

**STATE OF FLORIDA  
OFFICE OF THE GOVERNOR**

**COMMISSION ON OPEN GOVERNMENT REFORM**

**February 12, 2008**

**New College of Florida - Sudakoff Center  
5800 Bay Shore Road  
Sarasota, Florida**

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## A P P E A R A N C E S

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JOHN CARASSAS, VICE CHAIRMAN  
Judge, Pinellas County Sixth Judicial Circuit

PAULA DOCKERY  
Florida State Senate, District 15, Lakeland

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Deputy Managing Editor, "St. Petersburg Times"  
President, Florida Society of Newspaper Editors

JOANN CARRIN  
Director, Office of Open Government

## PROCEEDINGS

THE CHAIR: Let's get started. We have a few members who won't be here today, and one, Senator Dockery, who is on her way. I'd like to thank you all for coming today, for taking the time. I know it is difficult sometimes to make the time, and we really appreciate everyone who has come today, whether to speak or just to listen. We do appreciate it.

And we greatly appreciate the task that the Governor, Governor Crist, has given us. It is both a rare opportunity and a huge responsibility. Every time we look at an issue, it seems we turn one page and then there are seven more issues there standing behind the first issue, and it just sort of is growing exponentially.

I'd like to start today first by introducing Steve Phifer who is here on behalf of New College, to thank New College for giving us the space today. From what JoAnn tells me, as soon as we advertised that we would be in Sarasota, New College responded immediately by giving us -- offering us the space to meet. And so, I'd like to introduce Steve Phifer, who is the general counsel here at New College. Steve went to the University of Virginia -- I grew up knowing it as "The University -- for his undergraduate work, and then went to the other university to get his law degree, University of Florida.

As I said, he's general counsel here at New College. And before that he was in private practice in Tallahassee, specializing in administrative

law, environmental law and land use law. He served as assistant secretary for Florida Department of Community Affairs, as an administrative law judge with the Florida Division of Administrative Hearings, and as legal director and general counsel for 1000 Friends of Florida, and as general counsel to the Department of Community Affairs.

He's been an adjunct professor at FSU, teaching administrative law and growth management law. He's a member of the Advisory Board to the Florida Conflicts Resolution Consortium, and serves on the board of directors of 1000 Friends of Florida. He's also served as chair of the administrative law section of the Florida Bar. And I would like to, again, extend our thanks, Steve, to New College.

MR. PHIFER: We're delighted you're here. I want to welcome you to Sarasota city, Sarasota County, Manatee County, Bradenton area, and most especially to New College. We are delighted you're here and I hope that while you're here you'll take an opportunity to learn a little bit about New College. Our president, Mike Michaelson, is fond of introducing New College and describing New College by saying that we are the best liberal arts college in America that has never been defeated on a football field. There's not many things that would have kept Mike from being here today except that he is teaching a class right now. And at New College, that does come first.

You are on the east campus of New College, and I hope you will,

during breaks, take a look around you. If you go out the door that you came in and turn right and go around this building, you will be in the center of student life, student activity at New College. Most of our dormitories are here where students live, eat and play. It's centered here on east campus, which has completed construction of 200 new dormitory beds and five new buildings. It has created a student urban environment here on east campus and I hope you'll take a look at it.

If you went out and turned left, walk along the sidewalk and over the pedestrian bridge that crosses Tamiami Trail, you'll come to Jane Bancroft Cook Library. And the walkway that leads to the historic mansions along Sarasota Bay, one of those was the home of Charles Ringling, one of the Ringling brothers. He was the bean counter in the Ringling's family, the accountant. And he and his wife, Edith, lived in that house, built and lived in that house. The house next door was their daughter, Esther's house. And they are something to see. Imagine a mansion built by circus people. And you can imagine.

Our administrative offices are there. Many faculty offices are in those buildings. And then we have many classrooms there, too.

New College is an independent institution within the state university system. Our status is the same as the status of the ten other institutions within the system, like the University of Florida and Florida State University. We have a distinctive mission. We are Florida's residential

liberal arts honors college. We endeavor to provide an exciting educational environment for kids.

The record here has been impressive. Last year we had seven Fulbright scholar winners, which among undergraduate institution was as many as the entire rest of the state university system in Florida. We did that with about 115 graduates. We endeavor here to maintain a very high student/faculty ratio of about ten students per one faculty member. We try to have about 80 percent of our students live here on our campus.

There is no place more appropriate to host a meeting of a Commission on Open Government than a liberal arts college. Liberal arts colleges thrive and absolutely depend on open processes, open meetings, open communication, and we're delighted you're here. I've been involved in public meetings -- public records and open meetings issues during my entire practice of law and have always been proud that Florida has been a leader in that realm nationally. I have a sense that we are still very much a leader, but that is no reason for you not to examine this process and make it better. We're delighted you're here. We'll support your activity any way we can. Anything you need, you have but to ask.

THE CHAIR: Thank you very much. I would next like to ask each of the members of the Commission briefly introduce themselves. We're missing two, three members today. Representative Weatherford will be with us tomorrow. Commissioner Bailey -- oh, and Sandy D'Alemberte is

not here as well. Commissioner Bailey and Secretary Butterworth are in Tallahassee trying to save their budgets, as I understand it, and Sandy D'Alemberte won't be with us. But I'll start and then we can go down and start with Senator Dockery. I'm Barbara Petersen, chair of the Commission and serve as president of Florida's First Amendment Foundation. The Foundation is a small, non-profit organization based in Tallahassee, and we work very closely with the Office of Open Government and the Attorney General's Office on open government issues. Senator Dockery.

COMMISSION DOCKERY: Thank you. My name is Paula Dockery and I have the pleasure of serving as a state senator for District 15, which includes parts of Polk, Hernando, Lake Sumter and Osceola Counties, and I live in Lakeland.

COMMISSIONER CARASSAS: Thank you, Madam Chair. John Carassas. I'm a county court judge from Pinellas County. I served in the Florida legislature where I developed my appreciation for our Sunshine laws and open government laws. I served in the legislature for two terms. Also worked as deputy attorney general before I was appointed to the bench two years ago. Thank you.

COMMISSIONER: Hi. I'm Renee Lee, county attorney from Hillsborough County. I have been a longtime public servant and attorney in the public arena.

COMMISSIONER GRINSTEAD: My name is Jeanne Grinstead. I have no connection to public office. I'm the president of the Florida Society of Newspaper Editors and the deputy managing editor of the "St. Petersburg Times."

COMMISSIONER CARRIN: I'm JoAnn Carrin. I'm staff director for the Commission on Open Government and I'm the director of the Office of Open Government, which is in the executive office of the Governor, created by Governor Charlie Crist.

THE CHAIR: We will be taking public testimony at the meeting both today and tomorrow. Speakers who have registered in advance will see their names on the agenda. They will go first in the order listed. All registered speakers will have five minutes to present testimony. Those who have not registered but who wish to speak will then have an opportunity after the registered speakers.

We would ask each person who wishes to speak who has not registered to fill out a speaker's card and bring it up here to us so we can have an accurate record of who wishes to speak. If we have people who have not registered who want to speak, any time remaining will be split equally among them. And we should have plenty of time. We have had more than enough time the first two meetings we had.

I would also suggest that anyone who feels they have not been given enough time to speak, or those who do speak, if you have your

comments in writing, we would greatly appreciate submission of those comments for the record so that we can refer to them as needed. We have a court reporter here who is making a verbatim transcript of the meeting. Those transcripts, once available, are posted on the Web site for the Commission on Open Government.

I'd like to ask everyone to turn off their cell phones. And as I can see, the mikes are on all the time. And anybody who gets up to the podium, if you would please be sure to speak into the microphone. I believe we're also being taped today by the Florida Channel.

So, as I said, we have a huge opportunity and a huge task in front of us as Commission on Open Government Reform. We want to remember to remain focused and to keep our eye on the charge as given to us by Governor Crist in the executive order. It's very easy sometimes to get sidetracked into other issues that are equally important. But our task is to review both the public records law and the Sunshine Law, the open meetings law, with an eye towards reform.

It is not our job to interpret or question the application of the law in a specific or given situation. That is really up to the courts. But we will be considering, I think, in the next two days some more recommendations. We had recommendations come to us at the Kissimmee meeting; specifically, a recommendation from the Department of Children and Families, to endorse legislation that would make records easier to obtain.

That bill is in the works and there is a copy of it in your folder, and there are copies out on the table.

And we've had a few other very dramatic changes as a direct result of these meetings. After our Tallahassee meeting, the Governor responded to testimony received and made it easier for people to get access to their clemency records, and he issued the Citizen's Bill of Rights, outlining an agency's responsibilities to the public in terms of open government, both the public records law and the Sunshine law. So, we're seeing some very dramatic results already.

The Commission's final product won't be finished and presented to the Governor and the legislative leadership until December of 2008. And we will have, I presume, a package of legislation that will be considered a year from now.

So, with that, does anybody have any questions or comments? Am I forgetting anything, JoAnn? Okay. With that, I'd like to ask our first speaker, Tammy Vock, who is president of the Florida Association of City Clerks, to come forward. We do have a process. You have your card? We have a process here of reminding you about time. When you're one minute away, we'll give you this one; thirty seconds, and then when we do this one, you're out of time. So, we have the clock keeper over here. Thank you, Ms. Vock.

MS. VOCK: Good afternoon. I'm not here by myself. Thank you

for allowing us to be here. I am Tammy Vock. I'm the president of the Florida Association of City Clerks and the city clerk for the City of Vero Beach. I also have with me today Cynthia Goudeau, who is our first vice president and the city clerk for the City of Clearwater, and Pamela Smith, who is our second vice president and the city clerk for the City of Sanibel Island.

What we're here to ask you today is just to kind of listen to us. We'd like to really have a definition of what "extensive" means. I know it is different for the different municipalities. In my municipality, I have a population of about 18,000, which is a small population. However, we have a utility department. We own our own utilities. So, we have a lot of outer locations.

When someone comes in to ask for a public record, a lot of times I have to go and find these records at some of our outlying locations, which just takes some time. I also have a lot of records stored at a warehouse. And it takes some time for someone to go out there and retrieve those records. As city clerks, we are always very professional and we like to answer requests in a timely manner. That is not the problem. But sometimes it just takes a little bit more time to get records than other times.

We also receive a lot of frivolous requests. We hope that you address those. A lot of times I will get public records request from the same person over and over and over, asking for something and just

rewriting it the next time, asking for a record that actually never even exists. You know, we give this person what they're asking for, but sometimes that's not what they want.

As far as time goes, it's always been my policy to charge somebody if I think that it's going to take my records clerk over a half an hour to pull out the records. Now, my records clerk is the staff member in my office that is the lowest salary. She is the one that pulls out the records. She is the person whose salary that I base the cost of what the records are going to cost. It's her salary plus 15 cents for a copy. I make sure that I tell the person who is asking for the records the approximate cost of what it is going to cost so this person knows. If they still want the records, we do so. If not, it's not a waste of my time or their time.

With that said, I'll turn it over to Cindy and Pamela. They may have a couple other things to add. But I hope that you will include us as part of your decision-making process. And, again, we thank you for allowing the Florida Association of City Clerks to be a part of this Commission and receiving the agendas to come to their meetings. Thank you.

THE CHAIR: Thank you. If I could have you wait. Apparently, cell phones may be causing the feedback. So, if you could not just put them on vibrate, but actually turn them off if you're near microphones. So, I will turn mine off. Okay. Thank you. And this is Cynthia; is that correct?

MS. GOUDEAU: Cindy.

THE CHAIR: Cindy.

MS. GOUDEAU: Cindy Goudeau, city clerk of the City of Clearwater and first vice president of the Florida Association of City Clerks.

I won't repeat the things that Tammy has already covered. I would say that as a whole, city clerks are very responsive to the requests they get. I think as you deliberate what your recommendations are going to be, we would ask that you keep them in mind the wide variety of staffs in the city clerk's office. There's some city clerks, they are the staff. That's it. Whereas there are other cities that have the luxury of having more than one person. So, that plays into the ability to respond to the request that they're getting. And as Tammy said, sometimes the records are in offsite places.

I know in Clearwater, we're trying to put everything we can online. Our public records are available online. We are very open. We try to provide everything we can to the public as easily as possible. So, those are the types of things that we would just ask that as you deliberate, keep it in mind that we do have a whole host of resources available to the various clerks that respond to these requests.

COMMISSIONER CARASSAS: One question. Madam Chair, if you don't mind.

THE CHAIR: Yes.

COMMISSIONER CARASSAS: One of my first jobs out of law school as a young attorney was working for the City of Clearwater. My office was directly across the hallway from Cindy. And a lot of what I learned about what the clerk's office does is from Cindy right here.

Just for everybody else's information, we know what a county clerk does. They keep judicial records, obviously, recorded instruments. Distinguish for us, if you don't mind -- tell us a little bit more about what a city clerk's office, what kind of records you hold in your office.

MS. GOUDEAU: We hold all the minutes of the council. We maintain all the official documents, which would be the leases, agreements, deeds, easements. We also maintain records. My office maintains the cemetery records. We're, essentially, the historian and record keeper for a city. But, again, based on the size of the city -- like with Clearwater, we've got a number of outlying departments. We have public services. We've got our gas division. They maintain a lot of their own records, but if the records request comes in, we make sure that it's responded to.

And I'm trying to think of all the records we keep. We have advisory boards. We've got assessments for public works projects. We just have a whole host of records. We don't have, of course, court records and that sort of thing, but all the records of the city except for the police records we keep.

THE CHAIR: And that was a great question. Yes, Senator.

COMMISSIONER DOCKERY: While we're on this line, can you give us an idea of how many requests you get and what the requests are for? It doesn't have to be scientific. Just kind of your best idea of what comes into your office, what kind of requests.

MS. GOUDEAU: A typical day, we probably get 10, 15 requests, and they range from everything for settlements for a particular council meeting or advisory board all the way up to the history of the sign code. So, it's a wide variety of requests we get. And Tammy eluded to the frivolous, or what I call the nuisance requests, and that's where somebody thinks there's something that exists and they come in and they ask for all the details of the entire city staff from 2001 to 2006 having to do with a particular project. And then when you tell them how much time and the money that they will have to spend in order to get that request, sometimes they aren't real happy and they think you're trying to hide something when you're not.

And so, those are the types of -- we want to be responsive. We really do. But sometimes the request is so vast, there's just no way to respond to it in an efficient manner. And then, also, I know you don't ask who you are and why you want them. But sometimes we do have to ask, "Can you help us a little bit here as to what you're really looking for?" And then, they can, and we say this is going to cost you a couple thousand

dollars. We're not being unrealistic because it is such a vast request.

COMMISSIONER CARASSAS: One more question --

THE CHAIR: Yes.

COMMISSIONER CARASSAS: -- if you don't mind. Thank you.

Cindy, the number of employees that you have and the size of the city. I'm asking you that in comparison to a typical county clerk's office that has, I think, a lot more employees than you do to access this information.

MS. GOUDEAU: Well, in Clearwater, we have -- I have ten employees in my department, four of which are for the records section of what I do.

COMMISSIONER CARASSAS: In a city of how many?

MS. GOUDEAU: Over 100,000. Jackie Lohan, who is the city clerk in Sauchopi (phonetic), has, maybe, one other person. And that's, again -- and I'm probably on the high side of employees for a city clerk department.

COMMISSIONER CARASSAS: In comparison to a county clerk's office, you would say it would be five, ten times as many employees that work, a lot more that work for county clerks, right?

MS. GOUDEAU: I really couldn't answer.

COMMISSIONER CARASSAS: Okay. Thank you.

THE CHAIR: Any other questions?

COMMISSIONER GRINSTEAD: You talked about putting records online.

MS. GOUDEAU: Yes.

COMMISSIONER GRINSTEAD: What percentage of your records do you have online? And will it make it easier to answer a request when all the records are online?

MS. GOUDEAU: I'll answer it backwards. Yes, it will make it easier to respond to requests because you can put in a certain key word and it's going to show you everywhere that word appears in your documents, whether it's minutes, an easement agreement or that sort of thing. Right now, we have all of our current official records, all of our deeds, easements, agreements -- anything that's current is online. We have minutes back to, I believe, the mid-1980s.

We are currently working on getting all of our human resource records online. We're working with our planning department and our engineering department to get all of their documents online. I would say right now we probably have about 25 percent. But we are continuing to work on that project.

In fact, right now, we're in the middle of a back file conversion, a five-year back file conversion project, to get as many records as is practical. We're not going to put something online that just doesn't make sense to put there. In other words, if it's a short-term retention that only one department needs, that will probably never show up online

COMMISSIONER GRINSTEAD: Thank you, Madam Chair.

THE CHAIR: Thank you. And this may be a better question for Ms. Vock, who asked us to give her a definition of “extensive.” And I am just curious as to what your definition of extensive. How do you use that term to facilitate the public records request?

MS. GOUDEAU: The City of Clearwater’s policy, if it takes over 30 minutes, that’s considered extensive.

MS. VOCK: And that’s the same for me, too.

MS. GOUDEAU: There are some cities I know have as little as 15 minutes. And some, again, they determine extensive if it means they’ve got to go to multiple locations or it involves multiple departments. But our policy is 30 minutes. But I do know there are some that have as low as 15.

THE CHAIR: And after the 30 minutes, then you employ a charge for the services plus the copying fee and any other service charges that are allowed by law?

MS. GOUDEAU: The salary of the lowest paid individual that could do the work, whether that individual does the work or not. Because if they’re not available, I’ll have somebody else do it. But we calculate it based on that person’s salary, and then the copying charges.

THE CHAIR: If I can interject here, under current law, the statutory fee scheme has two prongs. One is the actual cost of duplication or 15 cents a page, if it’s a paper copy, up to eight-and-a-half by 14. And if a

request requires extensive use of agency resources, then the agency may charge a reasonable fee based on actual costs incurred for personnel or information technology resources.

And the legislature has, as recently as two years ago, there was discussion of whether they should define “extensive.” And the extensive use fee has been in the law, I think, since the mid eighties. And the legislature decided not to try to define extensive, but to allow the definition to remain at the discretion of the agency, simply because of the types of problems you talk about between -- you know, someone in Sauchopi (phonetic) with a staff of one will have a greater burden in complying with a public records request than you might in Clearwater with a staff of ten.

And definitions range from as low as 15 minutes, I’ve heard, and some policies as high as four hours. So, as long as the definition is reasonable, the courts have allowed the discretion, really, to stay with the custodial agency. And the legislature has, so far, decided to do that as well. Any other questions? Pam Smith.

MS. SMITH: Good afternoon. I’m Pamela Smith. I am a city clerk with the City of Sanibel, as known as Sanibel Island, and I’m also second vice president of the Florida Association of City Clerks. I don’t think there’s much more that I can reiterate with questions that you’ve already had, with the exception of saying and to remind you that a city clerk is a professional.

