

Get it on tape — after considering legalities of recording phone calls

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The outcome of a lawsuit often boils down to a credibility match as to what was said in a meeting or phone conversation. The ball game is generally over if there is an actual recording of the conversation. Nothing speaks louder and clearer than a person's own voice and words on a recording.

Getting the consent of all parties to a conversation in advance might stifle otherwise unguarded comments, but legal issues are involved with taping conversations. Certain unlawful actions in this area can result in both civil suits and serious criminal penalties.

Before covertly turning on the recorder, consider the line of work of the people being recorded. Those in certain specialized professions, such as journalists, lawyers, physicians, radio show hosts and ministers, may be governed by additional rules or ethical considerations when secretly taping conversations.

Also, the location of a conversation

impacts whether it is legal to tape a conversation without disclosure. Most states, including Texas, have what are known as "one-party consent" laws which permit a person to tape conversations to which he is a party without informing the others that he is doing so. In these states, it is only illegal for a person to secretly record conversations that he is not part of.

A few states, such as California, have "all-party consent" laws, which require that all parties to the conversation consent to its taping. Federal law allows a person to tape his own telephone conversations across state lines without obtaining the consent of the other parties, but some state courts have elected to apply their stricter all-party consent laws for telephone conversations taking place across state lines.

So, if any part of a telephone conversation takes place in an all-party consent state, to be on the safe side, a person involved would be well advised to obtain legal advice in advance.

Even though it may be legal to secretly record a conversation, the benefits of doing so should be weighed against certain risks. For example, if the recording is used in court some folks on the jury may think that it is sneaky and dishonest, even though

instructed by the court that it is lawful in Texas to record one's own conversations. Other jurors may consider the recording a smart move and head to an electronics store themselves the next day.

Additionally, mere disclosure of the contents of the recording could result in other liability such as a defamation claim or an invasion of privacy claim in some unusual circumstances.

A question also arises as to how to dispose of tapes of conversations, in instances where a future dispute is anticipated. Erasing tapes of even seemingly innocuous conversations may later make it appear that evidence was destroyed, possibly resulting in adverse perceptions and presumptions as to intentions of spoliation of evidence.

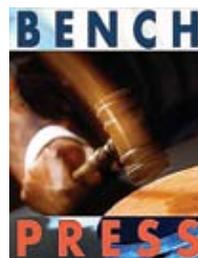
Many people tape at least some of their business conversations. Everyone should conduct themselves in phone conversations and meetings as if they are being recorded, so that their words do not come back to bite them.



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