

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SCOTT E. GROSS and :
GARY L. BOYNTON :
Plaintiffs, : Civil Action
v. : No. 96-6514
FRANK J. TAYLOR, et al. :
Defendants, :

M E M O R A N D U M

Cahn, C.J.

August 5, 1997

I. INTRODUCTION

Plaintiffs Scott E. Gross and Gary L. Boynton, police officers employed by the Borough of Emmaus, filed a complaint against Police Chief Frank Taylor, Sergeants William Kennedy and Karl Geschwindt, the Emmaus Police Department ("Department"), Emmaus Mayor Barry Barto, and the Borough of Emmaus. Defendants filed a Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6). Because resolution of the motion would have required the court to look beyond the pleadings, the court converted Defendants' motion to one for summary judgment pursuant to Federal Rule 12(c). An Order dated January 5, 1997 gave notice of the conversion and allowed the parties time to pursue discovery. The court today addresses Plaintiffs' motion for partial summary judgment and Defendants' motion for summary judgment. For the reasons that follow, Plaintiffs' motion is denied and Defendants' motion is granted.

II. FACTS

A. THE SURVEILLANCE SYSTEM

On July 28, 1995, the Department ordered audiovisual surveillance systems from Mobile-Vision, Inc. Each system included an in-car video camera mounted inside the front of the passenger compartment, a control head located next to the driver, a control panel on or near the dashboard with a liquid crystal display ("LCD"), a monitor, a video cassette recorder ("VCR") mounted in the trunk, a wireless "clip" microphone, and a rear seat microphone.

Several months prior to the installation of the systems, the purpose and installation of the surveillance systems were discussed at a Department meeting. Bortz Dep. at 15-16. The stated purposes of the system were "to protect [the police], for liability purposes," and to collect evidence. Id. at 15.

Mobile-Vision installed the surveillance systems on November 13, 1995 in police cars 102 and 103. Taylor Aff. ¶ 3. Cars 102 and 103 were regularly used by police officers on patrol. Geschwindt Dep. at 39. On March 15, 1996, two more surveillance systems were installed in cars 104 and 109, which were not regularly used by police officers on patrol. Kennedy Dep. at 23. On April 9, 1996, Mobile-Vision's representative, Wayne Krause, conducted a training session for all Emmaus police officers about the system's proper use. Each officer received a user's manual for the system. Taylor Aff. at ¶ 14; Geschwindt Dep. at 58-59.

Officers Gross and Boynton learned of the existence of the rear seat microphones "on or about March 31, 1996." Gross Aff.

¶ 5; Boynton Aff. ¶ 12. There is no evidence that either officer shared this information with their Department supervisors until almost a month later, on April 24, 1996. On that day, Officer Greg Bealer, not a party to this action, heard his voice on his practice tape, and discovered that the system's VCR recorded sound as well as video. Geschwindt Dep. at 42-44. That same day, after learning about Bealer's discovery, Gross pointed the microphone out to Sgt. Geschwindt, his supervisor, from outside patrol car No. 103 and informed him of his belief that the rear seat microphone was illegal. Id. at 39-42, 50-51, 62.

In response to this information, the Department ordered that the rear seat microphones be removed immediately. By April 25, 1996, the last rear seat microphone had been removed and a memorandum was issued to all officers reassuring them that the rear microphones were not installed to spy on officers. April 24, 1996 Mem. from Kennedy (Ex.3 to Paul Dep.). Several days later, Gross discussed his concerns about the rear seat microphones with a group of officers. Gross told the officers that he had discovered the rear seat microphones several weeks earlier. Gross Aff. ¶ 5; Bortz Dep. at 64; Geschwindt Dep. at 62-64.

B. SOP NO.13 AND OFFICER GROSS' REPRIMAND

In May, after the April 9th training session and the practice period which began on April 24th, the Department began regularly using the audiovisual recording system without the rear seat microphones in the patrol cars. Earlier, the Department had

developed a protocol for utilizing the system called standard operating procedure number 13 ("SOP No.13"). Geschwindt Dep. at 69-72. SOP No.13 directs officers approaching a citizen "to advise the citizen that the conversation is being recorded." Mem. of P. & A. in Supp. of Pls.' Mot. for a Prelim. Inj. ("Pls.' P & A"), Ex. A. at 2.¹ A copy of SOP No.13 was provided to every member of the police department. Geschwindt Aff. ¶ 8.

When responding to a criminal mischief complaint on June 6, 1996, Gross spoke at length with an Emmaus resident who appeared to be intoxicated. Incident Report, Ex. B to Taylor Aff. Gross recorded his conversation with the man using his clip microphone. Gross wrote in the incident report that "I taped our conversation for my protection but did not advise him as he was upset about the on going problem." Id.

Consequently, Chief Taylor told Officer Gross to report to his office on July 26, 1996 for a meeting to discuss the June 6 incident. Gross Aff. ¶ 16. Taylor, Geschwindt and Kennedy attended that meeting, termed a disciplinary hearing by the department. Id. ¶ 12. Mayor Barto was also present for at least part of the meeting. Id. Following the meeting, Taylor placed a written reprimand dated July 30, 1996 in Gross' personnel file for failing to follow SOP No.13. Gross Aff. ¶ 11; Taylor Aff. ¶

¹ SOP No.13, dated March 20, 1996, states, "Upon approaching a citizen, the officer shall advise the citizen that the conversation is being recorded by making the following announcement: 'I AM ADVISING YOU THAT THIS CONVERSATION IS BEING AUDIO AND VIDEO TAPED. YOU DON'T HAVE A PROBLEM WITH THAT DO YOU?'" Pls.' P & A., Ex. A at 2.

25-32. Gross could have but did not appeal the reprimand. Taylor Aff. ¶¶ 33-34.

At a minimum, Officer Gross informed his wife, Officer Boynton, and Officer Hoats about the reprimand. Gross Aff. ¶¶ 13-14; Hoats Aff. ¶¶ 2-3. Officers Schaeffer, Garloff, Fiore, and Richter also knew about Gross' reprimand. Schaeffer Aff. ¶¶ 2-3; Garloff Aff. ¶¶ 2-3; Fiore Aff. ¶¶ 2-3; Richter Aff. ¶¶ 2-3. Additionally, Wallace Worth, Chief Taylor's attorney, may have known about the reprimand. Patricia Gross Aff. ¶¶ 5,7.

