(Second Hearing)

P U B L I C H E A R I N G

before the

SENATE JUDICIARY COMMITTEE

on

SENATE, No. 1417
(Wiretapping and Electronic Surveillance Control Act)

Held:
Assembly Lounge
State House
Trenton, New Jersey
April 3, 1975

Committee Members Present:

Senator James P. Dugan (Chairman)

Senator Alexander J. Menza (Vice Chairman)

Senator Raymond H. Bateman

Senator Martin L. Greenberg

Senator John A. Lynch

* * * *

I N D E X

I N D E X (Continued)

* * * *

SENATE, No. 1417

STATE OF NEW JERSEY

INTRODUCED SEPTEMBER 30, 1974

By Senator FAY

Referred to Committee on Law, Public Safety and Defense

AN ACT to amend "An act concerning the interception of wire and oral communications, authorizing interception in certain cases under court order and prescribing procedures therefor, prohibiting unauthorized interception, use or disclosure of wire and oral communications, prescribing penalties for violations and repealing N. J. S. 2A:146–1," approved January 14, 1969 (P. L. 1968, c. 409).

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. Section 4 of P. L. 1968, c. 409 (C. 2A:156A–4) is amended to read as follows:

4. It shall not be unlawful under this act for:

a. An operator of a switchboard, or an officer, agent or employee of a communication common carrier, whose facilities are used in the transmission of a wire communication, to intercept, disclose or use that communication in the normal course of his employment while engaged in any activity which is a necessary incident to the rendition of his service or to the protection of the rights or property of the carrier of such communication. No communication common carrier shall utilize service observing or random monitoring except for mechanical or service quality control checks;

b. A person acting under color of law to intercept a wire or oral communication, where such person is a party to the communciation or one of the parties to the communication has given prior consent to such interception; or

c. A person not acting under color of law to intercept a wire or oral communication, where such person is a party to the communication or one of the parties to the communication has given prior consent to such interception unless such communication is inter-

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

cepted *or used* for the purpose of committing any criminal or tortious act in violation of the Constitution or laws of the United States or of this State or for the purpose of commiting any other injurious act. ***Any person who unlawfully intercepts or uses such communication as provided in this paragraph shall be subject to the civil liability established in section 24 of this act (C. 2A:156A–24), in addition to any other criminal or civil liability mposed by law.***

2. Section 8 of P. L. 1968, c. 409 (C. 2A:156A–8) is amended to read as follows:

8. The Attorney General, a county prosecutor or the chairman of the State Commission of Investigation when authorized by a majority of the members of that commission, or a person designated to act for such an official and to perform his duties in and during his actual absence or disability, may authorize, in writing, an ex parte application to a judge designated to receive the same for an order authorizing the interception of a wire or oral communication by the investigative or law enforcement officers or agency having responsibility for an investigation when such interception may provide evidence of the commission of the offense of murder, kidnapping, gambling, robbery, bribery, extortion, loansharking, [dealing in narcotic drugs, marijuana or other dangerous drugs,] *violations of section 19 of the "New Jersey Controlled Dangerous Substances Act" P. L. 1970, c. 226 (C. 24:21–19),* arson, burglary, embezzlement, forgery, receiving stolen property *punishable by imprisonment for more than 1 year,* alteration of motor vehicle identification numbers, or larceny punishable by imprisonment for more than 1 year, *unlawful manufacture, purchase, use, or transfer of firearms, or unlawful possession or use of bombs or explosives,* or any conspiracy to commit any of the foregoing offenses or which may provide evidence aiding in the apprehension of the perpetrator *or perpetrators* of any of the foregoing offenses.

3. Section 9 of P. L. 1968, c. 409 (C. 2A:156A–9) is amended to read as follows:

9. Each application for an order of authorization to intercept a wire or oral communication shall be made in writing upon oath or affirmation and shall state:

a. The authority of the applicant to make such application;

b. The identity and qualifications of the investigative or law enforcement officers or agency for whom the authority to intercept a wire or oral communication is sought and the identity of whoever authorized the application.

c. A particular statement of the facts relied upon by the applicant, including: (1) The identity of the particular person, if known, committing the offense and whose communications are to be intercepted; (2) The details as to the particular offense that has been, is being, or is about to be committed; (3) The particular type of communication to be intercepted; *and a showing that there is probable cause to believe that such communication will be communicated on the wire communication facility involved or at the particular place where the oral communication is to be intercepted*; (4) The character and location of the particular wire communication facilities involved or the particular place where the oral communication is to be intercepted; (5) A statement of the period of time for which the interception is required to be maintained; if the character of the investigation is such that the authorization for interception should not automatically terminate when the described type of communication has been first obtained, a particular statement of facts establishing probable cause to believe that additional communications of the same type will occur thereafter; (6) A particular statement of facts showing that other normal investigative procedures with respect to the offense have been tried and have failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous to employ;

d. Where the application is for the renewal or extension of an order, a particular statement of facts showing the results thus far obtained from the interception, or a reasonable explanation of the failure to obtain such results;

e. A complete statement of the facts concerning all previous applications, known to the individual authorizing and to the individual making the application, made to any court for authorization to intercept a wire or oral communication involving any of the same facilities or places specified in the application or involving any person whose communication is to be intercepted, and the action taken by the court on each such application; and

f. Such additional testimony or documentary evidence in support of the application as the judge may require.

4. Section 11 of P. L. 1968, c. 409 (C. 2A:156A–11) is amended to read as follows:

11. If the facilities from which a wire communication is to be intercepted are public, no order shall be issued unless the court, in addition to the matters provided in section 10 above, determines that there is a special need to intercept wire communications over such facilities.

If the facilities from which, or the place where, the wire or oral communications are to be intercepted are being used, or are about to be used, or are leased to, listed in the name of, or commonly used by, a licensed physician, *a licensed practicing psychologist*, an attorney at law, **[**or**]** *a* practicing clergyman, *or a newspaperman*, or is a place used primarily for habitation by a husband and wife, no order shall be issued unless the court, in addition to the matters provided in section 10 above, determines that there is a special need to intercept wire or oral communications over such facilities or in such places. *Special need as used in this paragraph shall require in addition to the matters required by section 10 of this act, a showing that the licensed physician, licensed practicing psychologist, attorney-at-law, practicing clergman or newspaperman is personally engaging in or was engaged in over a period of time as a part of a continuing criminal activity or is committing, has or had committed or is about to commit an offense as provided in section 8 of the act.* No otherwise privileged wire or oral communication intercepted in accordance with, or in violation of, the provisions of this act, shall lose its privileged character.

5. Section 12 of P. L. 1968, c. 409 (C. 2A:156A–12) is amended to read as follows:

12. Each order authorizing the interception of any wire or oral communication shall state:

a. The judge is authorized to issue the order;

b. The identity of, or a particular description of, the person, if known, whose communications are to be intercepted;

c. The character and location of the particular communication facilities as to which, or the particular place of the communication as to which, authority to intercept is granted;

d. A particular description of the type of the communication to be intercepted and a statement of the particular offense to which it relates:

e. The identity of the investigative or law enforcement officers or agency to whom the authority to intercept a wire or oral communication is given and the identity of whoever authorized the application; and

f. The period of time during which such interception is authorized, including a statement as to whether or not the interception shall automatically terminate when the described communication has been first obtained.

No order entered under this section shall authorize the interception of any wire or oral communication for a period of time in excess of that necessary under the circumstances. Every order entered under this section shall require that such interception begin and terminate as soon as practicable and be conducted in such a manner as to minimize or eliminate the interception of such communications not otherwise subject to interception under this act *by making reasonable efforts, whenever possible, to reduce the hours of interception authorized by said order.* In no case shall an order entered under this section authorize the interception of wire or oral communications for any period exceeding [30] *20* days. Extensions or renewals of such an order may be granted for periods of not more than [30] *20* days. No extension or renewal shall be granted unless an application for it is made in accordance with this section, and the court makes the findings required by sections 10, 11 and this section.

Whenever an order authorizing an interception is entered, the order may require reports to be made to the judge who issued the order showing what progress has been made toward achievement of the authorized objective and the need for continued interception. Such reports shall be made at such intervals as the court may require.

An order authorizing the interception of a wire or oral communication shall, upon a showing of special need by the applicant, direct that a communication common carrier use its best efforts to furnish forthwith the applicant with all information, facilities and technical assistance necessary to accomplish an in-progress trace or interception. This assistance shall be provided unobtrusively, and with a minimum of interference with the services that such carrier is affording the person whose communications are to be intercepted. Said order shall limit the hours that the carrier shall be obligated to provide said assistance, and shall specify the circumstances under which an obligation to provide assistance shall arise. Any communication common carrier furnishing such facilities or technical assistance shall be compensated for the costs of any assistance rendered to the applicant. Said carrier shall be immune from civil liability for any assistance rendered to the applicant pursuant to this section.

