

COMPLAINT

AND NOW, comes Plaintiff, Mary T. Miller, by and through her attorneys, Bruce J. Phillips, Esquire and John P. Rodgers, Esquire, and files this, her Complaint, against Defendants, Mary P. Kruzik, Gary Williams, Randall Smith, William J. O'Gurek, Charles Getz, Wayne Nothstein, and Carbon County, and in support thereof, avers as follows:

PARTIES

1. That, Plaintiff, Mary T. Miller, is an adult individual who resides at 28 West Columbus Avenue, Nesquehoning, Carbon County, Pennsylvania 18240.

2. That, Defendant, Mary P. Kruzik, was at all times material to this Complaint the 9-1-1 Manager of the Carbon County Emergency Communications Center and is an adult individual who has as her professional address Carbon County Emergency Services, 1264 Emergency Lane, Nesquehoning, Carbon County, Pennsylvania 18240. Suit is brought herein against her, individually and in her official capacity as the 9-1-1 Manager of the Carbon County Emergency Communications Center.

3. That, Defendant, Gary Williams, was at all times material to this Complaint the 9-1-1 Assistant Manager of the Carbon County Emergency Communications Center and is an adult individual who has as his professional address Carbon County Emergency Services, 1264 Emergency Lane, Nesquehoning, Carbon County, Pennsylvania 18240. Suit is brought herein against him, individually and in his official capacity as the 9-1-1 Assistant Manager of the Carbon County Emergency Communications Center.

4. That, Defendant, Randall Smith, was at all times material to this Complaint the County Administrator of Carbon County and is an adult individual who has as his professional address Carbon County Courthouse Annex, 2 Hazard Square, Jim Thorpe, Carbon County, Pennsylvania 18229. Suit is brought herein against him, individually and in his official capacity as the County Administrator of Carbon County.

5. That, Defendant, William J. O'Gurek, was at all times material to this Complaint a Member of the Carbon County Board of Commissioners and is an adult individual who has as his professional address Carbon County Courthouse Annex, 2 Hazard Square, Jim Thorpe, Carbon County, Pennsylvania 18229. Suit is brought herein against him, individually and in his official capacity as a Member of the Carbon County Board of Commissioners.

6. That, Defendant, Charles Getz, was at all times material to this Complaint a Member of the Carbon County Board of Commissioners and is an adult individual who has as his professional address Carbon County Courthouse Annex, 2 Hazard Square, Jim Thorpe, Carbon County, Pennsylvania 18229. Suit is brought herein against him, individually and in his official capacity as a Member of the Carbon County Board of Commissioners.

7. That, Defendant, Wayne Nothstein, was at all times material to this Complaint a Member of the Carbon County Board of Commissioners and is an adult individual who has as his professional address Carbon County Courthouse Annex, 2 Hazard Square, Jim Thorpe, Carbon County, Pennsylvania 18229. Suit is brought herein against him, individually and in his official capacity as a Member of the Carbon County Board of Commissioners.

8. That, Defendant, Carbon County, is a duly organized and existing municipal corporation within the Commonwealth of Pennsylvania and has as its principal address Carbon County Courthouse, 2-4 Broadway, Jim Thorpe, Carbon County, Pennsylvania 18229.

JURISDICTION

9. That, this action is brought pursuant to 42 U.S.C. §1983 and the First Amendment to the United States Constitution.

Jurisdiction is predicated upon 28 U.S.C. §1331 and §1343.

Additionally, jurisdiction is predicated upon the Wire and Electronic Communications Interception and Interception of Oral Communications Act, 18 U.S.C.S. §2511, et seq. , hereinafter the “Federal Wiretapping Act”.

Finally, the pendant jurisdiction of this Court is invoked to remedy those violations of the Pennsylvania Wiretapping and Electronics Surveillance Control Act, 18 Pa. C.S.A. §5703, hereinafter the “Pennsylvania Wiretapping Control Act” and the Pennsylvania Whistleblower Law, 43 P.S. §1423, et seq.

