

A Spy-Gear Arms Race Transforms Modern Divorce

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Danny Lee Hormann suspected his wife was having an affair. So the 46-year-old Minnesota man installed spying software on his wife's cellphone and the family computer, and stuck a GPS device to her car, letting him follow her to a lakeside cabin one night.

"It was awful," says Michele Mathias, his 51-year-old ex-wife, who denies cheating on him. She says she was so worried about her husband's spying that she and her children searched their garage for cameras and held whispered conversations on the lawn in case he was recording indoors. "It wasn't just invasion of my privacy. It was an invasion of the privacy of everyone who ever texted me or anyone who was ever on my computer."

The sleuthing got Mr. Hormann thrown in jail for 30 days, convicted of stalking his wife. "Whenever I tell people about this," Mr. Hormann said, "They say, 'I'd have done the same damn thing.' " He adds: "The technology just amazes me."

Mr. Hormann's tactics reflect a new reality for suspicious spouses. Supplied by a tech industry that is making James Bond-like gadgets more affordable and easier to use, they are taking investigations into their own hands.

Jay Ciccarone pleaded not guilty to criminal charges on claims he put spyware on his family's PC.

Techniques once accessible only to governments or corporations are now trickling down to daily use. It's part of a broader transformation of modern privacy in which even the most personal spheres of people's lives—home, friendships, intimacy—can be exposed for examination without knowledge or consent.

Lawyers say the technology is turning divorces into an arms race. Gerry Lane, a marriage counselor in Atlanta, says almost every infidelity case he sees started with a spying spouse. "If someone begins to have thoughts that they are being betrayed, they become obsessed with finding out the truth," Mr. Lane said. "Privacy does not exist in 2012."

Three companies that sell GPS trackers said sales are soaring. A BrickHouse Security executive said sales of tiny devices that can be placed in a bag or clothing have been "almost doubling" each of the past three years. Another maker, LandAirSea Systems Inc., said that so far this year it has sold about 15,000 of the devices, some of which magnetically attach to cars, already surpassing 2011's full-year sales.

SpygearGadgets.com said sales of nannycams and hidden cameras are up 40% this year, and GPS tracking devices almost 80%.

More than three dozen people interviewed, including family lawyers, prosecutors, private investigators, gadget retailers and marriage counselors, as well as individuals who have gone through divorces themselves, said that spouses are embracing snooping technology. A February report by the American Academy of Matrimonial Lawyers found that 92% of lawyers surveyed had seen an increase in evidence from smartphones the past three years, citing in particular text messages, emails, call histories and GPS location information.

The legality of spousal spying is complicated. Not all courts agree on what constitutes a "reasonable expectation of privacy" in a marriage.

In one 2011 Nebraska case, a mother who embedded a listening device in her daughter's teddy bear to record the girl's father was found guilty of violating the Federal Wiretap Act. And in a 2008 Iowa ruling, a court found that a man had violated his wife's privacy by taping her with a camera surreptitiously installed in an alarm clock in her bedroom in their home.

All together, at least five of the 13 U.S. circuit courts have found that the Federal Wiretap Act does prohibit surveillance within marriages. But at least two have ruled that the law doesn't prohibit recording your spouse.

In October 2010, for instance, a federal judge in Texas ruled against Rhea Bagley, who, while divorcing her husband, sued him over allegations that he had put spyware on a computer she used and placed a recording device in the family home before he moved out. District Court Judge Lee Rosenthal cited a 1974 circuit court precedent that the Federal Wiretap Act didn't apply to "interspousal wiretaps."

Ms. Bagley, in an interview, said that when someone knows that everything they are doing on their computer or that their private conversations have been recorded, "You feel like your privacy has been violated."

For his part, her ex-husband, Larry Bagley, said he felt he had a right to know what was going on in his home, particularly because, among other things, he was paying the bills. "I feel that if you are married to somebody, you should know everything," said Mr. Bagley, 41 years old.

Some of the most common forms of tech snooping are the simplest, divorce lawyers say. When someone leaves a smartphone or computer unattended, a curious spouse might quickly thumb through emails.

Occasionally, both husband and wife are spying on each other. In Oakland County, Mich., prosecutors charged Leon Walker under the state's antihacking statute after he read his wife's emails in a password-protected account on a shared computer. Then, this past July, they dropped the charge, claiming that his wife was snooping, too, by reading his text messages.

"If you arrest a spouse for something as trivial as this, then you are going to have to arrest the entire world," said Mr. Walker, 34 years old, in an interview. His wife declined to comment through her lawyer.

Divorce and privacy laws vary nationwide, and it is far from settled whether evidence discovered this way would be admissible in a divorce proceeding. However, if the information is used to harass or intimidate someone, a person can face prosecution for stalking or related offenses.

"Stalking laws differ by state, but usually the main element is that there is fear" felt by the victim, said Cindy Southworth of the National Network to End Domestic Violence. Spouses using spying tools could also run afoul of wiretap, cybercrime or trespass laws, or they may expose themselves to civil suits.

Amateur spies have widening options. LandAirSea sells a GPS Tracking Key—a matchbox-size, magnetized gizmo that can stick to cars—for \$179 online, far cheaper and more powerful than primitive GPS devices that 20 years ago cost thousands of dollars. Software can be purchased for many smartphones that can track their location. Computer software that copies instant messages and emails can cost less than \$100 and be installed without any special know-how. An array of tiny recorders makes eavesdropping easy.

