

PUBLIC HEARING

before
New Jersey Legislature

SENATE, COMMITTEE ON LAW, PUBLIC SAFETY
AND DEFENSE

ON

Senate Bills Nos. 897, 802 and 803
(Eavesdropping and Department of Criminal Justice)

Held:

September 16, 1968
Assembly Chamber
State House
Trenton, New Jersey

185 W. State Street
Trenton, N. J.

Members of Committee present;

Senator Joseph C. Woodcock, Jr. [Chairman]

Senator Frank C. Italiano

Senator Hugh Kelly

Eliot H. Lumbard, Esq., [Counsel to
Committee]

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SENATOR JOSEPH C. WOODCOCK, JR. [Chairman]: I think we had better call this hearing to order. We are past the appointed hour. Before we begin, I would just like to say that the hearing here this morning is in connection with the Electronic Eavesdropping Bill, which is, I believe, Senate Bill 897, and I would say that the hearing here this morning is against the backdrop of Federal hearings and debates in the United States Senate with respect to Title III, our Joint Crime Commission which held hearings last spring and hearings by other committees and commissions of this Legislature, all dealing with the subject of electronic eavesdropping and wiretapping. So really this is not a new subject, but we are dealing with a specific bill, a bill which is currently before the Senate and hopefully, if this Committee reports favorably, it will be acted on before the end of the year.

The first witness of the morning session will be the President of the Senate, Senator Forsythe. Senator, I don't believe there is any necessity to have you sworn. If you prefer, it would be all right.

SENATOR FORSYTHE: It is entirely up to you, Mr. Chairman.

SENATOR WOODCOCK: All right, we will swear you.

[Senator Edwin B. Forsythe, who was called as a witness, was duly sworn.]

SENATOR WOODCOCK: Would you proceed, Mr. President.

SENATOR EDWIN B. FORSYTHE: Mr. Chairman and members of the Committee: My appearance here this morning is as Chairman of the Special Joint Legislative Committee to Study Crime and the System of Criminal Justice in New Jersey,

created pursuant to Senate Concurrent Resolution 44, and as a sponsor of Senate 897 and 802, the bills upon which these hearings are being held.

The April 22 Report of our Joint Committee has been widely circulated and has been the subject of broad public attention within and without the Legislature. I am pleased that a substantial number of the Legislative recommendations of our Committee have been enacted into law.

It is not my desire to repeat material which the Committee will find in detail in the Joint Committee's report. However, I do desire to say I appear in support of Senate Bill 897. The issue as to whether or not New Jersey should allow electronic surveillance under strict court supervision for the purpose of combatting organized crime and official corruption is a very important issue.

I believe it is imperative that New Jersey adopt this bill. The U. S. Department of Justice officially stated that 70 per cent of organized crime in the Nation lies in 3 states (New York, Illinois and New Jersey). That finding is a disgrace to New Jersey and we must combat this spread of corruption in our community.

The great bulk of informed opinion is to the effect that electronic surveillance is essential to fighting organized crime and corruption.

To me, therefore, the question is whether or not New Jersey should utilize electronic surveillance; I contend it should. The only question in my mind is to be sure a system of adequate safeguards to protect the liberties of innocent citizens is

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devised to accommodate both their protection and the needs for
adequate law enforcement efforts against the crime cancer
in our State.

I believe Senate Bill 897 accomplishes that kind of
balance. This bill was drafted to accommodate Title III
of the Omnibus Safe Street Act of 1968, passed by Congress
overwhelmingly several months ago and signed by President
Johnson. Our bill and Title III contain a number of standards
and safeguards which are enormous and no fair-minded person,
in my judgment, could say that they deprive or threaten the
liberties of our citizens.

In addition, New York and various other states have
passed, or are in the process of passing, similar legislation.

I recommend and the Joint Legislative Committee to Study
Crime and the System of Criminal Justice in New Jersey, of which
I was the Chairman, recommend passage of Senate Bill 897.

Mr. Chairman, while I recognize the Committee's primary
concern today is on Senate Bill 897, I would appreciate the
opportunity to speak briefly of my support and sponsorship of
Senate Bill 802, since my schedule will make it difficult to
again appear tomorrow or Wednesday.

SENATOR WOODCOCK: I think that is in order, Mr. President.

SENATOR FORSYTHE: I commend to a careful re-reading by
members of the Committee the first 8 pages of the Special Joint
Committee's April 22 report and the provision of S 802 with
respect to the proposed Department of Criminal Justice and the
reasons for recommending the restructuring of the New Jersey
State Government to cope with the entire and most complex

problems facing the State in the administration of criminal justice.

Let us make crystal clear the provisions of Senate 802 and the findings and recommendations of the Special Joint Committee are not to meet inadequacies or shortcomings on the part of the many dedicated State, county and local officials charged with responsibilities in the varied aspects of the administration of criminal justice. The proposal is to establish an organization that will provide a system which can meet the many interlocking and related facets of the administration of criminal justice, to overcome the fragmentation of functions and jurisdiction and to provide an integrated system geared to meet the mobile, troubled and highly urban population of New Jersey. Thank you.

SENATOR WOODCOCK: Thank you, Mr. President.

Senator Italiano, do you have any questions to address to the President?

SENATOR ITALIANO: No.

SENATOR WOODCOCK: Senator Kelly, do you have any questions that you want to address to the President?

SENATOR KELLY: I have no questions at this time.

SENATOR WOODCOCK: Well, Mr. President, I don't think we have any questions of you this morning. I would, however, suggest that we do incorporate in this Committee's hearing, Section 7 of the recommendations made by the Joint Legislative Committee to Study Crime and the System of Criminal Justice in New Jersey, dated April 22, 1968, and for our stenographer, it will be found on page 12 of that report, and it is designated

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Number 7, "Electronic Eavesdropping." I don't think we need read it, but just incorporate that into the record.

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Thank you, Mr. President.

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SENATOR FORSYTHE: Thank you.

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[Following is Section 7, "Electronic Eavesdropping," of the Report of Joint Legislative Committee to Study Crime and the System of Criminal Justice in New Jersey:]

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Protection of everyone's liberties is a primary objective of any civilized system of administering criminal justice. We deeply believe that New Jersey should offer that protection. It is an unfortunate fact of our existence today, however, that organized crime is widespread in our State and there also exists official corruption. The rights of vast numbers of our citizens are thereby diminished. It is a further unfortunate fact of our existence today that significant evidence of such criminal activity, on a regular basis, cannot be obtained without the use of electronic eavesdropping. The experience of the most informed officials in and out of this State attests to that conclusion. Many so testified before the Committee.

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If a serious and responsible fight is to be mounted against organized crime and official corruption, then electronic eavesdropping must be utilized for that purpose. We recommend such a bill.

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Let no one misunderstand our recommendation to this effect. We do not believe electronic eavesdropping should be used widely or on a miscellaneous basis or as a lazy substitute for other types of intelligent and vigorous investigation. To the contrary, we recommend that electronic eavesdropping be permitted only where there is no other probable way to obtain evidence of these serious crimes; it would be confined to restrictive situations, under tight court control, pursuant to standards which have received implicit approval from the courts in the past year, including the United States Supreme Court.

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At present, Section 605 of the Federal Communications Act presents obstacles to a state developing an independent electronic eavesdropping policy. That section is now under active consideration by the Congress for amendment under a bill which would establish national standards by which states could authorize electronic eavesdropping. Final drafting of any New Jersey bill, therefore, must await passage by the Congress of those standards; of course, any subsequent bill would have to conform in all necessary respects.

SENATOR WOODCOCK: Professor Blakey of the University of Notre Dame Law School.

G. ROBERT BLAKEY: Mr. Chairman, I have a prepared statement which is rather long and I would prefer, if it is all right with the Committee, simply to insert it as it is in the record at this point and summarize it for the benefit of the Committee.

SENATOR WOODCOCK: I think that would be most helpful, Professor.

PROFESSOR BLAKEY: Let me also say I would like to invite questions at any time. I have no objection to interrogation. I would much rather have this be a dialogue than a monologue.

Mr. Chairman and members of the Committee: My name is G. Robert Blakey. I am professor of law at the Notre Dame Law School. I have been a consultant in the area of electronic surveillance to the President's Crime Commission, the Judiciary Committee of the United States Senate, and the American Bar Association Project on Minimum Standards for Criminal Justice. I am also a member of the American Civil Liberties Union. My appearance here today, however, is personal. My views are my own. They should not be attributed to any group or organization with which I am now or have been associated in the past.

I deeply appreciate this opportunity to appear before you and discuss the issues presented by Senate Bill No. 897. There can be no question that the problem of electronic surveillance is one of the most vexing that this body has ever faced.

Striking the proper balance between privacy and justice in a free society is always difficult. For all too often controversies in this area tend to degenerate into arid debates between contending ideologies. Too often aspects of the problem are identified as the whole problem. Here, as elsewhere, however, we must view things in context. "For that which taken singly and viewed by itself may appear to be wrong when considered with relation to other things may be," as Burke says, "perfectly right--or at least such as ought to be patiently endured as the means of preventing something that is worse."

"It would be time saving," Judge Jerome Frank once observed, "if [courts] had a descriptive catalogue of recurrent types of fallacies in arguments presented to [them], giving each of them a number, so that, in a particular case, [they] could say, 'This is an instance of Fallacy No. ____'." Putting together material for the President's Crime Commission, I had the distinctly unpleasant task of reading thirty years' worth of public debates and Congressional hearings in the area of electronic surveillance. Out of that experience I developed a catalogue similar to the one suggested by Judge Frank of the typical fallacies used in discussing the electronic surveillance issue and I have attempted to summarize them for you in a prepared statement. But because they are simply fallacies and ought not consume the time of the Committee as such, I would like to move to what I consider to be the real question, the underlying question, in the area of electronic surveillance, and that is to say, the question of social and law enforcement need.

I know of no better way to discuss that question with

you than to address myself to a case, a case in point, that is to say, the use of electronic surveillance techniques in New England by the Department of Justice and the FBI. The body of knowledge built up by the Federal Bureau of Investigation concerning the structure, membership, activities and purposes of organized crime groups was termed significant by the President's Commission on Law Enforcement and Administration of Justice. Indeed, the Commission recognized that only the FBI had been able "to document fully the national scope of" the groups engaged in organized crime. The Director of the FBI, moreover, has indicated that without electronic surveillance, the Bureau could not have obtained this intelligence. Because this information was not gathered for the purpose of prosecution, however, it has not generally been made public. The law enforcement techniques or the administrative safeguards and procedures involved in obtaining it have also not been made public. Nevertheless, aspects of the Bureau's practice have become public recently in the course of litigation in which the Department is engaged. Ten "airtels", and let me explain what an airtel is, - it is a communication from a district office of the FBI to the national office of the FBI - literally it is an air telegram, for short airtel - outlining for the Washington office of the Federal Bureau of Investigation information electronically obtained by the Boston office of the Bureau were disclosed during a post-trial hearing in a New England tax case. The disclosure was made in that case to give the defendant the opportunity to establish that the tax case against him was the fruit of unlawful electronic surveillance.

The airtels are summaries of daily logs kept by the Bureau agents of conversations picked up on an electronic device, placed by the Bureau in the office of the National Cigarette Service Corporation, a vending machine corporation, located at 168 Atwells Avenue in Providence, Rhode Island. The device was placed there to obtain accurate intelligence coverage of the activities of the head of one New England organized crime syndicate. The device was in operation from March 1962 to July of 1965. The ten airtels made public are the airtels from this period in which the defendant in the tax case was mentioned. The other airtels were kept confidential by the District Court, since they were not relevant to the issues raised in the tax prosecution. What is contained in them thus can only be inferred from those made public and this is the point that I would like to make with you now.

The ten airtels covering only approximately three weeks' worth of surveillance established this sort of a picture and I have outlined it in detail in the prepared statement. I would like to give it to you generally now.

It establishes that there is in fact a nationwide organization dominant in organized crime headed by a commission.

It establishes that this organization is broken up into various families or groups, that the families are headed by bosses and captains and lieutenants.

It establishes the relationship between that commission and the various families.

It sets up the functions or outlines for you the functions

of the boss of the various families.

It shows the geographical distribution of the families. There are families in Rhode Island, Illinois, New York, Maryland, Washington, New Jersey, Boston, Miami, Philadelphia.

It also shows that the organization is international in scope. There is apparently a family in Canada.

It establishes the following illegal activities are engaged in by this or other families: murder, kidnapping, extortion, fraud, bribery, perjury, loan sharking, and gambling.

Those same three weeks of surveillance established that this particular syndicate group was also engaged in legal activities, such as, gambling, labor unions, race tracks, vending machines and liquor.

The only accurate description I can give to you of what that device uncovered was if you could put yourself by way of imagination into the Middle Ages, into the system of feudalism that obtained at that time and imagine if you could have listened to what went on in some duke's castle in which he plotted the various activities that kept up his activities and his business.

The only difficulty is that particular device was not used in the 16th century; it was in the United States. It was today. And that that sort of activity could go on, I find deplorable.

The record of this surveillance, it seems to me, should put to rest any thought that organized crime is a "tiny part" of our crime picture or that electronic surveillance techniques

are "neither effective nor highly productive." They are both.

It is my understanding that Attorney General Sills has testified, not before this Committee, but the Crime Commission, that there is some question about the effectiveness of electronic surveillance, particularly wiretap. I would hope that this record of surveillance would put to rest that question. The use of electronic devices are effective. They are not only effective in the area of eavesdropping which was involved here, but also wiretapping. No criminal organization that reaches any degree of sophistication can do without communications. Just like a modern business cannot do without a telephone, so too a modern criminal organization cannot do without a telephone. Anyone who suggests otherwise is simply ill informed.

Mr. Justice Brandeis in his classic dissent in Olmstead v. United States, rightly suggested: "Our Government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example." Justice Brandeis spoke there in the context of lawless law enforcement. There is, however, another way in which government teaches by example. Its failures, too, do not go unnoticed, especially among the young, who see what we do but seldom listen to what we say. Unlike other successful criminals who operate outside of an organization and who require anonymity for success, the top men in organized crime are well known both to law enforcement agencies and to the public. In the earlier stages of their careers, they may have been touched by law enforcement, but once they attain top positions in the rackets, they acquire a high

degree of immunity from legal accountability. The National Advisory Commission on Civil Disorders, the Kerner Commission, described the impact of this process, for example, on the child of the ghetto in these terms:

"With the father absent and the mother working, many ghetto children spend the bulk of their time on the streets - the streets of a crime-ridden, violence-prone and poverty-stricken world. The image of success in this world is not that of the 'solid citizen,' the responsible husband and father, but rather that of the 'hustler' who takes care of himself by exploiting others. The dope seller and the numbers runner are the 'successful' men because their earnings far outstrip those men who try to climb the economic ladder in honest ways.

"Young people in the ghetto are acutely conscious of a system which appears to offer rewards to those who illegally exploit others, and failure to those who struggle under traditional responsibilities. Under these circumstances, many adopt exploitation and the 'hustle' as a way of life, disclaiming both work and marriage in favor of casual and temporary liaisons. This pattern reinforces itself from one generation to the next, creating a 'culture of poverty' and an ingrained cynicism about society and its institutions."

I think what the Kerner Commission is suggesting there is that the distinction we sometimes hear between street crime and organized crime is a misleading distinction. The relation is close. The relation is significant and any serious war on street crime must ultimately involve a serious war on organized crime.

No civilized society can long permit the operation within it of an underworld organization as powerful and as immune from accountability as some modern criminal organizations. The success story of these organizations is symbolic of the breakdown of law and order, and let me say, law with justice as well, increasingly characteristic of many sectors of our society. To hold the allegiance of the law-abiding, society must show each man that no man is above the law. But as part of organized crime, an ambitious young man knows that he can rise from body guard and hood to pillar of the community, giving to charities, dispensing political favors, sending his boys to West Point and his girls to debutante balls. The result of all of this was summed up by the President's Commission on Law Enforcement and Administration of Justice in these terms, and I quote:

"In many ways organized crime is the most sinister kind of crime in America. The men who control it have become rich and powerful by encouraging the needy to gamble, by luring the troubled to destroy themselves with drugs, by extorting the profits of honest and hardworking businessmen, by collecting usury from those in financial plight, by maiming or murdering those who oppose them, by bribing those who are sworn to destroy them. Organized crime is not merely a few preying upon a few. In a very real sense it is dedicated to subverting not only American institutions, but the very decency and integrity that are the most cherished attributes of a free society. As the leaders of organized crime pursue their conspiracy unmolested, in open and continuous defiance of the law, they preach a sermon

that all too many Americans heed: The government is for sale; lawlessness is the road to wealth; honesty is a pitfall and morality a trap for suckers."

What I am suggesting, Mr. Chairman, is that there is both a law enforcement need and a social need to bring electronic surveillance to bear on the problems of organized crime.

I might say that this is also the conclusion of the American Bar Association's Minimum Standards Project and I want to be careful at that point and say that the Project's conclusions are now tentative. They have not yet been approved by the House of Delegates. But the Police Function Committee has recommended to the House of Delegates the adoption of affirmative action in the area of electronic surveillance.

This is also the conclusion of the National District Attorneys Association, the National Association of Attorneys General. The National Council on Crime and Delinquency, the Judicial Conference of the United States, which incidentally is headed up by Chief Justice Earl Warren, has also recommended on the national level legislation authorizing electronic surveillance, consistent with constitutional standards.

And finally, this is the conclusion of the two most balanced over-all studies of the problem. I refer to the President's Crime Commission and the Privy Councillors Report in England in 1957.

I would like to summarize for the Committee, if I might, those two studies.

In June of 1957, three Privy Councillors were appointed to inquire into the interception of communications in Great Britain.

The report they filed deals only with wiretapping, but its conclusions are equally applicable to all forms of electronic surveillance. The practice over a twenty-year period was examined. After reviewing the historical source of the power as exercised by the police, the Councillors took up the purposes and extent of its use. The Report indicated that the power to intercept was limited to serious crimes and issues involving the security of the state. Serious crime was understood to mean a crime for which a long term of imprisonment could be imposed or a crime in which a large number of people were involved. Interception could only be on a warrant issued by the Secretary of State. Three requirements were set out: the offense must be serious; normal methods of investigation must have been tried and failed, or must from the nature of things be unlikely to succeed if tried; and there must be good reason to think that an interception would result in a conviction.

Let me interject at this point. For those people who are deeply concerned about privacy in this area, as indeed I am, the Privy Counsellors Report is extremely instructive because England used this equipment and the Privy Councillors Report is not an estimation of what might happen in the future, but rather a record of what happened in an existing law enforcement system which has premises virtually identical to our own and a deep concern over citizen privacy.

SENATOR WOODCOCK: Professor, if I may, just interject, in looking at the requirements set forth, aren't these requirements incorporated in Bill 897?

PROFESSOR BLAKEY: Yes, essentially. The bill as drafted

reflects the standards in Title III of the National Wiretapping Bill, the Electronic Surveillance Bill, and lessons learned in the Privy Councillors Report were incorporated in the bill and there was every attempt to gain what we could gain from the study of the English experience.

The Councillors found that the metropolitan police used interception chiefly "to break up organized and dangerous gangs * * *." The experience of the police was that much of the major crime in England stemmed from gangs located in London. According to the police, the leaders of the gangs needed the telephone to communicate with their henchmen. The chief use of interception by the Board of Customs and Excise, on the other hand, was in the area of diamond smuggling. Their experience was that the traffic was organized by a "very small, closed group" in which it was "hard to get reports from informers or by normal means of detection." Again, the telephone was widely employed by the individuals.

Let me interject at this point, here is concrete experience, contrary to the judgment of Attorney General Sills, and we can analogize closely, I think, to the existence of dangerous gangs in large metropolitan areas to our problem here and also the diamond smuggling experience in England to our own problem with the importation and distribution of narcotics.

SENATOR ITALIANO: Would you characterize the organized crime situation in the United States or in any state thereof as "very small closed groups"?

PROFESSOR BLAKEY: No, I wouldn't, Senator.

SENATOR ITALIANO: -- which was one of the problems faced in England in getting information.

