRUS COUNTY – The wording of a request for proposals for public relations services violated the Sunshine Law, causing the selection process to start anew.

The Citrus County Tourist Development Council had already awarded the contract when the Citrus County Attorney’s Office determined there was a flaw in the selection process.

The request for proposals explained that each vendor could give a presentation to the TDC.

The document also stated that vendors “may choose as a professional courtesy to remain outside the meeting room during the others’ presentations.”

David M. Snyder, an attorney for a firm that did not receive the contract, argued that the wording of the request for proposals violated the Sunshine Law “by inducing parties who made proposals and presentations to ‘voluntarily’ absent themselves from the TDC meeting.”

The county attorney agreed with Snyder, referring to prior case law that supported Snyder’s assertions.

Museum process goes public

TAMPA – The Tampa Museum of Art will make its architect selection process public, after *The Tampa Tribune* challenged the private evaluations.

The Tampa Museum of Art’s Foundation had been privately evaluating potential designers of a new museum. The city will provide \$17.5 million for the new museum, according to *The Tribune*.

“We don’t want there to be any appearance of impropriety,” museum Interim Director Ken Rollins said.

An attorney for the museum had

argued that the Foundation, a separate entity not subject to open government laws, was conducting the selection process.

Attorneys for *The Tribune* argued that the process should be open to the public because the museum, a public body subject to open

government laws, would have final say over the hiring process.

The museum released the list of architects under consideration for the project after it previously refused to do so.

ACCESS MEETINGS

Group seeks White House records

WASHINGTON D.C. – A federal judge has allowed a reproductive rights group to seek White House documents related to the group’s lawsuit against the Food and Drug Administration.

The Center for Reproductive Rights can now subpoena more than three years of correspondence regarding the emergency

contraceptive Plan B between the White House domestic policy office and certain FDA officials.

The center’s suit seeks to lift age restrictions on nonprescription sales of Plan B.

In August, the FDA approved the sale of Plan B without a prescription to women 18 and older.

FREEDOM OF INFORMATION

THE BRECHNER CENTER

2006 FREEDOM OF INFORMATION REPORT

Published by The Brechner Center for Freedom of Information ■ College of Journalism and Communications ■ University of Florida

Detainee investigation wins Brechner award

GAINESVILLE – A groundbreaking, detailed series by *The Associated Press* that examined the treatment and prosecution of detainees at Guantanamo Bay was named the winner of the 2006 Joseph L. Brechner Freedom of Information Award.

“Guantanamo Exposed” was written by *Associated Press* writer Paisley Dodds, who now serves as the bureau chief in London. Dodds has covered Guantanamo Bay since the U.S. opened the detainee camp in 2002. Taking a look back during the camp’s third year in existence,

the 2005 series revealed psychological pressures and harsh conditions for the approximately 520 male, terrorist suspects, from 40 countries, held at the secretive U.S. detention camp.

The series was recognized with a \$3,000 prize at the 21st Annual Brechner Center for Freedom of Information award celebration on Nov. 13.

The U.S. government released to *The Associated Press* nearly 3,000 pages of documents under a Freedom of Information lawsuit. The documents – with names and city, village and country

names redacted – account for nearly 100 testimonies at secretive tribunal proceedings where detainees complained there was no evidence against them and alleged abuse at the prison camp.

The series also found that detainees were coerced into confessions and were subjected to female interrogators using sexual tactics to weaken Muslim detainees.

The annual award was established by the late Joseph L. Brechner, an Orlando broadcaster. Previous award winners include: the *San Francisco Chronicle*, *The Washington Post*, the *St. Petersburg Times*, and *The Dallas Morning News*.

**BRECHNER
AWARD 2006**

Reporters face jail, fines for shielding sources

Reporters and news organizations fighting to maintain confidential sources were hit with criminal and financial penalties in 2006, although Congress did attempt to pass a federal shield law.

The federal government and five news organizations will pay \$1.6 million to a former nuclear weapons scientist once suspected of being a spy. Wen Ho Lee settled his privacy lawsuit, in which he accused the government of violating his privacy rights by leaking information to the press.

The settlement will also end contempt of court proceedings against five reporters who refused to disclose their

sources for stories about Lee’s espionage investigation. *The Associated Press*, *The New York Times*, the *Los Angeles Times*, *The Washington Post* and ABC have agreed to pay Lee \$750,000.

“We were reluctant to contribute anything to this settlement, but we sought relief in the courts and found none,” the companies said in a statement. “Given the rulings of the federal courts in Washington and the absence of a federal shield law, we decided this was the best course to protect our sources and to protect our journalists.”

