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# THE BRECHNER REPORT

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## Fla. high court limits information in court files

TALLAHASSEE – The Florida Supreme Court has adopted new rules regarding information that can be kept in online court documents.

The rules, which take effect Oct. 1, represent an effort by the Court to balance privacy of an individual's information in court records with the public's right to know.

Among the requirements, the rules specify that minors can only be identified by their initials; only the year of the

person's birth can be included; no portion of any Social Security number, bank account, debit card or credit card can be entered unless allowed by another statute or exception;

and only the last four digits of a phone number, driver's license number or passport may be included.

"The inclusion of unnecessary personal information in court filings is of special concern because providing

electronic access, which would include internet access, to court records will make nonconfidential personal information contained in those records more readily accessible to the public," the Court's June 30 opinion states.

In 2009, the Florida legislature mandated that the judiciary and clerk of the circuit courts provide the public with electronic access to court records by Jan. 1, 2012.

*Source: Scripps Treasure Coast*

## Video of teen's death withheld

TALLAHASSEE – The video depicting the death of 18-year-old Eric Perez, who died while in the custody of the Palm Beach Juvenile Detention Center in West Palm Beach on July 10, will not be released, under a new law banning public access to photos, videos and audio recordings related to deaths.

Perez's mother initially requested a copy of the video, intending to make it public, but later changed her mind, according to *The Miami Herald*.

Perez reportedly died after hours of screaming and vomiting.

The law, which took effect July 1, prohibits the release of photographs or audio and video recordings of a person being killed, except to family members of the deceased.

While some commentators applaud the law's efforts to protect the privacy of survivors of the deceased, others have criticized it as placing too heavy a burden on the grieving family to make the decision whether to release any photographs or recordings of the deceased.

*Source: The Miami Herald, Scripps Treasure Coast*

## Scott transition emails deleted

TALLAHASSEE – The email accounts of Gov. Rick Scott and as many as 50 transition team officials were erased by a private company which provided email service.

Scott ordered the Florida Department of Law Enforcement to investigate after Scott acknowledged in August that the emails, spanning the two-month period from his election to inauguration, were missing.

Documents show, however, that Scott administration officials may have been notified as early as January by the private Texas company, Rackspace, that the records no longer existed.

Although Scott's public records adviser,

Chris Kise, describes the deletion of emails as an "oversight," public records experts say that failure to maintain the records may constitute a Public Records Law violation.

"If they closed that account and destroyed those records, they are in violation," said Barbara Petersen, president of the Florida First Amendment Foundation.

Former Chief Financial Officer Alex Sink has filed a complaint, alleging a conflict of interest since the head of the FDLE, Gerald M. Bailey, is employed by the Scott administration.

*Source: St. Petersburg Times*

## 1st Circuit protects right to film police in public

BOSTON – In an important decision for the First Amendment, the 1st Circuit Court of Appeals ruled that individuals have a right to videotape the activities of police officers occurring in public places.

In *Glik v. Cunniffe*, prosecutors brought charges against Simon Glik for using his cell phone to record the activities of three Boston police officers who he believed were using excessive force to arrest a young man on the Boston Common.

The charges were later dismissed, but Glik sued the Boston Police Department for violating his constitutional rights.

In its Aug. 26 opinion, the 1st Circuit held that the "right to film government officials, including law enforcement officers, in the discharge of their duties in a public space is a basic, vital, and well-established liberty safeguarded by the First Amendment."

*Source: The New York Times*

**ACCESS  
RECORDS**

**PRIVACY**

## School chief fired for “deliberate” records violation

ST. PETERSBURG – Pinellas County school superintendant Julie Janssen was fired after becoming the subject of an ethics complaint alleging intentional violation of Florida’s Public Records Law.

The complaint alleges that Janssen and members of her staff ignored legal advice and “deliberately” withheld public records, but Janssen and her attorney say she did nothing wrong.

The *St. Petersburg Times* originally made a public records request in July for reports relating to a civil rights case pending against the district.

The *Times* made six more requests for the reports before they received an

email containing a link to the requested information on Aug. 11. A meeting was to be held on the civil rights case the same day.

One of the reports contained school district suspension data.

Although Janssen’s office said there was no intentional delay in producing the requested documents, an email sent by Janssen to her staff showed that she suggested “we hold all these reports until the board receives it and then we present the data to plaintiffs and then the press.”

“As far as I know...the law doesn’t mean that you drop everything and send it,” Janssen told the *Times*.

School board attorney Jim Robinson

pushed for the release of the report.

“The (Supreme Court) held that any sort of delay, no matter how short, impermissibly interferes with the public’s right to examine the records,” Robinson wrote in an Aug. 15 email to Janssen, her staff and the school board.

“When the requested records are ready they must be given to the requesting party even if that means they are given before a workshop or a meeting at which they are to be discussed or presented.”

Janssen was subsequently fired. She alleges that the school board owes her \$621,536 in salary and benefits.

Source: *St. Petersburg Times*

## Survey: Citizens replacing role of traditional media

COLUMBIA, Mo. – Citizens have a growing interest in government transparency and are increasingly becoming more assertive in their right to government information, a survey by the National Freedom of Information Coalition (NFOIC) shows.