10. That, the amount in controversy in this action exceeds, exclusive of interest and costs, the sum of \$75,000.00.

COUNT I

FEDERAL WIRETAPPING ACT

18 U.S.C.S. §2511, et seq.
and
18 U.S.C. §2520, et seq.

11. That, Plaintiffs incorporate herein by reference Paragraphs 1 through 10 hereof as if the same were set forth fully at length herein.

12. That, Plaintiff was continuously employed with Carbon County for a period exceeding 23 years and was serving as a Senior Dispatcher with the Carbon County Emergency Communication Center at the time of her termination on September 15, 2005.

13. That, on or about April 15, 2005, Plaintiff was met at her place of employment by Defendants, Kruzik and Williams, and Audrey J. Miller, who was serving as the Acting Director of Human Resources for Carbon County.

14. That, at that time, Plaintiff was specifically advised by Defendant, Kruzik, that on or about April 13, 2005, a phone line on Console #4 had been left off the hook and had recorded in excess of ten (10) hours of conversation by Plaintiff.

15. That, at that time, Plaintiff was specifically advised by Defendant, Kruzik, that Defendants, Kruzik and Williams, had taken possession of the recording and had disclosed it to third parties, including, but not limited to, Defendants, O'Gurek, Getz, and Nothstein, who had approved a 3 day suspension of Plaintiff by reason of the substance and content of the recording.

16. That, the recording of Plaintiff's conversations and the disclosure thereof were undertaken without the knowledge or consent of Plaintiff at any time.

17. That, as a result of the conduct of Defendants, Plaintiff, through legal counsel, filed a formal complaint with the Carbon County District Attorney, which complaint was memorialized in the correspondence, dated June 7, 2005, from John P. Karoly, Jr., Esquire to Gary DeBias, District Attorney. A copy of the correspondence is attached hereto, made a part hereof, and labeled Exhibit "A".

18. That, the complaint of Plaintiff was that Defendants had violated the express terms and conditions of the Pennsylvania Wiretapping Control Act by intentionally disclosing to others the contents of an electronic/oral communications knowing that the information was obtained through an electronic interception and by intentionally using the contents thereof as evidence against Plaintiff in a disciplinary employee action.

19. That, on or about July 24, 2005, after a meeting with the Carbon County District Attorney, Plaintiff was specifically advised that the Carbon County District Attorney would not pursue criminal action against Defendants in connection with the recording and disclosure of Plaintiff's conversations.

20. That, on September 8, 2005, Defendant, Kruzik, directed correspondence to Plaintiff recommending her immediate suspension and

termination for supposedly violating established protocols in the performance of her duties as a Senior Dispatcher. A copy of the correspondence is attached hereto, made a part hereof, and labeled Exhibit "B".

21. That, Defendant, Kruzik, did, in fact, recommend to Defendants, O'Gurek, Getz, and Nothstein, that Plaintiff be terminated from her position of employment.

22. That, by correspondence, dated September 16, 2005, from Dawn M. Bowman, Acting Director of Human Resources, Plaintiff was specifically advised that she was terminated from her position of Senior Dispatcher, effective September 15, 2005, which was the day before the correspondence directed to Plaintiff. A copy of the correspondence is attached hereto, made a part hereof, and labeled Exhibit "C".

23. That, Defendants, Kruzik and Williams, specifically violated the express terms and conditions of the Federal Wiretapping Act, 18 U.S.C.S. §2511(1)(c)-(d), which provides as follows:

§2511. Interception and disclosure of wire, oral, or electronic communications prohibited

- (1) Except as otherwise specifically provided in this chapter [18 USCS §§2510 et seq.] any person who -

- (c) intentionally discloses, or endeavors to disclose, to any other person the contents of any wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through the interception of a wire, oral, or electronic communication in violation of this subsection; or
- (d) intentionally uses, or endeavors to use, the contents of any wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through the interception of a wire, oral, or electronic communication in violation of this subsection;

24. That, Defendants acted in concert and conspiracy with one another in obtaining the recorded conversations of Plaintiff and disclosing them to third parties in violation of the provisions of the Federal Wiretapping Act, 18 U.S.C.S. §2511(c)-(d).

