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# THE BRECHNER REPORT

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## Court awards judgment in anti-SLAPP suit

ORLANDO – A circuit court judge awarded the operator of the *Veranda Park News* \$180,000 under a Florida statute that protects homeowners who petition regarding their homeowners' associations.

Florida Circuit Court Judge George Sprinkle entered a default judgment against Veranda Partners, LLC, in favor of *News* operator Larry Giles.

### FIRST AMENDMENT

The *News* is an online publication about issues in Veranda Park, an Orlando development where Giles has a house.

According to Giles' suit, the *News* "was an attempt to petition public officials and institutions to take action regarding matters of political and public importance" to the community.

Veranda Partners, a real estate developer with a controlling interest in Veranda Park, initially sued Giles after he published allegedly defamatory

statements saying the company misspent homeowners' association dues, unfairly enriched itself by changing landscaping, and partnered with the city of Orlando to gain a business advantage.

Giles counterclaimed that the suit was unlawful under Florida's anti-SLAPP statute because it intended to stop him from petitioning.

The judge ruled that Giles was entitled to triple his attorneys' fees, based on Florida's strong anti-SLAPP statute.

Source: *Citizen Media Law Project*

## Court holds White House visitor records public

WASHINGTON – A federal court issued five decisions ordering the Secret Service to search its computers for records related to lobbyist Jack Abramoff's visits to the White House.

Two open-government groups filed FOIA requests for White House visitor records in 2006.

The Secret Service gave Judicial Watch some documents, but Judicial Watch argued in the U.S. District Court for the District of Columbia that the disclosed documents were inadequate.

The Citizens for Responsibility and Ethics in Washington also complained that disclosures were inadequate after it requested documents on White House

visits from the Department of Homeland Security.

The court also held "sensitive security records" – created when a background check on a White House visitor turns up questionable information prompting Secret Service officers to investigate – are not exempt from FOIA requests.

The Secret Service and DHS both argued that even confirming or denying the records existed would reveal compromising information.

"The Court is not convinced that the information plaintiff primarily seeks – the name of a visitor, the dates and times

of his visits, and the person(s) visited – would allow even the most dedicated would-be criminal to discern what visitor characteristics trigger" a check, wrote Judge Royce Lamberth.

CREW also sued the National Archives and Records Administration for improperly handling a FOIA request on preservation and

destruction of White House visitor records, but Judge Reggie B. Walton said many of the requested documents were exempt under FOIA.

Source: *The Reporters Committee for Freedom of the Press*

### FREEDOM OF INFORMATION

## USDA official refuses to be videotaped

LEE COUNTY – A meeting of the Charlotte County "Iguana Advisory" board was cut short when a United States Department of Agriculture representative refused to be videotaped.

Parker Hall said he could not speak about the program while being filmed.

"I know I'm a pain in the rear end, but if we're going to be filmed I have to get permission through our legislative public

### ACCESS MEETINGS

affairs office for you to film it," said Hall, according to the *Boca Beacon*.

Board member Tony Ackerman then asked whether the *Beacon* reporter could be ejected from the meeting. Charlotte County Public Works representative Tara Musselman informed Ackerman that the reporter had a right to be present.

Although reasonable rules ensuring orderly behavior are appropriate, it is unreasonable to prohibit "the use of nondisruptive or silent tape recording devices," according to the 2008

*Government-in-the-Sunshine Manual*.

Board chairperson Lyman Randall, however, compromised by holding a closed meeting after the scheduled meeting and relaying what was discussed.

The *Beacon* contacted the USDA after the meeting and was informed that no USDA policy prohibited employees from being filmed or photographed.

The "Iguana Advisory" board discusses capturing iguanas in Charlotte County.

Source: *Boca Beacon and the Government-in-the-Sunshine Manual*

## Stadium group vows to operate in sunshine

PINELLAS COUNTY – A group created to search for a new stadium for the Tampa Bay Rays has agreed to open its discussions, meetings, e-mails and other documents to public review.

The 11-member group agreed to solicit public input at some meetings and hold public forums in order to combat criticism that it does not represent the interests of Tampa Bay residents, according to Progress Energy Florida CEO Jeff Lyash.

