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# THE BRECHNER REPORT

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## Florida Bar considers limits on citizen journalists

TALLAHASSEE – A proposed Florida Bar rule that would allow judges to ban certain types of journalists from using cameras, recording devices and cell phones in courtrooms has drawn objections from media and open government groups.

Proposed Rule 2.451 deals with electronic devices in the courtroom and

contains an exception for “professional journalists.” The definition of a professional journalist comes from the state’s shield law, which limits journalists to those paid by traditional media outlets.

### COURTS

The Florida Press Association, Florida First Amendment Foundation, Florida Association of Broadcasters and Reporters Committee

for Freedom of the Press objected to the proposed rule, worrying that it would exclude a large group of journalists such as freelancers, book authors, citizen bloggers and Web-based journalists.

Comments submitted to the bar will be reviewed by the subcommittee. No timeframe has been set for further consideration of the rule.

Source: *The Miami Herald*

## Capital reporters decry limits on access by new Gov. Rick Scott

TALLAHASSEE – Members of the capital press corps are concerned about new Gov. Rick Scott’s treatment of the press, voicing their concerns to the board of the Florida Society of News Editors.

Reporters complained that Scott excluded the press from events traditionally open, has been slow to respond to public records requests and has tried to hand pick reporters to cover events.

A post-inauguration reception at the state Capitol was limited to a select few reporters, with a pooled report to be released, according to Mary Ellen Klas of *The Miami Herald*. Klas said

that reporters never agreed to a pooling arrangement. Reporters also complained that records requests often went unanswered.

During an appearance at a meeting

### FIRST AMENDMENT

hosted by The Associated Press at the Capitol, Scott insisted that his administration had been transparent. He said that staffers were processing public records requests as quickly as possible.

Scott defended his mandate that agency heads refrain from speaking to the press, saying they need to focus on agency matters rather than give media interviews.

Source: *The Associated Press*

## AGO weighs in on status of notes

TALLAHASSEE – Handwritten notes were the subject of a recent advisory opinion from the Florida Attorney General’s Office. Venice City Manager Isaac D. Turner requested the AGO opinion after the media asked for notes he took in connection with a police chief’s resignation.

Turner took notes during interviews with police department personnel. He later “somewhat” discussed the interviews when briefing city council members on the issue, according to the *Sarasota Herald-Tribune*.

### ACCESS RECORDS

The AGO opinion states that “public employees’ notes to themselves which are designed for their own personal use in recollecting certain matters are not public records.” The opinion also cautioned

Turner that the longer the notes were kept, the more likely that they would be considered documents that would “perpetuate, communicate, or formalize knowledge.”

After the AGO opinion was handed down, Turner shredded his notes.

Source: *Sarasota Herald-Tribune*

## Media wins bid for access to witness list

ORLANDO – The *Orlando Sentinel* prevailed in its efforts to obtain the names of witnesses who would testify in the penalty phase of Casey Anthony’s murder trial.

Anthony, 24, is accused of killing her 2-year-old daughter in 2008. Her trial is set to begin in May. If Anthony is found guilty, a second phase of the trial would occur where jurors would recommend life in prison or the death penalty.

Chief Judge Belvin Perry denied the defense’s motion to keep the witness list sealed. Judge Perry rejected the argument that releasing the names would affect Anthony’s constitutional right to a fair trial.

“To the contrary, many potential penalty phase witnesses are presumably already known to the public at large and are already associated with this case,” Perry wrote in a four-page opinion. “Release of any known individual’s name could not possibly deprive the defendant of her fair trial rights.”

The list of witnesses released included family, friends, ex-boyfriends and others already associated with the case.

Source: *Orlando Sentinel*

## Plaintiffs in “Girls Gone Wild” suit get anonymity

ATLANTA – The 11<sup>th</sup> Circuit Court of Appeals has ruled that two of four plaintiffs in a lawsuit against “Girls Gone Wild” producer Joe Francis can remain anonymous.

The women were between the ages of 13 and 17 when they allege Francis exploited them by filming them in Panama City. They are now in their 20s and filed a civil lawsuit against Francis in 2008, using only their initials.

Federal trial Judge Richard Smoak

rejected the request to file anonymously, prompting an appeal to the 11<sup>th</sup> Circuit.

Attorneys for the plaintiffs argued that keeping their names private would protect them from unnecessary embarrassment and discrimination. Media attorneys argued that reporting and fact-checking would be inhibited if the plaintiffs remained anonymous.

A three-judge panel for the 11<sup>th</sup> Circuit ruled that the two plaintiffs who were filmed in sexual acts could remain

anonymous. The panel encouraged the trial court to reconsider the anonymity requests of the other two plaintiffs, who were filmed flashing their breasts in their car.

“The district court failed to give due consideration to the concerns the plaintiffs raised about being forced to maintain the suits in their own names,” Chief Judge Joel Dubina wrote in the opinion. “Justice should not carry such a high price.”

