



Exploding The Phone

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Re: Commonwealth v. John T. Draper

Dear Bill:

The long drive home from Stroudsburg Monday night provided me with an excellent opportunity to reflect upon the proceedings in the Draper case. Often in criminal cases, the minor annoyances caused by dilatory and other tactics of defense counsel overshadow the major accomplishments of the prosecution. Therefore, I thought I would review with you what I consider to be our major accomplishments in the Draper case. Initially, our goal was to obtain John Draper's conviction, with a minimum of appealable issues, on a criminal charge of sufficient magnitude to enable the local court to impose a substantial period of incarceration and to enable the Federal District Court in California to revoke his parole. I submit that we have accomplished this goal and more.

Upon Draper's plea of guilty to the criminal charge of Possession of a Device for Theft of Telecommunication Services in violation of 18 P.S.A. §910, the local court is authorized to impose a sentence of up to two years imprisonment and/or a fine up to \$5000. Moreover, should the Federal District Court in California be inclined to revoke Draper's parole, this misdemeanor conviction in and of itself should constitute sufficient grounds to support such action.

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Furthermore, since Draper plead guilty, the only grounds upon which he could appeal would be that the Court lacked jurisdiction, the sentence imposed was excessive, or that he was denied effective assistance of counsel. Draper's guilty plea constitutes a waiver of his right to raise on appeal all other issues which he argued in connection with his Motions to Suppress. Indeed, Draper's guilty plea to the charge is actually the "cleanest" conviction from a prosecutorial viewpoint which we could have obtained.

Draper's conviction is only one of our achievements in this case. In addition, the following matters should have immense precedential value for the Bell Telephone System:

1. The Trial Court's opinion upheld the validity of the search warrant issued in the Draper case including specifically the reliability of Bell Security Personnel as informants.

2. The Trial Court's opinion upheld the privilege of Bell Security personnel to be present during the execution of a search warrant by a police agency and to assist the police agency in identifying the items to be seized.

3. The Trial Court's opinion upheld the right of the Pennsylvania State Police to deliver property seized pursuant to a search warrant to an expert of the Police's choosing (in this case Bell Laboratories) for examination.

4. The Trial Court's opinion upheld the constitutionality of Pennsylvania's criminal charge of Possession of a Device for Theft of Telecommunication Services.

5. The Trial Court's acceptance of Draper's plea of guilty recognized that a computer, its related software programs, and a telephone line interface can constitute a device for theft of telecommunication services and that "WATS extending" when used without permission of the customer constitutes a form of theft of telecommunication services. In particular, as to John Draper, the Trial Court accepted the following factual statement:

"John Thomas Draper did possess an Apple computer, related software programs, and telephone line interface, for that computer which were designed, adapted and used for the commission of theft of telecommunication services by means of the application of multi-frequency tones and with the capability of:

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(a) (i) Probing the telephone network in a manner to search out customer lines capable of being subverted;

(ii) Having found the line(s) described in (a)(i), the line may then be further searched for its access code (password);

(iii) Having found the access code (password) telephone call may then be placed over customers' facilities, thereby perpetrating theft of telecommunication services when the calls are made without permission of the customer.

(b) Placing telephone calls in a manner permitting redirection of the calls to new destinations, and by-passing billing procedures. This method is known as "blue box" calling and WATS extending.

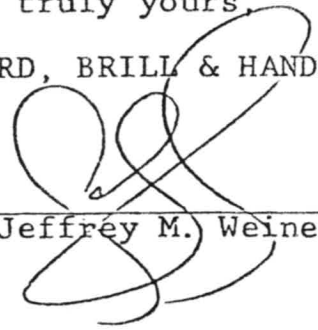
(c) Automatic call placing to over one hundred pre-programed numbers, or to any number entered manually, using a combination of (a)(b) set forth above.

However, perhaps our most important accomplishment in the Draper case is the fact that we have now sent a message loud and clear to the phone freak community that not only does Bell of Pennsylvania and the related telephone companies comprising the Bell Telephone System stand ready, willing and able to prosecute the most sophisticated criminal activity involving the telephone system, but even more importantly, businesses such as Kem, Lamaur, and ABC and local prosecutors are prepared to devote whatever effort is necessary to assist in this endeavor.

Very truly yours,

BAYARD, BRILL & HANDELMAN, P.A.

BY:


Jeffrey M. Weiner

JMW:js