

*Reid B.
Roberts, Esq.*

Family Law Update

It is widely understood that you can't go around tapping telephones unless you are an FBI agent. It is equally understood that you can't hack your way into computers to read private e-mail messages.

.....

Strassburger
McKenna
Gutnick
Potter

A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
322 BOULEVARD OF THE ALLIES
SUITE 700
PITTSBURGH, PA 15222
(412) 281-5423
(412) 281-8264 FAX

Crime by Answering Machine

The vast majority of people have never heard of the Pennsylvania "Wiretapping and Electronic Surveillance Control Act." To most of us, the term "wiretap" conjures up images of trench coat clad Mission Impossible agents, huddled around sophisticated electronic eavesdropping equipment housed in unmarked vans on dark street corners. Yet some conduct prohibited by the Wiretap Act is seemingly more innocent than would be expected.

Under the Pennsylvania Wiretap Act, it is a felony to intentionally "intercept" an "oral communication." An "oral communication" is an utterance by one who doesn't expect the utterance to be intercepted. "Intercept" means to acquire the contents of such an oral communication by electronic means.

Of course, law enforcement officials, switchboard operators and similar people are permitted to intercept oral communications under special circumstances. The law also permits recording someone who knows and consents to the recording.

It is widely understood that you can't go around tapping telephones unless you are an FBI agent. It is equally understood that you can't hack your way into computers to read private e-mail messages. It is much less generally known, however, that you can't secretly tape record a conversation in Pennsylvania. It is further prohibited to play that recording for others or to disclose its contents. Secretly recording your spouse talking on the phone to his or her paramour, for example, is a violation of the Act. It is a further violation when the tape recording is played for the neighbors. In addition to criminal penalties, the Act provides for civil remedies, including punitive damages and attorneys fees. In other words, even if you escape criminal prosecution, you may owe money to the wronged party.

If you are ever tempted to reach for the record button on your answering machine, this should give you pause.

The definition of what constitutes a violation of the Act may have recently been expanded. In the case of Simmers v. Packer , a Dauphin County court permitted a husband to pursue a civil suit for damages against his wife for their conversations that were recorded by her telephone answering machine. Husband made several calls to wife's telephone. The first time, he left a message on her answering machine. The next two times, he was in the course of leaving a message when wife picked up the telephone. The machine kept recording, and wife ultimately had the taped calls transcribed. Wife's attorneys sought to have husband's suit dismissed on grounds that

husband consented to the recording. The Court concluded that whether husband knew and consented to the recording was a question for a jury to decide, so the suit was allowed to proceed.

Husband may or may not ultimately succeed in obtaining a judgment against wife in this case. Either way, a Pennsylvania trial court has potentially enlarged the scope of forbidden behavior under the Wiretap Act. If you are ever tempted to reach for the record button on your answering machine, this should give you pause.

The information contained in Family Law Update is not meant to provide opinions or advice on specific legal matters. If you would like to consult with me on a specific issue, please call.

©2000 Reid B. Roberts, Esq.