Regulators have a tough time policing the sale of these kinds of devices, since they have legitimate uses by employers or parents. In 2008, the Federal Trade Commission filed a lawsuit against a spyware seller that claimed its software, called RemoteSpy, was a "100% undetectable" way to "Spy on Anyone. From Anywhere."

"You feel like your privacy has been violated" Rhea Bagley, whose husband used spyware and a recording device in their home

"If you are married to somebody, you should know everything" Larry Bagley

The agency charged the company, CyberSpy Software LLC, with unfair and deceptive practices. In a 2010 settlement, the FTC prevented the company from advertising that the software could be used to spy on people without their knowledge, and it required the software to obtain consent from a computer owner before installation.

CyberSpy didn't admit wrongdoing in the settlement and denied it had violated any laws or regulations. The company still sells the \$89.95 software but has changed its marketing pitch. Now the website says: "Especially perfect for those who want to monitor their employees or children, while away from home or work!"

CyberSpy's chief executive, Tracer Spence, said the company's practices met industry norms at the time. He said U.S. companies like his have since changed their products and advertising "to avert a possible run-in with the FTC."

With spyware so affordable, divorce lawyers say they advise clients to buy new computers to avoid the chance that any computers they previously used, or shared with a spouse, are bugged. Some lawyers

also say they have begun pre-emptively warning clients that they could run afoul of state or federal laws if they snoop themselves.

"People are dying to know if their spouses are cheating," said Randall Kessler, past head of the American Bar Association's family-law section. "You can have all the laws you want, but I think this is going to go on."

In suburban Atlanta, private investigator T.J. Ward said that his firm, which is handling roughly 80 spousal investigations, is currently tracking about five cars using GPS. It is a standard service he has offered for several years, he said, adding that he has seen the technology improve significantly.

Beyond using tracking gadgets to try to catch cheaters or trace assets, Mr. Ward said his firm also offers clients counter-surveillance options to see if a spouse is spying on them. Sweeping a home for bugs costs roughly \$5,000. A cellphone scan runs about \$500.

"There is so much technology out there," Mr. Ward said. "You've got to be able to counter."

In 2009, Georgia State Rep. Kevin Levitas sponsored legislation to outlaw the electronic tracking of a person's location or movements without consent. "You know in your gut that that violates some reasonable expectation of privacy," said Mr. Levitas, who retired in 2010.

The bill, which eventually stalled, included exceptions for private investigators, employers tracking company cars, and parents keeping tabs on their kids. It likely wouldn't have applied to spousal tracking, because a car typically would be considered marital property, Mr. Levitas said. In other words, either spouse could make a case for tracking the car under the premise that they own it.

Near Philadelphia, Jay Ciccarone, a father of two young boys, is facing criminal charges stemming from allegations he installed a \$97 spyware program on his family's computer.

The Wall Street Journal is conducting a long-running investigation into the profound transformation of personal privacy in America.

In September 2010, about six months after Mr. Ciccarone filed to divorce his now ex-wife, she went to police claiming he had been monitoring her, according to court records. According to the records, Mr. Ciccarone's ex-wife told police she discovered his alleged spying when he left his personal email account logged in on the family computer, and she read an email he had written to his lawyer.

She didn't respond to requests for comment.

Nearly a year later, police arrested Mr. Ciccarone and charged him with unlawfully using a computer, intercepting electronic and oral communications, and unlawfully accessing stored communications. Mr. Ciccarone is accused of using a program called Web Watcher, which is designed to record all activity on a computer—capturing email, logging keystrokes and monitoring Internet activity. He has pleaded not guilty and is seeking to have his case dismissed.

Mr. Ciccarone, in an interview, questioned why he was charged when his ex-wife didn't face consequences for reading his email. "I think the case should have been ended right there," Mr. Ciccarone said. "Where is the right to my privacy?"

Tom Hogan, the district attorney in Chester County, Pa., declined to comment specifics of the case. Speaking in general terms, he said, simply looking at an email from an account left open on a family computer probably wouldn't be viewed in the same light as using spyware to intercept messages.

Mr. Hormann, who lives about two hours outside Minneapolis, said he got the idea of sticking a GPS tracker on his wife's car in 2009 from an ad. The one he bought let him observe in real time where his wife drove her Mitsubishi Eclipse. It cost him \$500 to buy, plus a monthly fee.

"Pretty amazing stuff," said Mr. Hormann, a former investment salesman and now a truck driver. At least four times in late 2009 and early 2010, he used it to locate his then-wife, Ms. Mathias, court records say.

Ms. Mathias said she and her three children suspected for some time that Mr. Hormann was spying. "He knew where I was constantly," Ms. Mathias said. She said she never cheated. "If you have a device on your phone, your computer, your car," she said, "how the hell are you supposed to have any affairs?"

In March 2010, the month she filed for divorce, Ms. Mathias had a mechanic look for a tracking device. One was found magnetically attached to the car's underside. She contacted police and the county prosecutor charged Mr. Hormann with stalking and using a mobile tracking device on her car.

"She couldn't leave the house without him knowing exactly what she was doing," said prosecutor Tim Hochsprung.

In July, 2010, a jury convicted Mr. Hormann of two charges, stalking and tracking the car. He spent 30 days in jail. On appeal, a judge reversed the tracking charge, saying he had "sufficient ownership interest" of the car and thus could legally track its whereabouts.

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