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# THE BRECHNER REPORT

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## Officials defend D.C. lobbying

MIAMI-DADE COUNTY – Annual trips to Washington D.C. have raised concerns about the applicability of the Open Meetings Law when local officials lobby federal decision makers.

Several Miami-Dade commissioners and the county mayor recently attended meetings with members of Congress. The press was barred from many meetings because Congress members are not required to conduct meetings in the open.

“They’ve made it clear that they don’t care what the state’s open records law might be,” Lucy Dalglish, executive director of the Reporters Committee for

### ACCESS MEETINGS

Freedom of the Press, told *The Miami Herald*.

“They’ve repeatedly

said, ‘This is the federal government, and if we are sharing federal information with you, federal law applies.’” Dalglish said.

Miami-Dade County commissioners defended their trips, saying the visits with federal officials are important for the county’s wellbeing, and that they researched the legality of the trips before scheduling them. Commissioner Sally Heyman said the commissioners only talk about issues the commission has already voted on.

County Attorney Murray Greenberg said he approved the trips, noting that the public is provided with a schedule of the meetings, locations and attendees.

“I have said it’s seemingly OK. We don’t want to be the only county in the country that doesn’t get an ability to communicate with leaders in D.C.” Greenberg said. “We can’t control what a federal agency does or doesn’t do.”

A 1980 Florida Attorney General opinion states that the Open Meetings Law applies when officials travel out of state.

## Critics question sealing of settlement under new rules

BROWARD COUNTY – Two weeks after the Florida Supreme Court issued new rules for the sealing of civil court records, a Broward County circuit judge’s sealing of a civil settlement may not have been specific enough, according to reports by *The Miami Herald* and the *South Florida Sun-Sentinel* (Fort Lauderdale).

Judge Mark Speiser sealed the settlement details in a civil rights case against the Broward Sheriff’s Office.

The lawsuit stems from the Nov. 3, 2004 shooting of a Mexican migrant worker whom a deputy mistook for a burglary suspect.

The shooting victim, German Gomez, has needed constant care since the shooting and resides at a \$275-a-day

nursing home.

Gomez’s \$15 million federal lawsuit was settled the day before it was set to go to trial.

The large amount of the settlement was a factor in Speiser’s decision to keep the decision confidential.

“It was indicated that because of the large sum of money, they had a very strong concern and fear that [Gomez’s] wife and children [in Mexico] could be

kidnapped and held for ransom,” Speiser said.

New rules for sealing civil cases require the orders to include specific grounds and justifications for the sealing. Speiser’s order apparently did not contain these elements.

### ACCESS COURTS

## Reporter arrested while taking photographs of police officers

MIAMI – A reporter photographing police officers on a public street was arrested on multiple charges.

Carlos Miller, a freelance photographer and journalist, said he was in a construction zone and photographed the officers as they interrogated another man.

The officers who arrested Miller claimed he was standing in the middle of the busy street obstructing traffic.

Miller was charged with

### NEWSGATHERING

disobeying officers, obstruction of justice, disorderly conduct and resisting arrest without violence.

Some of the charges of disobeying officers were later dropped.

Miller said the arrest was a violation

of his First Amendment rights and that he should not have been prevented from taking photographs on the public street.

Miller said in a written statement that he was not resisting arrest but trying to protect his camera equipment when the police “slammed [his] head into the pavement.”

Miller spent a night in jail and said he suffered injuries during the arrest.

The South Florida chapter of the Society of Professional Journalists wrote the Miami police chief, requesting the arrest be reviewed at the “highest level of the police department and the city.”

SPJ contributed \$1,000 to assist Miller with his legal defense.

## Judge reverses ruling on sealed trial documents

ORLANDO – Hours after ordering court documents in the trial of former astronaut Lisa Marie Nowak sealed, a circuit judge reversed his ruling and approved their release.

“I further reconsidered my position and decided that everything should be released except the psychological reports,” Orange Circuit Judge Marc

Lubet said. “The state can send out whatever they want.”

Lubet reversed his ruling preventing the Orange-Osceola State Attorney’s Office from releasing documents requested under the Public Records Law.

Nowak, 43, is charged with attempted kidnapping, burglary with assault, and battery. The charges stem from a Feb. 5

incident where Nowak drove from Houston to Florida and allegedly confronted a woman in the parking lot of an Orlando airport. Police say Nowak had a BB gun, mallet, knife and rubber tubing in her car.

Nowak’s affections for a fellow astronaut spurred the confrontation, according to police. NASA fired Nowak after her arrest.

## NASA reveals few details of 2004 deal with astronauts’ survivors

ORLANDO – More than two years after NASA paid \$26.6 million to survivors of seven space shuttle Columbia astronauts, the space agency released limited details of the settlements.

The *Orlando Sentinel* finally received documents after making Freedom of Information Act requests in 2005 and 2006.

The documents do not reveal exactly when the settlements occurred, but the money came from the agency’s 2004

budget.

NASA spokesman Allard Beutel cited family privacy concerns for the lack of details surrounding the settlement.