A city clerk takes her responsibility, I should say, or his responsibility, not slightly. We understand how important it is to get to our constituents on other hands, because we do have city clerks who are elected, or to residents of our cities, how important it is for them to be able to get the information that they need or require in a timely manner. We don't take it lightly. But also, to make sure that you understand, that our offices are not structured the same as we've just had a discussion. Some of us are alone offices, one person. Some of us are lucky enough to have ten people. I surely don't.

We also have to prioritize our work. We have a voluminous records request that comes in. Oftentimes, we have to prioritize what we're going to stop in order to begin this huge public records request. And then, like in my office, we are not responsible for creating that record any way that it is already there. But if I can scan it and send it in a e-mail or FAX it to you rather than making a phone call and saying, "Hey, your copy is ready. It will be 15 cent," why don't I save you the time and money. So, therefore, the taxpayer pays for my time and the operation of my office rather than the person who is requesting the information.

So, just to let you know, we do take our jobs very seriously. And I really appreciate the opportunity to be involved in this. Thank you.

THE CHAIR: Any questions? Thank you very much. Sandra Chance, for the Brechner Center, had a family emergency and won't be

here today. So, Senator Kiser, Curt Kiser, lobbyist for the Florida Press Association. SENATOR KISER: Thank you, Barbara. Good afternoon. My job as lobbyist for the Florida Press Association and the Florida Society of Newspaper Editors, particularly during the legislative session, usually entails watching the calendar. I work closely with the First Amendment Foundation.

They screen all the bills that come through that deal with open meetings or public records, and usually send some sort of a letter addressed to that legislator that's filing the bill, perhaps to the committee, either saying that they've looked at it and found it to be in compliance with the law, or that they have some concerns over it and the concerns are such and such. And then they will outline in the letter. In some cases, they will even suggest making changes to bring it into compliance. In other situations, if it's beyond repair, she gently suggests that the legislation be withdrawn. So, as you can imagine, most legislators take offense at that and very few of them take it very lightly.

But anyway, what happens then is that legislation moves forward and comes to the committee. It's usually my job to go to the committee. And there's lots of bills. Lots and lots of bills. And it's impossible for someone like me to go to all the committees because you've got the House and the Senate. You've got several committees meeting at the same time. And you could have two or three or four bills on the agenda in

four or five committees all on the same day. And so, usually, what we try to do is prioritize the ones that cause the most concern, the ones that we think the most issues of concerns with us, and I focus on those. Many instances, if I have the time, I contact that legislator ahead of time and say I hope you got the letter from First Amendment Foundation talking about concerns and some issues with your bill. If you'd like to talk about it, I'd be happy to, but I just want you to know I will be coming to the committee today or tomorrow and appearing to oppose the bill or to make suggestions for corrections to it.

And that's, typically, what I do. And, again, most legislators are so accustomed to having their bills passed that they take offense at that. They don't like the fact someone who is going to come in and question their bill and say, you know, you're trying to protect something here that we don't think should be protected. It should be open to public record. So, it's not always a lot of fun to do that.

Now what I'd like to do is talk a little bit about trends of things that I've seen over the last eight or nine years that I've seen develop and the legislature is falling into that should be a concern to you as a commission looking at these issues.

First of all, let's take open meetings. Probably, the scripts bill of two or three years ago caused some of the greatest concern. And as always, whenever the legislature, or, for that matter, any governmental body, tries

to rush into something, that's when there's problems.

If you're trying to get that bill passed too quick, if you call a special session, like they did on the script bill, with finite time, everybody was pushing to get it done, they don't like to go overtime because then the news media says the legislators cost them \$40,000 a day, or whatever the number is today, and you didn't get your work done on time, and then they get blasted for that. So, they really push to try to get these things done.

Well, as typically happens when you have some thorny issues involved, those issues get solved last. And the issues dealing with the open meetings or public records, if that's one of the issues, it's going to be one of them that's dealt with at the very end. I can tell you that on this particular bill, I appeared before the committee several times. In several instances I pointed out as many as eight, nine and ten serious problems with the bill.

Well, typical fashion, I was told, "Well, we're going to deal with those. We're going to deal with those. We've got amendments coming." Well, they didn't get the amendments done on time. So, they passed the bill out of committee with the work being unfinished, they passed the bill to the floor. And literally, I'm standing outside of the chamber as they're reading the amendments. I never saw them. One of the senators came out and gave me a copy of them, a worksheet, while they're voting on them. And as a result, they closed part of their public meetings.

And unless you're talking about spending public moneys, that part of the meeting can be closed. So, that leaves out things like awarding contracts, personnel issues, policy decisions. All those can be discussed in a closed meeting.

I've got many more things that I would like to talk about, but time is running close. But I would also tell you that the committees don't do their job. They don't kill the bills. They pass them on. And then what happens is legislative leadership is the one that has to hold the bills up. Legislators, some what like this, people of the executive branch, they will take their clues from leadership.

Legislative leadership would say take your time in committee on these public record bills. Many times a staff analysis would point out there's problems. They go totally unnoticed and no one even mentions them. And as a result, I don't think they're doing the job they could do.

And if the leadership would take that job, then a few of those bills would come to their doorstep. But more of them need to be killed in committee. If I get time later, Barbara, I have some more.

THE CHAIR: Okay. Great. Anyone have any questions?

COMMISSIONER LEE: Madam Chair, I'm really curious to hear more of this issue. I think it has been brought to us before by the "St. Pete Times" or "Tampa Tribune" that large article they produced. But I'm really curious to hear about the trends.

THE CHAIR: Well, if we have a consensus. If you want to talk about some of the other trends, Senator.

SENATOR KISER: Sure, I'd love to. Let's talk about claims bills one of the worse abuse that I think, that goes on in the legislature today. What happens today is when there's a claims bill filed -- first of all, the rules on claims bills keep changing, and many times they don't tell you until afterwards. For example, you file a claims bill and they want you to -- in the past, you used to be able to say, "We're going to pay this claim out of general revenue."

COMMISSIONER CARASSAS: Tell us what a claims bill is first.

SENATOR KISER: A claims bill is when someone has been injured. Like, let's say, the Department of Transportation garbage or truck or a county garbage truck runs over somebody, either seriously hurts them, maybe kills them, and they have a claim against the state. Well, you can't just sue outright and collect your money. You're limited to \$100,000 per person, \$200,000 per incident. So, if you've got a half a million or a million dollar claim coming, you then have to go to the legislature to collect the balance of your judgment on that.

Well, what happens is the legislature -- the legislator files a claims bill for Ms. So-and-So because her husband was killed through the negligence of a state worker. That bill is filed and goes to the committee. In the past, you used to be able to just say pay it out of general revenue.

Well, a couple of years ago they changed the rule and said, "Oh, no, you can't pay it out of general revenue. You've got to have a specific source for those moneys." And they won't tell you what the source is. You've got to go find it out on your own.

In one particular instance that I'm personally aware of where I had one, there were three different times we filed the bill, and finally they finally made some suggestions about where the claim might be paid from. And that's just ridiculous. They should be there to help you and give you some guidance as to what type of fund you can take that money out of and that's available to you.

In addition to that, when the bill is filed, it gets referred to a general master, what they call a special master. And they then -- not all of them are heard, but sometimes they just stay in committee and they don't ever hear -- they don't even take your bill up. But if you're one of the lucky ones and they refer your bill to this special master, then usually a month or two months later, they have like a little small trial where they put the case back on again for what your bill is all about. Then that special master issues a report and the report goes back to the committee chairman. It remains a secret. Even the legislator who filed the bill can't even see the report.

Last year, one of the reporters sparred with the Senate, the general council, over this issue, and he argued that, well, this report of the special

master was similar to a bill and bill drafting, that it's really not public information unless the senator actually files that bill. Well, frankly, I don't buy that argument. It wasn't a bill. It was a report. A report was paid for with public funds to a special master and a report was issued giving what the master's findings were and the recommendations. They would not make that report known. Unless your bill then gets scheduled for a committee hearing, it stayed secret. And that, to me, is just wrong. It should be open.

Because, for example, if that special report, or the special master's report, indicates information in there that might be helpful to the senator or the House member, they need to have the information. If, for some reason, maybe the bill isn't going to – they aren't going to honor it, pay it this year, maybe the next year when they file, if they knew what that report said, they could change the way the bill is drafted or draw the money from a different source, perhaps. So, claims bills, to me, is still a very serious problem.

Let's talk a little bit back to the committee thing just a little bit. For some of you that might not know, when you go to a legislative committee hearing, there's a staff analysis that's prepared by very professional, high quality legislative staff. And in that report -- and, for example, this is an exemption for public records, it will say right in there that this does not meet the test of public necessity for this to be an exemption that is granted.

Or they'll say it's questionable whether or not they've adequately argued for an exemption for under public necessity.

Legislators, you can bring that up to them and say it's right in your report. Staff even highlights it that this is not in there. They just kind of look at you, smile and move the bill and vote it right out. And, to me, they should require some discussion.

I will tell you that in committees where once you spark even just one question -- and a lot of times, the legislators who are pushing these bills, they don't have any real evidence as to why this should be exempt from public records other than, maybe, something antidotal. "Well, these crime scene investigators, they ought to be exempt because they're dealing with issues at a crime scene, and there could be somebody out there that wants to do harm to them or threaten them to maybe change their conclusions, and, therefore, they ought to be exempt. Their names and addresses ought to be exempt from public records."

And you stand up there and say, "Well, can somebody cite some examples? Has this actually happened?" "Well, no, I don't have any examples, but that sort of thing sure could happen." And they'll still pass it just based on that. And that, my friend, is not sufficient. There really needs to be something more specific than that than just antidotal evidence.

But when you get up in front of a committee and you start arguing

against it and why it shouldn't be there, quite often this information is already public somewhere else, the person's name. A lot of times these people wore badges. They even had a number on the badge sometimes. So, it's out there identifying the person, yet they still want that person's name to be an exemption from public records.

And they just -- the moment one or two legislators on a committee will start asking the person sponsoring the bill, "Well, what about this?" I'd say better than half the time the bill crumbles right there. But so many times, what I face is nobody will ask that first question. Nobody will ask them about the deficiency pointed out in the staff report. Nobody will ask them about some specific evidence to back up why there should be an exemption or something like that. Once you get the discussion started, then it usually shows up pretty quickly how flimsy the ground is that they're trying to base this on. And I just think that if legislators to do their job at the committee level. They need to be killing bills that need to be killed.

And the other thing that I would point out to you that I think is a suggestion is that we've done things like the scripts bill. We had the Lee Moffit Cancer Center. We've had the Johnnie Byrd Alzheimer's Center. All of those have major exemptions to the open meetings. And if somebody really feels that this has to be in there, then maybe one of the things they ought to do is put that exemption on a one-year Sunset the first year they're in operation.

And, really, at the end of that year, a legislator can come back. Did they really need that exemption or not? Because once it's in there, it's hard to get it out later no matter what happens. So, one year later it has to be looked at again. That might be one way to help get to the bottom of some of these and people would see that maybe this really isn't all that necessary.

COMMISSIONER GRINSTEAD: Senator, could you talk a little bit more about some issues or concern that you anticipate in the upcoming session?

SENATOR KISER: When it relates to these issues, I would say, again, what I've outlined, that there will be more of that. We have -- one of the biggest abuses -- and I brought along a list. This is a current list right now of the different exemptions, and there's probably close to 30 in the Senate right now. There's only about seven or eight in the House, but they'll catch up.

In the Senate bills, roughly over a third of them are what they call shell bills. And that's exactly what it is. It's a shell. There's nothing in it. At a later point, they'll put something in there. And I really think, again, leadership needs to crack down on the use of shell bills. I think they're -- you can't tell what they're about. All you know is that there's one sitting out there. Sometimes staff will say, "Well, we've got a shell bill sitting there to deal with that issue."

And then, again, quite frequently, the very last moment that they can do these things in the House and Senate, all of a sudden the shell bill comes to life. All of a sudden there's something in there. And we scramble around trying to find out what's in there and have very little time to look at it, to analyze it and, more importantly, maybe get to whoever it is that's pushing this issue to talk to them and say we don't think it needs to be this broad.

Probably two-thirds of the public exemption -- or the public record exemptions, we don't mess with. Two-thirds of them, we look at them and say they're fine. It's justified. But it's probably about a third that we have questions with. Unfortunately, when they hear me get up in front of a committee, they must think we challenge every single one of them, but we don't. Probably at least two-thirds we agree that they are justified and they're fine. But the other third needs to have a lot of scrutiny to them.

THE CHAIR: Commissioner Carassas.

COMMISSIONER CARASSAS: Yes, on the claims bill. The report is an interesting point that you brought up. Isn't that governed, though, by the rules of the House and the Senate, not by state law?

SENATOR KISER: No. There are rules for that. But interestingly enough, there is nothing in the rules that tells them they can hold that report secret. But the Speaker and President maintain that that's their prerogative to hold that and not let it out to -- the only time they release

that report is when that bill mysteriously gets scheduled for a committee hearing. And that process is very mysterious. You don't know when or who makes that decision. Just that there is 15 claims bills filed. Maybe five of them will actually get a committee hearing. The other ten sit on a shelf. If there were reports done in those, you don't see them. The five that actually get scheduled for a committee hearing, that report will be available for those five bills. The others you don't get to see.

COMMISSIONER CARASSAS: For everyone. Not just for the committee members, obviously, but anybody who wants to see that.

SENATOR KISER: Yes. Anyone can see that. That becomes, then, a public record once it gets scheduled for a committee hearing. And last year, for example, when they took the claim bills up, as I recollect, the only claims bills that they allowed to come through last year were ones that had a separate source of money there, like a trust fund, an insurance policy, something like that where it didn't have to come from state callers. And those are the only -- most all of them are dealing with local government, special districts. There were very few that dealt with state government having to pay.

But we've got a -- the big issue coming up, of course, are the ones of these criminal defendants that were found innocent under DNA and the Innocence Project. I happen to have one of those for our law firm and we're doing it on a prolonged basis. But we have several of those that are

outstanding. And the legislature has talked about trying to do a basic bill that will handle all of those. It will be like a formula. So, you'll plug in how many years a person served and in prison unfairly, and you get "x" amount of dollars for each year you were in there. That hasn't come to passage yet, but there's quite a number of those and there's going to be a backlog of those.

And I just which the legislature would realize some of these people have spent 24, 25, 26 years. Some of these people had no criminal record. They had families, wives, kids. Totally destroyed while they were went off. Their businesses were destroyed while they went off to prison unfairly. And so, it would seem like, to me, that justice needs to be heard here. There needs to be something done. And so, I would like to see something done in that claims bill process and the whole thing to be handled very fairly.

THE CHAIR: And, Senator --

COMMISSIONER CARASSAS: One more follow-up.

THE CHAIR: Okay. Go ahead.

COMMISSIONER CARASSAS: I'm sorry. Because you brought up another issue that I think is important for us to address. You mentioned the one-year sunset.

SENATOR KISER: Yes.

COMMISSIONER CARASSAS: Right now, if an exemption passes,

it's up for review after --

SENATOR KISER: Five.

COMMISSIONER CARASSAS: Five years. So, you're saying reduce that to one year on specific bills or across the board?

SENATOR KISER: I'm saying on the brand new ones, on new ones that are -- for example, on the scripts bill, where it was a brand new situation and it's somewhat of a new endeavor of Florida to get into the economic development area and \$350 million the state forked over for that project, and they want a certain amount of this not subject to the open meetings law. In a case like that, I think it would be warranted to say, "Okay, we don't think you would need that."

But, obviously, it's a two-way street. When you're trying to deal some economic concern you're trying to place under the state, so in order to work with them a little bit, you know, just say, "Okay, we'll do it for the first year, and then we're going to critically look at what happened that first year. And if there's really no need for that exemption, it's going to expire."

I can almost guarantee they'll be back the next year wanting it back. But nonetheless, the legislature will have a better opportunity and they can decide whether or not that thing really does need to be exempt or not.

COMMISSIONER CARASSAS: And if -- I guess two questions for that. Is one year enough time to make an informed decision? I don't know

if it is or not.

SENATOR KISER: I don't either. And if the situation is there a concern about having it occur during that year, let them make that argument to get it extended another year. And let them say, "Well, our greatest project is such-and-such a bill or such- and-such a project and we won't get into that until next year. That's when we really need to have it." Okay, fine. Then extend it for one more year, let them get into that and see whether or not it was warranted then. So, I think you can deal with it.

COMMISSIONER CARASSAS: That's an interesting concept. We have not talked about that, I think, at any of our prior meetings. And one last thing. After, whatever, one year or two years or five years, or whatever, it has to pass, just for everybody else's information, by the same high standard, right --

SENATOR KISER: Yes.

COMMISSIONER CARASSAS: -- in order to continue it on as an exemption? So, you're not suggesting changing that in any way.

SENATOR KISER: No.

THE CHAIR: Senator Dockery.

COMMISSIONER DOCKERY: Thank you, Madam Chair. Curt, I don't disagree with anything you've said. And I'm kind of encouraged by your comments on scripts. I was one of the few legislators who voted no on that; not because I don't believe that it had merit or that it might be

good economic development, but it was thrown at us so quickly and there was no opportunity to do any kind of due diligence as a legislator when you're throwing away or throwing at something \$350 million of taxpayers' money.

And some legislators brought up some issues. One issue I brought up is why are we handing the money over now if they're not going to spend it for several years, and allow them to spend the interest on the money? Why isn't the state holding onto the funds until they're needed to be released? Because that's an awful lot of money that we were also giving them to use in terms of interest. So, I was one of the few who voted no on the bill because I didn't feel like I had the answers.

And it's unfortunate that in the legislature the biggest bills with the biggest price tags are the ones that get the least scrutiny because there is this pressure to move things through quickly. And I think that the public would be served better and the legislative process would work better if the public would put a little pressure on the legislators to slow down and carefully examine what's going.

And not to belabor a point that came up at a previous meeting, but on this CSX issue, we're sending \$491 million to a for-profit company and it was never heard in the first committee. There's something very wrong with that. And I think we need to start being a little bit more accountable, especially in times when our budget is going down and these big ticket

items.

And to your point about economic development -- and I know in the public records law it does mention some secrecy that can surround economic development. That's very dangerous. I'm finding more and more that any big project that's out there, they throw the term "economic development," and then all hands are off and everybody says, "Oh, we can't ask any questions. It's economic development." Well, I tend to think something like public safety is a little more important for privacy than economic development.

And I think people are hiding behind that term and I think it is something that this Commission needs to look at. Because what do we really fear about the public knowing the details of economic development? That it's really not going to create the jobs that are promised? That it's really not going to have the benefits? That they really should have some environmental studies, or whatever it is that they're trying to get away with not having, by throwing out the term "economic development"? A lot of mischievousness is happening under those two words.

SENATOR KISER: Yes. And I think Sam Morley, he's going to talk about a few other areas where you can fit in one or two of these little buzz words. It's like -- like you say, it's hands off or it's for this, it's for this. It's for that. And it would just be better to restrain ourselves. Say well, I'll look at it extra hard, but, you know, we're still going to look at the same way

that we're going to look at all the others. And it's just difficult to get them to do it. And it's so important the tenor is set by whoever is in leadership, whoever the president, the speakers, as you've seen with Governor Crist by him coming down so hard on these issues and creating a separate office. The whole executive branch there's been a shift of sensitivity by that.