C. TAYLOR'S ATTENDANCE AT UNION MEETINGS

The Emmaus Police Officers Association ("Association") is the bargaining representative for Emmaus officers. Chief Taylor was excluded from the Association's collective bargaining agreement. Nevertheless, he regularly attended Association meetings, including one in June 1996 which was called at least in part to discuss whether to file a complaint or grievance against Taylor based on his implementation of a new policy on overtime pay for court appearances. Boynton Supp. Aff. at ¶ 4. When Taylor appeared at the meeting, Detective Timothy Hoats, who was president of the Association, "timidly" told Taylor "he may want to leave because the topic of the meeting concerned him." Id. at ¶¶ 5-6. However, neither Hoats nor any other officer directly asked Taylor to leave. Plaintiffs' Supplemental Brief in Opposition to Defendants' Motion for Summary Judgment ("Pls.' Supp. Br.") p.18. Taylor did not leave the meeting.

III. SUMMARY JUDGMENT STANDARD

Summary judgment is warranted when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). A dispute is genuine only when the evidence presented could provide the basis for a reasonable jury to find in favor of the non-moving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 252 (1986) A mere "scintilla" of evidence supporting a plaintiff's case will not immunize against summary judgment. Id. However, when determining whether there is a genuine dispute, the court must make all reasonable inferences favorable to the non-moving party. Id. at 255 (citation omitted).

The moving party bears the burden of demonstrating that "there is an absence of evidence to support the nonmoving party's case." Celotex Corp. v. Catrett, 477 U.S. 317, 325 (1986). If, however, the non-moving party does not present evidence sufficient to establish an "element essential to that party's case, and on which that party will bear the burden of proof at trial," summary judgment is appropriate. Id. at 322.

IV. WIRETAP CLAIMS

The amended complaint's first five counts concern Chief Taylor and Sergeants Kennedy and Geschwindt's alleged interception of the Plaintiffs' private conversations in the

patrol cars. Specifically, Plaintiffs claim that the alleged interceptions violated (1) their constitutional right to privacy derived from the First, Fourth, Fifth, Ninth, and Fourteenth Amendments, (2) the Pennsylvania Wiretapping and Electronic Surveillance Act, 18 Pa. C.S.A. 5701 et seq. ("PA Wiretap Act") and, (3) Title III of the Omnibus Crime Control and Safe Streets Act of 1968, as amended by the Electronic Communications Privacy Act of 1986, 18 U.S.C. §2510 et seq. ("Federal Wiretap Act"). The wiretapping claims refer to the time period between November 13, 1995, when the systems were installed and March 31, 1996, when Plaintiffs learned of the existence of the rear seat microphones.

Although Plaintiffs have based these counts on a general constitutional right to privacy, their core claim in fact is that the alleged wiretapping and recording violates the Fourth Amendment as an unreasonable search and seizure. See Am. Compl. ¶ 21. As for the statutory claim, the Federal Wiretap Act and the PA Wiretap Act prohibit the unauthorized interception of oral communications. 18 U.S.C. §2511; 18 Pa. C.S.A. §5703. An "oral communication" is defined as "any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation." 18 U.S.C. §2510; see also 18 Pa. C.S.A. §5702.²

²The PA Wiretap Act is substantially similar to the Federal Wiretap Act. They differ primarily procedurally. However, there is also some variation in the remedies available under each statute. See generally, Clifford Fishman & Anne McKenna, Wiretapping and Eavesdropping (2d ed. 1995) ("Fishman & McKenna") §§1.12, 4.38.

Congress drafted the definition of "oral communication" to reflect the Supreme Court's standards for determining when a reasonable expectation of privacy exists. United States v. McKinnon, 985 F.2d 525, 527 (11th Cir. 1993), citing, S.Rep. No. 1097, 90th Cong. 2d. Sess.(1968), reprinted in 1968 U.S.C.A.A.N. 2112, 2178, citing, Katz v. United States, 389 U.S. 347 (1967). Thus, to succeed at trial, Plaintiffs will need to prove that they had a reasonable expectation of privacy or non-interception in the allegedly intercepted conversations.³

In addition, Plaintiffs have based their complaint on a general constitutional right to privacy. Though Plaintiffs base their claim on the First, Fourth, Fifth, Ninth, and Fourteenth Amendments, the real basis for these claims is in fact that the alleged wiretapping and recording violates the Fourth Amendment as incorporated by the Fourteenth Amendment. In Katz, the Court held that a reasonable expectation of privacy is necessary to invoke Fourth Amendment protection. 389 U.S. at 350-1, 360.

³Whether an expectation of privacy or an expectation of non-interception is appropriate to the consideration of wiretapping claims is unclear. Although the legislative history suggests that Congress intended to codify Katz's reasonable expectation of privacy standard, the Federal Wiretap Act sets the standard as a expectation of non-interception. 18 U.S.C. §2510 (2); McKinnon, 985 F.2d at 527 (citations omitted). Uncertainty about the standard is reflected in numerous lower court decisions that either use the two interchangeably or use one standard in combination with language and reasoning suggesting the other. See Fishman & McKenna, §2.15 (discussing the differences between the two standards and the difficulty in determining which one Congress intended). In the instant case, the result is the same regardless of the standard applied. Plaintiffs lack a reasonable expectation of either privacy or non-interception.

Thus, Plaintiffs' wiretap claims, both statutory and constitutional, effectively hinge on the question of whether Plaintiffs had a reasonable expectation of privacy when seated in their patrol cars while on-duty.

The court will address all five wiretapping claims together. The court has determined that Plaintiffs have presented insufficient evidence for a reasonable jury to conclude that any of Defendants committed an unlawful interception of an oral communication by Gross or Boynton, or that Plaintiffs had an reasonable expectation of privacy in their patrol car conversations.

A. EVIDENCE OF UNAUTHORIZED INTERCEPTION

As a threshold matter, "a named plaintiff must demonstrate the actual interception of at least one of his or her conversations before there can be a justiciable controversy Where there has been no interception, there can have been no injury." PBA Local No. 38 v. Woodbridge Police Dept., 134 F.R.D. 96, 100-101 (D.N.J. 1991). Demonstrating actual interception entails several steps.

First, Plaintiffs must produce evidence that they used a patrol car which had a rear seat microphone during the relevant time period. It is clear that Boynton used one of the microphone equipped cars. Paul Dep. at 13, 21-22. Whether Gross ever used either car is less clear, but the court will assume for this motion that both Gross and Boynton used a patrol car with a rear

seat microphone during the relevant time period.

Second, Plaintiffs must show that the system was capable of recording. It is unclear when the cameras were present in the patrol cars and when the practice tapes first became available to the non-sergeant officers. Plaintiffs have produced testimony that the cameras were present in patrol cars 102 and 103 as early as November or December 1995. Paul Dep. at 20. The videotapes, which were capable of recording aural and visual data, might have been available to the officers during the relevant time period. Id. at 16-17.