The rise in citizen interest is perhaps

in spite of or in response to a decline in news media attempts to enforce compliance with state and federal freedom of information laws through filing lawsuits.

One of the reasons for this shift could be that media organizations lack resources to keep up the newsroom aggressiveness,

according to a joint study by the NFOIC and Media Law Resource Center.

“If ordinary citizens are becoming more aware of their access rights, and more assertive regarding them, it is indeed a reason to be gratified,” said Kenneth F. Bunting, NFOIC executive director.

Source: *NFOIC*

## Pa. Supreme Court allows TV cameras in courtroom

HARRISBURG, Pa. – Pennsylvania’s high court joins a majority of states that allow some type of video or audio recording of arguments to come before the court.

Beginning in September, the Pennsylvania Supreme Court said that it will allow the nonprofit Pennsylvania Cable Network to

videotape oral arguments heard in its court, although the oral arguments can still not be broadcast live.

### COURTS

Only 13 states, including Florida, allow live video coverage of arguments in front of its supreme court, according to a report by the National Center for State Courts.

Source: *The Associated Press*

## Judge denies camera ban in Collier County teen murder case

FORT MYERS – Collier County Circuit Judge Frederick Hardt has ruled that cameras will remain in the courtroom in the trial of 15-year-old Alexander Crain, despite concerns of an adverse impact on Crain’s fair trial rights.

Crain, who is being tried as an adult, has been charged with two counts of manslaughter with a firearm for the murder of his parents, Thomas and Kelly Crain.

Crain’s attorney, Brian Bieber, argued that the cameras should be banned to protect his client’s right to a fair trial. Judge Hardt disagreed.

“There is a presumption that we will allow the electronic media in courtrooms to let the public know what is happening in our courts and so that the public will have confidence in the court system,” Judge Hardt said.

Source: *The News-Press*

## NLRB assesses social media

WASHINGTON – The National Labor Relations Board (NLRB) Office of the General Counsel has issued a report providing guidance on employers’ social media policies.

The report details the board’s investigations into 14 unfair labor practice disputes involving employee use of social media. The cases were reviewed upon request for advice from regional directors.

In some cases, the board agreed that the employee could be fired for “gratuitous” griping about the boss. In others, the board found that the employee had a right to speak out about workplace conditions.

The NLRB has received 129 cases involving social media in the workplace since 2009, most filed this year, according to a study released this month by the U.S. Chamber of Commerce.

Source: *NLRB.com, The Tampa Tribune*

## Suit against university for admissions list continues

WASHINGTON – The Reporters Committee for Freedom of the Press, along with 21 other news organizations, has filed an amicus brief in the 7th Circuit Court of Appeals, supporting the contention that records related to a secret admission process at the University of Illinois should not be considered confidential student education records.

The case, *Chicago Tribune v. University of Illinois Board of Trustees*, began in 2009, when the *Tribune* released a series uncovering a secret practice at the university granting preferential admission to applicants with political, financial and other ties.

The university is arguing that the records are protected from disclosure under the Family Educational Rights and Privacy Act (FERPA), which protects student records and prohibits the sharing of grade point averages and test scores, even if the student isn't named.

Source: RCFP.com

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## Pinellas County commissioner “unfriends” colleagues

CLEARWATER – Pinellas County Commissioner Ken Welch has “unfriended” several of his colleagues on Facebook, citing legal concerns involving state Public Records and Open Meetings laws.

Welch said he made the decision to unfriend several other commissioners after County Attorney Jim Bennett warned against using social media sites such as

Facebook and Twitter to communicate about public policy.

State guidelines issued last year recommend that governments and government officials retain records of all communications posted on such sites if they pertain to public business, as laws regulating open government often cannot keep pace with technology.

Source: *St. Petersburg Times*

## No more police scanners for Jacksonville area media

JACKSONVILLE – The Jacksonville Sheriff’s Office has removed its handheld scanners from local media and outside law enforcement agencies, citing budget cuts and public safety.

Since 2005, media organizations, such as *The Florida Times Union*, have leased its police scanners, which cost about \$4,600, from the Sheriff’s Office for \$70 a month.

The media say the scanners are necessary because the Sheriff’s Office communicates over encrypted frequencies that can only be accessed with the scanners.

Now, the sheriff’s office says the scanners are needed for staff at a new courthouse. Without the scanners, Jacksonville media will have to rely on tips and police-issued news releases.

“The Sheriff’s Office position that this policy change was for budgetary reasons really doesn’t wash, since we pay for use of the scanners now and are willing to pay their full cost,” *Florida Times-Union* Editor Frank M. Denton said.

Undersheriff Dwain Senterfitt said the email and text alert messaging system will be improved for quicker reports. Reports are currently sent out about an hour after the initial call.

Jacksonville Fire and Rescue Department is also going to an encrypted system in order to comply with privacy laws, department spokesman Tom Francis said. Francis said rescue workers need to know they aren’t broadcasting private medical information while communicating with hospitals.

