

*Florida High School Moot Court  
Official Issue Packet*

*Revised January 14, 2015*

**HARPER SANDERS**

**v.**

**EVERGLADE COMPUTERS, INC. and  
CHARTECH TECH SERVICES, INC.,**

A collaborative court education project of  
*The Florida Law Related Education Association, Inc.*

Special thanks to

*Supreme Court of Florida  
District Courts of Appeal  
Jeffrey Hammer,  
Florida Bar Law Related Education Committee*

Funded with assistance from  
*The Florida Bar Foundation  
The Florida Bar Appellate Practice Section*

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# FLORIDA HIGH SCHOOL APPELLATE COMPETITION 2015 REGISTRATION FORM

\_\_\_\_\_ Yes, we would like to submit a brief for the Appellate Competition. Teams are limited to two students per brief. Briefs must be received in Tallahassee by March 16, 2015.

I. Student's Name: \_\_\_\_\_  
School: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_ County: \_\_\_\_\_  
E-mail: \_\_\_\_\_ Phone: \_\_\_\_\_ Fax: \_\_\_\_\_  
 Team Captain

**I attest that the brief I have submitted is the sole work of my partner and myself.**

Signature of student: \_\_\_\_\_

II. Student's Name: \_\_\_\_\_  
School: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_ County: \_\_\_\_\_  
E-mail: \_\_\_\_\_ Phone: \_\_\_\_\_ Fax: \_\_\_\_\_  
 Team Captain

**I attest that the brief I have submitted is the sole work of my partner and myself.**

Signature of student: \_\_\_\_\_

III. Teacher's Name: \_\_\_\_\_  
School: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_ County: \_\_\_\_\_  
E-mail: \_\_\_\_\_ Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

IV. Attorney Coach's Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_ County: \_\_\_\_\_  
Firm Name: \_\_\_\_\_  
E-mail: \_\_\_\_\_ Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

**Brief submitted on behalf of: (Check One)**

**Petitioner    or    Respondent**

**Return 3 copies of this form and 3 copies of the brief to the address listed below.**

The Florida Law Related Education Association, Inc.  
2930 Kerry Forest Parkway, Suite 202  
Tallahassee, Florida 32309

**Email one copy in digital form to [staff@flrea.org](mailto:staff@flrea.org) by the due date.**

# RULES AND GUIDELINES

## Introduction

An appeal from a trial court to an appellate court normally involves two components: a written brief and an oral argument. **In this exercise, you will prepare a brief to the Supreme Court of Florida which will serve as the basis of an oral argument.** The top brief writers in each Appellate District will have the opportunity to present oral arguments in District Court of Appeal competitions. **Each student who authors a brief needs to be able and prepared to present oral arguments at a district competition should their brief be selected.** Selected teams will advance in the competition to the state level, with the statewide finalists having the opportunity to present oral arguments in the Florida Supreme Court in Tallahassee. District competitions will be held in mid-April 2015 and the State Finals will be held on May 4<sup>th</sup> and 5<sup>th</sup> in Tallahassee. Multiple teams may submit briefs from each school. In determining which side you choose, you should read and analyze the cases cited in the case materials.

## A. Rule 1: Teams

1. Each team preparing a brief must consist of two students from the same school. One student should be designated as the team captain. Teams must identify a teacher sponsor to review and select briefs for submission to the state office. In assembling teams, students and sponsors should consider not only the brief writing skills of the team members but also the oral argument skills.
2. **Each team is permitted to write a maximum of two briefs for submission – one for the petitioner and one for the respondent.**
3. **Each teacher/sponsor must select the top two briefs for each side of the case (maximum of four briefs) to submit to the state office. All students are encouraged to write briefs, but teachers should exercise their discretion in selecting the top two briefs for each side of the case to submit.**
4. **Teams will need to prepare oral arguments for the party they wrote a brief supporting. Students will need to be able and prepared to present oral argument should their brief be selected to advance to the district competition. To view a sample oral argument, [click here](#).**
5. Teams may use attorney coaches and teachers as advisors to guide them through the process of preparing the brief and oral arguments; however, the writing of the briefs must be the sole work of the students. Attorneys and teachers are strictly prohibited from writing any portion of the brief.
6. Team Registration Form  
  
Team rosters should be completed and submitted with the briefs by the due date. At registration, teams will be identified only by code.
7. Roll Call

Students will announce their names and team codes at the beginning of every round to the judging panel. No information identifying the team, beyond the students' names and team code, should be provided to the judges.

**B. Rule 2: The Packet**

1. Students should assume the moot court packet is complete and factual. Briefs which challenge the validity of issues beyond the scope of the issues questioned in the moot court packet will not be entertained. **Students should not reference information contained in the mock trial materials unless so stated in the moot court packet. The moot court and mock trial packets are not interchangeable.**
2. Students may only utilize the case law referenced in the moot court packet. **It is acceptable to cite cases that are contained within provided case law.** Any deviation is a rules violation.
3. Students may not construct additional facts not found in the moot court packet specifically. Any information utilized that cannot be fairly inferred from the moot court information packet will be considered beyond the scope, and therefore, a rules violation. Students cannot cite information from the mock trial materials if not explicitly found in the moot court packet.

**C. Rule 3: Competition Format**

1. This competition is composed of two phases: (1) the brief writing phase; and (2) the oral argument phase.

**D. Rule 4: The Brief**

1. Three copies of the students' brief must be received by The Florida Law Related Education Association, Inc. no later than March 16, 2015. Additionally, a digital copy should be emailed to [staff@flrea.org](mailto:staff@flrea.org) by the due date.
2. Each brief should follow the format of the enclosed brief outline. Failure to adhere to the format may lead to disqualification. The entire brief must be no longer than 20 pages inclusive of cover and table of contents. The pages must be letter-sized 8 ½" x 11." Format the text by allowing one-inch margins. All briefs must be typed and double-spaced. The type style should be Times New Roman 12 point font and each paragraph should be indented. Page numbers should appear centered at the bottom of each page. A cover page should clearly identify "Brief for Petitioner" or "Brief for Respondent" and list the participants' names, school, address, telephone numbers, and email addresses.
3. Pursuant to Rule 2, briefs may not include any case law beyond what is presented in the packet and may not include any manufactured or researched facts beyond what is found in the moot court packet specifically. **It is acceptable to cite cases that are contained within provided case law.**

4. Legal citation is not required, but is encouraged. Information on legal citations can be found in the appendices of the packet.

