

PUBLIC HEARING
before
SENATE JUDICIARY COMMITTEE
on
WIRE TAPPING

Held:
May 21, 1982
Room 114
State House Annex
Trenton, New Jersey

MEMBERS OF COMMITTEE PRESENT:

Senator John F. Russo (Chairman)
Senator Joseph Hirkala (Vice Chairman)
Senator Edward T. O'Connor, Jr.
Senator Carmen A. Orechio
Senator John P. Gallagher
Senator John B. Paoletta
Senator James P. Vreeland

ALSO:

John J. Tumulty, Supervising Research Associate
Office of Legislative Services
Aide, Senate Judiciary Committee

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SENATOR JOHN F. RUSSO (Chairman): The Judiciary Committee will resume its meeting. Mr. Attorney General, on behalf of the Committee, we thank you very much for appearing today. I know you had to revise your schedule to appear today -- you had mentioned that to me -- but, this is an important issue and an important matter to this Committee, and I am sure to the Legislature in general. We are very grateful that you took the time.

I think you know all of the members of the Committee. We know the fellow who is sitting on your left, Colonel Pagano, but would you introduce the rest of the people that are with you today?

ATTORNEY GENERAL IRWIN I. KIMMELMAN: I have with me today Lieutenant Colonel Justin Dintino of the Intelligence Section.

SENATOR RUSSO: Hit your button, General. When that light is on, that means you are--

ATTORNEY GENERAL KIMMELMAN: I'm not used to staged screenings, only in the court room. I have with me today Lieutenant Colonel Justin Dintino, who is head of the Intelligence Section of State Police; Michael Bozza, Deputy Attorney General, who is actually in charge of processing wire tap investigations; and, Edward McGuinn, Special Assistant to the Attorney General, who is a legislative liaison for me.

SENATOR RUSSO: Thank you, General. Members of the Committee, let me assure you that the room has been thoroughly checked over; there are no bugs in it. (laughter) You may feel free to ask any questions. In addition, for the Attorney General's assurance that the room is not bugged, we checked the room ourselves.

Just by way of a preliminary statement as to why we are here, let me say -- in sort of an emphatic manner, to make a point -- that some of us -- Senator Vreeland and myself, and I think Senator Orechio--have served on this Committee for the nine years that we have been in the Legislature. We have had to consider the wire tap law during those nine years, each time it came up. One of the prime concerns of the Judiciary Committee at its hearings during that period of time, has been the concern about an abuse of such a tremendous tool. There was extensive questioning, as I recall, by certain members of the Committee, and then on the floor of the Senate. Each time we received assurances from Colonel Pagano, from Attorney General Hyland, Attorney General Degnan, or whoever was in the position at the time, regarding this law. We recognize that although it is an important and effective tool for law enforcement, it carries with it a tremendous, delicate concern for Constitutional Rights, the Right to Privacy, and so forth. It seemed to be working all right -- at least we felt it was -- and then, of course, the Washington news story came out a few weeks ago, that gave us a national perspective on the issue that, frankly, I don't recall we had before. That referred to the fact that in New Jersey, we led the nation with 139 wire taps of telephones during that year, or, 23% of all wire taps approved in the United States during that year. I have to tell you, General, and Colonel Pagano, speaking individually, that is a shocking statistic to me. That doesn't necessarily mean that there is any wrongful use of the law, but, it does seem to indicate that we ought to be looking into it. We ought to give you a forum to present justification for that. I think I would be less than honest if I didn't say, at least for myself and perhaps other members of the Committee, that we start with a bit of a burden, demonstrating that this "somewhat" shocking statistic is justified. Sooner or later we are going to be considering the renewal of this law. Rather than have to consider it "under the gun" at the time, with a lot of pressure, we can start now.

We will put the concerns of the members of the public to rest, that New Jersey is not becoming a Nazi state of some sort, or, by perhaps doing something

about a possible abuse, if there is one. I don't think there is any member of the Committee who has prejudged this, but we are concerned and we want to hear the justification for this "somewhat" shocking statistic.

Is there any comment from any members of the Committee at this point, before we hear from the Attorney General and State Police? (no response) If not, I will turn the ball over to you, General, and let you take it from there.

ATTORNEY GENERAL KIMMELMAN: Senator, I appreciate your remarks, especially with respect to the fact that you haven't prejudged the issue, but, nevertheless, you have put the burden of proof on us. I will accept that as not a prejudgement-- As a matter of fact, we are very comfortable with having the burden of proof put on us and carrying that burden.

I took note of your initial observation of the fact that New Jersey leads the nation with some 138 or 139 wire taps, which seemed shocking to you. I can understand that to a person, without being privy to the facts, the statistic may well be shocking, especially if they have a predisposition against wire tapping. You must recognize that wire tapping, to the limited extent that it takes place, is an invasion of privacy. We have a principle -- a constitutional principle -- in this country, that there be no invasion of privacy. The law does permit privacy to be invaded for very limited circumstances, and, in the instance of wire tapping, that is one of them.

I will get to your point and perhaps spell out why one might think the total number of authorized wire taps in this state is a shocking figure. Let me say to you, Senator, and members of your Committee, that the State of New Jersey-- I have said this publicly before -- takes unjustifiable criticism for, as some people say, "a bum wrap", when the notion is spread around that this state is wide-spread with organized crime, with corrupt politicians, and with narcotic abuse. That is not so, although, there are instances of organized crime, corrupt politicians, and narcotic abuse in this State, but, certainly not more so than in other comparable areas.