25. That, the actions of Defendants were undertaken deliberately, knowingly, and willfully and with wanton and reckless disregard for Plaintiff's constitutional and statutory rights.

26. That, the supposed violation of a County policy by Plaintiff as claimed by Defendant, Kruzik, was a pretext for the termination of Plaintiff, which was undertaken solely by reason of Defendants, Kruzik and Williams',

personal animosity and disdain for Plaintiff, and was a perpetuation of their prior illegal actions undertaken in order to discredit Plaintiff and have her terminated from her position of employment, which was in violation of the provisions of the Federal Wiretapping Act, 18 U.S.C.S. §2511(c)-(d).

27. That, as a result of the willful and intentional actions of Defendants, Plaintiff is entitled to statutory damages pursuant to the express terms and conditions of the Federal Wiretapping Act, 18 U.S.C.S. §2520, et seq., including, but not limited to, actual damages suffered by Plaintiff and statutory damages, in the amount of \$10,000.00, together with punitive damages, attorneys' fees, and litigation costs, for which claim is herein made.

28. That, the actions of Defendant were undertaken in consultation and conspiracy with one another with such wanton and reckless disregard for Plaintiff's constitutionally protected rights and, more particularly, her rights arising pursuant to the Federal Wiretapping Act., 18 U.S.C.S. §2511(c)-(d), thereby entitling Plaintiff to punitive damages in accordance with the Federal Wiretapping Act, 18 U.S.C.S. §2520, et seq., for which claim is herein made.

29. That, the actions of Defendants, Kruzik and Williams, were undertaken solely to discredit Plaintiff and have her terminated from her position of employment, which position she had held for a period in excess of 23 years, and Defendants, Kruzik and Williams, together with Defendants,

Smith, O’Gurek, Getz, and Nothstein, did act in concert and conspiracy with one another to have Plaintiff terminated and did violate the provisions of the Federal Wiretapping Act, 18 U.S.C.S. §2511(c)-(d), in achieving that end.

WHEREFORE, Plaintiff, Mary T. Miller, prays this Honorable Court to enter judgment in favor of Plaintiff and against Defendants, Mary P. Kruzik, Randall Smith, Gary Williams, William J. O’Gurek, Charles Getz, Wayne Nothstein, and Carbon County, for the recovery of civil damages as authorized by the Federal Wiretapping Act, 18 U.S.C.S. §2520(a)-(b), including, but not limited to:

- a. Actual damages arising from her termination, including, loss of income, benefits, and interest accruing thereon from the date of termination;
- b. Punitive damages;
- c. Interest, costs, and reasonable attorneys’ fees; and
- d. Such other relief as the Court deems appropriate and just.

COUNT II

PENNSYLVANIA WIRETAPPING CONTROL ACT

18 Pa. C.S.A. §5703

and

18 Pa. C.S.A. §5725

30. That, Plaintiff incorporates herein by reference Paragraphs 1 through 29 hereof as if the same were set forth fully at length herein.

31. That, the actions of Defendants aforesaid not only constitute a violation of the Federal Wiretapping Act, but, additionally, are a violation of the Pennsylvania Wiretapping Control Act, 18 Pa. C.S.A. §5703, et seq.

32. That, in addition to damages arising pursuant to the Federal Wiretapping Act, Plaintiff is entitled to damages pursuant to the Pennsylvania Wiretapping Control Act, 18 Pa. C.S.A. §5725(a)(1)-(3), for actual damages arising out of her termination from her position of employment; punitive damages; interest, court costs, and attorneys' fees incurred by reason of Defendants' violations of the Pennsylvania Wiretapping Control Act, 18 Pa. C.S.A. §5703, et seq.

WHEREFORE, Plaintiff, Mary T. Miller, prays this Honorable Court to enter judgment in favor of Plaintiff and against Defendants, Mary P. Kruzik, Randall Smith, Gary Williams, William J. O’Gurek, Charles Getz, Wayne Nothstein, and Carbon County, for the recovery of civil damages as authorized by the Federal Wiretapping Act, 18 U.S.C.S. §2520(a)-(b), including, but not limited to:

- a. Actual damages arising from her termination, including, loss of income, benefits, and interest accruing thereon from the date of termination;
- b. Punitive damages;
- c. Interest, costs, and reasonable attorneys’ fees; and
- d. Such other relief as the Court deems appropriate and just.