6. Section 17 of P. L. 1968, c. 409 (C. 2A:156A–17) is amended to read as follows:

a. Any investigative or law enforcement officer *or other person* who, by any means authorized by this act, has obtained knowledge

of the contents of any wire or oral communication, or evidence derived therefrom, may disclose or use such contents or evidence to [another] investigative or law enforcement [officer] *officers of this or another state, any of its political subdivisions, or of the United States* to the extent that such disclosure or use is appropriate to the proper performance of his official duties.

b. Any person who, by any means authorized by this act, has obtained any information concerning any wire or oral communication or evidence derived therefrom intercepted in accordance with the provisions of this act, may disclose the contents of such communications or derivative evidence while giving testimony under oath or affirmation in any criminal proceeding in any court of this or another state or of the United States or before any Federal or State grand jury.

c. The contents of any intercepted wire or oral communication, or evidence derived therefrom, may otherwise be disclosed or used only upon a showing of good cause before a court of competent jurisdiction.

7. Section 23 P. L. 1968, c. 409 (C. 2A:156A–23) is amended to read as follows:

23. In addition to reports required to be made by applicants pursuant to Federal law, all judges of the Superior Court authorized to issue orders pursuant to this act shall make annual reports on the operation of this act to the Administrative Director of the Courts. The reports by the judges shall contain (1) the number of applications made; (2) the number of orders issued; (3) the effective periods of such orders; (4) the number and duration of any renewals thereof; (5) the crimes in connection with which the conversations were sought; (6) the names of the applicants; and (7) such other and further particulars as the Administrative Director of the Courts may require.

The Chief Justice of the Supreme Court *and the Attorney General* shall annually report to the Governor and the Legislature on such aspects of the operation of this act as [he deems] *they respectively deem* appropriate including any recommendations [he] *they* may care to make as to legislative changes or improvements to effectuate the purposes of this act and to assure and protect individual rights.

8. Section 28 of P. L. 1968, c. 409 is amended to read as follows:

28. This act shall take effect January 1, 1969 and remain in effect until December 31, [1974] *1980*.

9. This act shall take effect immediately.

STATEMENT

This bill reflects the Attorney General's report and recommendations regarding the past 6 years of operation of the New Jersey Wiretapping and Electronic Surveillance Control Act, transmitted to the Governor and the Legislature September 16, 1974.

J A M E S P. D U G A N (Chairman): The hearing of the Senate Judiciary Committee on the Wiretapping Bill which has been the subject matter of one other public and one private hearing will come to order.

I will call Mr. Mc Clellan as the first witness. I will ask that the court reporter swear the witness, please.

J O H N M c C L E L L A N, having been duly sworn was examined and testified as follows:

BY SENATOR DUGAN:

Q Mr. Mc Clellan, on February 13, 1975, you appeared before the Senate Judiciary Committee in camera at a private hearing and had your testimony taken by a stenographer; is that so?

A Yes, sir.

Q And do you have a copy of the transcript of that testimony that I supplied you with today?

A Yes, I do.

Q I am going to make reference to that transcript from time to time in my questions and I am sure that other members of the committee will. We will draw your attention to questions that were asked and certain responses that you made at our previous hearing.

Some of the questions, of course, that I ask are going to be redundant. They are going to cover the same subject matter. But, as you know, the purpose of this hearing is to give a public airing of the testimony that you gave to us privately.

We have also, with your knowledge and consent, made copies of your prior testimony available to the Attorney General's Office and the State Police and the Governor's Office. Is that so?

A Not with my knowledge, no, sir.

SENATOR DUGAN: Ms. Donath?

MS. DONATH: I wrote you a letter concerning the fact that we were going to do that, and asking that you notify us if you had any objection, and you called me and said that you did not.

BY SENATOR DUGAN:

Q Does that refresh your recollection?

A Yes. But the letter did not state that the testimony was going to be released to the Attorney General's Office or the State Police. The letter simply stated that a meeting of the Judiciary Committee would be held and a majority vote was taken to ---

Q A majority vote was taken on what?

A As to whether or not to release the testimony. It did not state to whom it would be released.

Q Well, did you have any objection to the release of that testimony?

A No; no.

Q Those to whom copies of your testimony were given have been invited here today to respond to your testimony, so that we can fully develop the matters you have brought to our attention in our prior hearings. They have had a copy of your testimony and are prepared, I assume, to respond to it and to respond to any supplemental testimony which you may give us today. Do you have any questions with regard to the procedure?

A No. I do not. May I preclude my testimony with a brief statement, please?

Q Well, let's get some of the necessary information we need and then you can make your statement. Will you give us your full name and address?

A My name is John Mc Clellan. I live at 11 Lois

Court, Wayne Township, Passaic County, New Jersey.

Q What is your present employment?

A I am self-employed.

Q In what capacity or what type of endeavor?

A A restaurant and tavern.

Q Where is that and what is the name of it?

A The name of it is the Crystal Bay Inn. It is located at 1600 Lake Drive West, Packanack Lake, Wayne Township, New Jersey.

Q Mr. Mc Clellan, what previous employment did you have?

A I spent approximately 13 years with the New Jersey State Police.

Q Can you outline your career during those 13 years, giving specific assignments during that time?

A Yes, I entered the New Jersey State Police Academy in October, 1961. The initial duties that I performed for the state police were that of general trooper, serving in such stations as Clinton, Newtown, Netcong, Paramus, Bloomfield, Sussex, Morristown Communiciations, Scotch Plains, Morristown Traffic, and in October of 1968, assigned as an investigator to the North Unit of the Organized Crime Task Force Bureau.

Q Since November of 1968 you were with the North Unitof the Organized Crime Task Force?

A Yes, sir.

Q What was the date of your entry into the State Police.

A I entered the Academy in mid-October, 1961.

Q Am I under the correct impression, that most of the testimony that you will give today is concerned with the experiences that you have had or the knowledge that came to your attention subsequent to your assignment to the Organized Crime Control Unit?

A Yes, sir.

Q Can you tell us what the Organized Crime Control Unit consisted of; that is, can you give us an organizational chart verbally?

A At the time I was there?

Q What are the duties and assignments of the Organized Crime Unit?

A As of today, I can't tell you.

Q At the time you were assigned to it.

A Mainly gambling investigation.

Q Gambling in what sense?

A Bookmaking and lottery.

Q What else did they concern themselves with?

A In October of 1968? My particular unit concerned itself with nothing more than bookmaking. We investigated nothing other than bookmaking, to my recollection.

Q Well, your particular unit was the north unit?

A Yes, sir.

Q If you can, tell us what percentage of the north unit was concerned with the control or the discovery of gambling activity?

A Through what period of time, sir?

Q From October of 1968 through the terminal date of your association with the State Police? That date is incidentally when?

A May 10, 1973. I went on sick leave.

Q The principal thrust of the activity of that unit is what I am trying to get at.

A Gambling.

Q To what extent?

A Percentage-wise?

Q Yes.

A I would say 95% gambling.

Q What was the other 5%?

A That was a mixture of hijacking, loan sharking, and homicide investigation.

Q That unit was characterized as an organized crime investigating unit?

A Yes.

Q Were the activities that you just detailed, hijacking, gambling, loan sharking, all considered organized crime activities?

A The term organized crime I find difficult to define.

Q What is your understanding of that term as it is used in the vernacular of the State Police?

A Today, I can't say.

Q Well, when you were there.

A At the onset of my entrance into the Organized Crime Task Force Bureau, clearly, from previous knowledge of certain individuals, the investigations were connected with people who were involved in "organized crime." However, as time passed, the meaning of organized crime and the terminology became less clear to me. Three or four or more bookmakers arrested at the same time might be connected to organized crime. Two or three fellows hijacking a truck might be connected to organized crime. Certainly in one particular homocide investigation, it was clearly in my mind a case of "organized crime."

Q These are on a case by case basis. You can't give us a general description of the characterization of an organized crime activity? What are the essential elements of a criminal activity being charaterized as an activity of organized crime?

A Well, organized crime to me has become a rather ambiguous term. The use of the phrase "organized crime" may be placed upon anyone arrested in a group or singularly for the crime of bookmaking, hijacking, or whatever.

Q Well, there was testimony in the last public hearing offered by one of the witnesses who characterized gambling per se as an organized criminal activity. Do you agree with that characterization in this state as you know it?

A On the whole, as far as bookmaking and lottery operations - if I personally had known of the individual before I entered the Organized Crime Unit and they were identified either through the press or television, et cetera, as a member of organized crime, I can't accept that. However, the label organized crime is placed on individuals by persons other than myself. My objective, which is to go out and make the arrests ---

Q Well, in response to my question, you cannot characterize it very well?

A I cannot clearly define organized crime.

Q That is sufficient. How was your Organized Crime investigating unit organized? Who was the head of this?

A Of my individual unit?

Q Yes.

A In October of 1968, the unit was headed by then Detective- Sergeant First Class Paul Deluca. He was assisted by then Sergeant Rudy Simonetti. The other members of the unit were Sergeant Alfred Piperata, Detective Bernard Kelly, Detective Richard Regan.

Q Well, the Detective-Sergeant Deluca was at the top of the pyramid, and underneath him was Sergeant Simonetti, and then it generally graduated down to the next level, the detective level?

A Yes.

Q Who was on that level?

A Piperata is under Simonetti who was under Sergeant Deluca. Simonetti was Sergeant Deluca's assistant.

Q And then under Simonetti?

