

4-17-2014

Eavesdrop Law's Demise Means Loss of Privacy

Marc D. Falkoff

Follow this and additional works at: <https://huskiecommons.lib.niu.edu/clglaw>



Part of the [Law Commons](#)

Suggested Citation

Marc D. Falkoff, Eavesdrop Law's Demise Means Loss of Privacy, Chicago Daily L. Bull., Apr. 17, 2014.

This Article is brought to you for free and open access by the College of Law at Huskie Commons. It has been accepted for inclusion in College of Law Faculty Publications by an authorized administrator of Huskie Commons. For more information, please contact jschumacher@niu.edu.

Chicago Daily Law Bulletin®

Volume 160, No. 76

Eavesdrop law's demise means loss of privacy

Last month, the Illinois Supreme Court struck down a key provision of our state's anti-eavesdropping laws. The high court held in a pair of cases that it's unconstitutional to punish someone as a felon simply for audio recording a conversation without consent.

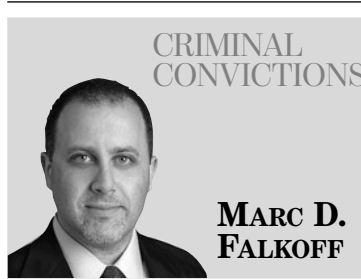
The court's rulings in *People v. Melongo* and *People v. Clark* are already being celebrated as victories for free speech and the First Amendment, and it's not hard to see why. The defendants were accused of recording (and in one case, posting to the Internet) conversations with public employees who supposedly weren't doing their jobs.

I imagine most of us have little sympathy for the alleged privacy rights of government agents. And it's right to view with skepticism a statute that criminalizes the only practical way to hold some officials accountable to the public.

Do you believe your alderman is soliciting bribes? Well, if you don't record him, how else are you going to prove it?

Similar concerns led the 7th Circuit Court of Appeals to hold in *ACLU v. Alvarez* that the Illinois statute could not be used to jail persons who openly record police officers engaged in their official duties in public. To draw an analogy, I think few of us would find it reasonable to imprison the video-camera operator who shot the Rodney King footage.

But we should be aware that these victories for free speech come at a significant cost. After



Marc D. Falkoff is an associate professor at Northern Illinois University College of Law, where he teaches and writes about criminal law and procedure. He can be reached at mfalkoff@niu.edu.

all, our state legislature made nonconsensual recording a crime to protect the privacy rights of all of us.

Perhaps the General Assembly drew the law too broadly and should have exempted the recording of public officials. But by striking the law down in its entirety instead of just narrowing its application, the Supreme Court has decreed that a great deal of unsavory behavior will now go unpunished.

Anyone you speak to, in the privacy of your home or out on the street, may now with impunity secretly record your conversation and use the recording pretty much however they want.

After all, it's not just public officials who are now fair game. The next time you're having a "private" conversation on the bus or sidewalk with a friend, acquaintance or lover, consider that anyone with a smartphone can sneak up behind you and secretly record

everything you say. Then he or she can post the recording to the Internet whenever he or she wants.

And it's not just third parties you have to worry about. Anyone you speak to, in the privacy of your home or out on the street, may now with impunity secretly record your conversation and use the recording pretty much however they want. Perhaps they want to gain the upper hand in a custody battle, curry favor with a business rival or even get you in trouble with the police.

Is this just paranoia? Consider the disturbing rise of video vigilantism. In Oklahoma City, a resident has made it his crusade to single-handedly stomp out prostitution in the capital. He hangs around red light zones, taping "Johns" after they approach prostitutes, then posts the incriminating videos to his website.

"If you get caught by the cops," he explains, "you pay a fine. If you get caught by me, you get a life sentence."

I suppose not everyone finds such behavior chilling or bristles like I do at the prospect of living in a state where anything we say may be recorded and broadcast to the world — whether our words were profound or ignorant, benign or vernal, inspiring or hateful.

Of course, our elected representatives already made that determination, on our behalf, when they passed the law that has now been struck down by the Supreme Court. There's no reason the General Assembly can't revisit the statute and try again.