Memorandum of Law – prepared by Gordon Wayne Watts, LAKELAND, Florida, U.S.A.

Question posed: "Does Florida Law allow the recording and disclosure of phone calls in the work place?"
Answer: Florida Law governing this behaviour is the following:

934.03 Interception and disclosure of wire, oral, or electronic communications prohibited.—
(1) *Except as otherwise specifically provided in this chapter,* 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;*

The definition –and exceptions –are given "in this chapter" as follows:

934.(2) "Oral communication" means any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception *under circumstances justifying such expectation* and does not mean any public oral communication uttered at a public meeting or any electronic communication.

So, 934.03 does not apply to the exception given, since it clearly states in the "plain language" of the law "*Except as otherwise specifically provided in this chapter," and one exception given is that* "Oral communication" is only defined as: "communication is not subject to interception *under circumstances justifying such expectation* ," and is not "any" and "all" oral communication. So, we turn to case law, asking The Courts to define what "*circumstances justifying such expectation"* there are:

First, we note that, while there is some misconception and "urban legend" about what is actually legal -and what is not, it is well-settled case law that one long-time exception to an expectation of privacy is the workplace.

Florida courts have consistently held that the constitutional protections of a reasonable expectation of privacy do not extend to an individual's place of business. Morningstar v. State, 428 So. 2d 220 (Fla. 1982); Cohen Bros., LLC v. ME Corp., S.A., 872 So. 2d 321 (Fla. 3d DCA 2004); Jatar v. Lamaletto, 758 So. 2d 1167 (Fla. 3d DCA 2000); Adams v. State, 436 So. 2d 1132 (Fla. 5th DCA 1983). An expectation of privacy in a business is not one which society is willing to protect. Morningstar, 428 So. 2d at 221 (citing Katz v. United States, 389 U.S. 347 (1967); Hill v. State, 422 So. 2d 816 (Fla. 1982)).

The United State Supreme Court, in Katz, holding that The Fourth Amendment prohibits surveillance by government – not individuals, held: "The Fourth Amendment does not protect against unreliable (or law-abiding) associates. Hoffa v. United States, supra. It is but a logical and reasonable extension of this principle that a man take the risk that his hearer, free to memorize what he hears for later verbatim repetitions, is instead recording it or transmitting it to another." Katz v. United States, 389 U.S. at 364 (1967)

The courts, in Cohen, quoting Morningstar, held that:

("[F]or an oral conversation to be protected under section 934.03 the speaker must have an actual subjective expectation of privacy, along with a societal recognition that the expectation is reasonable."). Society does not recognize an absolute right of privacy in a party's office or place of business. See Morningstar v. State, 428 So. 2d 220, 221 (Fla. 1983) (finding that although defendant may have had reasonable expectation of privacy in his private office, that expectation was not one which society was willing to accept as reasonable or willing to protect); Jatar, 758 So. 2d at 1169 ("Society is willing to recognize a reasonable expectation of privacy in conversations conducted in a private home. However, this recognition does not necessarily extend to conversations conducted in a business office.") Cohen Bros., LLC v. ME Corp., S.A., 872 So. 2d 321 (Fla. 3d DCA 2004); Cf: Jatar v. Lamaletto, 758 So. 2d 1167 (Fla. 3d DCA 2000); Adams v. State, 436 So. 2d 1132 (Fla. 5th DCA 1983).

This is current case law:

"Chapter 934 explicitly and broadly prohibits "any person," including private individuals, from recording oral communications without consent and disclosing such recordings. §§ 934.02(5), .03(1). Further, "[w]henever any wire or oral communication has been intercepted, no part of the contents of such communication and no evidence derived therefrom may be received in

evidence in any trial▫" § 934.06. But the statutory proscription of chapter 934 only applies where the person uttering the communication has a reasonable expectation of privacy in that communication under the circumstances. § 934.02(2) (defining "oral communication" as "any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation▫")...Considering these values and the already-existing legal exceptions that reflect them, we conclude that suppressing the recordings pursuant to chapter 934 under the circumstances of this case would produce an absurd result—a result we cannot fathom was intended by the legislature.4

Accordingly, we affirm."

(McDade v. State, No. 2D11-5955, Decided: June 7, 2013, Fla. 2DCA, and Certified to the Fla.S.Ct.)

– **Even private property is not totally protected:** In Hill v. State, 422 So. 2d 816 (Fla. 1982), the Courts affirmed, "holding that the dictates of State v. Sarmiento, 397 So.2d 643 (Fla. 1981), do not preclude the admission into evidence of appellant's confession made to an informant in appellant's backyard and recorded by police with electronic surveillance equipment." How much less protected is one's place of business. In WILLIAM G. AVRICH, vs. State of Fla., No. 3D05-1100 (Fla. 3rd DCA, Opinion filed August 23, 2006), the court held: "Based on the record before us, it is evident that the defendant made **telephone calls to the victim's business telephone line,** located in the victim's home where he conducted his business. Although the victim may enjoy a reasonable expectation of privacy in his home, that expectation is not extended to his business. See Morningstar, 428 So. 2d at 221 (holding that the constitutional protection of an individual's reasonable expectation of privacy in his or her home does not extend to a place of business). We find that there was insufficient evidence to satisfy the elements of section 365.16(1)(a) because the defendant only made calls to the victim's business telephone line." http://www.3dca.flcourts.org/opinions/3d05-1100.pdf *[Emphasis/colour added]*

Furthermore, even if a person made a tape-recording, and The Courts later overturned Morningstar and her sister holdings, such a person would not be a violation of criminal law, since this person, relying on very solid and well-settled case law would (obviously) not be acting with criminal intent, which is legally necessary to convict of a felony –which this is according to 934.03(4)(a). (This assumes any judge hearing such a complaint against is honest, and as we will find out today, many officials -even cops and judges -have been found to violate the law, thinking they are above the law.)

("To punish a person because he has done what the law plainly allows him to do is a due process violation of the most basic sort") Bordenkircher v. Hayes, 434 U.S. 357, 363 (1978)

In State v. Inciarrano, 473 So. 2d 1272, 1275 (Fla. 1985), The Florida Supreme Court held that "Section 934.02(2) in defining oral communication, expressly provides: 'Oral communication' means any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation . . . . From this language, it is clear that the legislature did not intend that every oral communication be free from interception without the prior consent of all the parties to the communication."

Both State and Federal Law support this common sense reading of the Constitution:

The Fourth Amendment right to privacy is measured by a two-part test: 1) the person must have a subjective expectation of privacy; and 2) that expectation must be one that society recognizes as reasonable. Katz v. United States, 389 U.S. 347, 360 (1967) (Harlan, J., concurring)).

Lakeland, Florida Attorney, John Hugh Shannon's right of privacy at the workplace fails on both prongs:

1) He, as an attorney (and a very smart on at that), surely knows that he has no expectation of privacy here. This is especially true when he is at his workplace, and even more-so, when he is running for elected office and then, subsequently, acting like a clown and making false allegations, harassment, threats to slander (implied or otherwise), and so on.
2) Secondly, even HAD he had any expectation of privacy, it is not, as the courts have clearly (and repeatedly) said, one which the public (read: courts) are willing to protect.