

Criminal justice: the wiretap act essay example

[Law](#), [Evidence](#)



Introduction

The quest to bring justice in highly democratic and constitutional societies like the US is on many occasions a double-edged sword. While many people and indeed the constitution provides for privacy and freedoms under the Fourth Amendment and other related sections; increased complexity of crime calls for a certain level of intrusion into people's privacy in order to ensure a safe and just society. The Federal Wiretap Act (1986) is a delicate Act that is premised on fighting crime through eavesdropping of communications. Scope of a wiretap order and possible constitutional violations of extending an original court order

The Federal Wiretap Act also referred to as Title III adopted in 1968 and later expanded in 1986, sets the procedures for court authorization for any form of wiretapping or surveillance (Hails, 2011). The Act is very clear that any surveillance or wiretapping must be preceded by the issuance of a court order. As such, it would be illegal for any officer issued with a court order to eavesdrop for a specific criminal case and go ahead and eavesdrop on other cases (ssd. eff. org, 2013). This is so because prior to issuance of a court order allowing an officer to eavesdrop, a judge must conclude based on available evidence that there is or are probable cause(s) to believe that a crime has been, is being or is about to be committed.

The sensitivity of eavesdropping on communications stands to violate many constitutional provisions because one not only invades the privacy of the suspect but also that of all other people that the suspect communicates with (Hails, 2011). The US Supreme Court noted that since eavesdropping violates the privacy of so many individuals, courts should issue such warrants only

where very serious criminal cases are involved.

As such, law enforcement officers are mandated not to eavesdrop or gather evidence for any criminal activity against which a court order has not been issued. Hails (2011) notes that violating that procedural rule may infringe on constitutional provisions and protections afforded to the targets or their communication partners in the First Amendment (freedom of press and speech, right to assemble peacefully, right to petition the government for a redress of grievances). It may also violate the Fourth Amendment which guards US citizens against unreasonable seizures and searches. Most notably, eavesdropping on suspected criminal activities without a court order may violate the Fifth Amendment which offers people protection against self-incrimination.

This issue may also conflict with the provisions of statutes of the Omnibus Crime Control and Safe Streets Act (1968), the Foreign Intelligence Surveillance Act (1978), the Privacy Act of 1974 and the Cable Communications Policy Act (1984). Statutes contained in these Acts state that all surveillance must be preceded by court orders when there is substantial evidence of criminal activity (ssd. eff. org, 2013).

When I hear evidence relating to other criminal activities, I should alert the necessary authorities to institute investigations against that criminal activity after which a court order is sought against each of those specific criminal activities in accordance with provisions of the Federal Wiretap Act. It would be suitable to seek for a court order for an order authorizing for a “ roving tap”. The “ roving tap” does not name a specific e-mail or telephone line but

allows law enforcement officers to tap any phone, email or any internet account that a given suspect uses (Hails, 2011).

Arrest of people against whom a court order has not been issued and treatment of wiretap evidence obtained thereafter

When I arrest people for crimes not associated with the reasons for the wiretap (drug trafficking operations) there are several things that can happen to any future evidence obtained from the wiretap. Hails (2011) advises that in line with the Wiretap Act, a court order should be sought to gather fresh evidence which is deemed admissible in court.

In absence of a court order people can be arrested when there is compelling evidence such as being caught in the act or any other foolproof evidence. I think it would not be morally prudent or even constitutional for a law enforcement officer to let a person confessing of a heinous crime like murder or rape to go scot free waiting for a court order to be issued. After an arrest, a court order can be sought especially the one authorizing for “ roving tap” in order to gather more evidence.

The Wiretap Evidence obtained after arrests can be used to back up the case in court. In case the Wiretap Evidence involves different cases, then each set of evidential facts should be used accordingly or specific to criminal case (Hails, 2011). For instance, Wiretap Evidence against the drug trafficking offence will be used specifically to that case while evidence against a murder case should be used for such a case.

Risks involved if I fail to arrest individuals against whom there is evidence of criminal activity.

If I fail to arrest the other individuals there are several risks involved. First there is a possibility that the new crimes committed by the new individuals could be interlinked or complementary to the crimes for which I am investigating. This is so because at the point of eavesdropping and I obtain evidence about a crime there is a high chance that the crime may be linked to the one that I am currently pursuing. I think that as long as the evidence I have gathered against the other crimes is very compelling then I can arrest the individuals.

Failure to arrest the other individuals may weaken the criminal case against drug trafficking operations for which I was to originally investigate yet the threat posed to the general public by that criminal act may be overwhelming.

The second risk is that the free suspects against whom I have evidence come to know that I have evidence against them then my personal safety may be at risk. As such, it would be safer for me as the investigating officer to have the suspects arrested.

Conclusion

Constitutional provisions assuring citizens of privacy and those aimed at increasing security at times conflict. The Federal Wiretap Act provides that all surveillance on communication (oral, electronic) must be authorized through a court order. It would therefore be illegal to use eavesdrop on communications against which there is no court order. Violating this provision of the Wiretap Act may lead to violation of constitutional provisions

of the target and that of the people s/he (target) communicates with. The First, Fourth and Fifth Amendments guaranteeing may be violated. However, in case compelling evidence is gathered outside the scope of a court order then the investigator should seek a fresh court order against those crimes and suspects and the Wiretap Evidence gathered thereafter is now deemed to be admissible in court. In case of compelling evidence such as catching a suspect in the act, or eavesdropping on a murder confession then the suspect can be arrested and more compelling evidence gathered in constitutionally before prosecuting the suspect. Failure to arrest suspected criminals poses a danger to the investigators and to the process of justice.

References

Hails, J. (2012). Criminal evidence. Belmont, CA: Wadsworth Cengage Learning.

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