The same thing, I think, what happened at the administrative level, the Speaker and the President say, you know, when it comes to these exemptions, I don't want to see them flying through the committee. I want to see questions. I want to see votes. And they fly through eight to nothing, nine to nothing, ten to nothing. Nobody's paying any attention to them.

THE CHAIR: Anymore questions?

COMMISSIONER GRINSTEAD: A couple of comments. The economic development issue, I think, is a very important issue. The exemption in current law allows a company with plans to move to Florida asked that everything be kept confidential, and it's confidential for up to two years, and then that can be extended. And so, if we get a lot of complaints from a lot of different people about the economic development exemption.

In terms of the sunset review process, that was changed in 1995. There used to be a review process. An exemption would be reviewed

every ten years after enactment. And that was changed in 1995 to have one review five years after enactment. And since that change in '95, I can tell you that there are probably less than five exemptions that have been allowed to have sunset, most of those because the program is no longer in existence. There was one exemption a few years ago that came up.

It had never been utilized. It was for the donors to some hall of fame, and there had never been a donor to the hall of fame or there had never been a donor who wished to remain anonymous. And even though the exemption had never been invoked, the recommendation from staff was to continue the exemption because it could be invoked at some point in the future. So, I think the idea of the Commission looking at the sunset review process -- I've had suggestions from legislative staff about looking at that process.

In terms of the claims bills, it's my understanding that the Senate has now entered into a contract with DOAH, and DOAH is now acting as the special master for the Senate. And as a part of that contract, DOAH is required to keep those old records related to those claims secret. And I think that we will be looking at that and, perhaps, talking about it more at our May meeting. And, Senator, I would strongly and very enthusiastically invite you to work with us --

SENATOR KISER: Sure.

COMMISSIONER GRINSTEAD: -- on that issue. And perhaps

we'll ask you to come back to the meeting in May to talk about it a little bit more.

SENATOR KISER: The Senate did the DOAH contract last year. That was last year was the first year that the DOAH administrative law judges conducted those hearings. And, you're right, they were instructed to keep it confidential and turn it only over to the residing officers.

THE CHAIR: And the question, I think, a judge crosses it comes up as to whether -- a recent rule change keeping those records secret would be permissible under Article 1, Section 24, which says that legislative records must be open unless there's a specific statutory exemption, which means that, you know, if there was a rule in place when the constitutional amendment became effective, that rule would stand. But from '93 forward, if they want to close access to something, they would have to go through the legislative process to get an exemption. So, we'll look into that a little further. Thank you very much.

THE CHAIR: Next, we have Diane McFarlin, publisher of the "Sarasota Herald Tribune."

MS. MCFARLIN: I want to thank you for this opportunity to talk with you this afternoon. My name is Diane McFarlin and I am the publisher of the Herald Tribune committee group based here in Sarasota. Our organization includes six editions of daily newspaper, several Web sites, a 24-hour cable news channel and various weeklies and magazines. Our

mission is to be the most trusted and valued source of news and information in the region that we cover, and, as such, we are avid users of the First Amendment.

I've also been a champion of freedom information as a past officer of the Florida Society of Newspaper Editors and the American Society of Newspaper Editors. But today I'm speaking primarily in my role as publisher, someone whose job it is to make certain that editors and reporters have the resources they need to keep the citizens of this community informed.

Sometimes state and local governments make that responsibility difficult to fulfill, and I'd like to share three examples. In February 2005, the "Herald Tribune" began investigating how education officials regulate teachers who violate ethical standards. It was then that reporters first asked the Department of Education for a copy of the database they maintain on each teacher misconduct case.

Over the next year-and-a-half, the "Herald Tribune" dedicated an enormous amount of time and resources to gaining access to this public record. Negotiations involved dozens of letters and phone calls made by multiple reporters. At first, the Education Department claimed the database cannot be made public. Then it asserted that the newspaper would have to pay to remove protected information from the database because DOE officials had not made sure the information was input

correctly.

DOE attorneys sent the newspaper an invoice for nearly \$20,000. Yes, \$20,000. Through months of negotiations over price and access, state education officials repeatedly said they were days or weeks away from providing the database, only to renege on that promise. At one point, the delays got so bad we sent a reporter to Tallahassee, hoping a face-to-face appeal would pry the database loose. The newspaper also enlisted help from its attorneys, who spent hours in discussions and drafting responses to state denials.

After nearly a year, our newsroom felt it had exhausted all reasonable means of getting the record. So, it found an alternative, using paper records to build its own database. We spent several thousand dollars for copies of the records, then devoted three reporters full time for more than three months to build a database. The newspaper also spent hundreds more dollars hiring outside help for data entry. The database is not the only public record that required extraordinary resources to obtain.

For the same project, the “Herald Tribune” requested budget documents from the Department of Education’s Office of Professional Practices. It took months for the state to provide basic budget information. The state then sent an invoice for more than \$400. Compiling three years of budget documents, apparently, took three different DOE employees nearly 20 hours and the state charged us nearly \$45 an hour for one of

those employees.

The second example concerns the Manatee County school district. After our reporters learned that a district administrative who retired while facing rape allegations, had a long history of questionable behavior with students, they requested personnel records for every teacher who had been fired or resigned for inappropriate conduct.

Manatee school officials took months to fill a request and sent the newspaper a \$3000 bill. That number was inflated by the fact that the district tried to charge the newspaper for the time it took three different employees, including two attorneys, to review and redact the investigative files.

The district went a step further. It tried to charge the newspaper for mailing out notification letters to every employee or former employee mentioned in each investigation. This included people called as witnesses. While state law does require school districts to give employees a chance to respond to potentially negative personnel records, this is supposed to happen before the information ever gets into the file, not after someone asks to see them.

The notification arguments over cost delayed the public records request for months. The dispute between the district and the newspaper was only settled when a new attorney was hired for the Manatee County schools.

The third example, this summer there was a heated battle brewing between our local sheriff and the county commission. Commissioners wanted the sheriff to cut his budget. Well, the sheriff said it was already cut to the bone. Our sheriff even threatened to take this case straight to the Governor.

The dispute gave us the idea to find out whether all three sheriffs in our coverage area had been good stewards of the taxpayers' money. It is a classic watchdog story that's been done hundreds of times. For that project, time is one of the most critical factors. We felt it was our responsibility to get the information to the readers before budget hearings began in the fall. If we found examples of waste, but didn't publish it until after commissioners yielded to the sheriff or vice-versa, our story would have been of little use to our readers.

You know, I'm going to jump ahead because I want to get to the point. Of course, we are an organization that makes money for the purpose of doing this sort of work. But how about the average citizen or small agency? Certainly, for them, these steps toward access would have been cost prohibitive. And for us, if you tallied up these three examples, it would have been more than enough to cover the salary of another reporter, somebody who could have been out doing investigations on behalf of our readers.

So, on behalf of those readers, the citizens we serve, I encourage

you to take whatever steps possible to a) better clarify charges that agencies and local governments can impose on requesters, especially those ambiguous fees related to clerical and supervisory labor costs, informational technology resource cost and other special search charges; b) recommend specific time limits for compliance for public records requests; and c) recommend elimination of special exemptions and unclear language that enable agencies to interpret exemptions that don't exist.

It is costly enough to inform the public without having to pay exorbitant fees for information that belongs to the public. Thank you.

THE CHAIR: Thank you. Any questions? Thank you very much. Jim Doughton, publisher for the "Gainesville Sun."

MR. DOUGHTON: Good afternoon. I'm going to be brief. First I'd like to start by thanking Governor Crist for appointing the Commission. I know he's been a big proponent of open government and we appreciate that, the citizens of Florida and the media. I'd like to thank each of you for being here. I know you're taking time out from your day jobs, and that's important. You're doing the work for the people of Florida.

And I think it's obvious Florida has been the standard for the entire country of open records. I looked back, reading through some of the literature. I guess it's been 99 years since the first law was passed, right, Barbara? Is that correct?

THE CHAIR: That's correct.

MR. DOUGHTON: Here in Florida. Of course, we all know about the Sunshine law, which is in '67. But 99 years ago, we had the first law about open government. So, we really have set the standards for the whole country.

My last 34 years in the newspaper business, I've been on the business side. Once in a while I try to be on the news side, but I'm reminded real quickly to go back over to advertising. But the last eight years, I've been the publisher of the "Gainesville Sun" and I have not been directly involved with news issues. So, I hear things more from, if you will, 30,000 feet.

So, my general comments are one, we do a great job here in Florida on open records, and I hope you can continue that tradition for many more years to come. I think open government really means better government.

I'm going to focus on just three general areas. One, that we need information in a timely manner. And the examples that you've heard already sort of point that out. But I think, oftentimes, there's a willingness to give the information, but it doesn't come in a very timely manner. So, that would be number one.

The number two thing I hear, especially from some of the smaller properties that are members of the Florida Press Association, have been with costs. Costs should be reasonable. And I know, as the clerks pointed out, that occasionally they get unreasonable requests, and there should be

some balance for that also. I certainly understand and empathize with their issue.

And then the third have to do with the exemptions. And for that, I turn to Greg Thomas. Greg Thomas is the attorney that represents the “New York Times” regional newspaper where he deals with a number of broad issues. He had four different examples relating to the exemptions.

One, regarding student records. Get better guidelines as to what a student record -- what is a student record? And the refusal to redact out of the educational records the information we normally want about discipline and non-academic problems. So, that’s number one.

Number two we’ve already heard from the economic development exemption. This exemption is way too broad. We only find out about the benefits the government is providing at the end of the process, where there’s no ability to change the public opinion.

Third, the direct support organizations. And this sort of falls into my backyard. Specifically, universities that create entities to avoid public scrutiny that really have massive budgets, the best example being, probably, the University of Florida Athletic Association, and others.

And then, the fourth is the Department of Children and Families. More access to information about kids in trouble. We want to protect the family, but we end up concealing the problem in the name of family privacy. So, those four areas regarding the exemptions that Curt talked about and

also Diane talked about. And I have a minute left. So, thank you very much. Thanks for the good work you're doing.

THE CHAIR: Any questions? I'd like to point out that at our meeting in Kissimmee in November, the Department of Children and Family Services asked the Commission to endorse legislation that will make it easier to open up DCF records. And that bill is in draft. There is a copy available on the table as you walked in.

And, basically, the bill first, and I think very importantly, allows the child access to the child's own records. I was stunned to learn that children in the foster care program do not have access to their own records. This bill would change that. And it would also allow the Department to release records once it determines that the records should be released.

Right now, if the Department wants to release records, the secretary has to go to court and get a court order allowing the release of the records.

And so, this would change that process. And I think we are seeing the Department opening up pretty dramatically in comparison to the way things have been in the past. And this bill is a huge step forward and the Commission has agreed to endorse it. And we've worked some -- I've worked some already with DCF on the language, and we will be testifying in support of that legislation during the legislative session.

COMMISSIONER CARASSAS: One quick question?

THE CHAIR: Yes, Judge.

COMMISSIONER CARASSAS: Just on the student record issue. What exactly is the issue there? I'm not sure I understood what you said.

MR. DOUGHTON: Okay. I'm not an expert on this. But my understanding is when the athletic association meets separate from the university, we don't necessarily, on those entities, have the public access to those records.

COMMISSIONER GRINSTEAD: There's a federal right to privacy and a state right that gives a student the right to privacy and student academic records. And the question is what is an academic record? For example, there was an issue that kids got in a fight on a school bus. There was a videotape made of the fight on the school bus. The school bus driver, I believe, got involved. And the school claimed that it was an academic record and, therefore, exempt from public disclosure. So, there have been disciplinary records that the schools are claiming are exempt.

I had an issue last week with a citizen where a school board had released academic records not entitled to receive them, and they claimed that they were public record, but they were clearly academic. So, there's a lot of confusion about what "academic record" means. And so, I think what you're suggesting is that we might want to look at that and provide a definition, a statutory definition, because right now there is none, to my knowledge.

MR. DOUGHTON: Okay. Thank you very much.

THE CHAIR: Matt Walsh, publisher for the “Gulf Coast Business Review.”

MR. WALSH: Good afternoon and thank you for giving me this opportunity to speak on this important subject. Our company is the observer group, and in addition to publishing the “Gulf Coast Business Review,” we also publish three community weeklies here in the Sarasota/Manatee area. We’re a much smaller operation than the “Herald Tribune,” so our issues are smaller than theirs, but, hopefully, just as important.

The first one that I want to address is one that might be a tiny thing, but it involves the spending of billions of public dollars. And it has to do with the way local governments, the state governments present their budgets to the public.

It seems, to me, that the state statutes are set up so that state and local governments are able to, I’ll use the term obfuscate, hide and be less than forthcoming about their expenses. As you know, each fall in Florida every public taxing authority is required to publish legal notices, spelling out its proposed budget and millage rate for the upcoming fiscal year.

This is well and good, but this is, basically, worthless information. And here’s why. I always ask the question “Compared to what?” When you see an itemized proposed operating budget, say for the Sarasota

County school board in the newspaper, it may tell you what it proposes to spend in the next fiscal year, but it doesn't provide you with any context.

There are no comparisons to the previous year's budget or with the previous year's actual expenses. Taxpayers have no clue whether the proposed budget, or even a line item, is increasing one percent, five percent, 20 percent, 30 percent. They have no information to be able to analyze and make informed conclusions about public spending. Then try to obtain this information in a uniform way.

That is a research nightmare. Every county and municipality reports and prepares its budgets differently and presents them differently. In my view, public record laws should require all taxing authorities to present their annual budgets to taxpayers.

And this is going to sound like minutia, but it is a big deal for the public to understand what is happening. To include the prior year's actual revenues and expenses for the operating budgets in one column, the current year's budget in the second column, the proposed budget in a third column, and a percent change compared to the current budget in the fourth column.

In addition, I would require all taxing authorities to show this same information for millage rates, assessed values, total number of full-time employees and the expenses for salaries and benefits. This format, indeed, would be meaningful and truly help make the business of

government open and transparent to the average taxpayer.

Lastly on this point of open public budget information, the State of Florida is the worst offender when it comes to easy accessibility to the state's budget. I challenge all of you to go to Google land type in 2007-08 Florida State Budget, and good luck trying to find out or even find the state budget. Thank you.

COMMISSIONER LEE: Madam Chair?

THE CHAIR: Yes.

COMMISSIONER LEE: This seems to be a reoccurring theme with some of our speakers, and we've heard it for several meetings now how unmanageable the state budget and the Department's budgets are to access. And I'm wondering if we shouldn't, maybe, gather some additional information, maybe have someone from the state educate us. I have no idea how the state's budgets are compiled and noticed and all of that. But those people who work in this area and who are trying to access that information are having a difficult time. And they've told us that several times now.

THE CHAIR: Having tried to read the budget that comes before the legislature, my eyes start twitching at the memory of it. It's a very difficult process, as I think it has been pointed out at previous meetings.

COMMISSIONER LEE: I would like to hear more about that to resolve that or making some recommendations.

THE CHAIR: Okay. We'll put that on the agenda for May. I would like to point out that Representative Herald will be here tomorrow to talk about a bill that she has filed that may be the first step in this process. It's House Bill 181. That was heard last week or the week before, I believe, by the Committee on Audit Performance, and it would require every state and local government agency to put contracts valued over \$5000 online.

It requires the Office of Open Government to create a portal through which all of these -- so the contracts, at least, will be online. It might solve your CSX problem. And it should, hopefully, make them easier to find. That bill, as I said House Bill 181 -- oh, it also requires expenses. I'm looking at the bill here. There is a copy out on the table. That bill will probably ask for a recommendation from the Commission as to whether we should endorse it. There is a Senate companion, and I think it has a fairly decent chance.

There was a fascinating story on MPR last week that you can still find on their Web site, I believe, about transparency and government spending, and Florida is not one of the leaders in this area. State of Missouri is, interestingly. Every expenditure by every agency in Florida must be online in the state of Missouri.

So, we will take your comments very much to heart, and I think it is an issue that this Commission will be moving forward on. And we'll ask for some specific testimony from, maybe, state and local governments at the

May meeting.

COMMISSIONER LEE: Just another comment. With respect to local or counties' budgets, there are some statutory provisions that tell you how to format those budgets, but they are not in the format that's been suggested here. Certainly, that would make it more user friendly.

THE CHAIR: So, the local governments, maybe we need to look at those statutes in terms of statutory requirements for formatting. I mean, it's always a great idea. I know when the legislature requires information to be put online, but if it doesn't explicitly state how that information will be provided, it can be really problematic.

I know with the lobbyist expenditure forms, great idea. We put those online, but trying to figure out who was spending what was virtually impossible because of the way they were being placed online. And I think it's a very good idea. I know that's an issue that you're very interested in, Senator Dockery, so we will take a hard look at this and get some testimony in May. Thank you very much.

Next we have Bonner Joy, publisher for "The Islander," Holmes Beach, Florida.

MS. JOY: Hello. Thank you for having me here today. I really appreciate it. I'll give you just a little, brief description. I think that maybe we've heard from some of the big fish in the pond, and I'm here like the little guppy. Just one newspaper, an annual average circulation for a

weekly of about 15,000 a week. Small resources, no clerks. And we struggle.

In my newspaper market, we cover three cities, three city governments, three mayors, three police chiefs, three building departments, three of everything. And for one small little newspaper, it really requires three full-time reporters. And they have to understand how government works, too.

I felt like -- and I've been publishing 15 years, and I've lived on Ana Maria Island for 33, and sometimes, you know, I can think that I've seen and heard everything. But then there are times when you're shocked. A few years back, and I think it was 1997, one of the mayors from one of the cities advertised for a clerk. An opening occurred. And the advertisement included "resumes confidential, to the mayor's attention." And, certainly, that got our attention at the newspaper. And we proceeded to try to obtain copies of the resumes.

And I will tell you that that's not unusual. More than likely, when there's an opening in a government position anywhere on Ana Maria Island, we look at the resumes that come in, particularly for building officials, people who will be in charge of a lot of public affairs. And we announce in the newspaper who those applicants are, unless they specifically ask that their information be withheld because they may be in jeopardy with a present job. And we certainly take that into consideration.

So, we proceeded to issue our requests, and many requests, and the resumes, according to the clerk, who is the clerk of record for the city, their resumes are locked in the mayor's desk. I'd say we probably went at least six rounds trying to get those documents. The newspaper's attorney negotiated with the city's attorney to get the documents, and they weren't made available, so we had a lawsuit. And we had a pretty good judge. It went very smoothly. We went to court very quickly, which, you know, isn't the case in another lawsuit that I'm involved in presently.

The outcome of the lawsuit was that we got the records that we requested, and we also had a settlement with the city that included education. And that's what I'm here to talk to you about. We elect people to city government, county government, and to the state, whose qualifications are sometimes six years of residency and a \$45 fee. That's what you'll need to run for office in the City of Ana Maria.

