**律師及被告間通訊的監察**

摘 要

以一般犯罪嫌疑人為監察對象時，除了影響到其隱私權外，還可能會波及到其受律師協助權。在以律師為監察對象時，可能會侵害到極大範圍人的此一權利。無論是從大法官解釋、現行刑事訴訟法或是學理，都應認人民享有與律師自由不受干預溝通的憲法權利。然而，我國現行法並未就律師及被告間通訊的監察設有妥適的規範，致使受有保護的通訊可能盡數為執法機關所掌握。在參考美國立法例後，我們建議，無論是在發動要件、期間、執行方式、事中監督、事後通知、使用，以及證據能力上，通訊保障及監察法都應針對律師及被告間通訊的監察設有特別規定，如此方能有效保障被告憲法上的受律師協助權。此外，現行實務上所採行的執行方式，有著違法及違憲的問題，必須改弦易轍，否則任何法制上的變動都將盡數成空。

關鍵詞： 通訊、監察、隱私、受律師協助權、通訊保障及監察法

**Surveillance on Communications Between Attorneys and Clients**

Abstract

Communication surveillance on suspects may intrude their privacy and the right to counsel. Communication surveillance on attorneys may intrude large number of people’s rights to counsel. According to the Judicial Interpretations, the Code of Criminal Procedure, and scholars’ comments, people have the rights to freely and fully communicate with their counsels. However, the current legal framework does not properly protect such rights, allowing the law enforcement to access privileged communications. After analyzing related statutes of the United States, this article argues that the Communication Security and Surveillance Law should add provisions regarding the elements, period, execution, monitor, post notice, use, and admissibility in order to govern the surveillance on communications between attorneys and their clients. In addition, the current executive method employed by the law enforcement is not only illegal but also unconstitutional and should be abolished. Otherwise, any revision of related statute would be meaningless.

Keywords: Communications, Surveillance, Privacy, Right to Counsel, The Communication Security and Surveillance Law