

MARION County Circuit Court  
Fifth Judicial Circuit Florida

State of Florida

v.

CASE NO: 2021 CF 286

Neil Joseph Gillespie /

Related [2019 CF 4193]

Amended Verified Motion To Dismiss Charges Against Defendant

Defendant Pro se Neil Joseph Gillespie submits his Amended Verified Motion to Dismiss Charges Against Defendant, and states:

1. Pursuant to Rule 3.190(c)(4), Fla. R. CRIM. PRO, The Defendant states that the material facts of case 2021-CF-286 are undisputed, and the undisputed facts fail to establish a prima facie case [of guilt against the Defendant.]
2. The Defendant is alleged to have violated:
  - Fla. stat. sec. 934.03.1a, Interception of Oral Communication
  - Fla. stat. sec. 934.03.1c, Disclosure of Oral Communication
 when he recorded a phone call with the alleged victim JANINE LUKE, a call labeled as "2020, 11-24-20, 5:59 PM, called 352-433-3513 spoke to JANINE, SARAH THOMPSON used JANINE'S phone to call me (ID CARLOS RODRIGUE)" and provided an audio file of the call to Assistant State Attorneys JARED GAINEY, ALICIA WINTERKORN, DOJ Personnel, Personnel associated with the City of Ocala, Marion County Attorney's Office, and the Florida Attorney General's Office.

Exhibit 18 Page 2 of 20

Amended verified Motion to  
Dismiss charges Against Defendant

CASE NO: 2021-CF-286

PAGE 2

3. The MATERIAL Facts Alleged ARE undisputed, AND the undisputed Facts Fail to Establish A PRIMA FACIE CASE OF GUILT AGAINST THE DEFENDANT BECAUSE OF THE FOLLOWING:
  4. The Defendant WAS A PARTY TO THE CALL.
  5. The Defendant IS A Citizen OF Florida.
  6. The Defendant IS A Citizen OF the UNITED STATES.
  7. The Defendant gave PUBLIC NOTICE ONLINE, FOR MANY YEARS, THAT ALL calls on his home office business phone, 352-854-7801, ARE LAWFULLY RECORDED FOR QUALITY ASSURANCE PURPOSES PURSUANT TO THE BUSINESS [EXTENSION PHONE] EXCEPTION UNDER F.S. 934.02(4)(b), see [www.nosue.org/telephoneRecording](http://www.nosue.org/telephoneRecording).
  8. Because the Defendant gives PUBLIC NOTICE ONLINE that he LAWFULLY RECORDS ALL PHONE CALLS, he HAS NO CRIMINAL INTENT TO VIOLATE CHAPTER 934 OF THE FLORIDA STATUTES, SECURITY OF COMMUNICATION, SURVEILLANCE, AND RELIES ON THE BUSINESS [EXTENSION PHONE] EXCEPTION UNDER F.S. 934.02(4)(b)1.
  9. IN ADDITION, THE DEFENDANT HAS POSTED ONLINE HIS 2014 LETTER TO THE FBI TAMPA DIVISION, SHOWING HIS LONG-STANDING PRACTICE OF RECORDED ALL PHONE CALLS IS LAWFUL AND DONE FOR

Exhibit 18 Page 3 of 20

Amended Verified Motion to  
Dismiss Charges Against Defendant

CASE NO. 2021 CF 286  
Page 3

Legitimate Purposes, Reasons with no Criminal Intent, including:

a. For accurate note-taking to receive detailed information, such as medical information from the doctor.

b. To have a verbatim record of all phone calls to protect the defendant from false accusations by certain persons, such as an attorney who misquoted the defendant in a statement to the court.

c. As a disability accommodation.

10. Chapter 934 is not a criminal statute chapter under Title XLVI, CRIMES, which includes chapter 775 to 896, Florida Statutes; the defendant is not charged with a crime in this case under Title XLVI, CRIMES.

11. Chapter 934 appears under Title XLVII, CRIMINAL PROCEDURE AND CORRECTIONS, which includes chapters 900 to 985, Florida Statutes, and pertains to wiretapping by persons acting under color of law. The defendant does not act under color of law, and the state has not alleged so.