And they don't have education about public records, and they scoff at the Sunshine law, and they think it's okay to talk about items that are going to come up on the agenda over coffee in the morning where their friends are hanging out, and they don't care to know how government should be operated. But I found, since 1997, when this lawsuit was settled, that in the City of Ana Maria that there is an awareness, if there's not a respect, and there is an education process.

And this is what they were ordered by the judge. Mandatory

attendance by Ana Maria's mayor, city commissioners, department heads and all employees whose duties relate to the maintenance of public records, and a showing of a videotape prepared by the Manatee County attorney, a seminar on public records that was conducted in -- oh, I'm sorry, this order came in, like, 2001. It was conducted in 2000.

And the videotape shall be presented within 45 days of an election. Further, there is an orientation or briefing session to be conducted by the city attorney for the City of Ana Maria for newly elected officials, all new employees, and anyone whose duties relates to the maintenance of public records. The first orientation or briefing shall be in conjunction with the videotape showing, and thereafter within 45 days after any newly elected officials take office.

This made a difference. It made a big difference in the City of Ana Maria where I haven't had another lawsuit. It helps that the clerks attend. And I know the clerks that are here today have had some education in the law, but I have a city clerk, for instance, now who testified in court just a couple of months ago that she didn't know what "exempt" meant. She never cited any exemption to the rules when she failed to provide public records. She failed to provide public records over a period of months, and they were ordered released by the judge for in camera review; and, at that point, the city attorney released the records. And I'm not sure whether the clerk even ever had the records.

Would education have helped here? Absolutely. So, I think what I'm proposing, you know, as I formulate the idea that, possibly, Realtors and teachers and other professionals have continuing education programs, that maybe the state should have a process for education for newly elected officials and people who deal with public records to have education in public records. And it could be as simple as a videotape seminar. Thank you.

THE CHAIR: Thank you. Any questions? Comments? Again, I think education has been a recurring theme and the need for education and continuing education. I know, on behalf of the clerks and as president for the First Amendment Foundation, I've done those classes or those seminars for them in the past, and I think that education is a critical component of this. The Office of Open Government has created an online training program for state agencies under the authority of the Office of Open Government, and I would really like to see that kind of program continued.

And perhaps we do need an education component. I will look into what other states might require education in the area of open government for elected and appointed officials and get back to the Commission in May on that. Jeanne, did you have a question?

COMMISSIONER GRINSTEAD: I just wanted to know your opinion. Is it that the officials just don't know the law or that they disagree with the

law?

MS. JOY: I think it's both. And I've heard people who are elected and haven't taken office yet or who are campaigning for office who feel that the Sunshine law is prohibitive, that they should be able to talk to one another. And, of course, my argument is why don't you talk at the meeting? But it doesn't always go anywhere, you know.

On the other hand, I often think that they don't know and they don't make it their business to know. But when they have to attend a seminar and they're told what the implications are and what amounts to a public record and why they have to be at a meeting, and someone gives them some education on quasi-judicial hearings, and the Supreme Court ruling, the Snyder ruling, which has become really important in municipal government dealing with property rights and so forth, I think that we end up with better public officials. Definitely better public officials with education. Otherwise, we just get people who want to do good but don't know how to do it.

COMMISSIONER LEE: Madam Chair?

THE CHAIR: Yes.

COMMISSIONER LEE: I've found that as soon as a person is elected, I try to get to them and explain to them the Sunshine law. Because as soon as they are elected to an office, not just when they are sworn in and take their oath, they are subjected to the Sunshine law. And

still, they -- they're still in the candidate mood and they want to talk to other people who are running for office, or the commissioners, and they get themselves in trouble out of ignorance, not be design necessarily so.

There are some people who still are experienced public officials and have a hard time with the Sunshine law but comply anyway. But education is a real key to this. And one of the things that I've found helpful is that even if I can't get to them once they've gotten an election, to get to them almost within the first week of them taking office and to have a new commissioner briefing with them. I give them a notebook, talk about evidence, public records, Sunshine law, and it's very helpful. It at least gives them a roadmap to stay out of trouble.

MS. JOY: Well, I certainly try to educate my public officials, and I tell them that once they're certified, once the election is certified, they're bound by those Sunshine laws and public records laws. But, you know, you have about -- you might have about 12 hours to get your mouth going, and then you need to comply.

I wanted to make a comment on the budget, if you don't mind, because I think that Matt needs another column in his report that includes the rollback break. I have -- and we saw that come into effect in the legislature this past year when Governor Crist ordered governments to roll back their taxes. And the rollback rate is legislated by statute to be the millage that -- the millage rate that would create the same amount of tax

that was raised last year with this year's revenue. But I have public officials who don't know what that is.

But when you can see what the rollback rate is, the millage rate that would be set if we rolled back the taxes to last year's revenue, then you know where you are with them. I mean, I have an elected official who thinks the rollback rate is when you bring in new police cars and they roll out on the street. The rollback rate is critical because, otherwise, anything more than the rollback rate is raising taxes. And we have many public officials who claim they've never raised taxes because they kept the millage the same from year to year. And that's a falsehood.

THE CHAIR: We'll take a look at it. Thank you. I think also this recent issue -- I'm sure, Renee, you're aware of it, and others on the Commission, with the City of Jacksonville and the grand jury report where we had the city commissioners in fairly flagrant violation of the Sunshine law, and the city attorney was blamed in the grand jury report, I think, perhaps, unjustly, for not providing enough education to city commissioners. But I do see that the education issue is becoming more and more critical. It's been critical all along, but I think it's getting more attention these days than it has in the past.

COMMISSIONER LEE: Especially with term limits. You're getting new people in all the time. And there are many factors that's kind of converged that makes it a more and more important issue. And term limits

is one of them.

THE CHAIR: Next we have Sam Morley, general counsel for the Florida Press Association.

MR. MORLEY: Good afternoon. Thank you for the opportunity to provide some comments. And I appreciate your time, too, to be with you a moment to take part in this process, important process.

I'd like to direct my comments to a general concern about records exemptions, and then, hopefully, have time to address three specific kind of minutia areas that I find to be a particular problem.

First, generally, in these exemptions, there's a thousand of them. They're enacted each legislative session. The rationale, typically, relates to business or proprietary interests, national security or privacy interests. And we share the concern with the presenters and all the Commission members that in some cases the justification for these exemptions is, basically, lacking.

I won't go into detail on the business side. You know about the economic development exemption and how problematic it can be. We think the exemption makes it much harder, if not impossible, for the public and press in turn to operate a financial benefit the state would receive in jobs and increased wages.

On the institutes like the Moffit Cancer Center and the Scripps Institute, you know, they do have open meetings in some areas, but for

future planning, my understanding is it's quite closed. So, the public doesn't have access to any of those important things that they're doing, which is future planning, to see if they plan to research, hiring and firing decisions. All very important to the public but, essentially, not available due to the limiting of this in these institute statutes.

So, basically, for a state claiming to be one in the Sunshine, it's surprising that we have such broad economic development exemptions. And my understanding is you have heard or will hear quite a few complaints from citizens in this area.

You know about the question exemptions based on national security. One of the main exemptions passed after the 911 attacks was exemption from disclosure, blueprints and schematic drawings of public facilities, and they're followed by a bill regarding property owned recreation facilities and entertainment complexes. So, you used to could get Shamu's tank size, you could get Epcot dimensions and so forth. Now that's -- or, you know, the tunnels at some of the stadiums. All that's closed and have been -- I think continue to be reenacted.

Others are related to hospital security plans, location of pharmaceutical stockpiles. We suggest that the attempts to be proactive and measures prescribing access have, basically, been applied too widely too quickly. A lot of these were knee jerk reactions. Some were successful. But the net sum has been a loss of public access. The

exemptions get overreached. And, ironically, they can lead to a citizen's inability to know what their governments are doing to protect them. Have the opposite result.

Another area of questionable exemptions is on the privacy type basis for the exemptions. Everybody agrees, you know, your Social Security number shouldn't be out there as part of the public, as should not the results of your physical. But, you know, if you look at some of these prodigious based exemptions, they look okay on the surface, though quickly they become problematic upon closer inspection.

For example, there's been a series of exemptions, I believe Senator Kiser mentioned them, related to personal information of law enforcement officers, guardian ad litem, code enforcement officers, judges, state attorneys, and, most recently, GJJ employees.

Now, in some cases exempting such personal information is very justified. But in some cases, no concrete information is offered to justify the closure. Sometimes an exemption is passed little more than antidotal references to a potential problem. You know, is it really necessary to exempt identity when that information is in the local telephone book? Which has been the case.

So, passing such exemptions without evidence of specific need, contrary to Florida's constitutional requirement, that exemption states specifically the public necessity to justify the exemption and states, you

know, that there's a potential necessity. It needs to be factually specific. And they continue to pass these privacy exemptions.

Let me go skip on, then, to a couple of real kind of narrow areas. One is a concern that I've run into manning our Florida press hotline to assist publishers and reporters. We found that one kind of a problem is that requests, on occasion, refer to a PIO, public information officer. You may have heard this problem before. This has been a longtime use on the statewide level, but it's, I think, starting to take root on local government level as well. The use of PIOs, my understanding is that it's contrary to the public records law. The law doesn't allow the agency or local government to impose automatic procedures prior to release, which PI could be construed to be.

Now, the last area I can't take credit for. This is the Pat Gleason's suggestion, which I thought was such a tremendous idea. Pat is an attorney in the Governor's Office of Open Government, a great proponent of open records. Her idea is to require, at least generate and maintain a records index.

One common issue we've heard from earlier presentations relates to excessive records fees imposed on reporters and the public. It seems like sometimes that excessive fees are there to discourage access. Sometimes the fees are not related to the copying at all but to the more ambiguous cost category, the staff resources, et cetera, necessary to

review the documents. And, you know, the government official may claim, sometimes legitimately, the review is needed to sort and cull the documents to be responsive.

Anyway, Ms. Gleason's proposal for a records index could go some ways to reduce staff time necessary for such a review. An index would be better organization of the records, allow more efficient responses by the local government. An index might also help on the accessor's side or citizen's side to narrow his or her request to those categories in the index opposed to a broad brush request, which is problematic for the clerks and others who have to deal with those things.

So, an index would require some work at the front end where the record is created in the form of organizing the documents into the appropriate types, the fields, the subjects. But the end result, if a public request is made, would it not be mutually beneficial, focusing the request on the needed documents and, at the same time, reducing the time needed to produce it.

So, we hope that the Commission might want to look into Ms. Gleason's idea of having a public records index requirement as a statutory requirement.

So, thank you again for your service to the Commission and for the extensive time you've given to this work project, and we look forward to seeing your recommendations.

THE CHAIR: Any questions for Mr. Morley? Comments? Is there -  
- did you have something?

COMMISSIONER LEE: Well, you know, we are beginning to see a proliferation of public information officers in Hillsborough County. Almost every department wants one. And I don't believe that they are being used as an impediment to providing public records, but to be a liaison with the press, to make sure the press has a person to go to for any of their needs, whether to get information, get records or anything else.

And it's disturbing to hear that they are -- you know, they should never be used as the sole point of seeking public records. Everybody has that responsibility in an organization. And I will go back and make sure that I talk to -- our PI knows, and let them know the impressions that are being made with the media and the public. Because they should never stand between access and the requestor.

THE CHAIR: There has been, in the past, as Sam pointed out, in the previous administration, a growing frustration among reporters at the state agency level where reporters had to go to the PIO in order to obtain records, and a member of the public had to go to the general counsel in order to obtain records. I think that has changed under the Crist administration. I'm not hearing those complaints as I was previously. But I do hear complaints that now the local government, in different areas of the state, is imposing -- different local governments are imposing that

restriction.

And it brings up a very important point, that there is a difference between access to information and access to public records. And the law requires that any person who has custody of a public record to provide access to that record under the guidance of the custodian or the custodian's designee.

So, it may be appropriate to send a reporter wanting information about a particular issue to the PIO, but public records request should be anybody who has custody should be subject to providing access to those records. And it is a concern and a growing concern that I hear articulated almost every day.

Yes, Senator?

COMMISSIONER DOCKERY: Madam Chair, that brings up an interesting point. A lot of the state agencies, and I'm sure probably goes to local governments as well, there seems to be this fear that if information gets out that it may not look good. And it seems, to me, there's a circling effect of people within an agency saying there needs to be one point person that we release information to. And I think that goes counter to what we want in the state, which is that anything generated with state tax dollars or local, that affect people ought to be available for people to get to.

And instead, we have this kind of harboring effect and almost a

review process before those records are released. And that's what is very frustrating, I think, to a lot of people. And I am an elected official, but I'm very in touch with the citizens in my district, in my community, in my five counties, and there is a great distrust of government right now, probably greater than I've ever seen in the 12 years that I've served.

And I think that this fear from state workers and local officials to release information just adds to that skepticism and fear that citizens are feeling. So, it seems, to me, that it's hard to legislate good intentions. But what we need is -- and I was touched by the story that Bob Butterworth told a few meetings back, and that is to act quickly to release information and not buckle down with your top agency folks to decide how to handle a media request. Just put the information out there. If you've been doing things correctly, there's nothing to hide. And that's where a lot of skepticism is coming in.

And even as a legislator, I see that different agencies are very protective of some information, and that's what is causing the skepticism. I don't know how we, as a Commission, get to that, but that's where we really need to go, is not as much what's exempt and what's not exempt, but about a culture of you exist in government because people pay for government to do certain things, and you're responsible to those people who are paying. And we've lost sight of that.

And it seems to be the public and government, and it should be the

public's government. So, I don't really know what the answer is, but I know we need to get into the culture more than just educating about how you do something is why you're doing it.

THE CHAIR: I couldn't agree more, frankly. And I think that the Governor has done us all a great service by sort of setting a standard. And there is the hope that there is the sort of trickle down effect in that we do get government officials embracing the whole purpose of open government. I mean, I'm very fond of saying there is a reason we call these people public servants. They work for us, the public.

And it's a very important issue and it does require more than just simple education of what the law requires, but the whole attitude. And we are seeing a change in attitude, I will say, at the state agency level and at some local governments also. But it does require those in charge to create that atmosphere among their employees.

But the whole PIO thing, I believed then, and still believe now, it was an attempt to sort of spin the story before the story was written. If we know what records request the media is making, then we have a broader opportunity to sort of counteract that. The question becomes -- and, of course, when you have reporters who routinely cover City Hall, then people in City Hall or people in the Department of Agriculture, or any agency, know who the reporters are.

But when we have public -- excuse me, citizens making public

records requests and they're treated with the kind of disrespect that many of our people have testified before us show, it shows that there is a real problem. I was really struck by the public testimony we received both in Tallahassee and Kissimmee and the level of frustration that the citizens were expressing and the poor treatment they had received by the people who have been elected to represent them.

The Governor responded with the Citizen's Bill of Rights, and I think we might want to consider putting that in statute as well. It is a very important document.

I know Senator Bennett was here. Did he step out?

COMMISSIONER CARASSAS: I think he just stepped out.

THE CHAIR: Is there anymore questions or comments? Then we will -- yes, Bonner Joy.

MS. JOY: I just have one comment that I forgot to make, and that's the cost of the education. Which my lawsuit in 1999 that resulted in a settlement agreement for education, cost the city and myself \$7000. The current lawsuit that I'm involved in where we're still involved in fee hearings, although we had a ruling in our favor, is \$70,000 on each side. And some education would have gone a long way to preventing that expense for the taxpayers because the taxpayers will ultimately pay \$140,000.

THE CHAIR: Under the law, there is a requirement that if you sue

government and win, the government agency must pay your attorney's fees and court costs. So, the highest award I've heard is \$360,000. So, it can be very, very expensive. And that's what they always -- a \$500 fine, yes, but attorneys' fees and court costs can be very exorbitant. Other comments or questions? Okay. Then we will adjourn until six o'clock this evening, at which point in time we will hear a number of people. And we can leave our books and documents here, and I'll see you back here at six.

(The meeting was adjourned.)

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(The meeting was resumed at 6:00 p.m. after which the following proceedings were had:)

THE CHAIR: Good evening. Again, what we've done is put people in order in which they registered. Everybody gets five minutes. Members of the Commission may have questions, may ask for more information. And I'd ask everybody up here to turn off their cell phones because they do interfere with the microphones. And everybody else, if you would just turn off the ringers, please.

And when you come to the podium, speak into the microphone. We are recording this for the court reporter. Transcripts of the meeting will be available on the Commission's Web site as soon as they're available. And you can also get transcripts from the previous meetings are already

posted. And we are being televised by the Florida Channel.

So, first on the agenda this evening is Gill Thelen, Executive Director of the Florida Society of Newspaper Editors.

MR. THELEN: I bring you greetings from dark and stormy Tampa. Members of the Commission have expressed interest in how frequently Florida news media requests public records, utilizing Florida Sunshine laws. To attempt to answer that question, FSNE asked our board members to report their newspaper's public records activity in 2007. We believe our board is representative of Florida papers their size and Sunshine activity.

Based on those responses, it is possible to say that a typical Florida daily newspaper routinely makes between several hundred and several thousand records request a year. Size of paper, of course, plays a role in the volume of requests. That's natural, because larger news organizations, until recently, have more reporters and greater resources.

Some smaller papers, however, are very aggressive pursuers of public records. The "Ocala Star-Banner," for example, estimates 1800 requests a year, both oral and written. The "Daytona Beach News-Journal," very aggressive in this area, estimates its reporters making about 2400 public records requests a year, most of them oral, some by e-mail, and even a few are by official form letter.

Concerns about access to public meetings arise about two dozen

times a year in the Daytona Beach area according to their editors. A few miles down the coast, “Florida Today” reports 175 public records request, and the majority of them are formal and written. In south Florida, the “Sun Sentinel’s” metro and investigative reports make in excess of 800 record requests a year. Their business, sports and features staff make records requests as well, but not nearly as often. The paper reports few incidents of complaints about closed meetings, perhaps three or four a year.

The “Palm Beach Post” made approximately 1400 public records requests last year. The bulk came from the metro and state desks and its Treasure Coast operation. Over in central Florida, the “St. Pete Times” makes about 1000 public records requests a year, according to its attorney Allison Steele. Steele says that in a typical week she reviews at least three public records requests that have met some kind of challenge or problem. But she never sees most of the requests, which routinely sail along without a problem.

When I was executive editor of the “Tampa Tribune,” it was not uncommon for us to make several public records requests a day, most of them oral. Counting formal written requests, “Tribune” attorneys estimate we made 800 to 1000 requests a year.

The Florida AP staff requested about 135 public records in 2007. This is a typical example. The most serious obstacle was met by reporter Lisa Orkin, who was seeking school district files in St. Lucie County

concerning a teacher with a history of sexual misconduct issues in other states. Lisa was participating in a national AP project about teachers who, despite problems in one state, were able to find jobs in another. The St. Lucie educator has been fired in Georgia over criminal charges involving a student despite an eventual acquittal. He also had similar sex-with-student misconduct allegations aimed his way in Oklahoma.