A Detective Piperata, Detective Bernard Kelly, Detective Richard Regan, Investigator Peter Henderson, myself, and Investigator Frank Carpenetti.

Q Did that constitute the membership of that unit?

A Yes.

Q How many such units were there in the State during that time that you served with the unit?

A Basically there were three centrally located Oganized Crime Task Force Bureaus with at least one other unit, to my own personal knowledge, headquartered in Morristown, also doing the same type of investigations.

Q There were four such units, then, in the State?

A No, basically there were three.

Q There were three such units in the State?

A There were three units referred to as Organized Crime Task Force Bureaus.

Q Were they all made up in the same general table of organization and staff and general terms as the one you were a member of?

A Yes.

Q Who had general supervision over these three units?

A At that time, Lieutenant Howard Graff.

Q And what was his title?
A He was a New Jersey State Police Lieutenant.
Q Did he have a specific assignment?
A I assume you would call him the administrator.
Q I am looking for the operational control over all these units.
A It came through Lieutenant Graff.
Q To whom did Lieutenant Graff report? To whom was he responsible for this activity?
A At that time Captain - he is retired now. I can't remember his name.
Q Well, it was some captain to whom Graff was responsible?
A Yes.
Q To whom did the captain report?
A I can't recall the name of the man who was the head of the Criminal Investigation Section.
Q Who in the Attorney General's Office had general supervision and responsibility for the operation of these three units?
A The Attorney General's Office.
Q Yes, for the supervision and the responsibility for the operation of these three units?
A I have no idea.
Q Once it got beyond Lieutenant Graff's superiors, you have no knowledge of who had supervision or responsibility for the operation of these units?
A I don't believe in October of 1968 the Organized Crime and Special Prosecution Section had yet been formed. I'm not clear on it, but I don't think it had yet been formed.
Q When were they formed? What were they and what are they today?

A I beleive they were formed in January of 1969. Again, I am not clear on that. Their main function was-- Their title was Organized Crime and Special Prosecution Section. Their main function was the handling of the statewide grand jury with the assistance of their attorneys and the detectives in any investigative ---

Q Well, who was the head of the Organized Crime Section that was organized sometime after 1969?

A From the Attorney General's Office?

Q Yes.

A The head of it?

Q Yes.

A The Organized Crime Special Prosecutor's Section was co-directed by Mr. Peter Richards, Mr. Edward Steir.

Q Were they in charge of this unit operationally?

A Yes, sir. I would assume so.

Q Was there anyone further up in the Attorney General's hierarchy to whom they reported or to whom they were responsible?

A I'm not clear on when Mr. Jahos first took office. But had Mr. Jahos been in office at that time, they would be responsible to Mr. Jahos.

Q Well, ultimately Mr. Jahos was put in general command of the Organized Crime Section which in turn had its operating arm as these three organized crime units that you made reference to?

A His title was Director of the Division of Criminal Justice.

Q All right. Why was he not the one to whom all of these units ultimately reported and to whom they were responsible?

A Each unit only reported to its individual supervisor.

Q Well, the supervisors in turn must have reported to someone?

A Yes, Lieutenant Graff.

Q Lieutenant Graff must have reported to someone?

A The captain whose name I can't recall.

Q The captain must have worked in concert with somebody in the Attorney General's Office, I assume?

A When it gets to that point, I haven't the slightest idea. The captain's duties were --- He was the Assistant Criminal Investigations Officer.

Q What was the relationship between the Organized Crime Section that was headed ultimately by Mr. Jahos and staffed by Mr. Richards and Mr. Steir? What was their relationship to the Organized Crime Units that you made reference to and to which you were a member?

A Mr. Steir and Mr. Richards and the attorneys under them assisted detectives in the fields of investigation on legal matters. They assisted in the preparation of affidavits.

Q Were the matters that were developed by the Organized Crime Units ultimately presented to grand juries by Mr. Richards and Mr. Steir.

A Not necessarily Mr. Richards and Mr. Steir. It was either Mr. Richards, Mr. Steir or one of their assistants, yes, sir.

Q And these matters were presented to the statewide grand jury that was established sometime after 1969?

A Yes, sir.

Q Is it safe to say then that the bulk of the work product of the Organized Crime Unit, to which you were a

member, ultimately found its way to the statewide grand jury?

A Only after the establishment of the New Jersey Electronic Surveillance Control Act.

Q Well, I am talking about 1969.

A 1969, yes, sir.

Q After that date, your work product then was presented to the statewide grand jury for evaluation, indictment or whatever disposition they wanted to make?

A Only wiretap cases, generally.

Q Well, you say only wiretap cases generally. What other cases were there?

A If I recall, they had the alternative of accepting a case and presenting it to a statewide grand jury or letting the case go its route in the county in which the arrest had been made.

Q You indicated that only the wiretap cases went to the statewide grand jury?

A Initially, yes.

Q And when did that practice change, and how did it change?

A I don't believe it has changed to this date.

Q Well, is it still your testimony that practically speaking the overwhelming majority of cases that are developed by organized crime units involving wiretapping go to the statewide grand jury?

A Yes, sir, unless the policy has changed. I am speaking of state police wiretaps, basically.

Q All right. Can you tell us what you did while you were a member of the Organized Crime Unit in the northern part of the state?

A My initial duties were the investigation of gambling, bookmaking, lottery and loan sharking.

Q Now, you said you had a statement you would like to make. I think we have a sufficient framework within which we intend to question. You may make your statement at this time.

A I would just like to state to the members of the Judiciary Committee, the members of the State Police and the press, that my appearance before the executive session and my appearance here today is in no way vindictive toward the New Jersey State Police as a body. I am here today, as I was at the executive session, testifying strictly on what I believe to be right and separating that from what is wrong, basically on a moral issue. Thank you.

Q Now, Mr. Mc Clellan, I would like to draw your attention to some parts of the testimony that you presented to us at the private hearing. I would like to draw your attention to the first paragraph on page 7.

A Yes.

Q In that part of your testimony - I will read it so it will be clear to those who do not have the advantage of having a copy of your testimony before them - you say, "From the inception of the act, the problem of bugging became clearly apparent. At first court orders for surreptitious entry were difficult to obtain, and so the burden was placed on the investigative body to solve that problem." What did you mean by that?

A I am referring there to a specific incident in which I was involved.

Q What incident was that?

A The investigation was being conducted in the City of Patterson and throughout the County of Passaic.

One of the prime concerns of this investigation was a premises known as the Cotton Club which is located in Patterson, New Jersey. There was an undercover man who worked inside the bar whose reports came back somewhat vague as to the activities that were going on inside the bar.

I was directly ordered by a member of the New Jersey State Police, a State Police Lieutenant, to attempt to find a means in which to gain entry into this club, after conferring with the undercover agent as to where and how an electronic bug might be placed, and what particular problem there was with the function of the telephone.

Q Well, were you ordered by your superior to break into the Cotton Club?

A He didn't put it in those terms.

Q Well, there was an undercover agent already inside the Cotton Club, wasn't there?

A Yes.

Q Well, what were you supposed to do for your superior within the Cotton Club that the undercover agent could not do?

A Attempt to find the location of an entrance into the Cotton Club to get inside. The first suggestion was the cellar. The second suggestion was the roof. Helicopter surveillance was used. Video tape was taken.

Q What was your specific assignment, to find a way to surreptitiously find a way to enter the Cotton Club?

A Yes.

Q What were you supposed to do when you got in there?

A Transfer information back to the superior officer who had given me that order. He would probably then refer it to the electronic surveillance unit.

Q Did you know what the purpose for all of this was? Why did he order you to go in there? Was it to find a place where a wiretap could be effective or where a bug could be planted?

A The reports that were coming out by the undercover agent were vague. He could not state clearly, for whatever reason, where a bug could be placed. Maybe it was lack of knowledge. I don't have the slightest idea.

Q What were you supposed to do, find a place where a bug could be placed?

A Yes, sir.

Q Do you know the type of bug your superior had in mind? Was it a bug or was it a wiretap or what?

A There was a problem with the telephone. That was learned through the undercover agent. The telephone would ring and someone would go and answer. He said that no one was ever observed ever making outgoing phone calls. He was always denied access to that telephone. As I recall, telephone checks made of that number and calls made to that number resulted in a message from the telephone company that it was not a working number and the telephone was disconnected. However, the undercover agent's reports indicated that the telephone was in use. One of our functions was to ---

Q Wait a minute. Before you get too far afield, I want to get the specific information that you personally have knowledge of concerning this particular incident. I want to know what specifically your assignment was. Was it to find a way to easily break into the Cotton Club, so that after hours a tap could be put on that specific telephone?

A Our operation was after hours.

Q Can you answer specifically that question? Was that your assignment?

A To break into the Cotton Club?

Q Yes.

A Yes.

Q You would have broken into the Cotton Club for the purpose of placing or finding an easy way to place a wiretap on that specific phone; is that correct?

A Wiretap and bug, yes, sir.

Q You can continue. This was without a court order, I assume?

A No court order.

Q Did you bring that to the attention of your superior?

A He gave the order.

Q Was there any referance made to the lack of a court order by either you or him?

A No.

Q What did you do then?

