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North Texas Private Investigators Association

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# The Informant

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*Where Every  
Member Counts*  
Volume 1  
Issue 11

## Internet Law: Eavesdropping On Your Spouse's E-mail?

**Provided through Murray Associates (October 2008)**

We may not need scientific data to prove that with the increasing use of the Internet, men and women have eavesdropped, or considered eavesdropping, their spouse's e-mails. Eavesdropping spouses' e-mails may constitute a crime under both federal and state law but careful factual analysis is required. For instance, the United States Code (U.S.C.), title 18- crimes related to interception of wire and electronic communications,- may apply to e-mail eavesdropping but there must be an actual "interception" within the meaning of the statute. Also, most U.S. states have criminal statutes penalizing the interception or eavesdropping of electronic or telephonic communications; analysis of technical terms is also required in these cases. Lastly, some state tort claims may apply to these snoopy conducts; it seems that these claims are easier to win.

18 USC §2511 prohibits the interception of oral, wire, or electronic communications. The statute expressly states that any person who "intentionally" intercepts, endeavors to intercept, procures another person to intercept; or uses, endeavors to use, or procures another person to use a mechanic device to intercept any wire, oral, or electronic communication commits a punishable crime. When a device is

used to intercept the electronic or wire communication, that device can be affixed to, or transmit a signal through a wire, cable, or other like connection. Also, when a device is used for the interception of the electronic communications, the person's conduct is also punishable if that person knows or has reason to know that the device has been mailed or transported in interstate foreign commerce. This statutory section sanctions the eavesdropping conduct even if "takes place on the premises of any business or other commercial establishment the operations of which affect interstate or foreign commerce; or obtains or is for the purpose of obtaining information relating to the operations of any business or other commercial establishment the operations of which affect interstate or foreign commerce."

It is also a crime to "intentionally" disclosing, or intending to disclose, the intercepting communications to any other person; this is particularly applicable to spouses that intent to use the eavesdropped e-mails in family courts. This crime carries fines or imprisonment for up to five years. In certain circumstances, usually involving more serious violations, the person may be civilly sued by the Federal Government.

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## The President's Message



### From the Desk of NTPIA President Arthur Cantrell

November is the last official meeting for NTPIA for 2008. Lots of changes will affect our group and the nation in 2009. We all need to be ready to meet these new challenges with panache and enthusiasm. This month's speaker will be Texas State Representative Jerry Madden. Representative Madden will be speaking on current legislative issues and their relationship and meaning for our industry. His presentation could not be more timely or important to each of our businesses in order to properly plan for the new year.

In the business world, when a company wants or needs to grow, many times they need to raise funds for expansion. One of the first steps in this process is the preparation of an "Executive Summary." An "Executive Summary" is a two or three page document meant to be used as "bait" to measure interest from possible investors. This document gives a summary of the company, its personnel and ownership, its products or services, the advantages of using their services, how the investment capital will be used, and an exit strategy or three year Performa.

Many speakers through the years espouse the use of "make a plan - then work your plan" One of the most important items in these plans for

success is setting "short term" and "long term" goals.

There are numerous studies and statistical data to indicate that individuals and companies that work a plan with specific goals are many, many times more successful. Your business plan can be as simple as using a daily calendar to a full bore Executive Summary.

In my business, I put an Executive Summary together. This document is not to raise funds, but to remind me of the purpose and goals of my company. These summaries are hard work; if done properly, but will let you know your strengths and weaknesses in your endeavor. Write a plan or summary, read it weekly, and celebrate when you meet your goals. We are selling our services in the PI industry. We are not selling soap or a product that a client can walk into Kroger or Wal-Mart and pick up a box of Art Cantrell. We have to "drive the demand" for our services. Stay ahead of the industry by using your plan to gain prosperity and growth.

Please remember that we are again donating to the USMC "Toys for Tots" program at our December Christmas party. Please bring a new unwrapped toy to the December meeting.

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I look forward to seeing you at the November meeting of NTPIA.

Sincerely,

Arthur Cantrell

**Next NTPIA Event:**

November 12, 2008  
Midway Point Restaurant  
12801 Midway Road  
Dallas, TX 75244

Please RSVP by Monday,  
November 10, 2008. You  
may RSVP via the website  
or e-mail Cecil Mixon.

**5:00**      **Board Meeting (open to all members)**  
**6:00**      **Social mixer and registration**  
**6:30**      **Meal served**  
**7:00**      **Continuing Education program**

**North Texas Private Investigators Association – Where Every Member Counts**  
**P.O. Box 59997, Dallas, Texas 75229**  
**[www.ntpia.org](http://www.ntpia.org)**

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**November's Speaker:**

**State Representative Jerry Madden**

**Subject: Current Legislative Issues**

**Here is a small sample of Representative Madden's political resume:**

Chair, Joint Select Committee on the Texas Youth Commission, 2007-present

Chair, House Committee on Corrections, 2005-present

Representative, Texas State House of Representatives, 1992-present

Vice Chair, State Affairs Committee, 2003-2004

Chair, Collin County Republican Party, 1974-1976, 1984-1991

Precinct Chair, Republican Party, 1974-1984

President, Collin County School Board, 1974-1976.