COUNT III

PENNSYLVANIA WHISTLEBLOWER LAW

43 P.S. §1423, et seq.

33. That, Plaintiff incorporates herein by reference Paragraphs 1 through 32 hereof as if the same were set forth fully at length herein.

34. That, Plaintiff's termination upon the recommendation of Defendant, Kruzik, to Defendants, O'Gurek, Getz, and Nothstein, occurred subsequent to Plaintiff filing a formal criminal complaint with the Carbon County District Attorney through her legal counsel, which complaint was memorialized in the correspondence, dated June 7, 2005, from John P. Karoly, Jr., Esquire to Gary DeBias, District Attorney.

35. That, Plaintiff specifically reported the commission of a crime and violations of state law, more particularly, the Pennsylvania Wiretapping Control Act, 18 C.S.A. §5703, indicating that Defendant, Williams, had listened to approximately ten (10) hours of recorded conversations despite knowing that the recording of the conversation was non-consensual and proceeded to disclose the contents and nature of the recorded conversations to numerous third parties.

36. That, Plaintiff is a protected employee as that term is defined pursuant to 43 P.S. §1423(a).

37. That, Defendants, Kruzik and Williams, acted in concert and conspiracy with Defendants, O'Gurek, Getz, and Nothstein, in violating the Federal Wiretapping Act, 18 U.S.C.S. §2511, et seq., and the Pennsylvania Wiretapping Control Act, 18 C.S.A. §5703, et seq., and in the suspension and

termination of Plaintiff despite the fact that Plaintiff made a good faith report, both verbally and in writing, to the appropriate authority of a specific incidence of wrongdoing.

38. That, pursuant to the express terms and conditions of the Pennsylvania Whistleblower Act, 43 P.S. §1425, Plaintiff seeks damages as a result of Defendants' illegal conduct, including, but not limited to, payment of back wages and fringe benefits, together with actual damages to reputation and future wage loss, for which claim is herein made.

39. That, in addition to the actual damages sought pursuant to the Pennsylvania Whistleblower Act, 43 P.S. §1425, Plaintiff seeks interest, costs, and reasonable attorneys' fees in accordance with the Statute.

40. That, the actions of Defendants in this context were undertaken deliberately, knowingly, and willfully and in concert and conspiracy with one another in retaliation for Plaintiff's good faith report of violations of federal and state laws to the Carbon County District Attorney.

41. That, in addition to the actual damages sought pursuant to the Pennsylvania Whistleblower Act, 43 P.S. §1425, Plaintiff seeks penalties in accordance with 43 P.S. §1426 of a civil fine and Defendants' suspension from public service for a period of up to six (6) months by virtue of Defendants

acting with the intent to discourage the disclosure of the violations of federal and state laws.

WHEREFORE, Plaintiff, Mary T. Miller, prays this Honorable Court to enter judgment in favor of Plaintiff and against Defendants, Mary P. Kruzik, Randall Smith, Gary Williams, William J. O'Gurek, Charles Getz, Wayne Nothstein, and Carbon County, for the recovery of civil damages as authorized by the Federal Wiretapping Act, 18 U.S.C.S. §2520(a)-(b), including, but not limited to:

- a. Actual damages arising from her termination, including, loss of income, benefits, and interest accruing thereon from the date of termination;
- b. Punitive damages;
- c. Interest, costs, and reasonable attorneys' fees; and
- d. Such other relief as the Court deems appropriate and just.

COUNT IV

CLAIMS PURSUANT TO FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION and 42 U.S.C. §1983

42. That, Plaintiff incorporates herein by reference Paragraphs 1 through 41 hereof as if the same were set forth fully at length herein.

43. That, all of the conversations of Plaintiff which were recorded and disclosed by Defendants were privileged and confidential in nature.

44. That, Plaintiff did not at any time know that her conversations were being recorded and would be disclosed to third parties, and Plaintiff had an expectation of privacy in voicing her views and opinions pursuant to the First Amendment to the United States Constitution.

