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Wire-Tapping Criminal Suspects: Should the Scope of Attorney-Client Privilege Extend that Far?

By: Jenna Ventola

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This paper is submitted to Professor Ambrosio in satisfaction of the requirements of Law and Morality.

Wire-Tapping Criminal Suspects: Should the Scope of Attorney-Client Privilege Extend that Far?

By Jenna Ventola¹

I. Introduction

The Attorney-client privilege protects from disclosure of confidential communications between an attorney and his or her client. Attorney-client privilege is the oldest evidentiary privilege.² The primary justification for privilege is that it encourages the free flow of information from the client to the attorney.³ If clients are concerned about lawyers reporting their conduct to the authorities, then he or she is unlikely to disclose all relevant facts, and this makes an attorney's job extremely difficult. In 1960, New Jersey passed statute § 2A:84A-20. According to the statute, "communications between a lawyer and his client in the course of that relationship and in professional confidence, are privileged, and a client has a privilege (a) to refuse to disclose any such communication, and (b) to prevent his lawyer from disclosing it, and (c) to prevent any other witness from disclosing such communication if it came to the knowledge of such witness (i) in the course of its transmittal between the client and the lawyer, or (ii) in a manner not reasonably to be anticipated, or (iii) as a result of a breach of the lawyer-client relationship, or (iv) in the course of a recognized confidential or privileged communication between the client and such witness."⁴ The only time this sacred privilege can be pierced is

¹ The author is currently a 2L Day Student at Seton Hall University School of Law. At the time of this writing, the author had received the 2016-2017 Academic Excellence Award in Professional Responsibility.

² Upjohn Co. v. United States, 449 U.S. 383, 389 (1981).

³ Fellerman v. Bradley, 99 N.J. 493, 498 (1995).

⁴ N.J. Stat. § 2A:84A-20 (LexisNexis, Lexis Advance through New Jersey 217th Second Annual Session, L. 2017, c. 237 (except c. 231), and J.R. 18).

contemplation of the parties at the time.”³⁴ Historically, attorney-client privilege was confined to communications that are directly related to pending or anticipated litigation.³⁵

Up until 1969, the ABA Canons of Ethics represented the official position of the bar on matters of ethics.³⁶ In 1969, the American Bar Association’s House of Delegates adopted the Model Code of Professional Responsibility.³⁷ “As originally drafted, the Code provided that a lawyer was permitted, but not required to reveal a confidence or secret of a client.”³⁸ However, this provision made no reference in disclosing fraud by the client, so the code was amended.³⁹ In 1974, the bar added the qualification “except when the information is protected as a privileged communication.”⁴⁰ The legislative history indicates that the bar intended to narrow the fraud exception and enlarge the domain of secrecy.⁴¹ As this statute has evolved over time, the ABA Committee of Professional Ethics has made it clear that the value of confidentiality takes precedence over the truth.⁴²

III. A Brief History of Wiretapping

Wiretapping has been around as long as the telegraph and the telephone.⁴³ After the invention of the telegraph and the telephone in 1837, private detectives tapped wires for their

³⁴ Id.

³⁵ Id.

³⁶ Id. at 1065.

³⁷ ABA Model Code of Professional Responsibility (1969).

³⁸ Id. at 1066.

³⁹ Id.

⁴⁰ Id. at 1067.

⁴¹ Id.

⁴² Id.

⁴³ ABA Section of Litigation 2012 Section Annual Conference April 18-20, 2012: The Lessons of the Raj Rajaratnam Trial: Be Careful Who’s Listening.

through the following exceptions: “Such privilege shall not extend (a) to a communication in the course of legal service sought or obtained in aid of the commission of a crime or a fraud, or (b) to a communication relevant to an issue between parties all of whom claim through the client, regardless of whether the respective claims are by testate or intestate succession or by inter vivos transaction, or (c) to a communication relevant to an issue of breach of duty by the lawyer to his client, or by the client to his lawyer. Where two or more persons have employed a lawyer to act for them in common, none of them can assert such privilege as against the others as to communications with respect to that matter.”⁵ This means that unless the lawyer helps his or her client cover up a past crime, or to commit an ongoing or future crime, their communications are completely privileged, unless waived.

II. The History of Attorney-Client Privilege

“The law of attorney-client privilege is the product of judicial decisions, augmented by statutes that usually incorporate the decisional law.”⁶ The policy of attorney-client privilege dates back to the 1700s.⁷ Even during this era, the privilege was created “to promote freedom of consultation of legal advisors by clients, the apprehension of compelled disclosure by the legal advisors must be removed; and hence the law must prohibit such disclosure except on the client’s consent.”⁸ During this time in England, there was a distinction between barristers and attorneys.⁹ The term “counsel” referred to barristers because they presented the evidence and argued the law in court, whereas the term “counselor” was used to refer to attorneys because they prepared cases

⁵ Id.

⁶ Hazard, Geoffrey C. Jr., "An Historical Perspective on the Lawyer-Client Privilege" (1978).

⁷ Id. at 1069.

⁸ Id.

⁹ Id. at 1070.

for litigation, advised clients, and drafted documents.¹⁰ In Spark v. Middleton, the lawyer was required to testify to matters “he knew before he was Counsel, or that came to his knowledge since by other persons, and matters which he knew of his own knowledge.”¹¹ At this point in time, privilege applied only to matters learned while counsel.¹² In other cases in this era, legal advisors had to testify if it yielded the truth. In Radcliffe v. Fursman, testimony was elicited from a witness who had acted as a legal advisor.¹³ During the trial, the testimony sought was related to giving legal advice rather than the representation of the client at trial.¹⁴ The argument against the admissibility of the evidence was that the communications were meant for “private instruction and information only, in order to direct parties in the conduct of their affairs...no counselor or attorney can be obliged, or ought to discover any matter which his client reveals to him.”¹⁵ The opposing argument was that disclosure of the testimony would yield the truth, and the House of Lords agreed, so this argument prevailed.¹⁶ The truth was seen as more important than attorney-client privilege.

In 1743, the case of Annesley v. Anglesea, nearly wiped out attorney-client privilege.¹⁷ Both sides acknowledged the general principal of attorney-client privilege—that information coming to the knowledge of an attorney in connection with the representation of a client is not subject to disclosure.¹⁸ The dispute in this case focused on whether a more precise definition of

¹⁰ Id.

¹¹ Id. at 1071.

¹² Id.

¹³ Id. at 1073.

¹⁴ Id.