## **Internet Law** (continued from page 1)

18 U.S.C § 2512 makes it a crime to possess, manufacture, distribute, and advertise wire, oral, or electronic communication intercepting devices. The conduct must be an "intentional." For this crime, a person may be fined or imprisoned for up to five years.

This particular section of the federal statute applies when the eavesdropping spouse uses a mechanical device for its spy activities. Lastly, state tort theories such as invasion of privacy and intentional infliction of emotional distress, among others, may also constitute possible causes of action against spouses who are eavesdropping his/her partners' e-mails.

A Michigan case illustrates how this federal statute and these state tort claims have been used in spouse cases involving e-mail eavesdropping. In *Bailey v. Bailey* (2008 U.S. Dist. LEXIS 8565), husband eavesdropped his wife's yahoo e-mail and found compromising information. The husband used a key logger software version that he installed in two home computers. This software records any keystroke in a computer and saves it in a file in the computer's hard drive. Through this software, husband learned wife's e-mail password and accessed it; he discovered adult content in wife's e-mails. The husband left home with his children and initiated divorce proceedings. The husband provided copy of wife's e-mails to his

family attorney to be used in the divorce case. The husband was granted full custody of the children (additional wife's behavioral issues triggered this decision) to which wife alleged it had not happened but for the e-mails husband illegally obtained. Wife filed a lawsuit alleging her husband violated 18 U.S.C. §§ 2511, 2512; Michigan Criminal Code- MCL §§ 750.539a and 750.540; and violated invasion of privacy rules; and intentional infliction of emotional distress, among others.

Definition of the term "interception" becomes a major issue in cases under U.S.C. title 18. In *Bailey's* case, the court held that interception within the meaning of the statute "encompasses only acquisitions contemporaneous with transmission." The husband obtained the e-mail password through the software program; his eavesdropping was not "contemporaneous with the transmission." Therefore, title 18 of the U.S.C. (Wiretap Act) does not apply. Husband was granted summary judgment as to the 18 U.S.C. § 2511 charge. Regarding violation of 18 U.S.C. § 2512, the court held this statute does not apply to husband's conduct because this section of the statute does not apply to the use of the wife's electronic communications. The husband was also granted summary judgment on wife's claims that husband's conduct violated Michigan Criminal Code.

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### **Words of the Month:**

#### **affiant**

A person who signs an affidavit and swears to its truth before a notary public or some person authorized to take oaths.

#### **affidavit**

Any written document in which the signer swears under oath before a notary public or someone authorized to take oaths that the statements in the document are true. In many states a declaration under penalty of perjury, which does not require the oath-taking before a notary, is the equivalent of an affidavit.

## Internet Law (continued from previous page)

As the Bailey's case shows, typifying eavesdropping of e-mails within title 18 of the U.S.C. is not an easy task. Factual analysis and careful review of the term "interception" as interpreted by state law is required. If the spouse's conduct does not qualify as actual

"interception," a claim under title 18 may not be successful. Torts claims of invasion of privacy may prove to be more victorious in e-mail eavesdropping cases.

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## And For You Corporate Security Types:

### The Second Cold War and Corporate Security from [stratfor.com](http://stratfor.com)...

Since the fall of the Soviet Union, foreign corporations have been very busy in Russia as they scramble for market share, attempt to profit from Russia's massive natural resources and seek to meet growing demand for consumer products. For these companies, growing Russian nationalism and tension with the West increases both the chance of regulatory and legal hassles and the possibility that Russian intelligence activity might be directed their way. **In other words, as tensions rise, so could the risk for Western corporations.**

Not all these problems are new. **As a young KGB officer, Putin earned his living by stealing technology from the West.** And he has since encouraged Russian intelligence agencies to expand their collection programs with the awareness that such information can assist the Russian economy and specifically the revival of the defense sector. While the Russians have an advanced weapons research and development infrastructure, they are very pragmatic. **They do not see the need to spend the money to develop a technology from scratch when they can steal or buy it for a fraction of the cost and effort.** This pragmatism was clearly demonstrated in their early nuclear weapons program...

**This surveillance of Western businesses may apply to both corporate offices and employees' residences.** Businessmen may be physically surveilled and **their residences subjected to technical surveillance and mail/garbage covers.** Domestic workers may also be recruited in an effort to collect information on their employers. Known or suspected NOCs will be carefully watched and will likely even be overtly harassed.

