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# THE BRECHNER REPORT

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## Sunshine Week spurs dialogue on open government, access issues

WASHINGTON D.C. – The third annual Sunshine Week is set for March 11-17, with journalists Ben Bradlee, Tom Brokaw and Judy Woodruff named as honorary chairs.

The goal of Sunshine Week is to raise awareness about open government and freedom of information.

The American Society of Newspaper Editors, through a grant from the John S. and James L. Knight Foundation, sponsors Sunshine Week.

Proposed events include the National Freedom of Information Day conference

on March 16 at the National Press Club in Washington D.C. and a “Closed Doors; Open Democracies?” teleconference broadcast by Open the Government.org.

Sunshine Week is an expansion of Sunshine Sunday, a Florida event where newspapers publish editorials, cartoons and news stories highlighting open government issues.

### OPEN GOVERNMENT

This year’s sixth annual Sunshine Sunday is scheduled for March 11.

For more information about Sunshine Week or Sunshine Sunday, visit [www.sunshineweek.org](http://www.sunshineweek.org) or [www.fsne.org](http://www.fsne.org).

## Prosecutors dismiss Sunshine, records charges against hospital

OCALA – A hospital indicted on misdemeanor charges for violating Florida’s open government laws during a CEO search has reached an agreement with the State Attorney’s Office.

In exchange for amending its lease to reflect principles of “operating in the spirit of open government,” the State Attorney’s Office dismissed the charges.

The hospital, which leases publicly

owned facilities, did not concede guilt but will pay \$2,000 for investigative costs.

“It’s a fairly standard disposition of a county court first-time offense,” said State Attorney Brad King.

A grand jury indicted the hospital in September for failing to provide the *Ocala*

*Star-Banner* with a list of CEO candidates and holding at least one closed meeting during a two-month period last summer.

### ACCESS LAWS

## Charges dropped against outspoken resident

RIVIERA BEACH – A local activist arrested at a November city council meeting will not face charges in connection with the incident.

Riviera Beach City Councilwoman Liz Wade had police remove Fane Lozman from the meeting during the public comment portion of the meeting.

Lozman was commenting on the arrests of area officials at the time of his own arrest. Lozman was charged with disorderly conduct and resisting arrest without violence.

Lozman also is involved in litigation against the city related to its decision to use eminent domain in a redevelopment

### ACCESS MEETINGS

## Superintendent sued by school board member

MIAMI – A school board member dissatisfied with the response to her public records requests has filed suit against the superintendent.

Miami-Dade school board member Marta Perez filed the public records lawsuit against Superintendent Rudy Crew.

Perez alleges that Crew misused his power and ignored her records requests. The requests are related to renovation costs for board members’ offices,

### ACCESS RECORDS

employee salaries, and other issues. “I do not believe that

the effort required of my staff to gather and organize the information regarding job descriptions and cost of all board office renovations... is an effective use of their time,” Crew wrote in a March 2005 memo, according to *The Miami Herald*.

Prior to filing the suit, Perez motioned that the school board ask Crew to provide the information. The board voted against Perez’s proposal.

Perez wants a judge to order Crew to fulfill the records requests and define Crew’s powers to set the school board’s agenda.

project. In his lawsuit, Lozman alleged council members violated Florida’s Open Meetings Law by holding a special meeting to sign an agreement with developers. The council has since changed its position on using eminent domain.

The State Attorney’s Office dropped the charges because prosecutors were not convinced a conviction was possible, according to *The Palm Beach Post*.

## Newspaper wins retaliation suit against college

KEY WEST – Florida Keys Community College will pay the legal fees of a newspaper company after the two parties reached a settlement in a First Amendment retaliation lawsuit.

Cooke Communications, owner of *The Key West Citizen*, filed the suit after the

college's president wrote in a letter to the company that he was ending any business with the company. College President Bill Seeker said the move was a result of *Citizen* articles that he alleged were unbalanced and unfair to the college.

Cooke Communications filed suit,

alleging its constitutional right to publish without retribution from a government agency was violated. Seeker then sent another letter agreeing to resume business with the company.

The college did not admit wrongdoing but did agree to pay \$9,000 in attorney fees.

## Trump sues to keep oversized American flag

PALM BEACH – Donald Trump is suing town officials who cited him for flying an oversized American flag at his Palm Beach property. Trump contends that he has a First Amendment right to fly the flag over his Mar-a-Lago Club.

Town officials cited Trump because his 15-by-25-foot flag atop an 80-foot pole violated zoning codes. Codes do not permit flagpoles taller than 42 feet. Trump says the ordinances are selectively enforced.

Trump's multi-million dollar lawsuit says a smaller flag would "look silly" in light of the property's "massive size." If Trump wins the lawsuit, money damages will be donated to Iraq war veterans, according to the suit.

