




## Surveillance Cameras in Schools: Unreasonable Searches

by Amy J. Borman and Maria Limbert Markakis

Surveillance cameras have long been used to ensure the safety of students in schools. As a result, courts have found it necessary to set limits on when, where, how and by whom the footage from these cameras can be used. The Family Education Rights and Privacy Act (FERPA) prohibits schools receiving federal funding from disclosing educational records to third parties without the consent of the parents, or, if the student is over 18, the student himself/herself. Because FERPA's definition of educational records includes "video or audio tape," FERPA has been used to protect student's right to privacy. Courts have also used FERPA to ensure that surveillance tapes from school buses remain confidential.

In addition to FERPA, the U.S. Constitution protects the privacy of students. The most recent decision concerning the constitutionality of the use of surveillance cameras in schools is *Brannum v. Overton County School Board*, decided by the Sixth Circuit Court in February of 2008. In *Brannum*, the court was faced with the question of whether a school's use of surveillance cameras in the locker rooms was a violation of the students' constitutional right to privacy under the Fourth Amendment. The Overton County School Board installed surveillance cameras in the hallways, entryways and locker rooms for the purpose of preserving the safety of the school. The cameras in the locker rooms were positioned in such a way that they recorded the teenage students in various states of undress. The students, who were not told about the cameras and did not give their consent to be filmed, filed suit against the School Board and the school officials in charge of overseeing the surveillance cameras.



The Fourth Amendment guarantees a right to be free from unreasonable searches. Noting that “[a] student search is justified in its inception when there are reasonable grounds for suspecting that the search will garner evidence that a student has violated or is violating the law or the rules of the school, or is in imminent danger of injury on school premises,” the Court held that general safety was an insufficient justification for such an “unreasonably intrusive” search. Because the “school officials wholly failed to institute any policies designed to protect the privacy of the students and did not even advise the students or their parents that students were being videotaped” the Court held that the surveillance “significantly invaded the students’ reasonable expectations of privacy.”

Additionally, the school officials who allowed the surveillance cameras in the locker rooms were not entitled to qualified immunity. The qualified immunity doctrine asserts that “public officials cannot be held liable for violating a person’s constitutional rights unless the right was clearly established at the time of the alleged improper conduct.” Though no court had previously held that students have a right not to be videotaped in a locker room, the Court found that videotaping people in various states of undress was a violation of personal liberties. Because the school officials “knew or ought to have known” that their implementation of surveillance cameras in the locker rooms was a violation of the students’ Fourth Amendment rights to privacy, the school officials did not have any qualified immunity.

*For more information on this decision, please contact the authors. Ms. Borman’s and Ms. Markakis’s biographies appear on the following page.*

*Colleen L. Maloney, a summer law clerk, assisted with this article. She will be graduating from Ohio State’s law school in May 2009.*

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# Background Check

*featuring*

## Amy J. Borman and Maria Limbert Markakis

Firm member Amy J. Borman returned to her native Midwest from New York City in 1985. She and her husband Bob have raised three children in the Toledo area. Dena (25), an Indiana University School of Music graduate, is a high school choral conductor in the Chicago Public Schools; Gabe (23) is a University of Maryland graduate and currently a paralegal at the U.S. Department of Justice, Antitrust Division in Washington D.C. and Ethan (18) graduated from the Toledo School for the Arts this spring. He will be attending Berklee College of Music in Boston this fall. Mr. Borman has multiple degrees, including one from New York University and he is a school counselor at Saint John's Jesuit High School.



Ms. Borman attended Wittenberg University and the University of Michigan where she obtained her bachelor's and master's degrees in music, respectively. She earned her law degree from the University of Toledo. Obviously, her interests lie in the arts. She is active in the arts organizations as well as professional women's organizations and educational advocacy endeavors.

In her practice, Ms. Borman advises businesses and educational institutions in all matters of compliance with laws. Ms. Borman provides guidance to educational clients nationwide and has been a guest speaker at businesses, universities and schools throughout the United States and Europe.

Ms. Borman can be reached at our Toledo or Columbus offices (419-241-6000; 614-280-1770).

Associate Maria Limbert Markakis was born in Northeast Ohio and is a graduate of the Ohio State University and its law school. While in law school, she spent a semester studying at the University of Oxford in Oxford, England. She received her bachelor of science degree in honors accounting and was awarded the College of Business Pacesetter Award.



Her legal career began at the Ohio Attorney General's Office in Columbus. She then moved to Toledo with her husband, George, a native of Cleveland, when he entered medical school at the University of Toledo. Dr. Markakis is currently in his second year of ophthalmology residency at the Kresge Eye Institute in Detroit.

Three years ago Aristotle was born. He is an active little boy who "plays" soccer with the Leprechaun League, attends Kindermusik and enjoys the Toledo Zoo Camp. Ms. Markakis, her husband and son can be spotted cycling around their neighborhood on their bicycle built for two!

Ms. Markakis is part of the Firm's Education Law Section. Her practice takes her across Ohio representing clients and advising school boards. In 2007 she was selected as an Ohio Rising Star Super Lawyer. Only 2.5% of the state's best up-and-coming attorneys are chosen.

Additionally, Ms. Markakis is a member of the Junior League of Toledo and an active member of Holy Trinity Greek Orthodox Cathedral. She can be reached by calling our Toledo office (419-241-6000).