**E. Rule 5: The Oral Argument**

1. Two students must participate for a team per round. Both students must speak and address one of the two questions in each round. Only one student may present rebuttal for petitioner.
2. Each team is given 20 minutes to present their case, as outlined below:

<b>Speaker</b>	<b>Time Limit</b>
<i>Petitioner</i>	<i>18 minutes</i>
Attorney - Question 1	9 minutes
Attorney - Question 2	9 minutes
<i>Respondent</i>	<i>20 minutes</i>
Attorney - Question 1	10 minutes
Attorney - Question 2	10 minutes
<i>Petitioner - Rebuttal</i>	<i>2 minutes</i>

3. Rounds will start on time. Teams should identify an alternate in the event that a team member cannot participate. In the event that a team, or a portion of the team, fails to appear within ten minutes of the time indicated, the team will compete with an incomplete team. Advancement will be at the discretion of the State Director.
4. Two students will present during any one round of competition. Each student will address one of the two questions presented in the brief. Both students must speak during the oral argument. If the second student does not speak during the course of the oral argument, that student will receive a score of zero (0).
5. No communication should occur between students participating in the round and other team members, coaches, or anyone else in the audience outside the bar. Any communication with anyone outside of the partner student during that round will constitute a rules violation.
6. Students should display dignity and respect to the judges, staff, and other competition personnel.  
  
Additionally, teams should respect each other.
7. Dress should be professional, courtroom attire.
8. During oral arguments, students will be scored based on the criteria found on the score sheet in the packet.
9. Scores and winners will not be disclosed after a round, but verbal critiques will be given.

**F. Rule 6: Videotaping/Photography**

1. Cameras and recording devices are permitted in certain courtrooms; however, the use of such equipment may not be disruptive **and must be approved in advance of the competition by The Florida Law Related Education Association, Inc.**
2. When one team requests to videotape during a trial, the opposing team must be consulted and their permission granted prior to taping.

**G. Rule 7: Viewing an Argument**

1. Team members, alternates, attorney coaches, teacher coaches, and any other persons directly associated with a team, except those authorized by the State Director, are not allowed to view other teams in competition so long as their team remains in the competition.
2. Judges should maintain order in the courtroom. If observers are disorderly, they will be asked to vacate the premises.

**H. Rule 8: Decisions**

1. All decisions of the judges are final.

**I. Rule 9: Team Advancement**

1. Teams will be scored first on their written briefs to determine if they advance to the oral argument presentations at the district level. Students who author the briefs need to be able and prepared to present oral arguments at a district competition should their brief be selected.
2. During the scoring of the written briefs, the panel of evaluators will give each brief a numerical score consistent with the score sheet located on the website. The scores from each of the judges in the panel will be added together to determine the top two to four briefs. The top two to four teams in each district may be given the opportunity to compete in the district competition.
3. During the oral argument competition, a panel of judges will score student performances in each round. The team that receives the higher score from each judge will be awarded that judge's ballot. The team with highest number of ballots wins the round.
4. At the end of the competition, the judges will consult to recommend the team or teams from the district to advance to the state competition.
5. Teachers may use their discretion in identifying an alternate student to participate in the state competition, if needed, upon approval of the State Director.

6. Briefs will be scored and a Best Brief award presented at the state competition consistent with the practices outlined herein.
7. The state finals will incorporate one preliminary round and one final round of competition. The top two teams will be determined by the panel of DCA judges evaluating the preliminary rounds. These top two teams will meet in the final round of competition. The team receiving the most ballots in the final round will win the competition.

**K. Rule 11: Eligibility**

1. All students on a team must be enrolled in the same public or private school in the district for which they are competing.
2. Florida public and private high school students, as well as homeschool students, are eligible to participate.

*All questions should be submitted in writing to [staff@flrea.org](mailto:staff@flrea.org).*

**NOTE: FLREA strongly encourages the use of an appellate attorney during the coaching process. The FLREA website contains valuable resources to assist you in preparing your brief, as well as your oral argument. All teams should [view the final round](#) of the state competition prior to participating in the oral hearing.**

# SOURCES OF LEGAL RESEARCH

The legal authorities you will be using as your source of research and for purposes of citing to the Court are included or referenced in the case materials.

You may also read articles and legal authorities from other sources and jurisdictions to get ideas and arguments for your brief, but these materials may only be used to get ideas or to enhance your understanding of the legal issues. They may not be cited as authority in this contest. Your Attorney Coach may wish to suggest reading material. While you are encouraged to explore other sources, there is no requirement that you do so.

Information on research using primary and secondary sources is enclosed in the Appendices for your review.

Additionally, you can utilize on-line research through a variety of sources. You should be able to find most of the cited cases at [www.findlaw.com](http://www.findlaw.com), under Laws: Cases and Codes. From the Findlaw "Cases and Codes" page, scroll down and click on the U.S. Supreme Court link and pull all cases with (i.e. 123 U.S. 456). For all Circuit Court cases a \_\_\_F.2d, F.3d or F.Supp., click on the applicable Circuit Court link. For example, *Doe v. v. Dept. of Pub. Safety*, 271 F.3d 38, 60 (2d Cir. 2001) would be found under the **Second Circuit**.

**Remember that in preparing your brief, you can only use the legal authorities included or referenced in these materials. You can research other authorities but you should only use authorities cited in the case packet and within the case law provided.**

## **RELEVANT LEGAL AUTHORITY**

In developing briefs and oral arguments, student competitors may utilize any authority cited in the mock appellate opinion included in the case materials, including federal and state case law (and various authorities cited therein), federal and state constitutional provisions, and federal and state statutes. Students should be careful to explore the authorities independently as opposed to relying solely on the context in which they are presented in the mock appellate opinion.

\*\*\* Note: Case law mentioned in the materials may be utilized by students in the development of briefs and oral argument. Additional cases may be added by the state committee.

**Regarding the facts of the underlying case, the students do not need any facts other than what is provided in the mock appellate opinion.**

**Students are not allowed to use facts from the mock trial case unless specifically mentioned in the moot court packet.**

**Article I, Section 23 of the Florida Constitution:**

**Right of privacy.**—Every natural person has the right to be let alone and free from governmental intrusion into the person’s private life except as otherwise provided herein. This section shall not be construed to limit the public’s right of access to public records and meetings as provided by law.

Restatement (Second) of Torts: Intrusion Upon Seclusion.

One who intentionally intrudes, physically or otherwise, upon the solitude or seclusion of another or his private affairs or concerns, is subject to liability to the other for invasion of his privacy, if the intrusion would be highly offensive to a reasonable person.