A On one or two evenings after closing hours I attempted to get into the cellar and apparently it was locked from the inside. I attempted to climb the roof, and that was again without success. The front door, of course, is locked after closing. The Cotton Club faces sides on a river. I attempted to find a way along the river bank in which there might be an entrance into the basement. As I recall, the undercover agent said that there was a staircase leading to the basement.

Q Ultimately, did you gain entrance?

A No, I failed.

Q Did that terminate your involvement with that project, your inability to gain entrance?

A As far as I was concerned, yes, sir.

Q Did you have any other connection with the Cotton Club case, so to speak?

A Yes.

Q Were there subsequent arrests or convictions? What disposition was made of your investigation?

A Well, it was not my primary investigation. There are indictments, which I believe are still pending.

Q When did all of this take place?

A I would say in the fall of 1972.

Q And that investigation continued after your involvement with it and it resulted in ---

A Wait a minute. I'm sorry. That would be the winter of 1973.

Q And that investigation resulted ultimately in indictments that are presently pending; is that so?

A At least one that I know of, yes, sir.

Q Do you have any further personal knowledge of that investigation after the incident that you just described to us? Did you have any further personal involvement in that Cotton Club case?

A After that?

Q Yes.

A Yes, sir.

Q Did that concern wiretapping or electronic surveillance?

A To some extent, yes, sir.

Q To what extent?

A Wiretaps were in progress but not at the Cotton Club. Wiretaps were in progress relating to the individual who owned the Cotton Club. My main function at that time was physical surveillance.

Q Well, apparently there were wiretaps used as an investigative tool in that investigation?

A Yes.

Q Were they authorized wiretaps to your knowledge?

A To my knowledge?

Q Yes.

A Yes, they were.

Q Again, drawing your attention to page 7 of your previous testimony, I want you to refer to the second from the last paragraph.

And that paragraph states, "And now I address myself for a moment to the problem of wiretapping. Consider, if you will, the incident of two state police detectives, neither being members of the electronic unit and both acting without court orders, discovered stringing telephone wires across the rooftops in central New Jersey."

Now, what specifically were you making reference to when you said that? Who were the detectives? Where did it happen? When did it happen and under what circumstances?

A I do not know the names of the detectives, nor do I know the location of the detectives. This was information that had come down through the unit. Two men were discovered by someone stringing telephone wire across rooftops in central New Jersey.

SENATOR BATEMAN: In your testimony to the Judiciary Committee you identified one of those men.

THE WITNESS: Would you refresh my memory?

SENATOR BATEMAN: Yes, page 18. "The man on the telephone pole with the private detective in the Plainfield area."

THE WITNESS: No, that is a different incident.

SENATOR BATEMAN: Oh, that is a different incident?

THE WITNESS: Yes, sir.

SENATOR BATEMAN: Okay, fine.

BY SENATOR DUGAN:

Q Well, how did you gain the knowledge that you have just given to us? How did you learn about the incident of two state police detectives being discoverd on a pole in central Jersey?

A You might refer to it as the grapevine.

Q Who told you?

A I can't recall. It was so long ago.

Q Well, do you know under what circumstances it was told to you?

A Probably just in passing conversation.

Q It is just scuttlebutt then that came down to you?

A I wouldn't say that.

Q Can you give us any information that would lead us to believe that this is a fact rather than just scuttlebutt?

A I wouldn't treat it as scuttlebutt. Names were mentioned.

Q Well, what were the names?

A The names that were mentioned?

Q Yes.

A If I gave you the names of the men that were mentioned and they were not the ones that were actually caught doing it, I would consider it unfair.

Q I want you to give us the names because ---

A Detective Demasi and Detective Castelano.

Q They were the two that you made reference to as acting illegally, without court orders, in central New Jersey, stringing wire?

A Those were the names that were mentioned.

Q How did those names come to your attention?

A Just through idle conversation within the units.

Q With whom were you speaking when those names came up?
A I haven't got the slighest idea.
Q It was detective who?
A The names that I mentioned?
Q Yes.
A Detective Demasi and Detective Castelano.
Q Do you have any other specific information? For example, do you know where this happened other than in central Jersey?
A No, sir.
Q When was it supposed to have happened?
A I can't recall. I'm sorry.
Q Can you particularize the time it was supposed to have happened?
A When? You just asked me that.
Q When and where?
A Central New Jersey, because it was the central unit who had the responsibility of certain counties. The time and date I cannot give you.
Q I draw your attention, then, to page 8 of your previous testimony, the first line, "Both these men discovered atop a telephone pole in the Plainfield area." Does that refresh your recollection?
A They are separate incidents, sir.

SENATOR BATEMAN: That is the one I asked about.

BY SENATOR DUGAN:
Q You have no present recollection as to who told you or who mentioned Demasi and Castelano's names as being the ones involved?
A No, sir.
Q Do you remember any name being mentioned as the one who observed or who was said to have observed these two detectives?

A No, just that they were discovered doing this.
Q Nobody said who discovered them?
A No.
Q Then, again, drawing your attention to page 8 and the last paragraph on page 7 of your previous testimony, you said, "Consider a state police sergeant and a leader of a unit engaged in investigating organized crime along with the private investigator known to be knowledgeable in wiretapping; both these men discovered atop a telephone pole in the Plainfield area." Can you fill in the particulars of that?
A The names of the state policemen?
Q Yes.
A Sergeant Roscoe.
Q Who was the private investigator?
A I have no idea.
Q How did you come to learn of this.
A Through the same method as the others.
Q Who was talking to you?
A I have no recollection.
Q When were they talking to you?
A Shortly after it occurred.
Q When did it occur?
A Not knowing when that particular unit was formed, I would say in the year 1972.
Q There was no mention of the private investigator's name?
A His name? No.
Q He was characterized by you as being known to be knowledgeable in wiretapping. Who characterized him as "known to be knowledgeable in wiretapping"?
A The person or persons who related the incident to me.

Q How would that particular person know?
A Maybe he knew him.
Q You don't know who that person was that gave you this information, do you?
A No.
Q Do you have any idea who it is?
A The private investigator?
Q No, the person who gave you this information about this matter?
A No, sir. Again, it was just talk throughout the unit.
Q Did you believe it?
A Did I believe it?
Q Yes.
A Yes.
Q What prompted you to come to that conclusion?
A I don't think anyone would concoct such a story.
Q Did you report that to your superiors or to anyone?
A Did I?
Q Yes.
A No.
Q Did you take any action at all?
A Myself?
Q Yes.
A As a detective, no, sir.
Q Did you consider it an illegal activity?
A I certainly did.
Q And yet you took no initiative in this matter at all?
A No.
Q Why did you not do something about it if you considered it an illegal activity?
A Like what, sir?
Q If I understood you, you said that at that time you were a member of the state police charged with upholding the laws of this State. I can appreciate your concern

about wiretapping abuses. We are all concerned, but why did you not, under those circumstances that prevailed, do something about it at that time?

A It was my belief that if everyone knew about it, certainly the sergeant superior officer was going to know about it, and certainly division headquarters would know about it, and division headquarters should have taken the appropriate action.

Q Well, did you make any complaint to anyone after you found that apparently no action had been taken?

A They took action.

Q What was the action taken?

A They promoted him to lieutenant.

Q You think then that that was appropriate action in response to an illegal activity?

A If you want to keep it quiet, yes.

Q And you felt then that the state police superiors or the attorney general's office were keeping illegal activity quiet?

A That was my personal feeling, yes.

Q And you felt that they were rewarding it by promoting the one that engaged in it?

A Rewarding the individual?

Q Yes.

A Promotion from detective-sergeant to detective-sergeant first class lieutenant is a reward, yes, sir.

Q Well, did you consider it a reward for engaging in this type of illegal activity?

A I don't know what transpired with Detective Roscoe and Division Headquarters.

Q But in any event, you took no action on your own initiative to bring this to the attention of anyone, to the Governor's Office, to the Attorney General himself, or to the United States Attorney or anyone?

A I did not.

Q Mr. Mc Clellan, I draw your attention to page 8, the third paragraph, which begins, "Consider for a moment a class being conducted by a state police detective to members of his unit on the method of illegally tapping a telephone box."

Can you give us the particulars of that? Who was the state police detective?

A His name?

Q Yes.

A No, sir.

Q When was the class conducted?

A It was within the central unit of the Organized Crime Task Force Bureau.

Q Who was in charge of that at the time this class was conducted?

A If I knew what time the class was conducted, I probably would be able to tell you the name of the individual who conducted it.

Q Well, approximately when did this happen?

A When it occurred, I can't tell you.

Q Who were the students in that class, if I can characterize them as students?

A I was not there, so I have no idea.

Q Do you know anyone who attended that class, either by hearsay or personal knowledge?

A Well, if it was in the central unit, I would assume that members of the central unit attended the class.

Q Well, do you know any specific individual who attended that class?

A Someone who sat in a chair and attended the class? No, sir.