¹⁵ Id.

¹⁶ Id.

¹⁷ Id.

¹⁸ Id.

attorney-client privilege would include or exclude what the attorney had learned.¹⁹ The plaintiff argued that the information to be elicited from the attorney was not imparted to him in connection with the pending litigation, the information was not essential to the matter in which the attorney was consulted, and that privilege should not apply to communication revealing the client's intention to commit a wrong.²⁰ Conversely, defense counsel argued that all communications between client and attorney are privileged, with some possible exceptions.²¹ Ultimately, the Court allowed the testimony by the attorney to be received because the communication was not necessary to securing the attorney's assistance.²² "In other words, a communication by a client to an attorney is privileged if it is directly germane to securing assistance in pending or prospective litigation, unless the litigation itself would amount to an abuse of process, but the privilege ceases to apply after the matter in question has been examined at trial."²³ This case established a very narrow interpretation of attorney-client privilege.

In 1833, attorney-client privilege received a redefinition that enlarged its potential scope.²⁴ In Bolton v. Corporation of Liverpool and Greenough v. Gaskell, Lord Brougham held all communications between the attorney and the client as immune from disclosure.²⁵ To reach this conclusion, he had to narrow the scope of case law, and completely ignored the holding of Annesley v. Anglesea. Lord Brougham stated in Bolton: "It seems plain that the course of justice must stop if such a right [of discovery of submissions of counsel] exists. No man will dare to

¹⁹ Id. at 1075.

²⁰ Id. at 1075-76.

²¹ Id.

²² Id. at 1078.

²³ Id.

²⁴ Id. at 1083.

²⁵ Id. at 1084.

consult a professional adviser with a view to his defence or to the enforcement of his rights.”²⁶

This definition of privilege presents a value choice between the protection of privacy and the suppression of the truth.²⁷ Other English cases struggled with this dilemma as well. In, The Queen v. Cox and Railton, a solicitor was called to testify to communications with his clients to show that a transfer of assets was fraudulent, and the Court denied application of attorney-client privilege.²⁸ “The Court was careful to distinguish between consultations for the purpose of receiving guidance to commit a proposed crime and communications after the commission of the crime for the legitimate purpose of being defended.”²⁹

The first American case regarding attorney-client privilege was in the 1820s in Dixon v. Parmelee, which endorsed the narrow view of attorney-client privilege under Annesley v. Anglesea.³⁰ Decades later, in Bank of Utica v. Mersereau, Chancellor Walworth concluded that attorney-client privileged applied in a case regarding a fraudulent scheme.³¹ However, three years later, Judge Selden relied on Annesley v. Anglesea to hold that attorney-client privilege did not protect testimony from an attorney offered to prove that his client was an undisclosed principal and as such liable on an obligation in favor of plaintiff.³² The Court considered the privilege inapplicable when the lawyer is acting as a business agent for his client.³³ Judge Selden’s reasoning was that “originally no communications were protected except such as related to the management of some suit or judicial proceeding in court, then actually pending, or in the

²⁶ Id.

²⁷ Id.

²⁸ Id. at 1087.

²⁹ Id.

³⁰ Id. at 1087-88.

³¹ Id. at 1089.

³² Id. at 1090.

³³ Id.

clients, and even businesses would tap each other's wires.⁴⁴ State legislatures quickly noticed the intrusive nature of wiretapping, and implemented legislation to prohibit it.⁴⁵ Whether or not wiretapping was constitutionally permissible became an issue during the Prohibition Era.⁴⁶ "Despite the surge in crime during Prohibition, federal law enforcement generally disapproved of wiretaps to obtain evidence in criminal investigations, and the Justice Department actually banned the practice."⁴⁷ Eventually in 1934, Congress passed The Communications Act of 1934, which made wiretapping a federal criminal offense and made wiretap evidence inadmissible in court.⁴⁸ For the next three decades, wiretapping would remain illegal and a stigmatized investigative technique.⁴⁹ In the late 1960s, there was a shift in attitude towards wiretapping because the government was struggling to enforce laws against organized crime and drug trafficking.⁵⁰ Eventually, modern advances in technology, the government's increased ability to intercept communications, and criminal prosecutions against white-collar crime such as insider trading, evolved wiretapping into the laws that we have today.⁵¹

IV. The Intersectionality of Wiretapping and Attorney-Client Privilege

In recent years, wiretapping of criminal defendants has become more prominent in criminal investigations. To prevent privileged communications from being used as evidence, in 1968, the New Jersey Legislature passed The New Jersey Wiretapping and Electronic

⁴⁴ Id. at 2.

⁴⁵ Id.

⁴⁶ Id.

⁴⁷ Id. at 3.

⁴⁸ Id.

⁴⁹ Id.

⁵⁰ Id.

⁵¹ Id. at 5.

Surveillance Act to prevent such recordings from being admitted into evidence. The act provides:

“Any aggrieved person in any trial, hearing, or proceeding in or before any court or other authority of this State may move to suppress the contents of any intercepted wire, electronic or oral communication, or evidence derived therefrom, on the grounds that:

- **a.** The communication was unlawfully intercepted;
- **b.** The order of authorization is insufficient on its face;
- **c.** The interception was not made in conformity with the order of authorization or in accordance with the requirements of section 12 of P.L.1968, c.409 (C.2A:156A-12).”⁵²

Under this Act, “no such interception shall be made unless the attorney general or his designee or a county prosecutor within his authority determines that there exists a reasonable suspicion that evidence of criminal conduct will be derived from such interception.”⁵³ Therefore, pursuant to this Act, attorney-client privilege extends to wire-tapping. There is however, one exception to this rule—New Jersey Statute §2A:156A-11. This statute provides: If the facilities from which, or the place where, the wire, electronic or oral communications are to be intercepted are being used, or are about to be used, or are leased to, listed in the name of, or commonly used by, a licensed physician, a licensed practicing psychologist, an attorney-at-law, a practicing clergyman, or a newspaperman, or is a place used primarily for habitation by a husband and wife, no order shall be issued unless a showing that the licensed physician, licensed practicing psychologist, attorney-at-law, practicing clergyman or newspaperman is personally engaging in or was engaged in over a period of time as a part of a continuing criminal activity or is

⁵² N.J. Stat. § 2A:156A-21 (LexisNexis, Lexis Advance through New Jersey 217th Second Annual Session, L. 2017, c. 237 (except c. 231), and J.R. 18).

