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# THE BRECHNER REPORT

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## Audit reveals resistance to school record requests

ORLANDO – An audit of transparency in Florida school districts shows that the average citizen might not have the time or money to take advantage of his right to public records.

Nonprofit group Sunshine Review, which ranks openness of government, conducted the review as part of its “Back-to-School” guide for parents.

The requests were sent to Florida school districts seeking records on relationships between the districts and their lobbyists. It is common practice for schools to utilize lobbyists.

One district, Duval County Public

Schools, at first denied any relationship with lobbyists despite documents to the contrary. Duval later complied with the request.

### ACCESS RECORDS

that was difficult to understand.

Cost was another obstacle that would likely deter the average citizen from looking into lobbyist relationships. Sarasota County Schools, for example, charged the Sunshine Review \$2,954.25

Other districts complied but provided information

to fulfill the public records request.

While some districts, such as Marion County, were downright hostile to requesters, others provided exemplary responses, according to Diana Lopez, Sunshine Review senior editor of government lobbying.

Orange County Public Schools and Citrus County Schools were among those Lopez pointed to as maintaining open communication and providing thorough response packages.

The Back-to-School guide is available online at [www.sunshinereview.org](http://www.sunshinereview.org).

*Source: Orlando Sentinel*

## Board resolution silences controversial member

ST. AUGUSTINE BEACH – The Anastasia Mosquito Control District voted to censure one of its members, passing a resolution prohibiting him from speaking in his official capacity at public meetings for six months. Less than two weeks later, the district modified its censure to allow John Sundeman to speak at public meetings, but still placing limits on his speech.

The district contended that Sundeman publicly ridiculed staff, board members

and others, potentially exposing it to hostile work environment lawsuits. “We’re not going to let him continue to abuse people,” said Col. Ron Radford, AMCD board member.

The dispute between Sundeman and his colleagues appears to stem from the district’s plan to move its headquarters, a move that will cost more than \$3 million

### FIRST AMENDMENT

and one that Sundeman has objected to.

The district’s new resolution allows Sundeman to speak at public meetings, but still prohibits him from speech that is “disparaging, derogatory, belittling, ridiculing, demeaning, or is pejorative.”

“My olive branch is that I will do what they request,” Sundeman said. “There will be no more (critical) letters identifying me as a commissioner. I’ll write as a private citizen.”

*Source: The St. Augustine Record*

## State Attorney: No criminal charges for TEAM

MILTON – A Santa Rosa County economic development council operated outside of the Sunshine and Public Records laws for years, according to a State Attorney’s Office investigation.

However, criminal charges will not be pursued because the violations were unintentional and “no public purpose would be achieved by prosecution at this time,” according to an investigative report.

The investigation into TEAM Santa Rosa was prompted by citizen complaints, which also accused Santa Rosa County commissioners of violating

open government laws.

Investigators looked into the county’s controversial decision to buy 90 acres of land from developer Bill Pullum for \$3.18 million.

### ACCESS MEETINGS

a county commissioner, TEAM Santa Rosa’s executive director and a TEAM board member did not violate any laws, according to the report.

Other actions by commissioners,

A visit to Pullum’s private island in Honduras by

including an e-mail discussion between board commissioners about neighboring Escambia County’s withdrawal from a multi-county transportation authority, did “not rise to the level of a violation of the Sunshine Law,” according to the report.

The State Attorney’s Office determined that some of the incidents it investigated might result in ethics violations. It recommended that TEAM designate a public records custodian and participate in open government law training.

*Source: Northwest Florida Daily News*

## Sheriff issues short-lived ban on notifications to TV station

TAMPA – A veteran reporter for CBS affiliate WTSP-Ch. 10 in Tampa was cut off from news conference notifications by the Hillsborough County Sheriff's Office, but a roundtable meeting apparently resolved the issue.

Sheriff David Gee's office sent a media alert about a news conference on allegations of police misconduct to Tampa-area media.