Restatement (Second) of Torts: Damages for Invasion of Privacy.

One who has established a cause of action for invasion of his privacy is entitled to recover damages for the harm to his interest in privacy resulting from the invasion, as well as his mental distress suffered, if it is of a kind that normally results from such an invasion.

**Section 934.02, Florida Statutes**

**Definitions**

(3) “Intercept” means the aural or other acquisition of the contents of any wire, electronic, or oral communication through the use of any electronic, mechanical, or other device.

(12) “Electronic communication” means any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photooptical system that affects intrastate, interstate, or foreign commerce, but does not include:

- (a) Any wire or oral communication;
- (b) Any communication made through a tone-only paging device;
- (c) Any communication from an electronic or mechanical device which permits the tracking of the movement of a person or an object; or
- (d) Electronic funds transfer information stored by a financial institution in a communications system used for the electronic storage and transfer of funds.

**Section 934.03, Florida Statutes**

**Interception and disclosure of wire, oral, or electronic communications prohibited.—**

(1) Except as otherwise specifically provided in this chapter, any person who:

- (a) Intentionally intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept any wire, oral, or electronic communication;
- (b) Intentionally uses, endeavors to use, or procures any other person to use or endeavor to use any electronic, mechanical, or other device to intercept any oral communication when:
  - 1. Such device is affixed to, or otherwise transmits a signal through, a wire, cable, or other like connection used in wire communication; or
  - 2. Such device transmits communications by radio or interferes with the transmission of such communication;
- (c) Intentionally discloses, or endeavors to disclose, to any other person the contents of any wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through the interception of a wire, oral, or electronic communication in violation of this subsection;
- (d) Intentionally uses, or endeavors to use, the contents of any wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through the interception of a wire, oral, or electronic communication in violation of this subsection; or

(e) Intentionally discloses, or endeavors to disclose, to any other person the contents of any wire, oral, or electronic communication intercepted by means authorized by subparagraph (2)(a)2., paragraph (2)(b), paragraph (2)(c), s. 934.07, or s. 934.09 when that person knows or has reason to know that the information was obtained through the interception of such a communication in connection with a criminal investigation, has obtained or received the information in connection with a criminal investigation, and intends to improperly obstruct, impede, or interfere with a duly authorized criminal investigation; shall be punished as provided in subsection (4).

\*\*\*

(3)(a) Except as provided in paragraph (b), a person or entity providing an electronic communication service to the public shall not intentionally divulge the contents of any communication while in transmission on that service to any person or entity other than an addressee or intended recipient of such communication or an agent of such addressee or intended recipient.

(b) A person or entity providing electronic communication service to the public may divulge the contents of any such communication:

1. As otherwise authorized in paragraph (2)(a) or s. 934.08;
2. With the lawful consent of the originator or any addressee or intended recipient of such communication;
3. To a person employed or authorized, or whose facilities are used, to forward such communication to its destination; or
4. Which were inadvertently obtained by the service provider and which appear to pertain to the commission of a crime, if such divulgence is made to a law enforcement agency.

(4)(a) Except as provided in paragraph (b), whoever violates subsection (1) is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, s. 775.084, or s. 934.41.

(b) If the offense is a first offense under paragraph (a) and is not for any tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain, and the wire or electronic communication with respect to which the offense under paragraph (a) was committed is a radio communication that is not scrambled, encrypted, or transmitted using modulation techniques the essential parameters of which have been withheld from the public with the intention of preserving the privacy of such communication, then:

1. If the communication is not the radio portion of a cellular telephone communication, a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit, a public land mobile radio service communication, or a paging service communication, and the conduct is not that described in subparagraph (2)(h)7., the person committing the offense is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.
2. If the communication is the radio portion of a cellular telephone communication, a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit, a public land mobile radio service communication, or a paging service communication, the person committing the offense is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

### **Section 934.10, Florida Statutes**

#### **Civil remedies.—**

(1) Any person whose wire, oral, or electronic communication is intercepted, disclosed, or used in violation of ss. 934.03-934.09 shall have a civil cause of action against any person or entity who intercepts, discloses, or uses, or procures any other person or entity to intercept, disclose, or use, such communications and shall be entitled to recover from any such person or entity which

engaged in that violation such relief as may be appropriate, including:

- (a) Preliminary or equitable or declaratory relief as may be appropriate;
  - (b) Actual damages, but not less than liquidated damages computed at the rate of \$100 a day for each day of violation or \$1,000, whichever is higher;
  - (c) Punitive damages; and
  - (d) A reasonable attorney's fee and other litigation costs reasonably incurred.
- (2) A good faith reliance on:
- (a) A court order, subpoena, or legislative authorization as provided in ss. 934.03-934.09,
  - (b) A request of an investigative or law enforcement officer under s. 934.09(7), or
  - (c) A good faith determination that Florida or federal law, other than 18 U.S.C. s. 2511(2)(d), permitted the conduct complained of
- shall constitute a complete defense to any civil or criminal, or administrative action arising out of such conduct under the laws of this state.
- (3) A civil action under this section may not be commenced later than 2 years after the date upon which the claimant first has a reasonable opportunity to discover the violation.

#### Restatement of Torts

**Conversion** is the wrongful possession or disposition of another's property as if it were one's own; an act or series of acts of willful interference, without justification, with an item of property in a manner inconsistent with another's right, whereby that other person is deprived of the use and possession of the property.

# FORMAT OF THE BRIEF

Each brief should follow the format of the enclosed brief outline. Failure to adhere to the format may lead to disqualification. The entire brief must be no longer than 18 pages, letter-sized 8 ½" x 11." Format the text by allowing one-inch margins. All briefs must be typed and double-spaced. The type style should be Times New Roman 12 point font and each paragraph should be indented. Page numbers should appear centered at the bottom of each page. A cover page should identify "Brief for Petitioner" or "Brief for Respondent" and list the participants' names, school, addresses, telephone numbers, and email addresses.

Do not be overly concerned with legal citation; mistakes will not hurt your score. You may even choose not to use legal citation, so long as you make it clear what case you are referencing.

If you do try to use legal citation, here are some pointers – you may want to use the *Blue Book, a Uniform System of Citation*, (18<sup>th</sup> ed., 2005), which should be available at any local law library for reference. However, you may simply follow the form of citation used in the sample brief.

