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# THE BRECHNER REPORT

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## Pinellas County must pay fees in public record dispute

PINELLAS COUNTY — The county will pay the *St. Petersburg Times*' legal expenses related to a successful public records lawsuit.

A circuit judge ruled that Pinellas County violated the Public Records Law when it refused to release a settlement agreement between the county and a former employee.

Since the county lost the lawsuit, it must pay the newspaper's \$19,806 legal bill.

The ex-employee, Rick Dodge, was fired in 2002. He alleged that the county fired him for drawing attention

to fraud in the welfare-to-work program. The county said he was let go due to job performance issues.

County Commission Chairman Ken Welch said the county fought the release of the settlement because at the time of the request, key parts of the agreement were being finalized.

*Times* executive editor and vice president Neil Brown said the newspaper has a responsibility to pursue such cases.

"The newspaper has a special role on behalf of the public to ensure that the government does not do its work in secret," Brown said.

## Fla. governor vetoes two records bills

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.

## ACCESS RECORDS

"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.

## Ex-weapons scientist settles privacy suit for \$1.6 million

WASHINGTON — 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 Energy and Justice Departments 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," the companies said.

Prior to the settlement, the U.S. Supreme Court was considering whether to take the case of the reporters who resisted subpoenas to reveal their sources.

Lee was fired from the Los Alamos National Laboratory in New Mexico and was later held in solitary confinement for nine months.

He was never charged with espionage. He later pleaded guilty to mishandling computer files.

"We are hopeful that the agreements... will send the strong message that government officials and journalists must and should act responsibly in discharging their duties and be sensitive to the privacy interests afforded to every citizen of this country," Lee said.

## Judge upholds \$18 million verdict against paper

PENSACOLA — A judge dismissed a claim for punitive damages but upheld an \$18.28 million jury verdict against the *Pensacola News-Journal* in a false light lawsuit.

In December 2003, a jury ruled for businessman Joe Anderson Jr., who alleged the newspaper's use of the term "shot and killed" in a story falsely implied that he murdered his wife.

Two sentences later, the article noted authorities ruled her death was a hunting accident.

The article was part of a series on Anderson and his paving company published in 1998 and 1999.

The jury could not agree on punitive damages, so Circuit Judge Michael Jones ordered a second trial on that issue.

Jones dismissed that part of the suit

in April, after Anderson and his lawyers allegedly violated an order to keep the newspaper's pretrial polling data confidential.

This is the first false light case tried in Florida, according to *The Associated Press*. The *News-Journal* and its parent company, Gannett Co. Inc. plan to appeal the decision, according to defense attorney Dennis Larry.

## Lobbyist law survives injunction

TALLAHASSEE — A new state law that requires lobbyists to disclose who pays them and how much survived an effort to block it. The law also bans gift-giving to lawmakers. The Florida Association of Professional Lobbyists, along with two individual lobbyists, sought a temporary injunction against the law and summary judgment.

The law was filed as a Senate bill, and the lobbyists argue that because it was not read three times by the House, it was invalid. The state constitution allows an exception to the reading requirement if a two-thirds vote is reached.

"Because the rule was waived it was not necessary to read the bill on three separate days," wrote U.S. District Judge Stephan Mickle.

The case can now proceed to trial unless Mickle's rulings are appealed.

*The Miami Herald* reviewed the records disclosed as a result of the new law and found that lobbyists earned at least \$17.4 million in the first three months of 2006.

Major contributors were Florida Power & Light, Calder Race Course, the American Tort Reform Association and the Florida Medical Association.

## FIRST AMENDMENT

### High court: No protection for whistleblowers on the job

WASHINGTON — The U.S. Supreme Court ruled that public employees are not protected by the First Amendment for statements made in connection with their work.

In a 5-4 vote, the justices ruled against Richard Ceballos, a prosecutor with the Los Angeles District Attorney's Office. Ceballos alleged that he was demoted for telling his supervisors that a sheriff's deputy lied to get a search warrant. The ruling does not affect state and federal labor laws or whistle-blower protection statutes, the court said.

"We reject, however, the notion that the First Amendment shields from discipline the expressions employees make pursuant to their professional duties," wrote Justice Anthony M. Kennedy.

In his dissent, Justice David H.

Souter advocated a case-by-case approach to free speech claims related to public employment. "[P]rivate and public interests in addressing official wrongdoing and threats to health and safety can outweigh the government's stake in the efficient implementation of policy," Souter wrote, "and when they do public employees who speak on these matters in the course of their duties should be eligible to claim First Amendment protection."