St. Lucie hired him, and Lisa wanted his personnel records. The school district stalled for more than a month before turning over the files. According to Lisa, they made up all kinds of excuses, including that they had just sent the file to be microfiched.

I hope this information addresses your request, and I welcome any questions you might have.

THE CHAIR: Anybody have any questions? Thank you very much, Gil. And I think we have copies of most of those e-mails, JoAnn? Did I forward them to you?

COMMISSIONER CARRIN: Right. And we distributed a report that he put together for everybody.

THE CHAIR: Okay. Perfect. Okay. Thank you.

COMMISSIONER LEE: Madam Chair?

THE CHAIR: Yes.

COMMISSIONER LEE: I have a question --

THE CHAIR: Yes.

COMMISSIONER LEE: -- before you leave. How have you found your requests with local governments? Are they charging the press? Are you having to pay for each public record that you get? Do you know if there is a courtesy exchange for local governments?

MR. THELEN: Generally not. And, certainly, in Hillsborough it's been the standard 15 cents a copy. The majority of the charge issues we've seen up in northeast Florida, the Daytona Beach/Jacksonville area. In other areas, it has not been a significant, day-to-day issue in terms of photocopying terms.

THE CHAIR: Any other questions? Thank you. Next we have Mark Schlakman? Did I pronounce that correctly? Talk about clemency. Mr. Schlakman? Okay. Then we'll go on to Mike Connelly of the "Sarasota Herald-Tribune." Did you all want to do this or are you doing it individually?

MR. CONNELLY: We're just going to rapid fire at you.

THE CHAIR: Okay. Perfect.

MR. CONNELLY: My name is Mike Connelly. I'm executive editor of the "Herald-Tribune." We serve Sarasota, Manatee and Charlotte Counties. I'm also a member of the boards of the Florida First Amendment Foundation and Florida Society of Newspaper Editors. Welcome to Sarasota. I am delighted you are holding a hearing here and deeply appreciate the work you are doing.

I want to talk to you today about one aspect of open government, access to data. For several years, the “Herald-Tribune” has been on the front lines of seeking access to public data, and it hasn’t been easy. Every year, privacy advocates argue more loudly for access restrictions that seem so reasonable that only a philosophical commitment to open government stands in the way.

But scratch beneath the surface, even in the areas where restricting access seems most compelling, and you find serious dangers to the interests of Florida citizens, who have been well served by Florida’s long, strong commitment to open government.

I want to tell you a story that goes to the heart of one of the thorniest issues of data access. The “Herald-Tribune” caused a stir four years ago when the newspaper sought a database that included the Social Security numbers of Florida teachers. On the surface, it is hard to imagine why a newspaper would want teachers’ Social Security numbers. And because the Department of Education had sent an e-mail to every Florida school teacher, asking that they e-mail me, I heard from hundreds of Florida teachers, some of them using decidedly unschoolmarmish language, who couldn’t understand why the newspaper would want their Social Security numbers.

We were working on a story that everyone would agree was in the public interest -- whether kids from poor families receive the same quality

of education as kids from affluent families. As part of our reporting, two “Herald-Tribune” reporters sought state data that would help answer two questions: Is the level of teacher training associated with student success? And do schools in poor neighborhoods get their share of the best trained teachers?

So, why did we need teachers’ Social Security numbers to chase that story? Linking databases is like piecing together a jig-saw puzzle. To link a database under a teacher’s work, for example, with a database on their certificate test scores, the databases must have at least one common piece of identifying information. Names don’t work. The Sarasota phone book alone lists 17 James or Jim Smiths.

So, almost every business, organization or agency gives its patrons a unique number -- an account number, a customer number, an I.D. number. The Florida Department of Education uses Social Security numbers.

So, the “Herald-Tribune” had three choices. Ask the state to link the databases so we wouldn’t need the Social Security numbers. We asked. The state refused. Let me say that again. We asked. The state refused. If the Department of Education had been willing to spend just a few hours -- my reporters actually estimated it would only take them 15 minutes -- helping us uncover the facts, the “Herald-Tribune” would never have needed access to Social Security numbers.

The second choice we had, ask for a data dump that included Social Security numbers so we could link the databases ourselves. Or, third choice, kill the story.

As teachers complained about our requests, Florida legislature hastily passed a law limiting access to only the last four digits of Social Security numbers. At first glance, again, that seems like a reasonable way to balance the privacy interests and public interest. But let's use the story as an example and look at what happens. The Department of Education database lists 370,000 staff members in the state.

To test the effects of this law, a "Herald-Tribune" reporter randomly selected a quarter of those names and separated out the last four digits. If we were given only the four digits 5299, for example, we don't know if we were reviewing data for Roland from Citrus County, Angela from Broward County, Maureen from Palm Beach County or Stephanie from Broward County. The reporter randomly picked nine other four-digit numbers and, on average, they produced 7.6 different names. And remember, that's using only a fourth of the entire staff database.

Privacy advocates want us to believe that no reasonable person could argue against protecting information such as Social Security numbers, and only identity thieves and evil data mining companies would want that kind of information. The reality is very different. Most attempts to restrict access to public information hurt the public interest.

The way state and local governments currently limit access data keeps thousands of news stories -- stories that shine the light on how our government works, stories that protect the least powerful citizens of our state, stories that help maintain a fair and just society -- from seeing the light of day.

With me today are five of my colleagues from the "Herald-Tribune," each of whom will explore a different issue related to access to government data. The issues we will discuss: First of all, unique identifiers. Social Security numbers have become the standby, but that almost guarantees that data will remain secret. There is a simple solution. Require the government entities to replace Social Security numbers with another unique identifier free of charge or for a small fee.

The second issue we'll talk about, proprietary software. Local governments, and, to some degree, state agencies, increasingly outsource the creation and maintenance of data. In case after case, they have entered into contracts that restrict them from giving the data layout, and, in some cases, the raw data itself, to citizens who request it.

The third topic, bad data design. Although state law says agencies must make it easy to identify and redact non-public information, time and again the agencies are building databases that do not take this into account.

The fourth item, cost. Increasingly, government officials try to

charge large fees to provide electronic records. They contract the work and try to pass along consultants' \$100-an-hour fees. Or they charge for extensive program time because they do not want to give raw data or did not plan any easy way to remove the portions of the data that are not public record.

And, finally, enforcement. Even when current law clearly requires government agencies to turn over data, officials and attorneys often delay, look for reasons to refuse requests, or even effectively ignore requests. A stronger system for resolving disputes is needed.

Now, finally, a quick word about the "Herald-Tribune" reporters and editors who will discuss each of these issues. All of them have extensive experience using data in their reporting, and all have extensive experience seeking data from the State of Florida and from local governments in Florida. Pepper them with as many questions as you like. They can take as good as they give.

And, of course, as you dig into these issues during the next few months, we are eager to answer any questions or provide any additional information or help. Thank you again for the work you are doing. Thank you so much for coming to Sarasota.

THE CHAIR: Thank you. Any questions? Comments?

COMMISSIONER GRINSTEAD: Mike, missed this, but most business have gone to employee numbers. Does the Department of

Education still use Social Security numbers for employee identification?

MR. CONNELLY: Actually, they use both. They had both in their database, employee I.D. numbers and social. The reason we needed social is because the database that had the certification scores only had Socials.

COMMISSIONER GRINSTEAD: Thank you.

THE CHAIR: I do have a request for all of your reporters who are here. Out on the table is a report from the Senate Government Oversight Committee, and a proposed committee bill, proposed Bill 7036. And it has a number of recommendations and would create some requirements about using open source software, and also to create some standards for providing online access, inoperability, things that I don't really understand.

So, if you and your staff would take a look at that and give us a response as to what you think about the bill and the changes to the law, I would greatly appreciate it. I know what it does with the Office of Open Government, but if you could take a look at both the report and the legislation that are out there on the table and let me know what you think of it, I'd appreciate it.

MR. CONNELLY: We'd be happy to.

COMMISSIONER CARASSAS: For those of us not from this area, what happened to that story?

MR. CONNELLY: Which? I'm sorry.

COMMISSIONER CARASSAS: With the Social Security numbers. What did you end up doing?

MR. CONNELLY: The story we did was a statewide story. We had an earlier slice of the database that had the Social Security numbers in it. And, in fact, I wrote a column in the newspaper detailing exactly how we protected that. We never put that database on our network. There was, literally, no way anybody else could get access to it. What we wanted was a fresher slice of the database, and that's what we were never able to come to.

THE CHAIR: Was that what Diane McFarlin was talking about where you had to go in and create using paper records?

MR. CONNELLY: That was a later story.

THE CHAIR: That was a later story. Diane McFarlin, who testified today, is the publisher, and she testified about having to manually create a database because she couldn't get access to the database through the public records law. Any other questions or comments? Thank you very much. Next we have Matt Doig, "Sarasota Herald" --

MR. DOIG: Can we switch?

THE CHAIR: Yes, you can switch. Who wants to go next? Maurice Tamman?

MR. TAMMAN: Yes.

THE CHAIR: This is Maurice Tamman, online editor from the “Sarasota Herald-Tribune.”

MR. TAMMAN: I’m not nearly as eloquent as my boss. My name is Maurice Tamman. I am the online editor of the “Herald-Tribune.” For most of my 18- year career, I’ve worked as either a database editor or a special projects reporter. Before joining the “Herald-Tribune” three years ago, I was with the “Atlanta Journal Constitution.” I am a member of Investigative Reporters and Editors and the National Institute of Computer Assisted Reporting. I routinely teach for both organizations on how to use databases in their reporting.

Let me explain how databases work and how limits on database access are a grave threat to open records. To those of you who are familiar with relational databases, I apologize in advance. But I thought it might be useful if we tried to track some analogies and allow people to visualize why and how databases work.

This is especially important because information is exploded in a database and put into different tables and only pulled back together when needed. Let’s take this piece of paper for example. All of you have a copy of it, okay. And let me explain how this document might look like inside a database.

For starters, at the top of this you have some information about the meeting. And you might want to keep track of how and where the

testimony took place. So, you might store that in a table called “events,” and that might have fields in it that would contain information about the commission name, the location of the event and the hearing dates. To differentiate between each meeting, you would assign a unique identifier. I don’t know how many meetings you have. This might be meeting number 42. And that would be a unique identifier for this particular meeting.

Then you might also want to keep track of the information about each speaker. Perhaps you might want to contact them all. So, there would be a second table called “speakers.” And then you have a field for the speaker’s name, their employer, their title, employment dates, biographical information, contact information. And each speaker, too, would be identified as a unique identifier. So, today I would be Speaker Number 3, and that would be my unique identifier.

All this information is contained on this piece of paper. But for the purposes of a database, there would be two separate tables. If you looked at each table separately, on the left side you have the table of meetings, and the right side the table of speakers. There’s no practical way of linking those two together. You would not know, for example, which speaker showed up for which events. And that’s why any database would need, in this case, a third table.

In this case, it’s something to tie everything together. We might call this one the “schedule.” And in our table, it might have date and time,

when I was supposed to show up and what time I was supposed to show up. But you would have two other fields in that, and that's all you would have. You would have a unique identifier for the meeting and you'd have a unique identifier for the speaker. And by doing that, now you can marry all the data together.

So, you can say, "Please, database manager, can you tell me who the speakers who were supposed to show up on this particular day and at this particular time, and tell me some information about it?" This is called a relational database and it allows information to be stored efficiently. So, if you have thousands of names and thousands of reference, you're not repeating information over and over and over again. And then it could be married up when you need it in the way you need it and not necessarily printed out like this.

In the real world, databases contain hundreds of tables with intricate linking systems and very specific identifiers. Today, governments store most of what we view as documents, like this piece of paper here, in databases. And gaining access to those databases, all the tables stored in those databases, information about how they marry themselves together, is the most important open records issue in Florida and the nation. Without access to all three elements, effectively the data inside databases is shielded from public scrutiny.

If I didn't have that third table that married the two other tables

together, the database we created would be useless. If I didn't know how those tables were linked together, that data in that database, the document, the public record that we're entitled to as citizens, is useless.

The matter is further complicated because some of the identifiers used by governments themselves are exempt. Mike talked about that. For the sake of one exemption, such as Social Security numbers, every document contained in a database is taken out of the Sunshine. Some agencies will replace those Social Security numbers with a new, unique identifier, but usually at great cost. Or they will truncate, as Mike explained, to four or six digits, which effectively makes them useless because the numbers could now match numerous records in a table rather than just one.

Using a truncating scrubbing method, for example, one of my children could have the same unique identifier as I do. Clearly, that could cause grave errors. But, more importantly, it produces a document that is not even a close facsimile of the document that is contained inside that database. Effectively, we're creating false public records by not allowing the proper identifiers to be used.

And it's getting worse. In recent years, local governments have privatized much of their database administration to vendors who routinely claim proprietary privileges over the design of the database. Yes, they generally agree to give us the data, but without the definition of every table,

of every field in that table and how they link up, it's all useless.

Just today, I was talking to an IT employee with a local county who contacted his vendor and his vendor had said that he was barred specifically from releasing the data definitions to me because they said it was proprietary. This database contains scores, perhaps hundreds of tables. He agreed that we were entitled to the data, but could not give me what I needed to understand what was contained in that database.

This is not isolated. It happens all the time. If not weekly, certainly monthly. And we all lose substantive access to public records if these two specific issues are not dealt with in a way that maintains the relationship between the different crossing avenues.

THE CHAIR: Any questions or comments?

COMMISSIONER CARASSAS: I think I have a question, and it's a little bit complicated. I understand that. Let me talk about something I am familiar with. I don't know if you are. Title companies, when you buy a house and you buy title insurance. I think they routinely purchase, or get from each county in the state of Florida, all the records every day, every week. In other words, they get everything, they put it in their own system, and then they manipulate the data. They do whatever they want with it, I assume, to do their searches. Is it possible to do something like that with the information you're talking about?

MR. TAMMAN: Yes. I don't think there's any way to stop

somebody from using public records for their own purposes. I mean, you can do whatever -- if it's a public record, it's a public record. And I think --

COMMISSIONER CARASSAS: I'm sorry, I'm not talking about the title insurance. That's already been done. But it's an example, I think, if I understand. And I'm not entirely well versed in it as you are. But I understand that that's -- I used to be an attorney that did property law, and you didn't have to go to the local government. You would go through your title company that had gotten the information, put it together, and then they would present to you a finished product. It's almost like what you're talking about today.

MR. TAMMAN: Yes.

COMMISSIONER CARASSAS: Is there a parallel for the information you're talking about, or is it too broad, too diverse, too complicated to get that same information --

MR. TAMMAN: Well, let me make sure I understand what you're saying. What you're asking is, is it possible for us to go elsewhere for the information?

COMMISSIONER CARASSAS: No. To gather the information on a regular basis, and then you could collate it any way you wish.

MR. TAMMAN: We do that all the time.

COMMISSIONER CARASSAS: You do that anyway.

MR. TAMMAN: For the data that we have that we get routinely, you

know –

COMMISSIONER CARASSAS: Such as? Give me an example.

MR. TAMMAN: Well, real estate for example.

COMMISSIONER CARASSAS: Okay.

MR. TAMMAN: We get, depending on what county it is, either daily

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COMMISSIONER CARASSAS: Police reports, things like that.

MR. TAMMAN: Police reports. And, quite honestly, the design of the databases as we get them is, more often than not, not very friendly. And what we do is clean them up -- clean them up for our purposes and for the purposes of other reporters, and then produce reports for them in a manner that serves our purposes generally, is to tell stories about specific issues.

So, when we get the data, like the dock stamp transactions -- every county does it differently and every county has different fields and different tables. And what we do is I bring it in, and the program it cleans it up and then it spits it out all in the same way so we can understand these issues, in our tri-county area anyway, in a similar context.

COMMISSIONER CARASSAS: Why would that not work in the original example with the education department employees? Is it because of the Social Security number?

MR. TAMMAN: Yes. I mean, for all this to work, right -- well, let me give you an example of where it doesn't work in the case of dock stamps. The clerks are the people who collect dock stamps. For the most part, what they're doing is simply recording the information on a public

transaction.

COMMISSIONER CARASSAS: Correct.

MR. TAMMAN: On those documents contains the legal description. Almost all property records, once you get over to the property appraiser's office, are not -- the property, the legal description is not considered the unique identifier. They usually create something called a parcel I.D. number. All right. Because of that, you cannot marry the clerk's dock stamp data with your property appraiser's data because there is no similar, unique identifier. Okay.

So, I can't tell you, for example, not without a tremendous amount of work and making sure that the keying in of the legal description of the clerk's office is the same as the keying in of the legal description by the property appraiser's office, to marry those two together. If I want to identify all the people who are flipping property, it ain't that easy because I don't have that unique identifier. The parcel I.D. number or property I.D. number, depending on where you are, that's truly unique.

Well, you know, the legal description is a much different beast. It's all hand keyed and separated by spaces, and sometimes people forget letters and words. But parcel I.D. is much better. But I can't marry those two together, not practically speaking. And if you're going back to the issue of the Social Security numbers and the database of teachers, how do you marry those two together if you don't have something that's unique?

And the qualifications are over here of the teacher, and the only unique identifier in there is a Social Security number, and everything else over here, information about where they taught, when they taught, how long they taught, doesn't have their Social. How do I marry the two together? It's impossible.

You know, perhaps it's not a good time to talk about it, but the idea of having a solution, a practical replacement for a Social Security number in a database, I think is imperative. I, you know, personally think that we should be talking about creating a system that if a Social Security number is contained in a database that the state has a system in place that local agencies can send a slither of their data that contains those Social Security numbers and come back with a unique identifier that's consistently used, or that security number that is randomly generated from some kind of mathematical algorithm.

So that every time somebody says, "Okay, I have a database here with Social Security numbers in it, it should go to the state, the state creates a translation table, they send it back to the local agency, and the local agency uses that replacement number instead of Social Security numbers in all their databases. That way you don't have that problem.

I understand the issues with releasing Social Security numbers. But we cannot not have -- effectively take every document that is related to that particular person completely out of the Sunshine because of that one

exemption. I don't think that exemptions were intended to have some kind of cascading effect on every other exemption. They're supposed to apply one exemption.

Well, in this case, when you have situations like this, you create a cascade effect that effectively takes every document down the road to all the other tables that relates to that Social Security number out of the Sunshine. And I don't believe that was the intention why we created exemptions in the first place.

COMMISSIONER LEE: And I would agree with him. You know, when we produce documents that have Social Security numbers on them, we redact the Social Security number and give you that document. You know, I'm not that well versed in all of the stuff that you talked about, but it sounds kind of scary to allow them to have full access to all the data that any company or government uses so that you can provide it and manipulate it the way you want. It seems that the law requires a production of a public record. And until all of that data is put together and produced, it's not a public record.

MR. TAMMAN: Well, let me question you a little bit. And this is one of the problems we deal with every day. And in the same example that I was talking about today when I requested a document, the database. He said, "Well, that would require me to print out 10,000 pages." Well, we can't view documents as pages. Documents in this form don't exist, okay.