Source: *The Associated Press*

## Judge orders red light names released to paper

KENNETH CITY – A circuit judge has ordered Kenneth City and its red-light camera company to hand over names of violators to the *St. Petersburg Times*.

Kenneth City hired American Traffic Solutions Inc. to install and monitor red light cameras at three of its five intersections with traffic lights. ATS

would not release the information for fear of violating the federal Drivers Privacy Protection Act.

“There is . . . clear evidence that the law was not intended to shield people from public access to information about their

**ACCESS  
RECORDS**

traffic infractions,” Pinellas-Pasco Circuit

Judge Anthony Rondolino wrote in his ruling. Rondolino noted that the Drivers Privacy Protection Act specifically exempts information about

violations.

Source: *St. Petersburg Times*

## Activist sues Riviera Beach, alleges secret meeting

RIVIERA BEACH – Fane Lozman, vocal critic of the City of Riviera Beach, has filed another open government lawsuit against the city. The suit alleges the city council members violated the Open Meetings Law when they met in a closed meeting to discuss whether questions would be placed on a March ballot.

Lozman alleges the council met publicly nine days later and formally voted to place the questions on a March ballot. Lozman wants to block the questions from being placed on

**ACCESS  
MEETINGS**

the ballot.

City Attorney Pamala Ryan denied

a violation of the Open Meetings Law occurred, stating that discussions during the Jan. 10 meeting were related to pending litigation.

Lozman was recently awarded \$85,000 in legal fees after successfully suing the city for records of agenda review meetings.

Source: *The Palm Beach Post*

## Prosecutors: No case against Bert Fish board

DAYTONA BEACH – The State Attorney’s Office will not pursue charges against hospital board members who held 21 meetings improperly closed to the public. The five-month investigation by State Attorney R.J. Larizza resulted in a finding that Bert Fish Medical Center board members unintentionally violated the law.

“We were looking to see if these folks

knew they really shouldn’t be doing this – there was no evidence of that,” Larizza said. “There are (Sunshine Law) exemptions unique to hospital boards – it’s not cut and dried.”

During the board’s closed meetings, it voted to merge with Adventist Health System. It held a second set of meetings last year and again decided to merge with Adventist Health System.

Attorney Jon Kaney, who represents a nonprofit foundation challenging the merger, disagreed with Larizza’s determination. “We depend on that office to enforce the Sunshine Law,” Kaney said, according to *The Daytona Beach News-Journal*. “What I see is studied indifference (to the law).”

Source: *The Daytona Beach News-Journal*

## U.S. Supreme Court declines \$5M Fla. libel case

WASHINGTON – The U.S. Supreme Court has declined to hear the appeal of a \$5 million punitive damages case in a Florida defamation case. Dr. Samuel H. Sadow sued Lawnwood Medical Center, Inc. for slander.

A jury awarded Sadow \$5 million in

punitive damages based on the accusation that a hospital official had remarked that Sadow was “not qualified to perform surgery on a dog.” No compensatory damages were awarded.

Lawnwood appealed to the 4<sup>th</sup> District

**LIBEL**

Court of Appeal, who last summer upheld the award. Both the Florida Supreme Court and now the U.S. Supreme Court declined to hear the case.

Source: *The Associated Press*

## Rival sues for campaign libel

WEST PALM BEACH – A Palm Beach County commissioner is suing a former campaign rival for libel over a document distributed during the campaign. Commissioner Jess Santamaria alleges that the 118-page request for an investigation of Santamaria, sent to state and county officials and the media, contained defamatory statements that damaged his reputation.

Andy Schaller, a no party candidate, ran against Santamaria in the November election. In the inquiry request, Schaller questioned Santamaria's criminal background, among other issues. Schaller cited a 1991 felony conviction of Jesus R. Santamaria and asked "Does Santamaria have a felony record?" according to *The Palm Beach Post*. Santamaria has never been arrested and argues that the document falsely portrays him as having a criminal record.

Palm Beach County Inspector Sheryl Steckler conducted a three-month investigation following the inquiry request. She dismissed the allegations but noted that Santamaria improperly discarded monthly pocket calendars that should have been kept as public records.

Source: *The Palm Beach Post*

## House panel seeks FOIA info to gauge transparency efforts

WASHINGTON – The new leader of the House Oversight and Government Reform Committee wants details of every Freedom of Information Act (FOIA) request made by citizens, journalists, executives and others for the past five years.

Rep. Darrell Issa, R-Calif., requested the documents as part of an effort to gauge President Barack Obama's promise of increased governmental transparency.

The voluminous request—approximately 600,000 FOIA requests were made last year—was made in hopes of making sure that "all federal agencies respond in a timely, substantive and non-discriminatory manner."

If individuals did not receive the records as requested, Issa also requested correspondence between government officials and requesters.

Source: *The Associated Press*

## WSJ sues for Medicare data

ORLANDO – *The Wall Street Journal's* parent company is suing for access to Medicare information that has been kept private for the past 31 years.

