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# THE BRECHNER REPORT

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October 2008

## Journalists arrested during Republican Convention protests

MINNEAPOLIS – Four journalists, two journalism students, and a journalism adviser were arrested, and over a dozen more journalists were given citations, during anti-war protests at the Republican National Convention.

*Democracy Now!* producers

Sharif Abdel Kouddous and Nicole Salazar were arrested on a felony riot charge while carrying out their journalistic duties on the first day of the convention, according to a statement from *Democracy Now!* Host Amy Goodman was detained and charged with misdemeanor obstruction of a legal process and interference with a police officer after asking police officers about Kouddous and Salazar.

*Associated Press* photographer Matthew Rourke was also arrested after he took a photograph of a police officer kneeling on a protestor's neck. Two University of Kentucky journalism students and an adviser spent at least two

nights in jail awaiting riot charges.

"Covering news is a constitutionally protected activity, and covering a riot is part of that coverage. Photographers should not be detained for covering breaking news," said David Ake, an *Associated Press* assistant chief of bureau, according to *The AP*.

Over 10,000 people participated in the protest on the first day of the convention, and over 280 people were arrested.

St. Paul Mayor Chris Coleman said the officers' response was "nothing short of heroic," according to *The Reporters Committee for Freedom of the Press*.

Near the end of the convention, around 18 journalists were cited for unlawful assembly while covering a protest. They were not given a chance to leave before officers confronted the protesters.

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

## Comments not defamatory

RICHMOND, Va. – An appellate court held the First Amendment protected a former Air America host who claimed a military contractor was responsible for rape, torture and murder at the Abu Ghraib prison.

Randi Rhodes told listeners that interrogators from military contractor CACI International were hired to supplement personnel in Iraq. Citing military reports, Rhodes accused the interrogators of directing the abuse of Abu Ghraib detainees.

CACI's subsequent defamation suit argued Rhodes spoke with reckless disregard for the truth.

Rhodes, however, expressed herself not through "actual facts" but protected hyperbole, said a judge for the 4th U.S.

Circuit Court of Appeals in upholding the lower court's dismissal of the suit.

Rhodes' comments were "unbridled, caustic, and indignant," but the right to free speech "minimizes the danger of self-censorship on the part of those who would criticize, thus allowing robust debate about the actions of public officials and public figures," wrote Judge M. Blane Michael.

"I always believed in our case, and I believed that the speech involved here was so much at the core of what the First Amendment is all about," said Rhodes' attorney Laura Handman, according to *The Reporters Committee for Freedom of the Press*.

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

## Suit claims U.S. Sugar talks illegal

WEST PALM BEACH – Discussions about the state's proposed \$1.75 billion buyout of U.S. Sugar violated the Open Meetings Law, according to a former U.S. attorney's lawsuit.

Dexter Lehtinen claims Gov. Charlie Crist's representatives and district leaders secretly negotiated the buyout before it was announced on June 24.

Under the deal, U.S. Sugar would cease business and sell its land to the

state. The 187,000 acres of farmland would be converted to marshes and reservoirs to help restore the Everglades.

"I'm not trying to stop the purchase. I'm just trying to stop a process in which there are no answers and there's no way to get answers," said Lehtinen, according to *The Associated Press*.

The governor's office released a statement responding to Lehtinen's accusations. "We support the South Florida Water Management District and have confidence that the district has operated within the public record laws of Florida," said Sterling Ivey, a spokesperson for Gov. Crist, who brokered the deal.

Lehtinen seeks to have the SFWMD's nonbinding "statement of principles" outlining the deal thrown out.

Source: *The Associated Press* and *The Palm Beach Post*

**FIRST  
AMENDMENT**

**ACCESS  
MEETINGS**

## Court declines First Amendment claim

BOSTON, Mass. – The Federal Bureau of Investigation allegedly pushed, hit and pepper sprayed reporters covering a raid, but a federal appeals court refused to consider whether this violated their First Amendment right to gather and report the news.