45. That, Defendants did deliberately, knowingly, and willfully suspend Plaintiff after having violated specific statutory provisions of the Federal Wiretapping Act and Pennsylvania Wiretapping Control Act and disclosing the recorded conversations freely spoken by Plaintiff without the threat of wiretap, disclosure of wiretap, or retaliation.

46. That, Defendants acted to perpetuate their conduct of suspension of Plaintiff by ultimately terminating Plaintiff from her position of employment by reason of the nature and context of the views and opinions of Plaintiff contained in the illegally recorded and disclosed conversations of Plaintiff in profound violation of Plaintiff's rights arising pursuant to the First Amendment and 42 U.S.C. §1983.

47. That, Plaintiff has suffered extreme embarrassment and humiliation as a result of Defendants' wanton and willful conduct and, more particularly, for penalizing her by suspension and termination for freely speaking her mind, for which claim is herein made.

48. That, Plaintiff has suffered severe emotional distress as a result of Defendant's wanton and willful conduct and, more particularly, for penalizing her by suspension and termination for freely speaking her mind, for which claim is herein made.

49. That, as a result of the actions of Defendants, Plaintiff was terminated from her position of employment and has suffered a loss of back wage, future wages, and impairment of earning capacity, together with accrued interest, for which claim is herein made.

50. That, Defendants acted with reckless and wanton disregard for Plaintiff's constitutionally protected rights arising pursuant to the First Amendment and 42 U.S.C. §1983, entitling Plaintiff to punitive damages.

WHEREFORE, Plaintiff, Mary T. Miller, prays this Honorable Court to enter judgment in favor of Plaintiff and against Defendants, Mary P. Kruzik, Randall Smith, Gary Williams, William J. O'Gurek, Charles Getz, Wayne Nothstein, and Carbon County, for the recovery of civil damages as authorized by Federal Wiretapping Act, 18 U.S.C.S. §2520(a)-(b), including,

but not limited to:

- a. Actual damages arising from her termination, including, loss of income, benefits, and interest accruing thereon from the date of termination;
- b. Punitive damages;
- c. Interest, costs, and reasonable attorneys' fees;
- d. Civil fine and suspension from public service for a period of up to six (6) months in accordance with 43 P.S. §1426; and
- e. Such other relief as the Court deems appropriate and just.

Respectfully submitted,
/s/ BRUCE J. PHILLIPS, ESQUIRE
/s/ JOHN P. RODGERS, ESQUIRE
Attorneys for Plaintiff
ECF User

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ALLENTOWN, PENNSYLVANIA 18104
TELEPHONE 610-820-9790
FACSIMILE 610-820-9909

JOHN P. KAROLY, JR.
LEWIS L. THOMPSON, JR.
CHRISOVALANTE P. FLIAKOS

IN REPLY, PLEASE REFER
TO FILE NO:

June 7, 2005

Gary DeBias
District Attorney
Carbon County Courthouse
4 Broadway
Jim Thorpe, PA 18229

RE: Wiretapping and Electronic Surveillance Violations

Dear Gary:

Please be advised that I have been contacted by Mary Miller who relates a very unfortunate circumstance which occurred at the 911 emergency center in Nesquehoning Pennsylvania. In summary, a handset at one of the consoles at the 911 center was inadvertently left off the hook from approximately 9:30 p.m. on April 12, 2005 until the late morning hours on April 13, 2005. The communications intercept was noted by Gary Williams, the Assistant 911 Manager. This intercept inadvertently recorded the ambient conversations of those employees in the 911 work area when they were not "on the air". Apparently, Gary Williams exploited his ongoing personality conflict with Mary T. Miller, a 23 year veteran and Sr. Dispatcher (the County took over the 911 center approximately 11-12 years ago as you know) by listening to more than ten hours of the intercepted private conversation of employees located at the center in order to arrive at a portion of the tape (at 7:34 a.m. on April 13, 2005) on which were allegedly recorded unflattering comments made by Ms. Miller using indelicate language. Not only did Mr. Williams listen to these intercepted communications knowing they were non-consensual but, Mr. Williams proceeded to disclose the contents of these electronic/oral communications to numerous other people until said disclosures resulted in Ms. Miller's three day suspension. Ms. Miller appealed the suspension on the basis that, inter alia, the

disclosing of the contents of this intercept were unlawful and could not be used against her at any time.