In 1979, the American Medical Association won a federal lawsuit in Florida banning the release of how much Medicare funds individual doctors receive.

"There is no legally supportable justification for maintaining a sweeping and obsolete injunction that for over thirty years has prevented the American public from knowing the true extent of Medicare waste, abuse and fraud," Dow Jones &

Company, Inc. argued in its court filing.

The American Medical Association, however, still opposes the release of the information, fearing that the data would lead to misleading conclusions.

"Physicians who provide care to Medicare patients are already subject to widespread governmental oversight," AMA President Dr. Cecil Wilson said in a statement.

"These federal agencies and contractors have access to the full range of Medicare data and are aggressively ferreting out improper claims."

Source: *The Associated Press*

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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  
Christina M. Locke, J.D., Editor  
Alana Kolifrath, Production Coordinator  
Warren Tillery, Production Assistant

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Sunshine Week, a national initiative to promote a dialogue about the importance of open government and freedom of information is March 13-19, 2011. Show your support for open government by asking elected officials to sign the Brechner Center's Open Government Pledge.

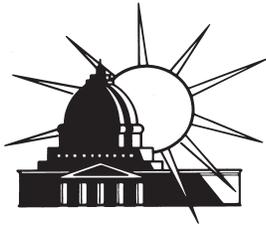
To learn more about the program and download the pledge, visit [www.brechner.org](http://www.brechner.org).

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

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## Transparency key when taxpayer money is at stake

A look at the recent Sunshine Law case against Sarasota County provides a window into the difficulties of preserving transparency when government activities are shielded from public view. Florida's Constitution and Sunshine Law give citizens access to the entire deliberative process of Florida government. Such access is critical when decisions are being made about the use of public funds. The process that led to Sarasota County's \$50-million spring training deal was the focus of a lawsuit brought by two citizens groups. The case and subsequent Florida Supreme Court decision highlight the potential for increased government secrecy when negotiating with millions from the public treasury.

The county and the public have long been at odds about the plan to bring a baseball team to Sarasota for spring training.

### The Back Page

By Cathy Antunes

Sarasota County planned to move the local fairgrounds to a local park to make way for new baseball stadium. Hundreds of children play baseball at the public park and the disruption of youth sports was met with public outrage. The county quickly backed off the proposal. In 2009, county efforts to raise money for stadium renovations by way of city-issued bonds re-paid with county tourist tax revenue were abandoned when watchdog groups challenged the plan. County officials remained determined to reach a spring training deal. In early 2009, Sarasota City and County had failed to negotiate a deal with three different teams. Public opposition had been a decisive factor in those failures.

A new strategy emerged. Commissioners appointed county staff (led by Deputy County Administrator David Bullock) and unofficially designated a number of private citizens (leaders of the Chamber of Commerce) to privately conduct spring training negotiations. The Orioles agreement was approved on July 22, 2009. In addition to the public being unaware of the members of the negotiating team, citizen groups were concerned about the extent of the authority assigned to the negotiators. Who was truly determining the fate of public assets—commissioners in open meetings or the negotiating team behind closed doors? Citizens



Cathy Antunes

for Sunshine and Sarasota Citizens for Responsible Government filed suit against the City and County of Sarasota in December 2009, alleging violations of the Sunshine Law. The citizens groups claimed the county's violations were serious and that commissioners delegated their powers to negotiate millions for economic development to a team of unelected or unappointed individuals, and the public was kept in the dark about the substance of their meetings and the composition of the team. The trial court, however, ruled in favor of the county and the citizens groups appealed.

The appeal received support from the Knight FOI Litigation Fund and the First Amendment Foundation. As the First Amendment Foundation stated in its friend-of-the-court brief to the Florida Supreme Court: "Unless this Court upholds the constitutional right of citizens to attend meetings of an EDA (economic development agency), including its negotiations, the increasing subsidization of private enterprises and privatization of governmental operations will have the effect of rendering the Sunshine Law meaningless." The FAF was also "quite troubled with the e-mail from Mr. Bullock to the attorney for the Orioles in which he reported that he had privately briefed commissioners on the status of negotiations and encouraged them not to discuss the matter in any detail at the public meetings." The Supreme Court determined that Mr. Bullock acted as an information gatherer and his team was not an official board or commission. Therefore, they were not subject to the Sunshine Law.

The Supreme Court's determination that Sarasota's spring training negotiating team was a "fact finding" group provides a "how to" manual for side-stepping the Sunshine Law – appoint staff and privately tap favored citizens to negotiate a deal without making them members of an official agency or board: Give them the responsibility for economic development discussions but none of the accountability, discuss a bit of the deal in public, unveil the finished product on the day of the vote and approve it before the public has an opportunity to understand and weigh in.

Unfortunately, information delayed is open government denied.

*Cathy Antunes is founder of the non-profit Sarasota Citizens for Responsible Government, one of the two citizen group plaintiffs. She has resided in Sarasota County since 1999.*