⁵³ State v. Worthy, 141 N.J. 368, 376 (1995).

committing, has or had committed or is about to commit an offense as provided in section 8 of P.L.1968, c.409 (C.2A:156A-8) or that the public facilities or the place used primarily for habitation by a husband and wife are being regularly used by someone who is personally engaging in or was engaged in over a period of time as a part of a continuing criminal activity or is committing, has or had committed or is about to commit such an offense.⁵⁴ Therefore, any wiretapping that contains privileged communications remains privileged unless the attorney is helping the client in the commission of a crime.

In State v. Ates, a telephone call between a defendant and his attorney was recorded by the authorities.⁵⁵ The defendant argued that his right to effective assistance of counsel had been compromised, and the indictment should be dismissed.⁵⁶ The Court denied the defendant's motion to dismiss, but held that the entire phone call between the defendant and his attorney was inadmissible in court.⁵⁷ The Court concluded that, "the improper interception of the privileged attorney-client communication was inadvertent rather than intentional."⁵⁸ The Court reasoned that the State should have brought this interception to the attention of the Court, and since they did not do so, the evidence was to be suppressed.⁵⁹

Conversely, in State v. Sugar, law enforcement officers intentionally eavesdropped on the defendant and his attorney and subsequently charged him with murder.⁶⁰ The trial court dismissed the charges against the defendant and held that the eavesdropping denied the

⁵⁴ N.J. Stat. § 2A:156A-11 (LexisNexis, Lexis Advance through New Jersey 217th Second Annual Session, L. 2017, c. 237 (except c. 231), and J.R. 18).

⁵⁵ State v. Ates, 426 N.J. 614, 617 (Super. Ct. 2009).

⁵⁶ Id. at 619.

⁵⁷ Id. at 626.

⁵⁸ Id. at 633.

⁵⁹ Id.

⁶⁰ State v. Sugar, 84 N.J. 1, 5 (1980).

defendant the effective assistance of counsel in violation of the Sixth Amendment.⁶¹ The Appellate Court reversed the trial court's finding and held that because the defendant did not claim that his confidence in his attorney was impaired and it did not appear the trial strategy was disclosed, dismissal of the indictment was not required.⁶² The Supreme Court ultimately remanded for further proceedings and enjoined the State from conducting any grand jury proceedings until the trial court ruled on the suppression of tainted evidence and witnesses from grand jury deliberations.⁶³ The Court reasoned that the appropriate remedy for official intrusion of attorney-client privilege is dismissal of prosecution when the intrusion destroys the relationship between the attorney and client, or reveals the defendant's trial strategy.⁶⁴ Since the conversation did not reveal the defendant's trial strategy, the Court did not dismiss the indictment, but remanded for proceedings to suppress the evidence.⁶⁵

Similarly, in State v. Santiago, a court reporter was reassigned to another matter, and while waiting for another reporter, conversations between the defendant and his attorney were recorded on the courtroom's sound system.⁶⁶ Defendant's counsel moved to dismiss the indictment alleging that the right to a fair trial and effective assistance of counsel had been compromised.⁶⁷ The Court held that there was no violation of the Sixth Amendment because the recording was unintentional.⁶⁸ Since the recording was unintentional, neither directly or indirectly State action, nor was there any transmission of the conversations to the prosecution, no

⁶¹ Id. at 9.

⁶² Id. at 10.

⁶³ Id. at 26.

⁶⁴ Id. at 22.

⁶⁵ Id.

⁶⁶ State v. Santiago, 267 N.J. 432, 433 (Super. Ct. 1993).

⁶⁷ Id.

⁶⁸ Id. at 437.

prejudice was shown, and there was no realistic possibility of injury to the defendant.⁶⁹ The Court explained that: “Because intrusions into the attorney-client relationship are not per se unconstitutional, establishing a Sixth Amendment violation requires some showing of prejudice in terms of injury to the defendant or benefit to the state. To establish a Sixth Amendment violation, it must be determined: (1) whether the government's intrusion is intentional; (2) whether the prosecution obtains confidential information pertaining to trial preparation and defense strategy as a result of the intrusion; and (3) whether the information obtained produces, directly or indirectly, any evidence used at trial or is used in some other way to the defendant's substantial detriment.”⁷⁰ “A Sixth Amendment violation cannot be established without a showing that there is a realistic possibility of injury to defendant or benefit to the state as a result of the government's intrusion into the attorney-client relationship.”⁷¹

In State v. Worthy, an informant recorded telephone conversations with defendant, which incriminated the defendant in drug offenses for which he and his co-defendants were indicted.⁷² The defendant moved to suppress the recordings, and the trial court granted the motion, finding that the recordings were obtained in violation of the New Jersey Wiretap and Electronic Surveillance Control Act.⁷³ The Appellate Court and ultimately the Supreme Court affirmed, holding that the Act applied in this case because the calls, although they originated from an out-of-state telephone, involved conversations with a person in the state.⁷⁴ The Court explained that: The New Jersey Wiretap and Electronic Surveillance Control Act, N.J. Stat. Ann. § 2A:156A-3,

⁶⁹ Id.

⁷⁰ Id.

⁷¹ Id. at 438.

⁷² State v. Worthy, 141 N.J. 368, 371 (1995).

⁷³ Id. at 379.

⁷⁴ Id. at 380.

applies to the interception of out-of-state telephone calls when a person located in New Jersey is a party, when the interception is undertaken for the purpose of investigating criminal activity in New Jersey, and when New Jersey law enforcement officers direct, or cooperate in, the interception.”⁷⁵ “The New Jersey Wiretap and Electronic Surveillance Control Act (Act), N.J. Stat. Ann. § 2A:156A-21a, provides that an aggrieved person may move to suppress the contents of any intercepted wire, electronic, or oral communication, or evidence derived therefrom, on the grounds that the communication was unlawfully intercepted. If the motion is granted, the entire contents of all intercepted wire, electronic or oral communications obtained during or after any interception which is determined to be in violation of the act or evidence derived therefrom, shall not be received in the trial, hearing, or proceeding.”⁷⁶

Based on the statutes and the case law, it is clear that the attorney-client privilege is sacred, but unintentional violation of the privilege cannot be used as a sword to dismiss a criminal indictment. This means that any conversation between an attorney and his or her client are inadmissible in court, but there are exceptions to this rule.