The group also will make its materials and meetings available to the public because it ultimately reports to public officials. It was created at the request of St. Petersburg Mayor Rick Baker.

Some group members expressed concern about complying with the Public

Records and Open Meetings Laws. The members questioned making discussions about finding corporate support and about specific potential sites public too soon in the process.

Other members expressed surprise at Florida's stringent Public Records and Open Meetings laws. "Are you serious?" Sembler Co. Chief Executive Craig Sher asked the stadium group's attorney, Charlie Harris, according to the *St. Petersburg Times*.

Although the group cannot determine if or where a new stadium will be built, it will have influence over any decision making.

Rays principal owner Stuart Sternberg indicated he would defer to the group.

"We could play on the middle of the bay on an island if they think it's the best idea," said Sternberg, according to the *Times*.

Source: *St. Petersburg Times*

## Commissioner calls Open Meetings Law "garbage"

PONTE VEDRA – An outgoing St. Johns County Commissioner slammed the Open Meetings law during discussions to support a resolution to amend the Florida Constitution to make state legislators operate under the law.

Ben Rich originally supported extending the law, saying it was "a slap to the face" of Tallahassee by making state legislators contend with the "kind of garbage" local government does, according to *The Beaches Leader*.

Rich, now against the resolution, said the Open Meetings Law "automatically

suspends the rights of people to talk" and is like laws "maybe in one of the Middle Eastern Islamic countries," according to *The Leader*.

No vote was taken on the resolution, though the commissioners expressed their opinions.

The state's Commission on Open Government, which Gov. Charlie Crist created in part to evaluate Open Meetings Law recommendations, is slated to report findings on the resolution on Dec. 31.

Source: *The Beaches Leader*

## Union sues school board

NAPLES – The Collier County School Board and three board members were sued for violating the Open Meetings Law by holding secret meetings to fire then-Superintendent Ray Baker.

Teamsters Local 79 and Collier County school bus driver Charlotte Locke claim phone records show board chairperson Linda Abbott and board member Richard Calabrese contacted current Superintendent Dennis Thompson about the position before the board voted 3-2 to terminate Baker and discuss the position with Thompson.

The suit also alleges the members, including board member Steve Donovan, secretly talked with each other about hiring Thompson.

No other candidates were interviewed for the position.

"Our research shows this decision was made ahead of time. This clearly offends the Sunshine Law," said Mark Richard, the attorney representing the union and Locke, according to the *Naples Daily News*.

The school board's attorney dismissed the suit as an attempt to harass Thompson. "It's kind of a nutty tactic, and we expect to dispose of it pretty easily," said Richard Withers, according to the *News*.

Baker also sued the board in late 2007 for violating the Open Meetings Law. That suit was settled in May 2008.

Source: *Naples Daily News*; also see *The Brechner Report Jul. 2008 issue*

## Board meetings made public

PENSACOLA – The City Council unanimously voted to require a board of trustees to hear public comment at all meetings after the city attorney advised it to do so.

City Attorney Rusty Wells wrote to the attorney for the Community Maritime Park Associates Board of Trustees, Ed Fleming, to tell him the CMPA should allow public comments at the meetings.

The CMPA chairperson originally said he had no interest in hearing the public.

Chairperson Lacey Collier's comments did not sit well with some council members. "We can spend \$40 million of public money on the park and have the audacity to say you can't have an open forum?" asked member John Jerrals, according to the *Pensacola News Journal*.

Community members also urged the Council to make CMPA meetings public. The CMPA board is "working for the citizens and not the other way around," said Deborah Nelson, the president of the League of Women Voters of the Pensacola Bay Area, according to the *Journal*.

"The Community Maritime Park board will be a board forever, as long as there is a Maritime Park, which is a public park. And there should be an open forum for the public when they're doing business," said council member Jewel Cannada-Wynn, according to the *Journal*.

Collier said the City Council's decision was "no big deal" and that the CMPA would "probably adopt the same procedures as the city uses," according to the *Journal*.

Source: *Pensacola News Journal*

## House passes libel tourism bill

WASHINGTON – The House of Representatives unanimously passed a bill to prohibit U.S. courts from enforcing foreign libel judgments that conflict with the First Amendment.