## Police erase security video after request

MIAMI – Miami-Dade police erased its copy of a security video showing Atlanta Falcons quarterback Michael Vick at the airport, after *The Atlanta Journal-Constitution* requested the video under Florida's Public Records Law.

Vick was suspected of hiding marijuana in a water bottle during a Jan. 17 visit to the Miami International Airport.

*The Journal-Constitution* requested a copy of the video on Jan. 18.

## ACCESS RECORDS

Police refused to release the video because it was part of

an ongoing investigation.

After prosecutors announced Jan. 23 there would be no criminal charges against Vick, the investigating officer erased the video from a flash drive.

A police spokesman said the newspaper would have to request a copy of the video from the Transportation Security Administration (TSA).

The copy of the video erased by the police was obtained from a TSA camera.

## ACCESS MEETINGS CONTINUED

### Judge denies PCOC appeal

BARTOW – A circuit judge denied the appeal of Polk County Opportunity Council board members who challenged their non-criminal infraction convictions for violating the Sunshine Law.

Chief Circuit Judge Ron Herring upheld the convictions handed down by County Judge Anne Kaylor.

The board members had been ordered to each pay a \$250 fine and \$28.60 in court costs. Board member Dennis Goosby paid the cost for all the members.

"I'm of the opinion that I wish to appeal it all the way up," Goosby said, according to *The Ledger* (Lakeland).

The members have the option of appealing to the 2<sup>nd</sup> District Court of Appeal in Lakeland.

PCOC board members contended that they were not subject to the Open Meetings Law when they took a break from a public meeting to discuss a personnel matter in private.

But Herring disagreed. "Where a private company steps into the shoes of a government agency and assumes government functions, it is subject to the Sunshine Law," Herring wrote in his order.

The PCOC assists poor residents through federal and state programs.

## Crist's first orders of business: open government, easy reading

TALLAHASSEE – Florida Gov. Charlie Crist's first executive order established the Office of Open Government and a "Plain Language Initiative" aimed at making government publications and announcements easier to understand.

The order includes a provision to implement a code of ethics for the governor's office and heads of state executive agencies. This same provision also calls for the training of agency employees on topics including ethics, public records, open meetings and records retention.

The functions of Crist's newly created Office of Open Government will be "to assure full and expeditious compliance with" the state's open government laws and to provide training on government transparency.

The "Plain Language Initiative" will begin with each state agency submitting an implementation plan. Requirements for future publications include clear language for a broad audience; logically presented, relevant information; "short sentences written in the active voice;" and reader-friendly design elements, such as the use of bulleted lists.

## Anderson files avoid seizure

WASHINGTON D.C. – The Federal Bureau of Investigation has ended its effort to access the files of late investigative reporter Jack Anderson. Anderson's family fought the FBI's push to examine his confidential papers.

The FBI sought information related to a case involving the American Israel Public Affairs Committee. Two former lobbyists have been charged with receiving classified documents in violation of the Espionage Act.

The FBI thought some of Anderson's papers may contain classified government information.

The documents are housed at George Washington University. Biographer and GWU journalism professor Mark Feldstein told the FBI there were no classified documents in the hundreds of boxes of Anderson's files.

The FBI has indicated it has dropped its request to review the files.



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## Washington Post drops request for Secret Service visitor logs

WASHINGTON D.C. – The Washington Post has withdrawn its lawsuit to obtain Secret Service visitor logs. The newspaper demanded the logs just prior to the November election, seeking information about visitors to Vice President Dick Cheney and his senior staff over the previous two years.

A district court judge, Ricardo Urbina, ordered the Secret Service to immediately comply with The Post's request. But days before the Nov. 7 election, the D.C. Circuit Court of Appeals blocked Urbina's order.

Cheney maintained the records of visitors to the White House and his

official residence were private because to release them would interfere with his ability to effectively do his job.

A May 2006 memorandum declaring that logs of visitors to the White House complex are exempt from disclosure was signed by the White House and the Secret Service. The memo designated these logs as presidential records, not subject to disclosure under the Freedom of Information Act.

The Post cited its failure to obtain the information prior to the election and the existence of similar lawsuits as reasons for withdrawing its legal action, according to The New York Sun.

## Horse clinic sues state for libel

WELLINGTON – An equine veterinary clinic has filed a defamation suit against the Florida Department of Agriculture. The suit stems from an outbreak of equine herpes virus that is blamed for the death of six horses.

The Palm Beach Equine Clinic alleges the state wrongfully reported that the clinic's facilities were under quarantine and had the contagious virus, resulting in inaccurate press coverage. The clinic says its revenues have dropped since the reports.

