
THE BRECHNER REPORT

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Chief Justice: Secret cases are not widespread

TALLAHASSEE – Secret court records at the center of several news reports last year are not widespread, according to Florida Supreme Court Chief Justice R. Fred Lewis.

Lewis ordered an inquiry into the practice of secret dockets and super-sealed cases and asked the Florida

Bar to recommend changes to the rules for sealing cases.

The investigation found that most secret files were the result of failure to follow the rules, misinterpretation of the rules and miscommunication.

“There weren’t really malicious, nasty, horrible people running around trying

to do intentionally horrible things to everybody in the world,” Lewis said.

The Miami Herald broke the story of secret court dockets in Florida, reporting on the problem in Broward County.

After public comment and a hearing on the matter, the Florida Supreme Court will consider adopting new rules for sealing cases.

COURTS

Two commissioners charged with violating Sunshine Law

MONROE COUNTY – Two Monroe County commissioners have been charged with violating the Sunshine Law. Mayor Mario Di Gennaro and Commissioner Sonny McCoy each face a civil infraction carrying a fine of up to \$500.

The charges stem from a September post-meeting discussion regarding an upcoming mayoral election. Di Gennaro and then-Mayor McCoy allegedly had a brief conversation about Di Gennaro’s plans to run for mayor.

The next day, McCoy participated in a radio interview and mentioned his talk with Di Gennaro after the meeting. When the show moderator asked if that was a Sunshine violation, McCoy said,

“No, no. I doubt it. If it is, go ahead and bring charges.”

State Attorney Mark Kohl wants the charges to send a message to other officials. “I hope every elected official in

Monroe County clearly understands that I intend to enforce Florida’s Sunshine statutes,” Kohl said.

ACCESS MEETINGS

FDLE concludes Cooper City commission dinners not illegal

COOPER CITY – City commissioners have been cleared of any criminal wrongdoing in connection with their pre-meeting dinners and drinks paid for by taxpayers.

The Florida Department of Law Enforcement, citing lack of evidence, ended its three-month investigation of the Cooper City Commission.

Then-Gov. Jeb Bush ordered the FDLE investigation of potential misspending and

violations of the Sunshine Law.

Commissioners had maintained they broke no laws. Cooper City officials ended their 15-year practice of dining together before meetings after a South Florida news station reported on the gatherings.

A *South Florida Sun-Sentinel* investigation found that commissioners spent more than \$5,000 on the dinners in the past two years.

Pilot program could be ready starting May 1

MANATEE COUNTY – The pilot program to restore electronic access to court records in Florida could begin as soon as May 1. Manatee County Clerk of Circuit Court R.B. “Chips” Shore volunteered to conduct the pilot program and has been working on the details for the past several months.

The Florida Supreme Court currently has a moratorium on Internet access to most court records until adequate privacy safeguards are in place.

Safeguards proposed by Shore include software to redact confidential information such as Social Security numbers and limiting access based on the type of user, from judges to public subscribers.

If Shore’s plan is approved by the Florida Trial Court Technology Commission and the Supreme Court, Manatee County court records will be available for online viewing. The pilot program is expected to last for one year. If successful, the program could be a model for other clerks of court.

“If [the public] can access it from home as opposed to coming in here, it saves resources,” Shore said. “For example, if you need something here on paper you have to have a clerk get it. This program will save money.”

Charges dropped against freelance photographer

WEST PALM BEACH – Criminal charges have been dropped against a freelance journalist arrested in 2004 for photographing voters waiting in line at the polls.

James S. Henry, 56, was arrested on charges of disorderly conduct, unlawful solicitation of voters and resisting arrest without violence.

A sheriff's deputy tried to take Henry's

camera from him outside the main elections office in West Palm Beach. Henry reportedly ran about 100 feet, fell and then was arrested.

In effect at the time was a rule preventing journalists from coming within 50 feet of voters outside polling sites.

Henry said he was about 125 feet away from voters at the time of his arrest.

The disorderly conduct charge was dismissed in 2005. In exchange for the dismissal of the remaining two charges, Henry waived his right to sue and will complete 15 hours of community service.

"I would have liked to have seen an outcome more supportive of the First Amendment as I understand it," Henry told *The Palm Beach Post*. "But I'm delighted the case has been resolved."

COURTS CONTINUED

Sheriffs, prosecutor clash over grand jury report

FLAGLER COUNTY – Sheriffs in four counties spoke out to the media, calling for the opening of a secret grand jury report on a prosecutor's inquiry into the Flagler County Jail.

State Attorney John Tanner began an investigation of abuse at the jail, but stepped down after some questioned his motive for the probe. Tanner's daughter alleged she had been mistreated at the jail after an arrest.

The result was a grand jury review of Tanner's conduct during the

investigation. The grand jury did not indict Tanner on any charges. The grand jury's report has been sealed because Tanner, based in Volusia County, argued that the report is improper and unlawful.

After the sheriffs' call for unsealing the report, Tanner requested parts of the report containing some of his objections be released.

