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# THE BRECHNER REPORT

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## W. D. Childers released from jail on appeal bond

PENSACOLA—Former Escambia County Commissioner W.D. Childers was released from jail on an appeals bond after serving all but two weeks of his 60-day sentence for violating the state's Sunshine Law.

Okaloosa County Judge T. Patterson Maney granted Childers the \$10,000 appeal bond a day

### ACCESS MEETINGS

after Circuit Judge Jere Tolton granted another \$10,000 appeal bond for a separate and unrelated bribery conviction that sentenced Childers to a 3 ½ year prison term.

"The court cannot reasonably find that this defendant is likely to flee," Maney ruled.

Both judges initially denied bond for Childers because each thought the appeal would fail. The 1<sup>st</sup> District Court of Appeal in Tallahassee ordered the judges to reconsider their initial denials, ruling that those were improper grounds for denying bail.

Childers is the first Florida official to be jailed for violating the open meetings portion of the Sunshine Law. State Attorney Curtis Golden estimates the appeal process will take six to eight months. (6/18/03-6/21/03)

## Court refuses to hear Earnhardt appeal

TALLAHASSEE—The Florida Supreme Court has declined to review one of the two cases challenging the constitutionality of the Dale Earnhardt autopsy law.

In a 4-3 decision, the Court denied the request of the *Independent Florida Alligator* to have the law that seals autopsy records from the public overturned. The law was passed in 2001 following the death of NASCAR driver Dale Earnhardt.

"This is a dark day for Florida residents," said attorney Tom Julin of Miami, who represents the *Alligator*. "It means that they cannot rely on the Florida Supreme Court to uphold their right of access to public records."

Justices did not give an explanation in the split ruling that allows the 5<sup>th</sup> District

Court of Appeals' decision to stand. The appellate court ruled in March 2001 that the viewing of any autopsy photos violates the privacy rights of families.

"The Florida Constitution gives every citizen the right to inspect and copy public records so that all may have the opportunity to see and know how the government functions," District Judge Thomas D. Sawaya wrote in the appellate court's decision. "It is also a declared constitutional principle that every individual has a right of privacy."

Another case challenging the autopsy law is pending in Broward County filed by *The South Florida Sun Sentinel* and the *Orlando Sentinel* in the 4<sup>th</sup> District Court of Appeals.

Julin has not ruled out a challenge to the U.S. Supreme Court. (7/2/03)

### ACCESS RECORDS

## Judge allows cameras in courtroom during JungleLand Zoo trial

KISSIMMEE—Osceola County Judge Jon Morgan has decided to allow cameras in the courtroom of the JungleLand Zoo case after the owner of the zoo requested that the trial be closed to television and still cameras.

Owner of the now defunct zoo, Eugene Calabrese, was issued a citation in November of last year for failing to maintain a 5-foot fence around the zoo inhabited by lions, tigers, bears and other exotic animals. If found guilty, Calabrese could face a 60-day jail sentence.

Calabrese sought to exclude cameras from the trial to maintain privacy. Calabrese's attorney Greg Gerjel argued that animal-rights fanatics were likely to target his clients if their pictures were

publicized. Activists have vandalized the park and threatened employees, Gerjel said, and such harassment might happen again if there is heavy media coverage.

Jack Kirschenbaum, attorney for WKMG-Channel 6, which covered allegations of animal mistreatment at the zoo, said the media are the eyes of the public and have a right to photograph the trial. He further argued that anybody could walk into the courtroom.

"This is the public domain," Kirschenbaum said.

The judge also refused to dismiss the charges, but agreed that the state would have to re-file its vague charges for the case to continue. (6/5/03-6/7/03)

### COURTS

## Former police officer sues city over records

NEWPORT RICHEY – A former New Port Richey police officer has sued the city alleging he was denied access to public records within a reasonable amount of time.

Arnold R. Uttley resigned in 1997 after he was arrested and pled no contest to DUI. According to the lawsuit, he sent four written requests to the city between September and December 2002 for records including his pay history during this three-year tenure at the police department, the rate for overtime pay, and internal affairs investigation reports and discipline records for all city police officers from June 2002 to present.

The city did not produce any of the requested records until March of this year. Other records have yet to be turned over, Uttley alleges.

“Our position is his responses were not produced in a reasonable amount of time,” Uttley’s attorney Patrice Pucci said.

Uttley is not seeking monetary damages. He is asking for a judgment ordering that the officials responsible be suspended, removed, impeached or referred to the State Attorney’s Office for prosecution.

This is Uttley’s second lawsuit against the city. He previously sued after another officer was hired after being arrested on suspicion of drunken driving while Uttley was not allowed to return after his conviction.

(7/9/03-7/10/03)

## 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.*

## AGO: Disclosure of autopsy photos to non-public agencies

TALLAHASSEE – Florida Attorney General Charlie Crist has released a legal opinion (AGO 2003-25) stating that medical examiners must go to court before using autopsy photos for training in a private setting.