PROFESSOR BLAKEY: Well, let me say this: There are very small closed groups, but I would put the emphasis on the plurality of groups. There are a number of groups in this country operating in the area of organized crime and each one of those groups are in fact closed. It is very difficult to infiltrate them with informants and get evidence through normal investigative techniques.

SENATOR ITALIANO: Are they closed to each other?

PROFESSOR BLAKEY: In some situations, yet.

SENATOR ITALIANO: Are the individual groups part of one large group?

PROFESSOR BLAKEY: Well, it seems fairly clear from the studies of the Crime Commission that there is a dominant group certainly in the eastern part of the United States. This is less and less true in the midwest and less and less true in the south and the far west. But there are a multiplicity of groups engaged in organized crime and in many areas while there is the one dominant group, other groups will operate in close alliance with the dominant group.

SENATOR ITALIANO: Well, what you are saying here then is that there is no such thing as organized crime throughout the United States, but individual groups may be organized in different areas of the United States?

PROFESSOR BLAKEY: Well, what I understand by organized crime is any syndicate, any collection of individuals who create a syndicate and operate under a long enough period of time.

To put it in legal terms, the difference between a partnership and a corporation is the difference between incident street crime and organized crime. When the organization acquires a life of its own, a life style of its own, and a continuity of leadership is when it really becomes organized crime. For example, the James boys certainly were a form of organized crime at one time in our country. But when Jesse was killed, the James gang virtually ended. On the other hand, we have had experience with organized crime groups in this country where the incarceration or even the death of a leader did not result in the termination of the organization's activity, rather another person succeeded. In this sense, the groups we face today are more powerful and more threatening to socieity because of the continuity of leadership involved.

SENATOR WOODCOCK: Well, Professor, doesn't it too depend upon the activity of the organization? In other words, I think it would be hard to perpetuate bank robbers or train robbers as easy as it would to perpetuate someone engaged in the activity of narcotics or usury or any of the others.

PROFESSOR BLAKEY: Yes, Senator, this is a factor, but one of the unfortunate misconceptions about organized crime, for example, is that it is primarily engaged in narcotics or gambling or prostitution or the other service-type offenses. The reality of it is that organized crime is also engaged in bank robbery.

SENATOR WOODCOCK: Is that correct?

PROFESSOR BLAKEY: It is also engaged in highway robbery. The Chicago area has a major problem with hijacking. We have had

a situation in northern New York where one leader of an organized crime group was the moving force behind a series of bank robberies, Federal bank robberies. So in a sense we have thought of organized crime in these terms primarily because we have examined it in these terms.

One of the things that a full-scale attack on the problem turns up is that the organized crime official is not simply a gambler or a pimp or a narcotic pusher. He is also a thief and a murderer in the traditional sense.

But in any case, the Councillors noted that in espionage the weakest link was communication, and without penetration of this link, detection would be almost impossible.

The Councillors refrained from making any hard judgments on the effectiveness of the use of electronic surveillance techniques in the terms of alternatives, noting the impossibility of certain conclusions in this area. But based on their examination of the English experience, they had no question but that its use was necessary in certain kinds of cases. They observed, and I quote:

"The freedom of the individual is quite valueless if he can be made the victim of the law breaker. Every civilized society must have power to protect itself from wrongdoers. It must have power to arrest, search, and imprison those who break the laws. If these powers are properly and wisely exercised, it may be thought that they are in themselves aids to the maintenance of the true freedom of the individual."

The Councillors concluded that no steps should be taken to deprive the police of the power of interception. They noted,

and I quote:

"But so far from the citizen being injured by the exercise of the power in the circumstances we have set out, we think the citizen benefits therefrom. The adjustment between the right of the individual and the rights of the community must depend upon the needs and conditions which exist at any given moment, and we do not think that there is any real conflict between the rights of the individual citizen and the exercise of this power * * *. The issue of warrants * * * will permit the freedom of the individual to be unimpeded, and make his liberty an effective, as distinct from a nominal, liberty."

They continued, and I quote:

"We cannot think it to be wise or prudent or necessary to take away from the police any weapon or to weaken any power they now possess in their fight against organized crime of this character * * *. If it be said that the number of cases where methods of interception are used is small and that an objectionable method could therefore well be abolished, we feel that * * * this is not a reason why criminals in this particular class of crime should be encouraged by the knowledge that they have nothing to fear from methods of interception * * *. This, in our opinion, so far from strengthening the liberty of the ordinary citizen, might very well have the opposite effect."

Finally, they concluded, and I quote:

"If it should be said that at least the citizen would have the assurance that his own telephone would not be tapped, this would be of little comfort to him, because if the powers of the police are allowed to be exercised in the future, as

they have been in the past under the safeguards we have set out, the telephone of the ordinary law-abiding citizen would be quite immune * * *. If it be said that when the telephone wires of a suspected criminal are tapped, all messages to him, innocent or otherwise, are necessarily intercepted too, it should be remembered that this is really no hardship at all to the innocent citizen. This cannot properly be described as an interference with liberty; it is an inevitable consequence of tapping the telephone of the criminal; but it has no harmful results * * *. The citizen must endure this inevitable consequence in order that the main purpose of detecting and preventing crime should be achieved. We cannot think, in any event, that the fact that innocent messages may be intercepted is any ground for depriving the police of a very powerful weapon in their fight against crime and criminals * * *. To abandon the power now would be a concession to those who are desirous of breaking the law in one form or another, without any advantage to the community whatever."

Now I would like to address myself briefly to the report of the President's Crime Commission.

When the President called together his Commission on Law Enforcement and the Administration of Justice, he asked it "to determine why organized crime has been expanding despite the Nation's best efforts to prevent it." The Commission identified a number of factors. The major problem, however, related to matters of proof. "From a legal standpoint, organized crime," the Commission concluded, "continues to grow because of defects in the evidence gathering process." The Commission reviewed

the difficulties experienced in developing evidence in this area in these terms, and I quote:

"Usually, when a crime is committed, the public calls the police, but the police have to ferret out even the existence of organized crime."

I might interject at that point, it is sometimes said that the State of New York has the major organized crime problem. I would like to suggest to you that that in part grows out of the fact that the New York Police, using electronic surveillance, have been working on their problem. I would suggest to you that New Jersey, Michigan and Illinois have problems as bad or worse than New York's and it has not been brought to our public attention largely because the police either have not been working the problem or have not been working the problem with effective legal tools.

SENATOR ITALIANO: Is this a conclusion on your part, that New Jersey, Michigan and Illinois have as great a problem or more than New York?

PROFESSOR BLAKEY: Let me say, Senator, that it is based on studies of any information that was made privy to me by the Crime Commission's Report. I might also add that I was a special prosecutor in the Organized Crime and Racketeering Section of the United States Department of Justice from 1960 to 1964.

SENATOR ITALIANO: Where?

PROFESSOR BLAKEY: In Washington and I was also assigned to do investigations in New Jersey. I am quite familiar, at least as of 1964, with the intelligence reports dealing with the New Jersey problem. I also in 1964 was going to move my major

sphere of concern to Illinois and at that time had the opportunity to review the intelligence data on that state. It is my judgment that the problem is Michigan, Illinois, New Jersey and New York, and I might say the fact New York is overstated publicly is based on rather hard data.

SENATOR KELLY: Professor, let me ask you something here. It has always been a question in my mind - and I say this in deference to my two colleagues here for whom I have a high regard - where does the honest police officer go? to a crooked Assistant U. S. Attorney or crooked Assistant Prosecutor who sometimes leaves this office and ends up representing organized crime in these various states that you mentioned? Where does the honest police officer go with this information?

PROFESSOR BLAKEY: Well, presently he goes very few places. The honest police officer has a hard time, particularly on the local level, and one of the hopeful effects, it seems to me, of the use of electronic surveillance in an organized crime program would be to deal first with official corruption and to get at the local prosecutors, to get at the local judges and to get at the local police officers who are now in charge of the policy-making machinery and denying the honest police officer and the citizen recourse to his government. If we could break the hold that organized crime has on the community through official corruption and release the honest police officer who I would suggest to you is in the majority, release him to do his work, we could bring this organized crime problem under control.

SENATOR KELLY: Would you agree with this statement that

one of the difficulties that we are experiencing today is that some of our crooked lawyers wind up being crooked judges? Do you agree with that statement?

PROFESSOR BLAKEY: Yes, and I say that as a member of the legal profession first and as a teacher in a law school. I have a great deal of respect for the honor and tradition of the legal profession and a great deal of disrespect for some of its members.

One of the things I would like to see in addition to the bringing in of the crooked judges and crooked prosecutors and crooked policemen are the crooked lawyers.

SENATOR KELLY: Well, I am not singling out the members of the Bar in particular. Maybe I am.

PROFESSOR BLAKEY: I would be willing to.

SENATOR KELLY: I have heard so much about the police officer who has gone so bad and so sour and so forth. But it would seem to me this is an area where we have some difficulty. I have to be concerned, and I certainly want to address myself to this problem during these hearings, as to where the honest FBI agent or Internal Revenue agent - where do these fellows go when someone leaves the prosecutor's office or the United States Attorney's office and winds up representing these people? One of the reservations that I have at this point and I may change my position - one of my reservations about these electronic sources of obtaining this information is where it ends up and who has access to this information. Then they leave the office of the prosecutor or the U. S. Attorney and they wind up representing

elements of organized crime and they know what honest law-enforcement officer was providing these leads and so forth, and from that moment on, his career is almost finished.

PROFESSOR BLAKEY: Let me suggest to you, Senator Kelly, this is not a problem peculiarly related to electronic surveillance. This would be true in any technical or traditional investigative procedure. For example, if the prosecutor comes in contact with the police on a day-to-day basis and learns the identity of a live informant today and that prosecutor subsequently defects to organized crime, which you are suggesting, that informant is in trouble. So that problem cuts across the whole range of evidence-gathering techniques. It is not peculiar to electronic surveillance.

SENATOR ITALIANO: Professor, I don't know, but maybe I misunderstood. You mean if a former prosecutor now represents somebody who is accused of crime and is then accused himself of defecting to organized crime?

PROFESSOR BLAKEY: No. I tried to make it very clear, it is more than representation - it is defecting. I am not about to suggest to you that anyone who represents an organized crime figure is for that reason allied to or connected with organized crime.

SENATOR ITALIANO: In other words, he is not corrupt.

PROFESSOR BLAKEY: No. Let me say, I would give even organized crime full due process of law. If we don't give it to them - in other words, our worst enemies - then it seems to me we are all in trouble and one way in which we can give due process is by giving them full legal counsel. But I draw

a sharp distinction between legal counsel after the fact in the context of a court room and legal counsel before the fact in the context of a criminal organization. What I object to is not representation, but action as house counsel and I am sorry to say that a large number of these criminal organizations not only have legal counsel, but also have the services of accountants. The same way as a major business organization needs these technical services, these business organizations need technical services. One of the things that more effective enforcement of the law can do is to deny these people, that is, the organized crime syndicate, the access to these other social services - lawyers and accountants. If we can do that, I think we can reduce these people to manageable proportions.

If I may continue with the quote, "The many Americans who are complaint 'victims' have no incentive to report the illicit operations. The millions of people who gamble illegally are willing customers, who do not wish to see their supplier destroyed. Even the true victim of organized crime, such as those succumbing to extortion, are too afraid to inform law enforcement officials. Some misguided citizens think there is social stigma in the role of 'informer', and this tends to prevent reporting and cooperating with police.

"Law enforcement may be able to develop informants but organized crime uses torture and murder to destroy the particular prosecution at hand and to deter others from cooperating with police agencies."

If I may interject at that point, I am familiar with

the facts of one particular case in Chicago where a man was identified as a Federal informant who had been himself a loan shark official. He just wasn't killed. A meat hook was put in his back and he was hung up on the wall and he was tortured for a period of three to four days with electronic cattle prods on his private parts and the discussion that took place among those people torturing him in this way was unbelievably sadistic. They took positive pleasure in seeing him as they put it, flapping around like a big fish. Now that kind of activity has a direct impact on the other people in the community. It doesn't take but one or two executions, and we will call them executions because that is what they are, to instill in the other members of the organization and those people in the legitimate community who have some information the desire not to cooperate with the police.

One of the real advantages of the use of electronic equipment is that it depends less on the cooperation of the people and to that degree is not subject to being changed through threats of force or violence. It cannot be bribed. The recording is immune from the kinds of pressures that the testimony of a normal witness is subject.

I continue the quote, "Informants who do furnish intelligence to the police often wish to remain anonymous and are unwilling to testify publicly. Other informants are valuable on a long-range basis and cannot be used in public trials. Even when a prosecution witness testified against family members, the criminal organization often tries, sometimes successfully, to bribe or threaten jury members or judges.

"Documentary evidence is equally difficult to obtain.

Bookmakers at the street level keep no detailed records. Main offices of gambling enterprises can be moved often enough to keep anyone from getting sufficient evidence for a search warrant for a particular location. Mechanical devices are used that prevent even the telephone company from knowing about telephone calls. And even if an enforcement agent has a search warrant, there are easy ways to destroy written material while the agent fulfills the legal requirements of knocking on the door, announcing his identity and purpose, and waiting a reasonable time for a response before breaking into the room."

The Commission then concluded, simply enough, that under "present procedures, too few witnesses have been produced to prove the link between criminal group members and the illicit activities that they sponsor." It was in this context, therefore, that the Commission examined the testimony of knowledgeable law enforcement officials that electronic surveillance techniques were indispensable to develop adequate strategic intelligence concerning organized crime, to set up specific investigations, to develop witnesses, to corroborate their testimony, and to serve as substitutes for them. The Commission then reviewed the arguments for and against the use of these techniques, examining in particular the actual experience in New York, and concluded - a majority of the Commission then concluded that they felt that subject to constitutional restrictions what legislation should be enacted authorizing the use of these techniques. And it was based on this recommendation and particularly the experience in England that the Congress in

the enactment of Title III afforded to the Federal authorities the right, consistent with the Constitution, to use these techniques. It also afforded to the states the opportunity to adopt state statutes meeting national standards. I suggest it is time to take advantage of that opportunity. Legislation is now pending and is moving hopefully toward enactment in such states as Pennsylvania - New York is going to re-examine its statute in light of Title III - Michigan, California, Connecticut and Rhode Island. And I think it would be well for New Jersey to move in that vein too.

Let me say in conclusion that electronic surveillance is not a panacea. Alone it will not do the job. Any effective program attempting to meet the challenge of organized crime must have men, it must have time, it must have commitment from the responsible officials and it must have legal tools. You deny any program any one of those factors, it will not succeed.

Let me suggest to you this is a program of integration. We have to have all of these things. In terms of legal tools, the legal tool is electronic surveillance. Without it, the program will ultimately be doomed to frustration.

In conclusion let me add, shortly before the enactment of Title III, I drafted what I hoped could be a model state electronic surveillance act. The statute was published in June of 1968. Unfortunately at that time Congress enacted Title III so there were some discrepancies between the model statute as I suggested and the standards of Title III. I have since had the opportunity to redraft the model statute in light

of Title III and for whatever help it might be to the Committee in testing Senate Bill 897 in terms of the requirements of Title III, I have attached a copy of the redraft to my statement as an appendix and it will, of course, appear in the record.

Senate Bill 897 in broad outlines meets the test not only of the Constitution but also of Title III and it is a bill that I could vote for in its present form if I were given the opportunity.

There are a number of technical problems, primarily ones of compliance with Title III, which I understand were brought about by the fact that this bill was being drafted as Title III was being enacted and in this business it seems one very often writes on sand. I have talked with Mr. Lanning of the legislative drafting service and will communicate to him some suggestions on the bill. But in general outlines, let me say, it is an excellent first step towards bringing about a substantial change in what I think Senator Forsythe aptly described as New Jersey's disgraceful organized crime problem. Thank you.

[Professor Blakey's written statement can be found in the Appendix to these hearings, Vol. IV.]

SENATOR WOODCOCK: Professor, I would like to address a few questions to you. You paint a very grim picture of the war against organized crime not only here in New Jersey but in the United States and I would just ask your opinion as to whether or not we can succeed in this war. Can the forces of right overcome the forces of evil?

PROFESSOR BLAKEY: By nature I am not an optimist and I am not an optimist in this area. And I don't want to be an alarmist either. I don't want to see an organized crime official under every rock. There are other problems in this country as large or larger than the problem of organized crime. But on the other hand, I think the time is running out in which we will be able to enact this statute, for example, in New Jersey or be able to enact affirmative legislation to move in this area. In a legitimate community it requires the concerted action of so many people to do the right thing and very few people who don't want to do the right thing very often can prevent the good people from doing what has to be done. This is a very real possibility as states such as New Jersey and more particularly Illinois move to respond to organized crime. I am not terribly sure that the state will be able to respond to it.

SENATOR WOODCOCK: And do you feel, Professor, that this electronic surveillance and wiretapping is a strong tool or weapon in the hands of the state government?

PROFESSOR BLAKEY: Let me repeat in part what I said, it is not a panacea. If you enact electronic surveillance legislation and do not follow it up by building the kind of administrative structure on the state and local level that will enforce the statute, if you do not provide the police force with the right kind of men, in terms of training, in terms of talent, if you do not back them up on a day-to-day basis, if you do not accord them an opportunity to use it, it will be an idle act. On the other hand, if you provide the administrative

structure, provide the men and provide the "commitment," and I put that in quotation marks, but do not give them the necessary legal tools, it will be an idle act. It is an integrated problem and an integrated approach is necessary to meet it.

SENATOR ITALIANO: Professor, one of your statements concerns me here. If I understood you correctly, you said time is running out before New Jersey and these other states will be able to adopt legislation of this nature?

PROFESSOR BLAKEY: Again, Senator, I do not want to be an alarmist. I don't want to overstate the problem. But let's be blunt and frank about it. Some of these states, and I include New Jersey, have a major problem with official corruption. and let me make at this point the other point, and make it very clear. I do not suggest that anyone who opposes electronic surveillance is therefore corrupt. Legitimate people, reasonable men, can disagree on this and those people who disagree with my position are not the lackeys of organized crime or not the unknowing allies of organized crime. But having said that, let's be blunt, that if organized crime has any sense at all, they don't want this bill and if they have any influence at all in this State Legislature or in the prosecutors' offices or in the police offices, they will do everything in their power to prevent it from being enacted and once enacted, to prevent it from being enforced. That has been the experience in other states.

SENATOR WOODCOCK: Anything else, Senator?

SENATOR KELLY: I'd like to ask one thing: Do you have

a copy of the bill here?

PROFESSOR BLAKEY: Yes, I do.

SENATOR KELLY: In Section 9 (b) provision is made for execution of such warrant by another public employee, authorized by the applicant requesting, I guess, the warrant or the order for wiretapping. Now by "public employee," do you know what is meant? Does this mean private detective agencies and so forth?

PROFESSOR BLAKEY: I would certainly hope it wouldn't be that broad.

SENATOR KELLY: I would too.

PROFESSOR BLAKEY: On the other hand, it seems to me the structure of this bill, as indeed the structure of Title III, is a very conscious effort to centralize in a publicly responsible official, either the Attorney General or the local prosecutor, who is periodically faced with elections and accountable literally to the people in a way in which police officials are not - to centralize in him the responsibility for the use of this equipment. Now if he chooses to use this, literally he can't go out and tap wires; he is going to have to do it through agents. But this bill, as the Federal bill, says, "Look, you're the guy that's doing it. You can use the agents that you choose, but if you choose bad agents, you're responsible for doing it." I would think if I know the people of New Jersey, and I think I do, if a local prosecutor began to use loosely a private detective agency to wiretap and bug, with all of the problems that would be raised with that, I suggest to you that is a major campaign

issue the next time around and that guy won't be reelected.

SENATOR ITALIANO: Except that in New Jersey we don't elect our prosecutors.

PROFESSOR BLAKEY: They are appointed by the State Attorney General. I would imagine that the Statewide pressure on ---

SENATOR ITALIANO: They are not appointed by the Attorney General; they are appointed by the Governor.

PROFESSOR BLAKEY: I'll have to back off on that point. I believe the Attorney General is elected, isn't he?

SENATOR ITALIANO: No, he isn't.