The important feature which distinguishes New Jersey from other jurisdictions is that we do something more than lip service in ferreting out organized crime, corrupt politicians, narcotic abuse, and, the like. We do that in a way which indicates that New Jersey is at the head of the list, nationally, in the number of court authorized wire taps. These wire taps are directed in practically all instances towards illegal gambling and narcotic offenses which are the backbone - the economic backbone - for organized crime.

The wire taps in New Jersey bear fruit. When they do, instances of narcotic abuse and of illegal gaming come to light. When these instances come to light, the spotlight falls upon New Jersey, and then, without a knowing justification, the notion is spread that New Jersey is wide-spread with organized crime, corruption, and so forth. But, the fact of the matter is, we do more than other states in trying to ferret this out.

You are correctly concerned, Senator and members of the Committee, with ensuring that these court authorized wire taps, which do constitute a limited invasion of privacy, are not subject to abuse. An application for a court authorized wire tap receives at least five different sets of scrutiny before it gets to my desk, and when it gets to my desk, it receives my scrutiny before I put my signature on it. Then it goes to court, and the process begins all over again, and the courts scrutinize the reasons why this application is sought and why it is not practical for the law enforcement officials to resort to any other alternative means of

ferreting out evidences of crime. Only when the court is satisfied does the court sign the authorization for the wire tap.

There is another backup, Senator, and the backup occurs in the instance of defense counsel. Once an indictment takes place, defense counsel invariably files motions to suppress wire tap evidence. With respect to the wire taps secured by court authorization from the Attorney General's office, there has been no instance where a court has ordered a suppression because the process was abused, or because the evidence was otherwise illegally obtained. So, that is the point, Senator: Number one, I review it; number two, a judge reviews it; and, number three, on motions for a suppression, we are sustained every time.

A major amount of wire tap requests come through the prosecutors' offices in the state. Thirty-three requests came from our office, and about 106 or so came from the prosecutors' offices. With respect to the prosecutors, we have no direct control over their application for the wire tap. Again, there are specific judges assigned throughout the state, in various vicinages where the prosecutor must go to secure court approval. Also, there again the prosecutor must justify his wire tap evidence on the motion brought by defense counsel to suppress. The prosecutors in this state, to my knowledge, have been uniformly successful, except in one or two minor instances in sustaining their wire tap evidence against motions to suppress.

We are talking about what happened, Senator, in 1981, and prior years, before I became Attorney General. These statistics are those which have been made available to me. What I have said is something of what I feel, especially with respect to the fact that the criticism against this state as being a "hot bed" of political corruption and organized crime, is really unjustified. Those are my own comments, as a result of my observations, as to what I have seen in the brief time I have been in office.

During my term as Attorney General, which will continue for the next three and a half years, I expect that my office will be as vigilant as it was during the term of my predecessors insofar as attempting to ferret out these instances of narcotic abuse, illegal gambling, all of which contribute to organized crime. I therefore suspect--although I don't have the figures yet, and neither does anyone for the year 1982--that the Office of the Attorney General will continue in its requests, whenever necessary, to a court for wire tap approval.

With respect to any specific facts you may have, Senator, or members of the Committee, I have with me, the Director of our Criminal Justice Division, Edwin Steir, and, the Superintendent of the State Police, Colonel Pagano. I am sure they both can furnish your Committee with much more detailed information than can I.

SENATOR RUSSO: Thank you, Mr. Kimmelman. Let me address a question to you, and that I am sure you will have to refer this to your people for the answer. You pointed out that one of the safeguards of this system is that a judge has to review and approve a wire tap application after you do. The last time this law came up for renewal, one of the members of the Committee asked the same question -- I would be interested in seeing what its updated information is -- of Mr. Steir at the time, or maybe of Colonel Pagano: How many applications have you made that the judges rejected? The answer was none. Every application you made was approved, which either tells us one of two things: One, you never make one unless it has total merit, with careful screening by the Attorney General, and I think the Attorney General at that time, pointed out that very thing. He said, "Look, the application doesn't get to judges until I have approved it." Maybe that is the answer. The other is, busy judges, when prosecutors or the Attorney General come before them oftentimes -- some judges, anyway -- give such a dignity to the office that they

don't reject these applications. But, that was a source of concern, and I think you remember that, Ed, and Colonel Pagano. So, I would be interested to know what the updated record is. Has there been any rejected applications at that time? Anyone from your staff can help.

ATTORNEY GENERAL KIMMELMAN: There have been no rejections since that time, Senator, because whatever General Degnan or General Zazzali told you, remains. The Attorney General does review these applications personally. I can say to you that deputies from Ed Steir's division follow me around the state. I was in Morris County attending some sort of function, and lo and behold, there are two fellows there. I forget the name of the hotel where this happened. It was in Convent Station. But, there I was, and two deputies came down and collared me at the table, and I sat for another half hour going over whatever papers had to be gone over before I affixed my signature. Let me say one further thing, Senator: I have a list here -- or at least I had one; I can't put my finger on it right now -- of the judges who have been designated by the Supreme Court to sign the wire tap authorizations. There is Judge Blake in Essex County; I know of Judge Demos, who handles the Middlesex County and Somerset area; I know of Judge Lenox, who handles the applications in Mercer County and in this area. The other judges who handled the other counties last year were: Judge Arthur Simpson in South Jersey. He was Administrative Director of the Courts, and he is now the Assignment Judge of Bergen County; and, Judge Grucio in Atlantic County.

Senator, I have served on the bench with each one of those judges. I know them personally. I know the diligent job that every one of them does. I know what I did when I was a judge. When papers were presented to me, I read them. I am sure these people do, more so, because of the importance of the application that is being made.