The Palm Beach Equine Clinic is

located adjacent to the Palm Beach Equine Sports Complex, which was under state-ordered quarantine. The clinic and sports complex operate independently.

A Department of Agriculture spokesman blamed the incident on faulty reporting by members of the press. Mark Fagan said his office told the media to contact individual facilities in the area because the entire site may not be under quarantine.

"Reporters have the responsibility to dig deeper, and if that means contacting each of the 10 facilities, that means contacting each of the 10 facilities," Fagan said.

### LIBEL

## Judge throws out anthrax suit

ALEXANDRIA, Va. – A former Army scientist's libel suit against The New York Times has been dismissed by a federal judge. Times columnist Nicholas D. Kristof did not act with malice, reminding readers to assume scientist Steven Hatfill's innocence and presenting the favorable views of Hatfill's loved ones, U.S. District Judge Claude Hilton wrote in his opinion.

The dismissal occurred a week after Times lawyers argued that Hatfill was a public figure for the purposes of his libel suit. Hatfill alleged that a series of columns in The Times falsely implied that he was involved in the 2001 anthrax attacks.

Attorneys for the newspaper argued that years before the attacks, Hatfill had injected himself into the national discussion of bioterrorism. The attorneys said that Hatfill had been quoted as an expert by the media and posed for a magazine photo.

Hatfill's attorneys contended that they could overcome a public figure designation because of major flaws in reporting.

This is the second time Hilton has dismissed the case. In 2004, he dismissed Hatfill's suit after ruling that the columns accurately reported that the FBI considered Hatfill a "person of interest" in the case. Hatfill appealed the first dismissal to the 4<sup>th</sup> U.S. Circuit Court of Appeals in Richmond, which sided in his favor.

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# Transparency advocates must resort to secrecy

The degree of government transparency in the United States is due in no small part to the efforts of the American press. The media lobbied for open government laws and advocated for the public's "right to know."

The press uses open government laws to hold public officials accountable and uncover stories of corruption. Government transparency is an essential tool for the press to serve in its "watchdog" capacity.

In order to comply with open government laws, officials must retain documents, record meetings, and take a variety of other measures so as not to sidestep these laws. The failure to do so could result in criminal charges, removal from office or other penalties.

## The Back Page

By Christina Locke

For the modern reporter, imitating the work habits of government officials could have disastrous consequences. As a result of recent high profile prosecutions of journalists who refuse to reveal confidential sources, today's journalists have resorted to a variety of covert tactics in order to avoid being hauled in front of a grand jury.

Journalists working with confidential sources are careful to avoid e-mails, leaving phone messages or using credit cards. They are apt to purchase a disposable cell phone for communication with confidential sources and then discard the phone. To avoid phone records, switchboard systems can be used instead of direct calls. Pages of notes can be too much of a liability and are quickly discarded.

During a reporter's initial meeting with a confidential source, a carefully worded "Miranda warning" of sorts - "Your name won't appear in the paper" - is sometimes used to soothe concerns but doesn't necessarily offer complete confidentiality.

"It doesn't feel right. It doesn't feel good to have to act like a drug dealer," said David Barstow, a reporter for *The New York Times*.

Barstow made the remark during a panel on protection from subpoenas at an American Bar Association media law conference in Key Largo. Reporters and attorneys from *The*



Christina Locke

*New York Times*, the *Los Angeles Times* and *Time Inc.* discussed the realities of reporting in an era of increased scrutiny from prosecutors.

Barstow has witnessed firsthand the dangers of protecting confidential sources. His former colleague, Judith Miller, spent 85 days in jail after she refused to testify before a grand jury investigating the leak of Valerie Plame's identity as a covert CIA agent.

Miller eventually received permission from her source, vice presidential aide I. Lewis "Scooter" Libby, to testify before the grand jury. Libby was indicted on charges of perjury and obstruction of justice related to the leak of Plame's identity.

Ten journalists testified at Libby's trial, including Miller, *Time* reporter Matthew Cooper, NBC's Tim Russert and *The Washington Post* Assistant Managing Editor Bob Woodward.

The impact of the leak investigation on the willingness of sources to come forward may never be known. Some fear that the investigation and Libby trial could encourage prosecutors elsewhere to subpoena reporters in criminal investigations. In addition to potential criminal contempt liability for journalists, news organizations can also be subject to substantial fines each day information continues to be withheld.

In the meantime, journalists have resorted to tactics that would be criminal if employed by government officials. The result is an obvious contradiction between the media's expectations of government transparency and press opacity.

With subpoenas and jail time a real possibility, reporters must balance the interests of confidential sources, corporate employers, editors, and their own self-protection. Despite the demands, journalists are still committed to getting the next big story.

"It's always a cat and mouse game, but you have to keep playing it," Barstow said.

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