Plaintiffs have thus adduced sufficient evidence for the court to assume that they were in patrol cars with operable recording equipment. However, such a showing is insufficient to survive summary judgment because Plaintiffs have not presented any evidence to demonstrate a genuine issue of fact about whether an interception actually took place.

The existence of a viable monitoring system creates "a potential for an invasion of privacy, but we have never held that potential, as opposed to actual, invasions of privacy constitute searches for purposes of the Fourth Amendment. . . . It is the exploitation of technological advances that implicates the Fourth Amendment, not their mere existence." United States v. Karo, 468 U.S. 705, 712 (1984) (emphasis in original); see also Broadway v. City of Montgomery, 530 F.2d 657, 660 (5th Cir. 1976) (appellants must show that oral communications were in fact intercepted to avoid summary judgment). If a mere showing that a person's

comments were capable of being intercepted was adequate to state a claim under the wiretap acts in "this age of powerful surveillance technology," virtually every comment could lead to a complaint. Wesley v. WISN Division--Hearst Corporation, 806 F. Supp. 812, 815 (E.D. Wis. 1992).

Plaintiffs assert that they "have obtained and set forth ample circumstantial evidence to establish that their private conversations were intercepted illegally through the use of the rear seat microphones." Pls.' Supp. Br. p.11. This court disagrees. Plaintiffs have not presented any evidence substantiating any claim beyond that they were in cars with systems capable of recording.

The court recognizes the peculiar difficulties plaintiffs face in presenting evidence to support wiretap claims. "[T]he fact that most of the plaintiffs have no personal, first-hand knowledge that any particular phone call was tapped is not remarkable . . . [t]he intentional tort of wiretapping created by [the Federal Wiretap Act] is obviously one which by its very nature is unknown to the plaintiff." Awbrey v. Great Atlantic & Pacific Tea Co., 505 F.Supp. 604, 607 (N.D. Ga. 1980). Some courts, therefore, have held that direct evidence of the interception of specific conversations or material is not necessary. See Cross v. Alabama, 49 F.3d 1490, 1509 (11th Cir. 1995); Walker v. Darby, 911 F.2d 1573, 1579 (11th Cir. 1990); Scutieri v. Paige, 808 F.2d 785, 790 (11th Cir. 1987).

However, these decisions do not stand for the proposition

that the barest of circumstantial evidence can sustain an illegal wiretapping claim. Unlike the case before me, the cases cited by Plaintiffs included substantial circumstantial evidence that interception had actually occurred. This evidence included statements by the defendants to third parties that they were engaged in wiretapping, evidence of targeting the plaintiffs for bugging by installing a microphone in his or her office, actual tapes of intercepted conversations, evidence of a pattern of wiretapping, and testimony that the defendant was remotely monitoring the plaintiff. See Cross, 49 F.3d at 1500-01, 1508-09; Walker, 911 F.2d at 1578 n.6; Scutieri, 808 F.2d at 790; Awbrey, 505 F.Supp. at 607.

Gross and Boynton have not produced any direct or circumstantial evidence of actual interception by Taylor, Geschwindt, or Kennedy. They have not produced a tape of any intercepted conversations of the Plaintiffs or other officers, evidence of targeting either Gross or Boynton for electronic surveillance, or testimony about a plan by Defendants to eavesdrop on Plaintiffs' conversations. In addition, there is uncontroverted evidence that the system could not be activated from a remote location by Defendants or anyone else, and that Plaintiffs could have neutralized an "active" system at any time. DiRenza Dep. at 22-23. This makes it even more unlikely that there was an actual interception, i.e., that Defendants acquired "the contents of any wire or oral communication." 18 U.S.C. §2511; 18 Pa. C.S.A. §5703. Without evidence of actual

recording, Plaintiffs cannot withstand summary judgment.

B. REASONABLE EXPECTATION OF PRIVACY

Plaintiffs have moved for partial summary judgment on the issue of whether they had a reasonable expectation of privacy. The court will deny this motion. Even if Plaintiffs had presented evidence that Defendants intercepted their conversations, the Fourth Amendment would not extend to their claims unless Plaintiffs could establish that Gross and Boynton had a reasonable expectation of privacy while in a Department patrol car. See O'Connor v. Ortega, 480 U.S. 709, 717 (1987). Public employees are entitled to a reasonable expectation of privacy in the workplace subject to limitation by actual workplace practices and regulation. Id. at 717, 723.

In the instant action, Gross and Boynton did not have a reasonable expectation of privacy or non-interception while on duty in a patrol car. In general, most citizens have no reasonable expectation of privacy in their conversations while seated in a police car. See United States v. Clark, 22 F.3d 799, 801-802 (8th Cir. 1994)(citations omitted); McKinnon, 985 F.2d at 528 (citations omitted); United States v. Sallee, No.91 CR 20006-19, 1991 WL 352613, at *2 (N.D. Ill. Oct. 24, 1991)(citations omitted). The key to Clark and similar Fourth Amendment cases is in the constructive notice to the plaintiffs. In other words, it is not reasonable to expect as much privacy when particular elements of a location or situation give warning that an

interception is likely.

For instance, courts have generally refused to acknowledge a reasonable expectation of privacy for conversations which take place in prisons, even for those who work there. See Lanza v. State of New York, 370 U.S. 139, 143-44 (1962)(conversation between inmate and brother in prison "visitors' room" intercepted by police); Angel v. Williams, 12 F.3d 786, 790 (8th Cir. 1993) (police officer taped speaking to prisoner in jail); Commonwealth of Pennsylvania v. Henlen, 564 A.2d 905, 907 (Pa. 1989) (investigating police officer taped by suspect during interrogation). These decisions rely in part on the fact that the prison's very nature and purpose give notice to individuals that their privacy is diminished. Like the prison, the patrol car is associated with the purposes of preventing crime and controlling criminals. The nature of the patrol car diminishes the reasonable expectation of privacy in activities and conversations taking place within it.

More importantly, Gross and Boynton's claim that they had a reasonable expectation of privacy in their patrol cars while on duty is belied by the specific circumstances of the case. The system's explained purpose, known presence in the patrol cars, and particular features would have placed a reasonable person on notice that there was a strong possibility that conversations could be intercepted.

