
THE BRECHNER REPORT

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Group says administration is stalling

WASHINGTON – Judicial Watch accused the Bush administration of stonewalling in attempts to keep details about Vice President Dick Cheney’s energy task force secret. The Department of Energy, the Department of Agriculture, the Department of the Interior, the Environmental Protection Agency and the White House Office of Management and Budget were among those ordered to hand over documents under a Freedom of Information Act request in April 2001. Agencies finally released thousands of pages of heavily edited material on March 25.

“What we have found is a systematic effort not to produce documents,”

according to Larry Klayman, chairman of Judicial Watch.

He characterized omissions and edits as “excessive.” However, a Justice Department spokesperson said the edits were normal and within the guidelines of the Act.

So far, the papers turned over have not mentioned

Ken Lay or any other Enron executives, although Enron representatives reportedly had six meetings with the task force. The Judicial Watch suit is unrelated to the ongoing lawsuit by the Government Accounting Office, which is suing to get a list of industry officials who met with Vice President Cheney’s task force. (3/26/02)

ACCESS
RECORDS

School records case to be retried

ESCAMBIA COUNTY – Vanette Webb, the first elected official jailed in Florida for violations of the state’s open records law, has been granted a new trial. At issue is whether or not she knew the documents she refused to turn over were public records.

In May 1999, Escambia County Judge Patricia Kinsey sentenced Webb to 11 months and 15 days in jail. She later suspended all but 30 days of the

sentence. County Judge William White later overturned Webb’s conviction. The 1st District Court of Appeal overruled White, and the Florida Supreme Court refused to hear the case. The case is now back in White’s court.

The prosecution requested that White recuse himself from the case, alleging that in overturning her conviction the judge had become an advocate for the defendant. The judge refused. (3/16/02)

Police mug shots not public records

JACKSONVILLE – Fourth Circuit Judge Frederick B. Tygart said an exemption to the Florida public records law that prevents disclosure of home addresses, phone numbers, Social Security numbers and photos of active and former law enforcement officers also exempts the release of mug shots of officers who have been arrested.

The Fraternal Order of Police sued when the Jacksonville Sheriff’s Office began releasing mug shots of arrested

officers in 2000. *The Florida Times-Union* of Jacksonville joined the lawsuit on the side of the Sheriff’s office after the police union sued.

The law that exempts the records of police officer information from the public records also exempts similar information about state child welfare workers, child support enforcement officers, certified firefighters and personnel officials of local government agencies. (1/1/02-1/2/02)

Judge says terrorism hearings public

DETROIT – A federal district judge in Detroit has ruled that it is unconstitutional to hold secret immigration proceedings for Arabs detained since Sept. 11.

A suit was filed by the American Civil Liberties Union, in conjunction with Rep. John Conyers Jr., the *Detroit News* and the *Metro Times*, in response to the press and

public being turned

COURTS

away from the deportation hearings of Rabih Haddad, a Muslim leader from Ann Arbor, Mich. Haddad is the cofounder of a charity with suspected ties to terrorist organizations. Haddad’s lawyers say that the secrecy surrounding the hearings have resulted in an inaccurate portrayal of him.

“Openness is necessary for the public to maintain confidence in the value and soundness of the government’s actions,” according to Judge Nancy G. Edmunds’ opinion.

“Our system of democracy depends on openness. Secrecy breeds fear, distress and resentment. We need faith and confidence that people won’t be railroaded,” said Kary Moss, executive director of the ACLU’s Michigan chapter.

This is the first decision in a federal court dealing with the legality of the Justice Department’s attempts to keep secret the proceedings of people detained in relation to the Sept. 11 terrorist attacks. A New Jersey state judge ruled that New Jersey law does not allow the names of those being held in prison to be kept secret.

Is unclear whether or not the government will appeal the decision, which could have consequences for other detainee hearings across the nation. (4/4/02)

Withheld records cost Miami consulting firm \$331,000

MIAMI – Dade Aviation Consultants, a major consultant for Miami International Airport’s \$5.4 billion expansion, was ordered by the 3rd District Court of Appeal to pay \$331,000 in legal fees to *The Miami Herald*, after forcing the newspaper to sue for access to public records.

The records that DAC sought to keep secret were related to payments to lobbyists who helped the consortium win the airport expansion contract. DAC, which consists of eight companies that

joined together to form a public entity, had argued that the funds used to pay the lobbyists came directly from the eight companies, and not the consulting group, and were therefore private. In October, the 3rd District found that the payment records were public and must be disclosed.

In issuing the unanimous opinion, Chief Appellate Judge Alan Schwartz said the consortium presented “one flimsy and indeed transparent excuse after another in defense of its position:

a pattern of conduct which amounted to the very definition of stonewalling.” Additionally, the judge suggested that the consulting firm’s legal defense might itself have been criminal, since the company attempted to create a false basis for a legal opinion.