SENATOR RUSSO: Thank you, Mr. Kimmelman. One last question from me at this time is: What is the record for 1982? How many are there, so far?

ATTORNEY GENERAL KIMMELMAN: Senator, I think -- I don't have the exact figures with me -- to my recollection, I have signed at least six or seven. Here we are, May 21st, we are five months into the year, and have had six or seven, which seems to be less than the rate last year. I am not purposely setting out to make the rate less than last year, but I think it is. It just happens that way.

SENATOR RUSSO: Senator Vreeland, did you want to raise something at this time?

SENATOR VREELAND: I just want to talk about the number 139 in New Jersey during 1981, and 160 in New York State. I am reading from this statement. I noticed that some of it is attributed to gambling in New Jersey -- these wire taps. Does that have anything to do with gambling in Atlantic City? I don't know who would answer this. I know Ed Steir has always been with the Judiciary, every time we have discussed this, as the Chairman has said. Do we, in New Jersey, rank number one with crime? Is that why we have so many?

ATTORNEY GENERAL KIMMELMAN: Senator, I think Mr. Steir will give you a specific answer. Let me try to respond to your general question, as to whether New Jersey ranks number one in crime. New Jersey doesn't rank number one in crime. You must understand where New Jersey is geographically located.

SENATOR VREELAND: I know.

ATTORNEY GENERAL KIMMELMAN: We sit in the mist of the financial centers of this country - Philadelphia is on the one side, New York is on the other. Let's forget about the financial centers on the west coast. But, you and I know -- or at least I know, and I assume you know -- that gambling and narcotic activities

go where the money is. The money happens to be here. People say New Jersey is a great state, it is a good place to live, it is a good place to work in, and we invite people to come to New Jersey because we have, square mile per square mile, probably more than any other state has to offer. Coupled with that, we have the financial resources in this state, that this kind of activity tends to be attracted to. That is why we have evidence of it in this state; that is why we are a lot more vigilant than most other states in attempting to root it out. When we do root it out, that is why you hear about it and that is why we get the black eye.

The other states with a large number of authorized wire taps are New York and Florida. I don't have to go into a long dissertation why New York and Florida are coupled with New Jersey in this particular area. New Jersey leads them because of the factors which I mentioned. Perhaps Mr. Steir can elucidate on my answer.

SENATOR VREELAND: If I might, Mr. Chairman-- You mentioned that the crime goes where the money is. That is why I asked you about Atlantic City, because that is, I understand, where the money is.

EDWIN STEIR: Senator, specifically, none of these gambling investigations are related to casino gambling in Atlantic City.

SENATOR VREELAND: Right. That was my question.

MR. STEIR: However, I think it is fair to say that there were a certain number of illegal gambling investigations, using electronic surveillance, and a certain number of narcotics investigations, using electronic surveillance. That occurred in the Atlantic City region, as a result of the fact that people were attracted to that area because of casino gambling. I think that is something that we anticipated, it is something that we are guarding against, and we are trying to be vigilant to protect the public from. The casino gambling in Atlantic City and the economic benefits that have been derived from it, carry with them a certain risk that they are going to attract criminal elements. We are very careful trying to protect it from that kind of intrusion.

SENATOR VREELAND: This is my last question, Ed. The fact that we are number one with wire taps -- I am asking you or the Attorney General -- would you attribute that to the fact that we have gambling in New Jersey? New York doesn't have gambling.

MR. STEIR: No. My answer is based on the statistics for prior years. If you go all the way back to 1969, you will see that our percentage of electronic surveillance, nationally, has been pretty consistent. In fact, it dropped this year from 31% in 1980 to 23% in 1981.

ATTORNEY GENERAL KIMMELMAN: Senator, what I wanted to say was, on your specific point, next week will mark the fourth anniversary of casino gaming in the State of New Jersey - that is May 26th, or something like that. What we have here is -- Mr. Steir has these figures in front of him -- for the year 1977, which was the last full year prior to casino gaming, New Jersey had 150 court authorized wire taps, which is less than last year. At that point, we were 23.9% of the total in the country. This year we are 23.4%. Things haven't changed.

SENATOR VREELAND: I think that is very good. That answers my question. Thank you.

SENATOR RUSSO: Thank you, Senator Vreeland. Senator O'Connor?

SENATOR O'CONNOR: Thank you, Mr. Chairman. General Kimmelman, you say that in your opinion, the wire tap investigations have worn through. You also say that they are primarily directed to gambling and narcotic activities. In my experience as an attorney, which also involves law enforcement experience as an

assistant prosecutor, I found that wire tap investigations and arrests usually result in the arrest of multiple defendants who get out on a plea, because of the people at the very top plea out. For the most part, regardless of the evidence, it seems that the majority of the people that are arrested as a result of wire tap investigations, will ride it out, wait it out, and go to trial. A very frustrating experience, from a prosecutorial standpoint -- going back ten or more years ago -- when you would go through this process, and it would take perhaps two years to try someone, or it would take forever to actually go through the process of the trial, and even assuming a conviction, the person would only be sentenced to a minimal sentence -- assuming you were dealing with lottery as opposed to gambling, or, rather bookmaking or sports gaming, which would require a mandatory state sentence at that time. The question is: If that is going to continue to be the focus -- that is to say, gambling investigations and narcotic investigations -- is it worth it? Is the end result worth the drain on the court system and worth the amount of money that we are spending to come to that point?

ATTORNEY GENERAL KIMMELMAN: A simple answer from my point of view is obviously yes, because with respect to reasons, we cannot relax our efforts. You just can't do it. To that extent, it is worth it. Mr. Steir can give you some figures which will prove that.