First, the purposes of the system were discussed at a staff meeting. Bortz Dep. at 15. Officer Paul's uncontroverted

testimony suggested that the installation of the audio/video recording system was common knowledge. Paul Dep. at 12. The existence of the rear seat microphones should not have come as a surprise because "the microphones were part of the system, and as you see on COPS or various shows It was just part of the system[.]" Paul Dep. at 23-24. In addition, there is no evidence that Plaintiffs were told that the system would not be used to record them. Such a promise or encouragement in combination with a plaintiff's assertion of privacy might be sufficient to make an expectation of privacy or non-interception reasonable. See Boddie v. American Broad. Cos., Inc., 731 F.2d 333, 338-339 (6th Cir. 1984)(reasonable expectation of non-interception where defendant agreed to plaintiff's refusal to be recorded during an interview but the defendant secretly recorded it anyway). Although Plaintiffs assert in their complaint that they "were instructed, as part of the installation of the audio system, that they alone had the only audio recording devices," they fail to provide any support for this claim and in fact fail to mention it in their affidavits. Am. Compl. ¶ 16. However, even assuming that such a statement was made, it is not a promise such as that made in Boddie because it lacks the specificity and context that would create an expectation of non-interception. In light of the system's purpose and the other officers' general understanding of the system, if Plaintiffs had an expectation of privacy, that expectation was unreasonable.

Second, the system's physical presence in the patrol cars

undermines Plaintiffs' reasonable expectation of privacy claim. The rear seat microphone was located at the top of the rear seat and not hidden. DiRenza Dep. at 24. In fact, DiRenza, the Mobile-Vision representative who installed the surveillance systems in the cars, testified that he never tried to hide the rear seat microphone. Id. at 25. Furthermore, Officer Gross was able to see the microphone from outside the car, and in fact pointed it out to Geschwindt while standing outside Bealer's patrol car. Geschwindt Dep. at 41.

Third, when the system was recording, the control head, "like a VCR panel," would be lit. DiRenza Dep. at 14,22. The control panel is located near the driver. Id. It would be fairly obvious to someone driving the car that the system was operating. Id. at 22. Moreover, the instruction manual given to every officer describes the recording light on the control panel. Plaintiffs have presented testimony that the glare of the sun might make it difficult to see the control head indicators, and therefore the driver might not realize that the system was recording. DiRenza Dep. at 15. Nevertheless, a person of reasonable caution would have been alerted to the possibility that a conversation might be recorded and with minimal effort could check the light. See, Wesley v. WISN Division- Hearst Corp., 806 F.Supp. 812, 815 (E.D. Wis. 1992) (radio station employee has no reasonable expectation of privacy in comments made in room with visible microphones; "[I]f a person should know that the person's comments could be artificially detected without

too much trouble, or that the means of artificial detection might actually be in place, the person's expectation of non-interception is not reasonable."). There is no genuine issue of material fact as to whether officers Gross and Boynton had an objectively reasonable expectation of privacy.

V. SOP NO.13 CLAIMS

In Counts Six and Seven of the Amended Complaint, Plaintiffs assert that SOP No.13 violates the Pennsylvania Wiretap Act and the First, Fourth, Fifth, Ninth, and Fourteenth Amendment rights of citizens. In Count Six, Plaintiffs sue as police officers subject to criminal and civil liability because defendants have mandated that they implement SOP No.13. In Count Seven, Plaintiffs sue in their capacity as taxpayers and residents of Emmaus, subject to financial liability for the constitutional violations wrought by SOP No.13. The court finds that it has no jurisdiction over these claims.

Article III of the Constitution permits federal courts to exercise jurisdiction only over ripe cases and controversies. Only when the complaint is based upon real and not hypothetical or speculative injury does the controversy become ripe for decision. The court determines ripeness by weighing two factors: (1) the hardship to the parties of withholding court consideration; and (2) the fitness of the issues for judicial review. Artway v. Attorney General of New Jersey, 81 F.3d 1235, 1247 (3d Cir. 1996).

The court finds that both factors in the ripeness analysis weigh against adjudicating the challenge to SOP No.13. "The hardship factor inquires whether the threat of prosecution is credible, and not merely speculative, so as to be concrete for purposes of Article III." Artway, 81 F.3d at 1247 (internal quotations and citations omitted). Plaintiffs have presented no evidence of any threat of PA Wiretap Act prosecution of Emmaus officers for following SOP No.13.⁴ Nor have Plaintiffs provided any evidence of an immediate threat of a civil suit based on SOP No.13 which might lead to financial liability for Plaintiffs. Whether civil and criminal actions based on SOP No.13 will be filed is a matter of pure speculation at this point, hinging on the unpredictable future decisions of prosecutors and private citizens. See id. at 1249 n.8 (police chief's claim of immunity in future §1983 action by a person forced to register under Megan's Law not ripe because no lawsuit had been filed). Plaintiffs have not demonstrated that they are in any imminent danger of injury in the form of criminal prosecutions or civil damages.

The second factor in the ripeness analysis, whether the issues are fit for judicial review, also cautions against determining SOP No.13's legality. In determining fitness for

⁴In fact, Defendants have made uncontroverted representations that the Lehigh County District Attorney's office reviewed and approved SOP No.13, and does not plan to prosecute Emmaus police officers for implementing the procedure. Prelim. Inj. Tr. pp. 15, 18.

review, the court considers "whether the record is factually adequate to enable the court to make the necessary legal determinations." Id. at 1249. In light of the rule to avoid unnecessary constitutional decisions, "[c]ourts are particularly vigilant to ensure that cases are ripe when constitutional questions are at issue." Id. (citation omitted). Plaintiffs' assert that SOP No.13 violates the First, Fourth, Fifth, Ninth, and Fourteenth Amendments to the Constitution, and will therefore subject them to financial injury in civil suits. At this point, no private citizens have filed civil suits alleging injury from the implementation of SOP No.13. Therefore, the court has before it no concrete examples of SOP No.13's application. Without a factual record, the court is hesitant to weigh the competing governmental and individual interests at stake in a constitutional challenge. Furthermore, the parties will suffer no hardship by this court's denial of review of the merits of SOP No.13. Therefore, the court will dismiss Counts Six and Seven because they are not ripe for review.

VI. REPRIMAND AND REPUTATION CLAIMS

Counts Eight, Nine, and Ten are related to Officer Gross' reprimand. In Count Eight, Gross alleges that the Department's failure to train him adequately in SOP No.13 and the wiretap acts led to his reprimand, thereby damaging his reputation in violation of his constitutional rights. Am. Compl. ¶¶ 52, 54; Pls.' Resp. to Defs.' Mot. to Dismiss ("Pls.' Resp.") p.16. In

Count Nine, Gross claims that Taylor, Kennedy, Geschwindt, and Barto invaded his privacy by disclosing the reprimand to other people, including members of both the Police Department and the general public. Am. Compl. ¶¶ 58, 59. Count Ten alleges that the public disclosure of the written reprimand violates Gross' constitutional right to privacy and his liberty or property right in his reputation. The statutory basis for this count as well as Count Eight is 42 U.S.C. §1983.