**REPORTER’S
PRIVILEGE**

Two *San Francisco Chronicle* reporters were ordered to jail for refusing to reveal who gave them secret grand jury testimony from an investigation into illegal steroid distribution by the Bay Area Laboratory Co-Operative.

Lance Williams and Mark Fainaru-Wada wrote several articles and a book based in part on transcripts of testimony by baseball players Barry Bonds, Jason Giambi and others.

The reporters’ jail sentence has been suspended pending an appeal to the 9th U.S. Circuit of Appeals.

Secret docket inquiries prompt rule change

TALLAHASSEE – In the wake of several news stories about secret dockets and sealed cases in state courts, the Florida Supreme Court is poised to adopt new rules for sealing cases.

The Miami Herald first drew attention to Broward County, where more than 400 civil cases have been sealed

since 1989. Current rules do not require a hearing prior to sealing a case.

After *The Herald* stories, other newspapers reported on sealed cases in Hillsborough, Pasco, Pinellas, Palm Beach and Sarasota counties.

The Florida Association of Court Clerks and Comptrollers submitted to the justices

proposed rules, which would require judges to hold a hearing and give advance public notice prior to sealing a case.

Chief Justice R. Fred Lewis asked Florida’s 20 chief judges to review sealed cases in their circuits. The Florida Bar’s Rules of Judicial Administration Committee expedited its recommendations regarding the new rules at Lewis’ request.

COURTS

Attorney General issues several access opinions

TALLAHASSEE – Attorney General Charlie Crist issued opinions this year on open government issues ranging from online discussion boards to the redaction of litigation records. (myfloridalegal.com)

Mediation discussions: May a closed attorney-client session be held pursuant to the Sunshine Law to discuss settlement negotiations on an issue that is the subject of ongoing

mediation pursuant to a partnership agreement between the water

management district and others?

AGO 2006-03: A closed attorney-session may not be held pursuant to the Sunshine Law to discuss these types of matters. The attorney general's office "cannot read an exception into the statute for pre-litigation mediation proceedings."

Utilities commission records: Are records of the New Smyrna Beach Utilities Commission that are furnished to the Florida Department of Law Enforcement in the course of a criminal investigation by the department exempt as criminal intelligence or criminal investigative information?

AGO 2006-04: Such records are subject to disclosure even though some of those records may have been provided to the FDLE in the course of a criminal investigation. The utilities commission, however, may not identify which of its records have been provided to the FDLE while such records in the hands of the department constitute active criminal intelligence or investigative information.

Duties of a records custodian: Whether the Public Records Law imposes a responsibility on "public relations staff" or other employees of an agency to make a good faith effort to locate documents.

Informal Opinion: This depends on whether such staff are the designated records custodian or have custody of the public record in certain cases. The question would likely have to be resolved by the courts in a particular situation.

Electronic discussion boards: What are the implications of the Sunshine Law on the use of an electronic discussion board to conduct public meetings?

Informal Opinion: The use of an electronic bulletin board to discuss matters that may foreseeably come before a public body over an extended period of time would not comply with the spirit or letter

of the Sunshine Law.

Crash reports: Is the City of Maitland Fire Department authorized by Fla. Stat. 316.066 to receive a copy of a written crash report prepared pursuant to that section in order to request reimbursement from the at-fault driver for a fee assessed by the city?

AGO 2006-11: Fla. Stat. 316.066 does not authorize the release of written crash reports to the City of Maitland Fire Department for the purposes of requesting reimbursement from

the at-fault driver in an accident for a fee assessed by the city. The Legislature may wish to reconsider the provisions of 316.066(3)(c) to address these concerns.

Simultaneous meetings: May the Joint Citizens Advisory Committee comply with the Sunshine Law in holding its quarterly meeting by linking simultaneous meetings of citizens' advisory committees in each of its participating counties, networked via computers, conference call, video or some other electronic media technology, so that all members of the committees and the public can hear and participate at the meeting, when each committee has a quorum present for its meeting?

AGO 2006-20: The Joint Citizens Advisory Committee whose members are representatives from several county metropolitan planning organizations may use electronic media technology to link simultaneously held public meetings of citizens' advisory committees allowing all members of the committees and the public to hear and participate at workshops. The use of electronic media technology, however, does not satisfy quorum requirements necessary for official action to be taken by the joint committee.

