

---

# THE BRECHNER REPORT

---

Volume 33, Number 9 ■ A monthly report of mass media law in Florida  
Published by The Brechner Center for Freedom of Information ■ College of Journalism and Communications ■ University of Florida

September 2009

## NCAA documents ruled public

TALLAHASSEE – A Circuit Court judge has ruled that NCAA documents related to alleged cheating among dozens of Florida State University athletes are public records. *The Associated Press* and more than a dozen other Florida news organizations filed suit seeking the records.

A transcript of an October 2008 hearing is at the center of the case, with the transcript being viewed by FSU and its lawyers through a secure NCAA Web site, according to the *Orlando Sentinel*. The NCAA, a private organization, argued that it was not subject to Florida's Public Records Law and that FSU was never in possession of the records.

Judge John C. Cooper, however, ruled

that viewing documents on the Web site provided by the NCAA was equivalent to receiving a paper copy. "The NCAA's position is clearly contrary to the broad interpretation given to the definition of public records in Florida courts and legislative language," Cooper said, according to the *Orlando Sentinel*. The NCAA is expected to appeal the ruling to the First District Court of Appeal.

The NCAA's investigation has been appealed by FSU, who could be forced to vacate victories in 10 sports, including 14 wins by football coach Bobby Bowden. The case involved 61 student-athletes who reportedly cheated.

Source: *Orlando Sentinel*

ACCESS  
RECORDS

## Additional e-mails released after search of Sansom's BlackBerry

TALLAHASSEE – E-mails not released by Northwest Florida State College as part of a public records request were recovered as part of a criminal investigation into the dealings of ousted House Speaker Ray Sansom and fired college President Bob Richburg.

The e-mails were released to Leon County State Attorney Willie Meggs, but were not released to *The Palm Beach Post* in November when the newspaper filed a public records request for "all communications between Richburg and Sansom from 2007 and 2008," according to the newspaper. The e-mails discuss plans for building a private jet hangar with \$6 million in state money.

Planning documents and e-mails obtained through public records link Sansom, Richburg and developer Jay Odom to the project.

In one July 2007 e-mail obtained by *The Palm Beach Post*, Richburg wrote that he and Odom agreed that Sansom was "the

king pin" in the hangar project.

Many of the newly released e-mails were recovered by state investigators from Richburg's college-issued BlackBerry. The State Attorney's Office also recovered e-mails sent by and written to Sansom that House officials had previously claimed did not exist.

The recovery of the e-mails revives the controversy over the e-mail retention policy for state lawmakers, which is less strict than the requirements imposed by the legislature on state agencies, local governments and the governor's office.

Meggs' investigation has revealed at least 18 private e-mail accounts, including two for Sansom and one for Jill Chamberlin, who serves as the House speaker's communications director.

Both Sansom and Richburg were indicted in April on charges of official misconduct and perjury.

Source: *The Palm Beach Post* and *Northwest Florida Daily News*

## Judge reverses prior restraint

HILLSBOROUGH COUNTY – Hillsborough County Circuit Judge Emmet Battles vacated an order barring the local media from publishing stories about statements made by four male teenage students accused of sexually assaulting a classmate.

One day earlier, the judge ordered a story posted on *TBO.com* based on the statements to be taken down and prohibited further stories based on the information from being written. *The Tampa Tribune*, *TBO.com* and *News Channel 8* challenged the judge's order arguing that blocking the release of the information was a prior restraint on free speech. In vacating the order, Battles said that the statements, contained in the court file of the case, were lawfully obtained. Prosecutors have said the statements were inadvertently placed in the court file, according to *TBO.com*.

Source: [www.TBO.com](http://www.TBO.com)

## New e-mail rules in Bonita

BONITA SPRINGS – In a unanimous action, the city council set new rules requiring that all city employees and volunteers forward e-mails related to city business from personal e-mail accounts to the city's e-mail server.

The change came after the State Attorney's Office investigated a public records complaint against Councilwoman Janet Martin alleging she had not provided e-mails requested under the Public Records Law from her personal e-mail account. Martin's attorney said the councilwoman mistakenly deleted the e-mails, but had since recovered them, according to the *Naples Daily News*.