A. INVASION OF PRIVACY

Pennsylvania law recognizes four types of invasion of privacy: intrusion upon seclusion, appropriation of name or likeness, publicity given to a private life, and publicity placing a person in a false light. Vogel v. W.T. Grant, Co., 327 A.2d 133, 136 (Pa. 1974). Gross claims that Defendants' alleged disclosure of his written reprimand implicates the third type, publicity given to a private life. Pls.' Resp. p.20. In Vogel, the court wrote that "[o]ne who gives publicity to matters concerning the private life of another, of a kind highly offensive to a reasonable man, is subject to liability to the other for [publicity given to a private life]." 327 A.2d at 136 n.9 (citing Restatement (Second) of Torts §652E).

A successful claim of publicity given to a private life must demonstrate (1) publicity given to (2) private facts, (3) which would be highly offensive to a reasonable person, and (4) is not of legitimate concern to the public. Faison v. Parker, 823

F.Supp. 1198, 1205 (E.D.Pa. 1993), citing, Harris v. Easton Pub. Co., 483 A.2d 1377, 1384 (Pa.Super. 1984). Gross has failed to produce evidence that would make at least one of these four essential elements a genuine issue of fact.

There is no evidence of publicity sufficient to sustain the claim before the court. Gross alleges that his reprimand was "disclosed or publicized to other persons, both inside the Police Department and other members of the public[.]" Am. Compl. ¶ 59. Moreover, he claims that "this [the pleading] is sufficient to allege the requisite publicity." Pls.' Resp. p.20.

"'[P]ublicity' requires that the matter is made public, by communicating it to the public at large, or to so many persons that the matter must be regarded as substantially certain to become one of public knowledge." Harris, 483 A.2d at 1384, citing, Restatement (Second) of Torts §652D, cmt. a (further citations omitted). The record shows that at least eight people other than the individuals at the disciplinary hearing knew about the reprimand. Gross by his own admission told three of these eight: his wife, Officer Boynton, and Officer Hoats. Gross Aff. ¶¶ 13-14; Hoats Aff. ¶¶ 2-3. Plaintiff has not produced any evidence linking Defendants to the disclosure to the remaining five individuals, but the Court accepts for this motion that Defendants were responsible for those disclosures.

Publicity occurs when the disclosure is "substantially certain to become one of public knowledge." Harris, 483 A.2d at 1384. In Vogel, disclosure to four third parties was not

sufficient to satisfy the publicity requirement. 327 A.2d at 137-138. The court in Vogel distinguished a series of other cases by demonstrating that in those cases the disclosures were made known to the general public. Id. at 137 n.14. It is not an invasion of a plaintiff's rights to communicate a private fact "to the plaintiff's employer, or to any other individual, or even to a small group." Id. at 137 citing W. Prosser, Handbook of the Law of Torts §117, at 810 (4th ed. 1971)(footnotes omitted)(emphasis added).

Gross emphasizes the disclosure of the reprimand to a non-police officer, Wallace Worth. Pls.' Resp. p.20; Pls.' Br. in Opp. to Defs.' Mot. to Dismiss ("Pls.' Opp.") p.16. But, like Mrs. Gross, Wallace Worth is not unconnected to the Department. Indeed, in an affidavit submitted by Plaintiff Gross, Mrs. Gross testified that she "knew Mr. Worth to be an attorney who represented or otherwise advised Police Chief Frank Taylor." Patricia Gross Aff. ¶ 5. Sharing information with one's attorney does not involve a disclosure likely to result in public knowledge. Plaintiff has failed to produce any evidence that Officer Gross' reprimand has been publicized.⁵ Accordingly,

⁵In addition, Gross fails to satisfy another element of the claim for invasion of privacy -- that the matter disclosed not be of legitimate concern to the public. Complaints about police officers and investigations of the misuse of public funds are matters of legitimate public concern. Santillo v. Reedel, 634 A.2d 264 (Pa. Super. 1993)(disclosure of complaint against police officer alleging sexual advances against a minor); Lee v. Mihalich, 630 F.Supp. 152, 155 (E.D.Pa. 1986), vacated on other grounds, 847 F.2d 66 (3d Cir. 1988)(disclosure of investigation of misuse of public funds). Gross argues that "there is no

Defendants' motion for summary judgment will be granted on Count Nine.

B. FAILURE TO TRAIN

In Count Eight, Gross alleges that the Borough of Emmaus and Chief Taylor failed to provide him with adequate training "on the use of the system and the applicability of the proscriptions of the Wiretap Act to the audio system and SOP No.13." Am. Compl. ¶ 52.⁶ This failure to train, according to Gross, resulted in the written reprimand and a violation of his "property and/or liberty interest in his reputation." Am. Compl. ¶ 54. In a §1983 action, the city is "only liable when it can be fairly said that the city itself is the wrongdoer." Collins, 503 U.S. at 122; see also Canton v. Harris, 489 U.S. 378, 389 (1989).

[I]t may happen that in light of the duties assigned to

legitimate public concern implicated by [the] reprimand" because "[Gross] is not running for public office" or "misus[ing] public funds." Pls.' Resp. p.21. I disagree.

There is a legitimate public interest in the lawful and efficient performance of police officers. This is true because police officers are not only public employees, but also the community's designated enforcers of its laws. Officer Gross' reprimand for ignoring Police Department policy and engaging in potentially unlawful conduct involving a local citizen is rightfully a matter of public concern. Plaintiff's argument on this point is unconvincing, perhaps most so because Plaintiff argues in other portions of the complaint that SOP No.13 violates citizens' rights. Am. Compl. ¶¶ 40-43. If Plaintiff genuinely believes this, he should welcome public scrutiny of not only the policy but also its implementation.

⁶ The typical failure to train claim is brought by a private citizen against the police. However, §1983 failure to train claims by state employees are cognizable. See Collins v. City of Harker Heights, 503 U.S. 115, 117-120 (1992).

specific officers or employees the need for more or different training is so obvious, and the inadequacy so likely to result in the violation of constitutional rights, that the policy makers of the city can reasonably be said to have been deliberately indifferent to the need.

Canton, 489 U.S. at 390 (footnote omitted). Such a situation would give rise to municipal liability for failure to train. Id.

Therefore, when determining whether Emmaus and its agent, Chief Taylor, are responsible for a failure to adequately train Gross,

the focus must be on the adequacy of the training program in relation to the tasks the particular officers must perform. That a particular officer may be unsatisfactorily trained will not alone suffice to fasten liability on the city, for the officer's shortcomings may have resulted from factors

other than a faulty training program.