When first citing a U.S. Supreme Court case, you should cite to the U.S. Reporter. For example, on page 6 of the sample brief, the petitioner cites to "*Jones v. United States*, 463 U.S. 354, 364 (1983)." The number 463 is the volume number, "U.S." stands for the U.S. Reporter, the books in which the Supreme Court cases are published, 354 is the first page of the cited case, and 364 is the exact page in the case upon which either the quoted language or the referenced portion of the case appears. *All subsequent cites* to the same case, immediately following that full cite, should be "*See id.*" cites. However, if the referenced portion of the case is on a different page, your cite should appear as "*See id.* at \_\_\_\_\_" (that specific page on which the quote or reference is located).

If a case has been previously cited but not immediately previously cited, then a shortened cite form should be used. For example, in the sample brief, *Jones v. United States*, is cited on page 6, followed by a "*See id.*" cite. Then on page 7, the *United States v. Ward* case is cited in its entirety. The petitioner then must again cite to *Jones v. United States*. If the petition were to use a "*See id.*" cite there would be confusion because the reader would assume that the petitioner was referring to the *Ward* case, the immediately preceding case. Therefore, the petitioner abbreviated the case name and simply lists the volume number of the U.S. Reporter, 463 and only the specific page in the case on which the reference appears after the word "at." If the petitioner went on to cite to the *Jones* case again, he or she could once again use a simple "*See id.* at \_\_\_\_\_" cite.

**Again, it is not necessary that you follow the exact legal citation form used in the sample brief.** Do the best you can. We are more concerned with the arguments you choose to make.

You will note that on the cover page of the sample brief, in the lower right hand corner, the petitioner's attorney has only identified himself or herself as counsel for petitioner. **You should include your full name, followed by the names and address of your high school, telephone numbers, and email addresses where you can be reached both at school and home.**

**Briefs should conform to the following outline:**

- I. Cover Page
- II. Table of Authorities
- III. Opinion Below
- IV. Constitutional and Policy Provisions Involved
- V. Questions Presented
- VI. Statement of the Case
- VII. Summary of the Arguments
- VIII. Argument
  - a. Question I
  - b. Question II
- IX. Conclusion

# SECTIONS OF THE BRIEF

## **Cover Page**

Follow the guidelines and see sample cover page.

## **Table of Authorities**

- List cases you used in your arguments to support your position.
- List relevant constitutional and policy provisions.

## **Opinion Below**

Include a short statement of the proceedings in the lower court/court below and the ruling or judgment of the trial court which is being appealed from.

## **Constitutional and Policy Provisions Involved**

Spell out the relevant provisions in the U.S. Constitution and policy provisions involved in the case from either the perspective of the petitioner or respondent.

## **Questions Presented**

Recite the two constitutional questions or issues on appeal before this Court.

## **Statement of the Case**

This will encompass a statement of the important issues and facts before the Court from either Petitioner's or Respondent's perspective. This section should incorporate (1) a concise (one or two sentences if possible) introductory explanation of the general nature of the case as a lead-in to the brief; (2) a short statement of the proceedings in the court below and the ruling or judgment of the trial court which is being appealed from; (3) a concise statement of the issues before the Court on appeal from the Petitioner's or Respondent's perspective; and (4) a concise statement of the important facts. This section should be presented in a light favorable to your side and contentions in your case.

## **Summary of Argument**

Include three or four paragraphs highlighting a summary of your arguments supporting either the Petitioner's or Respondent's position. Essentially this is a short synopsis of your arguments which will follow. See below.

## **Arguments**

This portion of the brief should discuss your position on the facts, arguments, and legal authorities (statutes and case law) which support your position on the questions presented. If the case law is favorable to your side, show how the prior cases are applicable to the facts or analysis of that case from the present case. You may wish to select the cases which most strongly support your arguments.

## **Conclusion**

This part is a short summary of your answers to the issues on appeal (the questions presented) and should consist of only a few sentences. It is a very concise statement of why you want the appellate court to agree with you. **The conclusion should also state what specific relief is being requested:**

### **General example of the final sentence in the brief and during oral arguments:**

*“In conclusion, for these reasons, we ask the court to reverse the decision of the 6<sup>th</sup> District Court of Appeals and find the statute unconstitutional.”*

## **SUBMITTING THE BRIEF**

Briefs should be submitted in the required format to The Florida Law Related Education Association, Inc. and should be **received by March 16, 2015**. The winning brief writers will be notified for dates of the local oral arguments.

Submit three copies of all briefs to the following address.

The Florida Law Related Education Association, Inc.  
2930 Kerry Forest Parkway, Suite 202  
Tallahassee, Florida 32309

**Additionally one electronic version must be submitted by the due date to [staff@flrea.org](mailto:staff@flrea.org).**

**For any questions, submit in writing to [staff@flrea.org](mailto:staff@flrea.org).**

# BRIEF WRITING PRIMER

There are two main ways to argue your position to the appellate court: through the appellate brief and through the appellate oral argument. They serve different functions and, to an extent, courts look for different things from each function.

Of the two functions, the brief is the more important. It succinctly reviews for the court what the case is about (what the relevant facts and legal issues are), what the law is (for each issue raised by the appeal), and what relief you are seeking. It really does not matter which side of the case you are on or which issue you are addressing. Your job is to persuade the court that your position is correct – that is, that the facts and relevant law support the relief you seek and that the outcome you want makes sense.

The brief is your chance to shine. It is your chance to show the court that you understand your issue, that you have done the necessary research into it, and that you can communicate the argument in a scholarly way. The court looks to you for guidance, and it is your responsibility to convince the court that you can be trusted.

Let us go over some of the more important factors that judges look to when reading/grading an appellate brief.

## **Effective Organization of the Facts/Procedural History**

Judges are busy and they look to you to narrow down the facts to those that are most important to deciding the issue. Have you summarized for the court all the facts that are relevant to your issue and that the court needs to know about in order to decide the case? Most cases have a lot of facts, but not all of those facts are relevant to the issue being raised on appeal.

For example, suppose your client was convicted of running a red traffic light and you are appealing that conviction. Does it make a difference how large the tires on his car were? Probably not (it might be relevant to a speeding ticket, but not running a red light). On the other hand, is it important to know what the weather and traffic conditions were at the time, or whether the police officers were in a position to see the intersection at the time that you client drove through it? Probably. Your ability to recognize a relevant or essential fact and to communicate it in an easy-to-understand way is very important to your ability to persuade the court.

## **Persuasive Use of Pertinent Facts/Diffusing Damaging Facts**

Do not ignore bad facts. If they are important to the case (and, of course, relevant to the issues on appeal), someone will find them. Probably your opposing counsel. It will make you look less than honest with the court if you do not disclose bad facts. Your job is to find a way to be candid, but to emphasize the facts that support your position. Finally, do not merely list the essential facts. Weave them into a story. Make the brief interesting to read.

