

“that’s what she said”

a ford & harrison blog about the popular television series “the office”

Corporate Espionage for Dummies

October 21, 2010 - by: [Brian Kurtz](#)

Prison Sentences for Michael, Dwight, and Jim: Up to seven years for interception of oral communications plus up to seven years for attempted theft of [trade secrets](#). There may also be criminal conspiracy prosecutions against Meredith, Oscar, and Ryan.

Litigation Value: Danny Cordray’s action for invasion of [privacy](#) and intentional infliction of emotional distress against Dunder Mifflin and several individuals = \$250,000. Osprey’s action against Dunder Mifflin and several individuals for misappropriation of trade secrets = an injunction and damages to be proved at trial.

This week’s episode is entitled “The Sting.” In the 1973 film of the same name, Robert Redford and Paul Newman play slick con men who team up to pull off an exquisite double-cross of a Chicago gangster. Fast forward to 2010 Dunder Mifflin. Michael, Dwight, and Jim might go to prison for their bumbled attempt to steal confidential information from a Scranton paper salesman.

Pennsylvania’s wiretap law makes it a third-degree felony to intercept a written, electronic, or oral communication without prior consent from all parties to the communication. It is also a third-degree felony to wrongfully appropriate another’s

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trade secrets for one's own use. The fact that Michael and Co. might not have learned anything of value probably doesn't matter. Attempting to commit a crime is its own criminal act.

But before we fret that Cecilia Marie Halpert won't see her daddy until she's a teenager, the boys might be able to shorten their prison sentences. It is a complete defense to theft of trade secrets if the information at issue does not in fact constitute a trade secret. The Pennsylvania theft-of-trade-secret statute defines a trade secret as any process, formula, or other information that has value, is maintained in confidence, and is not available in the public domain. Michael, Dwight, and Jim could argue that watching Danny Cordray's sales methods doesn't rise to the level of stealing a trade secret.

Criminal sanctions aren't Dunder Mifflin's only concern. Danny has lucrative tort claims against Dunder Mifflin and the employees involved for invasion of privacy and intentional infliction of emotional distress. He was surreptitiously recorded and observed, without his consent, during what he believed to be a private sales meeting. His privacy was undoubtedly invaded. As for emotional distress, the key element of the claim is that the defendant's conduct must be "extreme and outrageous." Hello. Did you watch this episode?

Danny's former company, Osprey, may also have civil claims against Dunder Mifflin for attempting to misappropriate Osprey's confidential business information from Danny. Hard to imagine a judge who would not issue a restraining order against Dunder Mifflin after hearing evidence of their hidden camera scheme.

"The Sting" offered much from the employment law point of view. When this blog covers the re-run, maybe we'll explore Stanley's potential "regarded as" claim under the [Americans with Disabilities Act \(ADA\)](#) for Michael's diabetes comments. Or Meredith's [national origin bias](#) toward her coworker and "cleaning man," Oscar. All in all, a great episode. Wish it could have been longer. . . . That's what she said.