We only print them out when it's convenient -- or when we need something like this to look at. They exist in databases.

And there are plenty of exemptions out there about what is public and what isn't public. And there are fields within databases that are exempt from the rendering. We acknowledge that. And we routinely go through the table. And that's one of the important reasons why we need the definitions of the tables to start with before we even get to that.

Just show me what's in that. Tell me what the fields are and what it contains. And then we can sit down together and say, "Okay, yes, this is clearly exempt. This is clearly exempt. We disagree on this one, but we'll come back to it later. This is not exempt. This is not exempt." And we can go through it one at a time, and then we come up with a relatively finite list of pieces of data that there's some disagreement over, and we can either compromise and say, "Okay, we don't want that," or we can go and argue that in front of a judge.

But now we're talking about a narrow group of a piece of information, and that is the document. The paper doesn't exist anymore. If I ask for that document, it's not there. They have to produce something out of nothing. The papers -- you know, when you were talking about printing something out, I guarantee you that almost any document you produce doesn't exist on paper until you say print. But this is being called in from various databases all over the place.

COMMISSIONER LEE: Well, to some extent your suggestion also turns the whole public record law upside-down because the custodian of the record has the duty to remove that confidential, exempt information. So, how can they do that when they sit down with you and disclose it and --

MR. TAMMAN: No, no.

COMMISSIONER LEE: -- try to negotiate sections?

MR. TAMMAN: No. I'm not talking about disclosing the information. I'm asking for them to tell me just what the type of information is contained in a field. So, for example, the field name might be Social Security numbers, right? Well, yes, we can both agree that's exempt, okay. Or it might be -- there might be a field that says "law enforcement officer," and it's a yes or no. Well, I know that the addresses of law enforcement officers are exempt, so, clearly, the information contained in that would not be public record, okay.

I'm not saying that we look at the data itself. All I'm saying, we look at what is going to be in that field so we can decide whether or not what we're getting is a public record. Do you follow me? Okay.

THE CHAIR: And I should explain also how the Social Security number exemption works. We had, at the last meeting, the representative from the Social Security Administration come and explain to us the federal law. But the Social Security number exemption in Chapter 119 exempts Social Security numbers.

There is an exception to the exemption for anybody engaged in a legitimate commercial activity. Those engaged in a legitimate commercial activity, which includes the media, have a right of access to the Social Security numbers if they put their request in writing, they verify that they are who they say they are, and they state the purpose for the request. And the only legitimate purpose for access to a Social Security number under the exemption is identity verification purposes.

Government agencies have to, by January 1 of each year, report who is getting access to Social Security numbers. After the problem with the Department of Education, the legislature came in and decided that government employees deserved greater protection than citizens when it came to their Social Security numbers. So, if Moe goes in and makes a public records request and needs my Social Security number -- I work in the private sector -- he gets my entire Social Security number. If he goes in and makes a public records request for JoAnn's records that contain Social Security numbers, he only gets the last four digits of her Social Security number.

So, we have an unequal system in terms of protection that doesn't work very well. It puts a greater burden on the custodial agency that has to figure out who is a government employee and who's not a government employee. It needs to be fixed, certainly. And then there's the whole issue, as explained by the Social Security Administration, whether the state

can and when it can actually collect Social Security numbers and whether we're out of compliance with federal law in some cases. So, that could take us the next three years to figure out, that one just by itself.

But the Social Security number issue is a real problem and the creation of unique identifiers may actually help that. Whether we can do that at state level, whether we need to do it at the federal level, I'm not sure. But there does need to be a solution to the problem. Senator?

COMMISSIONER DOCKERY: Thank you, Madam Chair. You mentioned an example earlier to Judge Carassas, and in it you were talking about who's recording the dock stamps and the property appraiser and that their records don't match up in terms of an identifier.

Do you think -- it seems, to me, it would be extremely inefficient since they're both county government offices. Do you think that oftentimes within a government entity, either the state or the county, that their databases don't match because they don't want there to be able to be interconnectivity or do you think it's a matter of inefficiencies?

MR. TAMMAN: I'm reminded of a scene in Casablanca where Claude Rains says, "You might say that but I couldn't possibly call it excellent..." Anyway, the point being is I think that happens.

COMMISSIONER DOCKERY: Well, and that may be a little bit off the subject. But the fact is that we do, at state level -- I don't know what the counties are doing. But we do, at state level, especially under the

former Governor, a lot of privatization with these firms that have all the data and control it, and then another agency -- and we heard this in one of our former meetings. Another agency has somebody else doing theirs. And then the systems don't interconnect, even though those two agencies need to interconnect; i.e., Department of Juvenile Justice and Department of Children and Families.

And so, it seems like the solution would be cheaper if they did. It would be easier for public records requests if they did. It would make more sense to the agencies if they did. It would be a more efficient system. So, perhaps the policy leading towards more open government could also help with some efficiencies and cost savings at the state.

THE CHAIR: And that is, I think, the gist of this report that we're going to discuss tomorrow from the Governmental Operations Committee, trying to improve not only government efficiencies, but the public's ability to access records through the creation of certain standards and articulated standards. And that's why I've asked -- because there's a lot of technical stuff in here that I don't quite understand.

MR. TAMMAN: And I think Matt's going to talk about privatization when I get done here, but that is -- I mean, the issue of Socials is a Hunt foundation. But I think moving forward the issue of privatization of database management is a much more frightening issue. Because local governments sign these contracts without being fully aware of it. The truth

is, a regular citizen comes in and says, "I would like this data," and then presents it with an attorney from the company who represents the firm that has the contract. And they just want a public record.

Well, your choice is the county is going to wind up, more often than not, with saving the contract. And so, they've got to line up behind the contract. And you're going to have the lowly citizen, and their choice is to hire an attorney and spend a fortune in the process, with no guarantees they're going to win.

THE CHAIR: The problem being the copyright --

MR. TAMMAN: Right.

THE CHAIR: -- asserted by the --

MR. TAMMAN: Right.

THE CHAIR: And there is -- and we'll talk about this, perhaps, after whoever is going to present it, Matt, who is going to talk about that. But there are provisions in the law. There's been some litigation on this. It's been an issue that has been around, unfortunately, since 1991.

MR. TAMMAN: The litigation doesn't bubble down. Senator.

COMMISSIONER DOCKERY: I just want to commend you. It's not easy for me to use the word technical speak, and you did a very good job in presenting that in a way that even somebody at my technology level could understand.

MR. TAMMAN: Thank you.

THE CHAIR: Any other questions? Okay. Thank you. All right. Next. Who's next? Matt Doig, reporter with the "Sarasota Herald-Tribune."

MR. DOIG: Yes.

THE CHAIR: Most of us know Matt.

MR. DOIG: Matt Doig. I've been with the "Sarasota Herald-Tribune" since 2002 on the investigative projects team. I'm going to talk about proprietary software.

Before I do, I want to jump in on some of my colleague's previous testimony. One of the issues that kind of troubled me that was brought up regarding the databases, you guys have to keep in mind that a lot of times it's not intentional. Some of these agencies never intended for these to -- it never occurred to them to match up these. I was one of the ones that worked on the infamous teacher story.

But say, you know, we want to find out how many of our bus drivers in the county, school bus drivers, have been arrested for DUI. That's kind of a standard newspaper story. We would get the Department of Education's school bus driver database. You know, a list of the employees with that. We would get a separate thing from the Department of Corrections of everybody who's been arrested for DUI. I'm kind of boiling down an example. But we would have to match those two together.

Now, somebody from DOC and somebody from DOE never sat at a

table and say, “Hey, when we create our systems, we need to be able to make sure they communicate with each other.” You know, DOC creates it for their purpose. DOE creates it for their purpose. And we’re the only ones who come up with the idea to say, “Hey, what would happen if we matched those two things together?”

So, I think that might help explain why we need those Socials. Because, you know, one agency may, when they create the records, say John, Smith. The other one may have John in one table, Smith in another table. But if they both have Socials, we can just smack those two things together and beautiful things happen.

So, the other thing I wanted to mention off Mike’s testimony on the teacher thing. I got angry after then Commissioner Jim Horne told all the teachers in the state to complain to us. So, I filed another public records request with DOE, asking anytime they had sold that same database to anybody. And it turned out a few months before our big snit happened, he had sold that database, Social Security numbers and all, to a private investigator firm and was not as worried about privacy as he was when we asked for it for research purposes.

So, anyway, like I said, my focus is going to be on proprietary software. In the last few years, it’s become more and more of an issue when we try and do watchdog projects. Like Moe said, things are not on paper anymore. Everybody is dumping things into a computer, and it’s in

tables and rows, and that's the only way you can get information. A lot of times there's not the in-house expertise at the local level to manage that, so they sign these contracts with private agencies in order to do that.

Now, that has given us three main obstacles as we try and do our jobs. The first one is we're getting flat out denied when we make requests.

Sarasota Police Department's arrest records, the county's fire response times, Manatee County's utility records.

In the old days, when all that was on paper, no big deal. We paid 15 cents a page and get a big stack of stuff. Now all three of those cases, in the last few years we've been told, "You guys can't have that. We've got this contract with a private company that explicitly says this is proprietary software and you can't have it."

So, the fire response data, we finally did get that, but it took weeks and weeks of haggling. And it wasn't until Moe was involved in it. He sat down with one of our attorneys, with the county attorney, with the private vendor, then go over the law and, basically, say, "You know what? You're right. We do have to give it." And the private vendor was not happy about it. But they had, essentially, entered into an unlawful agreement that kept public records away from us.

The other two issues, I'm ashamed to say, we, basically, had to give up because it became too problematic to get it. We never did get the arrest record for Sarasota County. I'm going to get into that and the cost

issue. This is what we got from Manatee County was just useless stuff. These look like the column headers on the database.

They wouldn't even -- Moe had talked about the data dictionary. We need to know what each of these things mean, the ID, QL, underscore CDE. Who knows what that is? But they would not turn over that data dictionary to us under this proprietary software mumbo jumbo. So, basically, we got a box full of useless paper and never got utility records from Manatee County.

THE CHAIR: And how much did that box of useless information cost you?

UNKNOWN SPEAKER: A couple hundred dollars.

MR. DOIG: Yes. It was money not well spent. Which leads to the second issue, excessive costs. So, once we finally get them to admit that they do, in fact, have to give us these public records, we're often hit with an eye-popping price tag. For the police department database for arrest records, they billed us \$7500 when we asked for the arrest records. And the worst part of that was that wasn't even for the data. That was just for, basically, this, to tell us what was in their data. So, then we would have been hit with another charge for them to actually produce it. Needless to say, we didn't go ahead with that.

But one of the main reasons -- there was a lot of reasons why that was ridiculous. But the main reason the charge was unreasonable is that

their private consultant they had hired billed the city \$125 an hour to do this information, and they tried to pass those charges on to us.

The third example of a problem this has caused is that the limited format we get this information in. An example here, let's say the agency videotapes a public official's 20-minute press conference. The official is slurring his words, kind of rambling on, mostly incoherent. And, you know, since we're like that we request a copy of the tape because we want to throw it up on our Web site. And they tell us, "Well, you can't have the whole 20-minute videotape. We're just going to give you this slickly edited two-minute version of it where this public official comes across as pretty eloquent." I think everybody here would agree that that would be skirting the public records law.

And when it comes to data, that's, essentially, the issue we come up against is they tell us we can have what they call a report. But this is the agreement they have with their vendor. Recently, we tried to get the Charlotte Sheriff's staff and payroll database, and they have an agreement with their private vendor to, every quarter, come up with an overtime report, a quarterly report.

And so, that's what they're telling us we can have. "Well, we can generate this report because that's the program for it." That stuff is almost entirely useless to us. What we want is the raw, unedited version of everything dumped in there so we can do crazy things like match up

separate databases and come up with our stories.

The other thing problematic about this report is that they put headers at the top of all this. And unless you work with a spreadsheet, it just adds an extra layer of trouble. It will add information in there that is not in the data originally, which also is contrary to public records law.

I've submitted a number of e-mail exchanges from the past few years that touch on these. And the problem has actually become so bad that now when I make public records request I include the relevant sections of 119 to try to avoid these problems.

Just so we're not all up here enjoying the sounds of our voices, I've come up with some suggestions on these for you guys to think about. It's likely all over the state government agencies have entered into these kind of agreements. What's going to be done about that?

The other issue -- I was talking to JoAnn about this earlier. The law has established clear guidelines for duplicating paper records, but it's relatively vague when it comes to electronic records. If the government programmer charges us 25 bucks an hour that they've contracted out with a private agency, why should we be billed \$125 an hour just because that's what their contract is?

Finally, requests for data don't need to include excessive programming costs. This is a relatively simple process. If any of you have ever copied a Word document from your computer onto a CD, it's,

basically, the same idea. All we're asking for is the original data, that you just copy that onto a CD. There's no major programming in most cases. Perhaps there should be a wall where all databases are built in a way where that's all they need to do is just copy it onto something, or have them pay for the costs if there is excessive programming used. That's it. Can I answer any questions?

THE CHAIR: Questions?

COMMISSIONER CARASSAS: On arrest records, can I ask a question about that?

THE CHAIR: Yes.

COMMISSIONER CARASSAS: I'm a little bit familiar with that, I guess. There's a police report on arrests. There's a number, the name, the charge and all that.

MR. DOIG: Right.

COMMISSIONER CARASSAS: Who actually -- well, you kind of answered my question. Who puts that information in the database? It's a private entity or public?

MR. DOIG: No. They probably have -- and I don't know for sure. They probably have --

UNKNOWN SPEAKER: Private vendor.

MR. DOIG: You know, the private vendor will set up what their person looks at on the screen, will be blank fields. And so, just a data

entry clerk, whether a name, you know, date of birth, the arrest code, you know, the arresting officer, that kind of thing.

And that information is dumped into a database that is then managed by the private vendor who, you know, then the police agency can say, you know, "Every quarter I want all public intoxication arrests as a report." And that's what the private vendor will do, just give them what they want instead of dumping all that raw data with the name and information that the police may consider useless for their purposes.

COMMISSIONER CARASSAS: If there is a case that is proceeding -- you mentioned DUI, for example, right?

MR. DOIG: Right.

COMMISSIONER CARASSAS: And John Smith has got a DUI. That data is, obviously, available throughout the criminal process, right? Are you saying you don't get the individual data or you're saying you don't get groups of data? In other words, tell me every John Smith that works for the State of Florida that got a DUI?

MR. DOIG: No. We never -- I don't want to say never. Hardly ever will we be that specific. We prefer to get the whole thing. Because then we can tailor it to our needs, just like a private vendor tailors the data for the agency's needs. We wanted every arrest. That way, if we just wanted to focus on DUIs, we could pull that out ourselves. If we wanted to focus on lewd and lascivious, we could pull that out. It's always in our best

interest that we get the whole raw database, and then we can manipulate it as we see fit.

THE CHAIR: And the problem is, then, that the companies are copyrighting the database? Copyrighting the software?

MR. DOIG: Nobody's claimed copyright, although I know that was - - we were just talking about it today with the GIS stuff out of Palm Beach County. They were trying to claim copyright. They're just claiming proprietary software, that this is -- and the ridiculous thing is they're, basically, acting like they've invented the tables and row, you know, columns and rows format. Because that's all we want. We want just -- if anybody's ever used Excel, that's what we want. Columns and rows. We don't need any special fancy program they do. That's why we have Moe, to do special things with programs. So, that's all we want is what the thing looks like in column and row format.

THE CHAIR: This is truly -- this issue has, unfortunately, not gone away. I first started dealing with the proprietary issue back in 1991, and it came, I think, to public attention right after Hurricane Andrew. Metro Dade had contracted with a private company to digitize the database, and it was a GIS database that the state then needed in order to help with the hurricane relief effort. And they went to get a copy of the database, and Metro Dade said we have to go to the private company. And it took three months to negotiate a deal for the state to get access to public record data.

And, as a result, there was some changes made to the public records law, one of them being prohibition against entering into contracts for the creation or maintenance of databases if those contracts impair the ability of the public to inspect a copy of public records. And that's exactly what you're describing. These contracts are impairing the ability of the public to inspect or copy public records.

And then there is a the problem of outright copyright, which we have case law from the Supreme Court that says government can't enter into contracts and contract away their obligations under the public records law. And then we had the case in Collier County. A property appraiser was copyrighting the database, the property database, and wanted \$20,000 for access to it and was sued and lost. And it was my understanding that the property appraiser stopped copyrighting the databases. I don't know whether they have or not.

But there are prohibitions and provisions in law, but it sounds like nobody is paying attention to them.

MR. DOIG: I mean, I've had cases where that exact phrasing that Barbara just said on you can't enter into these contracts. I put that now in my public records request and still get denied, even though it's standing right there in the midst of my request. They say, "We can't do it because we've got this contract."

I just got passed a note asking me to differentiate between software and data layout. If you've ever used Excel with columns and rows, we want to know what is in each of those columns. I mean, that's why this is useless. We need to know which of these columns are names, which one is water usage, the date, you know, the gallons, whatever it is.

So, we're not asking for the special program they created in order to, you know, create the whole thing, where the person enters it in and then, you know, the programs they use in order to generate the reports. We don't need any of that stuff. We just want the tables and columns so that we can do what we want. Am I -- I know it's like computer geek kind of stuff, but it's, you know -- if you looked at an Excel spreadsheet, you know, that's, basically, what we want back.

THE CHAIR: Jeanne, did you have --

COMMISSIONER GRINSTEAD: I think you already answered my question. But I was going to ask you, to your knowledge, are the counties and the police telling the citizens, too, that they can't have access to public records because of the private vendors?

MR. DOIG: Well, we kind of always joke about that. We were involved in the public records audit with Barbara. But, I mean, we're paid to do this. And we've gotten into heated exchanges. I mean, with the Charlotte thing, they wrote a letter to my bosses about how mean I was because I was insisting that they needed to give this to us. So, luckily, I

have nice bosses who not only support me in this, but also give me the time. Because this stuff drags on for weeks, you know, and you're playing phone tag. And that's why these other ones had to give up. Sometimes you have to just cut your losses and move on because, you know, it sends kind of a bad message to the agency.

But, yes, a member of the public, whose got a nine-to-five job and doesn't have, you know, fancy lawyers to drop a phone call every once in a while, I mean -- and, again, a public official is telling you you can't have it. Are they as versed in the public records law as we are? So, you know, I can't cite specific examples, but if anybody has tried to get this, I'm sure, you know, they've come across the same obstacles.

THE CHAIR: I think JoAnn and I could probably cite some specific examples. There's one citizen in Tallahassee I've been working with for at least the last five years trying to get access to records from a particular agency, and he keeps getting stalled. And then he gets something, but it's not what he asked for. Yes, it's a problem.

MR. DOIG: It's frustrating.

THE CHAIR: Yes, Senator.

COMMISSIONER DOCKERY: I think what's troubling, and I think this is what you're saying, is that if the vendor says it's proprietary, it's not that they're saying in my contract it tells me I can't share it with anybody. It's kind of saying in my contract I can say it's proprietary. I can give it to

that gentleman if I want to, and I can keep it from you if I want to.