“Our concern always has been with the crew’s families and their loss, and as a result NASA didn’t announce details of the settlement in an effort to protect the personal privacy of the Columbia families,” Beutel wrote to the *Sentinel*.

Seven astronauts died Feb. 1, 2003, when the shuttle came apart on re-entry.

## Lawmaker wants report sealed

WEST PALM BEACH – A member of the state House of Representatives is fighting the release of a grand jury report to the public, though her attempts have failed at the circuit court level.

Rep. Mary Brandenburg (D-West Palm Beach) testified before the grand jury during its investigation of “pay to play” city politics.

The grand jurors focused on large campaign contributions from developers to officials, especially to Mayor Lois Frankel, according to *The Palm Beach*

*Post*. The grand jury found no criminal activity but concluded a member of an ethics committee created by Frankel acted improperly.

Brandenburg is one of 10 members of the city’s ethics panel. She has maintained that she opposes the release of the report’s details in order to avoid distractions during the legislative session.

“I am confident that I will not have any problems with doing anything that was illegal or that breaks any rules of the Florida House,” Brandenburg said.

## Commission’s rules limit member comments

SOUTH MIAMI – The South Miami City Commission has tentatively approved new rules that include a provision for 30-day expulsion from meetings if anyone repeatedly disrupts a meeting.

The new code of ethics was drawn from similar ones in Atlanta, New York and California, according to *The Miami Herald*.

The code prohibits board members from making public comments on items they have voted on. An earlier draft

included a provision that recommended commissioners not go off the record with reporters.

Yvonne Beckman, a planning board member, opposed the new rules.

“In this ordinance, my rights to speak are suddenly taken away because I am a board member,” Beckman wrote in a memo to Mayor Horace Feliu.

## ACCESS MEETINGS

## Prosecutors seek access to drug records

ORLANDO – The Florida Office of Statewide Prosecution wants a judge to reverse his order sealing medical records seized from Florida pharmacies. The records were seized as part of a national inquiry into the sale of illegal steroids.

Circuit Judge John Marshall Kest ordered the medical records to be used only to obtain contact information to notify people that the government had possession of their private medical records. Florida prosecutors argued that law enforcement agencies should have full access to the records to investigate wrongdoing and follow leads.

A lawyer for the pharmacies where the records were seized, Signature, argued that sealing the medical records would protect patients’ privacy.

Signature is accused of filling online prescriptions for steroids and shipping them across the country, especially to New York. Authorities have indicated they primarily intend to prosecute distributors, not steroid users.

Prior to becoming a member of the planning board, Beckman was arrested for disorderly conduct and resisting arrest while commenting at a 2005 commission meeting.

The charges were later dropped and described by prosecutors as “unlawful.”

City Attorney Luis Figueredo said the city’s goal in adopting the new rules was to give all residents an opportunity to speak.

“It’s not intended to keep an individual from participating,” Figueredo said. “The city’s main goal is to get through the agenda.”

## Inquiry clears commissioner

ESCAMBIA COUNTY – A month-long inquiry into an Escambia county commissioner’s redistricting attempt revealed no violation of the Sunshine Law.

Commissioner Mike Whitehead was cleared of allegations that he had unauthorized direct contact with other commissioners during his failed attempt to redraw district lines.

The State Attorney’s Office said it found no evidence that he had manipulated his communications with a county administrator and the chief of the mapping department in order to measure support for his redistricting proposal.

“I knew from the beginning we had done nothing wrong. It was purely politically motivated,” Whitehead said, according to the *Pensacola News-Journal*.

The citizens who filed the complaint against Whitehead are associated with the local civil rights group Movement for Change. The group’s leader, Leroy Boyd, said Whitehead was attempting to redraw districting lines in order to eliminate an opponent.

The State Attorney’s Office reported that the manner in which Whitehead communicated with the county administrator and the mapping director complied with the Sunshine Law.

## Comment plan includes ID form in order to address city council

KEYSTONE HEIGHTS – Attendees who wish to address local officials at a Keystone Heights City Council meeting will now be required to complete an information card prior to the meeting. The change came about as the city changed its form of government and has a city manager for the first time.

Mayor Mary Lou Hildreth said the change was experimental and might not be strictly enforced.

“We probably won’t penalize you tonight [for not filling out the card], and probably not much in the future,” Hildreth said, according to *The Florida Times-Union* (Jacksonville).

## Fired city manager turns in USB drives after city demands review

LARGO – Fired City Manager Steve Stanton turned in two portable storage devices to the city of Largo after the city demanded to review the devices to determine if any public records had been removed from Stanton’s city-issued laptop computer.

A computer forensic expert who examined the laptop found that two portable storage devices were

used to store documents from the computer.

Stanton was fired about a month after revealing he planned to become a woman named Susan Stanton.

Stanton’s attorney, Karen Doering, said the city was aware that he was going to remove personal items from the computer file. Doering also blamed the *St. Petersburg Times* for inflating the issue by requesting records from the laptop.

