

CAN YOU LEGALLY VIDEOTAPE YOUR NANNY?

By Russell I. Marnell

There's a burgeoning business going on right now in using electronic surveillance to watch nannies and babysitters at home when parents are away or at work. It's an outgrowth of the stories we keep hearing about nannies abusing children. And it may be illegal if done without nanny's consent.

Under New York State law, a person is guilty of eavesdropping when he either wiretaps or mechanically overhears a conversation. The crime of eavesdropping (which includes taping a telephone conversation without consent) is a class E felony, subject to a number of penalties including incarceration.

But what about videotaping your nanny and child? The courts have not expressly ruled on this issue, and there's no specific law prohibiting it. However, legal experts say that since it is illegal to secretly tape record your nanny's phone conversation, it's *probably* illegal to secretly videotape conversations between your nanny and your child in your home.

But that may not follow for videotaping your nanny and your child in your home *without using audio*, since there is no conversation or discussion that would fall within the prohibition against eavesdropping. But it's a gray area, as yet untested.

So, your best course of action is to inform your nanny or babysitter that she will be videotaped, and to get her consent in writing. This will not only protect you from potential civil and criminal liability, but it will also put your nanny on notice to be on her best behavior.

If You're Planning to Videotape Your Nanny...

The American Civil Liberties Union (ACLU) recommends that you do the following if you are planning on videotaping your nanny:

- Use videotape without sound (do not record conversations);
- Get your nanny's consent in writing before you videotape her;
- After you videotape your nanny, talk to her about what you saw on the videotape. Do this each time you videotape her. This demonstrates that you are using the video only for "quality assurance" purposes.
- Never place video cameras in private areas, such as the nanny's living quarters, bathroom, etc. This violates her right to privacy.