PROFESSOR BLAKEY: What we have done here is, we have escalated this problem to a statewide election issue and the Governor would ultimately have to face it. If it is not a local county sheriff's race or a local county prosecutor's race, it is going to be a major statewide issue. And to the degree that you have a responsible State official, to this level, you have it in the Attorney General. I must apologize for not being fully aware of the State law. You have more safeguards because the kind of man you put in as Governor is going to be responsible for how this act is administered directly. He is not going to be able to duck it because it is going to be his Attorney General and his prosecutors on the county levels that are using it or not using it.

SENATOR WOODCOCK: I would say that I think the problem is covered by Section 1 (d), which defines "applicant." I think we are dealing with that. It says, "'Applicant' means the Attorney General, the chairman of the State Commission of

Investigation, a county prosecutor, or that person designated to act for such official * * *." So I don't think we are going to get outside of the area --

SENATOR KELLY: Except, Senator, I question giving the authority to a public employee who may not be a law enforcement officer. I think this is a questionable thing to do.

PROFESSOR BLAKEY: What is happening is that the authority of the applicant is clearly designated in the statute as being a prosecutive official, which ultimately is going to mean the Governor, as you point out the structure of your State government, and then the question arises, "Well, who actually puts in the wiretap?" You know, the Governor is not going to do that and the prosecutor is not going to do that, the Attorney General is not going to do that. He is going to have to have an agent working for him and what Section 9 (b) does is allow any public employee designed by that applicant to do it for him. So the lines of responsibility are very clear in the statute. If ultimately the Governor allowed private detectives to do this, I have a real question with "public employee" for private detective. But if he allows for example, ill-trained local policemen to do it rather than, for example, specially trained people in the Attorney General's office or specially trained people in the State Police, as I would hope that he would do, I think he is going to be in trouble, in trouble politically as well as otherwise.

SENATOR KELLY: I wish you were right on it. I don't know. I have seen a lot of people do some very careless things and it didn't affect them politically.

PROFESSOR BLAKEY: The remedy here is very, very clear. We can change the statute by saying "only members of the State Police," for example, "can exercise these warrants."

SENATOR KELLY: I think that's a great idea.

PROFESSOR BLAKEY: And my understanding of the New Jersey State Police is that it is first rate.

SENATOR KELLY: I think we have one of the finest State Police of any state in the Union.

PROFESSOR BLAKEY: They are well trained. They are people who have not been subject to corruption as a law enforcement agency. And it would be no harm at all to have them a service agency for the use of electronic surveillance by the prosecutors and the Attorney General. There would be no reason, for example, to afford to a small police community or a small community the right to have their police officers do it. Centralize it in the State Police where you have professionalism and you have people who are not subject to corruption as easily as on a local level.

SENATOR KELLY: I agree with you 100 per cent.

PROFESSOR BLAKEY: Thank you, Senator.

SENATOR WOODCOCK: Any other questions, gentlemen?

[No response.]

Professor, we want to thank you very much for taking time out to come before this committee and give us the benefit of your thoughts.

PROFESSOR BLAKEY: It has been my pleasure.

SENATOR WOODCOCK: We will take a five-minute recess.

[Recess]

SENATOR WOODCOCK: All right, gentlemen, I believe that we can reconvene now.

I think I ought to say for the record that inasmuch as this is an electronic eavesdropping hearing, we have in the back of the room a demonstration of how it is done. The State Police are putting this proceeding on tape and I think it is a very fine idea. We get some idea of how it works.

We do have Mr. Ralph Salerno here this morning. I am very happy to see Mr. Salerno here. I am very happy that he could come down from New York City to demonstrate to this Committee and to the people present just what a wiretap is and how it works. Mr. Salerno, I would give it over to you, sir.

R A L P H S A L E R N O: What I have done, sir, is brought not so much an example of how it works or how it is done, but rather the end result of what can be achieved.

I have with me a tape which is entitled, "The Voices of Organized Crime." It is an educational tape which has been given over to at least 40 law schools in the country for the purposes of education. It was put together by the New York State Joint Legislative Committee on Crime, its Causes, Control and Effect on Society. I served as a consultant to that Committee in New York State. It was used -- these conversations were obtained from law enforcement people in New York State who had made the recordings pursuant to court order where that was necessary. There are a few conversations here which were made with the consent of the victim or, in one case, the investigating officer himself had a recording device on his

person. The tapes that you will hear were used to educate, if you will, members of our legislative body which enacted legislation permitting wiretapping and eavesdropping. It was also used for the benefit of delegates to our State Constitutional Convention where the question of that part of the Constitution which would be relative to this subject had to be voted on, etc.

I would like to point out that my background is that I served for more than 20 years with the New York City Police Department. This entire period of service was given over to investigations of racketeering, syndicated and organized crime. I was a consultant to the President's Crime Commission. I am particularly pleased that I was the only police officer who was invited to serve in that capacity with the President's Crime Commission.

I have had during my period of service with the New York City Police Department a great deal of experience with the use of electronics and I think that some of the things that I learned from it could be helpful to you.

One thing that I would ask you to consider is this, that Professor Donald Cressy who worked with the President's Crime Commission and I ran a little bit of an experiment. As a consultant to that Commission, he was put in a position where there was made available to him the expertise of Federal law enforcement officers, state law enforcement officers and municipal officers so that he could learn as much as was known about organized crime. The professor, being a trained researcher, asked questions. Not only was he content with the answer, but he was very particular to ask, "How did you come to know this fact

about organized crime?" The answers that he received varied. Sometimes the answer would be, "Well, this was the story that the complainant victim told us when he came in." Sometimes he would be told that it was by direct observation, an eye-ball surveillance. Sometime he was told that the knowledge came from an informant. And then there were times that he was told that it came as a result of electronic surveillance of some kind. He kept sort of a running total and he came to the conclusion - I agreed with him when we reviewed it - that 80 per cent of everything that was known in 1966 about organized crime in the United States was either originally learned through electronics or corroborated to a degree where it could be believable. The informant information very frequently cannot be taken at face value. You look for some other kinds of corroboration and that is why I add that stipulation, that 80 per cent of everything known about organized crime came from this kind of investigative technique, the best technique for cutting through the insulation with which organized crime figures surround themselves.

I want to affirm what Professor Blakey has said to you earlier. I don't know necessarily that New York City has more organized crime than anybody else. I am led to believe that we know more about the problem that we have in our state than other jurisdictions which have not had the benefit of this form of investigative technique.

I would like to cite for your attention further that I was assigned to the McClellan Committee in 1963 when that United States committee conducted hearings on organized crime.

One of the people who appeared before that committee was Mr. John Bergen who was the Assistant Attorney General in charge of the Criminal Division who served under your current Attorney General. The area of electronic surveillance and wiretapping was raised with Mr. Bergen. Mr. Bergen is a man who can be certainly characterized as a very fine lawyer and a man of liberal thinking. He indicated in the record, and that is available to you and I suggest that you might want to consult it, that he had been opposed to electronic surveillance for the longest time because of concerns about the invasion of privacy, but that when he came face to face and had to come to grips with the problem, he changed his mind and he did realize and he testified before the Committee that he felt it was a very necessary tool. He indicated that Mr. Sills, the Attorney General, did not necessarily agree with him but permitted him this difference of opinion.

I know that I, myself, have on a number of occasions been visited by law enforcement officers from New Jersey who had to come over to New York to find out what was going on in New Jersey, it being a fact that there were certain areas in which we might have had a greater degree of knowledge or facts. I think this is so and was so not because these were not competent police officers, not at all. I think they were fully competent to do their job and I think they performed well and I think that the advantage that we had resulted essentially from this.

I am in a position to tell you that there is such evidence indicating that syndicated groups tried to interfere

with an election in New Jersey just one year ago. I don't know if the people in New Jersey are aware of that. It is a fact that we came across through this means. So I can't impress upon you enough how important this can be.

You will find, if I can go into the tape that I have here with me, that not only is electronic surveillance useful for direct evidence regarding the commission of a crime, but very frequently the actual conversation constitutes the entire corpus of the crime. The one thing that is recognized about organized crime is that it appears most frequently in the form of a conspiracy. For some of the participants, the actual participation in the conspiracy begins and ends with a conversation. That's the entire crime as it relates to him or as he can be connected with it. And the failure to obtain that conversation brings about the failure to implicate the man that is sometimes referred to as the king pin of crime or the real directors and law enforcement men have been just a little bit tired of being told that their best efforts only bring about the arrest of employees, that they are expected to knife through the insulation to the real leaders and the real leaders could patently place themselves under a lie detector test and they could say, "I have not seen a gambling slip in 20 years." Yet they direct and they benefit from the proceeds of gambling. They could say, "I have never seen, touched, tasted or smelled narcotics," and yet they are the men who direct narcotic activities and benefit from the proceeds.

So I feel that electronic surveillance is a necessary tool for cutting through the insulation with which these men

surround themselves and the only way that you can get the arch conspirator. I think if you listen to these conversations carefully, you will see that there is a definite connection between organized crime and crime on the streets. I think you will see the connection between organized crime and ghetto areas. There is one conversation here where identifying the names, we identified the gambling operation as being in the Bedford-Stuyvesant area of Brooklyn in New York. This is an area in which various levels of government are interested in pouring money and here in one gambling operation you will see more than six million dollars a year being taken out of that area. That is an aggravating condition.

SENATOR WOODCOCK: Mr. Salerno, if I may interrupt for a moment, I am reminded by Senator Italiano that I failed to swear you in before we began. Will you raise your right hand, sir.

[Ralph Salerno was duly sworn as a witness.]

MR. SALERNO: So I believe you can show that the operations of organized crime can be aggravative to certain areas of our society which are commonly characterized as the inner city, the ghetto area and so on.

The conversations do have some interpretation to them. I will try to bring this to your attention. Would you like to proceed with the tape now?

SENATOR WOODCOCK: Do you have a copy of your statement there that we might have the benefit of?

MR. SALERNO: No, I don't have a prepared statement.

SENATOR KELLY: Is this a prepared statement by you, sir?

MR. SALERNO: No, this is a transcript of the conversations on the tape.

SENATOR WOODCOCK: Well, do you have a copy of that that would be available to us?

MR. SALERNO: Yes. Would you like to proceed with the tape?

SENATOR WOODCOCK: Do you want to go into the tape first or ask some questions? I think that we might clear up one question that I am sure that all of us are interested in. You indicated that there was some information gathered in New York by the use of electronic eavesdropping equipment that indicated that there was an effort on the part of, I assume, organized crime or something to interfere with an election here in New Jersey.

MR. SALERNO: Yes. The nature of that was this: There were some people whom we would characterize as being involved in syndicated crime had an interest in the proposed race track in Secaucus. They evidently had been unsuccessful in being recognized as licensees and organizers. Because they had been rebuffed in this attempt, they were out to defeat the proposal for the race track. What they in fact did was to hire negroes to come into the area, to hand out handbills in favor of the race track.

SENATOR WOODCOCK: In other words, generate a white backlash, is that it?

MR. SALERNO: Yes. They went further. They hired negroes to come into the area, ring door bells seeking living quarters and accommodations, indicating that they expected to be employed as grooms and race track help in and around the

area and this was actually a conspiracy to generate, as you characterized it, a white backlash against that, their hope, I suppose, being that if it were defeated at this time, they might be more successful in a later attempt, whereas if the race track went through, they were going to be shut out as it stood.

SENATOR WOODCOCK: And this was developed through a tap or some other electronic device?

MR. SALERNO: Yes.

SENATOR WOODCOCK: And that tap or conversation is available to people here in New Jersey?

MR. SALERNO: I think it would be, yes.

SENATOR WOODCOCK: And do you know where that tape or tap lays right now?

MR. SALERNO: I would be pleased to tell you in camera certainly, to make it available to the Committee.

SENATOR WOODCOCK: All right.

SENATOR ITALIANO: This was on the referendum?

MR. SALERNO: Yes, that's right.

SENATOR WOODCOCK: And that's the only one you are talking about. There is no other evidence that you have that anyone interfered with any other election.

MR. SALERNO: No. It would appear that these men were entirely unsuccessful in trying to be recognized which speaks well, I think, for the supervisory people. This was more or less their way of trying to, number one, wreak a vengeance, if you will, but, two, hold up the possibility at some later date they might be more successful.

SENATOR WOODCOCK: But this is the only instance that you know of where there was any attempt on the part of organized crime to interfere with an election here in the State of New Jersey?

MR. SALERNO: Yes, it is.

SENATOR ITALIANO: In a sense it is not an attempt to interfere, they interfered.

MR. SALERNO: Well, I would be in no position to judge how successful they were. I would not like to attribute the outcome of the election entirely to their efforts.

SENATOR ITALIANO: Regardless of the outcome, if they did something --

MR. SALERNO: They did interfere.

SENATOR ITALIANO: -- they interfered.

MR. SALERNO: Yes. They did interfere.

SENATOR ITALIANO: That's the conclusion we must come to.

MR. SALERNO: Yes.

SENATOR KELLY: Sir, do you think we are making any gains on organized crime in New York?

MR. SALERNO: I think the most significant gain that is being made is the remarkably surprising to me - I was both pleased but remarkably surprised with the results of the Harris Poll which were published last week. Here the carefully selected group that the polling people put together were asked this question: "We are going to discuss with you a number of subjects which some people feel have contributed to a breakdown in law and order." The person being polled had a choice of saying, "I think it is a very important contribution to the

breakdown, not an important contribution, hardly one at all, or I don't have an opinion - I don't know." The choices that the people were given to pick from were: court decisions, police brutality, right-wing groups, communists, student demonstrations and riots, riots caused by negroes, organized crime and a few others. I was tremendously surprised, but very pleasantly so, to see that the Harris Poll showed that number one was organized crime as a contributor to a breakdown in law and order. 61 per cent of all of the people polled voted that organized crime was the prime contributor. Some 12 per cent had no opinion at all. So 61 per cent of all the people polled felt that and 70 per cent of those who had an opinion said that organized crime was the prime contributor to a breakdown in law and order. I was really surprised looking at the choices they had to pick from that it registered this high. I think this is significant and I think this is much more significant than any number of arrests or of people who have been sent to jail.

I am going back, sir, to a question that I heard you ask Professor Blakey. And I feel this, we can control organized crime because we can seriously dent it without putting a single person in jail. A suggestion which has arisen in New Jersey is one which I would generally tend to agree with, although I would like to see the nuts and bolts before I would give it full approval, and that is the legalization of more forms of gambling. We have as a matter of record the fact that illegal gambling has been the bread and butter of organized crime for many, many years. Now it just seems ridiculous to me that we tolerate that

kind of a situation where literally billions of dollars per year are going into an illegal area of activity when every jurisdiction that I know of is looking for a wider tax base and some ways to raise revenue to provide services which are required.

As a matter of fact, legalizing gambling can be done in such a way as to eventually reduce gambling. It is a fact that poor people gamble to a greater degree in ratio than wealthy people. So if we took their money because they insisted on gambling and put it back into those communities to raise their educational and social standards, their ability to earn income, the more affluent and acceptable they got in our society, the less they would gamble in the long run. I don't want to take up all your time with that, but I sincerely believe that hitting them in the pocketbook is just as effective as putting them in jail, perhaps even more so.

SENATOR ITALIANO: Do you know what the percentage was in that poll that came to the conclusion that organized crime was the prime contributor to the breakdown?

MR. SALERNO: Yes, the breakdown was 61 per cent said it was a major contributor, 21 per cent said it was not, 6 per cent said, "hardly a contribution at all," and 12 per cent had no opinion. So 61 per cent of the total polled, which was the highest of any of the categories and actually it comes out to 70 per cent of those who have an opinion --

SENATOR ITALIANO: Do you have an opinion?

MR. SALERNO: Yes. I agree with that opinion. I think my pleasure in being agreed with by such a majority was exceeded

by my surprise. I did not think that that degree of awareness had yet reached the American people. Although I think that trying to make the American people aware is a very important tack that should be taken by government. That is why I think that educational tape, as an educational tape, is valuable. Part of the problem of organized crime is a credibility gap on the part of many people. The true facts of organized crime - I mean, the placing of a body on a meat hook - sound a little bit far out to the average person. They find this difficult to accept, that this is happening in 1968, that a body is being prodded with an electric prod. A lot of people think that went out of style with "Drums Along the Mohawk." They don't accept that this is being done in this country today. I think this is the one area where electronics can be very useful, not only to get the actual evidence in a specific criminal case, but when the case is concluded I think the facts in that case should be explained to the people in greater depth. I think you will get greater acceptance if we can do that.

I think one of the best values that this tape had with our legislative body, for example, was that they did not have to accept the statement of a police officer. Lately it would appear that every statement by a police officer is suspect of being a self serving declaration. He wants more men. He wants more equipment. He wants a bigger budget. So we label this "The Voices of Organized Crime" so that what you hear is not something which is my opinion or a fact that I am relating to you. The benefit, we thought, in putting together an educational

tape was to let you hear it right from the horse's mouth. You are going to hear something here where it is proposed that something as vicious as hanging a man on a meat hook is done. You are going to hear how they will deal with informants, that they suspect there are informants in their midst, how they will identify them and what they will do with them. To do what? To bring about what Professor Blakey indicated to you earlier, difficulty in the evidence-gathering process.

Our legal system is one that I don't find fault with, but we all recognize that evidence and information are two different things, that we must have a document, we must have sworn testimony of a witness, and they have studied the same thing. If they make it difficult for you to obtain a witness, then you don't have evidence and then everybody sits back and says, "Why don't you catch the big man?" Yet the government of the United States, if I can point out to you how serious the problem is, -- you were discussing earlier whether or not there might be an over-dramatization -- in 1963 in the hearing that I mentioned to you earlier conducted before the McClellan Committee, Mr. Robert Kennedy who was then the Attorney General of the United States appeared and he testified. He had recommended an immunity statute. He was being questioned by Senator Muskie in the granting of immunity to a witness: "Can you keep that witness alive?" And Mr. Kennedy said that there had been several cases where it had been found necessary to change the name, change the physical appearance of the witness and transport him, his wife and his family outside the continental limits of the United States in order to try to keep him alive.

Now I will paraphrase that for you in one word. The government of the United States was offering the witness exile.

Now have we made any progress? In the President's Crime Commission the Organized Crime Task Force, to which I was a consultant, treated with this issue. I was not entirely satisfied with what they recommended. They recommended that the government provide residential facilities to protect witnesses during the pendency of an organized crime trial. I wanted to know what did a residential facility look like, did it have barbed wire to keep the bad guys out from killing our witness, were there machine gun nests to protect it at night and how about lights? And if you employ all of these safeguards, you have put your witness in jail. You have put your witness in a concentration camp.

When I discussed it with other members of the staff, they thought I was exaggerating, except that three months after we filed our report, the Department of Justice and the Department of Defense gave a public statement to the press in which they indicated they had concluded arrangements to use an unused portion of a barracks on a military reservation, which usually has fences around it, armed men walking up and down and lights to keep people out at night.

I think that is serious and I think that is much more serious than the American people have ever been told, that we have an internal enemy against which we can only offer witnesses imprisonment or exile. I don't think anybody really expects to get very many witnesses if that is the best that we can offer.

The interesting part is that in that same press release, it was indicated that the military reservations were not only going to be used for witnesses; they were going to be used for prosecutors and members of their families because several had been threatened in the past year.

Now I don't know that anyone connected with prosecution wants to go to a law school and try to recruit good young lawyers to come in and serve government and wants to tell them that if he handles an organized crime case and he and his wife and his children are threatened, we will put him in Camp Benning, Georgia, and he can spend the rest of his life happily surrounded by the Green Berets. I don't think we are going to recruit very many people. Yet this is a matter of record. I am speaking about a congressional record, I am speaking about something which was printed in the President's Crime Commission Report and I am speaking about a press release issued by the Department of Justice and the Department of the Army.

We have never told the American people that this is what we are facing. If we told them that, they might recall our troops from Vietnam and say, "Let's use them against organized crime in this country." They might have that feeling.

SENATOR ITALIANO: Maybe I am mistaken, but it seems to me the emphasis today apparently is on crime in the streets. Am I correct in this? I mean, today we have a great problem of crime in the streets. Now what I am curious to find out, if it is possible, the relationship between organized crime and this so-called crime in the streets, that is, crime against a

person and against property, which apparently is the danger inherent in our society.