**ACCESS RECORDS**

## DEFAMATION

### Court refuses letter-to-editor case

WASHINGTON D.C. – The U.S. Supreme Court declined to review a verdict against a newspaper for publishing a prisoner’s letter without investigating allegations about a prosecutor.

A jury found that the *Buzz* newspaper of Martinsville, Va., should pay prosecutor Joan Ziglar \$75,000.

Ziglar sued the newspaper after

inmate Zakee Tahlib alleged that Ziglar was encouraging false testimony in a murder investigation of Tahlib.

The *Buzz* conceded that it did not attempt to verify Tahlib’s identity or contact the prosecutor before publishing the letter.

The newspaper wanted the Supreme Court to take the case to clarify whether the press has a duty to investigate claims made in letters to the editor.

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## Hall of Fame nominees sought

In celebration of its 30<sup>th</sup> anniversary, the Brechner Center is currently seeking nominations for the Florida Freedom of Information Hall of Fame. The deadline for nominations is July 1, 2007.

The Hall of Fame honors individuals who have helped develop and defend Florida’s public records and open meetings laws, and the public access constitutional amendment.

Nominators must describe the

nominees’ contribution to Florida’s freedom of information and government in the sunshine. To submit a nomination, please visit [brechner.org](http://brechner.org). You may submit the nomination online or download a nomination form.

The Brechner Center’s 11-member inaugural class included the late Florida Gov. Lawton Chiles, Ralph Lowenstein, Pete Weitzel, and Joseph L. Brechner, for whom the Center is named.



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# U.S. ranked low in global survey of press freedoms

Reporters Without Borders (RSF) recently ranked the United States at 53<sup>rd</sup> in terms of press freedom out of 168 countries. We tied for that honor with Botswana, Croatia and Tonga. According to RSF, the United States looks enviably at Serbia and El Salvador when it comes to freedom of the press. I am willing to believe (or I just want to believe) that there is bias and error in a study that places the United States 30 slots below Benin in a survey of First Amendment-protected freedom. Nevertheless, RSF is not a crackpot group, and even if we do a little adjustment for bias, the findings are nothing short of disturbing.

However, freedom of the press is not the only First Amendment value under siege in America. The First Amendment

## The Back Page

By Marc J. Randazza

is ailing, and there is plenty of blame to go around. In the name of profits, political correctness, and “moral values,” our venerable mother of all liberties is thrown on the sacrificial altar for purposes that are hardly worth the change in my pocket, let alone our most cherished freedom.

Strategic Lawsuits Against Public Participation (SLAPP suits) are proliferating, and the penalty for such abusive litigation is far too light. These lawsuits are often filed by large organizations to silence vocal critics. California’s strong anti-SLAPP law provides a strong disincentive for SLAPP suits and elevates free speech to its proper place. Unfortunately, most states’ anti-SLAPP legislation is anemic. In Florida, our anti-SLAPP legislation is so watered down that it is rarely used, and *almost* useless, therefore plaintiffs file SLAPP suits with relative impunity.

Winning a defamation case is difficult, as it should be. Unfortunately, in most states, a “victorious” SLAPP defendant walks away with his finances in ruin, a case named after him, and a bewildered feeling of “with victories like this, who needs losses?” When citizens fear to use their right to free speech lest it drive them into bankruptcy, we have failed to become a “shining city on a hill.” All states should enact strong anti-SLAPP legislation modeled after California’s, lest our liberty be lost to



Marc J.  
Randazza

those unethically seeking comfort from criticism.

Liberty protects violent speech, racist speech and all kinds of speech that makes “us enlightened ones” uncomfortable or even disgusted. I like living in a country where I have liberty, but I have never craved the comfort of having my views on race, gender and equality unchallenged. I trust the marketplace of ideas to handle that challenge for me, and my egalitarian ideas are strong enough that they can withstand even the speech of the Ku Klux Klan.

No discussion of the erosion of the First Amendment is complete without a jab at the so-called “moral values” crowd. The Bush Administration interpreted its razor thin majority in 2004 as a mandate approving its repressive “moral” and theocratic agenda, and our Constitution has suffered ever since. Sen. Sam Brownback (R-Kan.) immediately held pornography “witch hunt” proceedings that would have made McCarthy proud. Alberto Gonzalez made obscenity prosecutions a top priority. Some U.S. Attorneys chose to adhere to their oath to uphold and defend the Constitution, or simply considered actual crime to take priority over prosecuting “dirty pictures” of consenting adults, and thus refused to participate. That appears to have cost some of them their jobs, but not their integrity.

Liberty gives us the ability to refute nasty things that may be said about us. Liberty protects children and adults alike. Liberty is the most moral of values. I am not one to stand idle while America begins to cast an envious eye toward nations that once sent us immigrants seeking freedom. When my ancestors came to this country, they did not stand on the deck of the Oceania and gaze upon the Statue of Morality. As J.D. Obenberger described it, “they saw the Statue of Liberty, and if co-existing with some perceived indecency [or discomfort] was the price of breathing their own free air, it was a choice they were generally delighted to elect because the price of freedom includes tolerance of the freedom of others.”

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