12. The Legislative Findings found in F.S. 934.01(4) state in relevant part:

"To safeguard the privacy of innocent persons, the interception of wire ~~communications~~ or oral communication when none of the parties to the communication has consented to

Amended verified Motion to  
Dismiss charges against Defendant

CASE NO: 2021 CF 286  
Page 4

The Interception should be Allowed only when Authorized by A Court of Competent Jurisdiction and should Remain under the Control and supervision of The Authorizing Court." (EXHIBIT 1)

- The operative words are "Privacy of innocent persons" when "none of the parties to the communication has consented" this is wiretapping

13. The state has Alleged the Defendant was a party to the communication, thus the Defendant had one party consent, and was not wiretapping.
14. The Alleged victim, MS Luker, has unclean hands and is not an "Innocent Person": Luker, Apparently, using the Phone of Carlos Rodrigue, Facilitated a Phone call contact - in violation of "NO contact" with Sarah Thompson in case 2020-CF-2417 where the Defendant is also a Defendant. MS. Luker allowed MS. Thompson to cuss people out by her own Admission, using her phone, and Luker likely Facilitated a Phone call between MS. Thompson and a drug dealer to buy illegal drugs, Presumably a crime. Therefore the Defendant believed he had a duty to Report the call to the Authorities, as he did, which was a Lawful Disclosure because the call was Lawfully Recorded under F.S. 934.02(4)(a)1.
15. Prior to the Phone call Allegedly intercepted by the Defendant, he did not know MS. Luker, her Parents, or Carlos Rodrigue, yet MS. Luker unilaterally volunteered her Parents to volunteer

Amended verified Motion to  
Dismiss Charges Against Defendant

CASE NO. 2021 CF 286  
Page 5

7 hours time to Drive the Defendant, A complete stranger, to eye surgery in Gainesville, wait for him through recovery, and Drive him home. Because this call was highly suspect given the circumstances, this was another reason to disclose.

16. In the event this case proceeds to trial, the Defendant demands a trial by jury under Art I, sec 22, Fla Const., trial by jury. The Defendant was unable to locate any Florida standard jury instructions in criminal cases for an alleged violation of F.S. 934.03.1a/c, further evidence that chapter 934 pertains to persons acting under color of law, and not the Defendant.

17. The Probable Cause Affidavit prepared by Billy Burleson of the Marion County Sheriff's Office (MCSO), Report # MCS085ARR004315, alleges the Defendant violated F.S. 934.03.1a, interception of oral communication, which Burleson shows as "Eavesdropping" and "Illegal interception of communication," and this statement on page 4 of 6:

"Based on the facts of this case, the suspect committed the offense of interception of communication by recording a phone call with the victim without her consent and illegal disclosure of communication by sending the recorded phone call to numerous people via email."

Exhibit 18 Page 6 of 20

Amended Verified Motion to  
Dismiss charges Against Defendant

CASE NO: 2021 CF 286  
Page 6

Without Alleging any of the elements of the crime found  
in F.S. 934.03.1a/c.

18. The Defendant does not record one Party consent calls for the purpose of direct or indirect commercial or private gain, and the state has not alleged so.
19. There is no such statute section 934.03.1a; there is section 934.03(1)(a) but that is different and has parentheses; and is void for vagueness with other subparts, which do not have parentheses, likewise with section 934.03.1c - no such statute.
20. The Probable cause Affidavit fails to state how the phone call was intercepted under 934.03(c)(b) only communication intentionally intercepted by electronic, mechanical or other device are prohibited.
21. Section 934.03(1) begins "Except as otherwise specifically provided in this chapter; the Defendant relies on the business ~~and~~ Extension Phone Exception, 934.02(4)(c)1.
22. Subpart (c) of 934.03(1)(a) begins with the word "Intentionally"; "Intentionally intercepts..." Defendant's recording under the business extension phone exception is "Automatic" and records ALL calls, and is not "Intentional" to single out any call.

Amended VERIFIED Motion to  
Dismiss charges Against Defendant

CASE NO. 2021 CF 286  
Page 7

### FEDERAL LAW

23. AS A CITIZEN OF THE UNITED STATES, THE DEFENDANT HAS RIGHTS AND PROTECTIONS AVAILABLE TO HIM UNDER THE CONSTITUTION AND LAWS OF THE UNITED STATES.