## **Issue Recognition**

The way that you frame your issue will direct the court to the specific question it must decide in the case. Once you have identified the issues to be raised on appeal, state them clearly in the

brief. Be direct and forceful, without being wordy. Use active verbs. Remember that judges are very busy. They do not often have the time to wade through wordy, vague, or repetitive briefs.

The way you phrase the issue for the judges sets the stage for everything to follow in the brief. The issue also determines what your analysis will be. You have to make sure that your legal analysis and the conclusion that you reach parallel the issue that you raise.

### **Legal Analysis**

Now that you have framed the issue that you want the appellate court to address, you have to lay out an analysis that is direct, logical, and persuasive. Your reader should be able to follow the analysis and, at the end of it, reach the same conclusion that you did.

Remember that your analysis revolves around the law. What is the law on the subject of your argument/on your issue? You either want the appellate court to apply the existing law (and perhaps extend it to a new set of facts and application) or to explain why, based on the distinct facts in your case, the existing law does not apply.

You must be clear in your thinking and direct in your writing.

### **Persuasive Use of Authority**

Courts are guided by the law, and it is your job to tell them what the law is, how the facts of the cases that you cite are either substantially similar to your facts or are so different (in important ways) that the legal conclusion in those cases should not apply to your case. Your Issue Booklet identifies the leading cases for the issue you have raised. Your job is to explain to the court why the conclusions in those cases do or do not control the outcome in your case.

To do this, you may need to discuss the facts of the more relevant cases. Discussing the facts of those cases may help the court in your case to determine whether the holding in the prior cases apply to your circumstances.

Remember that you, acting in the role of a moot court lawyer, are, essentially, stepping into the same role as an officer of the court that all attorneys step into. While you represent a client, you also play an important role in helping to shape the law. So be candid, thorough, and forceful.

### **Clarity, Conciseness and “Readability”**

In writing, let the first sentence of each section be your thesis sentence. State what your proposition is and let subsequent sentences support your thesis statement. End your paragraph with a conclusion that repeats your thesis statement.

Once you have completed your brief, be prepared to review and edit it. Revision means “to see again.” You can revise your writing most effectively if you can figure out a way to see it again. When we review something we have written, however, it is often difficult. Not only do we have what we have written on paper, but we also have what is still in our mind.

To distance ourselves from what we have put on the printed page from what is in our mind, we need to see what we have written in a different way. For example, instead of looking at our

complete message, we need to review what we have written differently, i.e. sentence by sentence. As we review each sentence individually, we can ask ourselves the following questions: 1) did the sentence say what I wanted it to say?; 2) did I say it in a clear manner?; 3) could I have said what I wanted to say in fewer words?; and 4) could I have said it better? When we look at what we have written sentence by sentence, we will often find that we wrote many things that were unnecessary. For example, in the preceding sentence, could I have just say "...we'll find we wrote many unnecessary things."

### **Organization, Headings and Subheadings**

No one likes to read a brief that is nothing more than a blob of words (imagine this Help Guide without any headings). Your readers are human and like to be able to focus on certain ideas at a time. As you take notes regarding the issues you are treating, therefore, you should note what the different issues are and organize your writing around each issue. To alert your reader that one issue is ending and another beginning, you should use headings and subheadings. Headings and subheadings not only help you telegraph to your reader that a change in issues or the treatment of a sub-issue is coming up, but help you frame your brief around the issues that will aid the logical organization of your full brief.

### **Compliance with Rules**

Let's be honest. Following your appellate brief writing rules can be less intellectually challenging than writing other school papers and you might even find it boring. Following the rules, however, is vital to practicing attorneys. Attorneys are required to follow different sets of rules to ensure a certain standard is followed that will be fair to everyone. For example, a Florida attorney writing a brief in state court has to follow the Florida Rules of Appellate Procedure (in federal court, the Federal Rules of Appellate Procedure apply). Because attorneys have to learn and follow court (and their Bar Association) rules, you too are being judged on your willingness to learn and follow your "quasi-court" rules for your moot court competition.

### **Spelling and Grammar**

Spelling and grammar are important to clarity and presentation. Errors in spelling or grammar have a negative effect on your reader. A reader who sports spelling and grammar errors may believe that the writer lacks credibility. The reader may question, therefore, the soundness of that writer's legal arguments. In this day of spell-check and automated grammar-check tools, there is no excuse (other than competition rules) not to use them, and using those tools will enhance your credibility with the reader. Remember, though, to still proofread: spell-check cannot substitute to careful review of your final brief. The appearance of your document will also affect your credibility and opportunity to persuade. People do see the small stuff.

### **Citation Style**

Are the citations sloppy? Are your citations proper (do they follow the rules provided)? Did you pay attention to detail? Again people see the small stuff and are affected by anything that might affect your credibility. Remember when doing your citations (as well as other portions of your brief) that you should base your decisions on the rules, not your own preferences.

**Good luck!**

# Sixth District Court of Appeal

## State of Florida

Opinion Filed December 9, 2014

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Appeal No. 6D14-9876

Lower Tribunal No.  
CA-1234

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**EVERGLADE COMPUTERS, INC. and CHARTECH TECH SERVICES, INC.,**  
Appellants,

vs.

**HARPER SANDERS,**  
Appellee.

Appeal from the Circuit Court of the Twenty-First Judicial Circuit In and For Palm County, Florida.

Before JUDGES WASHINGTON, ADAMS and JEFFERSON.

WASHINGTON, Judge.

This appeal arises from a judgment entered against Everglade Computers, Inc. and Chartech Tech Services, Inc. (“Defendants”) in favor of Harper Sanders (“Plaintiff”). For the reasons set forth herein, we reverse the judgment and remand for the entry of a judgment in favor of Defendants.

### **I. Facts and Procedural History**

As a student at Palm County High School, Plaintiff had the opportunity to lease a laptop computer through the school’s One2One Program. Everglade Computers, Inc., owned the computers and made them available to students for study, work and research. Chartech Tech Services, a subsidiary of Everglade, provided advanced technical support and had the capability to monitor and track the location of the computers. Defendants entered into a contract with the school board to provide computers in connection with the program, and Defendants were compensated for same.

Students who leased the computers, including Plaintiff, signed a contract which included the following provision:

“Monitoring Notice Everglade retains the right to remotely activate the laptop in the case of a possible lost or stolen laptop. This remote activation will help protect Everglade’s investment and ensure a quick recovery time.”