The alert stated that Channel 10 was not invited due to reporter Mike Deeson's "pattern of abusive conduct toward the sheriff's office and its employees, coupled with Channel 10's disregard for previous

complaints about Mr. Deeson's conduct."

"Am I aggressive, yes," Deeson said, according to the *Tampa Tribune*. "But I am not unethical."

Deeson felt that the shutout may have been due to his reporting, which has included stories about Gee's income and the construction of a wall around the sheriff's operation center costing \$675,000.

The day after the shutout, Channel 10 management met with the sheriff's office. Sheriff Gee agreed to resume contact with the station after that meeting.

*Source: The Tampa Tribune*

## High court blocks name release

SEATTLE – The U.S. Supreme Court has blocked the release of the names of Washington state voters who signed petitions to repeal a law that expanded the rights of same-sex couples.

The Court kept in place an injunction against the release of more than 120,000 names until the parties could file new motions. The vote was set for Nov. 3.

The group Protect Marriage Washington gathered the signatures so that a voter referendum could be placed on the ballot. This would give voters the opportunity to repeal the law passed by state lawmakers.

Protect Marriage Washington's attorney, James Bopp, said maintaining anonymity of voters would protect "the

right of citizens to be able to engage in political speech without the government requiring the public identification of people who engage in political speech."

Bopp also noted the potential for harassment of those who supported the referendum.

But the Washington Attorney General's Office, the Washington Coalition for Open Government and other groups seeking disclosure of the names argued that Washington's Public Records Act did not exempt petition signatures. Advocates for release of information also argued that the names are important information for voters.

*Source: The New York Times, Los Angeles Times*

## FOIA helps artists voice protests

WASHINGTON, D.C. – The National Security Archive has filed a series of Freedom of Information Act requests on behalf of a coalition of musicians seeking declassification of information regarding the use of music as an interrogation device at Guantanamo.

Based on already declassified reports and interviews of former detainees and guards, Britney Spears, Eminem and Bruce Springsteen are among the musicians whose music was used at the military prison in Cuba.

Songs such as the Barney theme song, the Meow Mix jingle and the Star Spangled Banner were also utilized.

The FOIA requests seek the names of all songs used since 2002 at Guantanamo.

"The fact that music I helped create was used in crimes against humanity sickens me," said former Rage Against the Machine band member Tom Morello. "We need to end torture and close Guantanamo now."

The National Security Archive filed the requests with the CIA, FBI and other agencies, seeking documentation regarding how particular music was chosen and what role the music played in interrogating detainees.

*Source: The Washington Post, National Security Archive*

## Judge throws out charges against Sansom

TALLAHASSEE – Charges of felony official misconduct against former House Speaker Ray Sansom, developer Jay Odom and former Northwest Florida State College president Bob Richburg have been dismissed.

In April, a grand jury indicted the men, with Sansom and Richburg also being accused of violating the spirit of the Sunshine Law during a meeting in Tallahassee.

The charges relate to a \$6-million project appropriated while Sansom was a legislator.

The money would have provided for a "joint-use" college airport facility that a grand jury said would have been an airplane hangar for Odom's business.

Sansom received a \$110,000 a year part-time job with the college

**ETHICS** after helping it receive millions in extra funding.

Leon County Circuit Judge Terry Lewis dismissed the major charges, except for a perjury charge against Sansom.

"[N]ot every wrongful conduct is a crime," Lewis wrote. "Sometimes the remedy for such conduct must be political rather than judicial. This is one of those situations."

Sansom's attorney said his client was "delighted" and that they "had maintained all along that you could not falsify the [state budget] and the judge agreed."

A panel of state lawmakers is investigating the case and has hired a special prosecutor to determine whether Sansom violated House rules. State Attorney Willie Meggs has appealed the dismissal of charges to the First District Court of Appeals.

*Source: The Miami Herald, Northwest Florida Daily News (Fort Walton Beach)*

## Board upset over shredding

BROOKSVILLE – Admissions documents that could have helped the Hernando County School Board defend a lawsuit were shredded, prompting an internal investigation by the board.