Q Was it just one seminar in illegal wiretapping or was it a continuing process?
A I have no idea.
Q How did you come to get the knowledge of this class?
A Again, the grapevine throughout the units.
Q You don't specifically remember anyone who spoke to you about this?
A No.
Q I draw your attention again, Mr. Mc Clellan, to the last paragraph on page 8, where you make reference to a wiretap of a Mr. Ruby Odum.
A That is a female.
Q Ms. Ruby Odum then. What knowledge do you have of that specific tap, and the fact that the initial tap revealed no evidence of criminality? Was that something that you worked on personally?
A Yes. It was a wiretap that I monitored.
Q For how long did you monitor?
A That tap went on for quite a few months.
Q On a continuing basis?
A With extensions of the court order.
Q How long did it go on?
A I would say for 2 to 3 or perhaps -- at the most, 3 months.
Q Up to 3 months?
A Yes.
Q How many extensions were granted, if you can recollect?
A Well, if it were a 15-day court order, there would have been at least 3.
Q During that time there was no evidence of criminality that came to your attention or to the

attention of the state police through that monitoring?
A That's correct.
Q Ultimately it was discontinued?
A That tap?
Q Yes.
A Yes.
Q Was Ms. Odum the target of that investigation?
A No.
Q Was that investigation concluded with arrests?
A Of Ms. Odum?
Q Of anyone.
A Yes.
Q Was any action taken against Ms. Odum?
A Her home was raided, but she was not arrested.
Q What was found, if you can remember, when her home was raided?
A Nothing.
Q Did you have anything to do with the preparation of the affidavit for the search warrant that was needed in order to search the home?
A I was asked to prepare an affidavit for the issuance of a search warrant for the home of Ms. Odum in conjunction with another individual.
Q Well, did you have any personal knowledge of criminal activity going on within her home or any evidence of such?
A No, sir.
Q Did you prepare the affidavit?
A No.
Q Who did?
A I don't know.
Q Do you know what the basis of that warrant was? What was presented by way of an affidavit to support the granting of that search warrant?

A No, I never saw the affidavit.

BY SENATOR MENZA:

Q There are many monitors on a tap such as this, are there not?

A Yes.

Q Was there more than one ?

A More than one monitor?

Q Yes.

A Yes, sir.

Q You gave the impression to the committee, I think, that you were the only monitor. As a matter of fact, you people switch off; is that correct?

A If I gave you that impression, Senator Menza, I am sorry.

Q How long did you monitor it?

A For an 8-or 12-hour period every day or every other day, perhaps, for quite a period of time, but always having access to the logs.

BY SENATOR DUGAN:

Q In that connection, did you have conversation with the other monitors about the subject matter of the telephone conversations?

A Yes, sir.

Q Did they tell you that their monitoring was as fruitless as yours?

A Yes.

Q And all of the monitors agreed that there was no evidence that came forth as a result of the monitoring in that case?

A No substantial evidence. There was no evidence of any criminal activity as set forth in the affidavit for the wiretap which was for narcotics and gambling.

BY SENATOR MENZA:

Q Mr. Mc Clellan, you have said that arrests evolved as a result of these wiretaps?

A Yes, as a result of the extensions on her phone and having the people talking on her phone and making references to other individuals, which is called a jump - or perhaps they made a new order or affidavit to go on another person's phone.

Q Did convictions result from those arrests?

A Yes.

Q So there is something in fact in the logs that would indicate criminality on the part of someone?

A Not to me, and I don't believe it would be to any state policeman who monitored it.

Q The logs, I presume, are kept for some period of time?

A I'm sure that the state police still have them, yes.

BY SENATOR DUGAN:

Q Mr. Mc Clellan, I would like to draw your attention to two of your comments in your prior testimony. One is on page 9, the first paragraph, and the next is page 10, the second to last paragraph from the bottom of the page. This is something that concerns the committee very much. I would like to read it so that the other people here today know what I am making reference to. I would then ask you to fill in the specific knowledge you have of these instances.

You testified at that time as follows: "Consider also that in many cases the applicant is not at fault, except, in my opinion, lacking a certain degree of integrity." You are making reference to an applicant for an affidavit for a wiretap or some court order.

"I realize that under the act," meaning the Electronic Surveillance Act,"it is not necessary for the applicant to actually type out the affidavit or court order, but certainly if he is to put his hand to it, he should be in some way responsible or previously advised as to its content. I refer here directly to the fact that in many instances the applicant is not aware of the content of the affidavit, extension request or order. These papers are drawn up by a member of the Attorney General's staff of the Special Prosecutions Section in an effort to further the case in which he intends to obtain indictments. I refer here directly to what is commonly known in the state police as 'target-type investigations.' "

I am now skipping to page 10. You continue in the second paragraph, "Getting back once again to the subject of affidavits and the applicant not always being responsible for its content , consider for a moment a detective pacing the floor of the state police barracks from nine A. M. to five P.M. and finally getting a call from a deputy attorney general that his affidavit is ready. The detective must then drive to Trenton, pick up the affidavit and take it to the State House, have a jurat taken, locate the Attorney General, have him sign it, and travel to the home usually of a judge authorized to sign same.

"Gentlemen, I respectfully submit to you that the applicant at this point has no idea whatsoever as to the content of this affidavit, order, authorization, extension, or whatever the case may be."

What personal knowledge do you have where affidavits are filed in support of electronic surveillance activity

that are false or the contents thereof are unknown to the one making the affidavit?

A As to the falsehood, I can make one specific reference to an incident. The applicant for the affidavit was Detective Michael Furer of the New Jersey State Police. The Deputy Attorney General in charge of the investigation at that time was Mr. Michael Bossa. Throughout the entire day this particular affidavit was being drawn, Detective Furer was in my presence, and in fact, if I recall correctly, we were on surveillance together that day, and Mr. Bossa was in Trenton preparing the affidavit.

At approximately four or four thirty, Detective Furer received a call that the affidavit was ready. Detective Furer left in his car, drove to Trenton, and went through the usual procedure. If I recall, he then had to drive to Stewartsville to the home of Judge Kingfield, at which time Judge Kingfield signed it.

Q Well, at that point, did the detective know what was in the affidavit?

A If you will just let me finish, I will tell you. I saw the affidavit the following day. Detective Furer is a narcotics detective. I was a gambling detective. The investigation was primarily concerned with narcotics and gambling; however, as it progressed, it headed in the direction of gambling. There were what I would refer to as cryptic terms over the wiretap, gleaned by Mr. Bossa, in which he stated that Detective Furer played the tape for me and discussed the meaning of these cryptic terms and that I indicated to Detective Furer that these cryptic terms were directly related to a continuing lottery conspiracy. That is false. Detective Furer never discussed this with me regarding those terms.

I never heard the tape. We never discussed it. It was not until the next day that I saw the affidavit and the affidavit became what you might call the laughing stock of the north unit, that someone who had gained as much gambling expertise as I had in my 10 years with the Organized Crime Section would venture to say that those particular words were related to a criminal conspiracy or lottery.

Detective Furer might just as well have said, if he chose to, had he known what was in the affidavit, that those words were related to a narcotics conspiracy, which I would not tend to believe, either.

Q Did you have conversations with Detective Furer about that false affidavit?

A Yes.

Q What conversation did you have with him about that affidavit?

A I brought to his attention the fact that I never heard those tapes, never read those logs, never discussed the meaning of those cryptic terms.

Q What did he say in response?

A I don't recall. I reported this incident to my superiors in Trenton.

Q Who did you report that to and when?

A Not recalling the day of the affidavit -- I thought on it, and I steamed on it for about 2 weeks. I went to Trenton and I reported to Captain Dorian. I reported it to then Major Graff. I believe he was a major at that time. Also present in the room was then Lieutenant Clinton Pagano. I told them that in my opinion the affidavit was based on falsities. It was untrue. It was making me the subject of a lot of jokes from other individuals in my unit who knew themselves that I would never

say such a thing.

Q That part that was attributed to you was a critical part of that allegation, wasn't it? Without that in the affidavit, it would not have supported evidence for a wiretap, in your judgement, would it?

A In my judgement it would not have.

Q What did your superiors do in response to your bringing this to their attention?

A Nothing.

Q What happened in the investigation? Did it result in any indictments?

A Yes.

Q And were there convictions? Was the wiretap evidence used in those cases, to your knowledge?

A Yes.

Q Where and when and what were the circumstances surrounding the indictment and the trial?

A The arrest and conviction of Detective Raymond Kordja of the Passaic County Prosecutor's Office for either bribery or misconduct in public office, and the indictment and conviction of Captain Joseph Esposito of the Patterson Police Department for bribery and misconduct in public office.

Q When did that occur?

A The last trial just concluded within the last month. The first trial resulted in a not guilty verdict on one count for Detective Kordja a guilty verdict on another. A not guilty verdict on one charge for Captain Esposito and a hung jury on the second.

Q Did you testify in those trials?

A Yes, sir.

Q As a witness for the defense?

A Both.

Q Did you offer testimony as to the subject matter that you just presented to us, the inaccurate or false affidavit?

A Yes, sir, out of the presence of the jury.

Q At the time of that trial, the judge knew all of the facts that you have presented to us?

A Yes, sir.

Q What action did he take?

A He ruled all my testimony irrelevant to the case, and it did not get to the jury.

BY SENATOR MENZA:

Q The voir dire on the admissibility of the tapes is what you testified on; is that correct?

A Right.

Q That is, whether the tape itself should be admissible and whether in fact the affidavit was false; is that correct?