In addition, students were notified by way of a monitoring notice insert to the printed program information that the use of laptops would be tracked and that “each laptop has a shared link” to Everglade.

To protect its investment, Everglade equipped its computers with a security function called TheftTrack. TheftTrack allows for three different functions to track and locate computers: webcam functionality, screenshot capability, and Internet Protocol (IP) and Domain Name System (DNS) tracking capabilities. TheftTrack is unable to capture audio. It captures still images rather than video. When the webcam is enabled and images are being captured, a green light illuminates on the user’s end of the computer.

Students who leased computers were required to check them in to the computer lab after school or pay a \$60 insurance deposit if they removed them from school property. Plaintiff routinely took his/her computer home after school but did not pay the insurance deposit. As a consequence, on numerous occasions, TheftTrack was activated on Plaintiff’s computer.

With TheftTrack activated, Defendants’ employees had access to screenshots of Plaintiff’s computer usage and still images through Plaintiff’s computer webcam. Utilizing the webcam functionality, Defendants’ employees observed that Plaintiff had set up entertaining scenes using marshmallow “Peeps” dressed like movie characters. Plaintiff had created the “Peeps” scenes to share with his/her friend, Robert “Sketch” Michaels. Defendants’ employees, who were working long hours and suffering from low morale, were intrigued by the creative scenes they observed, and they began to hold parties to share their findings.

In late March, Plaintiff loaned his/her computer to Robert Michaels. Unaware of this, Plaintiff’s teacher observed that Plaintiff did not have his/her computer and inquired as to its location. Plaintiff responded that he/she may have lost it. On March 26, Plaintiff signed a Notification of Lost Computer form, which stated “I hereby authorize Palm County High School and its contracted partners to activate TheftTrack to locate this missing computer.” The following day, Plaintiff informed the teacher that he/she had found the computer. The teacher called the school IT Department and left a message that the computer had been located and the search for it could be stopped. According to Defendants, however, the school did not instruct them to discontinue TheftTrack until April 15.

In response to the Notification of Lost Computer form, TheftTrack was again enabled on Plaintiff’s computer and the frequency of monitoring increased. Despite the teacher’s message to the IT Department on March 27, TheftTrack remained in use. Plaintiff was unaware of the use of TheftTrack, but he/she did observe that the green webcam light seemed to go on and off more frequently after he/she reported the lost laptop.

Plaintiff and Robert Michaels were suspicious that someone may be spying on one or both of them. According to Plaintiff, they decided to “up the ante.” On Friday, April 11, they

exchanged electronic messages (“eMessage”) referring to a potential drug deal at the school on Monday morning April 14. Plaintiff and Michaels created the eMessage using a “talk to text” application, which allowed them to speak into their respective computers and convert the spoken words to text. They also gathered bottles, baggies, herbs, powdered sugar and a brown zipper bag and placed them near the computer on Plaintiff’s desk in his/her bedroom.

On Saturday, April 12, Defendants’ employee Mikey Blair was monitoring TheftTrack pictures. He/she observed a webcam shot of a “really messy desk” and linked it to the eMessage conversation between Plaintiff and Michaels concerning a potential drug deal. Upon inspection of the photo image of the desk, Blair found that it could be a high volume of drugs and drug paraphernalia, as well as an object that he believed looked like a gun case.

Blair immediately showed the eMessage screenshot and the webcam photo to Defendants’ chairman and CEO, who then reported the matter to the school’s principal. The principal was immediately concerned because, during the preceding academic year, the school had received a series of indications of major drug deals, which resulted in calling the police, placing the school on lock down and using trained dogs to sniff the hallways for drugs.

On the morning of April 14, the principal confronted Plaintiff with the photo of the desk in Plaintiff’s bedroom and the copy of the eMessage exchange with Michaels. Plaintiff was shocked and disturbed that the principal had obtained a photo of his/her bedroom and a copy of the conversation with Michaels. As a consequence of the event, according to Plaintiff, he/she has become anxious, nervous, paranoid and living in fear that someone is watching him/her.

Plaintiff filed suit against Defendants on two cause of action: Invasion of Privacy under the Florida Constitution and interception of communication in violation of chapter 934, Florida Statutes. The jury entered a verdict in favor of Plaintiff on both causes of action, and judgment was entered in accordance with the verdict. Defendants have appealed.

## **II. Standard of Review**

This case involves the right to privacy under the Florida Constitution and statutes (specifically, chapter 934 of the Florida Statutes) that relate to the right of privacy. As such, the trial court’s applications of the law are reviewed de novo. *Von Eiff v. Azicri*, 720 So. 2d 510, 514 (Fla. 1998).

## **III. Right to Privacy Under the Florida Constitution**

Under Article I, Section 23 of the Florida Constitution, “[e]very natural person has the right to be let alone and free from governmental intrusion into the person’s private life except as otherwise provided herein. This section shall not be construed to limit the public’s right of access to public records and meetings as provided by law.” This provision was adopted in 1980.

The Florida Constitution does not provide an “absolute guarantee against all government intrusion into the private life of an individual.” *Winfield v. Division of Pari-Mutuel Wagering, Dep’t of Business Regulation*, 477 So. 2d 544, 547 (Fla. 1985). Before the right of privacy attaches, the plaintiff must establish that a reasonable expectation of privacy exists. *Id.* In addition, under the plain text of the Florida Constitution, the plaintiff must prove “governmental intrusion,” which is often referred to as “state action.”

In this case, there is no dispute that Plaintiff had a reasonable and legitimate expectation of privacy in his/her bedroom at home. Defendants knew that students would be taking the laptops outside of school and home with them. Even though Plaintiff did not pay the insurance deposit, there is no dispute that there is a reasonable expectation of privacy in the home, particularly in a bedroom. There is also no dispute that the school is a state actor.

Here, the judgment in favor of Plaintiff on the constitutional invasion-of-privacy claim must be reversed for three separate reasons. First, Plaintiff has not demonstrated any state action. Second, even if Plaintiff could establish state action, then Defendants acted in furtherance of protecting a compelling interest and have utilized the least intrusive means to do so. Third, Plaintiff consented to the intrusion that underlies this action.

### No State Action

The Florida Constitution protects natural persons from “governmental intrusion.” As a consequence, individuals are not protected against privacy invasions from private companies or other non-government actors. To be held liable as a state actor, the defendant must be acting pursuant to the power it possessed by state authority, rather than acting as a private company or individual. *Edwards v. Wallace Community College*, 49 F.3d 1517, 1522 (11th Cir. 1995).