MR. SALERNO: Yes. I think it is a matter of documented record that the importation of hard-core drugs - I am not speaking of the soft drugs - hard-core drugs, heroine, cocaine and opium, over the years has been in the hands of syndicated groups. The reason they don't control the soft drugs is that they just can't control them. These are either manufactured right in this country or can be grown in this country. That is why they can't control it. You know, a college Chem. major can manufacture LSD. He doesn't have the connection to the European ports of France with a Corsican who can give him 16 kilos of heroine. So this has remained in the hands of organized groups, the distribution and importation.

I would like to point out to you if we use the most conservative figures - for example, we are told by police experts that a heroine addict might spend somewhere between \$20 and \$100 a day on his habit. Let's take the smallest figure. Let's say he is spending \$20 per day. Now that is \$20 in cash that he has to hand the drug pusher for his habit in one day. Police experts will also tell you if this man has to turn to crime of the type that you are speaking of, stick-ups, assaults, muggings, burglaries, car thefts and the like - police experts will tell you that he is lucky if he gets much more than 10 per cent of the real value of the property that he takes. But we will be generous. We will give him 20 per cent that he can get for a fence or that he might be able to steal in cash and cash represents a very small portion of the value of everything

that is stolen. Very briefly, gentlemen, you will find out that using the most conservative figures, a single heroine addict, without spending a penny for food, shelter and clothing, has got to generate \$40,000 worth of crime in the streets, just to support his habit. That is \$40,000 worth of stick-ups, burglaries and thefts of property or crimes against a person. So if one addict means \$40,000 worth of crime in the streets, and this area, the metropolitan area of New York, is generally credited with having half of the heroine addicts in the United States, I believe the figure for New York City alone would come out to at least one billion dollars worth of crime in the streets.

SENATOR WOODCOCK: If I may, I think that Commissioner Spina from Newark indicated that better than half of the crimes against property and property loss in the City of Newark was directly attributable to people with the narcotic habit. Would you agree with that?

MR. SALERNO: There is a similar figure in New York City. More than 50 per cent of the crime in the streets is attributed to narcotic addicts, so that the figure would be the same.

SENATOR KELLY: Do you have penalties in New York for unauthorized disclosure of using electronic devices by a police officer or anyone in a related field who has access to this information through electronic devices? Is there a penalty for unauthorized disclosure to an unauthorized source?

MR. SALERNO: Not in the statute per se, but there would be in disciplinary action that could be taken.

SENATOR KELLY: Departmental?

MR. SALERNO: Yes.

SENATOR KELLY: But not by statute?

MR. SALERNO: No.

SENATOR KELLY: Do you see from your examination of this through your experience, of which you have certainly had a great deal, and it is very nice to see someone who has had this kind of experience with organized crime that doesn't at least appear frustrated, but I guess you have had many days of frustration in your work -- But I am interested in finding out with regard to the unauthorized disclosure of information that is acquired through electronic devices, if you feel in your judgment from your experience there should be a penalty, if this bill were adopted, 897, such as a misdemeanor or maybe even a high misdemeanor - I have some reservation about that - for unauthorized disclosure of the information which was acquired.

MR. SALERNO: I think the departmental action which could be taken would in the long run - you know, loss of employment, discreditation - would be even more severe than the penalty that you could provide with a criminal violation.

SENATOR KELLY: How about the official that terminates his employment, whether through his own volition -- but it is terminated and he has this information. Now he is out in our great society with this information. What departmental action -- see, you lose your jurisdiction over him.

MR. SALERNO: But I think you would have the greatest difficulty of all in proving that he is violating the law.

How would you prove that he is ---

SENATOR KELLY: Through wiretapping that you have adopted.

MR. SALERNO: Well, I would agree to this extent, sir, and one thing which seems to escape consideration is this, in all of my years in law enforcement I know of about 45 people who have been arrested and indicted for using wiretapping or eavesdropping improperly. These have been private detectives, they have been attorneys who hired them or the principals who hired both. Most of them were caught because we had electronic surveillance authorized by statute and the law enforcement people used that to catch them. So one thing which is omitted is that actually - this is not a great deal of protection - 45 people in over 20 years - but actually your public will have greater protection from illegal wiretapping if your law enforcement people have a statute that they can use.

SENATOR ITALIANO: I think Senator Kelly perhaps is talking about the unauthorized use of it with a legal tap. Am I correct?

SENATOR KELLY: In other words, sir, what I mean here is that if this bill were adopted in this State, 897, then I feel in my judgment if there is a penalty provided for unauthorized disclosure, you are protecting the innocent --

MR. SALERNO: I certainly agree with you in principle.

SENATOR KELLY: [Continuing] -- from the policeman who leaves the Police Department and has a great discussion at some tavern or wherever he goes or any other public official, once he leaves the department. I am just wondering from your

experience, if a penalty were attached even in New York - and I think you have had some experiences in New York that have been questionable - if a penalty were provided, whether your tool becomes greater as a law enforcement officer.

MR. SALERNO: I certainly would have to agree that I think protection should be made against unauthorized disclosures. I certainly am in favor of that. I think the mechanics and the nuts and bolts and the reality of being able to prove it when you say a prosecutor becomes an attorney -- I am just questioning the reality of that being a protection. If it is going to make people feel more comfortable about that bill, then I would say by all means put it in. But I really don't think it is an area of that great a concern that you can protect against.

I am much more concerned about what you might hear here. In these tapes you will hear a police officer supplying bullets for guns which gangsters are going to use to kill informants and that man was indicted and the evidence was invalidated at the time. That man is now before the court seeking to be reinstated in the New York City Police Department. You see, I would be much more concerned in protecting your public from something like that than I would be of the other. But I am only just taking the two relatively. I don't disagree with your interest in wanting to have all the safeguards possible.

SENATOR ITALIANO: In other words, what you are saying, the problem would be to enforce any penalty that would be provided.

MR. SALERNO: To prove that there was an unauthorized

disclosure, you would get immediately into the problem of what is an unauthorized disclosure.

SENATOR KELLY: There are many laws on the books that aren't practical. I think you would have to agree with that statement.

MR. SALERNO: I can see such a phrase.

SENATOR KELLY: But what I am saying is that I think the law enforcement official that has that tool, there being a penalty attached for this unauthorized disclosure - I think it puts him in a better position.

MR. SALERNO: I don't see any opposition to wanting to guard against an unauthorized disclosure. I certainly agree with you, yes.

SENATOR WOODCOCK: Mr. Salerno, just following the question asked by Senator Kelly, this just occurs to me: Would you think that if a man working with electronic eavesdropping devices and so forth in a department, such as you were attached to, later took that information that he had and divulged that to the press for publication similar to Life Magazine, this would be a violation of a trust or should be legislated against? In other words, should we discourage it or leave that alone?

MR. SALERNO: I feel this way generally, and this may not be a direct answer to your question, but I feel this way generally, that the entire area of security - I have the greatest regard for security - the entire area of security is one which is grossly exaggerated in the minds of the police, in the minds of prosecutors. I think historically the record is that all we have done is deprived other law enforcement people from

knowing things that might be helpful to them because of an over-zealous concern about secrecy and we have only deprived ourselves and this has really been the greater harm in the long run. Suppose you and I were two law enforcement men. I think you should be trained and I think you should be told all about loan sharking and how it works and I wouldn't worry the least bit about your going and telling the loan sharks that I know how it works. They know how it works. The only thing you could tell them is that I now know how it works. They might be able to make some minor revision. But in the meantime, we have kept the police community in the United States entirely in the dark about organized crime by keeping all of our information close to our vest and saying, "Look how smart we are. We know more than the other cops do." And we have deprived them of knowledge which could be helpful.

I think there are certain safeguards about security that should be employed. But some people carry it to an excess. There are some places where if you drop a match book somebody will stamp it secret and throw it in a safe. This is utterly ridiculous. I think having something that the public can be educated with is a good thing in this sense: When you have a current and pending case, certainly you safeguard the identity of witnesses, the identity of informants, the techniques that you may have used. Once a case is concluded, this can be used for public education. It can be interpreted. It should be turned over to people in the academic world.

I have been a police officer. I can give you the nuts

and bolts of the cops and robbers of organized crime, but I am not in a position to tell you what is the economic impact of organized crime on the United States or in New York State or in the State of New Jersey. I do feel that much of the evidence which is gathered, after it is no longer necessary in a pending case, should be widely distributed and disseminated to qualified people for them to use their professional background and expertise.

I would like a political scientist to get a look at what we know about organized crime and tell me what this does to our political process. I don't feel that I am qualified to do that. So you have the law enforcement agencies essentially being the intake for a great deal of information, which they use in the direct thrust of arrest and prosecution and actually it must amount to tons of paper and reports being held back - it is no longer necessary for prosecution - being held back from the academic world where they could do a great deal with it. The sociologists would have a field day. They would tell us about criminal subcultures which build up in communities, in cities, in towns, in parts of a city or a town where organized crime has had a hold for many years.

I think the economists could do a great deal, particularly in this day and age. I am convinced that if organized crime paid its proper taxes in the United States, instead of a 10 per cent surcharge, the Federal government could have given every American citizen a 10 per cent decrease. Now what would that do? That would take the fellow sitting in the middle of Wyoming who is not overly concerned about organized crime and it would get him

a little bit interested. If he looked at his 1040 when he files it at the end of the year and says, "My God, I could have saved 20 per cent if we didn't have organized crime or if they paid their proper taxes," there is the public support that legislators need to bring about the legislation.

I am sure there are parts of New Jersey where some citizen says, "I don't see organized crime out my window," and he is not overly concerned about what might be happening in other parts of the State with regard to organized crime because he feels untouched by it. But its hand is in his pocketbook.

Now policemen are not qualified really to prove that to him. They have the information, but they don't have the ability to put this in a recognizable form which would get his support for anyone in government who is really trying to do something about it.

One area - I even hesitate to raise the question - but I happen to be of Italian background. I think the presentation about organized crime is all too often incorrect. A number of American citizens of Italian extraction feel they are being accused of something and I would like them very clearly identified as the principal victims of organized crime, the people who were first victimized by certain parts of organized crime and have been victimized through the years and up to this date. I am not accusing them of anything. I am trying to help them and I am trying to keep them from being further victimized. This is something that has arisen, I think, because the people making the presentation are really not qualified to make the entire presentation of the facts.

SENATOR WOODCOCK: I think we can now go ahead with the tape.

[Mr. Salerno plays the tape entitled, "The Voices of Organized Crime," prepared by the New York Joint Legislative Committee on Crime, Its Causes, Control and Effect on Society. The transcript of this tape can be found in the Appendix to these hearings, Vol. IV.]

MR. SALERNO: I wonder if the Senator would like to revise his estimate of my frustration?

SENATOR KELLY: No, I really meant that as a compliment. I think these things certainly prove themselves to be effective. I think we need more people like you.

MR. SALERNO: Thank you, sir.

SENATOR WOODCOCK: Mr. Salerno, are any more copies of this transcript available to this Committee. I don't have any others myself. But I am sure they would be glad to make them available to you in quantity if you need them.

SENATOR WOODCOCK: That would be fine.

Thank you very much.

If there are no other questions, we can recess for lunch and I would like to thank you very much, Mr. Salerno, for taking time out to come down here. I know the Committee has benefited greatly by your appearance and I am sure that the Senate as a whole when they read the report of this hearing today will benefit greatly. I am sure -- at least I hope -- that law enforcement will take a step forward here in New Jersey as a result of that.

MR. SALERNO: Thank you for the privilege, sir.

SENATOR WOODCOCK: We will recess now and come back at two o'clock.

[Recess for Lunch.]

(Afternoon session)

SENATOR WOODCOCK: Prosecurot Kaplowitz.

L E O K A P L O W I T Z, Prosecutor, Union County, called as a witness, being duly sworn, testified as follows:

MR. KAPLOWITZ: Senator, may I ask initially if I will be able to direct myself to each of the crime package bills in addition to S-897. I realize, Senator, that you're trying to keep your record somewhat bifurcated, however, if it's at all possible, I would greatly appreciate it. It would avoid the necessity for another appearance, since I have been designated by the Prosecutors' Association to speak on 802 and 803.

SENATOR WOODCOCK: Well, of course, the only thing is, the hearings before this Committee at this time are devoted only to 897 and 802, I believe, so that actually - let me put it this way, I'm not going to prevent you from saying anything you care to say about 803 but the record would not be used for that purpose. So I think it might be best if you would zero in on that and then perhaps tail off on the other.

MR. KAPLOWITZ: All right. Except, and I don't want to prolong our colloquy, Senator, but 802 is tied in with 803, or vice versa, so that in order to comment on 802, of necessity, you would have to discuss certain aspects of 803. I just make that quick observation.

SENATOR WOODCOCK: The only thing is that this Committee is now impaneled and the notices went out based upon only those two bills and, frankly, the Senate as a whole has not had notice that we would meet on that. If you want to say

something about it, feel free to do it but I just don't think it's going to affect anything with respect to that bill.

Senator Kelly raises one other thought that it would

to the sponsor of the additional bill to comment on

it in there for that purpose. But let me

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useful weapon in our arsenal against crime. However valuable this weapon may be, it cannot and should not be permitted to be used indiscriminately.

Electronic surveillance, by its very nature, ensnares many innocent conversations in its net. Moreover, since it is inherently violative of the right to privacy, the occasions on which law enforcement authorities should be permitted to utilize such devices must be severely limited.

This does not mean that electronic surveillance must be abandoned. So long as the dangers are recognized and offset, it is possible and desirable, both constitutionally and as a practical police tool to establish a system of electronic surveillance which is compatible with the civil liberties of our people.

In my opinion, Section 3 of the proposed legislation is too all-inclusive and should really be limited only to securing evidence of the commissions of certain crimes which perhaps can be categorized in the nature of organized crimes.

If I recall correctly, 897, as it presently exists, talks about evidence in the commission of murder, kidnapping, gambling, robbery, bribery, extortion, or dealing in narcotic drugs, marijuana or other dangerous drugs, or other indictable offense punishable by imprisonment for more than 1 year.

I think, in the Prosecutor's field, that this runs the gamut and is not the intent or may not be the intent of the Legislature in passing a bill of this nature.

I think that perhaps the offenses that electronic

surveillance should be directed against should be the commission of the offense of murder, kidnapping, gambling, bribery, extortion, - and I insert here something that is not in the bill called suborning of public officials - further, dealing in narcotic drugs, and I would then expand that a little bit over what is in the present 897 so as to say, "dealing in narcotic drugs as defined in N.J.S. A., that's New Jersey Statutes Annotated, 24:18-4, which is the Narcotic Law, as such, so that instead of talking, as you do, about "narcotic drugs, marijuana or other dangerous drugs," I would go right back to the drug statute and tie it into that, so what's prohibited under 24:18-4 should be what electronic surveillance could be permissible for.

Then I would say, of course, "or any conspiracy involving the foregoing offenses."

While it may not be important, I have personally been in favor and have expressed myself so, well over a year or a year and a half ago, as being in favor of court supervised wiretapping on a limited basis. I did that at a time when it wasn't vogueish to express yourself in terms of invasion of privacy. However, I recognized, after being in the Prosecutor's office a little over two years, that it was a weapon that properly perceived and utilized would be helpful from the interest of law enforcement and also to protect the public at large.

I would suggest that some consideration be given to include in the proposed legislation additional definitions, something like "oral communications" as meaning any

communication uttered within an area which is not audible outside of the area through the normal senses; that an "intercepting device" be defined as any device or apparatus that can be used to intercept or intentionally overhear an oral or wire conversation other than any telephone or telegraph instrument, equipment or facility, or any component thereof, furnished to the subscriber or used by a communication's common carrier in the ordinary course of its business.

I am fearful that the definition in the proposed legislation, talking about "exigent circumstances," in paragraph "g", page 2, is too loose and may or could conceivably be attacked upon the basis of its constitutionality because standards are not, in my opinion, prescribed.

Now I recognize what is intended, that the exigent circumstances are the emergent situations where evidence can be lost if we do not act quickly enough. We recognize that in all of our search and seizure cases. However, this is a little different. This is not the ordinary search and seizure and we might be hard-pressed to find an example where the exigent circumstances are of such a nature so as to justify a tap without a warrant first being secured.

I think that this particular provision relating to the exigent circumstances is something that the Committee and the Legislature should give another look at from the standpoint of perhaps tightening it up, if you feel it's necessary, although in my respectful opinion I think it is more palatable to first have the warrant in every situation before you are permitted to tap.

There is something else in the proposed legislation which speaks of only a superior court judge issuing a warrant. I think, and here the prosecutors in a body are not in unanimity, there are some prosecutors that feel it should be any superior court judge, there are others who feel it should be limited to just the assignment judge of the county. I'm in the minority in that I think it should be expanded somewhat. I think the right to issue a warrant should be given to not only any superior court judge but also to any county court judge who is assigned to hear criminal cases by the assignment judge in that county.

I am also troubled by the definition of "private place or premises" as set forth in Senate Bill 897 because it may fail to give proper weight to the rights to privacy or the civil liberties which is inherent in our citizenry. For instance, it fails, I think, to observe the Supreme Court's holding in the United States vs. Katz Case, which was decided, I think, in 1967, December 18, 1967, which was a landmark case, you may recall, where the FBI, using an electronic device, was able to bug a telephone booth where an individual, this fellow Katz, was conducting his bookmaking activities. And there the Court ruled out the evidence based upon the fact that was one that was protected by the 4th Amendment to the Federal Constitution. The Supreme Court expressly rejected the test of private place or premises, determining that the test whether the conversation is protected is the intent of the individuals engaging in the conversation intended to keep that conversation private. So that when we're talking about

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the enclosure and the airplane and the boat, there's language in that Katz case which should be reviewed for purposes of evaluating this particular language.

And I happen to have the Katz decision with me but I pulled the language out of it. It says there, the tail end of the majority opinion, for instance, two or more parties may hold a private conversation in the middle of an open field so long as it is their intention that the conversation be private... For law enforcement authorities to eavesdrop on this conversation without a warrant would, under my interpretation of the Supreme Court holding in Katz, violate the constitutional rights of the parties involved.

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Therefore, I think some consideration should be given to evaluating the context of the Katz decision with the definition of "private place or premises" in 897.

Additionally, the warrant to be issued under 897, being upon ex parte application or upon information obtained upon what we lawyers call information and belief, that should be reliable information.

I recognize that somewhere in 897 they do discuss reliability of the information and the basis for it, but I think it should be spelled out carefully, the same as our case decisions spell out reliability of an informant upon which a search warrant can be issued.

Then if the Committee thinks it advisable to increase the number of persons who can issue an eavesdropping warrant, as I suggest, then, of course, sections 2, 5, 9 and 17 should be appropriately amended so as to include not only

the superior court judge but, as I advocate personally, any county court judge assigned to hear criminal cases.

If a superior court judge issues the warrant then, of course, it has statewide jurisdiction; if the warrant is issued by a county court judge, the jurisdiction will only be countywide.

I am opposed to paragraph 10 in principle, for the reason that this legislation being extreme in nature, the right to wiretap should be severely limited, and an applicant as defined in the act should not be permitted to authorize another law enforcement agency within his jurisdiction to do any wiretapping. In other words, if the applicant is the Attorney General, the State Police, the Prosecutor, or the Chairman of the State Commission of Investigation, as you have it, do not give them the right to appoint somebody else to act as their alter ego in something this sensitive. The applicant named in the act should have the sole responsibility for doing the necessary tapping, securing the information, getting the application, etc. Don't entrust something of this nature to a local police department.

Section 15, in my opinion, is loose and unclear and, in my respectful opinion, should be amended so as to clearly set forth that the fruits of wiretapping can never be used in a civil case, for it is a weapon designed to combat crime and has no place in the civil law.

I'm fearful that the language in 897 now, and I don't want to be construed to say that I'm reaching for something, but I think it could conceivably be utilized in a

civil case under the existing language because it doesn't talk about a criminal proceeding, it talks about "in a proceeding," and I think you have to tighten it up so that we are dealing with criminal activity, and that's what this is designed for.

Additionally, provision is not made in the proposed legislation which allows the State the right to appeal in the event an eavesdropping warrant is suppressed. It speaks of what happens with a warrant being suppressed and it gives a certain right to the defendant, so to speak, but there is no corollary or corresponding right given to the State. This is a most important right that the State should have for a fulfilment of the intent and purpose of the legislation.