The “libel tourism” bill protects American writers sued for defamation in countries with lesser libel law protections.

The bill “is a benchmark,” said James Park, counsel for Rep. Steven Cohen (D-Tenn.), who introduced the bill, according to *The Reporters Committee for Freedom of the Press*.

The bill was introduced after Saudi Arabian businessperson Khalid bin Mahfouz sued American author Rachel Ehrenfeld for alleged libel in her book

“Funding Evil: How Terrorism is Financed and How to Stop It.” Ehrenfeld lost.

“As our world becomes more and more interconnected, we need new laws to ensure that Americans’ First Amendment rights won’t be hindered by more restrictive, foreign mandates,” said Cohen in a press statement.

Prior to the introduction of the “libel tourism” bill, the House and Senate both introduced the Free Speech Protection Act of 2008, which gave losing defendants a federal cause of action when the judgment violates the First Amendment. The FSPA is still under consideration.

Source: *The Reporters Committee for Freedom of the Press*

## Attorneys sue to stop online publication of sales data

BROWARD – The law firm of Jones Day sued to prevent a residential sales Web site from publishing its attorneys’ names, photographs, and links to their law firm Web site biographies.

The site, Blockshopper.com, provides sales information for professionals’ homes in south Florida and a handful of cities nationwide. No Florida attorneys have sued yet.

Jones Day, which has an office in Chicago, sued Blockshopper.com for service mark infringement in the U.S. District Court for the Northern District of

Illinois after two of its attorneys’ home sales were covered on the site. The suit claims the site deceives users into thinking Jones Day is “source or origin of the services provided or offered for sale.”

The firm also accused Blockshopper of federal false designation of origin and unfair business practices under the Illinois Uniform Deceptive Trade Practices Act.

Jones Day seeks an injunction, damages, and attorneys’ fees. It offered to settle for \$10,000 if Blockshopper agreed to stop reporting on Jones Day’s employees. Blockshopper declined.

“If we don’t fight it, Jones Day could do this to any news organization or any blog. You would completely throttle the Internet if you required online journalists and bloggers to get permission before linking,” said Blockshopper president Brian Timpone, according to the *Broward Daily Business Review*.

Even though the sales information is public, putting it on Blockshopper “was somewhat disturbing because now if you Google me in Chicago, this is one of the first things that comes up,” said Mark Silberman, an attorney with Chicago’s Duane Morris, whose information was also posted, according to the *Review*.

Attorneys at the law firms of Bryan Cave and Skadden Arps Slate Meagher & Flom also had their information posted on Blockshopper.

Source: *Broward Daily Business Review*

## Hatfill moves to dismiss Locy appeal

WASHINGTON – Steven Hatfill, a former Army scientist who the government investigated in the 2001 anthrax attacks, moved to dismiss a contempt order appeal by *USA Today* reporter Toni Locy.

Locy was held in contempt for refusing to disclose confidential sources when she was subpoenaed in Hatfill’s Privacy Act suit against the government.

Hatfill claimed that the government violated the Act by telling the press he was a “person of interest” in the attacks that killed five people and injured 17.

After Locy was held in contempt, she immediately appealed the order, but an opinion was never issued.

## REPORTER’S PRIVILEGE

While waiting for an opinion, Hatfill and the government settled the suit for \$5.8 million, and Hatfill’s name was cleared.

Assuming the court dismisses Locy’s appeal, Hatfill’s motion requests the district court to require Locy to pay his attorney’s fees.

Under U.S. District Judge Reggie Walton’s contempt order, Locy already must pay sanctions of up to \$5,000 per day. The order also stipulated that neither Locy’s employer, *USA Today*, nor Gannett could help her pay the fines.

While the appeal is pending, Locy has not had to pay any contempt sanctions yet.

“Judge Walton’s contempt order would’ve wrecked my retirement. But Hatfill’s legal bills would destroy me,” said Locy, according to *The Reporters Committee for Freedom of the Press*.