MR. STEIR: Rather than doing it statistically, let me present it in this way: In the process of selecting a case in which the use of electronic surveillance is very complex, that goes on within the State Police and my office, our objective is not simply to arrest illegal gamblers, because we could do that from now until the cows come home and probably never make any dent in organized crime. Our objective is to try to select those situations in which you have an organized-crime-controlled gambling operation and attempt to disrupt the flow of cash to organized crime, by attempting to penetrate to the level at which organized crime figures are controlling the gambling operation. Not every one of them is successful. There are some cases in which you end up with violators who are at a fairly low level in the operation. But, in many cases, many very significant cases that have been prosecuted in this state over the years, we have been able to penetrate very significant racketeers who have gone untouched up to that point, simply because there has been no other route of attack. There has been no other way in which law enforcement has been able to gather enough evidence to build a case. Gambling happens to be one avenue through which organized crime is very vulnerable to electronic surveillance investigation.

So, if it is carefully selected, if it is carefully operated, and with a little bit of luck -- as we always need in investigations -- we can be very successful. So, when we see a defendant of that caliber coming along, we ask: Is it worth the expense? The only answer I can give to that is, in one of our cases that was prosecuted in Monmouth County about a year ago, which took a couple of years of investigation and about 20 of Colonel Pagano's best detectives for a long period of time, a reporter added up the total cost of that case to the state; it came to several million dollars. He asked the question, "Was it worth it?" When you looked at the caliber of the defendants in those cases, people who had gone untouched before, people who had been involved in large-scale corruption over the years, people who had been responsible for murders in this state, people who had been responsible for extortion, narcotics traffic, and a number of other major violations, the answer is yes. How much is it worth to this state to tolerate that kind of activity? The answer I come back with is, this state has gotten its money's worth over the years, and I hope we can continue to do so.

SENATOR O'CONNOR: Thank you.

SENATOR RUSSO: Senator Hirkala?

SENATOR HIRKALA: General, you mentioned in your testimony that you do not have any direct control over court approved wire taps submitted by county prosecutors. However, do you have the authority to review those with the prosecutors, to see if there are any abuses inherent in this system?

ATTORNEY GENERAL KIMMELMAN: Senator, there is general authority in the statute for the Attorney General to supervise prosecutors and to supercede a prosecutor's office when indicated. On occasion, prosecutors are superceded. I could so direct the prosecutors, before submitting wire tap applications, to have them reviewed by our office. In the past, it hasn't been done, at least not to my knowledge. There are logistical problems and sometimes problems of emergent necessity. They could be forwarded if they had to first search out the Attorney General, rather than prepare their papers, for example, in Hudson, and go directly to the judge there.

SENATOR HIRKALA: I am only talking about reviewing them after they have become an accomplished fact. Don't you think it would be a good policy for you to review those to make sure there are no abuses on the prosecutorial level rather than from your office? You can answer for the Attorney General's office, but how do we know that county prosecutors are being even-handed and that they are doing their job properly if there isn't another agency to look over their shoulder?

ATTORNEY GENERAL KIMMELMAN: Senator, I appreciate what you say, but it would cause a practical problem if the Attorney General reviewed what a prosecutor did after the fact. Number one, he has done it, and he has obtained a court order from a judge. Let's assume his evidence bears out. The wire tap produces evidence and he goes to court with it. The question is, when does the Attorney General review it? Do I review it and uniformly say, "Prosecutor, you did a great job; you have a court authorized order, and I approve of what the court did?" I'm not superior to what a court does, it is the court that I pay attention to. The court is superior to me. Do I criticize a prosecutor by saying, "I don't think you should have gotten this application together to present to a court", when the prosecutor is already moving with his wire tap? When he comes up with evidence, how does it look in court if someone finds out that the Attorney General has already disapproved this? If I approve or disapprove, are my approvals or disapprovals held confidential? Is it just a manner of internal security of the office and of the system? I don't know. I don't think it would work out if it was done after the fact. If it is done before the fact, it may cause efficiency problems insofar as criminal prosecutions are concerned.

SENATOR HIRKALA: This is one time I have to disagree with you General, very respectfully, I think if you have the authority over all of the prosecutors, certainly that is one of the most important functions that a prosecutor has control over, and without you being able to review the way they apply that law, I think you are missing a vote in that instance.

ATTORNEY GENERAL KIMMELMAN: Senator, again, I appreciate your remarks. I can review-- I don't need additional power from the Legislature to do this. I can do it now. We have not done it in the past.

SENATOR HIRKALA: Now, on another subject, but also relating to wire taps, the District of Columbia, Hawaii, Idaho, Louisiana, South Dakota, Texas, and Wisconsin, applied for no wire taps in 1981. Could you ever envision the time when New Jersey wouldn't apply for any wire taps?

ATTORNEY GENERAL KIMMELMAN: Senator, the jurisdictions which you mentioned, I do not believe have wire tap authorization statutes.

SENATOR HIRKALA: No. They do.

ATTORNEY GENERAL KIMMELMAN: Let's just see. Which ones?

SENATOR HIRKALA: They do. I am only giving you states that have the authority that didn't use it. That is on Table 1, Jurisdictions with Statutes Authorizing the Interception of Wire or Oral Communications. That is on page five.

ATTORNEY GENERAL KIMMELMAN: All right. I see. District of Columbia, no. Then you went to--?

SENATOR HIRKALA: Hawaii.

ATTORNEY GENERAL KIMMELMAN: Hawaii.

SENATOR HIRKALA: Idaho.