Redaction of litigation records: Does the case of *Johnson v. Deluz* allow the redaction of litigation records relating to complaints by students against school district administrators, teachers or other employees for physical or sexual abuse so that such records may be released absent consent or court order?

AGO 2006-21: Litigation records are public records that must be released after student identifying information has been redacted.

Static Web site access: May a municipality respond to a public records request requiring the production of thousands of documents by composing a static Web page where the responsive public documents are posted for viewing if the requesting party agrees to the procedures and agrees to pay the administrative costs, in lieu of copying the documents at a much greater cost?

AGO 2006-30: A municipality may respond to such records requests by establishing a static Web site.

Local advocacy councils: May members of a local advocacy council, who are attending a closed session of the statewide advocacy council during the discussion of one of the local council's cases, remain during the entire closed session of the statewide advocacy council which is considering cases from other advocacy councils unrelated to any of the local advocacy council's cases?

AGO 2006-34: Members of a local advocacy council, who are attending a closed session of the statewide advocacy council during the discussion of one of the local council's cases, may not remain in the closed session when the statewide advocacy council is considering cases from other advocacy councils that are unrelated to the local advocacy council's cases.

Court records still under study

TALLAHASSEE – Florida's moratorium on electronic access to court records will remain in effect while issues are studied further, according to a July 2006 order by the Florida Supreme Court. In the meantime, Manatee County will be home to a one-year pilot project.

The moratorium was imposed in 2003 and is set for review in July 2007. It allows online access to dockets, calendars and certain records, such as those related to cases of "significant public interest" or

cases in which a state agency is a party.

Among other things, the justices are still concerned with privacy, identity theft, fees for access and which Public Records Law exemptions to apply to court records.

The Committee on Privacy and Court Records submitted its final report and recommendations to the court in August 2005. The Court has ordered that a new committee, the Committee on Access to Court Records, be formed to implement and further study several recommendations.

**ATTORNEY
GENERAL OPINIONS**

Studies show access to information decreasing

Florida Public Records Audit: A statewide public records audit by Florida news organizations revealed that 42 percent of local government agencies audited violated the state's Public Records Law.

During a week in February 2006, volunteer journalists posed as ordinary citizens and requested records from county governments, city hall, school boards and sheriff's offices. Volunteers requested e-mails from the county, city and school district officials and a log of incoming calls at law enforcement agencies.

Although requesters of public records

are not required to offer their names, the audit found that names were demanded 16 percent of the time. Eighteen percent of the agencies required a form or written request before releasing records.

ACCESS STUDIES

Agencies were given an hour to tell volunteers that the records were public and when they would be available. Nearly 40 percent of the agencies took longer than an hour to provide that information.

Access Legislation Since Sept. 11: Public access to government records has been steadily limited by states since the Sept. 11 terrorist attacks, according to a

50-state study by *The Associated Press*. Florida, however, has largely avoided this trend.

The AP study found that legislatures have passed more than 1,000 access laws since the attacks. More than twice as many laws that restrict information were passed than those that offer greater access to government information.

Florida has actually seen a reduction in the number of open government exemptions passed each year, according to the AP. In the legislative session prior to the terrorist attacks, 16 new exemptions were passed in Florida. That total has not been reached since the attacks.

False light issue poised to go before Florida Supreme Court

PENSACOLA – Two appeals courts have certified questions on the issue of false light invasion of privacy to the Florida Supreme Court.

The First District Court of Appeal reversed an \$18.28 million verdict against the *Pensacola News Journal*, ruling that the plaintiff's false light invasion of privacy claim was governed by the two-year statute of limitations for defamation actions.

The First District, in *Gannett Co. Inc. v. Joe Anderson Jr.*, certified the question as one of great importance and in conflict with *Heekin v. CBS Broadcasting Inc.*, a case from the Second District.

Joe Anderson sued the *News Journal* for false light in 2001, three years after a story stated that he shot and killed his wife. Two sentences later, the story stated that the death had been ruled an accident.

Anderson initially sued for libel but later amended his suit to sue for false light

invasion of privacy.

In Florida, the statute of limitations for unspecified torts is four years. However, the First District held that Anderson's claims weren't materially distinguishable from a defamation claim, so the two-year statute of limitations applied.

Because Anderson did not file his suit within the two-year period, his verdict was reversed.

The Fourth District, in *Rapp v. Jews for Jesus Inc.*, certified the question of whether the tort of false light was even recognized in

FALSE LIGHT

Florida.

Edith Rapp sued Jews for Jesus after the organization published a newsletter in which Rapp's stepson wrote that Rapp, a Jew, had converted to Christianity.