### NATIONAL SUPREMACY

24. THE CONSTITUTION AND LAWS OF THE UNITED STATES ARE THE "SUPREME LAW OF THE LAND," ART. VI, CL. 2, U.S. CONST., THE "SUPREMACY CLAUSE":

This Constitution, AND THE LAWS OF THE UNITED STATES WHICH SHALL BE MADE IN PURSUANCE THEREOF, AND ALL TREATIES MADE OR WHICH SHALL BE MADE, UNDER THE AUTHORITY OF THE UNITED STATES, SHALL BE THE SUPREME LAW OF THE LAND; AND THE JUDGES IN EVERY STATE SHALL BE BOUND THEREBY, ANY THING IN THE CONSTITUTION OR LAWS OF ANY STATE TO THE CONTRARY NOTWITHSTANDING.

25. FURTHERMORE, UNDER ART. VI, CL. 3, U.S. CONST., "ALL... JUDICIAL OFFICERS, BOTH OF THE UNITED STATES AND OF THE SEVERAL STATES, SHALL BE BOUND BY OATH OR AFFIRMATION, TO SUPPORT THIS CONSTITUTION."

26. IN ADDITION, F.S. 934.02 (22) DEFINITIONS, "STATE" MEANS ANY STATE OF THE UNITED STATES, THE DISTRICT OF COLUMBIA, THE COMMONWEALTH OF PUERTO RICO, OR ANY OTHER POSSESSION OR TERRITORY OF THE UNITED STATES."

Amended verified Motion to  
Dismiss charges Against Defendant

Case No: 2021 CF 286

Page 8

27. Interception of wire, oral, or electronic communication is lawful under Federal Law, 18 USC 2511(2)(d) where one person is a party to the communication, and not acting under color of Law.
28. Title 18, Chapter 119 of the United States Code, states at 18 U.S.C. 2511(2)(d): Exhibit 2

It shall not be unlawful under this chapter for a person not acting under color of law to intercept a wire, oral, or electronic communication where such person is a 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 in violation of the Constitution or laws of the United States or of any State.

29. Therefore, the Defendant did not unlawfully intercept oral communication under Federal Law 18 U.S.C. 2511(2)(d) because he was a party to the communication and was not acting under color of Law.
30. Under the U.S. Supremacy Clause, Art. VI, cl. 2, U.S. Const., 18 U.S.C. 2511(2)(d) is the supreme Law of the Land, and must be followed by every state court Judge in the United States, including Judge Sanders, Marion County Florida, Circuit Court.

Hand Copy slight Edit

Exhibit 18 Page 9 of 20

Amended Verified Motion to  
Dismiss Charges Against Defendant

CASE NO: 2021 CF 286  
Page 9

31. Because 18 U.S.C. 2511(2)(d) is the Supreme Law of the Land in the United States, and must be followed by every State Court Judge, the Defendant did not unlawfully intercept communication as stated in the Probable Cause Affidavit sworn to by Billy Burleson of the MCSO. As such, the undisputed material facts of case 2021CF286 fail to establish a prima facie case [of guilt against the Defendant.]

32. The charges against the Defendant in case 2021-CF-286 must be dismissed under the due process clause of the U.S. Fifth Amendment to the Constitution: "No person shall be... deprived of life liberty or property without due process." The Defendant is currently deprived of his liberty and is incarcerated, and has been for 123 days.

33. The charges against the Defendant in case 2021-CF-286 must be dismissed under the Sixth Amendment to the U.S. Constitution:

"In all criminal prosecutions the accused shall enjoy the right... to be informed of the nature and cause of the accusations..."

This motion shows that the ~~undisputed~~ material facts of case 2021-CF-286 are undisputed, and the undisputed facts fail to establish a prima facie case [of guilt against the Defendant.]

have copy slight edit

Exhibit 18 page 10 of 20

Amended Verified Motion to  
Dismiss Charges Against Defendant

CASE NO: 2021-CF-286

Page 10

34. Furthermore, F.S. 934.03 (1)(a), interception of wire, oral, or electronic communication, is unconstitutional under the Fourteenth Amendment, section 1, U.S. Constitution:

Amendment XIV

Section 1: All persons born or naturalized in the United States and subject to the Jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any Law which shall abridge the Privileges or Immunities of Citizens of the United States; NOR shall any State deprive any Person of Life, Liberty, or Property without due Process of Law; NOR deny to any Person within its Jurisdiction the equal Protection of the Laws.

35. The Defendant was born in the United States and subject as a citizen to the Jurisdiction of the United States.

36. The State of Florida made or enacted F.S. 934.03(1)(a) and enforced it against the Defendant and abridged the Privileges and Immunities due him as a citizen of the United States under 18 U.S.C. 2511(2)(d), in violation of the Fourteenth Amendment, section 1.