In this case, Plaintiff has not established that the alleged invasion of privacy is the result of action by the school. The school did not sanction or approve the means employed by Defendants to protect their investment in the computers. The school notified Defendants when a computer without insurance had not been checked in to the computer lab after school. This was not necessarily to activate TheftTrack, but to notify Defendants in case they discovered any misuse. When computers were reported lost or stolen, the school would provide a form to Defendants so they would be on notice of same.

On the facts of this case, Defendants are private companies acting as such. Because Plaintiff has not established any “governmental” intrusion, the invasion of privacy claim must fail.

### Compelling state interest and least intrusive means

Even if Plaintiff could establish state action, the judgment must still be reversed because Defendants acted in furtherance of protecting a compelling state interest and they utilized the least intrusive means to do so, as contemplated by the Supreme Court in *Winfield v. Division of Pari-Mutuel Wagering, Dep’t of Business Regulation*, 477 So. 2d 544 (Fla. 1985).

Control of criminal activity is a compelling state interest. *State v. Johnson*, 814 So. 2d 390, 393 (Fla. 2002); *see also Winfield*, 477 So. 2d at 548 (holding that the state has a compelling interest in investigating gambling). Palm County High School has been plagued with potential drug deals and attendant issues. Once the Defendants were on notice of the photograph of the items on Plaintiff’s desk, as well as the related eMessage content, they could not be expected to ignore the risk presented or to withhold the information from the school principal. Likewise, the principal had a clear duty to act in response to the information received from Defendants to keep drugs and drug transactions out of the school.

In addition, Defendants utilized the least intrusive means to serve a compelling interest. Without the webcam image and the eMessage screenshot, the risks of illicit drug transactions and the introduction of a weapon to school property would not have been perceived. It is of no moment that these risks were the product of Plaintiff's imagination and did not materialize. The critical factor is that tracking the IP address would not have alerted the Defendants to potential criminal activity at the school.

### Consent

Further, the judgment must be reversed because Plaintiff consented to the computer monitoring that underlies this action. In *Florida Publishing Company v. Fletcher*, 340 So. 2d 914, 917 (Fla. 1976), the Supreme Court set forth that consent is a defense to an action grounded in trespass or invasion of privacy. Here, Plaintiff signed the Computer Lease Agreement and was plainly on notice of monitoring and tracking capabilities. In addition, when Plaintiff signed the Notification of Lost Computer form, he/she authorized the school and Defendants to activate TheftTrack. Plaintiff was also well aware of the green light present on the webcam. Defendants were neither expected nor required to provide advance notice to Plaintiff of the particulars for their monitoring. See *Winfield*, 477 So. 2d at 548 (holding that bank customers are not entitled to notice, prior to disclosure, that their bank records have been subpoenaed). Under all the circumstances, the judgment in favor of Plaintiff on the invasion of privacy claim must be reversed, as Plaintiff is deemed to have given his/her consent to the alleged intrusion upon seclusion which forms the basis for this action.

### **IV. Interception of Communication Under Chapter 934**

In addition to Plaintiff's constitutional claim, he/she asserted a statutory cause of action for interception of electronic communication. Judgment was entered in favor of Plaintiff on this cause of action. For the reasons set forth below, the judgment must be reversed.

Florida law prohibits intentional interception of electronic communications. § 934.03, Fla. Stat. Any person whose electronic communication is intercepted has a civil cause of action against the interceptor. § 934.10, Fla. Stat. For purposes of this matter, "electronic communication" is defined as "any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature ... but does not include any communication from an electronic device which permits the tracking of the movement of a person." § 934.02(12), Fla. Stat.

Silent video surveillance is not covered by chapter 934 of the Florida Statutes. *Minotty v. Baudo*, 42 So. 3d 824, 832 (Fla. 4th DCA 2010). Here, because TheftTrack does not capture audio or video, and only captures still images, Plaintiff is not entitled to recovery on his/her statutory claim for interception of communication.

In addition, Plaintiff was on notice of the monitoring and tracking capabilities available to the owner of the computer, as well as the remote activation functionality. Applying the plain language of Section 934.02(12), Plaintiff's eMessage with Robert Michaels is not a protected "electronic communication" because Plaintiff communicated from an electronic device (the computer) which permits the tracking of a person's movements. Likewise, Plaintiff did not communicate anything that could be intercepted in violation of law when he/she placed numerous objects on the desk to make it appear as though a drug transaction would occur.

## **V. Conclusion**

For the foregoing reasons, the judgment in favor of Plaintiff is reversed, and this cause is remanded with instructions to enter judgment in favor of Defendants.

ADAMS, J., CONCURS.

### **JEFFERSON, J., DISSENTING.**

I respectfully disagree with the analysis and conclusions of the majority and would affirm the judgment from which Defendants have taken an appeal.

To develop interest in the One2One Program, Defendants published certain information for the students and their parents to review and consider. Defendants' Program Information Page specifically states "Laptops unlock the doors of the classroom and provide students and teachers with the ability to take technology outside of the school. For a minimal insurance fee of \$60, students can take their laptop home...." The program information further states that "each laptop will be safe, private, and secure" and "these measures will help keep the students' personal information safe...."

Defendants' conduct toward Plaintiff – and the students in general – is plainly contrary to their representations in the Program Information. As Defendants' former employee, Mikey Blair, testified at trial, "we pretty much had free reign to access whatever we wanted whenever we wanted." Prior to March 26, when Plaintiff signed the Notification of Lost Computer form, TheftTrack was activated on Plaintiff's computer by school personnel on at least four occasions. At the touch of a button, Defendants had access to images of Plaintiff's bedroom. Instead of immediately discontinuing that access and taking prompt and appropriate steps to remedy the problem, Defendants continued to invade Plaintiff's privacy. In fact, Defendants' employees organized parties to view the images they had captured.

Furthermore, there is a disconnect between the purpose of TheftTrack (protecting the Defendants' investment) and the repetitive use of TheftTrack functionalities to capture images on the user's end. As teacher Sydney Adams testified at trial, there were only three situations in his/her class involving a lost or stolen computer, yet TheftTrack had been triggered on at least 127 computers school-wide out of 675 available for lease. In nearly half of those 127 cases, the screenshot and webcam functions were employed. More than 40% of the pictures recovered by Defendants were taken after the laptops had been recovered or found (which means no tracking was needed).