These court documents suggest the grand jury reprimanded Tanner for his behavior. The documents also include Tanner's argument that the grand jury

relied too much on "emotionally charged characterizations of lawful acts" and opinions.

Tanner argues that the grand jury did not have the authority to investigate him and that it received the investigation after its term had expired.

State Attorney Harry Shorstein, of Duval County, began the investigation of Tanner and argues it was always part of the larger investigation.

The report will remain sealed unless a judge rules it should be released.

DOJ wants plea deals offline

MIAMI – The Department of Justice wants to halt online access to federal plea agreements, a move already taken by federal courts in South Florida. Though the plea agreements in South Florida are not available on the Internet, they are still available at courthouses.

Judges and attorneys have expressed concern about a Web site that uses court records such as plea agreements

to identify government informants, according to *The Miami Herald*.

Who's A Rat (whosarat.com) is a subscription site that claims to be the "largest online database of informants and agents."

The DOJ recommended the ban on electronic access to federal plea agreements in a December letter to the U.S. Judicial Conference.

Hall of Fame nominees sought

In celebration of its 30th anniversary, the Brechner Center is currently seeking nominations for the Florida Freedom of Information Hall of Fame. The Hall of Fame honors individuals who have helped develop and defend Florida's Public Records Law, Open Meetings Law, or the public access constitutional amendment.

The deadline for nominations is July 1, 2007. Nominators must submit a nomination form and a letter of support describing the nominee's contribution to

freedom of information and government in the sunshine. To obtain a nomination form, visit www.brechner.org.

The Brechner Center inducted an 11-member inaugural class to the Hall of Fame in 1997. The inductees included the late Florida Gov. Lawton Chiles, Ralph Lowenstein, Pete Weitzel and Joseph L. Brechner, for whom the Center is named.

The second class of inductees will be honored at the Center's 30th anniversary conference in the fall at the University of Florida.

Consent agenda draws criticism

ALACHUA – The practice of placing items on a "consent agenda" – allowing Alachua city commissioners to automatically approve items without public discussion – is the target of a lawsuit alleging Sunshine Law violations.

Residents who attempt to speak on consent agenda subjects are ruled "out of order" at commission meetings. But residents do have the option of requesting consent agenda items be transferred to the regular agenda for public comment.

The city commission voted to deny the requests of two people who asked for a consent agenda item – the minutes of the 2006 election Canvassing Board – to be placed on the regular agenda.

As a result of the denial, the pair has filed suit against the commission, requesting the judge to stop the city from placing "matters of substance" on the consent agenda. The suit also seeks invalidation of the commission's approval of the Canvassing Board minutes.

Town passes disclosure law for developers

CUTLER BAY – A South Florida town has passed a disclosure law aimed at exposing deals between developers and community groups.

The Cutler Bay Town Council unanimously approved the law requiring public disclosure of payments made to community groups in exchange for not opposing developments and rezonings.

Details of developer payments to community groups are not subject to the Public Records Law.

“This law is about doing things right and in the open,” said Mayor Paul Vrooman.

“It’s an anti-extortion ordinance. I don’t know if you can call it that legally, but that’s what it is to me. It’s about preventing people from strong-arming developers,” Vrooman said.

Defenders of the payments say the funds can be used to make community improvements.

For example, in a previous settlement between developers and residents, the developers contributed \$45,000 to youth soccer and swim clubs.

Charlotte inquiry shows bid woes

CHARLOTTE COUNTY – Florida’s Public Records Law requires local governments to publish budget information, but the practice may be costing taxpayers, according to a report by the *Charlotte Sun*.

Though some state agencies are exempt from the disclosure requirement, local governments must make the information public. This often results in bids coming in just under the allotted amount for the project.

In Charlotte County, for example, three public works contracts illustrated the problem. A road repaving project

was budgeted at \$2.725 million; the bid was \$2.699 million. A contract to dredge a creek was budgeted at \$180,000; the bid was \$179,462.06. The replacement of stormwater pipes was budgeted at \$1.39 million; the bid was \$1.382 million.

Because contractors are able to access the budget information, the bids can be less competitive.

In addition, the narrow margin between the posted budget and the bid doesn’t allow much room for error, resulting in frequent requests for additional funding, according to Charlotte County Public Works Director Tom O’Kane.

Center, AG launch access project

TALLAHASSEE – The office of Attorney General Bill McCollum is partnering with the Brechner Center to encourage government entities to provide more information to citizens.

The first phase of the Government Accountability Project (GAP) will identify records that are difficult for citizens to obtain. In the second phase, GAP will work with state and local governments to increase access to

records. The project Web site is accessible at myfloridalegal.com.

“The GAP project and partnership with the University of Florida’s Brechner Center aim to further advance accountability for Florida citizens,” McCollum said.

Gov. Charlie Crist has also made open government a priority for his new office. Crist established the Office of Open Government and proclaimed March 11-17 “Sunshine Week” in the state of Florida.