Hand Copy Slight Edit

EXHIBIT 18 PAGE 11 OF 20

Amended Verified Motion to  
Dismiss Charges Against Defendant

CASE NO: 2021 CP 286

Page 11

37. The state of Florida deprived the Defendant of 123 days of Liberty without due Process of Law, in violation of the Fourteenth Amendment, section 1.
38. The state of Florida deprived the Defendant of the Equal Protection of the Laws, including 18 U.S.C. 2511(2)(d), in violation of the Fourteenth Amendment, section 1, U.S. Constitution.
39. The foregoing shows the Defendant's one-party consent recording of all phone calls is lawful under the business Extension Phone Exception, Fla. Stat. 934.02(4)(a)1, and the Constitution and Laws of the United States, including 18 U.S.C. 2511(2)(d), the Supremacy Clause, Art VI, cl. 2, and the Fourteenth Amendment, including the Privileges and Immunities Clause, Due Process, and Equal Protection Clause.
40. The holding in Otero v. Otero, 736 So. 2d 771 (Fla. App, 3 Dist 1999), 98-3127, held, because the taping of oral communication did not violate 934, the statute did not prevent disclosure, and the disclosure did not violate 934.03(i)(c). Because the Defendant's ~~one-party consent~~ recording of one-party consent phone calls does not violate 934.03(i)(a), the statute does not prevent disclosure, and the disclosure does not violate 934.03(i)(c).

Exhibit 18 Page 12 of 20

Amended Verified Motion to  
Dismiss Charges Against Defendant

CASE NOS 2021-CF-286  
Page 12

41. The Defendant has established in this motion under Rule 3.02(c)(4) to dismiss the charges against the defendant, that the material facts are undisputed, and the undisputed material facts fail to establish a prima facie case [of guilt against the defendant]. Therefore, Defendant's Amended Verified Motion to Dismiss Charges Against Defendant must be granted.
42. The undisputed material facts in case 2021-CF-286 are almost identical to the undisputed material facts in case 2019-CF-4193.
43. The Defendant was represented by forced appointed counsel Zachary Phipps of office of Civil + Criminal Conflict Regional Counsel (OCCRC), and the Public Defender, and Brenda Smith Esp. At times (also forced appointed counsel)
44. MR. Phipps told the Defendant that he did not violate F.S. 934.03 (1)(a) because the Defendant was a party to the recorded phone call and did not intercept oral communication. MR Phipps told the Defendant that actual interception was akin to climbing a telephone pole and cutting into the telephone wire and wiretapping, where none of the parties to the communication consented to the interception, (ie F.S. 935.15 situation where law enforcement officer may order telephone line cut). MR Phipps also told the ~~defendant~~ Defendant that disclosing the communication back to the source, Marion County Social Services, did not violate 934.03 (1)(c) and was looking for case law.

Exhibit 18 Page 13 of 20

Amended Verified Motion to  
Dismiss charges Against Defendant

Case No: 2021 CF 286  
Page 13

45. The Defendant Recorded a one-party consent Phone call with MR. PHIPPS where PHIPPS admitted to the Defendant that he was Competent to stand trial, and PHIPPS would withdraw his Motion for a Competency exam. Defendant had the Recorded call Transcribed, and ultimately provided it to the court, because PHIPPS did not withdraw his Motion for an exam, but withdrew from the case. Judge Gary Sanders accepted the transcript/audio file as evidence to GRANT DR. WARNER'S motion to withdraw from her appointment to examine the Defendant.

Wherefore, Defendant moves to dismiss the charges against him in Case 2021-CF-286. The Defendant has established under Rule 3.190(e)(9) that the material facts in Case No. 2021-CF-286 are undisputed, and the undisputed facts fail to establish a prima facie case of guilt against the Defendant. Therefore the Defendant's Amended Verified Motion to Dismiss charges against the Defendant must be GRANTED

Respectfully Submitted June 7, 2021.