Those are the observations and comments I have in regard to 397.

SENATOR WOODCOCK: Senator Italiano, do you have any questions concerning this?

SENATOR ITALIANO: Does he have a copy of that statement?

SENATOR WOODCOCK: Do you have a copy of that statement?

MR. KAPLOWITZ: Senator, these are really notes that I put together but I would be very happy to have them offset and sent to you within a day. I will redraft it. As you can see, this was done hastily, Saturday afternoon.

SENATOR KELLY: Mr. Prosecutor, you state here that you feel that the county judges should be authorized to issue these warrants or orders.

MR. KAPLOWITZ: Yes, sir.

SENATOR KELLY: There is a question in my mind right now whether it should be a warrant or an order.

MR. KAPLOWITZ: Or an order?

SENATOR KELLY: Or an order. There is a difference, as you know.

MR. KAPLOWITZ: Yes. I think - and just quickly without attempting to analyze the basic difference - I think it should be a warrant in the same category as a search warrant because the warrant, in effect, gives you the right to enter, the same as a search warrant will; whereas a court order sometimes could be construed as not giving you that right and may only be enforceable by an action in contempt. So I think it should be a warrant, as distinguished from an order.

SENATOR KELLY: Now you mentioned, instead of just the superior court, that the county judges be authorized.

MR. KAPLOWITZ: County court judges assigned to criminal --

SENATOR KELLY: County court judges assigned to criminal matters.

MR. KAPLOWITZ: That's my own personal view.

SENATOR KELLY: All right. Do you feel, in a nature such as this, dealing with the privacy that it does, that the higher the court possibly the better? There's a question in my mind that conceivably these warrants should only be issued by maybe our Justices.

MR. KAPLOWITZ: Of the Supreme Court?

SENATOR KELLY: That's right. There's a question in my mind about that.

MR. KAPLOWITZ: Senator, I can understand your views, however, I seriously doubt whether the Supreme Court, in effect, would get itself involved in issuing warrants because it then reduces itself to a trial level and no longer would be able to objectively evaluate the proper issuance of the warrant, in the first instance, if the case came up on appeal. They, in effect, would be asked to review their own act in issuing the warrant. I think here we might have to keep the Supreme Court out of it.

SENATOR KELLY: Well, let me ask you this, Mr. Prosecutor, if I may. Under your federal statutes, your wiretapping, - I'm just trying to reflect back in my memory and I may be in error - isn't it a fact that when these reports are gathered they're filed with the administrator of the court, the United States Supreme Court?

MR. KAPLOWITZ: Yes.

SENATOR KELLY: Isn't that the same thing, really?

MR. KAPLOWITZ: Well, we do the same. All of our - and I draw an analogy with the search warrant -- the administrative director of our court has access to everything that's filed. It becomes a public record once it is, in effect, filed. But I was responding to your observation, Senator, that perhaps only a Justice issue a search warrant. I view that, with all due respect, as being impractical.

SENATOR KELLY: When I say search warrant, I don't mean such as your warrants you have in existence today, I'm

talking about with your electronics, and I'm solely dealing with this.

MR. KAPLOWITZ: I understand, and I still see it that way.

SENATOR KELLY: And it would seemed to me that something being forwarded down to the administrator of the courts - you know, who's he?

MR. KAPLOWITZ: Well, I have no objection, you know, with the warrant being filed with the administrative director of the court but what I again felt would be impractical would be for - let's assume I'm the applicant and I want a warrant, for me to go to one of the Justices of the Supreme Court to ask him to execute the warrant, I think there you're reducing the status of the Supreme Court to that of a Trial Court. And I view that again as being impractical.

SENATOR KELLY: Thank you.

SENATOR WOODCOCK: Mr. Prosecutor, with respect to Section 5 which deals with the application for the warrant to a judge of the Superior Court, you, of course, would not limit the application. In other words, what you're saying, in effect, is that you would expand the application.

MR. KAPLOWITZ: Expand the persons to whom the application can be made.

SENATOR WOODCOCK: Right. But in no way limit.

MR. KAPLOWITZ: Right. Now this, Senator, so that I'm fair with my colleagues in the Association, - the view I'm expressing about expanding it is my personal view and I'm in the minority among the Prosecutors in the State. The

majority of them feel that it should be in the hands of the Superior Court Judge or perhaps even an assignment judge. I want that clear. I'm giving you their views and my own views.

SENATOR WOODCOCK: Right. Now when we speak - and I'm going to their views now - when they speak in terms of the assignment judge, they're not thinking of the assignment judge in Union County or Bergen County?

MR. KAPLOWITZ: Yes, they are. They're talking of the assignment judge in any of the counties.

SENATOR WOODCOCK: Well, again I'm talking about their position, - wouldn't this then limit, you know, restrict the number of people that we could apply to?

MR. KAPLOWITZ: Yes, by all means. That would be in line with Senator Kelly's observation that it be strictly construed. And let me say that, you know, this is a new field, it strikes right at the internal feelings of even people engaged in law enforcement who recognize that this may very well be a trespass. But here I think we have to balance the right of the so-called individual against the right of the public or society. And I think when we balance those rights here, the right of the individual must have to bend that little bit in order to protect the mass, meaning society.

SENATOR WOODCOCK: Well, isn't there also this, - going to that concept of restricting it to assignment judges, because certainly the wiretap would be available, or the electronic eavesdropping, in a situation where you were attempting to find out about corruption in public office.

MR. KAPLOWITZ: Right.

SENATOR WOODCOCK: And if it were limited to the assignment judge in a particular county you would wind up - this is not to comment upon any present member of the bench, but it would be possible, under certain circumstances, to be making the application to someone who might very well be part and parcel of the investigation.

MR. KAPLOWITZ: True, Senator. However, we must, if we have any framework of stability in our judiciary, we must have faith in the integrity of our judiciary.

SENATOR WOODCOCK: Well, we do. I think everybody has. But the fact is that if you restrict it to just those assignment judges currently on the bench then I think that this might be construed, with respect to some people who are in favor of this legislation, as an unreasonable restriction because Section 5, or my interpretation of it is that it makes it broad, it gives you right - if you want a warrant for an activity in Union County, you can go to Judge Pashman in Bergen County and have him issue that warrant because he is a judge of the Superior Court.

MR. KAPLOWITZ: Then if I use your language, Senator, what I'm advocating is expanding the persons who can issue the warrant but not limiting it. In other words, I'm not limiting it, I have little quarrel with a judge of the Superior Court, as presently set forth, because, as you know, the State Police want a warrant in X County, they'll go to a judge in B County to get it because it has statewide jurisdiction, if they don't want to work with the local

prosecutor or they don't want to work with the local police department. That's not unheard of. But I say here, because of the nature of what we're dealing with, I think if we have faith in the integrity of our judiciary, - I think a county court judge assigned to hear criminal cases should have the same right to issue a warrant as a Superior Court judge.

These are my views. I'm not going to make it a striking issue one way or another.

SENATOR WOODCOCK: Well, let me say that you're asking for an expansion of 5 and, as I understand it, the Association that you represent here today would ask for limiting it.

MR. KAPLOWITZ: That's correct.

SENATOR ITALIANO: Excuse me. I think you're talking about Section 2, aren't you, not Section 5.

MR. KAPLOWITZ: No, I think it's Section 5 which is on page 3, Senator, on the bottom of page 3. It says: "Application may be made to any judge of the Superior Court."

SENATOR ITALIANO: Yes. I'm looking at page 2 which says: "Under circumstances prescribed in this act, a judge of the Superior Court may issue an eavesdropping warrant upon the ex parte application of an applicant."

SENATOR WOODCOCK: Well both sections would have to be changed.

MR. KAPLOWITZ: Yes. Well, if you were to expand it then, of course, it would have to be. Now, I recognize, as I said before and I repeat again, - I recognize that in this particular area I personally am in the minority.

However, I deal with the courts. In Union County we run four criminal courts that are sitting simultaneously. We know that - with all due respect to the differentiation between the Superior Court judge and the county court judge, in the criminal field they're co-equal. And I see no reason to make a distinction here.

SENATOR KELLY: Well, maybe it's a distinction of authority.

MR. KAPLOWITZ: I'm sure, Senator, it's even more than just authority, it even goes to jurisdiction, of course.

SENATOR KELLY: Right, which is what I meant by authority.

MR. KAPLOWITZ: Surely. By all means.

SENATOR ITALIANO: Of course you would follow the same procedure. If they were to issue it, it would be limited to the county.

MR. KAPLOWITZ: Exactly. I said that, that if a county court judge were to issue it then he could only issue it for his county, which might very well put us back in a situation where if State lines were being crossed you would go to the Superior Court judge who has that statewide jurisdiction.

SENATOR WOODCOCK: Do you want to continue?

MR. KAPLOWITZ: May I? And I certainly appreciate your giving me the opportunity.

Senate Bill 802 is by far one of the most interesting subject matters that I've read in a long time.

Assuming, for a moment, that the theory of the establishment of a Department of Criminal Justice was a good one, nonetheless I think that timing may be somewhat questioned. For instance, present legislation provides that the Department of Criminal Justice shall be established as of October 1, 1968. Needless to say, legislation with such a sweeping degree of change inherent and implicit therein is bound to have a tendency for confusion and disorder which can only react to the benefit of the criminal element.

SENATOR WOODCOCK: Mr. Prosecutor, if I may, I would tell you that this section would have to be amended because we won't be in session prior to November, in any event.

MR. KAPLOWITZ: All right.

Senator, actually, I'm just going to give you quickly some comments insofar as the bill is concerned. I am only concerned and I am only here speaking on Article 5 which deals with the Division of Prosecution. However, I think I might be remiss if I didn't give you some observations that we feel, perhaps unduly so, might be of some assistance to the Committee and the Legislature in evaluating the entire bill.

I'm not going to discuss then the fact that certain freeholder organizations or police chief associations have gone on record as being opposed to it.

I think, however, that while the legislation is admirably conceived and well-intentioned, it creates a monolithic agency which can topple from a basic weakness, for

it puts authority and power in the hands of one man in such diverse fields of government as state police, local police, juvenile authorities, the prosecutors, the sheriffs, the parole boards, the probation officers, the rehabilitation commission, grand juries, and subordinates agencies of local counties and state government.

While we are sure that it was not the intent of the Committee, nevertheless this particular legislation could very well develop into a giant step toward the establishment of a form of government that is foreign to our concept at the present time.

The act itself has some rather questionable constitutional impediments. For instance, primarily, persons concerned with the apprehension and conviction of criminal offenders must have and should have a different philosophical approach from those required to formulate a successful rehabilitation program. Amalgamating the various agencies as presently provided for in the proposed legislation, whereby the divisions of local police service, the prosecution and state police are side by side with the divisions of youth, narcotic addiction control and rehabilitation, could have disastrous results for the latter three divisions are clearly not associated with law enforcement and, indeed, those purposes could very well be thwarted merely by virtue of their association with enforcement philosophies.

In other words, would it be right to have matters pertaining to parole, narcotics care, maintenance of youth centers, etc., handled by the same department which

has control of the law enforcement arm of the State?

Specifically, one of the responsibilities of the Division of Narcotics Control would be to perform certain medical examinations and then to submit the same to the court giving a copy to the defendant and prosecutor. I see here where there could be a basic conflict of interest in a role of this nature.

Now, so far as the Division of Prosecution is concerned, that's our main concern. For instance, the proposed legislation establishes as the head of the Division of Prosecution an assistant commissioner whose qualifications are not defined. And, in fact, he may not even be an attorney.

Yet, Article 5 confers upon such assistant commissioner, as head of the Division of Prosecution, the powers and duties related to criminal investigation and the enforcement and prosecution of the criminal business of the State, including any and all appeals and applications for post-conviction relief.

Can it seriously be advanced that a lay person could be qualified and competent to handle and supervise the Division of Prosecution?

Can a lay person have the slightest understanding of our rules of court or case decisions relating to criminal appeals or post-conviction hearings?

If the Assistant Commissioner is not an attorney, can he evaluate the ability or competence of a prosecutor or an assistant prosecutor, much less supervise his activities?

It is manifestly unfair, bordering on disaster, to entrust such an important aspect of our society today, namely, effective enforcement of the law, to the hands of an untried and even possibly an unqualified, untested assistant commissioner, for, instead of strengthening leadership in the control of crime, as expressed in your preamble, it will make a shambles of it.

No self-respecting prosecutor who has the responsibility, under the law as it presently exists, to use all reasonable and lawful diligence for the arrest, indictment and conviction of offenders against the law, could conceivably subject himself to being handicapped in the fulfilment of his duties by an assistant commissioner not qualified for the position.

More objectionable would be the right of the assistant commissioner to select the assistant prosecutors for their ability and competence may be questionable and, therefore, completely unacceptable to the prosecutor. Dissent of this nature within a sensitive office of law enforcement would be disastrous from the public interest.

The proposed legislation is unfortunately silent as to who would appoint and have control over the county detectives, investigators and clerical assistants. Would this duty repose in the prosecutor or would he be relieved of such responsibility? thereby demonstrating the manner in which the efficiency of an office can be stripped and debilitated.

It is the fervent hope of the members of the

Association, the Prosecutors' Association, that Senate Bill No. 802 not be enacted in its present form or, if so, that Article 5 thereof be removed and deleted therefrom.

Those are our observations in connection with Article 5.

SENATOR WOODCOCK: Now, as I understand it, one of the problems that the Prosecutors have is that the assistant commissioner who would be in charge of prosecution, under this bill, would not need necessarily be an attorney, by definition. I don't have a copy of the Bill, I'll take that --

MR. KAPLOWITZ: There is nothing in Article 5 relating to the Division of Prosecution, Senator, which even remotely spells out what the qualifications of the assistant commissioners are.

SENATOR WOODCOCK: Now, Mr. Prosecutor, there is nothing in the Constitution of the United States which says that a member of the Supreme Court must be an attorney.

MR. KAPLOWITZ: Oh, I would agree with that, Senator.

SENATOR WOODCOCK: In other words, if the President of the United States should suddenly decide the Chief Justice should be --

MR. KAPLOWITZ: A mailman.

SENATOR WOODCOCK:--Mr. Joel Jacobson, he might do that.

MR. KAPLOWITZ: With all due respect to Mr. Jacobson, I'm not so sure the President would exercise his prerogative in that regard.

SENATOR WOODCOCK: Not in that instance. But, nevertheless, he could do that.

MR. KAPLOWITZ: Yes. But that's an extreme case.

SENATOR WOODCOCK: Right. Now, here in the State of New Jersey is there any requirement that the Attorney General of the State of New Jersey be an attorney?

MR. KAPLOWITZ: Oh, I believe so.

SENATOR WOODCOCK: Is there? Where is that contained?

MR. KAPLOWITZ: Oh, without even checking it, I'm sure it's in the Consitution which not only will say that he must be an attorney of the State of New Jersey but the same qualification would hold true for judges.

SENATOR WOODCOCK: Of course we did, under Errors and Appeals, have lay judges.

MR. KAPLOWITZ: But since 1947, and that was while I was still in law school, we adopted an entirely new judiciary system, that was abolished and we no longer have lay judges, even on a municipal level, except those judges who are old justices of the peace who have held over since 1947, and they are few and far between now.

SENATOR KELLY: Mr. Prosecutor, under this philosophy, this theory, then I would have to assume that every legislator, whether he be a member of the Senate or Assembly, should be an attorney.

MR. KAPLOWITZ: No, no.

SENATOR KELLY: Here you create and enact laws. s that right?

MR. KAPLOWITZ: No. You see, Senator, what we're trying to indicate, not that you shouldn't put some top-notch administrator in a job to administer a program, that's not what we're talking about. But we're talking about putting an administrator in a job that is required to have particular knowledge, particular training, particular experience. In my wildest imagination, no matter how competent an administrator could be, he couldn't conceivably handle a post-conviction release application because there are many lawyers that don't know how to handle it.

SENATOR KELLY: I agree with that.

SENATOR WOODCOCK: Now, I believe you had some difficulty or the Prosecutors' Association had some difficulty with the fact that rehabilitation and law enforcement might be connected through this department.

MR. KAPLOWITZ: In the so-called hodge-podge, and I just put quotes around that, because, you know, in this business of law enforcement you get oriented, rightly or wrongly, you can't help it, you become indoctrinated, you get oriented. That's why the press and the public will holler, "You're prosecution minded," or "You're defense minded," "You're strong law-enforcement minded," "You're weak law-enforcement minded." That's orientation.

In this situation you would have the anomalous spectator of an assistant commissioner in the Division of Prosecution putting a man in jail and another assistant commissioner trying to get him out on parole. And they would be working for opposite purposes with opposite view-

points.

SENATOR WOODCOCK: Except that isn't it the same man that comes in, the man that is apprehended by the police and is prosecuted and sent to State Prison and goes through rehabilitation, parole, probation or what-have-you, whatever it may be, isn't he the same person? He doesn't change.

MR. KAPLOWITZ: Well, we hope he changes because otherwise our rehabilitative program goes down the drain.

SENATOR WOODCOCK: No, I'm saying physically he's the same person.

MR. KAPLOWITZ: Physically he's the same person, yes.

SENATOR WOODCOCK: He doesn't change.

MR. KAPLOWITZ: By all means.

SENATOR WOODCOCK: And you say the fact that one half of this department, if it were to be created, would deal with rehabilitation and one with law enforcement, that these inconcistencies are irreconcilable.

MR. KAPLOWITZ: Well, I won't go so far as to say they're irreconcilable. I think there is little that's irreconcilable if we're dealing with reasonable people.

I think that philosophically they are not compatible. And I think that if anything had to be withdrawn from 802, Article 5 should be withdrawn.

If you want to establish something that the legislature thinks should be established, establish it. But here we say to you that lumping the Division of Prosecution with the sociological aspects of the rest of this bill is

wrong because while we recognize, we in law enforcement recognize that the area of sentencing after conviction is the province of the court, we nonetheless exercise a prerogative of expressing our views to the court for whatever it may be worth and the court may completely disregard or discount anything we say but we, especially in Union County, are not averse to advising the court openly and on the record that consideration should be given to a defendant for certain reasons that we make known to the court. And on the other hand, we have equally little compunction to advise the court that this particular defendant is a heinous, multiple offender, or something of that nature, and should not be given leinency. I think that's one of our responsibilities in law enforcement, to advise the court, because oftentimes that presentence report is not inclusive enough and there are things that we, in law enforcement, may know that the probation department may even not know.

SENATOR WOODCOCK: Well, do you think there's an inconsistency in the fact that the Department of Institutions and Agencies might be dealing with retarded children who are innocent and have committed no illegal act other than - not an illegal act but just unfortunate enough to be born in that condition, and the fact that they're handling prisoners in the State Prison system; that that same department is handling in one case innocent people and in another case convicted felons?

MR. KAPLOWITZ: I think, Senator, that for the better functioning of what the Legislature would like to

happen - I think I know what's behind the bill - I still think you can't put it all in one department. I just don't think there is one man or one group of men, call him commissioner, or assistant commissioners under him, who can correlate and collate all of these various functions and do an admirable, creditable job for the citizens. I just don't think you have people who can do it. Not that they're not competent and efficient and intelligent and trained, you're asking for a Herculean task.

SENATOR WOODCOCK: Well, I know we are but we have a tremendous job to do here. We do have a very serious crime problem here in New Jersey. And obviously, from the statistics we read in the newspapers that are gathered from all sources, it is growing.

Now, I think, - this is my opinion with respect to this - that there is certainly a definite correlation between treating the same man through the process from the beginning to the end as there is in treating people who are mentally ill with those who have committed illegal acts and are incarcerated, because we have this problem and I think this would be apparent to most people in law enforcement, that because Institutions and Agencies deals both with the innocent and the guilty, when it comes to capital funds the expenditure of funds the innocent certainly are treated better in that department only because people's lives, and people sitting in this room and at this table, are spared to the innocent, they do not go out to the guilty. The fact is, and I think statistics bear this out, that we

are not reducing the number of people that get off at the end of the line and come back on, they just keep going around in a circle.

MR. KAPLOWITZ: Part of that vicious circle.