The records sought by the newspaper showed that the consortium had paid more than \$500,000 to lobbyists, in addition to thousands spent on political campaigns, while it tried to keep its county contracts. (3/7/02)

New court records policy outlined

TALLAHASSEE – The Florida State Supreme Court has amended the Rules of Judicial Administration, affirming that people seeking public records from the courts in Florida do not need to explain why they want the records. The court’s ruling adopts the recommendations of an advisory panel created two years ago to determine how Florida’s courts should handle public records issues. Requests for the records must still to be made in writing. Public records requests for the legislative and executive branches do not need to be made in writing. (3/8/02)

FIRST AMENDMENT

Rabbi fights for home prayer meetings

ORLANDO – Rabbi Joseph Konikov filed suit in federal court, challenging an order by the Orange County Code Enforcement Board to stop holding a weekly prayer meeting, or “minyan” in his home. The Enforcement Board gave the rabbi 60 days to stop the meetings. After that, he will be fined \$50 per day if people gather in his home for prayers.

According to the Enforcement Board, the Orange County Zoning Code forbids “operation of religious organizations” or “any function related to synagogues or church services” in residential zones.

Orange County investigators say they

counted more than 370 vehicles and 500 people at the rabbi’s house within a seven-week span. Neighbors say parking on lawns and traffic jams have become a problem.

“Zoning is not some magic wand the government can just waive to trample core fundamental rights. If the county thinks they have a traffic and parking issue, then the county needs to draft a law that addresses traffic and parking – not one which regulates religious speech and religious assembly in private homes,” said John Stemberger, an attorney for Rabbi Konikov. (3/27/02)

PSAs in Spanish

A Spanish language version of the “Keep Florida in the Sunshine” public service campaign advertisements is now available. For more information, or to download any of the free advertisements, visit <http://brechner.org>.

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.

ATHEIST plate called “objectionable”

TALLAHASSEE – The Florida Department of Highway Safety and Motor Vehicles wants to cancel a license plate that reads ATHEIST, which a Gainesville man has had registered for 16 years. The department characterized the tag as “obscene or objectionable,” and informed Steven Miles that the tag must be canceled. This places the tag among a list of expressions banned on license plates in Florida, including epithets, expletives and words for certain suggestive body parts. The review was prompted by a complaint signed by ten people.

While officials take great pains to keep offensive personalized plates off the road, consulting sources as varied as medical textbooks and the Internet to clear new personal tags, it is rare for one to be pulled after it has been issued. “It’s kind of disconcerting to know that the United States is based on freedom of

expression, yet in actuality, it’s quite restrictive,” noted Miles.

Miles, who is an electrical engineer at the University of Florida, believes that the attempt to revoke his tag directly infringes on his First Amendment rights. He has refused to mail back the tag to the DMV.

This is not the first time the expressive license tag has caused trouble for Miles. He has had a wrench thrown at him over the plate, and has even had it stolen from the car and hidden in the woods.

Many citizens use personalized license plates as a form of expression. Among the tags currently accepted by the Florida DMV are GOD4ALL and ALL4GOD. DMV spokesperson Robert Sanchez said that letters in support of Miles, and his ATHEIST plate have prompted a review of the issue. (3/14/02)

Incoming Marco Island councilman shuns sunshine

MARCO ISLAND – John Arceri ran unopposed for Marco Island City Council. So when the filing period for the job ended on Jan. 22, he was essentially “elected,” even though he did not take office until March. Arceri reportedly used the time between his “election” and his swearing in to meet with key members of the city government out of the sunshine.

While the meetings are technically legal, according to City Attorney Ken Cuyler, there is concern among some freedom of information advocates that they may have violated the spirit of the state’s strict government-in-the-sunshine laws. Council candidate Vickie Kelber said that as an incoming councilman, “he has to be alert to even the appearance of sunshine violations.”

Others are not as concerned.

Arceri met with members of the city council, and also had a meeting with City Manager Bill Moss, Council Chairman Glenn Tucker and an attorney for Florida Governmental Utility Authority to discuss the city’s proposed purchase of Florida Water Services, a deal on which Arceri functions as Marco Island’s negotiator. (3/12/02)

Speaker bars critical reporter from floor

TALLAHASSEE – Florida House Speaker Tom Feeney (R-Oviedo) banned Shirish Date, a reporter for *The Palm Beach Post*, from the House floor for the remainder

of the session because of what Feeney characterized as “offending” and “frightening” conduct after a press conference.