Neil Joseph Gillespie  
Neil Joseph Gillespie

MARION County Jail, Med B, 114B  
3290 NW 10th Street  
OCAIA, FL 34475  
DUNN # A0205941

Home Address

8092 SW 115th Loop  
OCAIA, FL 34481

Exhibit 18 Page 14 of 20

Amended Verified Motion to  
Dismiss Charges Against Defendant

CASE NO: 2021-CF-286  
Page 14

Verification F.S. 92.525 (2)

Under the Penalties of Perjury, I declare that I have  
Read the foregoing Amended Verified Motion to Dismiss charges  
Against the Defendant under Rule 3.190(c)(4), and that the Facts  
in it are true. Neil Joseph Gillespie  
Neil Joseph Gillespie

Certificate of Service

I hereby certify that I mailed the foregoing motion on June 7, 2021  
to the following by U.S. Mail:

MARION County Clerk  
P.O. Box 1030  
Ocala, Florida 34478

William Gladson, State Attorney  
State Attorney's Office  
110 NW 1st Ave, Suite 5000  
Ocala, Florida 34475

Signed Neil Joseph Gillespie, Neil Joseph Gillespie

Please Note

This is a handwritten copy of the original motion. The original motion  
was written on unlined paper, 10 pages w/o exhibits. This hand-copy  
is written on lined paper, so it's formatted differently, and is  
14 pages w/o exhibits. [Edits appear in brackets]

Exhibit 18 Page 15 of 20

Amended Verified Motion to  
Dismiss Charges Against Defendant

CASE NO. 2021 CF 286  
Appendix Page 1

ON JUNE 7, 2021 the Defendant provided the original Motion to Officer Thorsburg and Officer Canelle with an inmate request form to the Law Library requesting two copies and postage-paid mailing envelopes to the clerk and the state Attorney's office, during final court in Pod Med B, MARION County Jail.

The next morning, June 8, 2021, the Defendant found his 10 page Motion and 2 Exhibits laying on the first table in Med B, prior to breakfast at 5:00 AM. Officer Thorsburg said she would not send the motion to the Law Library because first the Defendant had to request and receive the envelopes to the clerk and state Attorney's office. This is incorrect according to the Inmate handbook pages 22-23 for pro se assistance.

The Defendant then spoke with Sgt. Courts, who said she would contact the law library that day for 2 copies and 2 envelopes. Later on June 8, 2021 Officer M. Frye took the motion and sent it by inter-office mail to "Judge Cockran" in Programs. Officer M. Frye and Officer Brown told the Defendant not to contact the law library for copies, but write to Judge Cockran, who is not a judicial officer, but a person named "Judge". This is contrary to the procedure stated in the Marion County Jail inmate handbook (Cockran provide worse than the Law Library for pro se assistance). The Defendant did not see his motion again until Friday June 11, 2021. →

Exhibit 18 Page 16 of 20

Amended Verified Motion to  
Dismiss charges against Defendant

CASE: 2021 CF 286  
Appendix Page 2

Sgt. Counts Returned the Defendant's Motion At 7:05 AM ON Friday, June 11, 2021, without copies and without envelopes. The LAST MAIL DAY for the week in the Jail is Thursday At Final Court. At 2:00 PM Sgt. Counts offered to take the Motion AGAIN for copying and return it Monday evening June 14, 2021. The Defendant declined the offer and hand-copied the Motion, and mailed the ORIGINAL MOTION Sunday June 13, 2021.

Previously the Defendant told Sgt. Counts the Motion was time-sensitive. The Arraignment in case 2021 CF 286 was set for Tuesday June 15, 2021 at 9:00 AM before Judge Lisa Herndon. The time for moving to dismiss under Rule 3.190(c) is either before or at the Arraignment, unless the court grants more time. However the court may at any time entertain a Motion to dismiss on specific grounds shown in the Rule, including (4) "there are no material disputed facts and the undisputed facts do not establish a prima facie case of guilt against the Defendant."

It appears the Jail acted to delay the filing of Defendant's Motion to dismiss so it could not be considered by the court at or before the Arraignment. However, under Fla. R. Jud. Admin 2.516(b)(2) service by mail is complete upon mailing. Therefore, Defendant's Motion to dismiss was served prior to the Arraignment. (END)

Exhibit 1

Select Year: 2020

The 2020 Florida Statutes

Title XLVII  
CRIMINAL PROCEDURE AND  
CORRECTIONS

Chapter 934  
SECURITY OF COMMUNICATIONS;  
SURVEILLANCE

[View Entire Chapter](#)

934.01 Legislative findings.—On the basis of its own investigations and of published studies, the Legislature makes the following findings:

- (1) Wire communications are normally conducted through the use of facilities which form part of an intrastate network. The same facilities are used for interstate and intrastate communications.
- (2) In order to protect effectively the privacy of wire and oral communications, to protect the integrity of court and administrative proceedings, and to prevent the obstruction of intrastate commerce, it is necessary for the Legislature to define the circumstances and conditions under which the interception of wire and oral communications may be authorized and to prohibit any unauthorized interception of such communications and the use of the contents thereof in evidence in courts and administrative proceedings.
- (3) Organized criminals make extensive use of wire and oral communications in their criminal activities. The interception of such communications to obtain evidence of the commission of crimes or to prevent their commission is an indispensable aid to law enforcement and the administration of justice.
- (4) To safeguard the privacy of innocent persons, the interception of wire or oral communications when none of the parties to the communication has consented to the interception should be allowed only when authorized by a court of competent jurisdiction and should remain under the control and supervision of the authorizing court. Interception of wire and oral communications should further be limited to certain major types of offenses and specific categories of crime with assurance that the interception is justified and that the information obtained thereby will not be misused.

History.—s. 1, ch. 69-17.

Exhibit 18 Page 17 of 20

Exhibit 2

**§ 2511. Interception and disclosure of wire, oral, or electronic communications prohibited**

(1) Except as otherwise specifically provided in this chapter [18 USC §§ 2510 et seq.] any person who—

(a) intentionally intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept, any wire, oral, or electronic communication;

(b) intentionally uses, endeavors to use, or procures any other person to use or endeavor to use any electronic, mechanical, or other device to intercept any oral communication when—

(I) such device is affixed to, or otherwise transmits a signal through, a wire, cable, or other like connection used in wire communication; or

(II) such device transmits communications by radio, or interferes with the transmission of such communication; or

(III) such person knows, or has reason to know, that such device or any component thereof has been sent through the mail or transported in interstate or foreign commerce; or

(iv) such use or endeavor to use (A) takes place on the premises of any business or other commercial establishment the operations of which affect interstate or foreign commerce; or (B) 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; or

(v) such person acts in the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States;

(c) intentionally discloses, or endeavors to disclose, to any other person the contents of any wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through the interception of a wire, oral, or electronic communication in violation of this subsection;

(d) intentionally uses, or endeavors to use, the contents of any wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through the interception of a wire, oral, or electronic communication in violation of this subsection; or

(e) (i) intentionally discloses, or endeavors to disclose, to any other person the contents of any wire, oral, or electronic communication, intercepted by means authorized by sections 2511(2)(a)(ii), 2511(2)(b)–(c), 2511(2)(e), 2516, and 2518 of this chapter [18 USC §§ 2511(2)(a)(ii), 2511(2)(b)–(c), 2511(2)(e), 2516, and 2518], (ii) knowing or having reason to know that the information was obtained through the interception of such a communication in connection with a criminal investigation, (iii) having obtained or received the information in connection with a criminal investigation, and (iv) with intent

Exhibit 18 Page 18 of 20

to improperly obstruct, impede, or interfere with a duly authorized criminal investigation, shall be punished as provided in subsection (4) or shall be subject to suit as provided in subsection (5).

(2)  
(a)

(1) It shall not be unlawful under this chapter [18 USC §§ 2510 et seq.] for an operator of a switchboard, or an officer, employee, or agent of a provider of wire or electronic communication service, whose facilities are used in the transmission of a wire or electronic communication, to intercept, disclose, or use that communication in the normal course of his employment while engaged in any activity which is a necessary incident to the rendition of his service or to the protection of the rights or property of the provider of that service, except that a provider of wire communication service to the public shall not utilize service observing or random monitoring except for mechanical or service quality control checks.

(II) Notwithstanding any other law, providers of wire or electronic communication service, their officers, employees, and agents, landlords, custodians, or other persons, are authorized to provide information, facilities, or technical assistance to persons authorized by law to intercept wire, oral, or electronic communications or to conduct electronic surveillance, as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978 [50 USC § 1801] if such provider, its officers, employees, or agents, landlord, custodian, or other specified person, has been provided with—

(A) a court order directing such assistance or a court order pursuant to section 704 of the Foreign Intelligence Surveillance Act of 1978 [50 USC § 1881c] signed by the authorizing judge, or