SENATOR WOODCOCK: Right. So that I say that I think there may be a connection certainly between law enforcement and rehabilitation. And unless we have a man up at the top who is prepared to oversee the entire project, I think we may be at a loss.

MR. KAPLOWITZ: In my opinion, Senator, you are going to have to find somebody who is going to be able to compartmentalize his thinking process and wear so many diverse hats that he will be caught up in a hodge-podge that he may drown in.

Now, again, I know what you're getting at and I know the purpose and I know you would like this centralization so that there is one man who is responsible for the program. Sometimes you can't do it. Sometimes, no matter how well-intentioned, it can't be done, because he will have under him, for instance, - if he were to have me as an assistant commissioner in charge of the Division of Prosecution, I'd be at his doorstep every other day hollering that his other assistant commissioners are too lenient with the people that my boys have been working day and night to convict.

SENATOR WOODCOCK: Right. And don't you think it's about time we had somebody in that position that can make the kind of determination that you are now talking about, as to whether or not we have the right programs for these

people that we have incarcerated?

MR. KAPLOWITZ: I must assume that you have people in these various agencies that are creditably doing their jobs now. I can't assume that the Commissioner or the head of the Department of Institutions and Agencies today is derelict in his duties.

SENATOR WOODCOCK: Nobody is making that statement.

SENATOR KELLY: Let me ask you this, Mr. Prosecutor. If organized crime is continuing and progressing, if crime on the streets is progressing, if our rehabilitation program - if all people in authority say it has been a failure, don't you think it might be worth a change to see if we can't improve our system if the present system has been a failure?

MR. KAPLOWITZ: Senator, I would be silly to sit here and say, don't try. No. I'm saying now that in the final analysis, if you are trying and if you are committed to 802, pull Article 5 out of it.

SENATOR WOODCOCK: Thank you very much, Mr. Kaplowitz.
Mr. Calissi.

G U Y W. C A L I S S I, Prosecutor, Bergen County, called as a witness, being duly sworn, testified as follows:

MR. CALISSI: Senators, Prosecutor Kaplowitz kind of threw a tent over the subject of the wiretapping bill and I'm not going to repeat some of the things that he said but I'm going to adopt, for the purpose of my testimony, most of his arguments. However, I would like to deviate in just two or three places.

For example, with respect to the crimes which would

be the subject matter of a tap.

My opinion is, while the present proposed bill is too loose in the sense that it permits tapping in cases where the alleged crime would result in punishment for a period over a year, that if you eliminate that still and all the crimes which are left aren't sufficient. And I don't completely agree with Mr. Kaplowitz in his designation of the crimes that he suggests. I have these crimes: the common law felonies, burglary, arson, robbery, gambling, rape, murder, and kidnapping which is not a common law felony but it's a serious crime, mayhem, larceny, bribery, subornation of perjury, extortion, and all those crimes covered under 24:13-4.

Now you may ask me why I include larceny. I do that specifically because the crime of larceny of automobiles is especially a burdensome task. It has come to be that there are actually, and have been for some time but more sophisticated now, rings or organizations organized in the larceny of automobiles. As a matter of fact, the stealing is done by order. You tell somebody what kind of a car you want, what year, what color, how many doors, what color the roof, and whatnot, and there are people actually in the business of stealing customwise.

So I think that that is becoming a very, very serious problem and should be included in this group of crimes.

Now let me say that I agree emphatically with the suggestion or recommendation that the section which

permits the tapping of wires, or otherwise, for a period of 48 hours prior to obtaining a warrant should be deleted. I believe that this particular device is an indispensable tool which law enforcement needs, but I also emphatically say that it should contain proper safeguards. And one of the safeguards is that it should not contain a clause or a section whereby the police, prosecutor or anyone else can tap a wire and then decide whether or not he should go in for a warrant 48 hours later. I think that would be a dangerous precedent and a dangerous provision. Now Mr. Kaplowitz said that but I just repeated it because I want you to know how emphatic I am on that particular point.

Now with respect to the crimes that I listed before, I should also like to include conspiracy to commit those specific crimes.

And for all other purposes I will adopt the statements made by Mr. Kaplowitz because he was designated to represent the Prosecutors' Association and we did discuss the various views of the Prosecutors.

Now with respect to one point, whether the assignment judge, the superior court judge or the county judge should be authorized to issue the warrant, my personal opinion is, and I think I'm in the majority, that the superior court judges should issue the warrant.

There is nothing wrong, I don't mean to point a finger at any other judge, it could be a district court judge and under our court system now being integrated as it is, a district court judge is doing superior court work, so

it really doesn't mean that much with respect to trial of cases, but I think for a new device of this kind, for the present, at least, I think I would prefer that the warrant be issued only on application to a superior court judge.

I don't construe that section that Mr. Kaplowitz construed as having some bearing on civil cases but I think it would be wise for me and possibly for the Committee to review that particular section because I certainly don't believe that wiretapping information should be used in civil cases.

And I want to say to this Committee that it's very important that if the defendant has the right to challenge the tap and to suppress the evidence, I believe that the State should have the right to take an appeal if an application for a warrant is refused. That at the present time is not in the law.

To that extent, I have concluded.

SENATOR ITALIANO: Should we draw a distinction here now, an application for the warrant and the suppression of the evidence? Isn't there a distinction there, Prosecutor?

MR. CALISSI: Yes there is a distinction because if the warrant is issued by the superior court judge, the suppression of the evidence can be before a county court judge assigned to criminal cases.

SENATOR ITALIANO: What I mean is, the State should have a right to appeal if a warrant is denied or anything?

MR. CALISSI: Yes. I think that the State should have the right to appeal if a warrant is denied.

SENATOR WOODCOCK: Do you have another question,
Senator Italiano?

SENATOR ITALIANO: No.

SENATOR WOODCOCK: Senator Kelly?

SENATOR KELLY: No questions.

SENATOR WOODCOCK: All right. Thank you very
much, Mr. Prosecutor, for coming down.

MR. CALISSI: Thank you.

SENATOR WOODCOCK: We will take a five minute break.

(Recess)

AFTER RECESS

SENATOR WOODCOCK: Suppose we reconvene. I will call as our next witness Professor Ruth.

P R O F. H E N R Y S. R U T H, J R. (Associate Professor of Law, University of Pennsylvania in Philadelphia], being duly sworn, testified as follows:

I am not going to read this whole testimony, Senator, if that's all right. (See Appendix)

SENATOR WOODCOCK: That is perfectly all right.

PROF. RUTH: I will just cover the highlights.

At the bottom of page 4, I start with specific comments, and I understand that the bill in New Jersey was drafted before the Federal people had finished putting together their version. So I think there are some technical things in the New Jersey bill that have to be accomplished to bring it in line with the Federal Authority. I list those on page 5 and at the top of page 6. I will just mention three of them. The others are technical.

I think there is a problem with the State Commissioner of Investigation being authorized to apply for a warrant. I don't think that is authorized under the federal act.

Number 5 on my list has to do with Section 10. One of the prosecutors here today mentioned, I think, also that that is not in accord with the federal bill. As a matter of my personal feeling, I think it's too broad as an emergency provision. The federal bill permits emergency warrants only in the case of national security or organized crime. I think your Section 10 would also have to be so limited.

Now, Number 8 at the top of page 6 really has to do with something that I think is omitted entirely from the New Jersey bill, and that is sort of a listing of who can use the material which is obtained as a result of electronic surveillance. Section 2517 of Title 13 of the federal bill does so list the proper uses by law enforcement people who have obtained knowledge of what was secured in an electronic surveillance, and I think that type of provision will protect both the people and the law enforcement officers if there is some comprehensive listing of the uses that can be made of information obtained through electronic surveillance.

I have three general points which are at the bottom of page 4 which are really a matter of personal preference of my own. I don't think every county prosecutor should be permitted to secure a warrant, and the reason I say that is primarily because of the expertise involved in electronic surveillance. I would like to see those who are permitted to use this to be as limited as possible consistent with making it a useful tool. So unless there is an area of need such as counties over a certain population - I put in 100,000 here. Today it would be 200,000 or 250,000. I think it should be limited to the State Attorney General's Office and County Prosecutors in the large counties.

Secondly, I would suggest what is usually an unpopular suggestion. I think there ought to be an absolute numerical limit on the number of surveillances permitted in a year,

either to each county attorney or to the State Attorney General. I say this, I think, without limiting the utility thereof in that District Attorney Frank Hogan of New York County, with eight million people, uses these devices only 75 to 90 times a year. So I don't think you would be losing anything by putting some kind of limit on it. Yet at the same time I think you would ameliorate the objections of the people and their feeling that possibly there will be a massive invasion of privacy under the bill. I don't think there would be anyway, because of the sheer mechanics of surveillance of the resources who need it. But I think it would have a good effect on the public if there were such a numerical limit in the bill.

Thirdly has to do with the judges who are authorized to sign search warrants for electronic surveillance. I think they ought to be limited to the Superior Court Judges and to such Judges as appear on a list appointed by the Chief Justice of your Supreme Court. Again I think this is a matter of expertise. I think there will be very few authorizations, and I think the same Judge in the district should do that all the time to build up a degree of expertise. I can see over a period of time such Judges getting together every six months or every year to discuss the type of problems that arise under the issuance of such warrants and how they feel about the policy that they are implementing in deciding whether to agree to or deny such a warrant.

One other problem I have with the statute, and this is really a problem I also have with the federal statute. I

think an authorization for twenty days might run into constitutional objection. The one Supreme Court case, the United States Supreme Court, which indicated that such warrants would be legal, was the Katz case. What was involved there were six observations of three minutes each in a telephone booth, or a total of eighteen minutes. I think if a warrant has been obtained and a bug is placed inside a house, and the conversation you said you had probable cause to hear has not been heard in five or ten days - I think the U. S. Supreme Court would say that's an unreasonable search and seizure under the fourth amendment. So I would cut the number of days down as a caution to five or ten rather than twenty.

You might want to get the views of law enforcement whether this would decrease what they believe to be the utility of it, but this is the one severe constitutional problem that I have with both the federal bill and the New Jersey bill.

That's really the heart of my specific testimony. The other items that I think have to be changed to conform with the federal bill are really technical items that don't really merit discussion.

SENATOR WOODCOCK: Thank you, Professor. I have a question concerning organized crime specifically here in the State of New Jersey. As I understand it, you were formerly connected with the Organized Crime Section of the Justice Department and were assigned to the State of New Jersey by the late Attorney General Kennedy. I was wondering whether

you would care to comment on the importance of this wire tapping and electronic eavesdropping surveillance on coming to grips and combating organized crime here in the State of New Jersey.

PROF. RUTH: Well, I was with the United States Department of Justice in the Organized Crime Section from 1961 to 1964. I wasn't assigned to New Jersey the whole time. I was in New Jersey about a year of that time, and from what I learned during that duty working with U. S. Attorney Satz and also sitting on the meetings of the Department of Justice where the organized crime conditions in the rest of the country were described and problems discussed, I think New Jersey has the second highest problem with organized crime in the country, second to New York City. I can't conceive of a meaningful program being built without the tool of this bill. But I do want to say that this bill is not enough. I am not one of those who believe in electronic surveillance as a cure-all. I don't think it's going to be. You need other things in the State that you don't have in the prosecutor's and police departments that have such organized crime units. I think you just passed a witness immunity bill. You need an Investigative Grand Jury statewide. You need more people than are now working on this problem alone and developing the expertise it takes to be involved in organized crime law enforcement. No matter how much of those resources you have, you always reach a certain point in dealing with the Cosa Nostra where you don't get above a certain level of

their higher ups, and you're not going to, except in extraordinary cases, without electronic surveillance. I think you will with electronic surveillance and I would like, under the carefully-guarded limitations that are in this bill, to see it tried. New York City has the most severe problem by far and people say, "Well, they have electronic surveillance, why haven't they gotten rid of it?" They only have about ninety policemen working on this problem in New York City alone, and about ten Prosecutors, and that's not enough.

SENATOR WOODCOCK: Now, Professor, since you were connected with the Justice -

PROF. RUTH: I wonder if I could say one other thing. As a Pennsylvanian I think I can say this. When I was working in the Organized Crime Program in New Jersey, I would say that the corruption problem that I encountered was the most severe that I had heard of anywhere and certainly equal to anywhere in the country. And to me that was the most upsetting part of it, when people are paid to serve the people and are really serving the interests of organized crime.

SENATOR ITALIANO: Now you are speaking of official corruption?

PROF. RUTH: Yes, sir.

SENATOR ITALIANO: And does this permeate all levels of government would you say, or is this local?

PROF. RUTH: I would say there is enough corruption in the State that organized crime can get most anything that they want, that they need.

SENATOR WOODCOCK: When you say "most anything they

need," Professor Ruth, do you mean an umbrella to operate under?

PROF. RUTH: This has to do with their illegal operations and legal operations. This is not to say that organized crime asks for everything it could get. I think one of the magic parts of the Cosa Nostra is their exercise of restraint. I think there are things that they do not reach for, because they do not want the light of the public eye or a concentration of law enforcement thrown upon them, so they are somewhat restrained at times and in different areas in what they ask for. So this is not to say that they can get anything; what I am saying is they get anything that they reasonably ask for, operating under their principles of restraint.

SENATOR ITALIANO: In other words, you are saying that New Jersey is a safe state for organized crime?

PROF. RUTH: Absolutely. Now this doesn't say that any particular person is corrupt, Because of all the resource problems involved in combating organized crime, the fact that the public, as far as I can see, has made no outcry for a real enforcement program that would give a political figure any encouragement to make that a part of his platform, I think all of us can be indicted for that situation, not just corruption of individual public officials. It's so much more; it's not just pay-off. It is very subtle. There are interests that are to be served by not doing anything about organized crime which may not involve pay-offs or anything.

SENATOR ITALIANO: Could you be a little more specific?

PROF. RUTH: I really don't want to get into naming names and places.

SENATOR WOODCOCK: What form would that take?

SENATOR ITALIANO: You say it does not necessarily come in the form of pay-offs.

PROF. RUTH: Well, I think it would come in the form of political contributions which may be a figure he only finds out about after he is elected.

SENATOR ITALIANO: That wouldn't be official corruption if he didn't know about it.

PROF. RUTH: He knows about it after he is elected. Someone might be framed. I mean, organized crime has its own dossiers on individuals who may have committed some sort of indiscretion early in their life. There are all sorts of ways that you can make people do what you want them to do. There is corruption in the Labor Unions in certain parts of the State which, in conjunction with businesses, can yield all sorts of economic power.

SENATOR KELLY: Professor, one of the things mentioned this morning - I don't know whether you were here or not -

PROF. RUTH: No, I wasn't.

SENATOR KELLY: One of the difficulties I think we have is in the area of these electronic surveillances and what have you, coming into the wrong hands, such as people who were Assistant Prosecutors at one time or Assistant United States Attorneys at one time. As you know, the crooked lawyers are tomorrow's crooked judges. These people have access to this information and tomorrow may be going out representing the organized elements of crime.

It just seems unusual that in this State, as well as in some of the other States, it is usually one law firm or one attorney that represents the general masses that get involved in this organized crime. Is that accurate so far as to the representation by certain law firms?

PROF RUTH: I think there are certain law firms that tend to be the exclusive representation, yes, in some areas. I don't know what that has to do though, Senator, with the fact that people become involved in working against organized crime and then go out and practice.

SENATOR KELLY: Well, what I think it has to do with is this: Some of these people end up in these particular areas and then, tomorrow, after having access to this information in connection with surveillances that have been made, leads that have been provided by the State Police or the Federal Bureau of Investigation, etc., at a later date they are representing these people and they have all this information.

PROF. RUTH: It's really a matter of picking your personnel. For instance, I know of no one - no one that I can think of - who had worked in the Organized Crime Section of the Department of Justice and went out and became a lawyer for organized crime. I think that's a matter of being so shocked and taken aback and dismayed by the picture that is presented by what you see that I know I wouldn't feel comfortable in that capacity. If a court appointed me to represent one, of course, I would do my duty, but I would certainly not as a private attorney want that as part of my business. I

would have problems doing what a lawyer ought to do for a client in that instance. As I say, if I were a court-appointed attorney, I would do my duty but I just wouldn't want to make my living that way, and I don't think that many people who have been involved in such enforcement find that they can.

SENATOR KELLY: You mention also about the 20 days limitation on electronic surveillance and wiretapping. If you had a subject and you were tapping his residence or place of business, it comes to my mind whether 20 days are enough and whether it should be 30 days, and maybe let the Supreme Court knock it out. They have been doing a lot of knocking things out. That's where we get some of the problems that we have today in my judgment.

PROF. RUTH: Well, I think that's the judgment that has to be made. Of course, from a law enforcement standpoint, you would want a longer time. I am just trying to make an estimate, having read the Katz case, of what I believe the Supreme Court will buy. Now it may be that the best way to do that is to test it. If that is the case, I would choose as my test case maybe one of the lesser cases so that you don't lose three years of investigation because your warrant said twenty instead of ten days. This is the problem in taking the attitude "well, let them test it." Because you may have a very important case that many, many people worked on for many years and it goes out the window.

SENATOR WOODCOCK: Professor Ruth, with respect to the safeguards for the individual and his rights to privacy,

do you think that the bill, with the technical changes that would have to be made, contains enough safeguards - this bill as proposed?

PROF. RUTH: With the suggestions I made?

SENATOR WOODCOCK: Yes.

PROF. RUTH: I certainly do, yes, sir. I view it as a balancing act. I think our privacy is invaded tremendously by what organized crime does. I am just willing to give this much up in the form of an electronic surveillance bill to see if that will help in the problem. Under the bill there is going to be continuous examination and reporting. If there is misuse or if it isn't helpful, the bill can be repealed, and I'm sure the people would demand that if that turned out to be the case.

SENATOR WOODCOCK: Professor Ruth, you and Professor Blakey who was here earlier this morning have painted a rather grim and black picture with respect to organized crime, not only here in the State of New Jersey but nationally, and I was just wondering whether in your opinion this war can be won.

PROF. RUTH: Well, I think some fundamental changes have to be made. I look at it as something we haven't tried to do. Nobody was doing much of anything about organized crime except in New York until seven years ago, and since then, principally, only the federal government has had a sustained drive and that has had its pitfalls at certain times. It's had its ups and downs.

I think if we try there's a lot we can do, because this is an area of crime which is deliberate, it's not caused by poverty or social conditions or whatever are the other causes of crime. This is a group of people who have formed a corporation and said we're in business to commit crime. I can't believe that our society is not equipped to deal with that sort of thing if we're willing to put the resources on it. If you count the number of people in the United States outside the Federal Government and outside of New York State that are devoting their time exclusively to organized crime, I don't think you would get above a hundred. So we are not trying to do anything about it, and here is a business which people believe is grossing forty or fifty billion dollars a year and netting probably seven or eight billion dollars a year.

SENATOR ITALIANO: Is that billions?

PROF. RUTH: Billions - bigger than any business in the United States. I don't think a hundred people working full time are enough to say that we have even tried to do anything about it.

SENATOR WOODCOCK: One last question that I have, Professor Ruth, that has nothing to do specifically with this bill, but since you have been connected with the Justice Department and there was some testimony here prior to your coming here with respect to the activity of the Commissioner of Criminal Justice as proposed under Senate Bill 802. I was wondering whether you could tell us what the function of the

Attorney General of the United States is with respect to prosecution and rehabilitation and incarceration, etc.

PROF. RUTH: Well, the Attorney General of the United States essentially has the functions, as I understand them, as proposed in the bill for New Jersey. The Attorney General of the United States is, by law at any rate, in charge of the F.B.I., which is the policing part of the Federal Law Enforcement Establishment. The Attorney General is head of all the Prosecutors, the U. S. Attorneys, that are scattered throughout the United States. The U. S. Attorney General is supervisor of the head of the Bureau of Prisons, which is a rehabilitative function, and that includes programs such as work relief and other programs in the community. The U.S. Pardons Board is attached administratively to the Department of Justice but the appointments are made by the President. The head of the Narcotics and Drug Abuse Control program for the Federal Government is subject to the jurisdiction of the Attorney General. The whole Federal Aid program for police, courts, corrections, and any other part of the criminal justice system, is supervised by the Attorney General of the United States, so he has these functions and in some way, since they are spread out throughout the United States, you might think he would have a harder job than someone just trying to supervise the boundaries of this State.