Source: *Naples Daily News*

## Ex-employee alleges violations in Santa Rosa

SANTA ROSA COUNTY – The State Attorney’s Office for the 1<sup>st</sup> Judicial Circuit is reviewing several complaints of Sunshine Law violations by county commissioners raised by a former assistant public information officer and two county residents.

The State Attorney’s Office has said the inquiry is considered a “review,” not an “investigation.” The office is also looking into alleged violations by Santa Rosa County’s economic development council, according to *Northwest Florida*

*Daily News*.

Romi White, the assistant public information officer from June 2006 to May 2007, filed several of the complaints.

White alleged she was directed by a county commissioner to stop using her county e-mail when dealing with a political action committee lobbying the commission and that the commission held at least one unadvertised meeting at which no minutes were taken to discuss how they would vote on a hiring freeze at an upcoming regular meeting.

Former Santa Rosa county commissioner Tom Stewart told the *Northwest Florida Daily News* that White’s complaints were meritless and a result of White being passed over for a promotion.

Santa Rosa residents Alan Isaacson and Jerry Couey have also filed several complaints with the State Attorney’s Office regarding Sunshine Law violations by the commission related to the purchase of land for an industrial park.

Source: [www.nwfdailynews.com](http://www.nwfdailynews.com)

## City notices yearly goal planning meetings but minutes missing

PANAMA CITY – Officials participating in a yearly meeting to discuss future plans for the city, including the city’s budget and water system, may have violated Florida’s Sunshine Law by not taking minutes at the meeting.

At the yearly meetings, city officials meet to discuss goals for improving the city in the upcoming 12 to 24 months.

This year’s June meeting was properly noticed, but minutes of the meeting were not taken and have not been taken at such meetings in previous years, according to the *News-Herald*.

City Clerk Terri Lillard said minutes

were not needed because no action was taken. The meeting was attended by the five city commissioners, city staff members, and a third-party “facilitator.”

According to Florida’s Sunshine Law, minutes must be taken

at meetings where two or more board or commission members meet to discuss issues that could come before them in the future.

City officials have said the violation was not intentional and that they will work to correct it, according to the newspaper.

Source: *News-Herald*

**ACCESS  
MEETINGS**

## REPORTER’S PRIVILEGE

### Federal judge rules in favor of Naples reporter called to testify

NAPLES – A federal judge agreed that the reporter’s privilege should apply to a *Naples Daily News* reporter who was subpoenaed to testify in a lawsuit brought by one of the failed candidates for Collier County sheriff.

Reporter Ryan Mills was subpoenaed to testify in a lawsuit brought by Vinny Angiolillo against Collier County Sheriff’s Office and the current sheriff. Angiolillo alleges that he was illegally arrested, falsely imprisoned and discredited as a candidate.

In a motion to quash the subpoena, Deanna K. Shullman, an attorney representing the newspaper, wrote

that Angiolillo sought details from conversations the reporter had with the former Sheriff’s Office spokeswoman in which the spokeswoman alleged there had been improper campaigning at the Sheriff’s Office, according to *The Naples Daily News*.

U.S. District Judge Sheri Polster Chappell granted the motion, stating that Mills was “simply gathering news to report on the plaintiff’s case” and that there was no evidence the information sought could not be obtained from another source, according to the newspaper.

Source: *The Naples Daily News*

## Hillsborough launches virtual meetings plan

HILLSBOROUGH COUNTY – The residents of Hillsborough County no longer have to be present at county budget meetings for their questions and comments to be heard thanks to a county initiative allowing for “virtual town hall” events, according to *The Tampa Tribune*.

During the meetings to discuss the fiscal 2010 budget, residents can watch the hearings on the county’s

**NEW  
TECHNOLOGY**

cable television station (HTV) or online streaming video. They can address questions or comments to commissioners via phone, e-mail or video recording using YouTube.

Commissioners make an effort to answer the questions in real time, according to *The Tampa Tribune*.

“It allows people to participate in county government from the comfort of their homes,” said county communications director Lori Hudson, according to the newspaper. “No more driving downtown or driving to some location.”

The commission held the first of four budget hearings using the technology in June. The virtual features can be accessed through the county’s Web site at <http://www.hillsboroughcounty.org>.