(B) a certification in writing by a person specified in section 2518(7) of this title [18 USC § 2518(7)] or the Attorney General of the United States that no warrant or court order is required by law, that all statutory requirements have been met, and that the specified assistance is required,

setting forth the period of time during which the provision of the information, facilities, or technical assistance is authorized and specifying the information, facilities, or technical assistance required. No provider of wire or electronic communication service, officer, employee, or agent thereof, or landlord, custodian, or other specified person shall disclose the existence of any interception or surveillance or the device used to accomplish the interception or surveillance with respect to which the person has been furnished an order or certification under this subparagraph, except as may otherwise be required by legal process and then only after prior notification to the Attorney General or to the principal prosecuting attorney of a State or any political subdivision of a State, as may be appropriate. Any such disclosure, shall render such person liable for the civil damages provided for in section 2520 [18 USC § 2520]. No cause of action shall lie in

Exhibit 18 Page 20 of 20

(I) It shall not be unlawful under this chapter [18 USC §§ 2510 et seq.] for a person acting under color of law to intercept the wire or electronic communications of a computer trespasser transmitted to, through, or from the protected computer, if—  
(I) the owner or operator of the protected computer authorizes the interception of the computer trespasser's communications on the protected computer;  
(II) the person acting under color of law is lawfully engaged in an investigation;  
(III) the person acting under color of law has reasonable grounds to believe that the contents of the computer trespasser's communications will be relevant to the investigation; and  
(IV) such interception does not acquire communications other than those transmitted to or from the computer trespasser.

(J) It shall not be unlawful under this chapter [18 USC §§ 2510 et seq.] for a provider of electronic communication service to the public or remote computing service to intercept or disclose the contents of a wire or electronic communication in response to an order from a foreign government that is subject to an executive agreement that the Attorney General has determined and certified to Congress satisfies section 2523 [18 USC § 2523].

(3)

(a) Except as provided in paragraph (b) of this subsection, a person or entity providing an electronic communication service to the public shall not intentionally divulge the contents of any communication (other than one to such person or entity, or an agent thereof) while in transmission on that service to any person or entity other than an addressee or intended recipient of such communication or an agent of such addressee or intended recipient.

(b) A person or entity providing electronic communication service to the public may divulge the contents of any such communication—

(i) as otherwise authorized in section 2511(2)(a) or 2517 of this title [18 USC § 2511(2)(a) or 2517];

(ii) with the lawful consent of the originator or any addressee or intended recipient of such communication;

(iii) to a person employed or authorized, or whose facilities are used, to forward such communication to its destination; or

(iv) which were inadvertently obtained by the service provider and which appear to pertain to the commission of a crime, if such divulgence is made to a law enforcement agency.

(4)

(a) Except as provided in paragraph (b) of this subsection or in subsection (5), whoever violates subsection (1) of this section shall be fined under this title or imprisoned not more than five years, or both.

(b) Conduct otherwise an offense under this subsection that consists of or relates to the interception of a satellite transmission that is not encrypted or scrambled and that is transmitted—

(I) to a broadcasting station for purposes of retransmission to the general public; or  
(II) as an audio subcarrier intended for redistribution to facilities open to the public, but not including data transmissions or telephone calls,  
is not an offense under this subsection unless the conduct is for the purposes of direct or indirect commercial advantage or private financial gain.

(5)

(a)

(I) If the communication is—

(A) a private satellite video communication that is not scrambled or encrypted and the conduct in violation of this chapter [18 USC §§ 2510 et seq.] is the private viewing of that communication and is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain; or

(B) a radio communication that is transmitted on frequencies allocated under subpart D of part 74 of the rules of the Federal Communications Commission that is not scrambled or encrypted and the conduct in violation of this chapter [18 USC §§ 2510 et seq.] is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain,

then the person who engages in such conduct shall be subject to suit by the Federal Government in a court of competent jurisdiction.

(II) In an action under this subsection—

(A) if the violation of this chapter [18 USC §§ 2510 et seq.] is a first offense for the person under paragraph (a) of subsection (4) and such person has not been found liable in a civil action under section 2520 of this title [18 USC § 2520], the Federal Government shall be entitled to appropriate injunctive relief; and

(B) if the violation of this chapter [18 USC §§ 2510 et seq.] is a second or subsequent offense under paragraph (a) of subsection (4) or such person has been found liable in any prior civil action under section 2520 [18 USC § 2520], the person shall be subject to a mandatory \$500 civil fine.

(b) The court may use any means within its authority to enforce an injunction issued under paragraph (ii)(A), and shall impose a civil fine of not less than \$500 for each violation of such an injunction.