V. Exceptions to Attorney-Client Privilege and The New Jersey Wiretapping and Electronic Surveillance Control Act

There are certain forms of communications that are not privileged between an attorney and his or her client. New Jersey Statue §2A:84A-20 provides: “Such privilege shall not extend (a) to a communication in the course of legal service sought or obtained in aid of the commission of a crime or a fraud, or (b) to a communication relevant to an issue between parties all of whom

⁷⁵ *Id.* at 379.

⁷⁶ *Id.* at 380.

claim through the client, regardless of whether the respective claims are by testate or intestate succession or by inter vivos transaction, or (c) to a communication relevant to an issue of breach of duty by the lawyer to his client, or by the client to his lawyer. Where two or more persons have employed a lawyer to act for them in common, none of them can assert such privilege as against the others as to communications with respect to that matter.”⁷⁷

In State v. Terry, a husband and wife were charged with conspiracy to manufacture, possess, and distribute drugs.⁷⁸ The Appellate Court held that the Wiretapping and Electronic Surveillance Control Act did not require a special need to wiretap a cell phone used by a married person.⁷⁹ The Court explained that interception in this case did not vitiate the marital communications privilege because the statute provides that no otherwise privileged communication intercepted under the Wiretap Act would lose its privileged character.⁸⁰ In response, the trial court adopted a crime-fraud exception to the marital communications privilege (relying on the crime-fraud exception to attorney-client privilege).⁸¹ However, the Appellate Court rejected this, explaining that such an exception to a privilege enacted by the legislature could be added only by rule or statute pursuant to New Jersey’s Evidence Act.⁸² The court explains that, “N.J.S.A. § 2A:156A-11 does not require a showing of special need to wiretap a cellphone merely because it is registered to or used by a married person, even if the married person uses the cellphone to communicate with his or her spouse.”⁸³ The court reasons that the

⁷⁷ N.J. Stat. § 2A:84A-20 (LexisNexis, Lexis Advance through New Jersey 217th Second Annual Session, L. 2017, c. 237 (except c. 231), and J.R. 18).

⁷⁸ State v. Terry, 430 N.J. Super. 587, 589 (Super. Ct. App. Div. 2013).

⁷⁹ Id.

⁸⁰ Id. at 591.

⁸¹ Id. at 593.

⁸² Id. at 610.

⁸³ Id. at 596.

fact that the spousal testimonial privilege was at issue in other cases does not mean that the court is free to create exceptions to other privileges.⁸⁴ The fact that the Legislature codified a crime-fraud exception to the attorney-client privilege does not mean that the court can add that exception to the marital-communications privilege because the privileges are akin.⁸⁵ Essentially, the trial court did not have the authority to add the crime-fraud exception to the marital communications privilege.⁸⁶

In State v. Mazzarisi, the police recorded conversations between the defendant and his attorney.⁸⁷ The tape recording had occurred after charges had been filed against the defendant when he appeared with his attorney to turn himself into the police.⁸⁸ The Court held that when considering the admissibility of a recording pertaining a partial omission of guilt, the trial court must employ a two-part analysis: it must determine if the omission is unduly prejudicial, focusing on the evidentiary purposes for which the recording is being offered, and if in its discretion, the Court finds the omission unduly prejudicial, the Court must then consider whether it renders all or only some of the recording untrustworthy, and suppress only the portion that is deemed untrustworthy.⁸⁹ The Court ultimately reversed the order dismissing the indictment because neither the search warrants nor the indictment were based on any information revealed in the conversation between the defendant and his attorney, and thus the Sixth Amendment was not violated.⁹⁰ The court reasoned that, “The State must be in no better position than it would have enjoyed had no illegality occurred. However, even when there is a Sixth Amendment,

⁸⁴ Id. at 610.

⁸⁵ Id.

⁸⁶ Id.

⁸⁷ State v. Mazzarisi, 430 N.J. Super. 433, 438 (Super. Ct. App. Div. 2015).

⁸⁸ Id.

⁸⁹ Id. at 458.

⁹⁰ Id.

violation, the general rule applies that remedies should be tailored to the injury suffered from the constitutional violation and should not unnecessarily infringe on competing interests. The role of the exclusionary remedy employed by the Supreme Court in *Sugar I* is twofold: to vindicate defendant's constitutional rights and to deter police from such conduct in the future. For the prosecution to proceed, it must be carefully purged of all taint from investigatory excess."⁹¹

In *National Utility Service, Inc. v. Sunshine Biscuits, Inc.*, the defendant (a corporation) asserted attorney-client privilege, but inadvertently produced a copy of a memo from its in-house counsel.⁹² The memo stated that there was an existing contract between defendant and plaintiff.⁹³ The defendant filed an affirmative defense that there was no contract between the two parties, and the plaintiff sought to retain the memo as a crime-fraud exception to attorney-client privilege.⁹⁴ The court found that the pre-litigation memorandum prepared by defendant's in-house counsel to its controller was neither discoverable nor subject to use by plaintiff, under the crime-fraud exception under the attorney-client privilege because it embodied advice inconsistent with a legal theory later developed by litigation counsel.⁹⁵ The court reasoned that: "The crime or fraud exception to the attorney-client privilege is interpreted broadly. Confederating with clients to allow court and counsel to labor under a misapprehension as to the true state of affairs; countenancing by silence the violation of a court order and aiding and abetting the continued contempt of another, are all frauds within the meaning of N.J. R. Evid. 403(2)(a). There is no reason to believe that the use of the word "fraud" in that rule is to be

⁹¹ Id.

⁹² Nat'l Util. Serv., Inc. v. Sunshine Biscuits, Inc., 301 N.J. Super. 610, 613 (Super. Ct. App. Div. 1997).

⁹³ Id.

⁹⁴ Id.

⁹⁵ Id. at 619.

limited to conventional notions of tortious frauds. Acts constituting fraud are as broad and as varied as the human mind can invent. Deception and deceit in any form universally connote fraud. Public policy demands that the "fraud" exception to the attorney-client privilege as used in N.J. R. Evid. 504 be given the broadest interpretation."⁹⁶ It further explained that: "The initial reaction of in-house counsel cannot be deemed to bind the legal and factual contentions raised by the attorneys retained to defend the litigation. The burden of establishing the elements of the crime fraud exception to the attorney-client privilege is upon the person seeking to overcome the privilege. The person seeking access to the communication must present a prima facie case for the exception to apply. The showing must be made by evidence other than the contested communication itself."⁹⁷ Essentially, the court held that the exception did not apply because the memo was different from what the trial counsel asserted an affirmative defense arguably inconsistent with the legal position embodied in the memo.⁹⁸

Based on the history of the statute and the available case law, it is clear there are exceptions to the attorney-client privilege. In cases of inadvertent recordings, the prosecution is unable to admit evidence from these recordings. Attorney-client privilege is seen as sacred in the legal profession. While the policy justifications are clear—lawyers want their clients to feel comfortable with them so clients engage in honest and open communication with them so lawyers can zealously advocate on their behalf—other concerns must be considered: Should attorney-client privilege extend to unintentional wire-tapping? If an omission of guilt is recorded inadvertently, should that be excluded from evidence? As lawyers, isn't it our job to seek justice? Is it just to withhold evidence from the court that exposes the truth? The rest of this essay aims to

⁹⁶ Id. at 616.