So I think there is great precedent for that kind of organization. I certainly agreed with your comment that we tend to divide up the crime problem and picture the prosecutors fighting the correction people, as one of the

witnesses here did today. He said the prosecutor has got to be a representative against the correctional people. I think that's just a faulty view of the system. I don't think we are going to get anywhere until everybody realizes they are part of one system whose goals are the same. I think putting them together under one person that tries to bring these interests together is something that would be extremely helpful.

SENATOR WOODCOCK: Do you have any questions, Senator Italiano?

SENATOR ITALIANO: Yes. There has been a tremendous increase in crime against persons and property, as you know. Do you relate this in any way to organized crime?

PROF. RUTH: Well, I would certainly in certain areas. I think that people who live in the inner cities of the big cities and other ghettos, when they see that the way to wealth is through crime, and the people driving in Cadillacs are organized criminals. The narcotics problem, I think is certainly attributable in great part to the supply brought in from outside this country by organized crime.

I think a lot of the property crimes committed by professional criminals, which I think are a large part of our property crimes, would be in great difficulty without services from organized crime such as the fences and any time they might need a fix or something like that. I think organized crime helps the professional criminal, the people that go around in ad hoc groups and make their living through crime. But I have talked to kids in South Philadelphia, for

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instance, and they view the world as the gamblers and the police working together and they view what they think as the heroes of their elders as being the organized criminals. So they say where are our values going to come from? we're going to have to make them ourselves.

Of course, there is the example of violence that organized crime provides. . . . They are not doing . . . it as often as they used to, but the cold killing which is not a product of passion or emotion or prior difficulties between husband and wife which is the usual murder. This is an example which I think other people must look to and see, well, these guys get away with it, why shouldn't we try?

SENATOR KELLY: Do you think we can win this battle against organized crime?

PROF. RUTH: Well, I'm not very optimistic about anything at this stage of our being, I guess. I do believe that if we apply the resources and get the legislative enactment needed, we have as good a chance in this area or better - I would say better - than in other areas of crime.

SENATOR WOODCOCK: Well, Professor Ruth, I want to thank you very much for coming here this afternoon. I think that the Committee and the Senate will benefit greatly by your testimony. Thank you very much.

PROF. RUTH: Thank you.

I will call Mr. Jacobson.

If I may for the record, and I have been remiss in this: Members of our Committee have called this morning and said that they were unable to make it. Senator Italiano has handed me a note with respect to Senator White who called early this morning and said that a prior very important commitment kept him from being here and hopefully he will attend tomorrow. I know that there are other members who were to be here but were unable to make it today and, hopefully, they will attend tomorrow.

J O E L R. J A C O B S O N, called as a witness, being duly sworn, testified as follows: Thank you, Senator Woodcock, Senator Italiano, and Senator Kelly. My name is Joel R. Jacobson and I am here before you today as the Director of Community Affairs for the United Automobile Workers in Region 9 which includes New Jersey.

I think it is perfectly obvious that I am not an expert in law enforcement but I do regard myself as a law-abiding citizen who believes in law and justice. I must say after hearing the undocumented testimony of the previous speaker leveling charges of corruption in government at all levels which I assume includes the Legislature, I think you will be delighted to hear me say that I speak in opposition to all wiretapping in the State of New Jersey.

I must say in a serious vein that while the previous speaker was not asked to present evidence of crime, it comes to me as something perhaps not to be too highly regarded when a man makes blanket statements about New Jersey being

the safest State in the Union for crime, without offering some substantive evidence to document the charge. And if there is evidence that he has about crime in this State, it would appear to me that as a law-abiding citizen he should approach his nearest prosecutor or the Attorney General of the State and provide him with that evidence.

I suppose I speak here more as a person who considers himself a civil libertarian than as a law enforcement officer. The UAW and our Union opposes the institution of wiretapping and other electronic eavesdropping on principle. We witness that everyone, including the most zealous advocate of electronic eavesdropping, considers it to be an encroachment on one's privacy. It was Justice Brandeis who regarded privacy of a free citizen as "the most comprehensive of rights - a right most valued by civilized men." Now I understand there are these law enforcement officers who make the point that they cannot effectively pursue criminals without this additional tool. That, of course, poses the perennial dilemma which we face. How can we fight organized crime without unnecessarily invading the privacy of a decent citizen.

The solution that has been proposed, as evidenced by S-897, is what the sponsors call a balanced solution. They offer only a limited amount of wiretapping, it's restricted to a few crimes, and it is supervised by the courts. I would like to submit that in our opinion this so-called balanced solution is no solution at all. Firstly, there are physical and other inherent factors which preclude meaningful limitations on the invasion of privacy. Prosecutor Kaplowitz, who was here about an hour or so ago, specifically said that this particular

statute runs the gamut of potential crimes to be committed.

Number 2, the invasion of privacy is far greater than is readily apparent, and I will go into that a little deeper in just a moment.

Number 3, the record shows that many courts either abdicate their attempt to supervise wiretapping or that, in a more effective manner, the applicants for wiretapping warrants avoid the tough Judges and they will find a Judge who is more disposed to order such warrants and will beat a very hasty path to his door, and he will do a land-office business for such warrants.

The UAW maintains that the ban on electronic eavesdropping must not only be maintained but in effect should be strengthened. We find S-897 objectionable even when a court order is required. We find it heinous as in Section 10 when it permits wiretapping without the court order, and I know you've heard much about that and there is no need to repeat it.

I want to tell you a personal story that may be germane. About six years ago, when I was still single and had a few dollars, two friends of mine and myself took a tour of Europe one summer, and we wound up in Budapest at the Hotel Goelet and, by some peculiar coincidence, we were assigned the same room that at that time Vice President Nixon had occupied a week earlier. One of my friends who had arranged for the tour said to me as we checked into the hotel, "Be careful what you say. The room is bugged." Now it appears to me - we had a great deal of fun about that, complaining about the towels and other things in the hotel - that in its more serious aspects

wiretapping and electronic eavesdropping smack of the totalitarian spirit, and I felt that very much those few days we spent in the hotel in Budapest. It deprives a citizen of his privacy by observing all movements, all words, and possibly even his thoughts. Fear and insecurity permeate. Happiness is a lost word. For those few days I felt that spirit, and I didn't like it. And it appears to me that we may be running in that direction by the unfettered and perhaps even more liberal use of wiretapping and other electronic devices. Privacy does not mean solitude. A man must communicate. I must talk to my wife, my children, my doctor, my lawyer, my clergyman, and the instrument I use most frequently to convey messages to these people is the telephone, and if I know or fear that the telephone is to be used to invade my most intimate thoughts with my most intimate friends and colleagues, there is obviously something that creates that same totalitarianism that I experienced in that hotel room in Budapest.

So I make the point that good wiretapping, even on a limited basis, seriously impairs privacy which is absolutely necessary in a free society. Now I would point out that when you do grant a warrant under a court order to tap a man's telephone, the following happens: All calls into that man's home are overheard and all subject matter overheard, no matter how irrelevant, how intimate, or how privileged - information which is not covered by the court order.

Number 2, all persons who respond to outgoing calls on that telephone are overheard, and they are not the subject

of the court order.

Number 3, all other persons who use that phone would be subject to electronic surveillance, and they are not included in the court order.

Finally, all persons who call our subject are not subject to the court order.

I repeat, it appears to me to be an objectionable abuse of personal privacy in a free society.

I can see other abuses that can emanate from the passage of this bill S-897. Now I have on occasion voiced critical opinion about certain law enforcement agencies and officials. I want to emphasize that I believe many of our law enforcement agencies and officials to be dedicated, intelligent, hard-working, sincere citizens. I do not tar anybody with the brush of criticism. But there are others; there are too many who are none of these things, and there are such recent occurrences which perhaps could be classified under the title of the Cook County Syndrome which lead me to believe that certain law enforcement officials have neither understanding nor sympathy for democracy, the rights of the free citizens, or perhaps our own Bill of Rights.

I suggest that to permit information of an intimate, confidential, privileged nature to be in the hands of such individuals could on occasion and by certain individuals be easily transposed into a saleable commodity. Obviously, I am talking about the abuses of blackmail.

Secondly, in this Section 3 , where you have the warrant granted for possible evidence of an indictable offense to

include incarceration of over one year's imprisonment, there have been times where I have been involved in my Union work in strikes where I and my colleagues have been charged with offenses that were indictable for one year or more, and we think it's the most noble of God's work to try to do good for your fellowman through a Union. Yet under this statute, we could be subject to a wiretap because of the definitions extended here, and we find this to be rather typical of a totalitarian state, untypical of a democracy. It could mean that every time we are about to have trouble with a company, we can expect our wires to be tapped. There have been occasions when police officers, who were not distinguished for their love of pickets, could use such information, certainly not to our help.

Finally, tapes can be doctored. I am told - I don't know this but I'm sure the experts do - that it is possible to have Enrico Caruso's voice sing songs today that were written after his death through the magic of electronic genius. Now it's possible to doctor tapes, and God knows what will happen. I make no specific reference to these young ladies because they were not present, but when I testified before the hearing early this year before the Law Enforcement Council and a transcript of my testimony was sent to me, there were phrases there that I never used, didn't recognize; there were glaring gaps of things I had said that were not included. So even an honest attempt to portray accurately what has been said is difficult. With the desire to sometimes abuse, the abuses are obvious.

I just want to conclude by saying that I find repugnant the theory that we, the decent citizens, must resort to dirty business in order to catch an occasional criminal.

I would like to quote Supreme Court Justice Felix Frankfurter when he said in a court decision on Lee vs. United States, the following two sentences: "Suppose it be true that through dirty business, it is easier for prosecutors and police to bring an occasional criminal to heel. It is most uncritical to assume that unless the government is allowed to practice dirty business, crime would become rampant or would go unpunished. My deepest feeling against giving legal sanction to such dirty business is that it makes for lazy and not alert law enforcement. It puts a premium on force and fraud not on imagination and enterprise and professional training."

I would just submit once again that in a free society, a citizen should be free from the impairment of his ability to speak confidentially without having his rights invaded for whatever reason.

Thank you.

SENATOR WOODCOCK: Thank you. Do you have a copy of that statement, Mr. Jacobson?

MR. JACOBSON: No, I just have notes here, sir. I would be delighted to transcribe them if you would like.

SENATOR KELLY: I would like to mention this. You mention the dirty business of wiretapping. We are weighing this against the dirty business of organized crime and of what

narcotics have done to the children, particularly in this State. Where years ago we may have had some problems in this line, it has never been of the magnitude that it is today. We have communities in this State, very fine, outstanding communities, and today they have become pits for narcotics. I think by using dirty business against dirty business, maybe we can clean it all up. If we can catch these people who are so well organized, if we have to do it electronically and get them disorganized, maybe it's not too bad for us to get our hands a little dirty if that's the only way we can do it.

MR. JACOBSON: Well, Senator, this is the old philosophy that has been argued and debated for years: Does the end justify the means? I know you have been through this so many times, and I have too, there is no need to debate it here. In my opinion, this is a tactic more typical of those governments whom we constantly invade against than of our own democracy.

SENATOR WOODCOCK: Mr. Jacobson, just a few questions.

With respect to organized crime, would you accept the - I don't like to use the word evidence - the statements that have been made in the President's Crime Commission Report and other reports that are available and the testimony that was heard here today with respect to the seriousness of organized crime?

MR. JACOBSON: Undoubtedly. There is no question about that. I have no doubts about it.

SENATOR WOODCOCK: There is no question in your mind with respect to the fact that we do have this very

serious problem?

MR. JACOBSON: My only objection, as voiced earlier, is that I would like to hear evidence. I just don't like to hear blanket charges with nothing to document them.

SENATOR WOODCOCK: Well, I'm just saying that you would accept that as being a very serious problem facing society today?

MR. JACOBSON: Yes, sir.

SENATOR WOODCOCK: I think, if I understand you correctly, all you are saying here today is that you don't think this is a proper instrument for Government to be using in its fight against organized crime.

MR. JACOBSON: That is substantially correct.

SENATOR WOODCOCK: Well, let me ask you this: Do you think there is an analogy between the wiretap and the electronic surveillance and a search and seizure?

MR. JACOBSON: You are getting into an arena of law of which I know nothing. As a matter of fact, I've done some reading on this and I read about the fourth amendment to the United States Constitution and I decided I should not discuss this since I'm not a lawyer. There have been restrictions on that, and I understand the Supreme Court has issued 5 - 4 decisions of a varying nature.

SENATOR WOODCOCK: Well, without discussing the legal ramifications, isn't it a fact that an officer of the law can come into your home with a warrant and make a search?

MR. JACOBSON: Right, but not for evidence to be used in a court case, and the court made that distinction

at one time. They could go in and look for a murder weapon, but they couldn't go in and look for a shirt and find it had blood on it, because that would be evidence to be used. This is a distinction I just happened to read in a court case. There again, I am not a lawyer and I don't know really as to the legal point I am referring to. But I did read that in one of the documents I read.

SENATOR KELLY: Mr. Jacobson, if one of the best forms they have in organized crime is through the media of communication, then I think the access we have, so far as the law enforcement agencies are concerned, of obtaining this information is through communication.

MR. JACOBSON: If you don't impair the privacy of innocent people, you may be able to, but I can't see how you can do it. Now when you become theorists or purists, I would say you're right. But I don't see how you can do it without impairing the privacy which I consider to be a most precious commodity.

SENATOR KELLY: I agree with you as far as the precious privacy, but I just have some reservations about some of the astute citizens who want this privacy. I don't think they are entitled to it.

SENATOR WOODCOCK: Well, I only have one last question, Mr. Jacobson. If I understand your position correctly, you could not conceive of a bill for eavesdropping, electronic or otherwise, that would satisfy you. In other words, if we were to take this bill and rip it apart, if it still involved a surveillance of other people's conversation by the police,

regardless of what restrictions we put upon it, you would find it unacceptable in our society.

MR. JACOBSON: I believe that is accurate. We have seen no bill, nor have any of our lawyers been able to draft such a bill, that would meet our objections.

SENATOR WOODCOCK: Thank you very much, Mr. Jacobson.

MR. JACOBSON: I'll see you Wednesday morning.

SENATOR WOODCOCK: At this time I would like to ask Colonel Kelly, Superintendent of State Police, if he would kindly come forward and testify. I would like to apologize, Colonel, for keeping you this long but we did have an arranged schedule here and I did want to keep to it as much as possible.

COLONEL KELLY: We're used to it, Senator. A lot of surveillances keep us waiting a long time.

D A V I D B. K E L L Y, Superintendent, New Jersey State Police, called as a witness, being duly sworn, testified as follows:

COLONEL KELLY: I am David Kelly. I am Superintendent of the New Jersey State Police.

I was asked to come here today to testify specifically on the Senate Bill that's pertinent to wiretap, only. And right now, as of today, and it has been our belief for a long time that the court order of wire and oral communication interception of today is probably the most singular, valuable weapon in law enforcement's fight against crime.

I know that you have statistics. I know that you've had hearings on statistics on the rising crime rate in the State. I know that you're aware of this. We don't expect that the detection devices would be the ultimate. We still have wear and tear and surveil, and this is only a supplement, like the polygraph, but we need it as a tool.

We are quite aware and very cognizant of the rights of people, maybe moreso than people will realize.

The liberties of the people of this Country have to be respected. And as we look at the bill we thought that maybe we could make some suggestions and give you some ideas as to what we thought would be the restrictiveness and the controls and centralizations with regard to the applicant, the informant, and to the people who would do the work, the surveillance work.

Our feeling was that - and I have to agree with Dr. Ruth in some of his statements, most of his statements, in fact, probably all of them, in terms that maybe too many people in the system would help to decentralize it. We feel that the Attorney General - and as I listened to Dr. Ruth I do have that leaning to maybe not every prosecutor but I have no objection to every prosecutor and the Commissioner of Investigations, as you people have. And I must go along with the superior court judge or, specifically, the assignment judge. We feel that within the counties within the State structure there are 21, any one of which could be available at any time. I feel this would add kind of specialization to it too, and a certain group would be well informed in this particular sphere of endeavor. And it is our first venture and this is my reasoning for it. I believe that with the experience we all could profit.

My second proposal would be in terms of who would use this equipment. And I say, with due respect to our police agencies we would suggest that the State Police do this and be the agency, and the sole agency that would do this. And we're not voluntarring our service in terms of

being noble but some of the things and ramifications that we've delved into, we feel that, first, the surveillance equipment is going to be expensive, it's going to cost money and most of the local police departments cannot afford the type of equipment that would be required. The training, the experience and the manpower necessary to operate this equipment would again prohibit some police departments, local police departments. Thirdly, the elimination of duplication. We feel that in protecting people's rights they are entitled to know who the responsible agents or parties are that have accused them.

We feel that with the one agency doing it, that is specialized in it, if there be any fallacy in the system the fault could be placed within one organization and before one individual.

The theme seems to be nonfragmentation and this seems to be our area. We feel that this would be fragmentation if we had too many people handling this equipment, handling the investigations, surveillancewise.

We feel that the prosecutor on his application to the court and upon acceptance of the court, give it to one agency and this agency in turn be specialized in this effect and its return, go back to the court and turned back to the agency requesting it. This we feel would be the protectiveness of the people that are being surveilled against or surveilled, and it would also protect the police officer.

We feel that the one agency concept and centralization - we feel that the Attorney General's office or the Attorney General, rather, the prosecutors and, if it

be the wisdom of the legislative body to decide certain prosecutors and the assignment judge kind of localizes it and restricts it and I think that all people will be protected.

With regard to such other areas that you have within the framework, we have an application of process that I won't waste your time with, and I present it to you for whatever consideration you may have, but we would like to say something about the list of crimes.

We would like to add loansharking, be it a law or be it not a law eventually it would be, but murder, kidnapping, gambling, robbery, bribery, extortion, loan-sharking, dealing in narcotics, drugs, marijuana or other dangerous drugs.

We are looking close to the acts punishable by one year imprisonment and some times maybe we become all-embractive or maybe too embractive, and I think maybe if we looked at that a little closer. And if we're going to define them, fine, but if we're going to generalize, it may be a great complex in terms of - for example, some man may sign his motor vehicle license and misrepresent him which is an indictable offense which is a year and I'm sure as hell we don't want to do an electronic surveillance on such types of crimes or so-called crimes as these.

And this is the area I'm talking about in elucidating the crimes that you have listed here.

Again you say, as we said, in recommending that one agency do the surveillance, it's going to be a great burden on the State Police, if such a thing happens, or the

agency because it takes training, it takes men and it takes equipment and it takes time.

With regard to the Doctor's statement on the 30 day business, on the 30 day usage, it may take sometimes longer - 20 days he cited - it may take longer than 20 days. But he also stated that only 15 minutes of interview was used. Well, we agree only fifteen minutes, that it takes 15 minutes of evidence but it takes 30 days to get it. This is part of the program because one of the things that we understand, and I give you a typical situation, there could be information of a meeting tonight someplace and it may not take place, and it may not take place tomorrow night but we know there's going to be a meeting and eventually it will take place. Now agreed that if we have time, this is what should be taking place. We should make application. There's no question about this.

Now, I don't believe that there should be notification. I don't believe that we should have this notification at all. I believe that in your report, yearly report, numbers, types, kind, as suggested and recommended in the bill, yes. That these reports should be documented. But in an emergency I think that we should have the right to use this equipment upon the authorization of the applicant and in due time notify those people that the surveillance has been against. Now the due time could be in terms of - I don't know, I just don't know right now. Should it be 3 months? Should it be a year? But I think that only notification should take place in terms of emergency, those

people that surveillances were made on without due process. Of course, in time due process would take place.

There are conditions that do exist within areas that we really cannot get into, and with this type of equipment we can get into, in emergencies. I'm talking about rebellious conditions and all of a sudden a condition can change where we would need to do something about something that we hear about and maybe we need further information but we have to have an emergency clause and I would suggest that we look strongly at an emergency clause.

But with regard to notification, we've kicked around 30 days and kicked around 3 months and we kicked around a year. I'm inclined to go for around 90 days, 3 months' notification clause. I do feel that people should be notified because of emergency cases but not notified in due process, the applications, I think.