Judge denies ban after photo leak

SARASOTA – Photos related to the homicide of a 6-year-old girl were leaked to a Sarasota news station, resulting in a criminal investigation of the leak and a judicial ruling against a ban on publishing the photos.

In September, Coralrose Fullwood was found dead in a wooded area near her home.

The leaked photos are of the girl’s home and were used to justify the removal of Coralrose’s siblings from her

parents’ care.

Law enforcement officials made four copies of the disc containing the photos, intended only for use by lawyers in the case.

Attorneys for the girl’s parents, Dale and Ellen-Beth Fullwood, asked a judge to prevent WWSB ABC-7 from showing the photos.

The judge declined to impose a prior restraint on the news station.

PRIOR RESTRAINT

Days later, station gets to air story

ORLANDO – A judge ordered an Orlando television news station not to air the contents of documents that once belonged to a controversial political consultant. Several days later, Judge Rom Powell modified his prior restraint order to allow publication of the information, except for medical and attorney-client details.

WKMG-TV Channel 6 is appealing the judge’s modified order to a state

appellate court. The station’s initial expedited appeal was denied.

Political consultant Doug Guetzloe sought the injunction against reporting on his files after he discovered they had been given to the station following a public storage facility auction. After the judge modified his initial ban, the station aired a story reporting that Guetzloe may have falsely testified about who offered financial support for some of his political operations.

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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 Kolifraith, Production Coordinator
Kimberly Lopez, Production Assistant

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Series sheds light on impact of “secret weapons”

For nearly 19 years, records of who had a license to carry a gun in Florida were open to the public. Abruptly last spring, that changed. State lawmakers overwhelmingly passed an exemption protecting the identities of everyone who has a concealed weapon permit. Gov. Jeb Bush signed it into law.

Now, if someone wants to know if their neighbor, ex-spouse, nanny, coworker, or child’s school bus driver has a license to carry a gun in public, they won’t be able to find out without the person’s permission or a court order.

Before the law took effect, the *South Florida Sun-Sentinel* obtained the database of licensees, providing a last look at who is legally allowed to pack heat on Florida’s streets. We found that not all of them are law-abiding.

The Back Page

By Megan O’Matz

My colleague, John Maines, and I matched the names, addresses and dates of birth of concealed weapon licensees against other databases of

felons, domestic violence injunctions, warrants, jail bookings and registered sex offenders. We found that more than 1,400 people had valid licenses despite having pleaded guilty or no contest to felonies as serious as assault, burglary, drug possession, child molestation and, even, manslaughter. Six were registered sex offenders. Hundreds of others continued to legally carry weapons despite active warrants for their arrest or convictions for behaving recklessly with firearms, such as firing into the air on the Fourth of July. Still more had their licenses repeatedly suspended or revoked.

Clearly, the state was not living up to its promise, made in 1987, to license only “law-abiding” people. Instead, loopholes in the law, miscommunication with cops and courts, and simple bureaucratic errors enabled people with criminal histories to legally carry guns.

The *Sun-Sentinel*’s four-part series, published in late January, received intense reaction from readers, interest groups and state officials. The Brady Campaign to Prevent Gun Violence, the country’s leading gun control organization, released a statement saying: “The *Sun-Sentinel* has published information the gun pushers do not want the public to have, which is why the gun



Megan O’Matz

lobby pushed through a law locking up this information and making it impossible to get in the future.”

Not surprisingly, lawmakers have shown little interest in re-opening the records to enable greater scrutiny of the licensing process. After all, Florida has long been known as the Gunshine State, for its lenient gun rules. And the National Rifle Association holds considerable sway in Tallahassee, working to defeat lawmakers who oppose the group’s proposals. Legislators sealed the concealed weapon records at the prodding of the NRA after an Orlando television station published a list of local licensees on its Web site.

At public hearings, the NRA and its supporters argued that the publication of the names embarrassed the individuals and subjected them to potential danger. Burglars could use the list to find homes with guns to rob! Sex offenders could see who has a gun and target someone else instead! Thieves could steal people’s identities! Stalkers could unearth their victims!

Yet none of this had been a crying problem in the 19 years the records were open. The records were never posted on the Internet by the government but were available only through a public records request.

The question now is: If lawmakers won’t reverse the law, will the courts? Open government advocates argue that the secrecy law is ripe for a legal challenge on grounds that it is unconstitutional. In Florida, records must be open unless the Legislature passes an exemption that *narrowly* addresses a specific need. By exempting every bit of personal information in the concealed weapon database, critics say, lawmakers passed an exemption that is overly broad.

But other states also will not release the names. In Pennsylvania, in fact, the restriction applies even to dead people. Did Charles C. Roberts IV, the man who killed himself after shooting five Amish school children to death last October, have a concealed weapon license? Pennsylvania officials won’t say. Said a State Police spokesman: “Under our law I can’t release that.”

Megan O’Matz is an investigative reporter at the South Florida Sun-Sentinel. She and her colleagues were Pulitzer Prize finalists last year for uncovering massive fraud in FEMA aid.