

REPORT

This office has completed its review regarding allegations that employees of the Pensacola News Journal may have illegally recorded a meeting between representatives of the University of West Florida and the newspaper. Based upon our review, we have determined that there is insufficient evidence to establish that a crime occurred.

Section 934.03 Florida Statutes, makes it illegal to intentionally intercept an oral communication where all parties to the communication have not given consent to such interception. In addition, the person being recorded must have a reasonable expectation of privacy in the conversation and it must be an expectation that society is prepared to recognize.

The meeting giving rise to this complaint occurred on July 2, 2013, in a conference room at the Pensacola News Journal. Present at that meeting were seven representatives from the University including school President, Dr. Judy Bense and Chairman of the Board of Trustees, Lewis Bear, Jr. The newspaper was represented by four members of the editorial board as well as reporter Rob Johnson. The witnesses from UWF described the meeting as contentions and that Rob Johnson asked the majority of the questions.

Of the witnesses from UWF, two recall Johnson making verbal statements indicating that the meeting was being recorded. One witness indicated that Johnson made a statement at the beginning of the meeting indicating that he was planning to record the conversation while the other testified to a similar statement that was made during the course of the meeting. Several witnesses indicated that there was a device on the table in front of Johnson which they assumed was recording the meeting. One of these witnesses stated they observed an icon on the device that indicated to them that it was recording. Two witnesses testified that they were unaware that the meeting was being recorded.

As a result of two witnesses indicating that they were unaware that their conversation was being recorded, it is necessary to determine whether they had a reasonable expectation of privacy. This meeting involved twelve people in a conference room at the News Journal. The courts have held that a meeting in a business setting has a lower expectation of privacy as compared to a more private location such as a home. For the University, the purpose of the meeting was to try and build a better relationship with the paper. Additionally, the University hoped to correct what they believed was inaccurate reporting by the Newspaper in previous articles. They hoped that the information provided during the meeting would result in what the University would consider as more accurate reporting in the future. Several witnesses said they expected the information they provided would be used in future articles regarding UWF. Finally, most of the questions were asked by a reporter and not a member of the editorial board. All of these factors lead to the conclusion that the matters discussed at the meeting were not private but likely to be published in the paper. For these reasons, we determine that the participants in the meeting did not have a reasonable expectation of privacy.

In conclusion, we have determined that there is insufficient evidence to establish that a crime was committed. Section 934.10, Florida Statutes, provides a civil remedy to those persons who believe that their communication was improperly intercepted. This remedy is available to the University if they deem it appropriate.