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# THE BRECHNER REPORT

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## FDLE finds Needelman violated records law

BREVARD COUNTY – The Florida Department of Law Enforcement found that former Brevard County Clerk of Courts Mitch Needelman used his private email for official business, Florida Today reported.

The emails from his personal account were subject to Florida's Public Records Law and proved crucial in building the political corruption case against Needelman, according to Florida Today.

The State Attorney's Office released

interviews revealing that Needelman instructed his staff and others to use personal email accounts, especially when discussing the county's scanning contract with BlueWare, the paper reported. The interviews also indicate

### ACCESS RECORDS

that Needelman advised employees to delete work-related emails.

Needelman was charged with official

misconduct, a third-degree felony, for attempting to get around the Public Records Law, according to Florida Today.

The interviews and private emails are part of an ongoing case against Needelman and two BlueWare executives, the paper reported. Investigators accused Needelman of awarding a multi-million dollar scanning contract to BlueWare in exchange for campaign funds.

*Source: Florida Today*

## Sarasota commissioners face Sunshine suit

SARASOTA – Citizens for Sunshine filed another suit against the city of Sarasota, according to the Sarasota Herald-Tribune. The group claims two city commissioners met with local business owners in private to discuss homelessness, the paper reported.

Commissioners Susan Chapman and Suzanne Atwell, along with other city officials, attended a

### ACCESS MEETINGS

meeting at a restaurant to discuss the effect of homelessness on local businesses, according to the Herald-Tribune. The

suit alleges that the meeting was planned in advance, no notice was given and no minutes were kept, which violates Florida's Sunshine Law, the paper reported.

Citizens for Sunshine also named the individual commissioners in the suit, according to the Herald-Tribune. The group wants Chapman and Atwell to pay legal fees personally because it does not want taxpayer money funding more of these lawsuits, according to the paper.

City Manager Tom Barwin said the meeting was similar to public events that officials attend regularly and the city is building a coalition to solve the

homelessness problem, according to the Herald-Tribune.

City Attorney Bob Fournier said the city will pay to defend Chapman and Atwell because it is legally obligated to, the Herald-Tribune reported.

Andrea Mogensen, attorney for Citizens for Sunshine, said these efforts directly conflict with Florida's Sunshine Law.

"We have a constitutional right as citizens to observe our government in action," Mogensen said. "Not that coalitions be built in back rooms and meetings outside of City Hall."

*Source: Sarasota Herald-Tribune*

## Bill would keep university searches private

TALLAHASSEE – A state representative reintroduced a bill that would protect state university executive searches from both Public Records and Sunshine Laws, according to The Gainesville Sun. Rep. Dave Kerner said the laws prevent the best candidates from applying for positions like university president, The Sun reported.

The bill would keep candidates' personal information and the preliminary search phase private, according to The Sun. When a group of finalists is chosen,

identifying information as well as the selection meeting would be public.

Kerner said the Public Records Law and Sunshine Law prevent Florida from drawing the best candidates, The Sun reported.

### ACCESS RECORDS

"I want to make sure as a legislator that we are opening presidential searches to (the) widest applicant pool," Kerner said.

The bill was previously introduced in the 2013 Legislature, but failed because it lacked sponsorship in the Senate, according to The Sun. Kerner said he has Senate sponsorship this time.

"At the end of the day, if we can fashion a balance between providing access to the candidates and their information as they move deeper into the selection process, but also providing protection in the initial stages, I think that's a fair way to proceed," Kerner said.

*Source: The Gainesville Sun*

## Media challenges judicial review of murder trial documents

JACKSONVILLE – A judge ruled that all documents regarding a murder case must be reviewed before they are released, according to The Florida Times-Union. Local news organizations opposed the review because it violates Public Records Law, the paper reported.

Circuit Judge Russell Healey said that the release of information in this case may make jury selection challenging, The Times-Union reported.

Media organizations like The Times-Union and First Coast News argue that there is no established law or procedure to support this type of review, according to the paper. WJXT TV-4 joined the newspapers, stating that it is unsure how the review procedure will work.

“It’s sort of changing it from the presumption that everything is open to the presumption that everything is closed,” said Edward Birk, attorney for WJXT TV-4. “In my memory, I can’t remember a judge doing something like this before.”

The plan for review followed the state attorney’s release of some of the defendant’s letters sent out while he was in jail, The Times-Union reported. Judge Healey said he wanted to control what the media reports to ensure the defendant receives a fair trial. The request to reconsider the order has not been decided yet, according to First Coast News.

*Source: The Florida Times-Union*

## Liberty County Sheriff acquitted of falsifying public records

BRISTOL – A jury acquitted Liberty County Sheriff Nick Finch of official misconduct and falsifying public records charges, according to The Associated Press.

Prosecutors alleged that Finch improperly released a man from jail, destroyed the arrest documents and altered jail logs, the AP reported. The man was charged with carrying a concealed weapon without a permit.