The opinion comes in response to a question posed by Dr. Stephen Nelson, chief medical examiner in Polk, Hardee and Highlands counties. Nelson wanted to use autopsy photos for training during a sexual abuse conference involving medical professionals among the private sector, and asked Crist about who is permitted to use the photos.

In 2001, the Attorney General’s Office issued a legal opinion stating medical examiners may use autopsy photos in the context of training and education purposes for public agencies, making it impermissible to provide them to private entities. Crist further clarified that autopsy photos may be shown to non-public agencies if a court makes an appropriate finding of good cause and if the family of the deceased is allowed to

attend any hearing on the matter.

Because of the ruling, Nelson will need to seek a judge’s approval to use the photos at the conference involving private medical professionals.

The law is overbroad and should be stricken, said Jon Kaney, general counsel for the First Amendment Foundation.

“There is no public necessity for sending the requesters off to court,” Kaney said.

The law allows autopsy photos to be used at public colleges, but not at private schools such as the University of Miami.

Nelson believes the law creates a double standard and an uneven playing field.

“...[T]here is a double standard that says we can do it for public folks but not private folks,” Nelson said.

The law that prevents public access to autopsy photos was passed in 2001 after racecar driver Dale Earnhardt was killed at the Daytona 500.

(6/6/03-6/10/03)

## Rabbi sues over state selling detailed motor-vehicle information

WEST PALM BEACH – Rabbi Joel Levine is seeking a class-action lawsuit against two of the nation’s largest information brokers, alleging that the companies have violated federal privacy laws by obtaining Florida Department of Highway Safety and Motor Vehicle records.

The two companies involved in the suit are Georgia-based ChoicePoint Inc. and Massachusetts-based Reed Elsevier Inc., the parent company of LexisNexis. The lawsuit contends the records obtained by the companies include such information as people’s names, addresses, birth dates, and other information detailed on motor-vehicle titles, in violation of the federal Driver Privacy Protection Act.

The act was passed in 1994 after a man killed actress Rebecca Schaeffer by getting her address from California motor vehicle records. In 1999, an amendment to the law mandated that a driver must “opt in” or consent in order for their

information to be released to the public. Levine’s lawsuit, however, argues that in Florida, a driver must “opt out” by telling the state they do not want their information released.

The Driver Privacy Protection Act precludes Levine from directly suing the state, which is why his attorneys are going after the two information brokers in an attempt to stop businesses from buying motor vehicle records.

“If this litigation is successful it will take the market away,” said Attorney James Green, one of the two lawyers who filed the suit. “These data miners will know that the cost of obtaining information illegally is much higher than what the market will bear.”

The lawsuits are seeking \$2,500 for every time since June 1, 2000, when the “opt in” amendment should have taken effect, that the state has released an individual’s personal information without consent.

(6/27/03-6/28/03)

## Supreme Court rules in favor of filters

WASHINGTON—The U.S. Supreme Court has ruled in a 6-3 decision that public libraries must install Internet pornography filters on computers to receive federal technology grants, rejecting arguments that the requirement violates First Amendment rights.

“Because public libraries have traditionally excluded pornographic material from their other collections, Congress could reasonably impose a parallel limit on its Internet assistance programs,” Chief Justice William Rehnquist wrote in his majority opinion.

Rehnquist also noted that when an adult patron encounters a blocked site, a librarian should be able to override the filters to allow the patron to access the site.

The American Civil Liberties Union and others have sued the federal government over the law, arguing the filters can block legitimate information sites, amounting to government

ensorship.

Justice John Paul Stevens, who dissented, said the act “impermissibly conditions the receipt of government funding on the restriction of significant First Amendment rights.”

Stevens also said the act can provide parents with a “false sense of security without really resolving the problem” because, he argues, some objectionable material may still get through.

Lawmakers have attempted to impose limits on Internet pornography two previous times. Each time the high court objected on grounds that the limits restricted free speech. This time, however, libraries can refuse to comply if they surrender federal aid and can disable filters at the request of patrons.

The federal government has provided nearly \$1-billion in aid to libraries, with grant money making up as much as 90 percent of the library’s technology budget. (6/24/03)

## Judge orders name taken off Web site

WEST PALM BEACH—A judge has issued an injunction preventing a Chicago man from disclosing stories and information, regardless of its truth, about his relationship with a former Vermont beauty queen.

Former Miss Vermont Katy Johnson filed a lawsuit in circuit court in Palm Beach County against Tucker Max arguing that he was using her name and photograph on his Web site to promote his “career as an authority on ‘picking up’ women.”

The temporary order prevents Max from “disclosing any stories, facts or information, notwithstanding its truth, about any intimate or sexual act” involving Johnson, including any photos

or references to Johnson on his Web site.

Max’s attorney, John C. Carey, called the order “inconsistent with the freedom of speech guaranteed by the Constitution.” Carey also said in an e-mail to The Associated Press that “Tucker Max has the right to tell his autobiographical account of their relationship,” and that they would ask for the order to be dismissed.