⁹⁷ Id. at 618.

⁹⁸ Id. at 619.

answer these questions by analyzing and evaluating these questions through John Finnis' nine principles of practical reasonableness.

VI. *Finnis' Theory of the Basic Goods*

In Natural Law and Natural Rights, John Finnis acknowledges seven basic forms of human good: life, knowledge, play, aesthetic experience, sociability, practical reasonableness, and religion.⁹⁹ Finnis explains that these seven goods are the basic aspects of well-being and explain why we do something. He states, "From one's capacity to grasp intelligently the basic forms of good as 'to-be-pursued' one gets one's ability in the descriptive disciplines of history and anthropology, to sympathetically see the point of actions, lifestyles, characters, and cultures that one would not choose for itself."¹⁰⁰ According to Finnis, these basic goods do not yet mean moral good.¹⁰¹ For Finnis, we need all seven of these basic goods to flourish as humans.

A: Life

Finnis explains that the first basic value, is the value of life.¹⁰² According to Finnis, "life" signifies every aspect of the vitality, which puts a human in good shape for self-determination.¹⁰³ Finnis explains that life includes bodily health, and freedom from pain "that betokens organic malfunctioning or injury."¹⁰⁴ Finnis also includes procreation of children in this category.¹⁰⁵ He

⁹⁹ John Finnis, Natural Law & Natural Rights 85-89 (Oxford University Press, Second Edition 2011).

¹⁰⁰ Id. at 85.

¹⁰¹ Id. at 86.

¹⁰² Id.

¹⁰³ Id.

¹⁰⁴ Id.

¹⁰⁵ Id.

explains that, “We can distinguish the desire and decision to have a child, simply for the sake of bearing a child, from the desire and decision to cherish and to educate the child. The former desire and decision is a pursuit of the good of life, in are aspects of the pursuit of the distinct basic values of sociability and truth, running alongside the continued pursuit of the value of life that is involved in simply keeping the child alive and well until it can fend for itself.”¹⁰⁶

In terms of procreation, the basic good of “life” does not apply to either attorney-client privilege, or wiretapping. However, there is an argument to be made that attorney-client privilege and wiretapping laws promote life because they shield one from confidential or potentially incriminating evidence being revealed that can result in incarceration. If one is incarcerated, it becomes very difficult to participate in the pursuit of life that Finnis endorses—a healthy lifestyle, freedom from pain, procreation, etc. Therefore, there is an argument to be made that both attorney-client privilege and wiretapping laws promote the basic good of life by protecting the client from confidential information being revealed to others that can result in incarceration.

B: Knowledge

According to Finnis, knowledge is considered “as desirable for its own sake, not merely instrumentally.”¹⁰⁷ Finnis explains that knowledge can be understood as “any proposition, whatever its subject-matter, can be inquired into (with a view to affirming or denying it) in either of the two distinct ways, (i) instrumentally or (ii) out of curiosity, the pure desire to know, to find out the truth about it simply out of an interest in or concern for truth and a desire to avoid ignorance or error as such.”¹⁰⁸ According to Finnis, curiosity drives our interest in knowledge—it

¹⁰⁶ Id. at 87.

¹⁰⁷ Id.

¹⁰⁸ Id. at 60.

is “a name for the desire or inclination or felt want that we have when, just for the sake of knowing, we want to find out about something.”¹⁰⁹ Once we have an interest in knowledge, and one reflects on this, Finnis explains that we understand that knowledge is a good thing to have, not only for its utility, but “one finds oneself able and ready to refer to *finding out, knowledge, truth* as sufficient explanations of the point of one’s activity, project, or commitment.”¹¹⁰ Therefore, Finnis ultimately concludes that the good of knowledge is self-evident—an aspect of authentic human flourishing, and formulates a real (intelligent) reason for action.¹¹¹

Both attorney-client privilege and wiretapping do not promote the basic good of knowledge—they actually hinder it. The doctrine of attorney-client privilege hinders knowledge because the doctrine is designed to keep communication between an attorney and their client private. For example, a client can tell his attorney that he committed a crime, and as long as it does not promote an on-going or future crime, the attorney is obligated to keep this information confidential, thus deterring knowledge of a situation. In theory, wiretapping promotes knowledge because it is a recording of information being exchanged between people. However, wiretapping evidence is usually suppressed, so the way the law is interpreted, it also deters knowledge because it prohibits information from being presented in a court of law.

C: Play

Finnis asserts that the third basic aspect of human well-being is “play.”¹¹² He explains that, “each one of us can see the point of engaging in performances which have no point beyond

¹⁰⁹ *Id.*

¹¹⁰ *Id.* at 61.

¹¹¹ *Id.* at 64-65.

¹¹² *Id.* at 87.

the performance itself, enjoyed for its own sake.”¹¹³ According to Finnis, the performance may be solitary, social, intellectual, physical, strenuous, relaxed, highly structured, relatively informal, conventional, or “ad hoc” in its pattern. Finnis explains that “an element of play can enter into any human activity, even the drafting of enactments, but is always analytically distinguishable from its ‘serious’ context; and some activities, enterprises, and institutions are entirely or primarily pure play. Play, then, has and is its own value.”¹¹⁴

The basic good of play is inapplicable in this analysis because neither the doctrine of attorney-client privilege or wiretapping laws involve Finnis’ concept of play. This does not have a negative impact on whether or not these laws are viewed as “moral” because as Finnis explains, not every moral act involves all seven of the goods.