Source: *The Tampa Tribune* and <http://www.hillsboroughcounty.org>

## Apple delays release of iPod safety records

SEATTLE – A Seattle television station's request for records related to iPods catching fire and overheating was delayed seven months by Apple attorneys, who filed multiple exemption requests.

Amy Clancy, consumer investigator for KIRO 7, had filed a Freedom of Information Act request with the Consumer Product Safety Commission (CPSC) for all complaints related to burns and fires involving iPods. The CPSC is a federal agency perhaps best known for issuing recalls of unsafe consumer products.

Months later and over the objection of Apple attorneys, the CPSC released more than 800 pages of records containing reports of cases where iPods have caught fire, smoked or burned their owners, according to a report from KIRO 7 Eyewitness News.

The documents reveal that although the CPSC determined the risk of injury is very low, it did notify Apple of the company's obligation to "inform the Commission of defects associated with this product which could create substantial product hazard" under federal law.

Source: [www.kiro7.com](http://www.kiro7.com)

## White House visitor logs still secret

WASHINGTON – The Obama administration has refused several Freedom of Information Act requests for the lists of visitors to the White House.

Among the requests denied is *MSNBC.com*'s request for a list of all visitors to the White House since the president took office in January.

Also, several requests from the Citizens for Responsibility and Ethics in Washington (CREW), a non-profit organization, for lists of coal industry executives and health care industry executives who have visited the White House were initially denied.

CREW has filed at least two suits against the Department of Homeland Security, which houses the Secret Service, the office that maintains the visitor lists

After CREW announced it was filing suit for the list of health care executives, the White House released a partial list that included the names of the visitors and the dates, but not titles or employers, according to *The Associated Press*.

The Department of Homeland Security has argued that the records are protected under the Presidential Records Act.

The Obama administration's position echoes the arguments made by the Bush administration in refusing to release visitor lists.

A separate lawsuit brought by CREW against DHS seeking visitor logs from the Bush administration is pending in the U.S. Court of Appeals in Washington, D.C.

Source: [www.abcnews.com](http://www.abcnews.com) and *The Associated Press*

## Court rules clemency records open

WASHINGTON – A federal district court judge has ruled that the names of individuals who unsuccessfully applied for executive clemency from President George W. Bush are not exempt from the Freedom of Information Act.

The Office of the Pardon Attorney in the Department of Justice had refused to provide George Lardner with the names, prompting his lawsuit. Lardner is working

on a book about presidential pardon power, according to his complaint.

The Pardon Office unsuccessfully argued that the FOIA exemptions for personal privacy, medical records and law enforcement records applied to Lardner's request.

Lardner first submitted his request in April 2008.

Source: [www.citizen.org](http://www.citizen.org)

## NEWSGATHERING

### Death row interview ban upheld

CHICAGO – The U.S. Court of Appeals for the 7<sup>th</sup> Circuit upheld a regulation that prohibits prisoners on death row in the federal prison system from meeting with reporters.

David Hammer, a death row inmate, sued Bureau of Prisons officials after being denied interviews with the media. Hammer argued that the rule was a content regulation prohibited under the First Amendment.

The regulation was put in place by former Attorney General John Ashcroft and former bureau director Kathleen Hawk-Sawyer after Timothy McVeigh's interview on *60 Minutes* in March 2000.

In *Hammer v. Ashcroft*, Chief Judge Frank Easterbrook wrote the majority opinion relying on *Pell v. Procunier*, which established that the media has no greater constitutional right of access to prisons or inmates than the general public. *Hammer* differed from *Pell*, however,

because in this case it was the prisoner, not the reporter, asserting a right to interview, according to the *Reporters Committee for Freedom of the Press*.

The majority opinion stated that the regulation was "reasonably related to legitimate security interests" and that it prevented prisoners from becoming a "celebrity," according to the *RCFP*.

The opinion also stated that Hammer could speak to the press via phone or mail.

In separate dissents, judges Llana Rovner and Diane Wood criticized the majority for basing their opinion on unsupported assumptions.

Rovner wrote that the majority opinion makes the "astonishing proposition that the government may limit a prisoner's access to the media based on its distaste for the anticipated outcome of the prisoner's speech."