Souter was joined in his dissent by Justices John Paul Stevens and Ruth Bader Ginsburg. Justice Stephen G. Breyer offered his own dissenting opinion. The Ceballos case was first argued in October, when Justice Sandra Day O'Connor was still on the Court. O'Connor retired Jan. 31. The case was reargued in March.

## Police officer claims rights violated by VA

TAMPA — A police officer at a Veterans Administration hospital claims his First Amendment rights were violated after he was told he would be fired for giving sensitive information to the *St. Petersburg Times*, according to a story by the newspaper.

A congressional committee is reviewing the case of Robert J. McCarthy, 52.

McCarthy, who was a police officer in Philadelphia for 30 years, had been working at the James A. Haley VA Medical Center for about a year when the VA inspector general launched an investigation of poor patient care and mismanagement at the center.

The investigation, which began in February, was based on an anonymous letter to the *Times*.

A month later, allegations of criminal activity in the hospital police force arose from anonymous e-mails to the newspaper.

McCarthy contacted the newspaper almost three weeks after the stories about the hospital were published.

McCarthy said that he had been reassigned to a file clerk position because he was suspected of being the source of the *Times* stories. He denied he was the author of the e-mails.

The hospital accused McCarthy of releasing information regarding the VA without authority, using obscene language and sending a sarcastic e-mail to the police chief.

## DOT remedial measures OK'd

CITRUS COUNTY — A circuit judge ruled in favor of the state Department of Transportation, finding the agency made a good faith effort to remedy Sunshine Law violations.

The violations stem from meetings held two years ago by the Environmental Resource and Regulatory Agency Group (ERRAG), an advisory group involved in the DOT's Suncoast Parkway II study.

Citrus County residents Teddi Bierly and Robert Roscow were excluded from the meetings and filed suit against the state.

The original judge in the case, Judge Janet Ferris, found that the ERRAG meetings should have been held in the Sunshine. As part of court-ordered mediation, she ordered the DOT to remedy the violations with "curative meetings," according to *The Citrus County Chronicle*.

But Bierly and Roscow challenged those meetings, saying not all original ERRAG members attended and that the presentations were inadequate. They requested the work of the ERRAG be thrown out for violating mediation.

Circuit Judge Terry Lewis replaced Ferris, and although Lewis admitted that Bierly and Roscow had legitimate concerns, the judge ruled that the DOT still made a good faith effort to remedy the violations.

### 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](mailto:brechnerreport@jou.ufl.edu)

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

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## Hospital board subject to law

OCALA — The board of directors of an Ocala hospital are subject to the Sunshine Law, the State Attorney's Office has determined. It also concluded that the incident prompting the inquiry was not a violation of the Sunshine Law.

In February, Munroe Regional Medical Center's board of directors voted unanimously and without any discussion to demote President and Chief Executive Officer Paul Clark to the position of chief operating officer. Two weeks earlier, a majority of board members said they opposed having a COO position.

The State Attorney's Office then began an investigation as to how the board reached a unanimous decision considering its previous opposition.

Munroe Regional Health Systems Inc. operates the hospital under a lease

from the Marion County Hospital District.

Assistant State Attorney Mark Simpson first concluded that the hospital is subject to the state's open government laws, in addition to the Sunshine requirements stipulated in the hospital's lease.

Simpson then spoke with Clark and another Munroe executive, Vice President Earline Piscitelli, during his investigation. Clark said he spoke individually with board members and told them of his proposal to step down.

Piscitelli explained that a press release distributed immediately following the meeting was one of two press releases written, one with the board's decision and one with another outcome.

Based on the statements of Clark and Piscitelli, Simpson found there was no evidence of a Sunshine violation. He did not speak with any of the board members, according to the *Ocala Star-Banner*.

## Charges posthumously dropped

ESCAMBIA COUNTY — A circuit judge dropped criminal charges against an Escambia County commissioner who died in 2004.

Willie Junior disappeared a day before he was to be sentenced on corruption charges. He died of an apparent suicide.

The main reason for the request to drop charges was to allow Junior's widow to receive her husband's retirement benefits from the county and state, according to Junior's attorney, Michael Griffith.

Junior and three other county

commissioners were indicted in May 2002. Junior faced charges ranging from racketeering and bribery to violating the Sunshine Law. He pleaded no contest to several charges and was likely to be sentenced to 18 months in prison.