ATTORNEY GENERAL KIMMELMAN: I see that. I do stand corrected. They do have authorization.

SENATOR HIRKALA: Yes, but they did not utilize it. Could you ever imagine New Jersey ever doing that, having that tool at its command and not using it?

ATTORNEY GENERAL KIMMELMAN: No. I can't imagine that.

SENATOR HIRKALA: Thank you very much for your help.

SENATOR RUSSO: I think also, in New Jersey, the Attorney General's office, in 1981, utilized this law 33 times. There was reference to New York and Florida. The New York Attorney General's office utilized this law five times. In fact, the next highest Attorney General's office in the country utilized less than one-third of New Jersey's. It kind of gives one the impression that we have some snoopy people in the Attorney General's office, more so than anywhere else in the country.

SENATOR HIRKALA: General, before you answer, I would like permission from the Chairman to respond to that.

SENATOR RUSSO: Respond to what?

SENATOR HIRKALA: To what you just brought up, the fact that New Jersey's Attorney General has applied for so many more wire taps than the Attorney General in New York. Perhaps we are doing a better job in ferreting out crime.

SENATOR RUSSO: Before you answer the question, that is really the focus of this hearing. We are either doing a better job of ferreting out crime, or we are abusing a constitutional privilege.

ATTORNEY GENERAL KIMMELMAN: Senator, can I interrupt, respectfully?

SENATOR RUSSO: As long as it is the Attorney General, yes.

ATTORNEY GENERAL KIMMELMAN: In New Jersey, since 1970 -- I guess that was the year -- we had the Criminal Justice Division of the Attorney General's office. I don't think there are any other states which have the Criminal Justice Division tied right to the Attorney General's office. The Attorney General in New Jersey -- as I meet my brethren around the country -- is unique, because I have more law enforcement authority than the others. In New York, specifically, Attorney General Abrams' criminal law enforcement responsibility is not the same as mine; it doesn't measure up to law enforcement responsibility in that jurisdiction. New York is mainly concentrated in the hands of the various district attorneys. So, they are making the most applications. The Attorney General made five. If law enforcement in New Jersey was confined to 21 county prosecutors, you might see me with only five or less. There is a law which puts that responsibility in our office, and we follow it.

SENATOR RUSSO: So, there is an explanation for what appears to be an outlandish figure in the statistics.

ATTORNEY GENERAL KIMMELMAN: That is the exact reason. I attended a meeting in Washington about a month or six weeks ago, with 33 Attorneys General from around the country, and we swapped notes. It is obvious that we have much more law enforcement responsibility in this jurisdiction than they do.

SENATOR RUSSO: Thank you, General. Senator Gallagher?

SENATOR GALLAGHER: Thank you, Mr. Chairman. General, I would just like to start off by supporting Senator Hirkala's statement, relative to a review of what is being done by the prosecutors. We all, as citizens of this state, have a degree of confidence in those who are chosen to be our law enforcement people, whether it be the chief law enforcement officer in the state or in the county. I am particularly comfortable with you, having known of your background and your involvement before the courts, but I cannot say that I held that view of some who have held your position or a prosecutor's position. If there is anyone in this state who is totally confident that some of those offices have not been abused in the past, I would like to find them, because I think there is a great feeling that many of those offices, particularly since they are politically appointed offices, have been handled in a very uneven manner in the past.

With that behind me, I would like to go on to a question that perhaps you could satisfy. Your statement before was that these things may be necessary in areas where a lot of money is involved. I see, where we do have the casinos, we only had four such things authorized in 1981. Mr. Steir related to some, but we only had four. I also see that there is a great disparity among the respective counties. I have no idea where yours took place. I know where the counties' took place, according to this table. My question to you has a number of parts.

One, is there a reluctance that you see on the part of any particular county, or any particular county judge? Do you have to, in some instances, work around any situations? By law, must any wire tap in a county be approved by a judge sitting in a county?

ATTORNEY GENERAL KIMMELMAN: Maybe I can start with the last question, Senator. The judges who are authorized to entertain wire tap applications are very specifically designated by the Supreme Court. They may not necessarily sit in the county where the wire tap is to be obtained. In other words, if the prosecutor of Somerset County wanted an authorization, he would not go to one of the judges in Somerset, he would go to Judge John Demos, who sits as the assignment judge in New Brunswick, Middlesex County. I know of no instances where a prosecutor who had difficulty getting a wire tap authorization from a judge, circumvented the judge by then coming to the Attorney General's Office and saying, "Here fellows, I can't get this, perhaps you can." That has never happened, not to my knowledge, and I certainly wouldn't want to see that happen.

Let's go to some of your other questions, if I can remember them, Senator. We start with a basic principle: Power is a very heavy substance. It can be intoxicating at times. My office carries power with it, and so does the Office of the the Prosecutor. It is up to all of us in the political system of New Jersey, who deal with the appointment process, such as the Governor, such as the Senate, and such as this Committee which passes upon the initial confirmation stage, to do as best they can to ascertain that these individuals, on whom they will vest the power, will not abuse that power. It could happen from time to time. We can't always be 100% right. Power, being what it is, sometimes could cause arrogance. Hopefully, in our appointive process, we can keep it down to an absolute minimum, or zero.

SENATOR GALLAGHER: Because of the disparity in some of these county authorizations, and now based on the size of the counties, and the make-up of the

counties, etc., do you have county prosecutors who are reluctant to use this device?

ATTORNEY GENERAL KIMMELMAN: Perhaps Mr. Steir can indicate the answer to that one, Senator.