D: Aesthetic Experience

Finnis explains that “many forms of play, such as dance or song or football, are the matrix or occasion of aesthetic experience. But beauty is not an indispensable element of play.”¹¹⁵ He distinguishes aesthetic experience from play, explaining that aesthetic experience does not require one’s own action.¹¹⁶ Finnis states that, “what is sought after and valued for its own sake may simply be the beautiful form ‘outside’ one, and the ‘inner’ experience of appreciation of its beauty. But often enough the valued experience is found in the creation and/or active appreciation of some *work* of significant and satisfying form.”¹¹⁷

¹¹³ Id.

¹¹⁴ Id.

¹¹⁵ Id.

¹¹⁶ Id.

¹¹⁷ Id. at 88.

The basic good of aesthetic experience is inapplicable in this analysis because neither the doctrine of attorney-client privilege or wiretapping laws involve Finnis' concept of aesthetic experience. As previously stated, this does not have a negative impact on whether or not these laws are viewed as "moral" because as Finnis explains, not every moral act involves all seven of the goods.

E: Sociability (Friendship)

Finnis states that "there is the value of that sociability which in its weakest form is realized by a minimum of peace and harmony amongst persons, and which ranges through the forms of human community to its strongest form in the flowering of full friendship."¹¹⁸ He explains that collaboration between two individuals is instrumental to the realization of one's real purpose.¹¹⁹ According to Finnis, "friendship involves acting for the sake of one's friend's purposes, one's friend's well-being. To be in a relationship of friendship with at least one other person is a fundamental form of good."¹²⁰

The basic good of sociability, or friendship, is not applicable to wiretapping, but it is applicable to the doctrine of attorney-client privilege. The purpose of attorney-client privilege is not only to protect confidential communications between a lawyer and his or her client, but also to implement trust in this relationship. If the client does not trust his or her lawyer, then they will not be truthful with them, and ultimately it will be difficult for the lawyer to help his client. Thus, his encouragement of trust allows the possibility of friendship between a lawyer and his or her client.

¹¹⁸ Id.

¹¹⁹ Id.

¹²⁰ Id.

F: Practical Reasonableness

Finnis defines practical reasonableness as “the basic good of being able to bring one’s own intelligence to bear effectively on the problems of choosing one’s actions and lifestyle and shaping one’s own character.”¹²¹ He explains that negatively, this is someone who has a measure of effective freedom, and positively, this is someone that seeks to bring an intelligent and reasonable order to their actions, habits, and practical attitudes.¹²² According to Finnis, this order has an internal aspect such as when one strives to bring one’s emotions and dispositions into harmony and inner peace of mind, and an external aspect such as when one strives to make their actions authentic—“genuine realizations of one’s one freely ordered evaluations, preferences, hopes, and self-determination.”¹²³ As Finnis explains, “this value is thus complex, involving freedom and reason, integrity, and authenticity.”¹²⁴ He explains this complexity by identifying the nine basic requirements of practical reasonableness: (1) a coherent plan of life, (2) no arbitrary preferences amongst values, (3) no arbitrary preferences amongst persons, (4) detachment, (5) commitment, (6) the (limited) relevance of consequences: efficiency, within reason, (7) respect for every basic value in every act, (8) the requirements of the common good, and (9) following one’s conscience.¹²⁵ These requirements are very significant, and will be discussed in further detail below.

I will discuss practical reasonableness in relation to attorney-client privilege and wiretapping in the next section of this essay.

¹²¹ Id.

¹²² Id.

¹²³ Id.

¹²⁴ Id.

¹²⁵ Id. at 100-125.

G: Religion

Finnis begins this section by explaining, “for, as there is the order of means to ends, and the pursuit of life, truth, play, and aesthetic experience in some individually selected order of priorities and pattern of specialization, and the order that can be brought into human relations through collaboration, community, and friendship, and the order that is to be brought into one’s character and activity through inner integrity and outer authenticity...”¹²⁶ Based on this order, Finnis posits two questions: (1) “How are all these orders, which have their immediate origin in human initiative and pass away in death, related to the lasting order of the whole cosmos and to the origin, if any, of that order?”¹²⁷ (2) “Is it not perhaps the case that human freedom, in which one rises above the determinism of instinct and impulse to an intelligent grasp of worthwhile forms of good, and through which one shapes and masters one’s environment but also one’s own character, is itself somehow subordinate to something which makes that human freedom, human intelligence, and human mastery possible and which is free, intelligent, and sovereign in a way no human being can be? Basically, Finnis suggests that we should be establishing and maintaining a proper relationship between our self and the divine.”¹²⁸

The basic good of religion is inapplicable in this analysis because neither the doctrine of attorney-client privilege or wiretapping laws involve Finnis’ concept of religion. As previously stated, this does not have a negative impact on whether or not these laws are viewed as “moral” because as Finnis explains, not every moral act involves all seven of the goods.

¹²⁶ Id. at 89.

¹²⁷ Id.

¹²⁸ Id.

VII. Practical Reasonableness and Morality

Finnis explains that each of the seven basic goods can be participated in, and promoted in an inexhaustible variety of ways and combinations of emphasis, concentration, and specialization.¹²⁹ According to Finnis, practical reasonableness is “participated in by precisely by shaping one’s participation in the other basic goods, by guiding one’s commitments, one’s selection of projects, and what one does in carrying them out.”¹³⁰ This concerns what one must do, or think, or be if one is to participate in the basic value of practical reasonableness.¹³¹ Finnis explains that reasonableness is both a basic aspect of human well-being and concerns one’s participation in all the other basic aspects of human well-being.¹³² Also, “the basic forms of good are opportunities of being; the more fully one participates in them the more one is what one can be.”¹³³ Essentially, practical reasonableness shapes our participation in the other goods, and helps us choose what to do.¹³⁴ Finnis identifies nine basic requirements of practical reasonableness: (1) a coherent plan of life, (2) no arbitrary preferences amongst values, (3) no arbitrary preferences amongst persons, (4) detachment, (5) commitment, (6) efficiency, within reason, (7) respect for every basic value in every act, (8) requirements of the common good, and (9) following one’s conscience.¹³⁵

¹²⁹ Id. at 100.

¹³⁰ Id.

¹³¹ Id. at 102.

¹³² Id. at 102-103.

¹³³ Id. at 103.

¹³⁴ Id.

¹³⁵ Id.