Source: *The Reporters Committee for Freedom of the Press*; also see *The Brechner Report June 2008 issue*

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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)

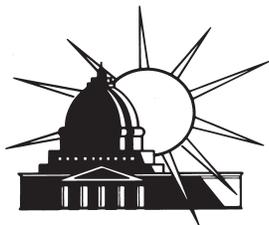
Sandra F. Chance, J.D., Exec. Director/Exec. Editor  
Kearston Wesner, Editor  
Alana Kolifrath, Production Coordinator  
Alison Parker, Production Assistant

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University of Florida  
Brechner Center for Freedom of Information  
3208 Weimer Hall, P.O. Box 118400  
Gainesville, FL 32611

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## Public records vital to investigation of brokers

For years, rogue mortgage brokers, many licensed by the state of Florida despite criminal backgrounds, preyed on investors. They bilked the young and old, the savvy and novice. Then they did it again. The state of Florida, the industry watchdog, did not stop them.

Forty-eight years after Florida became the first state in the country to regulate mortgage brokers, the state's screening process had filled with holes.

This year, in an extraordinary series built largely from documents and databases obtained through Florida Chapter 119 and federal FOIA requests, *The Miami Herald* pierced this veil and pointed the way to reform.

*Borrowers Betrayed*, a three-part series that began in July, revealed that more than 10,000 people with criminal records were granted licenses to work in Florida's mortgage industry this decade. Of those, more than 4,000 were licensed despite committing crimes state law specifically required regulators to screen.

After slipping through the cracks amid the state's historic housing boom, those criminals went on to commit nearly \$85 million in mortgage fraud. Victims lost homes, fortunes and trust in government in a state with the country's highest rate of mortgage fraud.

"This is a classic public records story," said Michael Sallah, *The Herald's* Pulitzer-Prize winning investigations editor who led the project with reporters Rob Barry, Jack Dolan and Matthew Haggman. "There were consequences, clearly, to allowing criminals to have mortgage brokers' licenses."

Finding those consequences required detailed analysis of key databases – one after another until *The Herald* was able to fully see how the state had so significantly dropped its guard.

First, the newspaper obtained a database of licensed mortgage brokers and lenders through a Chapter 119 request to the Florida Office of Financial Regulation. Then *The Herald* began running the brokers' names through criminal databases, including:

- **The Florida Department of Corrections**

Searching this list found some 3,000 hits of brokers who had been in the state prison system for convictions.



Ronnie Greene

- **The Florida Department of Law Enforcement**

This database, which includes a fuller list of criminals than the DOC, posed a challenge to *The Herald*.

Running the names of all brokers through FDLE would have cost millions of dollars, as individual searches cost \$23. Instead, the newspaper filed a Chapter 119 request for the FDLE to conduct a study to detail the number of brokers with criminal convictions – but not include their names. This list found an additional 7,000 hits.

"Without that, I don't even think we would have a project," Sallah said. "At the end of the day, we found over 10,000 mortgage professionals with criminal histories."

Though the FDLE run did not include names, the newspaper was able to identify individual brokers through other public records it had obtained. Then the reporters launched other layers of research – searching the federal PACER system for civil cases against brokers, for instance, and heading to courthouses and police departments to pull individual case files. They sat down with dozens of victims and reached crooked brokers.

Dolan, Barry and Haggman's legwork found eye-opening case studies. One broker was licensed despite a conviction for cocaine trafficking and a police report that said he carried a small arsenal of assault rifles. Given a green light to sell mortgages, the broker fleeced 30 people and arranged nearly \$3 million in fraudulent loans from Miami to Tampa. Licensed brokers stole Social Security numbers, bank account information, and even homes.

The newspaper also filed Chapter 119 requests for e-mails of top state regulators. The e-mails revealed the public officials paid to protect consumers had actually opposed tougher enforcement.

The case studies, victim stories and pattern of enforcement breakdowns formed one compelling whole that triggered an immediate outcry for change.

Ultimately, Florida's top mortgage regulator stepped down. A state audit affirmed the newspaper's findings. And a move is afoot to rebuild a victims' fund that had simply gone to waste.

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Ronnie Greene, *Urban Affairs Editor and longtime investigative reporter with The Miami Herald, authored the nonfiction book Night Fire: Big Oil, Poison Air, and Margie Richard's Fight to Save Her Town (HarperCollins/Amistad 2008).*