John Seigenthaler, the founder of the First Amendment Center at Vanderbilt University, said that federal courts have found that the same First Amendment protections that protect newspapers and television should be extended to the Internet. (6/3/03)

## NEWS NOTES CONTINUED

### Carassas wins First Amendment award

TALLAHASSEE—State Rep. John Carassas, R-Belleair, is this year’s recipient of the First Amendment Foundation’s Pete Weitzel Friend of the First Amendment Award.

The foundation cited Carassas’ “unwavering support of the public’s right of access” and his support for the two-thirds vote requirement change in the state Constitution for future public records exemptions.

Carassas was elected to the House in 2000 from House District 54. He received the award at a June 27 meeting of the Florida Press Association and Florida Society of Newspaper Editors.

The award is named after a former senior editor at the *Miami Herald* and founder of the First Amendment Foundation, and it is given annually to a legislator who makes a significant contribution to open government.

## Handbook available

TALLAHASSEE—The revised second edition of The Florida Public Records Handbook published by the First Amendment Foundation is now available. The handbook is the only one of its kind in the nation with profiles on more than 150 of Florida’s most useful state and local public records.

The handbook details the different documents available at state agencies, the courthouse, city hall and online, along with many agency phone numbers, addresses and Web links. It also includes a public records law question and answer section by Barbara A. Petersen, president of the foundation, and a public records law summary from Pat Gleason of the Florida Attorney General’s Office. Author and Jacksonville journalist Joe Adams will also provide periodic update information through his Web site at [www.iDigAnswers.com](http://www.iDigAnswers.com).

The handbook began publication in 2000 and serves as a companion to The Government-in-the-Sunshine manual produced annually by the Florida Attorney General’s Office, also published by the foundation.

Copies are available from the foundation pre-paid for \$24.95 or can be purchased in combination with the sunshine manual for \$34.95. Order forms are on the foundation’s Web site at [www.floridafaf.org](http://www.floridafaf.org). For more information, contact the foundation at (850)822-3518 or (800)337-3518.

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# Legislature in Review: We laughed, we cried

What an embarrassment of riches.

We could write a comedy out of the antics surrounding the 2003 legislative session – all four of them – but so much of the material lends itself more to tragedy.

The Florida Constitution invites lawmakers to

## The Back Page

By Lucy Morgan

sugar and telephone lobbyists and consume as much free food and booze as possible.

Their only real task is to adopt a budget. This year it took two attempts, but we managed to get a budget of sorts approved in late May. It's only \$53.5-billion and everybody is already talking about things that need to be added.

A reader suggests lawmakers should have to pay their own expenses for special sessions when they fail to complete their work on time. Not a bad idea.

Gov. Jeb Bush likes to point out how much better off we are than some other states. That's true, but when you are in pain, it helps little to be reminded that others are suffering, too.

All 50 states have budget problems of varying seriousness, but generally speaking, the bigger the state, the bigger the problems. California, for example, faces a deficit that totals more than \$30-billion. Florida is one of the few states that actually had more money to spend this year than last year.

But we also had some big expenses. Voters have approved a series of Constitutional amendments requiring lawmakers to build a high speed rail system, reduce the number of children in classrooms, stop smoking in every workplace and pay more to operate the courts.

As best I can tell the pregnant pigs are not demanding money. Voters approved an amendment establishing requirements for the size of cages they live in. Keep a pregnant pig in a too small cage and you can be arrested. Are the pig police next?



Lucy Morgan

We've been reading a lot lately about reporters at other newspapers who have confessed to making things up. Fortunately, we have enough real lunacy in Florida to keep us going for years without having to dream it up.

Where else would the House Speaker open each day with "It's a great day in the state of Florida," and close each session with a rock song descriptive of the day.

Where else would the Senate president offer advice for staying sober from the podium so his members would not over indulge during a break. He used the word "vitamins," as he cautioned against overindulgence, but we all knew what he meant.

Since approving a budget in late May, lawmakers have been back twice in futile attempts to reach agreement on a bill that would solve Florida's medical malpractice problems. As yet, they cannot even agree that there is a problem but the governor says he'll keep bringing them back over and over again until they reach agreement.

The Senate is about ready to strangle the governor because he has taken aim at their campaign money. In a widely publicized meeting, Bush urged doctors and hospitals to get businesses to stop contributing money to the GOP senators who oppose the governor.

Senate President Jim King suggested the governor's request has taken the war to DEFCON2, a description used to describe the situation when someone has pointed nuclear weapons at the United States.

The governor added a little salt in the Senate wounds he created when he took off a day after threatening Senate campaign war chests to help the California Republican Party raise money for the 2004 campaigns. It was in this atmosphere that House Speaker Johnnie Byrd announced he is considering a run for the U.S. Senate.

As anyone can see, we don't have to make things up. The supply of weirdness is never ending in Florida politics.

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*Lucy Morgan is the Tallahassee bureau chief for the St. Petersburg Times and writes a regular column on Florida politics, people and issues that appears on Saturdays.*