Assistant State Attorney John Simon objected to the decision, arguing that Junior had already entered a plea and was awaiting sentencing.

Junior served as a state witness in the case of fellow Commissioner W.D. Childers.

Junior, 62, was a commissioner for 18 years.

## COURTS

### Paper sues for secret docket details

BROWARD COUNTY — The Broward County clerk began filing motions asking judges in more than 100 cases kept from the public docket if the files should remain confidential.

The move comes after an investigation by *The Miami Herald* revealed that more than 100 lawsuits since 2001 are kept on a secret docket in Broward Circuit Court.

In May, Clerk Howard Forman formulated a new policy that required judges who order cases sealed to be more

specific about the types of information they want kept from the public. The policy did not apply to cases already sealed.

In the midst of his new policy, Forman denied a request by *The Herald* for a list of all civil cases not available for public inspection. The newspaper then successfully sued Forman for the case numbers and party names for the secret files.

But the cases remained off the public docket, prompting Forman's requests for clarification.



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# Reporting team holds disaster agency accountable

We never imagined one map on FEMA's Web site in the midst of the unforgettable 2004 hurricane season would lead to the longest-running investigation the *South Florida Sun-Sentinel* had ever done and a federal Freedom of Information Act lawsuit that will change the way reporters cover disasters nationwide.

Database specialist John Maines discovered the map preparing for a hurricane enterprise story meeting in September 2004. He noticed something odd: a large cluster of FEMA claims from Miami-Dade, one of the few counties in Florida not hit by the four hurricanes that year.

Before our first story ran, showing FEMA had already approved more than \$21 million to Miami-Dade residents, our investigative team filed a FOIA request for the claims.

## The Back Page

By Sally Kestin

We wanted to know: Who were all these people getting disaster assistance and for what?

As the investigation progressed, we filed more than 20 other FOIA requests to help understand how FEMA approved claims and what about its system allowed widespread fraud and waste.

From the start, FEMA refused to provide names and addresses of aid recipients, citing the Privacy Act. The government also declined to provide the names of its privately contracted inspectors, calling it "an unwarranted invasion of their privacy."

FEMA withheld then-FEMA Director Michael Brown's e-mails on grounds that their release would "discourage open, frank discussions on matters of policy" and refused to turn over quality control reports of inspectors' work.

In March 2005, the *Sun-Sentinel* filed suit for access to the information in the U.S. District Court for the Southern District of Florida.

While we waited, the team found ways around the obstacles. We hit the streets and located aid recipients who called FEMA assistance "free money" and told of neighbors hosing down furniture to make it look like storm damage.

The team found FEMA inspectors and discovered some had criminal records for theft, robbery and embezzlement. We obtained FEMA claims data by ZIP code and identified the same



Sally Kestin

patterns of waste and fraud found in Miami in disasters across the country.

The 15-month investigation was a finalist for the 2006 Pulitzer Prize for investigative reporting and won top awards from the Scripps Howard Foundation, Associated Press Managing Editors and Investigative Reporters and Editors Inc.

In an April 2006 ruling in our lawsuit, U.S. District Judge Kenneth A. Marra concluded that FEMA must release the names of its inspectors, the quality control reports, the addresses but not names of aid recipients,

and all but two of Brown's e-mails.

FEMA has appealed the judge's decision on recipients' addresses but has agreed to produce the remainder of the information.

Documents released so far have already resulted in a story detailing how FEMA officials scrambled to justify their decisions after our Miami story broke. Those e-mails never would have been public if not for our suit.

If the decision in our case is upheld, reporters nationwide will have access to more detailed data about FEMA claims in past and future disasters.

Addresses will help pinpoint where the money is going and allow reporters to compare that to actual damage. Is FEMA sending money to vacant lots? Are tenants of apartment buildings collecting aid when the property managers report no damage?

As we saw with the 2004 Florida storms and with Hurricane Katrina, where federal auditors recently estimated as much as \$1.4 billion in FEMA aid to individuals was bogus, no agency warrants more of our scrutiny.

Our lawsuit and others like it will help reporters keep better watch over FEMA's spending of tax dollars.

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*Sally Kestin is an investigative reporter at the South Florida Sun-Sentinel. She previously covered social services, education and local government for The Tampa Tribune and the Sarasota Herald-Tribune. After the 2004 Florida hurricanes, she led a team of reporters who uncovered \$530 million in fraud and waste in FEMA disaster aid nationwide. She has won state and national awards and was a finalist for the 2006 Pulitzer Prize for investigative reporting.*