1. A Coherent Plan of Life:

Finnis begins by explaining that “implicitly or explicitly one must have a harmonious set of purposes and orientations, not as the ‘plans’ or ‘blueprints’ of a pipe-dream, but as effective commitments.¹³⁶ He explains that it is unreasonable to live moment to moment, to follow immediate cravings, or to just drift.¹³⁷ Finnis gives the example of committing to the practice of medicine or scholarship because they “require both direction and control of impulses, and the undertaking of specific projects; but they also require the redirection of inclinations, the reformation of habits, the abandonment of old and adoption of new projects, as circumstances require, and overall, the harmonization of all one’s deep commitments—for which there is no recipe or blueprint, since basic aspects of human good are not like the definite objectives of particular projects, but are *participated in*.¹³⁸

While both the doctrine of attorney-client privilege and wiretapping laws do not promote a coherent plan of life for individuals, it does promote a coherent plan of life for the legal system. The doctrine of attorney-client privilege creates order within the legal system. If clients do not trust that communications with their attorney are confidential, then not only are they unlikely to be truthful with their attorney, but they may not even consult an attorney at all. Wiretapping laws also promote a coherent plan of life for the legal system because it allows people to trust that their communications with others will not be used against them in an unfair, or unlawful way. Thus, creating trust within our legal system creates order within the legal system. If people do not trust the legal system or the people that participate in it, they will not respect the legal system

¹³⁶ Id. at 104.

¹³⁷ Id.

¹³⁸ Id.

and it could fall apart entirely. Therefore, these laws promote a coherent plan for our legal system.

2. *No Arbitrary Preferences Amongst Values:*

Finnis explains that committing to a coherent life plan will involve concentration on some goods at the expense of others.¹³⁹ According to Finnis, “the commitment will be rational only if it is on the basis of one’s tastes. It will be unreasonable if it is on the basis of a devaluation of any of the basic forms of human excellence, or if it is on the basis of an overvaluation of such merely derivative and supporting or instrumental goods as wealth or opportunity or of such merely secondary and conditionally valuable goods as reputation or pleasure.”¹⁴⁰ He explains that, it is one thing to have little capacity for goods such as friendship, scholarship, or sanctity; but it is stupid or arbitrary to think, speak, or act as if these were not real forms of goods.¹⁴¹ In other words, it is acceptable to prioritize some basic goods over others in pursuit of a coherent life plan, but we should not ignore other goods for arbitrary reasons.

Both the doctrines of attorney-client privilege and wiretapping ignore the basic good of knowledge, but it does not ignore it for arbitrary reasons. Wiretapping laws promote the basic good of life by protecting one’s conversations from being used against them in court, and through creating trust and order within the legal system. The doctrine of attorney-client privilege values friendship over knowledge by prioritizing the privacy between an attorney and his or her client over the knowledge that can be acquired from those conversations. However, the reason for doing this is to promote trust between a lawyer and a client, ultimately creating order within

¹³⁹ *Id.* at 105.

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

the legal system, so it does not ignore knowledge arbitrarily. Finnis explains that committing to a coherent life plan involves focusing on some goods at the expense of others as long as we do not ignore some of these goods for arbitrary reasons. Since the basic good of knowledge is ignored for a rational reason—to promote trust and order within our legal system—Finnis would find this to be morally permissible.

3. *No Arbitrary Preferences Amongst Persons:*

According to Finnis, one's own well-being should reasonably be the first claim of one's interest, concern, and effort, not because it is of more value than the well-being of others, but because it is one's own.¹⁴² He explains that, "the only reason for me to prefer my well-being is that it is through my self-determined and self-realizing participation in the basic goods that I can do what reasonableness suggests and requires, viz. favour and realize the forms of human good indicated in the first principals of practical reason."¹⁴³ Thus, we should not improperly favor individuals, show unreasonable respect of persons, egoistic or group bias, or partiality opposed to the Golden Rule.¹⁴⁴

Both the doctrine of attorney-client privilege and wiretapping laws do not arbitrarily prefer some persons over others. Each of these laws are applied to all people equally—whether one has an expensive, private attorney or a court appointed attorney. Thus, it does not arbitrarily prefer some persons over others.

¹⁴² *Id.* at 107.

¹⁴³ *Id.*

¹⁴⁴ *Id.* at 109.

4. *Detachment:*

Finnis explains that “in order to be sufficiently open to all the basic forms of good in all the changing circumstances of a lifetime, and in all one’s relations, often unforeseeable, with other persons, and in all one’s opportunities of effecting their well-being or relieving hardship, one must have a certain detachment from all the specific and limited projects which one undertakes.¹⁴⁵ In other words, no project should affect someone so much that if they failed at it, their life would be devoid of meaning.¹⁴⁶ “Such an attitude irrationally devalues and treats as meaningless the basic human good of authentic and reasonable self-determination, a good in which one meaningfully participates simply by trying to do something sensible and worthwhile, whether or not that sensible and worthwhile project comes to nothing.”¹⁴⁷

Detachment is a difficult requirement of practical reasonableness to apply to the doctrine of attorney-client privilege and wiretapping, but there is an argument to be made that these laws include an element of detachment because they have exceptions. For example, the doctrine of attorney-client privilege is penetrable if a client tells his or her attorney he is going to commit a crime, and the lawyer reports it, this does not completely ruin the sanctity of the doctrine. In regard to wire-tapping, proper protocol must be followed such as reasonable suspicion of a crime, and the proper authorities signing off on the wire-tap. If these procedures are not appropriately followed, then the wire-tap evidence is inadmissible in court. These exceptions or procedural safeguards are in place so that if they aren’t properly followed, the doctrines or legal system does not fall apart, and thus there exists an element of detachment.

¹⁴⁵ Id. at 110.

¹⁴⁶ Id.

¹⁴⁷ Id.

5. *Commitment:*

Commitment establishes the balance between fanaticism and dropping out, apathy, unreasonable failure, or refusal to get involved with anything.¹⁴⁸ “It is simply the requirement that having made one’s general commitments one must not abandon them lightly.”¹⁴⁹ According to Finnis, one should creatively look for ways to carry out one’s commitments rather than restricting one’s effort to familiar projects, methods, and routines.¹⁵⁰ “Such creativity and development shows that a person or society, is really living on the level of practical principal, not merely on the level of conventional rules of conduct, rules of thumb, rules of method, etc., whose real appeal is not to reason but to sub-rational complacency of habit, mere urge to conformity, etc.”¹⁵¹

Both the doctrine of attorney-client privilege and wiretapping meet the requirement of commitment because these are sacred doctrines that are very difficult to penetrate. Specifically, attorney-client privilege is seen as one of the most sacred doctrines within our legal system. It is very difficult to get the court to agree to penetrate the doctrine of attorney-client privilege, or to admit wiretapping evidence that was not obtained properly. The rules have been amended multiple times to keep these doctrines relevant and applicable within our legal system, thus there is a commitment to them.