The Fourth District allowed Rapp's claims for false light invasion of privacy and negligent supervision and retention to proceed but recognized that there is "some uncertainty in the area" of false light.

Center will celebrate 30 years

The Joseph L. Brechner Center for Freedom of Information will host a two-day conference in fall 2007 to celebrate its 30th anniversary. The event also will honor the 40th anniversaries of the federal Freedom of Information Act and Florida's Sunshine Law.

Marion Brechner, wife of the late Joseph L. Brechner, gave money to fund the event. Mrs. Brechner also gave an

additional gift to the Marion Brechner Citizen Access Project to fund a service to help respond to questions about open government legislation.

"The conference will explore the issues and challenges to freedom of information and develop strategies for protecting the public's right to know, both in Florida and nationally," said Professor Sandra Chance, executive director of the Brechner Center.

Chance named McClatchy FOI professor

The Brechner Center for Freedom of Information's executive director has been named the McClatchy Professor in Freedom of Information.

Professor Sandra Chance has been recognized nationally for her teaching, research and scholarship in freedom of information issues.

Chance has been the Center's executive director since 2002 and a member of the University of Florida faculty since 1993.

"The need for education about the importance of FOI has never been greater," Chance said. "The McClatchy Professorship will help us significantly in meeting this need."

The McClatchy Company donated \$600,000 for the professorship. Another \$400,000 is expected to be matched by the state. McClatchy is the second-largest owner of newspapers in the United States.

"Free people cannot exist without free speech and freedom of information," said Gary Pruitt, chairman, president and CEO of McClatchy.

Dean Emerita Terry Hynes expressed her appreciation for the company's gift. "The professorship enables us to extend and deepen the impact of the College's work in freedom of information," Hynes said.

Florida access statutes receive additional exemptions during 2006 legislative session

TALLAHASSEE – The following 10 bills enacted during the 2006 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 (www.leg.state.fl.us).

Chief sponsors of the bills are in parentheses next to the bill numbers.

Lawmakers also enacted or reenacted 30 other open government-related laws.

LEGISLATIVE SESSION REPORT

HB 193 Court

Monitors: Creates a public record exemption for a court order appointing a court monitor and the monitor’s reports relating to the health or finances of a ward. Confidentiality expires if a court makes a finding of probable cause. Also creates an exemption for court determinations relating to a finding of no probable cause and court orders finding no probable cause. Such records may be subject to inspection as determined by the court. (*Bogdanoff, R-Fort Lauderdale*)

HB 459 Donors – Statewide Public Guardianship Office: Allows donors or prospective donors to the Statewide Public Guardianship Office to remain anonymous. (*Sands, D-Weston*)

CS/HB 605 Home Addresses

– DJJ Employees: Exempts the home addresses, phone numbers and photos of certain active or former Department of Juvenile Justice employees from the Public Records Law. Similar information about employees’ spouses and children is also made exempt. (*Planas, R-Miami*)

CS/HB 687 Concealed Weapons

Permits: Creates an exemption for identifying information of applicants and recipients of concealed weapons permits. Exempt information can be disclosed to law enforcement agencies and commercial entities for the purposes of law enforcement or homeland security. Disclosure is allowed under specific circumstances, such as upon court order and a showing of good cause. The exemption applies retroactively. (*Adams, R-Oviedo*)

CS/HB 1001 Fingerprint ID

Information: Makes biometric fingerprint information exempt from

public records requirements. “Biometric” is defined as any record of friction ridge detail, fingerprints, palm prints and footprints. The exemption applies retroactively. (*Adams, R-Oviedo*)

CS/HB 1117 South Florida

Regional Transportation Authority: Exempts certain documents related to the acquisition of land by the South

Florida Regional Transportation Authority until an option contract is executed or until 30 days before a

contract for purchase is considered for approval by the authority. (*Greenstein, D-Coconut Creek*)

CS/HB 1285 Innovation Incentive Program: Expands the current exemption and creates an exemption for identification numbers, trade secrets, anticipated and average wages, proprietary information and stipulated taxes related to the Innovation Incentive Program. Also exempts sales percentages derived from the Department of Defense. (*Attkisson, R-Kissimmee*)

CS/HB 1369 Rejected Bids,

Proposals or Negotiations: Creates an exemption for rejected bids or proposals if the agency concurrently provides notice of its intent to reopen invitations to bid or requests for proposals. Also exempts meetings at which negotiations with vendors are conducted, although a recording must be made. The recording enters the public record once the agency announces a decision or intended decision on the bid, or until 20 days after competitive sealed replies are opened, whichever is earlier. (*Evers, R-Milton*)

HB 1451 Florida Center for Brain

Tumor Research: Exempts individual medical records and information received from an individual from another state, county or the federal government held by the Florida Center for Brain Tumor Research. (*Gannon, D-Delray Beach*)

CS/HB 7161 State Board of

Administration: Exempts proprietary confidential business information related to alternative investments of the State Board of Administration. The public record exemption applies only when the party submitting the information provides a written declaration adhering to specific requirements. Access is allowed by court order.