The journalists did not show they were authorized to be on the property in the first place, according to a three-judge panel of the 1st U.S. Circuit Court of Appeals.

The reporters entered the home of a

Puerto Rican activist after the activist's daughter waved them in. But the court held the wave did not give the reporters a First Amendment right to be on the private property, and the reporters did not show they had a right to enter a nearby private field.

The court also said the reporters still can claim the FBI used excessive force under the Fourth Amendment. In addition, the court said the lower court incorrectly failed to assume the plaintiffs' version of

the facts were true in dismissing the case.

"Here, the plaintiffs' submissions reveal that without any provocation or need for force, the defendants assailed them," wrote Judge Juan Torruella in his opinion.

The U.S. District Court in San Juan will now determine whether the reporters' Fourth Amendment rights were violated during the raid.

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

## McCain apologizes for gaffe

LEE COUNTY – Senator John McCain's presidential campaign apologized for denying a *Tallahassee Democrat* reporter access to an area restricted to national reporters.

Secret Service agents told Stephen Price to leave an area reserved for the national media, even though other state reporters were in the same area.

Another state reporter was removed when she

asked why Price was ejected. Two state reporters remained. Price was the only black reporter in the area.

"Race played absolutely no role in any actions taken by our employees or anybody else in this case," Secret Service spokesperson Eric Zahren said, according to *The Associated Press*.

Zahren also said two other Florida

reporters were removed along with Price, and any reporters not with the national press who remained should have been removed as well.

Price and Bob Gabordi, the *Democrat's* executive editor, accepted the apology but lambasted the Secret Service.

"Our issue remains with the Secret Service agent. His actions are still a problem. The senator's campaign

has done the right thing and we appreciate that," said Gabordi, according to *The AP*.

"It was just a really crazy situation. We were being carted out of there and everyone was looking," said Price, according to *The AP*.

Source: *The Associated Press and the Tallahassee Democrat*

## NEWSGATHERING

## Rosenberg records stay sealed

NEW YORK – A federal judge held that the testimony of a key witness in the 1950s Julius and Ethel Rosenberg espionage case will remain sealed, but testimony from 42 other witnesses will be made public.

David Greenglass, Ethel Rosenberg's brother, objected to having his grand jury testimony released. His testimony helped convict the Rosenbergs of disclosing nuclear weapons secrets to the USSR. The Rosenbergs were executed in 1953.

Historians argued for the release of over 1,000 pages of grand jury testimony, claiming the historical significance of the Rosenberg case trumped grand jury

confidentiality rules.

Judge Alvin K. Hellerstein's order unsealed the records of all the witnesses who testified except those who are still alive and refused to consent to the release of their testimony.

"History of how we dealt with these problems in the 1940s and 1950s is a current history, and a history that is very important for us to understand," said Hellerstein, according to *The Associated Press*.

The government has two months to appeal.

Judge Hellerstein's order also unsealed testimony in the Abraham Brothman and Miriam Moskowitz Cold War spy case.

Source: *The New York Times and The Associated Press*

## COURTS

## Meeting ends without public comment

NAPLES – A "public" meeting about leasing Alligator Alley ended after 20 minutes with no public comment.

Packets summarizing information about six firms interested in the lease

## ACCESS MEETINGS

were handed out only to Florida Department of Transportation officials in attendance. The packets were given to the DOT officials to score the firms based on technical and financial criteria.

A DOT representative said officials needed to contact DOT lawyers to determine if the packets were part of the public record.

Some meeting attendees were incensed after driving nearly two hours for the meeting. "If you go to a public meeting, by golly, it better be open to the public," said State Rep. Matt Hudson, R-Naples, according to the *Naples Daily News*.

Hudson also claimed the meeting was not properly noticed.

The Alligator Alley lease is expected to last for 50 to 75 years and could potentially result in a \$500 million initial payout to the state.

The lease has caused disagreement among residents and legislators in Broward and Collier counties.