### Constitutional right to privacy

The right to privacy is a fundamental right under the Florida Constitution. *Winfield v. Division of Pari-Mutuel Wagering, Dep't of Business Regulation*, 477 So. 2d 544, 547 (Fla. 1985). As such, at trial, the burden of proof was on the Defendants to demonstrate they are serving a compelling state interest and that they are utilizing the least intrusive means to do so. *Id.* The standard of review involves the “highest level of scrutiny.” *Von Eiff v. Azicri*, 720 So. 2d 510, 514 (Fla. 1998).

As a preliminary matter, “governmental intrusion” has indeed been established. It is undisputed that the school is a state actor and Defendants contracted with the school. Under their contract, Defendants were essentially acting as an extension of the school. Without their contract, Defendants would not have had any means to capture the subject screenshot and webcam image. Further, absent the information and directives it received from the school, Defendants would not have monitored any particular computer. Simply put, Defendants acted pursuant to the power they possessed by state authority, which is the test for state action. *Edwards v. Wallace Community College*, 49 F.3d 1517, 1522 (11th Cir. 1995). Under the facts and circumstances of this case, there is no error in the finding that Plaintiff established a “governmental intrusion” in violation of Article I, Section 23, of the Florida Constitution.

In addition, the Defendants did not carry their burden to prove a compelling state interest and utilization of the least intrusive means to accomplish that interest. Here, Defendants were not searching for drugs to serve a compelling state interest. The risk of a drug crime served as an after-the-fact justification for Defendants. At best, Defendants were protecting their investment and inadvertently ran across evidence of potential crime in the process of doing so. At worst, their employees were spying on high school students for their amusement. I recognize that Palm County High School has a history of serious drug concerns, but the computer leasing program is completely separate and disconnected from those concerns. There is no compelling state interest. Moreover, even if a compelling state interest were to be found, Defendants have not established that they used the least intrusive means to accomplish any such interest. Basic IP address tracking was available to Defendants, and the use of same would have accomplished any objective they may have had.

Further, I disagree with the majority’s conclusion that Plaintiff consented to Defendants’ invasion of his/her privacy. Plaintiff was on notice that Defendants could “remotely activate the laptop in the case of a possible lost or stolen laptop” and that a shared link to Defendants would “help track the location, use, and other important information regarding the company’s large investment in America’s youth.” When Plaintiff signed the Notification of Lost Computer Form, he/she authorized Defendants and the school to “activate TheftTrack to locate the missing computer.” Plaintiff knew the laptop had a green light, and that it sometimes illuminated, but did not know why.

It does not follow that Plaintiff consented to the capturing of screenshots or webcam images by Defendants. Of note, a feature of TheftTrack is that after sending an image to the server, all history of the transfer from the laptop is erased. The user does not have any reason to know when or whether he or she is being observed. Moreover, as Defendants’ own Chairman and CEO stated in an email to teacher Sydney Adams, the capabilities of TheftTrack are not

made known to the students. At most, therefore, Plaintiff was on notice that the physical location of the laptop could be determined by remote tracking means. The right to privacy is a fundamental right under the Florida Constitution, and it cannot be compromised or given up as easily as the majority opinion would allow.

#### Interception of communication

I would affirm the judgment in favor of Plaintiff on the interception of communication claim under Chapter 934 of the Florida Statutes. Florida law prohibits intentional interception of electronic communications. § 934.03, Fla. Stat. The Florida Supreme Court has upheld the rights of individuals to be protected from interception of electronic communications even in the face of challenges under the First Amendment and spousal immunity. *Shevin v. Sunbeam Television Corp.*, 351 So. 2d 723 (Fla. 1977); *Burgess v. Burgess*, 447 So. 2d 220 (Fla. 1984). Further, applying *Shevin v. Sunbeam*, Defendants do not have license to intrude upon Plaintiff's solitude by electronic means, even if Plaintiff is suspected of committing a crime.

I respectfully disagree with the majority's analysis of *Minotty v. Baudo*, 42 So. 3d 824 (Fla. 4th DCA 2010). *Minotty* involved hidden security cameras on business property. The only conceivable purpose of those security cameras was to capture images of the business premises and events therein. In this case, by contrast, Defendants knew and expected that the students would be able to take their leased computers to their homes. In addition, the primary purpose of the computers was for the students to use them – not for the Defendants to monitor conduct or gather images. I also hasten to add that Plaintiff and Michaels utilized a “talk to text” application when they exchanged electronic messages. As a consequence, I disagree with the statement in the majority opinion that TheftTrack cannot, or does not, capture audio.

Likewise, I disagree with the majority's interpretation of the definition of “electronic communication” contained in Section 934.02(12). The primary purpose of the computer leased to Plaintiff was not to permit the tracking of Plaintiff's movements. I would interpret the subject statutory language (specifically, “an electronic device which permits the tracking of the movement of a person”) to mean and refer to the sort of technology that solely or primarily functions to track movement, such as an automobile satellite navigation system. Plaintiff's communication with Robert Michaels was undoubtedly made through electronic means. As our Supreme Court recognized in *Burgess v. Burgess*, 447 So. 2d 220, 222 (Fla. 1984), the rights protected under chapter 934 of the Florida Statutes emanate from “the legislature's purpose in upholding one's constitutional right to privacy.” On the facts presented, in light of the fundamental nature of the rights involved, I cannot agree with the majority's conclusion that Plaintiff's eMessage was not a protected “electronic communication.”

For the foregoing reasons, I would affirm the judgment in favor of Plaintiff. I respectfully dissent.

# Supreme Court of Florida

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No. SC14-0001

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**HARPER SANDERS,**  
Petitioner,

v.

**EVERGLADE COMPUTERS, INC. and CHARTECH TECH SERVICES, INC.,**  
Respondents.

## **ORDER INVOKING DISCRETIONARY JURISDICTION**

On consideration of Petitioner's Notice to Invoke Discretionary Appellate Jurisdiction, the above-styled case is hereby acknowledged. Upon direction of the Justices of the Court, it is hereby ordered that the following issues be briefed and argued to the Court by the parties:

1. Whether the Respondents' utilization of webcam and screenshot monitoring violated Petitioner's rights under Article I, Section 23, of the Florida Constitution.
2. Whether the Respondents' utilization of webcam and screenshot monitoring violated Petitioner's rights under Chapter 934 of the Florida Statutes.

Dated: January 3<sup>rd</sup>, 2015.

*John A. Tomasino*

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John A. Tomasino  
Clerk, Supreme Court

# HOW A CASE PROGRESSES THROUGH THE STATE AND FEDERAL COURTS