The lawsuit was filed by two students ordered to transfer from Nature Coast Technical, a magnet high school, for violating a residency policy. Only Hernando County residents are allowed to attend the school.

The school board learned that documents related to the case were shredded after receiving a letter from former Nature Coast principal Margaret “Tizzy” Schoelles, who was principal until June 30.

Schoelles denied any involvement in the shredding, which was discovered in August, explaining that she was the one who brought the issue to the board’s attention. Schoelles apparently left records in her office that she thought would be useful to her predecessor, but the documents were later shredded.

Interim Superintendent Sonya Jackson is investigating the matter.

“The people who are responsible need to be held accountable,” said school board member Sandra Nicholson. “You cannot shred documents. This is serious and it should be reported to the state.”

*Source: St. Petersburg Times, The Tampa Tribune*

## Media seeks access to Smart case

SALT LAKE CITY – Members of the Utah press want a federal judge to open sealed records in the case of the man accused of kidnapping Elizabeth Smart. Attorney Michael O’Brien argued that the public has a right of access to the filings in the kidnapping case of Brian David Mitchell, who is charged with abducting Smart from her home in 2002.

O’Brien also contends that the case docket is incomplete and does not reflect that some motions were ever filed. The media did not learn that some sealed motions were filed until they were referred to in another filing by federal prosecutors.

“Although the members of the public may not attend criminal proceedings in large numbers, the news media acts as the public’s surrogate in attending such proceedings and reporting to the public, thus educating the public,” O’Brien wrote.

Smart was discovered nine months after being taken from her home, accompanied by Mitchell and his wife, walking the streets of a Salt Lake City suburb.

The Utah news media in 2004 was successful in their bid to keep Mitchell’s competency proceedings open in the state court system. A federal grand jury has since indicted Mitchell and a new competency hearing is planned.

*Source: The Associated Press*

## COURTS

## Lawyer asks for 75 years of records

TAMPA – An attorney who requested St. Joseph’s Hospital records on “adverse incidents” since it opened in 1934 is facing objections from the hospital, who sued to limit the release of records.

Michael J. Trentalange, a medical malpractice attorney, said he requested the records because he expects to undergo a colonoscopy at the hospital.

Trentalange represents the widow of a man who died after a similar procedure at St. Joseph’s.

Trentalange’s request sheds light on the 2004, voter-approved amendment to the Florida constitution broadening patient access to medical records. The

Legislature’s subsequent attempt at scaling back the amendment and exempting most records was rejected by the Florida Supreme Court.

The hospital wants a Hillsborough circuit judge to limit the records to those involving death, disfigurement and other specified injuries. Trentalange has modified his request to only seek incidents since 2000.

St. Joseph’s also wants to prevent Trentalange from representing any malpractice plaintiffs who might use the records produced in response to his request.

*Source: The Associated Press*

## Baseball e-mails raise concerns

SARASOTA – E-mail correspondence among Sarasota County Commissioners related to a potential offer of \$41 million in taxpayer funds to the Baltimore Orioles could be the focus of an open government lawsuit. Attorney Andrea Mogensen, who represents two citizen groups, said her clients want to overturn Sarasota County’s contract with the Orioles, due in part to alleged Sunshine Law violations.

Sarasota eventually struck a deal with the Orioles to give \$31.2 million of taxpayer money in exchange for a spring training contract.

The e-mails at the focus of the inquiry include one from Commissioner Shannon Staub making a case for offering the team

\$41 million so the Orioles wouldn’t sign a contract with nearby Lee County. A few days after Staub’s e-mail, the Commission met and rejected the deal, but the meeting agenda didn’t reflect that a discussion of the contract was planned.

Staub said that she copied fellow commissioners on the e-mail, knowing that it would be posted to a county Web server. “The reason that I did so much and made it public record immediately was so the media could read it,” Staub said.

County officials said there was a rush due to fears that the team would sign with another community, resulting in the meeting agenda not being changed.