Source: *Naples Daily News*

## City manager scolded for public records violation

CORAL GABLES – Mayor Don Slesnick issued a written reprimand to City Manager David Brown, who admitted in court he kept public records from a journalist who uncovered suspect purchases on a city-issued Visa card.

Brown said he directed an employee to withhold statements and receipts from George Volsky, a columnist with the *Coral Gables Gazette*, until he could add two backdated receipts showing he reimbursed the city for expensive lunches.

“Your effort to mislead persons to believing that your reimbursements to the city occurred at an earlier time is unacceptable and has brought discredit to you and to the city,” Slesnick wrote.

Brown admitted he kept the documents from Volsky, but the State Attorney’s Office only accused him of one civil count of violating state public records laws.

“He made a simple error in judgment. The state doesn’t believe it’s a serious violation,” said Assistant State Attorney

Howard Rosen, according to *The Miami Herald*.

“I’m shocked by the decision from the State Attorney’s Office not to charge Mr. Brown with the premeditated attempt to falsify and cover up the receipts in question,” said Dan Benedict, the procurement supervisor who told police of the receipts, according to *The Herald*.

Brown paid a \$500 fine and \$2,100 for costs of the investigation.

Source: *The Miami Herald*

## D.C. Madam photos held public

CLEARWATER – A circuit judge ruled that crime scene photographs of the suicide of Deborah Palfrey, the D.C. Madam, are public but cannot be copied or published.

Blanche Palfrey, the mother of the D.C. Madam, sued to stop police and a medical examiner’s office from releasing photographs of her deceased daughter.

Police took photographs of Deborah Palfrey after she hanged herself in Blanche Palfrey’s shed. The Pinellas-Pasco Medical Examiner’s Office took photographs of the autopsy.

Neither department released the photos because the investigation was ongoing. The only entity which had sought the photographs before Palfrey’s suit was the internet site *The Smoking Gun*.

Blanche Palfrey’s lawsuit claimed the release would cause “severe emotional distress” to her and to any children who

might see the photographs in the news.

“I’m afraid it would kill me,” said Palfrey, according to the *St. Petersburg Times*.

An attorney for the *Times* had mixed emotions about Sixth Circuit Judge Linda Allan’s holding. “I’m not sure that it’s legally correct, but it’s eminently fair,” said *Times* attorney Tom Reynolds, according to the *Times*.

Judge Allan said the order was a temporary injunction that could be revisited.

A federal jury had convicted Deborah Palfrey of money laundering and racketeering in connection with her Washington, D.C. prostitution ring. She committed suicide while awaiting sentencing.

Source: *St. Petersburg Times and Sarasota Herald-Tribune*

## Clerk ignores legal advice

SEBRING – The Clerk of Courts disregarded legal advice and turned over videotapes to *The News-Sun* after determining the tapes were public records.

“After due consideration, I am convinced that the material [sic] in question are not exempt but are subject to the public records sunshine law,” L.E. “Luke” Brooker wrote to *The News-Sun*.

The tapes allegedly showed county employees stealing gasoline from county gas pumps.

Sebring attorney James Lobozzo Jr., who represents the clerk’s office, claimed the videotapes were exempt from the Public Records Law because they were part of an active criminal investigation by the Highlands Sheriff’s Office.

Source: *The News-Sun*

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## Government employees’ personal e-mails are private

LEE COUNTY – Personal e-mails are private, even if they are sent on government computers, a circuit judge held.

Attorney Doug Wilson sought the county’s e-mails after his clients were fired from their county jobs for exchanging other salacious e-mails. Wilson hoped the requested e-mails would reveal the identities of other individuals not implicated in the scandal.

Assistant County Attorney Colleen Greene told the court that some of

the employees’ personal e-mails were excluded from the response to Wilson’s request because they were private communications.

Circuit Judge Cynthia Ellis agreed with Greene and held that the requested e-mails were not public records under the Public Records Law. Therefore, Wilson could not obtain them.

