

## **Recording in the Central Station**

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NASS EX  
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# I. **Recording Voice Conversations In Central Stations**

1. Why?
  - A. Alarm Industry practice; safety; protection of core business
  - B. Standard setting/regulatory bodies (e.g., insurance underwriters, CSAA standards, fire department standards)
2. Why Not?
  - A. Employee right to privacy most frequent countervailing consideration by Courts, State laws
  - B. State Common Law Tort Actions for Invasion of Privacy
  - C. Federal Statutes
    - ◆ Federal Omnibus Crime Control and Safe Streets Act of 1968
    - ◆ Electronic Communications Privacy Act of 1986
3. Application of Federal law to real world “hypothetical”
  - A. U.L. Central Station records all incoming/outgoing telephone calls where:
    - ◆ No actual notice given employees on recording of calls
    - ◆ No distinction made between employees and “administrative” employees
    - ◆ Dictaphone 9102 machine used to record all telephone conversations of employees
    - ◆ Telephone conversations recorded by Central Station were listened to by management
  - B. Title III of Omnibus Crime Control and Safe Streets Act of 1968, as amended (18 U.S.C. § 2510 et seq.)

Title III provides, *inter alia*, both civil and criminal penalties for any person who intentionally (i) “intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept, any...oral...communication;” (ii) uses an “electronic, mechanical, or other device” to do so; (iii) discloses or endeavors to disclose the contents of such intercepted communication to any other person; or (iv) uses or endeavors to use the contents of such intercepted communications. 18 U.S.C. § 2511(1)(a)-(d) (1994 & Supp. 1999); *see id.* §§ 2520(a), 2511(4). “Intercept” is defined under Title III as “the aural or other acquisition of the contents of any wire, electronic, or oral communication through the use of electronic, mechanical or other device.” *Id.* § 2510(4). Further, “electronic, mechanical, or other device” is defined as:

Any device or apparatus which can be used to intercept a wire, oral, or electronic communication other than--

*(a) any telephone or telegraph instrument, equipment or facility, or any component thereof, (i) furnished to the subscriber or user by a provider of wire or electronic communication service in the ordinary course of its business and being used by the subscriber or user in the ordinary course of its business or furnished by such subscriber or user for connection to the facilities of such service and used in the ordinary course of its business...*

*Id.* § 2510(5).

- C. Arias v. Mutual Central Alarm Service, Inc., 202 F. 3d 553 (2d Cir 2000)
- ◆ Case very close to hypothetical brought in Federal District Court, S.D., N.Y.
  - ◆ Civil damages claim brought by Mutual Central employees under Title III of Omnibus Crime Control and Safe Streets Act of 1968
  - ◆ Federal District Court and Federal Appeals Court both found that “blanket” recording of all outgoing and incoming calls was in the ordinary course of business within the meaning of Title III (18 U.S.C. § 2510), and thus no unlawful interception occurred.

#### Recording Device

- ◆ Appeals Court analyzed recording device and noted that Plaintiff/Appellants had conceded that Dictaphone was “a telephone...instrument, equipment or facility, ... or component.”

#### Listening vs. Recording

Did blanket recording constitute “interception” outside “ordinary course of business?”

- ◆ Court found that recording (versus listening) can form basis of “interception”
- ◆ Plaintiffs had conceded that blanket recording (as opposed to listening) formed the basis of their claim
  - Other outcome possible without Plaintiff’s concession?



## **ATTACHMENT**

INFORMATION; PRIVACY CONTACT. You understand and agree that in conjunction with employee training, quality control and the provision of services, we may monitor and/or electronically record video and audio related to monitored activity at your location, as well as conversations with you, emergency services providers, and law enforcement personnel. Further, you understand that privacy cannot be guaranteed on telephone, cable and computer systems, and we shall not be liable to you for any claims, loss, damages or costs which may result from a lack of privacy experienced. You consent to us (i) using information about you and your location (collectively, “information”) to administer services, offer you new products or services, enforce the terms of this agreement, prevent fraud and respond to regulatory and legal requirements, (ii) provide information, including information contained on your emergency information to law enforcement or fire service personnel for the purpose of providing services hereunder or in response to a subpoena or other such legal process, and (iii) using and sharing aggregate customer information and statistics that do not include information that identifies you personally. You agree that we may contact you by telephone, facsimile, email or other Internet facilities, with respect to the system and service we provide under this agreement, and new offerings of systems or services we may make available in the future.

## ATTACHMENT

An example of a company e-mail policy is:

### ELECTRONIC MAIL PRIVACY

- ◆ E-mail is the property of the company and should be used solely for work-related purposes
- ◆ Employees are prohibited from sending messages that are harassing, intimidating, offensive or discriminatory. Such conduct by an employee may result in immediate dismissal or other disciplinary measures.
- ◆ Each employee will be given a password to access e-mail. Your password is personal and should not be shared with anyone else. Employees are prohibited from accessing someone else's e-mail. However, the company retains a copy of all passwords and has a right to access e-mail at any time for any reason without notice to the employee. The Employee has no expectation of privacy or confidentiality in the E-mail system.
- ◆ The employee must sign and return an Acknowledgement & Consent form indicating receipt and acceptance of our company's policy.

#### Acknowledgement

I understand that the company's electronic mail and voice system (herein together referred to as "the company's system") are company property and are to be used for company business. I understand that [excessive] use of the company's systems for the conduct of personal business is strictly prohibited.

*I understand that the company reserves the right to access, review, and disclose information obtained through the company's systems at any time, with or without advance notice to me and with or without my consent.* I also understand that I am required to notify my supervisor and company's Security Department if I become aware of any misuse of the company's systems. I confirm that I have read this employee acknowledgement and have had an opportunity to ask questions about it. I also agree to abide by the terms of the company's policy in this regard, a copy of which has been provided to me.

(Robert P. Fitzpatrick, *Technology Advances in the Information Age: Effects on Workplace Issues*, SC08, ALI-ABA 599,625 (July 17, 1997))