

# Eavesdropping Law

In two opinions issued by the Illinois Supreme Court on March 20, 2014<sup>1</sup>, the Court held that Illinois' eavesdropping law, which criminalized the recording of conversations without all parties' consent, was overly broad and therefore unconstitutional.

The eavesdropping law<sup>2</sup> states that a person commits eavesdropping when he “[k]nowingly and intentionally uses an eavesdropping device for the purpose of hearing or recording all or any part of any conversation or intercepts, retains, or transcribes electronic communications unless he does so (A) with the consent of all the parties to such conversation or electronic communication....”

The court stated that the Statute's purpose – protecting communications in which participants had an expectation of privacy – was an important government interest. But it was so broad that it would criminalize a range of conduct that no one would consider to be private:

“For example, the statute prohibits recording (1) a loud argument on the street; (2) a political debate in a park; (3) the public interactions of police officers with citizens (if done by a member of the general public); and (4) any other conversation loud enough to be overheard by others whether in a private or public setting. None of these examples implicate privacy interests, yet the statute makes it a felony to audio record each one.”

The justices remarked that, carrying the law to its logical conclusion, it would allow someone to take handwritten notes that are sketchy and incomplete, and then report incorrectly about what is happening, but it would prohibit that same person from using a smartphone or similar device that could get an exact record of what was said. ♦

*Kathryn M. Vanden Berk, JD*

<sup>1</sup> People v. Clark, 2014 IL 1097190, and People v. Melongo, 2014 IL 114852, were issued simultaneously on March 20, 2014.

<sup>2</sup> 720 ILCS 5/14-(2)(a)(1)(A).

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