Finch said he released the man because carrying a concealed weapon is especially common in Liberty County

and the Second Amendment should take precedent over state gun laws, according to the AP.

During the trial, a jail employee testified that she gave Finch the paperwork regarding the arrest, the AP reported. The original charging documents went missing and someone altered the jail logs.

Finch was found not guilty of both counts and immediately reinstated to his position by Gov. Rick Scott, according to the AP.

*Source: The Associated Press*

## Venice accused of violating records lawsuit settlement

VENICE – The city of Venice settled a lawsuit claiming a violation of a previously settled lawsuit, according to the Sarasota Herald-Tribune.

Citizens for Sunshine alleged that the city failed to issue government emails to a group of citizens that made recommendations about utility rates to the city council, which violated the terms of a 2009 lawsuit settlement, the Herald-Tribune reported.

As part of the new settlement agreement, Citizens for Sunshine will

drop the motion to reopen the previous lawsuit, and the city will pay \$2,607 in legal fees to Citizens for Sunshine’s attorney, according to the paper.

In the agreement, the city of Venice did not admit that it violated the law regarding the utility group, the Herald-Tribune reported. The city signed the new settlement agreement and held training sessions for council members on the Sunshine Law, according to the paper.

*Source: Sarasota Herald-Tribune*

## 4th Circuit denies Risen’s appeal of order to testify

WASHINGTON, D.C. – The 4th Circuit Court of Appeals denied reporter James Risen’s appeal of an order compelling him to testify against one of his sources, according to The New York Times.

A three-judge panel ruled 2-1 in July that Risen must testify in the trial of Jeffrey Sterling, a former Central Intelligence Agency (CIA) official charged with providing Risen with classified government information in violation of the Espionage Act, The Times reported. The full appeals court denied Risen’s opportunity to have the order reversed.

## REPORTER’S PRIVILEGE

The denial likely will be appealed to the Supreme Court, according to the paper.

“We are disappointed by the 4th Circuit’s ruling,” said Joel Kurtzberg, Risen’s attorney. “My client remains as resolved as ever to continue fighting.”

The 4th Circuit’s refusal to appeal Risen’s case affirmed its earlier ruling that the First Amendment does not protect reporters who received leaked classified information, according to The Times. In 2011, a federal district court held that the protection applied to Risen in these circumstances.

The case revolves around information Risen published in his 2006 book, “State of War: The Secret History of the CIA and the Bush Administration,” describing a failed CIA plan against the Iranian government as reckless, The Times reported.

*Source: The New York Times, United States v. Sterling, No. 11-5028*

## County breaks up Animal Board for re-evaluation

BREVARD COUNTY – The Brevard County Commission dissolved the county’s Animal Advisory Board in order to determine how to create a new panel, Florida Today reported.

Commissioner Trudie Infantini told Florida Today that disbanding the board was the best way to allow the board to continue to meet and discuss animal issues in private. Since the board is no longer an official body, these informal meetings will not be subject to Florida’s Sunshine Law, the paper reported.

The commission said it will also hold public meetings as part of the re-evaluation process. The board’s operations were suspended in September due to conflict at meetings and widespread criticism of the Animal Services and Enforcement staff, according to the paper.

Brevard County created the Animal Advisory Board in 2009 to guide the Animal Services and Enforcement Department and to make recommendations on animal policy and education, Florida Today reported.

*Source: Florida Today*

## Hialeah city council cleared of Sunshine Law allegations

HIALEAH – The state attorney’s office determined that the Hialeah City Council did not violate Florida’s Sunshine Law, The Miami Herald reported. Former mayor Julio Martinez had accused the council of meeting in private prior to a public budget meeting, according to the paper.

Martinez based his allegations on a surveillance video which showed council members entering and exiting a lobby, conference room and office together prior to the meeting, The Herald reported. Martinez is currently running for mayor.

Both the state attorney’s office and the Miami-Dade Ethics Commission investigated the allegations, according to the paper. Each party concluded that

the council members did not violate the Sunshine Law.

The state attorney’s memo cited insufficient evidence as the reason for declining to open a criminal investigation, The Herald reported.

The Ethics Commission interviewed council members and other city employees in their investigation. The interviews did not reveal any wrongdoing, according to the paper.

Hialeah mayor Carlos Hernandez and other members of the city council presented the findings of the investigation, The Herald reported. Hernandez said the city plans to sue Martinez to cover legal costs incurred during the investigation.

*Source: The Miami Herald*

## Sarasota committee meetings now open to the public

SARASOTA – A Sarasota committee will now have all its meetings open to the public, according to the Sarasota Herald-Tribune.

The Development Review Committee previously held private “pre-meetings” to prepare for public meetings, the paper reported. This practice recently raised questions from open government advocates about possible Sunshine Law violations.

City Attorney Bob Fournier said he

has informed committee members that the Sunshine Law applies to them and all future Development Review Committee meetings will be open to the public, according to the paper.