MR. DOIG: Well, I don't think it's that specific. But if you've seen -- basically, there's two subsidiary agreements. They're saying we're going to turn over all this data to you, private company. You're going to manage it for us and give it to us in the form we want. But I don't think it says, you know, don't give it to "Sarasota Herald-Tribune," but give it to the "Bradenton Herald."

COMMISSIONER DOCKERY: No, no, no. That's not what I'm saying.

MR. DOIG: Okay. I'm sorry.

COMMISSIONER DOCKERY: What I'm saying is, is the vendor able to make the decision who he or she can give it to?

MR. DOIG: Oh, I see what you're saying. We tried. Yes, we've called, maybe, a vendor before. But their prices are, you know, very unreasonable.

COMMISSIONER DOCKERY: It seems, to me, Barbara, Madam Chair, that if a government entity contracts with somebody that that vendor needs to operate as though they were an extension of that government agency. And so, if the government agency says we can't share this information because there's an exception, that's one thing. But that vendor can't get out of that responsibility of being an extension of the government agency just by virtue of having their contract.

THE CHAIR: Well, and there is both a provision in 119 that would prohibit the contract in the first place, and then there is the question of whether the vendor is an agency for the purposes of Florida's public records law. The definition says any private -- I mean it's all government agencies. But any private company acting on behalf of.

So, for example, Convergys is, technically, an agency for the purposes of Florida's public records law. It has taken over management of the personnel system. So, it is an agency for the purposes of Florida's public records law. So, it seems, again, that we have a lack of information and understanding about what the public records law requires.

MR. DOIG: The law there is being ignored.

THE CHAIR: And then, how do we tweak that and fix that, you know? I mean, that's, I think, the problem. The law is there. That provision in the law, the prohibition of entering into the contracts have been there since 1995. But I can tell you it's routinely ignored. And so, what do we -- I mean, how do we approach it? Matt brought this to my attention a few weeks ago about the problems that they were having. You know, it sort of comes and fits in spurts. But privatization is clearly a problem.

There was a bill that was filed a few years ago, and it never went anywhere -- I'm going to try to dig it up -- that addressed the issue specifically about privatization. And I will see if I can't figure it out, if I find it, rather. But it talked about privatization and public access. And I'll see if

I can't find it.

COMMISSIONER LEE: Barbara, I'm not that familiar with the bill that you're talking about. But I guess the question that's nagging me is if you have a company who is managing the records, does that company then become a custodian of the records as defined by law?

THE CHAIR: The custodian and the person who has custody, to my way of thinking, are two different people. The custodian is defined in the public records law. And if you look at the provision -- and I'm sure they've changed all the numbers from the number that it used to be. But there's a provision that says any person who has custody of the public record must provide access to that record under the supervision of the custodian or the custodian's designee.

So, the person who has custody is separate from the custodian. The custodian is the person who has a legal responsibility for ensuring that the public records law is followed, that records are retained and maintained according to law, and that access is provided. So, that is the person who is legally responsible for maintenance and access. And then there is the person who has custody.

So, for example, I could -- if I was wanting the personnel records for the State of Florida -- and those requests have been made for all the personnel records for the State of Florida -- I could go to Department of Administration and make that public records request or I could go to

Convergys and make that public records request. Because Convergys has access, is acting on behalf of, and is technically an agency, under the definition of Florida law.

COMMISSIONER LEE: But they couldn't release those records without the custodian giving them permission to.

THE CHAIR: Right. So, under the supervision of the custodian or the custodian's designee. The custodian is responsible for ensuring that every person who has custody of the public record understands the requirement of the public records law.

COMMISSIONER LEE: I mean, I think there is some risk to the agency, certainly, who uses an outside company and then gives authority to that company to release any records upon request because the liability is with the agency for any exempt information, the custodian. So, there could be some real, real issues here in terms of liability if you've got a private company just summarily releasing documents.

THE CHAIR: Well, the liability issue is really a separate issue. There are a few exemptions in the public records law, information that is exempt and confidential, and there are penalty provisions with the release of that information by government. Those are relatively few in number.

Generally speaking, government will not be liable for the inadvertent release of exempt information if they are acting under the public records law. In other words, acting in response to a public record. But there are

some penalty provisions. For example, if you release the name of a person involved in a car crash to anyone not authorized to receive it in the first 60 days following the car crash, it's a third-degree felony. Name of a rape victim, for some reason, is only a second-degree misdemeanor. But there are those -- in that case, yes, there would be a penalty attached.

COMMISSIONER LEE: And one of the reasons that I even brought it up is because this technology has moved so quickly, and government and the law just has not caught up with it. And I think we need to get well educated and tread lightly so that we can protect, certainly, those things that need to be protected, but, certainly, provide records requested as well. I think we are really -- this has happened in lightning speed.

You know, I hardly understood what Maurice said. I tried and I'm still sitting here muddling through the different fields and wondering how to provide that information because nobody has requested that, that I know about. Here is something I'm sure I'll be faced with. I'm going back and warning my people.

THE CHAIR: To watch out for the "Sarasota Herald-Tribune."

MR. DOIG: Our only concern -- and final word here. I'll let you guys move on. But our only concern is that genie is out of the bottle and has been for years. I mean, that information has been sold to insurance companies and, you know, private investigator firms. It really seems to be an issue when the newspapers call up, asking for the same -- like I said,

that education information that they caused a big ruckus over had already been sold to a private investigator firm. So, that's something that I hope you guys keep in mind.

THE CHAIR: And technology is catching up. There is redaction software available now that wasn't available. It can actually be handwritten Social Security numbers.

MR. DOIG: If they put that thought in it beforehand, instead of saying, "Okay, the sheriff wants overtime reports quarterly." If they said to them, "You know what? Someday those nosy guys from the press are going to come and want this thing, so boot this thing in a way that with the press of a button we can just dump the raw format over onto a DVD or a CD to get to them and get us off our backs."

COMMISSIONER LEE: That's also a requirement in current law.

THE CHAIR: We need to take a short break here, and when we come back -- we'll take, like, a five-minute break, and when we come back we'll finish up with the "Sarasota Herald-Tribune."

(There was a short break off the record.)

THE CHAIR: Okay. So, next, obviously, is Chris, since he is standing there at the podium. Chris Davis. COMMISSIONER

CARASSAS: Are we missing Renee?

COMMISSIONER CARRIN: There she is right there.

THE CHAIR: She's coming.

MR. DAVIS: My name is Chris Davis. I'm the investigations editor for the "Sarasota Herald-Tribune." I've been a reporter and an editor in the state of Florida for about a decade. I was involved at -- oops! Is that me?

THE CHAIR: Do you have a cell phone on in your pocket?

MR. DAVIS: It's off.

THE CHAIR: Okay. Then I don't know what that is.

MR. DAVIS: I was involved heavily in the First Amendment Foundation's public records audits. And I deal with public records all the time with the investigative projects that we work on.

Every day in my job I work with reporters who rely on public records and Florida's public records law to do the watchdog journalism that they do. And there are a lot of good things to talk about. The public records law, it is a strong law. But as often as I'm hearing praise for it, I'm hearing complaints about how it's not working. There's nowhere that that's more evident than when it comes to electronic records.

Florida Statute 119 admonishes government officials that they must consider access to public records when they design the databases that they use. But the reality is that many do not do that. In case after case, journalists working with public records, electronic records find that state and local governments spend large sums of money to create databases that, in essence, restrict access to public records or drive up the cost of

reviewing them to hundreds or thousands of dollars.

As governments rely more and more on computers and less on paper, public access should be getting easier. When public information was co-mingled on paper with protected information, there was no way to avoid time-intensive redaction. A public employee literally had to sit down, read this stuff and physically take out the information that was not public. But with a little planning, the redaction process can become almost instantaneous when you're talking about electronic records. Unfortunately, such planning has been conspicuously absent.

The shift towards storing information in databases should have created a "Golden Age" of public access. If government agencies designed their databases correctly, they could easily separate public information from protected information. They can do this by grouping protected information, like Social Security numbers or the addresses of police officers, into one place. Then when a member of the public or a journalist comes and asks to review his database, a few mouse clicks can redact all the protected information, even if there are millions of these records that need to be deleted.

This only works, however, if the database is designed properly. When government officials input information in the database, the protected information must be corralled into one place, or a clear flag must be attached to protected information so that it can be identified later. None of

this is difficult to do as long as the person creating the database gives it some thought at the outset. It is a simple matter to make sure Social Security numbers, for example, are typed into one place and one place only.

Public records advocates and the Florida legislature recognize these issues and took steps to ensure that government agencies would consider them. I read from the statute: Automation of public records was not a road to right of access to those records. As each agency increases its use of and dependence on electronic record keeping, each agency must provide reasonable public access to records electronically maintained and must ensure that exempt or confidential records are not disclosed except as otherwise permitted by law.

But real-world practice has not always kept up with the law. In early 2005, the “Herald-Tribune” asked the Department of Education for a copy of the database it uses to track teacher misconduct cases. The newspaper needed the database to determine how long it took to investigate teachers, how many teachers were abusing students, and if punishments were fitting the crime. The vast majority of the information in this database is not exempted by the public records law, but it still took the newspaper reporters almost two years of rigorous negotiations to get the data at a reasonable price.

At first, the Department of Education attorney said the database

could not be provided at all because a small number of the cases in the tracking system involved criminal cases that had been expunged. State law requires teachers to reveal expunged criminal records, and, in return, promises to keep those allegations secret. Normally, this would not be an issue.

If the Department of Education had flagged these expunged records and this database, it would be a simple matter. Even someone with just a basic understanding of databases could have done the redaction in just a few minutes. The department officials said they had not done a diligent job keeping track of which ones were expunged records. As a result, the Department gave the newspaper a bill for \$20,000, and said it might take months, if not a year, to go through the database by hand and determine which records have been expunged.

This is not a unique story. Law enforcement agencies routinely struggle to provide electronic databases on their arrests, largely because there are fields within the database that contain victim information. The protected information is often typed into summary fields that also contain public records. And, in essence, that contaminates information that's supposed to be open to the public.

The Sarasota Police Department cited this exact issue when the "Herald-Tribune" asked for a copy of the database it uses to track arrests. Redaction fees plus the cost of programming by an outside consultant

drove the cost more than \$7,000.

In 2005, the “Herald-Tribune” asked Charlotte County Utilities, a public water utility, for an electronic copy of its customer database. The goal of the request was to examine customers using large amounts of water during a drought when there were watering restrictions. Charlotte County refused, at the time, to turn over the record because it said it had not flagged the accounts of customers, including police officers, whose addresses are exempted from public record.

At the time, the newspaper explained how this violated public records law. But a year or two later, when the newspaper renewed its previous request, the county still had not created a system for flagging protected addresses.

Also in Charlotte County, the “Herald-Tribune” asked for a database of all county employees, including their salary, their title, their contact information, their addresses. The request was refused outright because county officials said they had no way to remove protected information, including Social Security numbers, and, again, the addresses of employees whose job titles keep that information secret under state law.

We know, from talking with citizens and journalists around the state, that the kinds of issues we’re facing day to day in getting data are widespread, and that, in many ways, they’re getting worse.

We must recognize that access to electronic data is, and always will

be, critical for an informed public and a free press. To protect and improve access to electronic records, we need new laws and policies that introduce accountability to government agencies that ignore public records law when they create databases. It must be clear that government agencies are responsible for designing databases in a way that allows easy access to public information. It also must be clear that mixing protected information with public information cannot be an excuse not to provide public records.

The only way to ensure this is to require government agencies to pay the cost of redacting protected information from their database records. This requirement should be stated clearly and nonequivocally. Introducing this cost will provide a financial incentive, the only incentive, really, for government agencies to plan for public records access when they're creating the databases.

Before I answer any questions, I want to address Renee's question from early on about -- I think this goes to the crux, I think, of public records and electronic public records. And that is, isn't there some concern with newspaper reporters getting access to raw data, that information that hasn't been processed by somebody else?

And I think the answer to that question is that's what newspapers are for. You know, when we did a project that involved looking at overtime pay, how spending on take-home cars is being done by our sheriff's offices, and we could have relied on what the sheriff's office gave us. We

could have said, okay, give us your bunch of documents and we'll take that, take this at your word, and we'll write our story.

But it's not in the public interest to do it that way. It's in the public interest to look at the actual source documents, which, in this case, is databases, where they input the very first time they report an expense, and it's all kept in databases. So, what we need is that raw data so that we can make sure that someone in a position of power isn't twisting information, that we're seeing the actual information.

It would be something like them -- if it wasn't electronic data and it was just paper data, us, instead of going through the budget and ledgers and saying "Here's where we spent this money. Here's where we spent this money," if we took the executive summary that's presented publicly, and that's all we ever looked at. There's a very big distinction, I think, in terms of us being watchdogs. That's it.

COMMISSIONER LEE: Would you make it clear that I wasn't in Charlotte County in 2005.

MR. DAVIS: You weren't in Charlotte County in 2005. That I know.

THE CHAIR: Any questions or comments? Chris raises a good point in terms of accountability., And the role of the press in helping the public keep an eye on what government is doing and how it's doing it is the historical reason that the press gets the constitutional protections it does, is because it is the eyes and ears of the public. And I think it's critically

important that they have access to the data, not only to keep government, you know, sort of accountable, but also frequently stories of problems in government that government is not even aware of. And it's the role of the independent press to do that.

COMMISSIONER GRINSTEAD: Madam Chair, I wanted to ask Chris, what's the situation on electronic records at city levels? Are they designing their databases accurately? Or put another way, how far behind state agencies are they in designing databases?

MR. DAVIS: From my experience, it really depends on the municipality. There are some municipalities that we've dealt with that have their databases very user-friendly, very easy to access. There are others that haven't done much of anything. You know, I think -- not to pick on Charlotte County, but they have some real issues. They have this very expensive manned system that incorporates a lot of different data from one division to another. All that stuff is dumped into one big place. But they don't have the programming know-how to get what's requested out of that. They have to rely on an outside company to do any of that work.

And they literally refuse to turn over records because of something as simple as taking out the column of Social Security numbers. So, there's an example of a municipality that's far, far behind what I think most people would find acceptable in electronic records.

THE CHAIR: Okay. Who's next? Paige? Paige St. John.

MS. ST. JOHN: Hello. My name is Paige St. John and I'm an investigative reporter for the "Herald-Tribune." I've worked with Florida's public records law while covering the legislature and state governments since 2000, have worked frequently with Pat Gleason and the Attorney General's Office and now the Governor's office in challenging denials to public records, and have taken repeated refusals to court, prevailing each time, including in the release of Florida's voter rolls and felon lists.

And before I launch into my spiel here, I wanted to give a short preamble. We're talking a lot about electronic data and record, using a lot of terms. But we're still discussing something that framers of the Constitution had in mind when they said that Congress shall make the law to the bridge public discourse. This is public discourse. These records, this data, these databases. These are the elements of speech that the public needs in order to discuss public issues intelligently. And it's no more complicated than that. And the public needs to be able to ask whatever question it wishes of government. And to do that these days, that means to ask databases whatever questions, to merge databases, to take stuff from one agency and compare it to another agency and to, essentially, truth check. And that is all public dialogue and that is simply the process we're still engaged in.

The accumulation and the assimilation of public information into large and complex data systems creates an immense tool to take

government's measure. However, the failure of Florida public record law to keep current with this bridge resource and fully embrace it with the same presumption of open public access has opened the door to subjective censorship.

Lapses in present law hold the public hostage to whatever blind spots government agencies have thoughtlessly or intentionally created in their splendid systems. The first is in poorly designed databases that cannot intelligently retrieve the wonders that they house, a crime aided and abetted by the statute that says no agency is required to create a record where none already exists.

And a financial hurdle is set before any member of the public trying to overcome the deficits of these overpriced electronic lockboxes, a hurdle made insurmountable by public agencies that treat their record warehouses as profit centers or hand them over to private vendors to plunder.

For instance, every regulated property insurer in Florida is required by law to submit quarterly reports to show the number of homes they insure in every Florida county, how many policies they have dropped in that quarter, and to what degree they insure those homes against hurricanes. And I can think of nothing more critical to the current public debate than this most basic piece of information.

Yet for years these records were housed by a private contractor,

and even the Office of Insurance Regulation was limited to retrieving predetermined reports. In other words, you could ask of the data only the questions that had been prearranged by contract, and during this crisis could not go back and come up with new questions to ask the data, such as, “How much insurance have we lost in the last five years?”

To obtain the raw and complete information necessary to show how Florida’s property insurance market has changed since 2004, I was required to pay the contractor’s rate in excess of \$100 an hour to download what turned out to be no more complicated than a simple Excel spreadsheet. If you don’t use Excel, think of it as a checkbook register. It’s nothing more than that. And I was paying for access that state government should have insisted on its own part from the start.

What’s more, to decipher the codes in this data that I had been handed was another charge, for the vendor to provide what turned out in the end to be publicly available information posted on the state agency Web site. The charge was \$300.

The fact the Office of Insurance Regulation has since figured out how to generate subsequent reports quickly and at no cost -- and that evolution occurred from the creation of this Commission, I might add.

The fact that the Office of Insurance Regulation has since figured out how to generate subsequent reports quickly and at no cost is itself troubling, because it underscores the subjective whimsy at play when

governments are left to make up their rules of what records to provide and which ones to hide.

For instance, the Office of Insurance Regulation requires every Florida property insurer to file detailed financial data in electronic form, but that these reports be filed with a national organization that, in turn, charges the public \$10 to view each of these documents. A financial statement is \$10. The accompanying auditor's report is another \$10. There are another eight adjacent reports to each financial report. The core two that I usually request cost \$20 would be to see State Farm, 20 more for State Farm Florida, 20 to see Allstate, 20 more for Allstate Floridian, 20 for Nationwide, 20 for USAA, 20 for USAA Casualty. That's a \$140. And we're not even through the state's top five insurance companies.

A member of the public hoping to see these state-mandated electronic records directly from the state is out of luck. They can be accessed only through a third party's pay-per-view system.

Other public records where access is measured by your bank account. Though the Department of Revenue collects and assembles property tax rolls from each of Florida's 67 counties, ownership is retained by the counties, some of which sell their data to vendors, who charge exorbitant rates to retrieve this information.

Driver's license records, available only on a per record search. Criminal history records through the Department of Law Enforcement,

available for \$25 each to the public, but the entire database is for sale to private vendors.

I would add as a note here that another newspaper reporter recently asked the Department of Law Enforcement to provide the database at no charge. The FDLE commissioner has the discretion to make those records available for research. And the request was denied. Again, that underscores the subjective nature of the way the statutes are employed.

COMMISSIONER DOCKERY: Paige, what was you trying to get? What kind of records were you trying to get from FDLE?

MS. ST. JOHN: Well, I wasn't. That's another reporter.

COMMISSIONER DOCKERY: Do you have any idea what they were searching for?