*Source: Manatee Herald Tribune*

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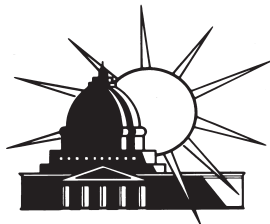
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## Florida newspapers unite to challenge NCAA secrecy

In this tough economic climate with shrinking resources, suggestions are growing that media companies consider what once was unthinkable, such as sharing news coverage. Several months ago in Florida, an unusual collaboration was forged among the state's media organizations. It resulted in a major public records legal victory, upheld by the 1<sup>st</sup> District Court of Appeal in early October.

The lawsuit had its beginnings in the academic cheating scandal involving 61 Florida State University athletes. In the course of the NCAA proceedings, a day-long hearing was held before an NCAA infractions committee to hear testimony from FSU officials before deciding penalties.

As the issue grew more contentious between the NCAA and FSU over the severity of the penalties, media coverage increased with questions about NCAA secrecy rules. FSU appealed the

### The Back Page

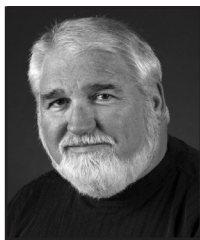
By Louis M. "Skip" Perez

*The Associated Press* and *Orlando Sentinel* formally requested documents from FSU officials relating to the investigation.

Of particular interest was whether the state's Public Records Law applied to a "read only" Web site created by the NCAA which gave FSU lawyers access to the penalty hearing transcript and other documents. NCAA lawyers argued there were no "records" since the material existed only on the secure confidential Web site. FSU lawyers also had signed strict confidentiality agreements.

After *The Ledger* made its public records request, I called our local counsel, Gregg Thomas, and corporate counsel, George Freeman of *The New York Times*, to explore how we might proceed after the denial. Thomas suggested a broad attack, so he and his colleagues at Thomas, LoCicero, and Bralow called Mike Glazer, lawyer for the *Tallahassee Democrat*, and they enlisted counterparts at 23 other media organizations across the state to join the lawsuit in Tallahassee circuit court

The lawsuit was filed in June, naming the NCAA, FSU and FSU law firm GrayRobinson. Florida Attorney General Bill McCollum joined the media effort with strongly worded support.



*Skip Perez*

And it didn't take long for FSU officials to respond. They too agreed the media and public should have access to the report on the NCAA confidential Web site. FSU's early position was that it was bound by an agreement it was required to sign by the NCAA.

In August, media lawyers Carol Jean LoCicero and Rachel Fugate argued the case before circuit Judge John Cooper. "You don't have to touch a piece of paper to receive a document," LoCicero said. Cooper ruled that the NCAA was in violation of the Public Records Law.

The NCAA promptly moved for a stay of the circuit court order until it could appeal to the 1<sup>st</sup> District Court of Appeal. In early October, the appeals court upheld Judge Cooper's ruling.

Following that appellate court ruling, FSU officials released the 684-page transcript of the NCAA Infractions Committee hearing a year earlier. It provided an unedited and detailed account into the normally secretive world of college sports, a major university and the powerful body whose job it is to keep college athletics honest.

It was the first time the NCAA had been required to disclose records of an investigative hearing in a Florida case and was a landmark ruling, said media lawyer Fugate.

Still, the NCAA was not finished. It appealed the ruling to the Florida Supreme Court, seeking a stay of its obligation to release the records. In late October, the state's highest court declined that request, but continues to consider whether a hearing is necessary. The NCAA then released the documents, which were essentially what FSU officials released several weeks earlier following the appellate court ruling. But the NCAA is pressing the Florida Supreme Court to review the case, which could provide impetus for similar actions by media groups in other states with strong public records laws. And in Florida, this area now seems especially fertile following the ruling.

Though the FSU case is the most timely and newsworthy, other Florida public colleges and universities have been the subject of NCAA investigations in recent years, or may be in the future. This strong ruling serves as a powerful precedent for future public records requests involving the NCAA and its oversight of college athletics in Florida, and perhaps the nation.

*Louis M. "Skip" Perez is Executive Editor of The Ledger and Senior Editor of The New York Times Regional Newspaper Group.*