

# CLEMENTLAW

THE LAW OFFICES OF DANIEL E. CLEMENT

## New York Divorce and Family Law Blog

### [Can Video Surveillance Be Used in a Divorce](#)

Posted on February 9, 2010 by  
[Daniel Clement](#)

When one spouse suspects the other of having an affair, the knee jerk reaction is to hire a private detective to get the "smoking gun." It is permissible to hire a detective to "snoop around" even when the spouse having the affair has an obtained an order of protection against the other.

"The hiring of a professional licensed private investigator in a matrimonial action to gather evidence is for a proper and legitimate purpose." [Anonymous v Anonymous](#)



According to the Court opinion:

The husband had the right to gather evidence up to the date of trial in defense of the matrimonial action and in support of his own counterclaims. The husband was not required to accept that the wife had necessarily ceased her extramarital affair merely upon her assurance to him that she had. In fact, such representation proved to be false as the wife does not controvert that the private investigator disclosed as the result of his investigation that she was continuing to have an affair with Father L. Under the circumstances, the hiring of the private investigator, in and of itself, was not an unlawful intrusion upon the rights of the wife secured by the order or protection.

While obtaining proof of the affair is not objectionable, what you do with it can be problematic. In *Anonymous*, the husband reluctantly turned over the video of his wife having an affair with the priest to the church-the church wished to investigate the scandalous allegations. But, if the husband had the wife followed and recorded by a private investigator for the purpose of gathering embarrassing material to deliver to her employer with the intention to cause her to lose her employment his conduct according to the court could be considered harassment –“conduct which alarms or seriously annoys another person, and serves no legitimate purpose.”

In sum, it is permissible to obtain surveillance tapes to be used as evidence in court. The surveillance “evidence” cannot be used to simply to embarrass a party or to cause them, for instance, to lose their job without possible consequences.