Id. at 390-91 (citations omitted).

Defendants have presented uncontradicted testimony of an April 9th surveillance training session for the entire police department, of the distribution of the user's manuals and SOP No.13 to every officer, and of a month long practice period on the surveillance systems. Gross never claims that he did not receive the relevant materials and official training. Instead, Gross claims that he was not sufficiently trained in either wiretap law or SOP No.13. SOP No.13's requirements are clear, even after a cursory reading, and require no training in wiretap law. SOP No.13 simply requires an Emmaus Police Officer to inform a citizen he encounters that their conversation is being recorded. Pls.' P & A, Ex.A. Officer Gross' training was sufficient to communicate this requirement.

Gross has offered no evidence that there was a deficiency in the training program or that the deficiency caused his injury. Therefore, the court will grant Defendants' motion for summary judgment as to Count Eight.

C. PUBLIC DISCLOSURE

In Count Ten, Gross claims that Defendants' public disclosure of the reprimand violates (1) his constitutional right to privacy and (2) his constitutional liberty or property right to his reputation. Am. Compl. ¶ 62. After careful examination of the evidence in the light most favorable to Plaintiff, I conclude that he has failed to allege a cognizable deprivation of any constitutional privacy, property or liberty interests in his reputation.

1. Right to Privacy

The Constitution protects an individual's privacy interest in preventing the disclosure of certain types of personal information without consent. See Whalen v. Roe, 429 U.S. 589, 599 (1977). "[C]ourts have found that those with personal information in the control of the state retain constitutional protection against its inappropriate disclosure." Scheetz v. Morning Call, Inc., 747 F.Supp. 1515, 1521 (E.D. Pa. 1990) (citations omitted), aff'd, 946 F.2d 202 (3d Cir. 1991). However, this protection is not absolute. Fraternal Order of Police, Lodge No. 5 v. City of Philadelphia, 812 F.2d 105, 110

(3d Cir. 1987). This court must consider whether the type of information allegedly disclosed -- the fact that Gross violated SOP No.13 and was reprimanded for it -- is the type of information protected by the Constitution. See Scheetz, 946 F.2d at 206 n.5 (finding that "type of information made public not 'private' in the constitutional sense" and therefore cannot support a §1983 claim). The court concludes that it is not.

First, the information contained in the incident report that served as a basis for the reprimand was already a matter of public record. "The Pennsylvania courts, construing the Pennsylvania Right-to-Know Act, Pa.Stat.Ann. tit. 65, §66.1(2)(Purdon Supp.1990), have held that police blotters (which contain essentially the same information as incident reports) are public records within the meaning of the statute and must be made available to the public." Scheetz, 747 F.Supp. at 1531 (citations omitted)(emphasis added). Thus, Gross' reprimand is not encompassed by a constitutional right to privacy because the facts underlying the reprimand were already subject to public disclosure.

Second, Gross has no cognizable constitutional privacy interest in the reprimand itself. Flanagan v. Munger, 890 F.2d 1557, 1570-71 (10th Cir. 1989)(police chief's disclosure of officers' reprimands and reason for reprimands to media does not violate constitutional right to privacy). In Flanagan, a police chief revealed to the media the names of several officers who had been reprimanded and the off-duty conduct that triggered the

reprimands. The Court of Appeals for the Tenth Circuit was "unwilling to hold that a reprimand of a public employee is of a highly personal nature and creates a constitutional expectation of privacy." Id. at 1571. The court finds Flanagan's reasoning persuasive and applicable to the facts of this case.

Gross claims that Department regulations, policies, and standard operating procedures, as well as the Borough Code, 53 Pa. C.S.A. §45101 et seq., created a specific and legitimate expectation that the written reprimand would remain private and confidential. Am. Compl. ¶ 56. However, Gross has neither cited a particular provision of the Borough Code or Department regulations, nor offered any evidence or testimony in support of his claim of a reasonable expectation of privacy in the reprimand. Moreover, even if there was a policy, code, or regulation that deemed personnel files confidential, this fact alone would not create a constitutional privacy right. Flanagan, 890 F.2d at 1571 (citations omitted); see also Scheetz, 946 F.2d at 206-07 (existence of federal constitutional right to privacy is distinct from existence of state statutory or common law right to privacy).

2. 14th Amendment Due Process Claims

As an alternate constitutional ground for his §1983 claims, Gross points to the 14th Amendment's Due Process Clause. Gross presents both a procedural and a substantive due process claim. In the former, he attacks the disciplinary hearing as inadequate.

In the latter, he alleges that his liberty and property interest in his reputation have been violated by the reprimand's disclosure.

a. Procedural Due Process

The court's review of the procedural due process has two parts. "First, the Court must determine whether the asserted individual interests are encompassed within the fourteenth amendment's protection of 'life, liberty, or property'. . . . Second, if the protected interests are implicated, [the Court] must then decide what procedures constitute 'due process of law.'" Smith v. Borough of Pottstown, CA No. 96-1941, 1997 WL 381778, at *12 (E.D. Pa. June 30, 1997)(citations omitted). Gross' claim fails both prongs of the analysis.

i. Liberty Interest

Gross' claim of a liberty interest in his reputation is governed by Paul v. Davis, 424 U.S. 693 (1976). In Paul, the Court held that injury to reputation by itself was not a "liberty" interest protected by the 14th Amendment. Siegert v. Gilley, 500 U.S. 226, 233 (1991), citing, Paul, 424 U.S. at 708-709; see also Kelly v. Borough of Sayreville, NJ, 107 F.3d 1073, 1077-78 (3d Cir. 1997). Moreover, financial harm caused by the disclosure, absent the alteration of some additional interest, is insufficient to convert a reputation interest into a liberty interest. Id.

Gross alleges that the "reprimand which reflects poorly upon

his reputation, honor, integrity and could affect his interest in other employment opportunities." Pls.' Opp. pp.17-18 (emphasis added). But, the "possible loss of future employment opportunities is patently insufficient to satisfy the requirement imposed by Paul that a liberty interest requires more than mere injury to reputation." Clark v. Township of Falls, 890 F.2d 611, 620 (3d Cir. 1989); see also Sturm v. Clark, 835 F.2d 1009, 1012-1013 (3d Cir. 1987)(financial harm to an attorney (who dealt predominately with prison cases) caused by a loss of clients due to restriction of access to prison does not implicate liberty interest); Guthrie v. Borough of Wilkinsburg, 478 A.2d 1279, 1283 (Pa. 1984)(reprimand and loss of future opportunities insufficient to satisfy Paul standard). Since Gross has not alleged a cognizable injury to his liberty interest, his procedural due process claim cannot be based on this ground.⁷

ii. Property Interest

State law determines whether a property interest exists.