Governor vetoes two records bills passed in 2006 legislative session

TALLAHASSEE – Gov. Jeb Bush vetoed two public records bills passed by the Florida Legislature during the 2006 session.

The first bill (HB 1097) would have required government agencies to reply “promptly” to public records requests. In his veto message, Bush wrote that existing law already outlines a standard for when an agency must respond to requests – “at any reasonable time, under reasonable conditions.”

The bill had the potential to require agencies to reply without delay, regardless of the situation, according to the governor. This could require the hiring of additional staff, and the Legislature did not provide any additional funding, he wrote.

Bush also objected to part of the bill requiring agency heads to appoint

records custodians and provide notice of the appointment.

“To the extent the public or government employees are misled to believe that only designated persons can receive record requests, the bill does not accord with the spirit of public record law,” Bush wrote.

The second bill (CS/SB 1438), would have allowed the Legislature to access records with confidential and exempt status. Bush wrote in his veto message that by allowing the Legislature access to such records maintained by the executive branch, the separation of powers would be weakened.

The bill also would have codified existing case law on custodial requirements for confidential and exempt records.

Web site set for 2008 will track federal spending

WASHINGTON D.C. – Americans will be able to better track government spending online after the passage of a new law, the Federal Funding Accountability and Transparency Act of 2006.

The law calls for the establishment

of a Web site to list federal grants and contracts greater than \$25,000. Funds classified for national security reasons will not be included on the Web site.

By Jan. 1, 2008, the site should be available to the public.

“The Web site will allow our citizens to go online, type in the name of any company, association, or state or locality and find out exactly what grants and contracts they’ve been awarded,” President Bush said upon signing the law.

Patriot Act suit goes forward

DETROIT – A legal challenge to the USA Patriot Act may proceed in federal court, according to a ruling by U.S. District Judge Denise Page Hood.

Hood issued the ruling nearly three years after she heard arguments in the case. The American Civil Liberties Union, on behalf of Muslim organizations, challenged the constitutionality of the Patriot Act.

The ACLU contends its clients were harmed because fear of the Patriot Act kept people from attending religious services or donating to charitable organizations.

Plaintiffs in *Muslim Community Association v. Ashcroft* specifically challenge the part of the law that allows agents to obtain documents such as individual library book lists and medical information.

The government argues that the law does not violate the Fourth Amendment prohibition on unreasonable searches and seizures because it applies to items given to third parties.

Judge allows cameras at trial

ATLANTA – Cameras will be permitted during the trial of a man accused of killing four people after escaping from an Atlanta courthouse. Superior Court Judge Hilton Fuller denied the request of defense attorneys to bar cameras during the trial.

Attorneys representing Brian Nichols argued that the presence of cameras would inhibit testimony from witnesses and deny Nichols a fair trial.

Fuller said that if it was later

needed, the court could adjust the order allowing cameras and attach conditions to commercial broadcast coverage.

Nichols was being retried on rape charges at the Fulton County Courthouse when he grabbed a deputy’s gun and escaped from custody. Nichols also took a suburban Atlanta woman hostage but surrendered the following day.

Prosecutors are seeking the death penalty for the March 2005 incident. The trial is scheduled to begin Jan. 11.

COURTS

Times’ silence hurts libel defense

ALEXANDRIA, Va. – A federal judge will not allow *The New York Times* to defend itself in a libel suit using information received by one of its columnists from two confidential sources. The ruling is intended as a sanction against *The Times* for failing to disclose the identities of two Federal Bureau of Investigation agents.

Former Army scientist Steven Hatfill is suing *The Times* for defamation based on columns written by Nicholas D. Kristof concerning the deadly anthrax mailings of 2001.

Hatfill was named a “person of interest” in the anthrax investigations and claims the columns defamed him by suggesting he was responsible for the attacks.

ACCESS MEETINGS

Officials decline speech rules

MARTIN COUNTY – Martin County commissioners declined to move forward with several restrictions on speech during public meetings.