A Yes.

Q Did the judge determine that the affidavit was a false one?

A He did not.

Q If the affidavit was a false one, the order would be improper and, therefore, the wiretaps would not be admissible; is that correct?

A Yes, sir.

Q The wiretaps were admissible into evidence?

A They were.

Q And the jury heard them?

A Yes, they did.

Q Did you testify in voir dire out of the presence of the jury with regard to the affidavit?

A Yes, sir.

BY SENATOR DUGAN:

Q Mr. Mc Clellan, I draw your attention again to your

previous testimony, and specifically page 11, the last paragraph. You are talking there about the celebration of the first anniversary of the establishment of the Organized Crime Task Force Bureau. You are quoting Colonel David B. Kelly, and you continue, "In his remarks Colonel Kelly said, 'Men, let's get the job done. I don't care how you do it, or where you go, or who you step on, just do it.' And then the ravage began. It is this type of thinking and logic which prevails today, or at least prevailed up until the time I left the state police. It is this logic that I question."

Now, can you expand a little on that thought and tell us what you had in mind?

A A state police trooper and a state police detective are what you might refer to as a well-oiled machine. People who begin to think for themselves and react as individuals, as I did, could not at the time of this specific Passaic County investigation function within the law and within their own individual moral standards. I fully realize that every individual has different moral standards.

Colonel Kelly's remarks to me indicated that we had a free hand to do what we had to do; to do what we thought was necessary; to go wherever we thought it was necessary, and to question whoever we thought it was necessary to question.

Q Well, did you interpret his remarks as an encouragement for state policemen to involve themselves in illegal acts contrary to the wiretap surveillance act?

A Not at that time, no.

Q Well, at some later time did you come to that conclusion?

A In retrospect, yes, sir. But I am not saying that he had this in his mind at the time he made those remarks.

Q What specifically caused you to change your mind in making that conclusion?

A The incidents that were involved throughout the Passaic County investigations.

Q Have we covered all of those incidents here today?

A No.

Q Which ones haven't we covered?

A We haven't covered the remarks I made regarding the two state police detectives atop a telephone pole in the City of Patterson.

Q Well, let's talk about that. Who were they?

A As I recall, Detective Siebert -- I am going to preface everything here with and/or, because there were three, as I recall, and I was doing the surveillance of the club that day.

Q What club is that?

A The Cotton Club.

Q We are back to the Cotton Club investigation?

A Yes.

Q Detective Siebert and who else?

A Logan.

Q They were on top of a pole?

A It would be and/or Detective Weir.

Q Two out of the three of those detectives were up on the telephone pole.

A Right. I am referring back to the fact that the reports coming out of the Cotton Club from the undercover man indicated that incoming calls were being accepted and that he was denied the opportunity to use the phone.

Q What were they doing?

A They were trying to determine - and I make reference to it on page 8, the second paragraph. It had been the prime concern of the lieutenant in charge of the investigation that a wiretap should be placed on this phone. I have already described the difficulty that we experienced with the telephones. These two detectives - and I indicated here that I did not know to what degree of success these individuals had atop this telephone pole. I saw them there. I can't recall which two of the three it was.

Q What were they doing?

A They were attempting to find out, through means that I know nothing of, electronic means, what the difficulty was with the telephone after we had met with no success in trying to get into the Cotton Club. They wanted to determine this for themselves.

Q Were they engaged, then, in an illegal activity, to your knowledge?

A In my opinion, if two state police detectives members of the electronic surveillance unit are atop a pole and no court order has been issued, it is just the thought and concern of the lieutenant in charge of the investigation that a wiretap should be placed on that phone, but there was difficulty with determining how. These detectives were atop that pole trying to discover what was wrong with this phone. I do not know what they did atop this telephone pole. I just saw them there, and I knew what their mission was, because I overheard that morning in the office what their mission was to be ---

A Well, are you of the opinion that they were engaged in an illegal activity, and if so, what was it?

A I think they were trying to find out what was wrong with this man's telephone.
Q Were they trying to place an illegal tap?
A Do I think that these two men were trying to place an illegal tap?
Q Yes.
A No, sir.
Q They were trying to find out what was wrong with the phone inside the club; is that right?
A Yes. I don't think they did it on their own volition.
Q Well, is that activity the one which prompted you to think that the superintendent of the state police was encouraging illegal activity?
A No, because neither one of those men were present or knew that he said that.
Q You said that there came a time when you interpreted Colonel Kelly's remarks to be an encouragement to the state police to engage in illegal wiretapping.
A I did not say that, Senator. I said that I do not know what Colonel Kelly had in mind when he made the remarks that he made.
Q Well, you said you changed your mind sometime later because of the Passaic County activity.
A In retrospect.
Q We are trying to find out the incidents that made you change your mind.
A Reflecting back on Colonel Kelly's remarks?
Q Yes.
A Yes, sir, they most certainly did.
Q Well, what incidents were there that made you think that Colonel Kelly was encouraging illegal wiretapping?

A I didn't say that. I don't know what he said.
Q I misunderstood you then, and I will withdraw that.
A Colonel Kelly just blatantly said, "Get the job done. I don't care where you go, how you do it, who you step on, just get the job done."
Q Well, the ultimate question that all of these questions are leading to is, is it your opinion, after spending that many years involved in state police activity, and specifically wiretap activity, that there is incidental, a moderate amount, or widespread illegal electronic surveillance conducted by the state police? That is ultimately what we want your opinion on. Can you tell us what your opinion is in that regard?
A Illegal?
Q Yes.
A I base my statement that illegal wiretaps ---
Q Unauthorized is a better word. Is it a widespread practice?
A No, it is not.
Q Is it an isolated incident that might happen?
A To my personal knowledge?
Q Yes.
A No.
Q Is it ever done, to your personal knowledge?
A By people that I know?
Q Yes.
A No.
Q What other evidence do you have of illegal wiretaps conducted by the state police, other than what you have testified to today?
A I just consider the wiretap illegal if, in my opinion, the affidavit is false.

Q Well, that is the kind of thing that I am talking about. If you are filing a false affidavit, that is either perjury or false swearing; so it is a criminal act to knowingly make an affidavit that is false; is that correct?

A Yes.

Q If a wiretap is authorized but prompted by an illegal act, the wiretap is illegal. That is what I want to know. How often the occasion is where false affidavits are knowingly filed or that no affidavits are filed and the state police just go out and tap wires?

A I would say, the state police just going out and tapping wires, I have no knowledge of that at all.

SENATOR MENZA: May I interrupt for a moment?

SENATOR DUGAN: No. I have just one further question.

BY SENATOR DUGAN:

Q Now, the false affidavits that support wiretaps, how often does the filing of a false affidavit occur?

A I'm referring back again to the Passaic County investigation ---

Q I want you to refer to your experience in its aggregate.

A False affidavits?

Q Yes.

A I have seen in my experience what I consider to be a false affidavit filed in support of a wiretap on the one occasion that I previously alluded to.

Q Are there any others?

A That I have seen?

Q That you know of through any means, whether you saw it or whether someone told you about one.

A No.

SENATOR DUGAN: That is all I have at this time. Senator Menza.

BY SENATOR MENZA:

Q You have testified as to one false affidavit; is that correct?

A Yes.

Q And that is the only false affidavit that you know about?

A Yes.

Q That is the one that has been heard in court already and ruled on by a judge?

A Yes.

Q And the judge in effect said it was not a false affidavit, if the wiretap was admissible?

A Yes.

Q In addition to that you testified to two incidents, one being two men on top of a pole trying to determine whether there was something wrong with the telephone inside the Cotton Club, and you trying to break and enter into the Cotton Club. Those are the two that you know of your own knowledge?

A Yes.

Q You don't know of your own knowledge with regard to Demasi and Castelano. That is just something you heard?

A Yes, sir.

Q You don't know of your own knowledge with regard to Sergeant Roscoe and the private investigator?

A Are you asking me if I know of them through my own knowledge?

Q Yes.

A No. I don't know of my own knowledge.

Q You don't know of your own knowledge about the class that was given?
A No.
Q Then, of your own knowledge, if you were going to court and raise your hand and testify, you would testify only about the affidavit - and correct me if I am wrong, by the way - and you trying to enter the Cotton Club, and the two men on top of the pole?
A No, because Senator Dugan concluded his questioning of me before I got finished with the other part of the Passaic County investigation.
Q What I am trying to ask you is, other than what you heard, hearsay evidence, and these other two incidents, do you know of your own knowledge of any illegal and/or unauthorized wiretapping?
A I know what I consider to be an illegal, consensual bug, if you will.
Q We will get to the consensual bug in a moment. Other than a consensual bug, do you know of your own knowledge of any unauthorized or illegal wiretapping at all?
A Within the state police, no, sir.
Q That includes everything that you have stated?
A Yes.
Q So in fairness, I'm asking you again. Of your own knowledge, do you know of any illegal and/or unauthorized wiretapping during your entire time with the state police?
A No, sir.
Q You know of one false affidavit, which has already been ruled on by the court; is that right?
A Yes. But may I just expound on that for one moment? I know of one false affidavit. Every wiretap issued as a result of that affidavit and reflecting on it,

I consider to be an illegal wiretap. If they are going to use an affidavit that contains the lies and the falsities in support of other affidavits and it becomes part of the investigation, it is my opinion that those taps are illegal.

