
Wiretapping & Eavesdropping 3d: Surveillance in the Internet Age

by

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2025-2026 Edition

Issued in December 2025

Volume 1



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ISBN 979-8-350-23142-7

2025-2026 Highlights

Wiretapping and Eavesdropping is now in softbound format. This update fully merges past supplement material into the main text and updates the material for ease of research and filing. New sections in this 2025-2026 Edition include:

- § 3:53—An appellate decision from California, *Sanders v. American Broadcasting Companies, Inc.*, reiterating that an expectation of privacy, in order to be reasonable for purposes of the intrusion tort, need not be “of absolute or complete privacy.”
- §§ 28:50, 28:51—Review of 2025 and 2026 amendments to the rules of the CPPA, California’s independent privacy enforcement agency.
- § 30:25—2025 geofencing federal district court and state appellate cases.
- Updated and streamlined Appendices.

An annual softbound format facilitates reorganization and revision to accommodate new developments in this rapidly evolving field of law. Look for more changes to come in future editions!

Publisher’s Editorial Staff
December 2025

Dedication

To Pete, Gray, Claire, & Max, who all make this world a better place.

With love and gratitude,
ATM

About the Authors

Anne Toomey McKenna

Anne Toomey McKenna (she/her) is a trial attorney, researcher, author, and educator, whose published works are relied upon by attorneys, judges, and researchers around the world. Professor McKenna is Affiliated Faculty with Penn State University's Institute for Computational & Data Sciences, and has taught *Evidence*, *Cyberlaw in Practice*, *Information Privacy Law*, and *Civil Procedure* for years. She has served as the Chair and Vice Chair of the Artificial Intelligence Policy Committee (AIPC) for the world's largest technical professional organization, the Institute for Electrical and Electronics Engineers (IEEE-USA), working directly with members of Congress and their staffers on legislative policy issues around AI and data privacy. She currently serves by invitation on the small Advisory Board to the IEEE-USA AIPC where she continues that work.

As part of her interdisciplinary research and scholarship, Professor McKenna works and advises on the legal, policy, and societal issues surrounding emerging technologies and the law. Professor McKenna brings extensive experiential depth to her scholarship and work in this interdisciplinary field, including her two-plus decades of work as a trial attorney handling privacy and surveillance issues in federal and state courts in Washington, D.C., and Maryland. Her current work includes representing, advising, consulting, and educating government agencies, courts, businesses, educational institutions, and individuals about:

- artificial intelligence and autonomous systems
- biometric systems
- electronic surveillance
- data laws and data practices (including health, financial, and PII privacy compliance and handling breaches)
- school and workplace privacy
- website practices and terms
- satellites, geolocation tracking, and geodata
- social media and online content/speech/tort issues, including mis- and disinformation and national security
- statutory claims, including ECPA and CFAA
- electronic evidence

Professor McKenna's published works on privacy, surveillance, emerging technologies, and evidence are regularly cited and relied upon by judges, attorneys, businesses, and policy makers in navigating these

complex and evolving areas of law. In addition to her numerous articles and published pieces, Professor McKenna is the co-author of two well-known, oft-cited, multi-volume legal treatises, *Wiretapping & Eavesdropping: Surveillance in the Internet Age, 2nd & 3rd Eds.*, McKenna, Anne Toomey & Fishman, Clifford S. (West/Thomson), and *Jones on Evidence, 7th Ed.*, Fishman, Clifford S, & McKenna, Anne Toomey (Thomson Reuters), that have been cited by almost every U.S. Court of Appeals, and numerous other federal and state courts. McKenna's law review articles are widely cited as well.

Professor McKenna has been interviewed/quoted by NPR's *Morning Edition*, *The Washington Post*, *The Baltimore Sun*, *The Boston Globe*, *the New York Post*, *Vice*, *Bloomberg Law/Radio*, and NBC, FOX, and CBS news, and her numerous articles and opinion pieces on privacy, electronic surveillance, data policy, technology and law have appeared in major media outlets across the nation, including *Vice*, *Slate*, *the Miami Herald*, *the San Francisco Chronicle*, *Fast Company*, *Ars Technica*, *Techdirt*, *the Conversation*, and *Scientific American*, among others. She is also one of the lead interviewees in the 2020 documentary, *Interference: Democracy at Risk*.

Professor McKenna is the lead faculty creator of *Principles of Cyber Law & Policy*, an open access course developed via grant from the National Security Agency to improve U.S. citizens' resiliency in the cyber era, and she served as the Principal Legal Consultant for the Department of Justice-COPS's initiative, the *Use of UAVs (drones) in Community Policing*.

Among her *pro bono* work, Professor McKenna has represented victims of revenge porn and online stalking, and she helped obtain a published First Amendment victory in Connecticut's Supreme Court for a murder victim's family's right to post missing posters.

Clifford S. Fishman

A graduate of Columbia University Law School (1969), Prof. Fishman, served for eight years as an Assistant District Attorney in the New York County D.A.'s Office and as Chief Investigating Assistant D.A. in New York City's Special Narcotics Prosecutor's Office, where he tried dozens of jury trials; wrote and supervised the execution of more than thirty interception orders; wrote search warrants leading to the seizure of untold quantities of heroin, cocaine, and marijuana (not to mention a 200-pound bog of peat moss); and also oversaw the purchase of the most expensive kilogram of pancake mix in the history of American law enforcement.

Having cleaned up New York City's narcotics problem, in 1977 he joined the faculty of The Catholic University of America Law School, where he teaches criminal law, criminal procedure and evidence. In addition to this treatise, he is the co-author of *Jones on Evidence (7th*

ABOUT THE AUTHORS

ed.) and numerous scholarly articles about various aspects of search and seizure, electronic surveillance, and evidence, which, in aggregate, contain more footnotes than any rational human being would ever even imagine, let alone write. Professor Fishman has also occasionally taken court assignments to defend indigent defendants, in which capacity he complains bitterly about prosecutors doing to him what he delighted in doing to defense attorneys when the shoe was on the other foot.

He and his wife Betty are the proud parents of two daughters reared to honorable adulthood, and are active members of their synagogue. Outside interests include hiking and bicycling; the Civil War (studying it, not re-fighting it); the theater; classical and country music; rooting for mediocre sports teams; writing unpublished fiction (without footnotes!); and cultivating his beard.

Contacting the Authors

If you have a question, a suggestion, a comment or wish to consult with the authors on any subject, they encourage you to contact them directly via a shared email account, Fishman-McKenna@law.edu

Acknowledgments

We acknowledge with gratitude the assistance and support of our team at Thomson Reuters who worked so hard to bring this project to completion. We are particularly grateful to Aaron Micheau, who drove this softbound conversion forward with kindness, humor and professionalism, and Grace Strehle, who performed magic, especially with updating thousands of cross references.

Words cannot truly express our thanks to those with whom we share our lives most closely, who—for many, many years—have supported our hours of research and writing with patience and encouragement (and sometimes even some proofreading). Without their love and support, this work would not be.

Thank you, Betty (Cliff).

Thank you, Pete, Gray, Claire, and Max (Anne).

Finally, we acknowledge with gratitude all persons who use the laws, procedures, and court decisions detailed in this treatise to preserve the Rule of Law, and by so doing, uphold the laws of our nation and its fifty states, protect the rights afforded to us in the Constitution, and secure our nation. As electronic surveillance has become a ubiquitous feature of our world, may this work serve to inform and educate about when and how such surveillance may be lawfully conducted as well as when and how our privacy is (and must be) protected by law.

Anne Toomey McKenna and
Clifford S. Fishman
December 2025



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