Source: *The Florida Times-Union*

## Lake Wales official accused of Sunshine Law violation

LAKE WALES – Lake Wales Housing Authority official Booker T. Young Jr. was charged with violating the state’s Sunshine Law when he and two other board members walked outside during a housing authority meeting. Young, 81, has pleaded not guilty to the misdemeanor charges.

The board was discussing an update on parking lot repairs when Young invited board members outside to look at cracks in the asphalt allegedly caused by garbage trucks. An affidavit filed by the State Attorney’s office, however, states that Young “created a separate meeting” without first notifying the public in advance and that he did not take notes

during the meeting.

Young argues that the State’s actions constitute selective enforcement because neither of the other two board members present were charged and that even if the outside gathering was a separate meeting, it was not subject to the Sunshine Law since there was no discussion and no action taken.

This is the second time Young has been charged with violating the Sunshine Law, which requires reasonable public notice any time two or more elected officials meet and that the meeting be open to the public.

Source: *The Ledger (Lakeland)*

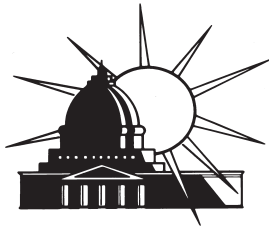


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## Cameras roll in new federal court experiment

It lacks the drama of the various flavors of “Law and Order” or the intrigue of a John Grisham novel. But the video of a July 21 hearing on the plaintiff’s request for a preliminary injunction in *Gauck v. Karamian*, Civil No. 11-2346 (W.D. Tenn. filed May 4, 2011) is nevertheless an important milestone.

The video, which is available in segments online at <http://www.uscourts.gov/multimedia/cameras/player.aspx>, is the first recording of a federal court proceeding in the federal courts’ new pilot program of cameras in selected courtrooms.

It has been joined by video recordings of two other proceedings: jury selection and the trial in a contract dispute, *Parma Community General Hospital v. Premier Anesthesia of Parma*, Civil No. 09-00325 (N.D. Ohio filed Feb. 9, 2009); and personal injury trial, *Morton v. Fort Madison Community Hospital*, Civil No. 09-00179 (S.D. Iowa

filed Dec. 17, 2009). All three proceedings were recorded and posted online as part of a program approved by the U.S. Judicial Conference last year which allows court-operated cameras to cover civil proceedings in 14 federal trial courts, including the Middle District of Alabama and the Southern District of Florida.

This experimental program is just the latest chapter in the long saga on the question of camera coverage of federal trial courts, and is not the first time that the federal courts have experimented with camera coverage of their proceedings. From 1991 to 1994, limited camera coverage of civil trials was tested in eight federal district courts, which led to a recommendation that federal courts allow televised proceedings. But the Judicial Conference – which sets policies for all federal courts except the U.S. Supreme Court, which sets its own rules – rejected this recommendation, concluding in 1994 that “the intimidating effect of cameras on some witnesses and jurors was a cause for serious concern.” The Judicial Conference then relented a bit, deciding in March 1996 to allow each federal Circuit to decide the issue for itself and the district courts in its geographic area, while strongly urging the Circuits to follow the Conference’s 1994 policy.



**Eric P.  
Robinson**

But the question of cameras in federal courts remains a contentious one, as shown by the recent controversies over the proposed video webcasting of a music downloading trial in a Massachusetts federal court, see *In re Sony BMG Music Entertainment*, 564 F.3d 1 (1st Cir. 2009) (reversing trial court order allowing webcast), cert. denied, *Tenenbaum v. Sony BMG Music Entertainment*, 130 S.Ct. 126, 175 L.Ed.2d 234 (2009), and the planned live broadcast and streaming of a trial challenging the constitutionality of California’s anti-gay marriage Proposition 8. See *Hollingsworth v. Perry*, 130 S. Ct. 705, 175 L.Ed.2d 657 (2010).

The first proceeding to be recorded and posted online in the new cameras experiment showcased some of the dilemmas that can arise with cameras in court proceedings. The case, *Gauck v. Karamian*, was brought by Memphis, Tenn. television reporter Lauren Lee Gauck Giovannetti – who uses the name Lauren Lee professionally and filed the suit using her maiden name – against the owner of the TheDirty.com website, which she alleged published sexually explicit photos which the site falsely claimed were of her.

The parties in the case had already agreed that the explicit photographs at issue in the case would be kept under seal. Thus, Chief Judge Jon Phipps McCalla, presiding over the case, announced at the start of the proceeding that “By consenting to a video recording...neither party is agreeing or consenting to the public disclosure of material as to which they have previously asserted a privacy right or other claim...[The photos] will remain under seal and obviously since they’re under seal they’re not going to be displayed [on camera].”

The current federal cameras experiment will continue for up to three years, with the Federal Judicial Center producing interim reports at the end of its first and second years and a final study of the program at its conclusion.

Only time will tell if this experiment finally leads to federal courts being open to regular camera coverage, or if it will be just another short period of openness before cameras are once again left outside the courtroom doors.

*Eric P. Robinson is the deputy director of the Donald W. Reynolds Center for Courts and Media, in Reno, Nev.*