Q It is true what you say, that a false affidavit thereby makes the order bad and thereby makes the wiretap bad, but in this particular case and with this particular false affidavit, you testified in court under oath and subject to cross-examination, and the court ruled in effect that the affidavit was not false and that the wiretap was admissible; is that correct?

A I don't know what the judge's ruling was, other than the fact that I was told that he ruled that all my testimony - and I think it consisted of four days - was irrelevant to the facts and irrelevant to the case.

BY SENATOR DUGAN:

Q Is there anything else that you would like to add, Mr. Mc Clellan? We don't mean to cut you off. If you want to tell us anything else, we would be glad to hear it.

A Do you want to get into consensual wiretapping?

Q Well, consensual wiretapping is not prohibited without a court order. I don't mean to cut you off. I have no questions on that. If you would like to add something yourself voluntarily as a witness, that is fine. You can say anything you want here, Mr. Mc Clellan. We don't want to shut you off. You have been good enough to come and give us your testimony, and we want to hear all of it that you would like to offer.

A It is in my testimony. I would like to read some pertinent parts.

Q Surely.

A On the bottom of page 9 and continuing on to the second paragraph on page 10, "Let me now reflect once again on the problems of bugging and eavesdropping. Consider, if you will, the fact that after extensive surveillance, it was discovered that two individuals under investigation met daily in a public place, and they always sat in the same location. Efforts were made by state police detectives and civilians to overhear the conversation of the two men, but without success. The next step was to place a tape recorder in the pocket of a coat and hang the coat as close as possible to the place where these two men sat, prior to their arrival, in an effort to tape their conversation.

"Neither the state police detectives or the civilians involved were a party of that conversation. Here again I must admit that I do not know what degree of success was met by this action. I do not believe that these detectives conducted this operation of their own volition. I do believe, however, it was discussed with the superior officer who gave the okay for the operation. This, gentlemen, I submit to you is definitely illegal."

Q Can you give us the names, dates and the times that you make reference to and the places?

A There were about 8 or 10 state police detectives involved in that operation. The location was the Haledon Diner on Haledon Avenue in Haledon, New Jersey. The dates are February or March of 1973. I'm not clear on that.

Q Who was involved?

A The man in charge of the investigation was Lieutenant Walter King. The civilian was a secretary to the

Narcotics Squad located at the Little Falls barracks. The detectives who participated in this surveillance inside the diner and outside the diner were Detective Carmen Palizzo, Detective Ferret, Detective Sweeney, Detective Logan, and Detective Palizzo's wife, and a friend and neighbor of Detective Palizzo and his wife, whose names I do not know.

Q What was the result of this investigation?

A The result of this investigation, in my opinion -- knowing the two men who were under investigation ---

Q Who were they?

A Emil Asa and Dominick "Red" Pizzano.

Q Did the investigation result in any indictments?

A Yes.

Q What disposition was made of that?

A Dominick Pizzano is either a fugitive or he has left the state and can't be found, and Emil Asa is supposed to be serving a jail term.

Q As a consequence of this investigation?

A Yes, as a consequence of this investigation, but not necessarily as a consequence of these particular incidents.

Q Do you have anything else you would like to draw our attention to?

A No.

SENATOR DUGAN: Senator Lynch.

BY SENATOR LYNCH:

Q What are the standard operating procedures with regard to an order by the court for a wiretap in the Organized Crime Unit? How does that come about?

A The detective must first go out into the field, conduct an investigation, surveillance, confer with an informant if there is an informant in the case.

SENATOR MENZA: There are always reliable informants, aren't there?

THE WITNESS: On their reliability, other than the ones I have spoken with, I would make no comment. As to whether there is always an informant, other than cases that I have been involved in, I can make no comment.

Getting back to Senator Lynch's question, he must then establish probable cause and/or special need that the investigation cannot continue any further without the use of electronic surveillance. He then brings it to the attention of the superior who transmits it to the Deputy Attorney General assigned to that particular unit, and then and there they go over the case together and decide whether there is enough probable cause and/or special need to draw an affidavit for a court ordered wiretap.

BY SENATOR LYNCH:

Q Did the Deputy Attorney General speak with you prior to the drawing of an affidavit or not?

A In my experience, yes, on all occasions. It was the same with each deputy attorney general throughout my entire involvement in electronic surveillance.

Q Did you testify before in a case where the false affidavit was submitted to the Court that the trooper who signed the affidavit was called to Trenton to execute the same?

A Yes, sir.

Q Did the Attorney General discuss the matter with him before he signed his name to the affidavit?

A I don't know. I was not there.

Q Where are the deputy attorney generals located?

A Where?

Q Yes.

A Division Headquarters in Trenton.

Q Who is there?

A The particular Attorney General was Michael Bossa.

Q The Attorney General was in the state headquarters?

A Yes, unless the procedure and/or location has changed. It was there up until the time I left the state police, yes.

Q Has it been your experience as a member of the state police to read the affidavit before you put your signature to it?

A Not only has it been my experience to read the affidavit, but I consider myself extremely fortunate in having established a close rapport with a particular deputy attorney general, and we would stay at his home prior to the day we would be going to Trenton to draw this affidavit. We would stay as late as necessary and go over the probable cause, special need, and we would write it out in longhand and submit it the next day to Trenton. I am speaking only of my own personal knowledge.

SENATOR LYNCH: Thank you. That is all I have, Mr. Chairman.

SENATOR DUGAN: We will now take a short recess.

(Whereupon there was a short recess taken.)

SENATOR DUGAN: Who is appearing for the Attorney General in response to my request?

R O B E R T P. M A R T I N E Z: Mr. Chairman, my name is Robert P. Martinez. I am a special assistant to Attorney General Hyland. With me is the former Deputy Attorney General Edwin Steir who is now Special Assistant to the Director of Criminal Justice. Mr. Steir is the

individual mentioned in Mr. Mc Clellan's testimony as having been one of the co-directors of the Organized Crime and Special Prosecution Section in the Division of Criminal Justice.

Also with me is Major William Baum who is the Chief of the Criminal Investigations Section of the Division of the State Police, and under whose jurisdiction all the units that were discussed here today in the Division of State Police fall.

SENATOR DUGAN: That is Major Baum. Was Major Baum in command of that unit all during the times that were made reference to in the previous witness' testimony?

MR. MARTINEZ: I will let him answer that.

MR. BAUM: No, I was not.

SENATOR DUGAN: When did you assume command?

MR. BAUM: January 1, 1974.

SENATOR DUGAN: Who was your predecessor?

MR. BAUM: Major Graff was the supervisor during most of the time. He retired in June of 1973 and there was an interim there for 6 months.

SENATOR DUGAN: Were you connected with that unit, Major?

MR. BAUM: No, I was not. I was in charge of the intelligence unit at that time.

SENATOR DUGAN: Did you have any liaison with that unit?

MR. BAUM: Yes, I did.

SENATOR DUGAN: Was it a close one?

MR. BAUM: Yes.

SENATOR DUGAN: When were you specifically aware of their activities?

MR. BAUM: I was with the electronic surveillance unit. That was under my command at that time.

SENATOR DUGAN: The electronic surveillance unit for the entire state?

MR. BAUM: That's correct.

SENATOR DUGAN: Okay, thank you. Mr. Steir, during the time frame made reference to in the previous witness' testimony, you were in essentially the same office that you are in now, in a lesser capacity, but doing essentially the same work?

MR. STEIR: Yes. I had direct field responsibility for the functioning of the attorneys who participate in the investigation of organized crime and corruption.

SENATOR DUGAN: Each of the three of you were here during the time that Mr. Mc Clellan gave his testimony, and you heard his entire testimony; is that correct?

MR. MARTINEZ: Yes.

MR. STEIR: Yes.

MR. BAUM: Yes.

SENATOR DUGAN: For the record, the Attorney General's Office was given a copy of Mr. Mc Clellan's testimony a week or two ago, and they were advised at that time that they should be prepared to respond to the things that were made reference to in that testimony by Mr. Mc Clellan concerning the state police operation; is that correct?

MR. MARTINEZ: That's correct.

SENATOR DUGAN: Are you prepared today to respond to his prior testimony and his testimony as given today, which is essentially the same as his prior testimony supplemented by names and dates and so on?

MR. MARTINEZ: That is correct, Senator. I am sorry that Mr. Boylan by prior committment had to leave at this point. We are prepared to testify, however, nonetheless in the same detail he would have given.

When Attorney General Hyland received your letter of transmittal and a copy of Mr. Mc Clellan's testimony, he directed that we inquire as to the circumstances alleged by Mr. Mc Clellan, and to prepare a response for the committee's consideration. We are prepared to do so today with one exception. He has now identified Detectives Castelano and Demasi as those individuals involved in the alleged stringing of wires in the central unit. We did not have that specific information from the prior transcript, but we will, of course, check into that and offer to report back to you with that information as soon as we are able to clarify that one specifically.

SENATOR DUGAN: The committee will expect then a written report to supplement your testimony today in that specific instance.