“When it comes to this open meeting requirement, I don’t think you can make distinctions between DRC meeting and these pre-DRC meetings,” Fournier said. “I do think that the meetings should be held in the open,” the paper reported.

*Source: Sarasota Herald-Tribune*

## Judge hears arguments in Jacksonville Sunshine Case

JACKSONVILLE – A circuit court judge heard oral arguments in The Florida Times-Union’s lawsuit against the city of Jacksonville, the paper reported.

Circuit Judge Waddell Wallace said he needed more time to consider the case before making a ruling, according to the paper.

The lawsuit focuses on whether the city violated the state’s Sunshine Law when it discussed potential changes to

the Police and Fire Pension Fund in a private meeting. The city argues that the Open Meetings Law didn’t apply because the unions waived their right to negotiate pension benefits, The Times-Union reported.

Judge Wallace repeatedly inquired why the pension fund was negotiating in place of the unions, the paper reported. The judge did not make an immediate ruling.

*Source: The Florida Times-Union*

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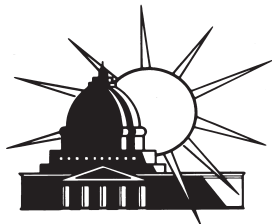
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## Journalists using leaks are protected, what about Snowden?

I am often asked whether Edward Snowden's leaking of classified documents about NSA surveillance programs is protected by the first amendment. My answer is no, his handing over of classified information to reporters at The Guardian, the Washington Post and the New York Times enjoys no constitutional protection or privilege.

Snowden is a source who leaks information, not a journalist who receives leaks. The difference is crucial: in the transaction between source and journalist, constitutional protections extend only to the latter.

Specifically, the government is legally powerless to get a court injunction barring a journalist from publishing a story based on leaked information. And post-publication, too, journalists have special protections: first amendment principles, doubts about the application of federal statutes, and a tradition of prosecutorial forbearance—all these combine to create huge obstacles to the bringing of criminal charges

against journalists for reporting on leaked, classified information. This double-standard—exposing government leakers to punishment while insulating the journalists who publicize their leaks—may seem unfair, arbitrary, even offensive. The double-standard is nonetheless necessary.

It is necessary because all legal authorities protecting journalists' confidential sources—from state shield laws, to the Justice Department's internal guidelines, to the few remaining court decisions recognizing first amendment protection for sources—have, at their core, the requirement that government investigators must “exhaust all alternative means” for identifying a leaker before they can force a journalist to name a source.

One cannot fault prosecutors for failing to “exhaust all alternative means” for identifying a journalist's confidential source, yet also forbid them from interrogating potential sources, and even taking intrusive investigatory steps (for example, polygraph tests for suspected government employees) to identify a leaker. If prosecutors are forbidden, under the first amendment, from questioning journalists except as a last resort, they must be given the latitude to pursue legal measures to investigate suspected leakers.

Moreover, the unfairness of the source-journalist double-standard is mitigated, in most cases, by journalists' obligation to protect the confidentiality of a confidential source. This is a matter of honor, ethics



Peter Scheer

and, in my view, a legal responsibility deriving from first amendment principles. When the government demands disclosure of a journalist's confidential source, the journalist is obligated to refuse to cooperate, even to the point of paying fines and going to jail rather than naming the source.

Snowden's case doesn't exactly fit this paradigm because he has chosen NOT to be a confidential or anonymous source. From the beginning of the NSA revelations, Snowden has been public and up-front about his role in obtaining the documents, illegally copying them, and making them available to favored reporters.

Does this difference alter the analysis? I don't think so. Snowden's motives for going public remain unclear. His taking credit for the NSA leaks might reflect a belief that he is obligated, morally if not legally, to stand up and take responsibility for his actions rather than hide behind the “anonymous” descriptor. Less charitably, his decision to be front-and-center in the NSA controversy may have more to do with ego than principle.

In any case, Snowden will have more credibility, and therefore more influence over US policy, if he gives up his political asylum (in Russia of all places!) and returns to the US to take up the time-honored role of conscientious objector. Although he will have to face charges of violating the Espionage Act, Snowden will have at his side the best defense lawyers in the country. That, and his apparently genuine belief that his leaks have caused no harm to US security interests, may substantially limit his exposure in a trial.

I worry about Snowden. I worry that, like Julian Assange, his politics may have clouded his judgment and he is now more concerned about neutralizing US military and intelligence capabilities than he is about exposing excesses and wrongdoing. But Snowden has also caused the Obama administration to reexamine NSA programs and to take steps to open some national security decision-making to public scrutiny. These are positive and important developments.

If it also turns out that Snowden is correct that his disclosures have not harmed American security interests—and time will tell whether he is correct about that—then, frankly, he will be seen as an American hero, and deservedly so.

*Peter Scheer is the executive director of the First Amendment Coalition, nonprofit based in San Rafael, California.*