However, Edward Sears, editor of *The Palm Beach Post*, believes the ban is more related to an earlier story about Feeney legislative aide Bridgette Gregory that suggested she was

NEWSGATHERING

unqualified for her position. Gregory, 27, holds a \$55,644-a-year position, without the requisite bachelor’s degree or the three years of technical background required by the state’s official job

description. Date also reported that Gregory tried to delete e-mails about state and campaign business from her computer after reporters requested them. The e-mails indicated Gregory used her computer to arrange Feeney’s campaign appearances, which may violate ethics rules. (3/7/02; 3/21/02)

Supreme Court won’t hear Leggett appeal

WASHINGTON – The U.S. Supreme Court will not hear an appeal in the case of Vanessa Leggett, the Texas writer who spent more than five months in jail for refusing to turn over notes to a federal grand jury. Leggett’s attorneys asked the Court to use her case to extend protection for writers and reporters under the First Amendment. The Court offered no comment in turning down the request. Leggett, a novice crime writer, was

working on a book about the murder of Doris Angleton, a Houston socialite, whose husband Robert was acquitted of the crime. New evidence led a federal grand jury to reopen the case in 2000, and prosecutors subpoenaed Leggett’s notes. She refused, and was jailed until the grand jury’s term expired.

According to her attorney, Michael DeGeurin, Leggett “faces a substantial threat of future incarceration.” (4/15/02)

Fees awarded to Monroe citizens group

KEY LARGO – Monroe County must pay \$26,285 in legal fees to a local citizens group that successfully fought a sunshine lawsuit. The dispute stemmed from the violation of open meetings laws during the awarding of a contract to build a sewer system on Key Largo.

Last year, Circuit Judge Sandra Taylor voided the contract between the Florida Keys Aqueduct Authority and Ogden Water Systems, saying that open government laws had been broken during the selection process. Chief Circuit Judge Richard Payne assessed the fees.

Attorney John Jabro aided the citizens group, Keys Citizens For Responsible Government, in their suit. Monroe County Attorney Jim Hendrick said the county plans to challenge the ruling. (2/29/02)



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A new source for state-by-state access information

Freedom of information advocates have a new and potent source for information about state laws, now that The Marion Brechner Citizen Access Project is up and running at www.citizenaccess.org. The Marion Brechner Citizen Access Project is a groundbreaking effort

The Back Page

By Bill Chamberlin

detailed analysis and unique rating system will provide payoffs for journalists, media lawyers, scholars, citizen groups, and policy makers for decades to come.

Mrs. Brechner, an Orlando broadcasting executive with an abiding interest in freedom of information issues, provided a gift of \$600,000 to the University of Florida that was matched with \$400,000 from the state. The money provides an endowment for a research team, office help, and website and database experts, most of whom are graduate students.

Mrs. Brechner's commitment to access is now bearing fruit, as you can see online the beginnings of a rating system for access to meetings and access to records in all 50 states. The categories right now are limited to redaction and to computer records issues. But the ratings on state constitutions, definitions, and procedures for public records will come soon.

A visitor to www.citizenaccess.org is able to see summaries and ratings of all state laws that have been processed, a comparison to another state's laws, and a comparison to the laws of every state. The site also provides direct hyperlinks to the individual state laws and state access audits that have been completed, as well as background information on the laws of every state.

The researchers, all with law school background, search the state laws for any provisions relevant to access. They



Bill Chamberlin

arrange them in pertinent categories, write summaries that can be read by lay professionals, and send them to a board of experts on freedom of information. The Sunshine Review Board rates each of the constitutional, statutory, or case law summaries on a scale of 7 to 1, with a 7 representing a law that most facilitates access and a 1 representing a legal provision that least facilitates access. Advisory board members include veteran journalists, access advocates, a state government access expert, a law professor, a media law professor, the general counsel of the ASNE, and representatives of the American Library Association and the League of Women Voters.

Anyone who knows about the complications of access laws knows this is a tremendous undertaking and will not be completed overnight. However, we have designed the project so that you will see each category as it is completed, and we will be continuously putting information on line, now that we have completed the database and Web page construction. One warning for the moment: I haven't written the help page yet, so anyone who needs guidance to get around should send me an e-mail or give me a call. We also have a feedback page, and we hope access advocates will help us be responsive to current legal issues.

The Marion Brechner Citizen Access Project makes it possible for you to find out what your state law is, find out how experts rate it, and see the language of all state laws. Dean Terry Hynes, Marion Brechner and I hope this will revolutionize the reporting and scholarship on access issues. We hope it will make it easier to write good law and harder to write embarrassingly bad law. We hope the ratings will help make access better understood and more frequently

Bill Chamberlin, the director of the Marion Brechner Citizen Access Project, also is the Joseph L. Brechner Eminent Scholar of Mass Communications and an affiliate professor of the UF College of Law.