Wilson expressed concern that the decision made it possible for “corruption to be concealed,” according to the *Bonita Daily News*.

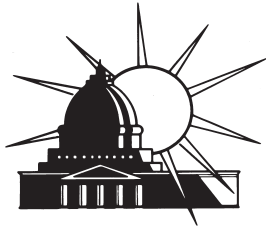
Source: *Bonita Daily News*



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## Openness principles guide Florida's government

Open government has been a core principle of Florida's constitutional psyche since 1909, when the first public records law was placed on the books. The Government in the Sunshine Law was enacted in 1967, and in 2002, an overwhelming 75 percent of Florida voters supported a constitutional amendment requiring two-thirds of the Legislature – rather than just a majority – to vote to approve new exemptions to Florida's Sunshine Laws.

Under the Public Records Law, every person has the constitutional right to inspect or copy any public records, with a few exceptions. The Open Meetings Law enables citizens to access state and local government proceedings.

### The Back Page

By Alexis Lambert

The Attorney General's Office has played a significant role in helping the public understand the laws. It is my responsibility as the new Attorney General's Sunshine Law attorney to field questions from reporters, officials and citizens about public records and open government issues daily. My goal is to help people resolve any issues before costly and time-consuming litigation becomes necessary.

Occasionally, these issues can be resolved with a quick phone call to remind a government official to operate in the sunshine or to turn over the requested records. Usually, members of the media just need advice, although some ask that I intervene in particularly egregious situations. I cannot provide legal counsel, but I can guide people through the laws' finer points.

Since becoming the Sunshine Law attorney, I have received many phone calls about how to handle driver's license information in personnel files. Generally, personnel records are public records unless there is a legislative exemption. Applications for employment, salary information, grievance records, and travel vouchers are all subject to disclosure. The media has access to this information, with significant redactions.

The Drivers Privacy Protection Act, at 18 U.S.C. § 2721, which Florida law mirrors, requires the redaction of information such as driver's license photographs, Social Security numbers, medical and disability information, and emergency contact information. Such information may typically be released only if "authorized under state law, if such use is related to the operation



Alexis Lambert

of a motor vehicle or public safety."

Authorized recipients of this personal information may disclose it for a handful of permitted purposes under Florida Statute chapter 119.0712(2)(e). Information such as driver's license photographs must be redacted unless its disclosure is required for "governmental purposes."

Qualifying "governmental purposes" include: the issuance of duplicate driver's licenses; law enforcement agency requests; voter eligibility determinations by the Department of State; paternity and child support actions in Title IV cases conducted by the Department

of Revenue; protective investigations done by the Department of Children and Family Services; or for the Department of Financial Services to facilitate obtaining the location of owners of unclaimed property, validating unclaimed property claims, or identifying fraudulent or false claims. Medical information is almost always redacted, except for very narrow exceptions regarding revocation, cancellation, or suspension orders.

I have also received many calls about police vehicle inventory records. Officers' names, titles, and take home vehicles are typically subject to disclosure. Certain information, though, is exempt: information that would reveal any undercover personnel; information revealing surveillance personnel or resources; the home addresses, phone numbers, Social Security numbers, and photographs of law enforcement personnel and their spouses; and the names and locations of schools or day care facilities the law enforcement personnel's children attend.

As the Sunshine Law attorney, I do more than explain the law; I can also direct people to processes to help them obtain relief. For example, the Attorney General's Office conducts a mediation program, established at Florida Statute §16.60. This program creates an informal process for citizens and governmental agencies to resolve public access controversies without litigation.

My responsibility is to help the public navigate the available laws and resources. Like the government, my office is open. I can be reached at (850) 245-1097 or by email at Alexis.Lambert@myfloridalegal.com. I look forward to working with you and helping Florida keep its reputation as the Sunshine State.

*Alexis Lambert is the new Sunshine Law attorney for the Office of the Attorney General.*