I think possibly you want to ask me questions now. I don't want to go any further into the many portions of the bill. The bill as we want it, we're for the bill with the certain recommendations that we have made.

SENATOR KELLY: Colonel, do you feel in the battle against organized crime in New Jersey, and certainly with the overflow into South Jersey, the Philadelphia area, Pennsylvania, and certainly North Jersey, the New York area, - Do you feel that using the electronic devices would be extremely beneficial to the State Police in its constant fight against organized crime?

COLONEL KELLY: Yes, sir, and I strongly urge that we have this equipment or the authorization for this equipment to fight this element.

SENATOR KELLY: Do you feel, Colonel, that one of the failures we've had, possibly because of this fight against organized crime - one of the failures that exists today is because we haven't had the legal opportunity to eavesdrop, these electronic devices?

COLONEL KELLY: One of the failures, yes.

I would like to say this, Senator. We talk about the rights of people. We all are dedicatedly for the rights of people but the good people seem to be getting hurt and they don't realize it. We talk about the good individual who, 65 years of age, has nothing to do and he has \$2.00 to bet on a horse. There's not really too much wrong with this. But you add up all these two dollars, two dollars and two dollars, and these good individuals become part of a system that is supporting organized crime.

We're talking about - and one of the Prosecutors, I think, said that he would take out larceny. I would strongly urge that we stress larceny because of the highjacking type business and this is one of the most flagrant crimes we have going on in this State.

SENATOR WOODCOCK: Colonel, that was Prosecutor Calissi and I think he wanted it in because of the fact that people could call up and order a car that they wanted stolen, and that type of thing.

COLONEL KELLY: Right. Well I'm strongly stressing

that if you knock anything out, don't knock that out.

We feel that it is absolutely necessary and good people - and as you know better than I do, laws are not passed for good people, they're passed to help good people, and I think this is the intent of this group here, to help good people, and we need this as a tool. It's not the answer. There's a lot of hard work to be done and a lot of surveillance to be done other than by electronic devices. And I think that we have made some inroads. We have an organized crime task force that we're using and operating in areas and municipalities throughout the State. We have an intelligence unit that is really operating and people, and specifically police departments are starting to recognize this and they're starting to recognize that they're getting some help and they're coming forth with information that they didn't have channels for before, they had no place to deposit it, and we're getting information and they, in turn, are getting help. And I think if en masse all of the police departments are made to recognize, and they do recognize that they do have a problem and they can get some help, some outside help, I think possibly the tenor of this whole thing would change.

And I'm not saying that there's a lackadaisical attitude but as we look about the State sometimes there's kind of a frustration, where do we go and who do we talk to, and now that I know it, what can I do about it. And I think that possibly we can help in this area and they can help us.

SENATOR KELLY: Colonel, is there organized crime

in this State today?

COLONEL KELLY: If this is what we call organized crime, we have a bunch of people who are doing things that they shouldn't be doing. If you call it organized, yes, sir.

SENATOR WOODCOCK: And would you accept the concept, as explained by Professor Blakey and Professor Ruth, with respect to it being analogous to a corporate entity where they have somebody at the head of it and he directs the criminal activity, in effect, through other people under him?

COLONEL KELLY: Right, sir. We feel the tentacles as they go about and we can feel it. There are areas where just possibly you just can't get into unless we have some kind of help, some kind of detection help, some kind of a modern technique. We can't get into many areas. You can't get into a plant, you can't get into some geographic sections of the State, and some of these things are going to help and this specifically will help in terms of this.

SENATOR WOODCOCK: And would you also accept the idea put forth by Professor Blakey, I believe it was, that this isn't necessarily one corporation, you know that has a national headquarters and that it comes down, and it may be several or more corporations operating in this fashion.

COLONEL KELLY: Right, each with its own specialty. And when we talked about the highjacking, it's prevalent and it's interstate and it's in the State. And once something is stolen somebody has to get rid of it. It has to go to a fence and someone has to buy it. You know, if a thousand televisions are stolen someplace the fence has to handle them. And some

good people are buying them too at kind of a cost price. Where are we going to get information like this until we find something in the middle and then some of these people have to get squeezed.

I think that the complacency of the people has added immeasurably to the conditions that we have today. We have to get to the people. And I think if the people realize too that they have an obligation and they realize that people are protecting them, and I think that we have built in enough protectiveness in what you're doing here today, I think you can help the people.

SENATOR WOODCOCK: One other question comes to mind. In limiting the time on a wiretap or an electronic surveillance to be in operation, you indicate it might be needed for as long as 90 days.

COLONEL KELLY: Right.

SENATOR WOODCOCK: Now what safeguards could we adopt that would protect the innocent conversations over that line? In other words, it may very well be that you're tapping a line that I might make a call on and it could have - oh, I'm sorry I used myself as an illustration - I was going to say, have some intimate conversation on the line that I wouldn't care to have revealed. You know, how do we dispose of this without --

COLONEL KELLY: We have to protect - well, the application, of course, will have to have all of the elements of a warrant. And while I'm on it, sometime I wish that someone would give some thought to maybe changing this

nomenclature to say "court order" as opposed to warrant. As soon as you say "warrant" people have the impression they're going to be searched and frisked and everything else. I just toss this out in terms of maybe if we differentiate between court order in this respect as opposed to the warrant, search warrant type of thing, although it is yet it should have all of the elements of a warrant, the description, what we're looking for, the individual that we're looking for, the time and place, all of the elements that would be required in a warrant. This information goes to the court and, in turn, the court could evaluate and cut off this type of thing.

The tapes, someone said, well what about the tapes, they may be doctored. If proper tapes are used, they can't be doctored. This is done by a microwave type of thing or timing devices and these things have to be spelled out and clearly defined for the protectiveness of the people.

That information on there that is not incidental to the application has to be deleted and has to be not recognized at all.

SENATOR WOODCOCK: Yes. But what I mean, Colonel, is this. If you, for instance, were to put a tap on this Chamber for 90 days, you would pick up conversations that would have nothing to do with the subject matter that you wanted.

COLONEL KELLY: Right.

SENATOR WOODCOCK: But that conversation would still be on that tape. What possible - and I'm asking you

for some technical advise now --

COLONEL KELLY: Right.

SENATOR WOODCOCK: What method would be used to get rid of that so that all you would have in effect would be the essence of the conversation that you want, so that it would be destroyed in other words, that it wouldn't exist in limbo or anyplace else.

COLONEL KELLY: There are two suggestions I would have with regard to this, Senator. First, if it be, and I don't think that a superior court judge could have the time to sit and listen to this thing, but to clarify what I said about 90 days- the 90 days that I spoke about was in terms of an emergency and notification, not in terms of a tap. I didn't mean to infer 90 days in terms of putting a tap on. That's quite lengthy. 30 days is time enough and if there need be an extension, fine, then we go for the extension, but to say 90 days, if I said that, I didn't mean that.

SENATOR WOODCOCK: No, I may have misunderstood you.

COLONEL KELLY: I was talking in terms of the emergency and extension, and notification rather.

The built-in systems that we could have - this would have to be played to the court or to the applicant and we would have to take out those things and possibly destroy in the presence of somebody with certification that this was - all evidence destroyed except that portion which dealt with this particular case.

SENATOR WOODCOCK: Thank you.

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SENATOR ITALIANO: Colonel, as a practical matter, there is no way of eliminating whatever conversations are picked up by a third party to the place that's tapped, who may be an innocent person.

COLONEL KELLY: Right.

One other thing, Senator, in the application to the court we have to specify the telephone number. We're not going to say it can be a public phone booth. We're not going to say it because we have to explain to the court and the court in it's wisdom say, wait, you can't tap Jersey Central, you can't tap the whole State. It has to be restricted to the place, to the phone, and conceivably this could happen. Any maybe anyone could use that phone and we would - in turn, Senator, there could be innocent parties, myself or yourself included. And these are the things that we have to have - I think there is enough morality within the system that this thing would be respected, if we're talking in terms of criminal procedures.

But one other thing - let me say this, maybe this is in defense of the whole thing. If this system, if this ever gets out and we find that someone leaked it and we find something discriminatory has been said about someone, or you find that something has been said about you, we have built into the system enough of check-back to find out where it came from and who said it. First, through the assignment; second, through the prosecutor; and, third, through the central agency - somewhere within this system, This in itself should be the protectiveness that we're looking for in terms

of - well, suppose something is wrong. Well, whoever did that wrong we can place the wrongness there and maybe do something about it. And I think this kind of - it's like a rumor, how do you stop it? Good or bad there are some things that -

SENATOR ITALIANO: There is a distinction here between a search warrant and this type of a warrant.

COLONEL KELLY: No question about it.

SENATOR ITALIANO: The search warrant you present to the individual. It's directed against him.

COLONEL KELLY: Right.

SENATOR ITALIANO: But this type of a warrant, first of all, the individual doesn't even know he's under surveillance.

COLONEL KELLY: Right.

SENATOR ITALIANO: And even though this warrant is directed against him personally, the third party or the second party, as the case may be, who is talking with him has no knowledge of this either.

COLONEL KELLY: Right.

SENATOR ITALIANO: And there is no need for a warrant against that particular person.

COLONEL KELLY: Right.

SENATOR ITALIANO: Yet that person or persons are under surveillance, in a sense.

COLONEL KELLY: In a sense.

SENATOR ITALIANO: So long as they make a phone call to that particular phone or someone calls from that phone to them.

COLONEL KELLY: Agreed, that's agreed, Senator. But the point that I'm making again is that the application in itself is pretty definite, pretty well defined, and I think these are some of the, not the risks but some of the kind of --

SENATOR ITALIANO: In other words, you would call this a balancing statute also.

COLONEL KELLY: Yes, sir.

SENATOR ITALIANO: Balancing the right of privacy against what you think is needed to fight organized crime.

COLONEL KELLY: Yes, sir. And believe me, I think --

SENATOR ITALIANO: In other words, we have to agree that this is an invasion of privacy to a certain extent.

COLONEL KELLY: Well, the very act itself, if we're talking about privacy, is an invasion of privacy. There's no question about this. We accept this. It's for the good and well-being of many people, and we're talking about one individual now and this is what this application says.

SENATOR ITALIANO: We're speaking in the terms of one individual, as of now --

COLONEL KELLY: Right.

SENATOR ITALIANO: -- but if the law were in effect it may not be just one individual. Because I have to disagree with one of your very noble statements that laws are passed to protect the good people. I'm a believer in the fact that laws are passed to protect all people, whether they be good or bad. This is a necessary element in our society, to protect everyone.

A statement was made here earlier that New Jersey is a safe state for organized crime. Do you agree with that?

COLONEL KELLY: It's kind of a broad statement - it's a safe state for organized crime.

SENATOR ITALIANO: Yes, because of the official corruption that exists on such a large scale that organized crime can get practically whatever they want within reasonable limits.

COLONEL KELLY: I don't know about that, can get whatever they want. But if we're talking in terms --

SENATOR ITALIANO: No, I mean this statement was made here, and it's a matter of concern.

COLONEL KELLY: Yes, I heard that. It was a statement made by Dr. Ruth from federal statistics that we know about and they know about, and that of the 22 known leaders in organized crime, alleged leaders in organized crime, about 12 or 14 of them are in the New York-New Jersey area. And if we're talking about the protectiveness, I guess birds of a feather - and this may be what we're talking about, if we're talking about the protectiveness. The groups that's - are you talking about the corruptness on official levels? I am not aware of any corruptness on official levels in terms of politics or this sort of thing. I'm talking in terms of, there is highjacking and there is shylocking and there is gambling. With this type of operation goes the people that do that type of work. Naturally, there is a collectiveness about them and about that. I think that there have been and probably will be some more inroads made. I

think we're taking and making the right approach to fight this by this vehicle or tool that we're getting. I think that within our structure we're building organizational units that are doing something about this, and doing something well. We've established compacts with other states. And one of the things that possibly people don't realize is that there's a certain in-trust built in police departments or built with policemen within themselves. There are certain policemen who are not trusted.

Simply, some of these things are not provable but by mere association. Consequently, the LEIU, a Law Enforcement Intelligence Unit which operates throughout the country, and we are the only one in the State, and it's done just on a telephone conversation, on their conversation, and you really have to know the man that you're talking to before you'll get some of the information or before you can get some of the information.

We now have established this rapport with many agencies throughout the country and much information is coming to us about the wheres and whys and hows, and we are making inroads in this direction.

To answer your question with regard to New Jersey being second, it is. It is the second highest, as reported by the Federal Government, in terms of Cosa Nostra people living in this area, and crime rate. That's statistically been proven.

SENATOR WOODCOCK: I think the question Senator Italiano is directing himself to, Colonel, is whether or not

there is a connection between the high incidence of organized crime in New Jersey and official corruption. In other words, can this really exist without it? Or let's put it this way, does it exist without it?

COLONEL KELLY: I have the feeling that it couldn't exist without it, without the corruption, be it permissive or omissive and be it in terms of frustration or be it in terms of acknowledgement. I have this feeling.

SENATOR ITALIANO: I realize that the statistics that you cite, that today these statistics exist as a result of the fact that organized crime can exist in New Jersey in a safe degree, as was explained here, and that, secondly, if it exists in a safe degree does it exist here because of corruption in all official capacities at every level of government, as has been expressed here?

COLONEL KELLY: Well, I won't say that --

SENATOR ITALIANO: I'm not trying to spot you --

COLONEL KELLY: I realize that, and I'm not concerned about being spotted.

SENATOR ITALIANO: -- but it's a matter of concern to hear something like that under oath and in a public hearing.

COLONEL KELLY: What I'm saying to you, Senator, is, the statement was made "in a safe atmosphere."

SENATOR ITALIANO: Yes.

COLONEL KELLY: All right. I don't know what that means, "a safe atmosphere."

SENATOR ITALIANO: Well it denotes to me - it denotes that they can do whatever they want to do without fear of reprisal, safely.

COLONEL KELLY: Then we have to talk in terms of enforcement, we have to talk in terms of prosecution and in terms of conviction.

SENATOR ITALIANO: Well this is evidently at every level because that was also expressed in connection with that statement, at every level, official corruption.

COLONEL KELLY: We have the feeling that within the structure, within the structure of government, there are people, again either by omission or by permission, who have permitted this type of stuff, either through complacency or by association. Provable evidence is some other thing. One of the questions was asked of us at one time, have you arrested any organized crime leaders? Well, we arrest something like 18,000 people in a year that are part of organized crime. Whatever part they play in this, they're part of it, they're the fence, they're the shylocker, they're whatever they may be; they're the cop that may take a bribe, they're the correctional officer that may permit something. This is part of a system of organized crime, be it on this level or this level or whatever level you may. When property is stolen it has to go somewhere, it has to be fenced, and this is the level that I'm talking about. I'm talking about all people. I'm talking about people on the municipal level, the county level and state level, by sheer complacency are part of this whole thing, by merely

doing nothing, by walking away from it.

SENATOR ITALIANO: But there's a distinction between complacency as compared to corruption.

COLONEL KELLY: Right.

SENATOR ITALIANO: There is a definite distinction there, --

COLONEL KELLY: There's no question about it.

SENATOR ITALIANO: -- frustration, as you say, as compared with corruption, there is a definite distinction.

COLONEL KELLY: There's no question. This is why I clearly defined there are some police officers that are frustrated and there are other police officers that are corrupted, and to what degree --

SENATOR WOODCOCK: And others who are complacent.

COLONEL KELLY: Yes.

SENATOR ITALIANO: Or who lack training.

COLONEL KELLY: This can be too, there's no question about this.

SENATOR ITALIANO: Knowledge, experience and equipment.

COLONEL KELLY: Right. This is all part of a breakdown of the whole system.

SENATOR ITALIANO: One other question. How do you relate the increase - what I expressed here earlier, I guess you were here - the increase in crimes against the person and property that we're experiencing which has made our streets unsafe, as everybody has been made aware of, how do you relate that to the organized crime problem?

In other words, such crimes as rape, robbery.

COLONEL KELLY: Yes, I know what you're saying. It all depends. To generalize, there are some towns that have not been affected and to generalize it is not a really true picture.

SENATOR ITALIANO: You can't generalize.

COLONEL KELLY: This is not a true picture. For example, you can't compare Philadelphia with Haddonfield. You say, has crime increased in Haddonfield or such places, you know. But let's talk about the area in question and the concentration of where enforcement has to take place and how it has to take place and the training and the education and the people. There are still people who are walking their dogs on the streets in some of the towns around here.

SENATOR ITALIANO: This is what I mean. In other words, you can't say that Camden City's increase in crime is directly related to an increase in organized crime, as such. Nobody can actually say this.

COLONEL KELLY: No, we can't prove this but we have the feeling that this is so because again within the structural framework, like birds of a feather, as I said to you before, - there is a certain amount of protectiveness within a certain area that these people will go to and you can find a place to hide and you can find a place to sell something and you can find a place to buy something. This is the core and this is where we have to strike and this is where we have to get to the areas that are affected, and we

can't get in there without some kind of a system or device. And again, this is where we need the help, in this type of area. The shore areas, we can't generalize and classify one county vs. another county because of the types and kinds of people, industrial people vs. residential sections. And these are the considerations for the whole program. And from the Uniform Crime Report, I would suspect that you did get a copy of this, we tried to show you the differentiation. We have no comparative because this is the first year, but we will show you where the crime rate is and how, we'll show you trends and how our people - and we have people who are specialists in this and will be specialized in this who can show you why. There's a lot of transit trade, a lot of industrial people, and this type of thing is what affects it, when you're talking about organized crime.

SENATOR ITALIANO: Yes. Well I'm not attempting to belittle the organized crime problem --

COLONEL KELLY: No.

SENATOR ITALIANO: -- but there is such a problem as safety on the street --

COLONEL KELLY: Right.

SENATOR ITALIANO: -- which some people will say is not related to the organized crime problem.

COLONEL KELLY: Well, I have to agree with you in this respect. It is not related wholly to the organized crime. I have to agree with you in this area. There's no question about that because, as we have an old saying - people of the mob, they only kill themselves, you know, somebody that

does something wrong they'll take care of them themselves, they have their own disciplinary system. But generally they are not out shooting decent people. If this is what you're talking about, the robberies and --

SENATOR ITALIANO: Yes, the robberies and muggings.

COLONEL KELLY: Right. Now this goes with a different element and the different kinds of people. But don't forget, if we're talking about narcotics, you have to go to a certain area to get this type of thing which brings about a certain element. Now we're talking about organized crime again because without organized crime you don't get narcotics. So to relate them to - I can't really separate them but there is a differentiation in terms of geographic --

SENATOR KELLY: Colonel, if we looked at organized crime as a cancer in our society then this electronic device certainly isn't going to be a cure but I think it could serve as an arrest. And we're going through a period - I guess since the inception of this country we've had - our country always loved our people, you know, and today we're going through an experience where some of our people don't love our country, and I think that with the State Police we have the tools to do the job and it's up to us to provide the tools so that you can do the job. And I think with organized crime we have to address ourselves to it, is it here? Now you are testifying that it does exist and the witnesses before you testified - it's been unanimous so far that organized crime exists in the State of New Jersey. Now, if it does, I think the time is long overdue that we address ourselves to this problem.

You mentioned statistics. I've read over the past years where crime is on the increase in the suburbs, you know. But they never say in statistics who the perpetrators of the crimes are.

COLONEL KELLY: That's right.

SENATOR KELLY: You know, where they're from. I have an idea but I've never seen statistics as to where they're from. But I think, Colonel, as you point out, that it is a cancer and we may not cure it but maybe this is a drug to help arrest it.

COLONEL KELLY: This will help. This will supplement whatever we do have. But we have to keep right on plugging, pushing and fighting, which we intend to do. And whether we get this or not, we're not going to quit, whether we get this or not but it will help us.

SENATOR WOODCOCK: Anything else, gentlemen?

Well, Colonel, I want to thank you very much for taking time out to come down here and give us the benefit of your testimony and I'm sure that the Committee and the Senate will benefit greatly by it.

Thank you again.

COLONEL KELLY: Thank you very much.

SENATOR WOODCOCK: Now is there anyone else who has not been heard but would like to be heard in connection with Senate Bill 897?

Seeing or hearing no one else, I will adjourn the meeting now and we will be back tomorrow at ten A.M.

(Hearing adjourned)