

THE LATEST PRESS FREEDOM BATTLE IN FLORIDA

August 23, 2010 (Miami, FL) - Press freedom advocates worldwide are in an uproar over Italian Prime Minister Silvio Berlusconi's latest attempt to curb the journalist's ability to gather news by proposing an "all-party consent" clause to tape-recorded conversations. Yet, this same clause exists in 12 states in this country, including Florida, where it is a felony to tape record someone without their consent.

Under Federal law and the law of 38 states and the District of Columbia, the recording of a conversation is legal as long as at least one party to the conversation has consented to the recording. The rationale behind these statutes is that when one is speaking to another person, there is no reasonable expectation of privacy because either party to the conversation would be free to disclose the contents of the conversation.[1]

Florida originally had aligned itself with the majority of states. As first enacted in 1969, Florida Statute 934 (The Florida Security of Communications Act) stated: "It shall *not* be unlawful for a person ... to intercept a wire or oral communication where such person is a party to the communication or where one of the parties to the communication has given consent to such interception."

The Florida legislature amended the law, however, on October 1, 1974, so that it would read to the contrary that: "It is lawful ... for a person ... to intercept a wire or oral communication ... when *all of the parties* to the communication have given prior consent to such interception."

The precise reason for the change is unknown. "Some think it involved Senate President Dempsey Barron and a tape recording made of him by a *Miami Herald* reporter." [2] "Others believe it arose out of a Miami scandal involving a circuit judge and other officials who were indicted on bribery charges in 1973 after a series of tape recordings were made involving bags of money produced at a farmer's market." [3] Many of such origin stories suggest that legislators sought the change in the law so that they could deny statements that they made to reporters who were tape recording them.

Whatever the origin, Florida Statute 934 has been problematic since this change and has severely restricted the journalist's ability to gather news in Florida. It has always been questionable whether the law serves a legitimate public purpose because it often serves only to protect the ability of one party to a conversation to lie about what was being said during that conversation.

Here is an example. Sean Casey, an employee at the Inter American Press Association (IAPA), based in Miami, was charged with DUI manslaughter. He hired prominent criminal defense attorney Milton Hirsch, who in turn hired Miami psychotherapist, Dr. Michael E. Rappaport, to assist in the case. Following his conviction, Casey alleged that both Hirsch and Rappaport unlawfully advised him to flee the country to avoid going to trial. [4] Casey claimed that conversations he had with Hirsch and Rappaport prior to his flight had been recorded without Hirsch and Rappaport's knowledge and consent. These recordings may reveal that Casey is telling the truth and that both Hirsch and Rappaport committed perjury under oath in open court when they denied the allegations.