MS. ST. JOHN: Criminal history records. The alternative is \$25 per person for one at a time, which is hobbling the ability to look at any kind of statewide trends, you know. It just simply makes it impossible to do anything more than to look up one person at a time. That's like trying to read the phonebook one name at a time.

COMMISSIONER GRINSTEAD: Was this a request for all records from FDLE?

MS. ST. JOHN: Criminal history. Just that slice.

THE CHAIR: The criminal history database is what they were trying to get.

MS. ST. JOHN: To draw a bright line of contrast, access to electronic public records can be very simple. And this is something you need to understand. This is not difficult for agencies to do. In fact, some agencies do this joyfully, willfully, freely. Florida voter registration roll has more than 13 million records available for \$10 on a DVD. It takes a phone call, and you've got it the next day. Quarterly campaign finance records, \$10 per CD.

There is little difference between any of these digital records. They're created, kept and housed the same way, and as a matter of course by public entities engaged in the public's business. They were paid for by public dollars. The public should not have to pay again to see what it has already bought. I can answer any questions.

THE CHAIR: Questions? I think JoAnn knows a little bit about that FDLE request of the criminal history database. I was involved with it to some extent with the editor and the reporter trying to get it. But it was weeks and weeks of negotiation. And, to my knowledge, they never got it because they couldn't afford the price tag. And it is a disservice to the public because these are stories of great and wide public interest.

I mean, for example, a story that researches the number of teachers who have been involved in sexual assaults on students is a public service and not something that DOE or the school system itself might want to be looking at. But when a newspaper starts looking into it -- I remember there

was -- I think it was your father, Matt, who was doing a story on the most dangerous intersections in the county, and it was not something that was -- not information that the county was putting out, but he was working on the story, having trouble getting access to the records, did the story, and the county made changes as a result of that story. So, it is -- many of these are in the public interest.

Next we have David Gulliver, again with "Sarasota Herald-Tribune."

MR. GULLIVER: Good evening. David Gulliver. I'm the new kid on the block here with the "Herald-Tribune." I've been with them for two years. I've worked at newspapers in four states. And I've filed, I can't even tell you how many, FOI requests over the years. I've helped the Reporters Committee for the Freedom of the Press with their electronic records access. So, I've seen how this plays out all over the country.

For preparation for the hearing, I interviewed several reporters across the county and reviewed a really good study on Freedom of Information appeals and enforcement at the state level. That's what I'm going to be talking about.

As you heard, denial of records is a serious problem. Time and again, "Herald-Tribune" reporters have requested what should be public documents and been flatly refused or seen them unreasonably redacted with no citation of the laws justifying the gutting of these documents.

I'll give you an example from one of my fairly recent requests. This

was for the inspection results for a local hospital. And in part it reads like this: “Complainant works in (redacted). The (redacted) fails delay. The picture goes out, the (redacted) and it’s very dangerous. Patients are getting a lot more (redacted) than they need or (redacted) may be putting (multiple redactions).” And redactions and redactions.

And that was actually a good page. I had one page where it was just articles of prepositions. All the nouns and verbs were gone. I requested the agency review the redactions, and a spokesman said that the redactions were proper.

In another case, the “Herald-Tribune” asked for the customer database from Manatee County Utilities, as you heard. I won’t go through it all again. But they refused. And we had all sorts of evidence, from the Florida Statute and the Sunshine Manual and attorney general’s opinions, Samuel Broschu going over to us, but the County would not turn over the data, and wouldn’t provide useful copy of the layouts or anything else, and finally told Chris and the I team the only way they would turn over the information is if we sue them for it.

So, when this happens, our primary option is to go to court, you know, as Paige has said and others have said, of course. But that’s expensive and it’s adversarial and slow. And by state law, Florida has a system for FOI appeals, but from research I’ve done, is among the weakest of the 22 states in this country with such systems.

Florida has a mediation program in the Attorney General's Office, and its key flaw, as you may know, is that it's voluntary. Both parties must agree to participate; otherwise, there is no mediation. And as one longtime Florida reporter told me, "Mediation doesn't count as a solution if the other side has to agree to participate."

The other flaw is that any mediation results are non-binding. If both sides consent to mediation, even if that happens, at the end of the process, the government agency is not bound by the ruling and you may still have to go to court in the end. And for that reason, very few reporters use the system as far as I can tell, as the statistics from the agencies show.

In 2007, it handled 82 cases, of which 60 were resolved. And you compare that with Texas -- it also has FOIA dispute resolution process and it's also housed in the AIG's office. In 2007 -- I'm sorry, 2006, the most recent year, they handled 16,000 cases and ruled on more than 15,000.

To be fair, a couple Florida reporters told me that the previous year's AG staff could kind of informally get results, you know, a call from the AG's office would prompt the agency to rethink what it had done. But from what I've heard, that kind of informal effort has died out in recent years.

I've looked around and in research and through conversations with the other reporters, and they kind of all center on three states with pretty good working systems. Connecticut has been a model for a lot of states.

Its FOI Commission has binding authority, and it's kind of a tiered process.

First it goes to mediation, and about half of the complaints are resolved at that level. And then there's a hearing process after that. And the hearing results will go to the full commission for approval. It handles about 650 cases a year, and only about three percent ever get appeals in courts.

And New York state doesn't have a binding process, but they have an advisory FOIA Commission. From my days in New York state, I can tell you it is incredibly well respected. Bob Freeman, the director, is one of the experts in this country in FOI, probably. And they will write advisory opinions, but the commission has been around long enough and is so well respected that those opinions will carry a lot of weight during court.

Texas, also, as I said, does the AG system. And the reporters I've talked to say it's a very strong system. They have a couple nice features in their law. Essentially, the agencies have to get permission from the AG's office before they go and pull a record. And if they're going to do so, they have to provide a sample of the electronic records, cite laws explaining why it should be exempt. And I'll cut to the chase here. The bottom line, records are presumed public unless the agency is going through the process of showing they shouldn't be.

Just a quick example from my most recent working state Virginia, which doesn't have anywhere near the reputation Florida has for open records, but does have a pretty good FOI appeals system. They also have

an advisory commission. When they looked at doing this they went to the interstate law. They decided to go with a small two-person commission housed in the legislature, which is interesting. Most states don't do that. But they take in questions on FOI and open meetings, they issue advisory opinions, and they do a very good thing. They go around to state and local governments and they educate. And I think the end result is it kind of creates a more open climate and a more responsive climate, and, at the same time, it also generates a good binding opinion with far more results with the agencies.

Just real quickly, because the issue has come up a couple times, give you an example of why your identifiers are real important. One of my previous lives, I also worked as a database analyst in Ohio. And we did a story there. I did some of the database analysis on it. (Inaudible) It was on doctors in military hospitals. And one of the things we looked at was we had identification information on the doctors, we had malpractice verdicts, we had records from passing state medical boards.

But the only way we could link this together is with unique identifiers. And we identified, probably, 40-50 doctors with horrendous track records. And we had to leave hundreds, literally hundreds more on the table because we didn't have a bomb proof unique identifier for the Social Security number. And I don't think you can question the value being able to shell out hundreds more doctors who really shouldn't have been working

in these military hospitals. So, we could have done a better job with more access to unique identifiers.

That will wrap it up. I can take questions on what I have seen in other states, on appeal process or even some of this database EE we've been talking about.

THE CHAIR: Questions? Yes.

COMMISSIONER LEE: I guess on the appeals process, I think we do need a better way to enforce the lack production of public records. But when you engage in the appeal process, what happens to the request? Is it just suspended until there is a decision made? And how does that affect the timeliness of the information that you need?

MR. GULLIVER: Well, I can't speak to Florida's process from personal experience because I haven't used it. Like I said, I don't know very many Florida reporters who do. Frankly, I think a lot of us see some of these systems as they're not efficient and they're not effective and really can kill your effort to gather news information for the public in a timely fashion. And Matt alluded to that earlier. You know, go through one of these long retracted battles with no clear resolution and no real guarantee results. You know, we've got to get stories in the paper.

And just the other day -- I'm not going to go into details. But I had a story, basically, die on the vine because I couldn't get the information in time and events have elapsed that story at this point. So, these things are

crucial. And if you do come up with a stronger system of appeals -- I think the Connecticut model is pretty good because it's got that mediation to lead to a quick result, and you also have the fallback of the hearing process if some goes and gets complicated.

THE CHAIR: I can tell you a little bit about mediation process. There was a program started by General Butterworth and it was unofficial for years, and it was codified in, I think, 1995. It's a voluntary program as Dave said. When you have a dispute over access to records, either party can request mediation, but both parties must agree to mediation. And then any result reached is non-binding. But you're also correct, when Pat Gleason was with the Attorney General's Office, she ran that program. And frequently it didn't have to go to mediation because Pat was quite proactive in calling the agency if she thought they were in violation or might be in violation. And there is a report from the Attorney General's Office each year on the number of cases mediated.

I had a meeting last week with representatives from the Attorney General's Office and there is real interest in getting that program going again. There's been some staff turnover and it has not been as active, perhaps, in the last year as it was prior. And there is interest, and I think we'll see some changes happening there.

The other thing I would say is that I will get the information for you on programs in Connecticut, New York, Texas, Virginia. Illinois has a

program. Hawaii has a program. There are nine or ten states that have -- maybe more now, that have very formalized systems. And they do different -- they're all a little different. Bob Freeman is different, each program is different. I mean, they're all a little bit different. But I will get that information and make it available so that we can look at the possibility of creating a similar source system in Florida. And we'll have that -- we're going to have the May meeting, an August meeting and an October meeting. So, I will get that information and make it available to the members of the Commission. I have quite a bit of it now because there was talk in '95 of making the process a little bit more formal than it is in Florida. But they decided to try mediation, and that was already in place. So, we'll get that information and make it available.

Any questions or comments? Senator?

COMMISSIONER DOCKERY: Just a comment on the whole presentation of all of you was great. You've done a lot of research for us and it's going to be very helpful in us making decisions. So, thank you.

MR. GULLIVER: Thank you.

THE CHAIR: Thank you. Yes, it was very helpful. Next we have -- we have two more speakers. Anthony Lorenzo. Is Mr. Lorenzo here? We have, apparently, some very bad weather. Mr. Schlakman is here. He got hung up by bad weather and bad traffic, but he is here and he's going to talk to us about clemency.

MR. SCHLAKMAN: Madam Chair, thank you, members of the Commission. I appreciate the opportunity. My apologies for being waylaid. But again, I appreciate the opportunity.

If you have no objection, with your permission, what I'd like to do in the interest of time is just quickly identify a few issues and defer upon the context that you might otherwise want to receive, and I can supplement that over the course of the next several days. But at least to touch upon and highlight a few different issues.

And for quick context, which is relevant to these few issues, I had the privilege of serving as special counsel for Governor Chiles for several years. And within the context of those several years, two or three of those years I handled, among other things, clemency. So, you have heard, I think, from various individuals and organizations about certain aspects of the clemency process at some of your prior meetings.

And I can just, in broad brush, suggest that Governor Crist's willingness to explore opportunities to identify ways the clemency process might be more transparent and, in effect, user friendly. The steps that have been taken thus far and the issues that have been raised before your Commission represent very positive steps and potential of positive steps forward. Progress has already been made in terms of rights restoration, providing applicants with their case histories, Which up until recently, the only thing that they were informed about was whether there's

a favorable or unfavorable recommendation. But they couldn't challenge -- right or wrong they couldn't challenge what was in the document. That, as a result of the Governor's efforts and then your willingness to engage, you've already seen some progress on that front.

I believe you may have heard from the Florida Rights Restoration Coalition, which is a group of 40 national, state, local and community organizations, that have aligned to promote rights restoration. My understanding is that they -- and actually the ACLU staffs that collection of community organizations.

They have filed -- I haven't seen it. But I understand that they filed a public records request relating to the process issues in the rights restoration process. Not so much case specific of substantive issues, but just process issues to try to get a sense as to what the current state of play is as far as the back logs, the cases that have not yet been heard or processed. And I think they fashioned it as somewhat of a hybrid public records request and a request to the Governor.

Because, as you may know by now through prior testimony, the Governor has unrivaled discretion to release virtually any document at anytime for any reason. And he can grant clemency subject to the approval of two members of the Cabinet. So, I will supplement. There are a few more detailed issues that track along with those.

And I think also you may have heard, I understand, some

suggestion that as far as access, just the geography of Florida, it's often difficult for people throughout the state to make their way to a clemency meeting. I understand that some people have suggested that it might be useful, to the extent that it's possible, to alternate locations. Well, that would be an interesting option.

I would suggest, to the extent that the Commission is willing to look at that -- and some of that becomes minutia, but it's very helpful in terms of access. Electronics. There could be video-teleconferencing capability that might not require physically moving the Governor and Cabinet and all the apparatus that might support such across the state. I mean, there may be some benefit physically moving them. So, that's just another option to explore.

Switching gears very quickly now, I'll close on one unrelated to clemency. Another aspect of the clemency process unrelated to rights restoration. The death penalty review process. Without delving into any of the detail, I'd just like to mention the American Bar Association -- and I was actually one their fellow commission efforts. And this is a good thing. For example. A team of volunteers for a number of different projects. And Sam Gilbert volunteered, in his capacity as former president of the American Bar Association, to serve on the Florida Death Penalty Assessment Review Team.

Not enough time to delve into this, but there's one aspect of the

section of the section of the report -- I won't bore you with that 500-page report. But I can distill down one relevant aspect in terms of openness, transparency, public meetings, and it relates to the, again, capital case death penalty review process.

There have been -- I won't say virtually, but I can also say no public hearings on capital cases. And just for context, because these issues are controversial -- this report neither supports nor opposes capital punishment. It looks at the process and it says these are the things that need to be addressed in an effort to make the process more effective and fair and accurate.

So, as far as the public meetings held and our transparency element on capital cases, there are some opportunities. Again, not enough time to develop that tonight, so with your permission I'd like to distill down -- not this, but maybe into a one- or two-pager that might prove to be useful, or at least provide context on a point as we apply the issue.

And, finally, moving away from the clemency process. I, among other things, serve as chairman of the board for the Innocence Project of Florida. That is the entity that attempts -- and, Senator, you're familiar with the issues that we still are drafting. But the entity that attempts, by way of DNA evidence, to exonerate wrongfully convicted, wrongfully incarcerated.

And in the interest of time, there are some examples that I would love to share with you, but I would defer unless you have questions.

But just to drive this point home and to inject some of the commentary that I was listening to, had an opportunity to listen to from the “Sarasota Herald-Tribune.” This is a fledgling organization, by the way, and that’s probably an overstatement. Rule and investigation might give you a better idea of how the organization works. Incredibly passionate lawyers that take on causes that seem to be lost. And, certainly, clients who have, in many cases -- well, in some cases, been incarcerated for 20 or 30 years of their lives for crimes they didn’t commit, and are still waiting for compensation.

The relevant part is, in the course of attempting to represent these tragic figures, the individuals in our society, they are subject to many of the copying constraints, records access constraints, that occur in different scenarios. When the organization -- literally, was operating on donations. It’s a little bit better, but still we have no state support, no funding, to do the job of righting the miscarriages of justice, but for the good graces of individual donors and some foundations. The Florida Bar Foundation in particular. The Attorney General’s Office -- this was lawful and appropriate, but it doesn’t work.

What I mean by this is the Innocence Project of Florida, this is two or three years ago, was presented a bill of approximately \$23,000 for copying case files. And subject to having a supervisor in the room with the clock ticking and the meter running -- you’ve heard this, just in a different

context. It only adds another exclamation point for four or ten. When the matter at issue is someone with potential -- and that's what they're looking for, evidence to support judicial relief for those that were wrongfully convicted or wrongfully incarcerated.

So, we're balancing, without getting state resources to provide for this representation. As in zero. Dealing with all of the other aspects of this, as you know or could imagine, having to pay the Attorney General's Office what is pro vocal (phonetic) and appropriate as far as reproduction costs is unobtainable.

People have changed. There may be opportunities to move forward. As I say. I actually went a little bit further than I intended to. I just wanted to flag clemency on the one hand, two very critical issues. And, certainly, shifting out of clemency in the context of the Attorney General's Office and what might be done, whether it's electronic copying, whether it's some -- whatever you might call it, imperative, for a negotiated a lower price on hard copy reproduction. Something that's not -- it wouldn't take that much thought or creativity given the compelling nature of the challenge.

To whatever extent that those issues would resonate to the Commission, we'd definitely be more than enthusiastic about working with you. And I can provide, as I say, with your permission, a bit more context on the three different issues that I just raised.

THE CHAIR: I think that would be greatly appreciated by everyone. So, anything you want to provide us, including that massive report.

MR. SCHLAKMAN: Can I do it electronic?

THE CHAIR: I kind of prefer the paper copy myself. I like to write in the margins. That's hard to do electronically.

MR. SCHLAKMAN: All right. If you're serious, I will send one.

THE CHAIR: Yes, I am serious. And any distillation or summarization of the points you'd like us specifically to consider, I think that everybody would find that very helpful.

MR. SCHLAKMAN: Thank you.

THE CHAIR: Any other -- Senator?

COMMISSIONER DOCKERY: Who do you work for?

MR. SCHLAKMAN: I neglected to give you that information. I gave you historical. I'm currently a senior program director for the Center for the Advancement on Human Rights at Florida State University. The Chair -- Sandy was actually the founding chair of the Innocence Project in Florida. He volunteered me. But he's extraordinary. And the opportunities that he's enabled to engage upon are truly amazing.

But short answer, it's the Center for the Advancement of Human Rights. It's a free-standing center within the Florida State University and it engages on, well, a number of dockets are covered, whether it's clemency, whether it's human trafficking. We work with state, federal, local law

enforcement and helping to support some of those issues. So, a wide range of issues. And Sandy was instrumental in creating that center.

COMMISSIONER DOCKERY: Madam Chair? It's very interesting. I'm chairing the Criminal Justice Committee in the Senate this year, which is a new area for me, and there's so much overlap between what I'm hearing as testimony in that committee and what's going on here. We've had a lot of people come and talk about restoration of rights, clemency, helping those who have had their rights restored get a job. And that led to an interesting conversation that we had recently on expunging and sealing records.

And so, there is a interproject in our committee, and we're probably going to have a bill coming forward. And I think we have time to hear it in this Commission before it's going to be moving pretty quickly through the process. But it's just amazing how much overlap there is and, in fact, to have a bill on human smuggling. So, not trafficking, but smuggling.

MR. SCHLAKMAN: Oh, really? And I was, you know, in dealing with seal and expunge. And another time of day, there is access between the licensing issues and rights restoration that I think would be -- well, additional useful context that you may be interested in.

COMMISSIONER DOCKERY: Please share it with us.

THE CHAIR: Any other questions or comments? Thank you very much for battling the weather. And with that, I think, is there anyone else

who wished to speak? So, with that, we'll adjourn until nine o'clock tomorrow morning. And we can leave all this stuff here once again. We'll leave it here and we'll see you all tomorrow morning.

(The meeting was adjourned at 8:05 p.m.)