⁷Plaintiff argues that unlike in Paul, the applicable state law recognizes a legitimate liberty interest in reputation. Specifically, the Pennsylvania Constitution lists reputation among the "inherent and inalienable rights" that it protects. (Pa.Const. Art.I §1.) However, courts in this district have regularly rejected this argument. See Puricelli, 820 F.Supp. at 914-15; Lee, 630 F.Supp. at 155. Plaintiff attempts to distinguish Puricelli by arguing that the information there was a matter of public record. Pls.' Opp. p.15. This distinction is without import for two reasons. First, the incident report underlying the reprimand is accessible to the public. See §VI.C.1, supra. Second, the logic of Judge Brody's discussion of the Pennsylvania Constitution argument does not depend on whether the information was a matter of public record.

Brown v. Trench, 787 F.2d 167, 170 (3d Cir. 1986), citing, Board of Regents v. Roth, 408 U.S. 564 (1972). The Pennsylvania Borough Code provides that no borough police officer "shall be suspended, removed or reduced in rank except for the following reasons" 53 Pa. C.S.A. §46190. There has been no evidence presented that as a result of the reprimand Officer Gross has been suspended, removed or reduced in his rank. Officer Gross was not transferred to a new position nor were his duties changed in any way. Under Pennsylvania law, a reprimand does not implicate a property interest. Guthrie, 478 A.2d at 1282.

In Guthrie as in the instant action, police officers challenged the issuance of a reprimand. The court held that "the mere theoretical effect on possible promotions or future employment prospects is too abstract to constitute a property interest. Neither due process nor Local Agency Law can be viewed to protect such remote, future, indirect, or speculative rights." Id. (citations omitted); see also Linhart v. Glatfelter, 771 F.2d 1004, 1008 (7th Cir. 1985)(reprimand placed in police officer's file without any demotion does not implicate constitutional property interest); Terzuolo v. Bd. of Supervisors of Upper Merion Twp., 586 A.2d 480, 482 (Pa. Commw. 1991)(written reprimand with slight pay decrease is not property deprivation). Therefore, Gross has failed to raise a genuine issue of material fact concerning the deprivation of a property right protected by state law.

iii. Reprimand Procedure

First, although Gross claims that "he received no prior notice" for the disciplinary hearing, his own affidavits contradict this assertion. Pls.' Opp. p.14; Gross Aff. ¶ 16. In fact, he was told in advance by Chief Taylor that the June 6th incident would be discussed at the meeting. Gross Aff. ¶ 16. Given this notice and that Plaintiff does not contest the fact that he was given a fair opportunity to be heard, any notice requirements were satisfied.

Second, Gross was given all the procedure to which he was entitled. The Third Circuit Court of Appeals has held that a hearing by a public employer will satisfy due process requirements if it accords with bargained for grievance procedures. Dykes v. Southeastern Pa. Transp. Auth., 68 F.3d 1564, 1571 (3d Cir. 1995). Plaintiff could have sought recourse by filing an appeal. Indeed, Gross testified that he may have told Officer Hoats about the reprimand in order to prepare an appeal in conformity with the established grievance procedures. Gross Aff. ¶ 14. Where an individual has access to a grievance appeal procedure, there is no violation of procedural due process. Buttitta v. City of Chicago, 9 F.3d 1198, 1206 (7th Cir. 1993); Narumanchi v. Bd. of Trustees of Conn. State Univ., 850 F.2d 70, 72 (2d Cir. 1988). The hearing and appeals process available to Officer Gross offered appropriate and proportional due process protection for the interests at stake. See Morrissey v. Brewer, 408 U.S. 471, 481 (1972).

Third, Gross challenges neither the truth of the account of the underlying incident nor the accuracy of the reprimand. A failure to allege that the information disclosed by an employer is false is fatal to any claim that an individual should have been given a hearing. Codd v. Velger, 429 U.S. 624, 627 (1977); see also Homar v. Gilbert, 89 F.3d 1009, 1022 (3d Cir. 1996), rev'd on other grounds sub nom. Gilbert v. Homar, 117 S.Ct. 1807 (1997). "Only if the employer creates and disseminates a false and defamatory impression about the employee in connection with his termination is such a hearing required." Codd, 429 U.S. at 628.

b. Substantive Due Process

To sustain his substantive due process claim, Officer Gross must show that he was arbitrarily deprived of a fundamental right. See Austin v. Neal, 933 F.Supp. 444, 451 (E.D. Pa. 1996). A deprivation is arbitrary "only when it is 'egregious' or 'irrational.'" Id. (citation omitted). Furthermore, "the substantive component of the Due Process Clause can only be violated by governmental employees when their conduct amounts to an abuse of official power that 'shocks the conscience.'" Fagan v. City of Vineland, 22 F.3d 1296, 1303 (3d Cir. 1994)(en banc)(citations omitted). Gross never claims that the disciplinary hearing was arbitrary or capricious. Moreover, the court cannot see how the Defendants' actions relating to the hearing could ever be found to shock the conscience. Therefore,

Plaintiff's substantive due process claim fails.

VII. FIRST AMENDMENT

Count Eleven of the Amended Complaint asserts that Taylor violated the collective bargaining agreement and the Pennsylvania Public Employee Relations Act ("PERA"), 43 Pa. C.S.A. §1101.101, et seq., by attending Association meetings. In particular, Plaintiffs allege that Taylor's presence at the June 1996 Association meeting at which Taylor's implementation of a new overtime policy was "subject to discussion by rank and file members of the Association . . . resulted in Association members being intimidated or coerced from engaging in any discussions reflecting upon Taylor in a negative manner[.]" Am. Compl.