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#### A GREAT RESOURCE FOR LOCATING MISSING LIFE INSURANCE POLICIES

Always a challenging type case is locating missing life insurance policies. Aside from the standard methods of searching there is a database that can be of great assistance. Click on to the link below for access to a database that has records of over 150 million life insurance policies. This is a pay site but it is a GREAT tool in your research when the standard methods are producing no results.

Take a look at this web site and I'm sure you'll agree it can be a useful resource in a future case. Bookmark this one, it will make money for you some day.

<http://www.mib.com/html/lost-life-insurance.html>

Useful investigative information is provided  
by Ed DeMartino of Precise Mark. Inc.

## History of Veterans' Day

Provided by NTPIA member Cecil Mixon



**Unknown US soldier from the North Africa American Cemetery**

World War I – known at the time as “The Great War” - officially ended when the Treaty of Versailles was signed on June 28, 1919, in the Palace of Versailles outside the town of Versailles, France. However, fighting ceased seven months earlier when an armistice, or temporary cessation of hostilities, between the Allied nations and Germany went into effect on the eleventh hour of the eleventh day of the eleventh month. For that reason, November 11, 1918, is generally regarded as the end of “the war to end all wars.”

In November 1919, President Wilson proclaimed November 11 as the first commemoration of Armistice Day with the following words: "To us in America, the

reflections of Armistice Day will be filled with solemn pride in the heroism of those who died in the country's service and with gratitude for the victory, both because of the thing from which it has freed us and because of the opportunity it has given America to show her sympathy with peace and justice in the councils of the nations."

The original concept for the celebration was for a day observed with parades and public meetings and a brief suspension of business beginning at 11 a.m. The United States Congress officially recognized the end of World War I when it passed a concurrent resolution on June 4, 1926.

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## History of Veterans' Day (continued from previous page)

An Act approved by Congress on May 13, 1938, made the 11th of November in each year a legal holiday - - a day to be dedicated to the cause of world peace and to be thereafter celebrated and known as "Armistice Day." Armistice Day was primarily a day set aside to honor veterans of World War I, but in 1954, after World War II had required the greatest mobilization of soldiers, sailors, Marines and airmen in the Nation's history; after American forces had fought aggression in Korea, the 83rd Congress, at the urging of the veterans service organizations, amended the Act of 1938 by striking out the word "Armistice" and inserting in its place the word "Veterans." With the approval of this legislation (Public Law 380) on June 1, 1954, November 11th became a day to honor American veterans of all wars.

Later that same year, on October 8th, President Dwight D. Eisenhower issued the first "Veterans Day Proclamation" which stated: "In order to insure proper and widespread observance of this anniversary, all veterans, all veterans' organizations, and the entire citizenry will wish to join hands in the common purpose

Congress passed the Uniforms Holiday Bill on June 28, 1968, which was intended to insure three-day weekends for Federal employees by celebrating four national holidays on Mondays: Washington's Birthday, Memorial Day, Veterans Day, and Columbus Day. It was thought that these extended weekends would encourage travel, recreational and cultural activities and stimulate greater industrial and

commercial production. Many states did not agree with this decision and continued to celebrate the holidays on their original dates.

The first Veterans Day under the new law was observed with much confusion. It was quite apparent that the commemoration of this day was a matter of historic and patriotic significance to a great number of our citizens, and so on September 20th, 1975, President Gerald R. Ford signed Public Law 94-97 which returned the annual observance of Veterans Day to its original date of November 11, beginning in 1978. This action supported the desires of the overwhelming majority of state legislatures, all major veterans service organizations and the American people.

Veterans Day continues to be observed on November 11, regardless of what day of the week on which it falls. The restoration of the observance of Veterans Day to November 11 not only preserves the historical significance of the date, but helps focus attention on the important purpose of Veterans Day: A celebration to honor America's veterans for their patriotism, love of country, and willingness to serve and sacrifice for the common good.

This Veterans Day, honor those Veterans who are members of your family and friends. Then, thank God for their service and your freedom. My service in the military was special to me, as I know many of you whom served have special memories.

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**Believe it or not, there are only three or so pay periods between now and Christmas. Each year NTPIA is privileged to work with the USMC on their "Toys for Tots" charity. Start gathering toys now - The NTPIA Christmas party is December 10 - Free Food, Fun, and Toys for Tots and extra drawings for door prizes**

**Semper Fi**

North Texas Private Investigators Association  
*Where Every Member Counts*  
P.O. Box 59997  
Dallas, TX 75229

## **NEXT NTPIA EVENT**

November 12, 2008  
Midway Point Restaurant  
12801 Midway Road  
Dallas, Texas 75244

### **Continuing Education**

**State Representative Jerry Madden**

**“Current Legislative Issues Affecting the Investigative Industry”**



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