MR. STEIR: Senator, I think that the disparities among the counties result from a couple of factors. The most important factor, of course, is the nature of the criminal activity that is going on in that county; another factor is the resources available for prosecutors. Electronic surveillance takes highly specialized, highly trained personnel. It is expensive in terms of man hours and cost, and there are some counties which simply do not have the resources to use it, even though conditions may exist in those counties to justify it. What we find is, in a number of counties where there is organized crime activity that is susceptible to electronic surveillance, and where it is appropriate but where the prosecutor does not have the resources, he will call upon us to come in and handle that investigation which goes beyond his capacity.

SENATOR GALLAGHER: Is there any county in the State of New Jersey that does not have organized crime activity?

MR. STEIR: Well, I suppose there are counties in which organized crime activities is not of magnitude of other counties. Yes.

SENATOR GALLAGHER: On the level of 1 - 10, I guess, how much a year does it cost us for electronic bugging or wire tapping, or whatever you want to call it, surveillance? How much are we spending per year? I see their charts, but I would like to know what your figures are.

MR. STEIR: Those figures are derived from forms that we submit, the Administrative Office of the U.S. Courts; however, I think you ought to know something about what goes into those figures. They include a number of expenses that probably would have been incurred even if we didn't have electronic surveillance, or the manpower to conduct the surveillances. All of the support functions that go along with electronic surveillance probably would be performed even if we didn't use electronic surveillance.

Colonel Pagano has some figures that might interest you on the fixed costs that are unique to electronic surveillance, the purchase, and maintenance of equipment.

C O L O N E L C L I N T O N L. P A G A N O: Senator, I don't believe that anyone can give you an absolutely accurate figure on the cost of electronic surveillance. Fixed figures at this point, for maintenance and for acquisition of new equipment is minimal. We are in a situation right now where, in some of the areas of electronic surveillance programs, we are going to have to look for new equipment. I don't know, and I have not seen the figures that you have in front of you, that anyone can give you truly accurate dollar figures as you are seeking.

SENATOR GALLAGHER: From here, if I multiply correctly, we are talking about half a million dollars in your office alone.

COLONEL PAGANO: I think very candidly, if you were to be able to factor in the number of man hours and break from that the actual cost of those man hours, right down to the gasoline and the cars used in the surveillance. I think the figures are inescapable. I wouldn't even say that half a million dollar figure is accurate.

SENATOR GALLAGHER: I have just two more short questions, Mr. Chairman. I guess I better stay with Mr. Steir and Colonel Pagano. Our legal use of wire tapping is what we are discussing today. Do you think our legal use of wire tapping has led to any growth in the illegal wire tapping business?

COLONEL PAGANO: To the contrary, we can see quite clearly through the intelligence that we have available to us, that the act itself, which proscribes illegal use of wire tapping, has a dampening effect. We see less by way of use of wire tapping by private detectives, in matrimonial cases, by industrial snoopers, and things of that sort; in fact, it is a rare case that you would see something like that today.

MAJOR JUSTIN J. DINTINO: Colonel, could I add something to that? In 1981, we had five illegal wire tap investigations by the State Police. All illegal wire tap investigations are called to the attention of the State Police. Our electronic surveillance goes out and conducts the investigation. Any time New Jersey Bell Telephone or any other telephone system in the state finds some foreign equipment, or they get a complaint from someone in reference to suspecting illegal wire tapping, we get the investigation. Ten years ago, the FBI conducted all of these investigations. It was an agreement made, and we picked it up. I don't have the statistics, but I know in 1981 there were five. Back in 1970, or around that time frame, there were about 35, 40, or 50. They have greatly reduced.

SENATOR GALLAGHER: This is my last question. Judge, I was a little concerned about your statement earlier about people running around the state trying to find you on such a -- what I would consider -- serious matter, to determine whether or not to tap. Is that due to the nature of wire tapping? Must you make a decision right then and there, in a hotel room, by being pulled out before making a speech to some group in order to determine whether or not you are going to authorize a wire tap situation?

ATTORNEY GENERAL KIMMELMAN: It is hard to answer yes or no to that, but, I had an incidence not too long ago, where the wire tap was not for the purpose of ascertaining illegal gambling or a narcotic activity; it was for the purpose of focusing in on an attempted murder for hire. The wire tap was authorized by me, and by a judge, and that possible murder for hire was thwarted. I think that was worth running after me at the Madison Hotel.

I have, as part of my duties, the job to be visible, Senator. Let me give you an example: This morning I was at the Sports and Exhibition Authority. On the way down to Trenton, I testified before Senator Graves' Law Committee on raising the drinking age to 21. From there, I had to go to the Superior Court in Newark, for Judge Scalera, to deal with the strikers at the Salem Nuclear Generating Plant, and then, I headed down to Trenton. So far, it has been a busy day. If someone really needs a wire tap authorization, they are going to have to trail me around.

SENATOR RUSSO: It sounds like you ought to get your pilot's license.
(laughter) Senator Orechio?

SENATOR ORECHIO: I am not too alarmed by the number of wire taps in New Jersey. I think number one, it probably demonstrates that the law enforcement arms of our government are diligent and conscientious in doing their jobs. I also observed that their record in other states, in terms of the number of wire taps that were sought, really pale compared to our record.

I have a question. I would also like to make this point: With John Russo's Death Penalty, we will never know the number of the would-be murders or criminals who may be dissuaded from committing a crime because they are not going to be noticed-- They are not going to tell the world that they would have committed a crime. By the same token, I think everyone in New Jersey that tries to do business in New Jersey, is aware of the fact that we have a network of law men who will not hesitate to utilize wire tapings as a resource to apprehend criminals, and, certainly, have a

beneficial impact on the quality of life in New Jersey. Certainly, conclusions can be drawn from that.

