

Post Mag

11/12/78

Can You Tape A Chat Secretly? Scribe Says Yes, But Counsel Says No

In 1968 a Notre Dame law professor helped the late Sen. Philip Hart (D-Mich.) draft federal wiretap laws that included a provision limiting secret taping of conversations. Today that academic, Robert Blakey, is chief counsel for the House Assassinations Committee, and last month he had an encounter with a National Enquirer reporter who secretly taped Blakey during two on-the-record interviews.

Now Blakey is threatening to sue for damages in a confrontation that could be of interest to reporters, private eyes and anyone else tempted to record a conversation secretly.

Jay Gourley, the National Enquirer reporter who gained a measure of fame for digging through Henry Kissinger's trash several years ago, concealed a tape recorder during one interview with Blakey and taped a later phone chat without informing Blakey. When the attorney learned of this—Blakey had been challenged by Gourley on a point and the

reporter said the words were on tape—he exploded and fired off a letter threatening to sue the Enquirer. He also demanded the tapes. Lawyers for the Enquirer have refused to turn over the tapes.

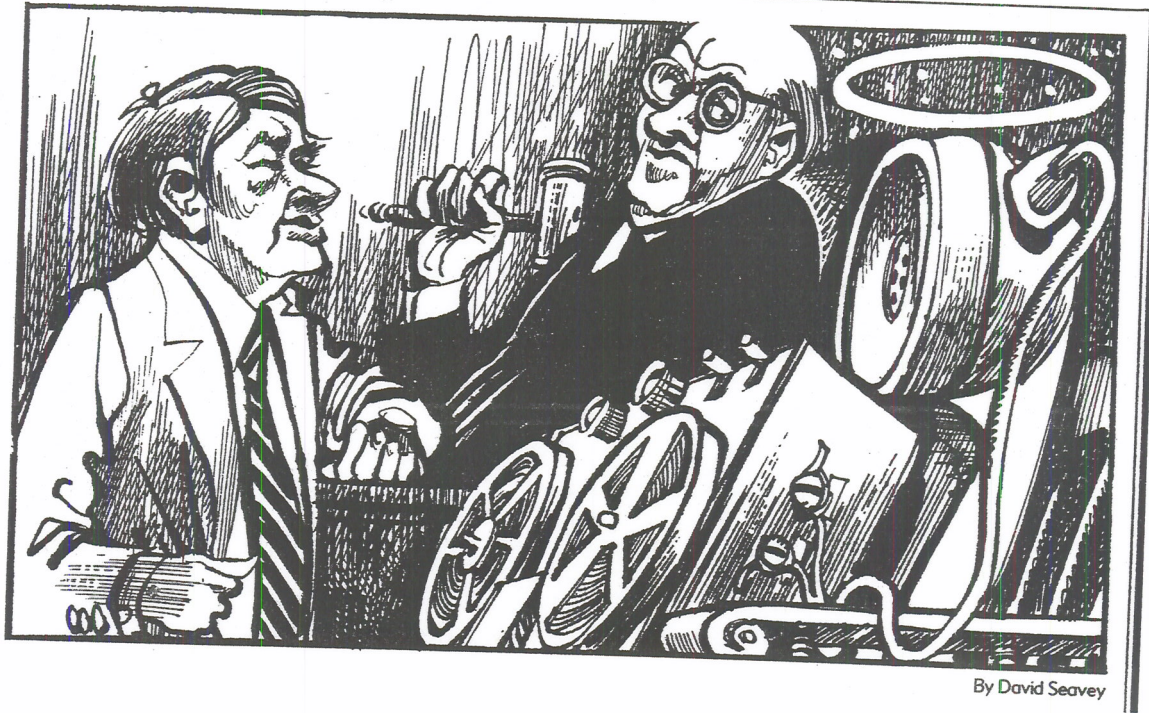
Part of the 1968 wiretap legislation says in part: "It shall not be unlawful . . . to intercept a wire or oral communication where such person is party to the communication or where one of the parties to the communication has given prior consent to such interception unless such communication is intercepted for the purpose of committing any criminal or tortious act . . . or committing any other injurious act."

Gourley hangs his hat on the first part of that paragraph, stating he was party to the communication (as the interviewer) so could therefore tape at will without notifying Blakey. The assassination committee counsel, on the other hand, says the last part of the paragraph forbids such taping if the person doing the

taping intends to commit an injurious act. And, he has told colleagues, he considers Gourley's actions malicious, inhibiting to free speech and injurious.

Gourley says he identified himself as a reporter and was interviewing Blakey in the line of duty. When Blakey hedged on something he'd told Gourley earlier, says the Enquirer reporter, he saw nothing unfair about challenging him with a recording as proof.

Private investigators (working mostly on divorce cases) and some Washington reporters have felt they were acting under color of law while taping conversations secretly. Blakey, drawing from experience gained during the drafting of the legislation, says that interpretation is incorrect, that surreptitiously taping anyone with the intention of using their own words against them violates the spirit of the law. It may take a court to decide if, in this case at least, such an action also violates the letter of the law.



By David Seavey