

### Cautions Regarding Telephone Taping

From time to time, the issue of the legality of taping a telephone conversation arises. The issue often relates more to a concern over when a UAH employee may be subject to having his/her conversation taped, than to the question of when may such an employee tape another individual's call. Both federal and state statutes apply, and violations may result not only in civil liabilities but criminal penalties as well.

There are several relevant federal provisions. As a general rule, federal law allows a telephone conversation or other electronic communication to be taped by a party to the conversation; taping may also occur by a third party where one party to the conversation has given consent. 18 U.S.C.S. § 2511(d). That means that Joan may tape her telephone call to John, without his consent. This provision also applies to cellular and cordless telephone communications. The Federal Communications Commission, however, has issued more restrictive regulations that are applicable to local telephone companies and are to be imposed by those companies on customers through customer agreements. These regulations require that, before the taping of an interstate telephone conversation may occur, all parties must consent orally or in writing, or verbal notice must be given to the participant prior to recording and as a part of the recording, or the use of a recording device is signaled by an "automatic tone warning" sound (a "beep tone") repeated throughout the conversation. 47 C.F.R. § 64.501.

On the state level, many states have enacted legislation that is similar in effect to the "one party consent" federal statute, and in these states a conversation may be lawfully recorded by one party to the conversation. Alabama is such a state. § 13A-11-30 and 31, *Alabama Code*. The Alabama statute, like that of a number of other states, also encompasses the intentional use of an electronic device to overhear the in-person private conversations of another. Twelve states, however, require the consent of all parties to a conversation for taping to be lawful.

In the context of this mosaic of federal and state regulation, UAH faculty and staff should be aware that an intrastate telephone conversation could be taped by the other party without notice being given. The taping of interstate telephone conversations may or may not be lawful, in view of the difference in state legislation on this matter. Common courtesy would dictate that notice always be given to a party prior to recording his/her telephonic or electronic conversations. While UAH employees would assuredly abide by such a standard, other individuals may not.