I also noticed, in New Jersey -- mainly Essex and the other counties that had a large number of wire taps -- there seems to be a relationship with gambling and narcotics. To me, the most evil crime that anybody could be involved in is narcotics. I was wondering, as far as New Jersey is concerned, if there is any way to relate the percentage of those involved in gambling, and those convictions that were brought about by the utilization of wire tapping, to whether or not those were also people involved in narcotics as well?

MR. STEIR: It is very difficult to make a corrolation between gambling and narcotics and most of those cases. I can tell you, though, that we have examined our applications for electronic surveillance and the results of those cases. We can tell you that, number one, at the outset of the investigation, it is quite clear that the objective is to go beyond people who are simply gamblers, and to get to people who are racketeers who are going to be involved in a variety of activities beyond but including, perhaps, narcotics, but certainly extortion, various forms of violence: loan sharking, and other kinds of activities, that are of far more serious character, than gambling in its own right.

Secondly, when we have examined the nature of the defendants who have been arrested, we see that those predictions, those objectives, are well grounded in our cases. It is very difficult for me, in a public session, to sit and discuss the identities of particular defendants and so forth. But, we are very conscious of the need to use electronic surveillance for those kinds of criminal activities that society is least willing to tolerate; those include: extortion, murder, violent crimes, and, narcotics. Those are the objectives for which we use it, and those are the kinds of situations that we try to restrict ourselves to.

COLONEL PAGANO: May I add to that?

MR. STEIR: Yes, Colonel.

COLONEL PAGANO: Just by way of comment, we have come a long way since Appalachian. The issue there was the cross-circuiting of gambling, traditional organized crime types of activity, and narcotics. The issue today is cross-circuiting; where you find one, you find the other, because there is money to be made. I have heard the comment today, from Senator Russo, and probably properly so, that we should be concerning ourselves with examining the statistics that were recently published. I don't look upon those statistics as a criticism, I look upon them as a commendation. I think what is shocking is the fact that we have, in this state, representatives of 7 of the 24 clearly identified organized crime families in this country. I think what is shocking is that we, as a State Police organization working within the New Jersey system -- which is very important, having a system as we have -- have been able to identify 5,400 organized crime members or affiliates. I think what was shocking was, if you want for a better word, the fact that New Jersey, in the mid 1960's, was identified, by every leading publication in this nation as being the leader in organized crime, political corruption, the hot bed of the states, and the hot bed of the nation, for this kind of activity. The fact that we really did have an effective system, I think we ought to be commended. When I say we, I mean everyone - the Legislature, who gave us this authority; the Attorney General, who executes it; and, the people in the system who have diligently followed the direction that we were given by our Legislature and by our leaders and by the governors. We ought to take a lot of pride in the fact that we have gotten off our butts. I question, as Senator Hirkala does, why there are states that have the authority and then do nothing, because there is organized crime involvement everywhere, not climbing every post, and it is not going to overwhelm us,

but it certainly has a tremendous effect on the life style we lead, and it has a tremendous effect on the image of ourselves and our states. I really don't think every time someone says New Jersey, they ought to smirk and think of some politician or some policeman going to jail. What they ought to do is pay attention to what the politicians in this state have done for us - the authorities they have given us and the way we have executed those authorities.

Electronic surveillance is used only as a last resort. That, after four reviews in the State Police -- at least three reviews by our attorneys -- a lot of cross conversations back and forth as to what we hope to obtain through a given surveillance, and, whether or not the cost is going to be beneficial in the long run to our goals, and then, the Attorney General -- I don't care where you catch him, or what time of the night or day -- sits and goes through it and questions us as to the legality and the policy decisions of the order. Only then does it go to a court. By the time it has been reviewed through all of the steps, through the attorneys and through experienced investigators, and an attorney general; it will be hard for a judge not to understand the need for that.

SENATOR ORECHIO: I have two questions. On Table 9, there is a schedule covering the period of 1971 to 1981, showing a number of incidents involving tapping, and the percentage of convictions. I noticed that from 1975, the number of convictions have been diminished. As a matter of fact, in 1981, out of 1,735 arrests, there were only 248 convictions or only 14% of those arrested were convicted. I am wondering, how does New Jersey compare, in terms of those statistics, as they relate to us and what our experience has been?

MR. STEIR: May I respond to that? I think what you have to realize is that there is a serious lag between the termination of the electronic surveillance and the ultimate disposition of the case so that convictions are reported in years subsequent to the year of the electronic surveillance. As you move toward a more current time, you are necessarily going to have fewer convictions because of that serious gap.

SENATOR ORECHIO: Except from 1971 to 1972, they went up. If you use the same method of recording these statistics, that doesn't reconcile, sir.

MR. STEIR: All I can tell you is that in terms of our cases, a conviction rate is probably greater than any other form of investigation. Electronic surveillance information is very, very difficult to defend against; if it is there, it is there, and you are likely to be convicted if you have been a subject of a successful installation. Our rate of conviction for electronic surveillance cases runs somewhere between 85% and 95%, which is significantly higher than most other kinds of cases. I don't have the specific numbers in front of me, for New Jersey; this is a national table that you have referred to, as you have indicated.

SENATOR ORECHIO: I just have one final observation. Senators Gallagher and Hirkala have indicated that they felt the Attorney General should review or monitor the various county prosecutors who seek the taps. The only question I have is, it seems to me that if a judge in those counties, assignment judges, normally have to approve them, it appeared to me that maybe the Chief Justice is the one who would be looking over the shoulder of the judges to approve them, rather than you over the prosecutors.

