

Under surveillance: Who will watch the watchers?

Monday, Jun. 26, 2006

THE FOURTH Amendment is the source of Americans' right to privacy but while the home is sacrosanct **the courts have said that a citizen in a public place has no reasonable expectation of privacy.**

Thanks to the spreading use of surveillance cameras, a citizen now has no expectation, reasonable or otherwise, of any privacy at all in a public space. An average American now appears on a surveillance camera between 10 and 100 times a day.

In "Under Surveillance," her examination of the use of these all-seeing eyes, Scripps Howard News Service reporter Lisa Hoffman writes that there are an estimated 5 million surveillance cameras in the U.S. today and their number is expected to double in five years.

—*Scripps Howard News*

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May 9, 2000

Robert E. Ducharme
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1 Junkins Avenue
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Re: [REDACTED] Attorney Paula Werme

Dear Bob:

I am writing in response to your letter dated April 26, 2000. In that letter, you forwarded an audiotape that you received from Attorney Werme, as well as the complete file of the criminal charges that had been brought against [REDACTED] for stealing evidence from the court. In my subsequent telephone conversation with you, you indicated that you understood that the audiotape was recorded by [REDACTED] at the direction of Attorney Werme. You indicated that it was your understanding that Ms. [REDACTED] had the tape recorder in her purse while she visited the Brentwood Family Court. Ms. [REDACTED] recorded the conversation that she had with the court clerk while standing at the counter in the clerk's office.

After reviewing the audiotape and the circumstances surrounding the recording and analyzing the wiretapping and eavesdropping statute, RSA 570-A, I have determined that neither Ms. [REDACTED] nor Attorney Werme have committed a criminal offense. RSA 570-A:2 prohibits the interception of an "oral communication" without the consent of all parties to the conversation. RSA 570-A:1 defines "oral communication" to mean "any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation." Because it appears that Ms. [REDACTED] recorded the conversation while standing in a public place at the courthouse, the circumstances do not justify the clerk's expectations that her conversation would not be recorded by Ms. [REDACTED] or anyone else. [REDACTED] it does not meet the statutory requirements for prosecution.

Thank you for referring this matter to our office. If I can be of further assistance, do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink that reads "N. William Delker". The signature is written in a cursive style with a long horizontal flourish at the end.

N. William Delker
Assistant Attorney General



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Portsmouth Herald

Secret taping upheld by state

By Karen Dandurant, Portsmouth Herald Staff Writer

PORTSMOUTH — N.H. Assistant Attorney General N. William Delker called the action "reprehensible," but he upheld Boscawen attorney Paula Werme's right to tape conversations as part of her defense of her clients.

A complaint made in April by Portsmouth City Prosecutor Robert Ducharme is not the first made against Werme for taping conversations secretly, but she says she will continue doing what she does in order to protect her clients' interests.

Ducharme was prosecuting a case of the theft of a piece of evidence taken from a file in Portsmouth District Court. The evidence was allegedly stolen by Werme's client out of a folder in the family division of the court. It related to a juvenile case.

Werme's main practice involves child abuse cases. She said she works with the New Hampshire Division of Children, Youth and Families (DCYF), and believes that her clients should get everything on tape.

"Everything happens in closed meetings. A record is vital," said Werme. "As to the item taken from court, the case was in the final disposition phase and I say she had a right to take what she needed."

Werme did not represent the young woman in the child abuse case, but is representing her on the criminal charge.

The taping occurred because there was a question about whether an evidence list had been submitted in the juvenile case. Werme said she was told there was one, but couldn't get access to it.

She sent the woman to the Rockingham County Superior Court to get on tape from the clerk that no list existed.

"That judge lied, and I have seen him do it before," said Werme. "If necessary, I will not even be the defense attorney, I will testify to that."

Werme sent the young woman to the court armed with a hidden tape recorder that she supplied. The woman asked a clerk specific questions about the evidence list relating to her child's case. She was told there was none, and the taped conversation was sent to Ducharme as part of Werme's objection to a motion filed against her client by the prosecutor.

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"It is my belief that secretly taping someone violates the law," said Ducharme, "so I wrote to the Attorney General's office for their opinion. In the meantime, I had to dismiss the criminal stealing charge because of the conflict of interest involved in having attorney Werme as the woman's defense lawyer."

"I told him (Ducharme) I was sending the tape to him," said Werme. "I think his report on my actions is the world's funniest police report."

Ducharme said because the clerk did not know she was being taped, it was wrong. He said people have a right to privacy.

But Werme said that, in this case, it isn't so. She said the clerk was a governmental employee, and the conversation took place in a public building. She said taping conversations in those situations are perfectly legal.

"I have my clients tape people on a daily basis," said Werme. "I do it because the DCYF lies. They really hate being taped."

If what she did is "reprehensible," Werme says she wonders why it was OK for police to wire the teen-age girl who helped bring about the conviction of Pame Smart in one of the state's most notorious murder trials.

"If it's wrong for me to tape someone in a public building, why is it right for them to tape a private citizen in a private place?" asked Werme.

"My action was no different than a police officer or other person who records a citizen in order to get a suspect to discuss a crime on tape. I want to get statements on tape in order to challenge statements made in court," she said.

Since the letter received from Delker said "no crime had been committed", Ducharme has reinstated the charges against Werme's client and she has turned herself into police.

Ducharme said the case is in the system, and she may be in court some time this month.

Werme did not let the assistant attorney general's critical statement pass. She wrote to him berating him for the "offhand remark," and promising that any further such comments made by him or any other person in the Attorney General's office, would result in legal action.

In her letter, Werme told Delker that his statement was disingenuous.

"You cannot possibly intend to take the position that what is legal and ethical for the government to do in the prosecution of a criminal matter is unethical for a defense attorney to do in defense of one," wrote Werme. "I personally take the position that the Constitution being a limitation on the conduct of government, it necessarily follows that what is legal to do unto the citizens is legal for the citizens to do unto the government."

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