Instead, county commissioners voted to ban political campaigning by commissioners or speakers during public meetings.

Commissioners had considered several restrictions on public speech during meetings, many of which are used in other Florida counties.

The free speech rights controversy began in September, when commissioners stopped a resident from criticizing a county building official by name. Commissioners cited a county policy

preventing speakers from referring to officials by name.

At the advice of the county attorney, Martin County agreed to back off the naming ban and allow speakers to use names.

“I think this has been a good exercise,” said Commissioner Lee Weberman. Weberman had criticized the resident who was stopped from naming the county building official, according to *The Palm Beach Post*.

“I think we’ve found out we’ve been doing some things that maybe we shouldn’t. I think we learned that our employees are going to have to have thicker skins,” Weberman said.

THE BRECHNER REPORT

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.brechner.org>
e-mail: brechnerreport@jou.ufl.edu

Sandra F. Chance, J.D., Exec. Director/Exec. Editor
Christina Locke, Editor
Alana Kolfirath, Production Coordinator
Kimberly Lopez, Production Assistant

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.

U.S. Supreme Court shows signs of less secrecy

WASHINGTON — Reporters who cover the Supreme Court were alerted to an unusual event in September 2006: Justice Stephen Breyer would hold a press briefing to explain the findings of a committee he had headed that looked into judicial-discipline procedures.

The prospect of a Supreme Court justice's holding a press conference about anything was rare enough. But when Breyer entered the Court's press room that afternoon, he brought Chief Justice John Roberts Jr. with him. Roberts participated with Breyer, answering a range of press questions and applauding Breyer's committee report.

Roberts' cameo appearance is one of a number of signs that the new chief justice is lifting the veil, ever so slightly, on an institution that has long coveted its privacy and secrecy. And because a chief justice often sets the tone for other justices and the Court staff, a new, somewhat more open climate seems to be unfolding at the nation's highest court, in contrast to the chillier tone fostered by Roberts' predecessor and mentor, William Rehnquist.

Whereas Rehnquist held only two or three press conferences in his entire 19-year tenure — carefully controlled events to boost his perennial campaign for judicial pay increases — Roberts has already given two in his first year. Before his September appearance, he held a briefing with reporters in April when he announced his appointment of James Duff as head of the Administrative Office of the U.S. Courts.

In addition, as Roberts began his second year in office last month, the Court also announced that it had made arrangements to release publicly the transcripts of oral arguments within hours after they conclude. Journalists and scholars have long complained about the leisurely pace of the release of oral-argument resources; transcripts had been made available 10 days after the fact, and anyone wanting to hear tapes would generally have to wait months, until after the term ended, before they could be heard at the National Archives.

Starting with the first oral arguments Oct. 3, transcripts were indeed online within hours, enabling reporters to include more



Tony Mauro

precise quotes in their accounts than previously possible.

Rehnquist, who died in September 2005, was cordial, sometimes friendly, and grudgingly helpful to the press. He gave his blessing to Information Age advances such as a user-friendly Web site that has greatly benefited the press and public alike. But Rehnquist's starting point was a view that, as he once told a group of reporters, "We don't need you people" in the same way that the elected branches of government need the news media.

If pressed, Roberts might not totally disagree with Rehnquist's stance, but he seems more willing to find ways in which the call for greater access and accountability can be met without threatening justices' privacy and security needs. Before he was a judge, Roberts was a noted appellate lawyer who argued before the high court and was generally accessible to journalists.

But in spite of the new signs of a more public face for the Court, it is clear that an era of glasnost has not fully blossomed.

Routine, quick release of all oral-argument audiotapes, for example, still seems some distance away. Similarly, the justices are still as reluctant as ever to explain their reasons for recusing themselves from a case.

And the long-running campaign by access advocates to persuade the justices to allow broadcast coverage of Court proceedings appears no closer to success. Asked about cameras in the Court at a judicial conference in California in July, Roberts said the justices, in their role as stewards of the Court as an institution, were very cautious about making such a change.

"I appreciate very much the argument that the public would benefit greatly from seeing how we do things," Roberts added. "But we don't have oral arguments to show people how we function. We have them to learn about a particular case, in a particular way that we think is important."

Tony Mauro, based in Washington, D.C., is special correspondent for the First Amendment Center Online, providing analysis of Supreme Court cases pertaining to First Amendment issues. A veteran reporter covering the high court, Mauro is Supreme Court correspondent for Legal Times and American Lawyer Media.