¶ 68. Plaintiffs contend that Taylor's presence at the meetings in general, and at the June 1996 meeting in particular, violates their rights to free speech and association, and ask the court to permanently enjoin Taylor from attending Association meetings for as long as he remains chief of police.⁸

⁸ The court has doubts about its jurisdiction over this count. Plaintiffs seem to allege an unfair labor practice claim rather than a First Amendment violation. Indeed, Plaintiffs have not described a First Amendment injury in this case without reference to Taylor's alleged violation of the PERA. See Am. Compl. ¶ 69 ("Taylor knew or should have known that his attendance at Association meetings was prohibited conduct, pursuant to the [PERA]"); Pls.' Opp. p.18 n.9 ("[U]nder the [PERA], Taylor's presence at the meetings would be prohibited if it had the effect of interfering with the administration of the employee organization [.]"). Under the PERA, the Pennsylvania Labor Relations Board ("PLRB") has exclusive jurisdiction over unfair labor practices. 43 Pa. C.S.A. §1101.1301. However, the Pennsylvania Supreme Court recognizes an exception to exclusive

Plaintiffs do not allege, and discovery has not revealed, that Taylor attempted to regulate or prohibit the speech of any Association members at the meetings. There is no evidence that Plaintiffs or any Association members were disciplined or threatened with discipline for statements they made at the meetings. The First Amendment claim rests entirely on one allegation that Taylor's presence at the meetings chilled Plaintiffs' speech. In support of this claim, Plaintiffs have presented evidence that another officer present at the June meeting, Officer Garloff, stated that he felt intimidated from speaking out at the meeting. Boynton Supp. Aff. ¶ 9.⁹

This vague charge of chilled expression cannot sustain Plaintiffs' First Amendment claim. In Clark v. Township of Falls, a municipal employee claimed that he stopped attending township meetings and was chilled in the exercise of his First Amendment rights because of threats that he would lose his job if he did not keep quiet. 890 F.2d 611, 622 (3d Cir. 1989). The

PLRB jurisdiction when constitutional claims are involved. City of Philadelphia v. District Council 33, 598 A.2d 256, 258-59 (Pa. 1991) (when complaint alleges breach of contract and unconstitutional impairment of contract in conjunction with failure to bargain in good faith, Court of Common Pleas had proper jurisdiction). In addition, the court of appeals has noted that a First Amendment claim under section 1983 provides remedies unavailable under the PERA. Labov v. Lalley, 809 F.2d 220, 223 (3d Cir. 1987). Therefore, the court will exercise jurisdiction over Plaintiffs' constitutional claims, but will avoid any consideration of the labor issues involved.

⁹Officer Garloff's own affidavit does not mention feeling intimidated at the June 1996 meeting or making the statement Boynton ascribes to him.

court of appeals granted judgment as a matter of law for the defendant because the record contained no "evidence of acts . . . that could reasonably be construed as a 'threat' of retaliation for . . . First Amendment activities." Id. The court held that the plaintiff needed to present evidence that someone authorized by the township had directed that threats be made against the plaintiff to prevent him from attending meetings or speaking out. Id. As in Clark v. Township of Falls, Plaintiffs in this case have presented no evidence of threats made to prevent them from speaking freely at Association meetings. Plaintiffs have alleged a "subjective chill" on their rights, but these allegations "are not an adequate substitute for a claim of specific present objective harm or a threat of specific future harm[.]" Laird v. Tatum, 408 U.S. 1, 13-14 (1972). Therefore, summary judgment is appropriate on Plaintiffs' First Amendment claims.

VIII. ANONYMOUS HARASSMENT OF BOYNTON

In Count Twelve of the Amended Complaint, Boynton asserts that he has been the target of anonymous harassment by other police officers. This harassment has included the posting of cartoons and drawings intended to "defame, embarrass, humiliate or otherwise injure Boynton and his reputation and to portray Boynton in a false light." Am. Compl. ¶ 74. Boynton charges that Taylor has deliberately failed to prevent such harassment, and has failed to enforce a municipal policy forbidding the posting of such material on police department property. Boynton

sues pursuant to 42 U.S.C. §1983, asserting that Taylor's indifference has injured Boynton's liberty and property right in his reputation, and has caused him emotional distress, humiliation, and financial harm.

For the reasons discussed in section VI, above, Boynton's claim of an injury to his liberty and property interest in his reputation must fail. Boynton has failed to explain what procedural protection he was denied, and has failed to allege any change of status which might satisfy the "stigma-plus" requirement of Paul v. Davis. His claim is "nothing more than a state defamation action masquerading as a Section 1983 claim." Nicole K. v. Upper Perkiomen School Dist., 964 F. Supp. 931, 939 (E.D. Pa. 1997)(citation omitted). Moreover, Boynton has not presented the court with any evidence supporting his claim. Neither of Boynton's affidavits mention the harassment allegations, let alone provide support for his claims of financial injury and emotional distress. Therefore, summary judgment will be granted on Count Twelve.

IX. CONCLUSION

Plaintiffs have failed to present evidence that Defendants intercepted any of their conversations in violation of the Constitution or federal or state wiretap law. Furthermore, Plaintiffs have failed to demonstrate that they had a reasonable expectation of privacy in their on-duty conversations in the police cars. The court will therefore grant Defendants' motion

for summary judgment on Counts One through Five of the Amended Complaint, and will deny Plaintiffs' motion for partial summary judgment on their reasonable expectation of privacy.

The court has determined that Plaintiffs' claims of criminal and civil liability arising from their implementation of SOP No.13 are not yet ripe. Therefore, the court will dismiss Counts Six and Seven for want of subject matter jurisdiction.

Plaintiff Gross has failed to demonstrate that Defendants deprived him of any constitutional liberty or property interest in connection with the reprimand he received for violating SOP No. 13, so the court will grant Defendants summary judgment on Counts Eight and Ten of the Amended Complaint. Because Gross has presented no evidence that Defendants disclosed his reprimand in a manner that could constitute "publicity" under state law, the court will also grant summary judgment on Count Nine.

Plaintiffs have failed to present evidence that the presence of Defendant Taylor at Association meetings led either to retaliation against them or to a chilling of their First Amendment rights. Therefore, the court will grant summary judgment for Defendants on Count Eleven.

Finally, Boynton has not demonstrated that the anonymous harassment he suffered constituted a deprivation of a property or liberty interest, so the court will grant Defendants' summary judgment on Count Twelve of the Amended Complaint.

An appropriate Order follows.

BY THE COURT:

Edward N. Cahn, Chief Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SCOTT E. GROSS and :
GARY L. BOYNTON :
 :
 v. : Civil Action
 : No. 96-6514
 :
FRANK J. TAYLOR, et al. :

O R D E R

AND NOW, this 5th day of August, 1997, upon consideration of Defendants' Motion to Dismiss, Defendants' Motion for Summary Judgment, Plaintiffs' Motion for Partial Summary Judgment, and all responses thereto, IT IS ORDERED as follows:

1. Defendants' Motion for Summary Judgment is GRANTED as to Counts One, Two, Three, Four, Five, Eight, Nine, Ten, Eleven, and Twelve; and judgment is hereby entered in favor of Defendants on those counts;

2. Counts Six and Seven of the Amended Complaint are hereby DISMISSED for lack of subject matter jurisdiction;

3. Plaintiffs' Motion for Partial Summary Judgment is DENIED; and

4. The Clerk is directed to close the docket of the above-captioned case for statistical purposes.

BY THE COURT:

Edward N. Cahn, Chief Judge