After reviewing the circumstances here, it appears to me that several persons have committed felonies of the third degree by: (i) intentionally disclosing to others the contents of an electronic/oral communications knowing that the information was obtained through an electronic interception and, (ii) by intentionally using the contents thereof as evidence against Ms. Miller in a disciplinary employee action. (18 Pa. C.S.A. Section 5703 (2) (3)). You will note that there is no exemption from this conduct in the act, including no viable exception within Section 5704 (3) which applies to emergency communication systems. This is so for several reasons, not the least of which is that this was not a recorded telephone conversation but an ambient conversation, much like a room bug, that was unintentionally recorded but intentionally disseminated and used against the privacy rights of the intercepted person, Ms. Miller.

I bring this to your attention because of the obvious violations of the Statue which have occurred here and, what I believe is your obligation to investigate this matter further. I also believe that in the absence of your appropriate intervention, continued violations of this Statue will occur as Ms. Miller continues to be improperly prosecuted for misconduct based upon the illegal intercept.

Ms. Miller is desirous of speaking with you at your earliest opportunity to clarify any information or issue which requires such clarification.

Naturally, should you have any questions regarding the foregoing, please don't hesitate to contact me upon receipt hereof. My client is willing to cooperate with you to the fullest extent in this matter.

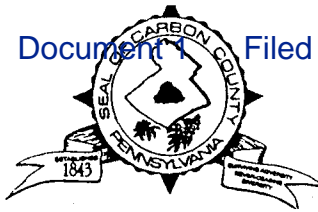
With kind personal regards, I remain,

Sincerely,

Dictated but not read

John P. Karoly, Jr., Esquire
KAROLY LAW OFFICES, P.C.

cc: Mary Miller



COUNTY OF CARBON

EMERGENCY SERVICES

1264 EMERGENCY LANE
NESQUEHONING, PA 18240-1802



911 Communications

(570) 325-9111
FAX: (570) 325-9121



Emergency Management

(570) 325-3097
FAX: (570) 325-9132

September 8, 2005

Mrs. Mary Miller
28 W. Columbus Ave.
Nesquehoning, PA 18240

In re: 9-1-1 Call - 08/31/05

Dear Mary:

Upon investigation of the possible mishandling of a suicidal caller, August 31, 2005 brought forth by a co-worker, I find that the call was indeed mishandled.

As per the Personnel Policies and Procedures manual for employees of Carbon County, Page 19, I consulted with the County Administrator prior to implementing disciplinary action.

As a result of the above investigation completed September 8, 2005, I am recommending immediate suspension with a recommendation to terminate for violating established protocols, negligence and carelessness in performing your duties as a Senior Dispatcher. Your actions exposed the County to liability regarding the incident that occurred on August 31, 2005 and put the caller at risk for self-harm

Respectfully,

Mary Kruzik
9-1-1 Manager

MK/st

cc: Carbon County Commissioners
Chief Clerk/County Administrator
Director – Human Resources

COUNTY OF CARBON HUMAN RESOURCES DEPARTMENT

Director of Human Resources
AUDREY J. MILLER

Assistant Director
DAWN M. BOWMAN



2 Hazard Square
Court House Annex
JIM THORPE, PA
18229-1238

TELEPHONE: (570) 325-8523
FAX: (570) 325-9492

September 16, 2005

Certified & Regular Mail

Mrs. Mary T. Miller
28 W. Columbus Ave.
Nesquehoning, PA 18240-1003

Dear Mrs. Miller:

This letter is to notify you that you are hereby terminated from your position of Senior Dispatcher, effective September 15, 2005.

Sincerely,

A handwritten signature in cursive script that reads "Dawn M. Bowman".

Dawn M Bowman
Acting Director, Human Resources

Cc: Mary P. Kruzik, 911 Manager