¹⁴⁸ Id.

¹⁴⁹ Id.

¹⁵⁰ Id.

¹⁵¹ Id.

6. *Relevance of Consequences: Efficiency, within Reason:*

Finnis explains that this is the requirement that brings about good in the world by actions that are efficient for reasonable purposes.¹⁵² He explains that one's actions should be judged by their effectiveness, their utility, and their purpose.¹⁵³ There are many contexts in which we should compare and assess the consequences of alternative decisions.¹⁵⁴ For example, it is reasonable to prefer human good to the goods of animals, basic human goods to merely instrumental goods, etc.¹⁵⁵ Finnis states, "Where there are alternative techniques or facilities for achieving definite objectives, cost-benefit analysis will make possible a certain range of reasonable comparisons between techniques or facilities. Over a wide range of preferences and wants, it is reasonable for an individual or society to seek to maximize the satisfaction of those preferences or wants."¹⁵⁶ The significance here is not only in the choices we make, but how we come to make these choices through our reason.

Both the doctrine of attorney-client privilege and wiretapping laws meet the requirement of efficiency because of their effectiveness, utility, and purpose. Their purpose is to promote trust and order within our legal system, even if the consequence of this is that communications between an attorney and his or her client remain confidential. Finnis explains that it is not only significant what choices we make, but how we make these choices through our reason. Since there is a rational reason to have these doctrines and procedural safeguards in place within our legal system at the expense of certain knowledge being revealed to the court, these laws can be viewed as efficient and within reason.

¹⁵² Id. at 111.

¹⁵³ Id.

¹⁵⁴ Id.

¹⁵⁵ Id.

¹⁵⁶ Id. at 111-112.

7. *Respect for Every Basic Value in Every Act:*

Finnis begins this section by explaining that this requirement can be formulated in several different ways.¹⁵⁷ The first formulation is that “one should not choose to do any act which of itself does nothing but damage or impede a realization or participation of any one or more of the basic forms of human good.”¹⁵⁸ Finnis expressly rejects consequentialism, and explains that basic values, and the practical principles expressing them are the only guides we have.¹⁵⁹ He explains that “if one is to act intelligently at all one must choose to realize and participate in some basic value or values rather than others, and this inevitable concentration of effort will indirectly impoverish, inhibit, or interfere with the realization of those other values.”¹⁶⁰ This means that we must make our choices rationally, and to that, “reason requires that every basic value be at least respected in each and every action.”

Both the doctrines of attorney-client privilege and wiretapping respect other values because there are exceptions to these laws. In general, these laws have procedural safeguards in place that are meant to protect an individual, but there are limits. For example, I have discussed how both attorney-client privilege and wiretapping laws hinder knowledge because they allow information to be kept from the court. However, these laws do respect the value of knowledge because the law allows for instances where knowledge cannot be kept from the court. If one plans to commit a future crime such as killing someone, then the exceptions to these laws allow

¹⁵⁷ *Id.* at 118.

¹⁵⁸ *Id.*

¹⁵⁹ *Id.* at 119.

¹⁶⁰ *Id.* at 119-120.

for this knowledge to be revealed to the court. Therefore, even though these laws may not promote knowledge, they do respect it.

8. *Requirements of the Common Good:*

There is a common good for human beings, and those are: life, knowledge, play, aesthetic experience, friendship, religion, and practical reasonableness.¹⁶¹ According to Finnis, each of these human values is a common good because they can be participated in by an inexhaustible number of persons in an inexhaustible number of ways.¹⁶² Another significant sense of common good is “a set of conditions which enables the members of a community to attain for themselves reasonable objectives, or to realize reasonably for themselves the value, for the sake of which they have reason to collaborate with each other in a community.”¹⁶³

Both of these laws promote the common good because it gives people a reason to collaborate with others in their community. For example, the legislature had to consult amongst themselves in passing this law. Also, the doctrine of attorney-client privilege requires that lawyers and clients collaborate with one another in working on a case. In regard to wiretapping, police officers, attorney generals, and officers of the court must work together to properly implement and obtain wiretapping evidence. These laws allow members of the community to collaborate and attain a reasonable objective.

¹⁶¹ Id. at 154.

¹⁶² Id.

¹⁶³ Id.

9. *Following One's Conscience:*

Finnis explains that one should not do what one thinks or feels should not be done.¹⁶⁴ If one has good inclinations—they are generous, open, fair, and steady in one's love of human good—then one is able to make practical judgments that reason requires.¹⁶⁵ Conversely, if one does not have these good inclinations, then his or her conscience can mislead them, unless one strives to be reasonable.¹⁶⁶ “Practical reasonableness is not simply a mechanism for producing correct judgments, but an aspect of personal full-being, to be respected in every act as well as overall—whatever the consequences.”¹⁶⁷

Following one's conscience is also another difficult requirement of practical reasonableness to apply to the doctrine of attorney-client privilege and wiretapping laws, but there is an argument to be made that since these laws have been around so long and have been amended to keep them relevant, the legislature has passed these laws in good conscience and continues to keep them relevant and applicable in our legal system with a good conscience.

10. *The Product of these Requirements—Morality:*

“The requirements of practical reasonableness generate a moral language utilizing and appealing to moral distinctions employed more or less spontaneously.”¹⁶⁸ Each of these requirements is thought of as a mode of moral obligation or responsibility.¹⁶⁹ Each requirement plays its part in reasonable decision-making, and thus are essential and necessary for morality.¹⁷⁰

¹⁶⁴ *Id.* at 125.

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ *Id.* at 126.

¹⁶⁸ *Id.* at 127.

¹⁶⁹ *Id.* at 126.

¹⁷⁰ *Id.*

Finnis would find both the doctrine of attorney-client privilege and wiretapping laws morally just because they fulfill the requirements of practical reasonableness and promote many of the basic goods. These laws are practically reasonable because they promote order within the legal system, which can be viewed as a coherent plan of life for the legal system. These laws do not arbitrarily prioritize some goods over others or some people over others, are efficient, respect the value of other goods, and involve commitment and detachment. Even though these laws do not promote every basic good, Finnis does not require this to be viewed as moral. Therefore, since these laws promote some of the basic goods and are practically reasonable, Finnis would find both the doctrine of attorney-client privilege and wiretapping laws to be morally just.