

Committee Opinion  
October 9, 1986

LEGAL ETHICS OPINION 848

COMMONWEALTH'S ATTORNEY –  
COMMUNICATING WITH ADVERSE  
PARTY.

It is improper for a commonwealth's attorney to communicate with an uncharged suspect, who is represented by counsel, through the agency of another suspect who tapes telephone conversations with the uncharged suspect, without the consent of the attorney representing the uncharged suspect.

It is improper for a commonwealth's attorney to arrange for the police department to develop and implement a plan whereby a suspect would tape telephone conversations with an uncharged suspect, without the consent of the attorney representing the uncharged suspect. [DR:1-102(A)(2), DR: 7-103(A)(1); LE Op. 550 and LE Op. 233]

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**Legal Ethics Committee Notes.** – Comment [2] of Rule 4.2 would seem to authorize law enforcement to initiate pre-indictment investigative contacts with an uncharged suspect known to be represented by counsel and therefore a prosecutor's involvement in such activity, though condemned in L E Op. No. 848, would be proper under Rule 4.2. In addition, in L E Op. No. 1738, the Bar indicated that lawyers or their agents may secretly tape record telephone conversations in which they participate, but only in situations involving criminal or housing discrimination investigations or if the lawyers are protecting themselves from possible criminal action.