Source: *RCFP*

### 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  
Adrianna C. Rodriguez, Editor  
Christina M. Locke, Editor  
Alana Kolifrath, Production Coordinator

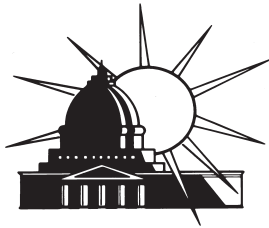
The *Brechner Report* is published 12 times a year under the auspices of the University of Florida Foundation. The *Brechner Report* is a joint effort of The Brechner Center for Freedom of Information, the University of Florida College of Journalism and Communications, the Florida Press Association, the Florida Association of Broadcasters, the Florida Society of Newspaper Editors and the Joseph L. Brechner Endowment.



# THE BRECHNER REPORT

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

September 2009



**UF** UNIVERSITY of  
FLORIDA

Non-Profit Organization  
U.S. POSTAGE  
PAID  
Permit No. 94  
Gainesville, FL

## Public records expose flaws in wetlands protection

The whole thing started with a call from a source about a government report.

That led to a series of award-winning stories in the *St. Petersburg Times* about why Florida was still losing wetlands despite federal and state laws that were supposed to protect them. Ultimately, that phone call led to the publication this spring of our book, *Paving Paradise: Florida's Vanishing Wetlands and the Failure of No Net Loss*. In between, we filed more than 20 Freedom of Information

Act requests with an alphabet soup of federal agencies. We also filed dozens of requests for records under Florida's Government-in-the-Sunshine Law. We dug through academic studies, court documents and bankruptcy records in search of answers.

### The Back Page

By Craig Pittman &

Matthew Waite

Research Council, an arm of the National Academies of Science, had produced a startling report. It said the nation's system for protecting wetlands was badly broken. The agency in charge of protecting swamps, bogs and marshes, the U.S. Army Corps of Engineers, wasn't bothering to keep track of what it was doing, the report said.

When we found out the Corps issues more permits for wetlands destruction in Florida than in any other state, we knew we had a story (although it took us two years and a change of editors to convince anyone else). We started off with a FOIA request. We had learned that each permit is supposed to have a latitude and longitude point showing where the wetlands were located. We figured if we got the permitting database, we could stitch together a map showing where they had been destroyed.

Persuading the Corps to give us the database took a year, and when we finally convinced them to hand it over, it was worthless. Whole sections were blank. The fields that did contain geographical data were full of flaws. Some of the points were out in the Gulf of Mexico – which may be wet, but it is not a wetland.

So to determine how many acres of wetlands had been paved



Craig Pittman



Matthew Waite

over, we turned to analyzing satellite imagery. Ten months of eye-burning misery later, we had an answer: 84,000 acres of land that had been swamps, bogs and marshes in 1990 had been turned into houses, stores and parking lots by 2003.

The Corps couldn't even tell us how many permits they had approved or denied. They were too busy cranking out permits to keep track. We found out they produced a paper report every three months – they called them “quarterlies” – that contained that information. All the quarterlies were jammed into one poor woman's desk, so we basically submitted a FOIA request for her desk. Once we had it, we compiled the information into a spreadsheet. That told us that between 1999 and 2003 the Corps had approved 12,000 permits to destroy wetlands in Florida and denied just one.

We sought documents from the Environmental Protection Agency, the U.S. Fish and Wildlife Service and the Federal Emergency Management Agency. We traveled the state to dig through documents belonging to the Florida Department of Transportation to show how it was wasting millions in taxpayer dollars on failed attempts at making up for destroying wetlands with new roads.

At one point, we interviewed a guy named Joe Burns who served as the Corps of Engineers' liaison with Congress. He said he frequently heard from congressmen and senators inquiring about why wetland permits hadn't been issued yet. In fact, he said, he got so many letters, calls and e-mails from congressmen that he created a database to keep track. While the interview was still going on, we typed up a FOIA request for that database, too. That led us to further FOIA requests for the records of those congressional contacts – many of them made at the behest of campaign contributors who wanted favors.

Seeing what we had found, plenty of government employees, went on the record to tell us how badly the nation's wetlands protection system is broken.

*Craig Pittman and Matthew Waite are staff writers at the St. Petersburg Times. They have won several state and national awards for their stories on Florida's vanishing wetlands.*