ATTORNEY GENERAL KIMMELMAN: It also sounds like me looking over the shoulder of the judge who has already signed it. What am I supposed to do, say, "Judge, you did something wrong?" What do you think I get, Senator Hirkala, when I go to court the next time?

SENATOR RUSSO: The issue here is, as we said before, when I referred to the apparently shocking figures-- I voted for the wire tap law each time it came up. I think it has been a good one, and I think it is working well. It is really like a lot of our social programs. We have to be very careful that they neither abuse them nor that the public gets the impression that they are abused. When that happens, the result often isn't a tightening up, but an elimination of them. All you have to have is an appearance of abuse, and the whole program is in serious trouble. That is why I think it is important that we have this discussion today, because it gives us the chance to say to the people of this state -- I should say the Attorney General's Office and the State Police -- that there is a reason for it, not for abuse, but here are the reasons for it. It gives us the chance to start thinking about it because in 1984, a year and a half away, this Committee is going to have to consider the extension of the wire tapping law with modifications. So, it is something that has to be commenced at this time, and a dialogue begun. I think that is why it is important that we do meet today. Senator Hirkala?

SENATOR HIRKALA: I didn't want to interrupt you.

SENATOR RUSSO: I think before you do, the Attorney General wanted to say something.

ATTORNEY GENERAL KIMMELMAN: I thought you were about to conclude the hearing.

SENATOR RUSSO: Not quite yet.

SENATOR HIRKALA: Mr. Chairman, I just wanted to say that I feel very comfortable with General Kimmelman, Director Steir, and Superintendent of Police, Colonel Pagano, and the work of their particular offices, the Attorney General's Office, and the State Police in direct criminal investigations. I am sure all of us feel comfortable. My admonition to you, General, regarding county prosecutors, was just to see that there are no abuses. That is the only thing I had in mind. If you just reviewed two, just to see how the prosecutors administer that portion of the law, I would be satisfied. But, I do not have any inkling of anything that is not proper; I would just like to see you check them out. That's all.

ATTORNEY GENERAL KIMMELMAN: Senator, what you say is well taken. The prosecutors will know that someone is watching the store.

SENATOR RUSSO: General, I wonder if I could ask you to submit to me just one copy for my review, as Chairman of the Committee -- I will discuss it with the Committee -- the affidavits that have to go with these applications. I am talking about the ones that are not pending matters, 1981 wire taps. I would like the applications that went with each one of those. Would that be feasible?

ATTORNEY GENERAL KIMMELMAN: Senator, if it is permitted by the Act which you voted for, I will be happy to comply, but, it will probably be one which has already been concluded, where the prosecution is concluded, and the matter is put to rest.

SENATOR RUSSO: I am more interested in whether the wire tap aspect of the matter is put to rest. I don't think it necessary that the entire proceeding be put to rest, although, if you feel it is, I will accept that judgement. But, if the wire tap aspect has been put to rest, I would appreciate that. It gives us a chance to see what goes into the affidavits. They may be clear, beyond question and justified. It gives this Committee a chance to make that determination and to let the people of the state know that. I think it would help if you could do that.

ATTORNEY GENERAL KIMMELMAN: Okay. Fine, we will.

SENATOR RUSSO: Would any other members of the Committee like to speak? Senator Vreeland?

SENATOR VREELAND: I just want to address this question to the Superintendent of Police, Mr. Pagano, who said, I think, just recently here, that New Jersey had a reputation -- I agree with him. I remember when the Mafia and everybody else was burrying their bodies on farms in South Jersey. It was a hot bed. Do you think we are losing that reputation? This has nothing to do with wire tapping, but just as a point of interest.

COLONEL PAGANO: I absolutely think we are losing that reputation. I think we have a reputation in New Jersey of doing more to control this kind of activity than anywhere else in the nation. I mean that sincerely. I am the Chairman of all the Superintendants, Justin Dintino holds national office, Ed Steir has been all over the country, and before the year is out, our Attorney General will be also, I am sure. We don't have burial farms in Central Jersey. I grew up in a town, Bergen County, where the people went to work in the morning and the mob from New York moved in, and worked all day, and then went back to work at night. We don't have that anymore. We don't listen to the taps and regularly hear people talking about having this guy in their pocket, or that guy in their pocket; we have done a lot. I think we can say, sincerely, that we have brought a real element of control to the problem. We could not have done it without electronics.

SENATOR VREELAND: I am sure you have, and I think you should complimented. I think we, in the Legislature, appreciate that. Certainly, we don't like the reputation New Jersey has had, and I am glad to hear that it is being changed.

SENATOR RUSSO: Just as an aside, you probably remember, Colonel, when I was with the Ocean County Prosecutor's Office, we dug up that farm in Jackson. We were starting to think we couldn't find a burglar in a phone booth because after it was all done, they were buried in the vats.

COLONEL PAGANO: Yes. But we found the shoe. We identified enough, Senator, to make it worth the while to have done the digging.

SENATOR RUSSO: Are there any other comments from the Committee?

ATTORNEY GENERAL KIMMELMAN: Senator, could I just correct the record with an apology to Michael Bozza? I said he was a Deputy Attorney General, but he is really an Assistant Attorney General.

SENATOR RUSSO: Is there anything else? (no response) If not, thank you very much. We appreciate receiving those affidavits. We will be talking more about this when the law is up for renewal. Thank you again. Thank you for rearranging your schedule, General. We appreciate it.

(Hearing Concluded)