Rather than go over the specific references that were made or that were the subject of the committee's inquiry of Mr. Mc Clellan, assuming that you were on notice that these matters would be brought to your attention, and your response would be solicited, I am going to ask you to give us that response without leading you and in whatever fashion you choose.

I would like your response to the allegations that were made and suggested by Mr. Mc Clellan. Who is going to speak in response to my request?

MR. MARTINEZ: Senator, I would like to have Mr. Steir very briefly describe the organizational structure of the New Jersey State Police and the Division of Criminal Justice and the relationship between the two with respect to the chain of command.

I notice in the prior testimony of Mr. Mc Clellan there seemed to be some confusion about precisely how that works. I will ask him to speak to that briefly first, and then I will ask Major Baum to respond specifically to each of the incidents that Mr. Mc Clellan raised.

SENATOR DUGAN: I would like the record to show that there was reference made to that subject matter in Mr. Steir's prior appearance before this committee at the first public hearing that we had. The Attorney General, Mr. Steir, Mr. Boylan, and I think Mr. Richards testified but did not conclude their testimony. So I want the record to show that this is the second appearance of Mr. Steir.

Mr. Steir you have already been sworn, and I advise you that your testimony is still to be taken pursuant to that past oath.

I will ask the court reporter to swear in Mr. Martinez and Mr. Baum.

(Whereupon Mr. Martinez and Mr. Baum were sworn in by the court reporter.)

SENATOR DUGAN: The three of you being sworn, you may commence your response to the committee in any fashion you desire.

MR. MARTINEZ: I would like to commence with the testimony of Mr. Steir.

E D W I N S T E I R, having been duly sworn, testified as follows: Without going into a lot of detail about the history, I think it is important to understand the development of the Organized Crime Section of the Divsion of Criminal Justice and something about the relationship that has existed between it and various units of the New Jersey State Police.

In 1969 I was then Chief of the Criminal Division in the U. S. Attorney's Office in this district. Mr. Peter R. Richards was an attorney from the Organized Crime and Racketeering Section of the U. S. Department of Justice assigned to New Jersey.

When the State Grand Jury Act was passed, we were asked by the administration at that time - the Governor was former Governor Hughes, and the Attorney General was Arthur Sills - if we would establish the State Grand Jury and operate it and try to develop it into a permanent law enforcement institution in the State to combat the problem of organized crime which has been identified through legislative investigation and has been the subject of a great deal of newspaper publicity.

We set up a unit which operated within the New Jersey State Police in a unique fashion. We are not and have never been responsible directly to the New Jersey State Police. We have always been responsible to the Attorney General through our own chain of command. At the time that we started, we were directly responsible to the Attorney General. We functioned that way for over a year. We established the State Grand Jury and I believe the first indictment was returned in March of 1969.

When the administration changed, we were asked to remain and to continue to function as we had in the past. Under that administration, the Division of Criminal Justice was formed. The first Director was Evan Jahos. We were then made part of the Division of Criminal Justice and given the status of section. We and the attorneys responsible to us still functioned in basically the same way that we did under the prior administration.

We continued to function through the Cahill administration and are still operating in essentially the same way that we did back at the beginning. Although the structure on paper has changed somewhat, we still operate in much the same way as we did in the beginning with regard to the State Police.

As I indicated, our relationship with the State Police is such that I can't order a member of the State Police to do anything, nor can a member of the State Police order me to do anything in the course of an investigation. We work on a cooperative basis, a basis which is built on mutual dependence and, I think, on mutual respect.

It is a good system, in that it provides a kind of check and balance relationship. The State Police are interested in having good, effective attorneys from the Attorney General's Office working with them, and we are interested in having good, effective detectives working with us in investigations. But as soon as a problem develops, it comes to the suface very quickly.

BY SENATOR DUGAN:

Q Do you have your own detectives?

A We do not.

Q All your investigation is done by the State Police?

A That's correct. All of our investigations or

the investigations in which we participate with the State Police are presented to the State Grand Jury. A certain percentage of those investigations have involved electronic surveillance, but they are by no means the primary source of the matters that are presented to the State Grand Jury.

There is no point in going into details concerning the investigations that we have conducted, but over the years I think we have established a procedure with the State Police, particularly with regard to electronic surveillance, that provides for assurance to us and to the public that electronic surveillance as it's performed on the state level by us is being done through a series of steps, which have been carefully calculated by our office and the state police to assure that electronic surveillance is used most effectively and that it is only used in cases which are, in our view, of the greatest significance, and that it's done in a way that maximizes protection to the public. We regard it as a potentially dangerous device which is available to us, and we try to treat it in such a way as to assure ourselves and the public that it is not going to be abused.

I think that we have described to this committee the various steps that are taken in the preparation and the obtaining of an electronic surveillance order. John Mc Clellan described from his perspective, and I think pretty accurately, the procedures. He talked generally about the procedures that are followed in obtaining a court order for electronic surveillance. There is very careful scrutiny in both chains of command, that is, in the Organized Crime Section and

in the State Police to make sure that the resource of electronic surveillance is not abused or wasted, because it does consume a great deal of manpower and time, and we are very careful also because of the impact that electronic surveillance has on the public. We are very careful to see that it operates in as effective and honest a way as possible.

We have undergone very close scrutiny by the Federal Electronic Surveillance Study Commission, and from all indications, I think their findings have indicated that they look upon our operations as being done in a competent, effective manner.

We have been using electronic surveillance for a period of 6 years now, and to my knowledge, there have been no indications of widespread or substantial abuse. There have been legal issues which have been raised. Mr. Weissbard is here. Mr. Weissbard is an attorney who has been involved in representing individuals who have been the subjects of electronic surveillance. I think he has represented these individuals very effectively. Mr. Weissbard and we, of course, have disagreements with regard to legal matters. That is, issues have been presented to the courts with regard to electronic surveillance and when we take one position he takes another. But I think that there have been no scandals, and no evidence of abuses or of illegality on the part of the Attorney General's Office, the State Police or anyone else.

Q That evidence would be awfully difficult to see come all the way to the surface, wouldn't it?

A Scandals have a way of coming to the surface one way or the other. I would think that after 6 years

of electronic surveillance, just as the Watergate situation came to the surface, something would be there. Now, Mr. Mc Clellan has expressed some of his views with regard to activities with which he is familiar. We are prepared to respond to what he has said specifically.

Q I would like your response to the incidents that he makes reference to.

A There were two incidents mentioned in Mr. Mc Clellan's testimony in which the Attorney General's Office has been directly involved. The one incident involves the Haledon Diner surveillance and the other involves a preparation of an affidavit in which Mr. Mc Clellan's expertise was used. I have personal knowledge of both incidents, by the way, so I am not speaking just on conversations of other people since these matters have come to public attention, but I recall certain of the details of both of these events. Of course, most of the matters about which Mr. Mc Clellan testified from firsthand knowledge were all part of one broad investigation. The investigation involved a gambling operation which existed in the County of Passaic in the City of Patterson and its relationship to certain law enforcement officials. The subject of the investigation was to determine the extent to which the gambling and narcotics activities of Emil Asa and his associates were being protected by law enforcement officials in the City of Patterson and the County of Passaic.

It was a long and complicated investigation, and a very sensitive one, from our point of view, because of the involvement of law enforcement officials as the targets of the investigation.

We discussed at great length the subject matter of the meetings at the Haledon Diner between Asa and Pizzano. The question came up as to whether or not we could legally intercept those communications on the basis of consent. In view of the fact that they were being held in a public place, there was some feeling that we could intercept those communications because they were within earshot of patrons. And if the state police detectives were patrons and were in a position to overhear those conversations, legally we would be on firm ground in doing so.

But we decided that since there was an issue in the case, we would present the matter to the court and obtain a court order, if we could, to cover the situation, and in fact we did. I don't know whether Mr. Mc Clellan was aware of that or not, but apparently not. But in fact a court order was obtained to intercept those communications, and they were intercepted as a result of the court order.

The point I want to make is that, in a situation like the one I described, where that kind of problem arises we prefer to err on the side of caution.

In the other situation, I was concerned about the electronic surveillance. Statements were made which were going to be used in an affidavit to obtain an extension or a jump, that is, a wiretap based on the original. Mr. Mc Clellan referred to it as the one where his interpretations of those converstaions were to be utilized. As far as I was concerned, it was not the only basis for the court order that we intended to obtain. But I felt that it should be explained in the affidavit; that is, the communications that were cryptic should be interpreted as best we could.

I instructed Deputy Attorney General Bossa to make sure that those litigations were discussed with Mr. Mc Clellan and that we didn't go too far in the affidavit, and that nobody said more about those conversations than we would be prepared to back up under oath in court. It makes no sense to me to put yourself in a position with an affidavit where obviously you are stretching and straining an interpretation of a conversation in order to try and justify the wiretap, because ultimately you are going to be faced with a motion to suppress. You are going to have to live with whatever you have said in court.

BY SENATOR DUGAN:

Q What was the issue that was presented to the court in that respect concerning the accuracy of the Mc Clellan affidavit?

A I beleive that the position that was taken with regard to that affidavit was that under the Petillo case the court had to accept the affidavit at face value. That, as we understood it at the time, was the law in New Jersey. That issue is currently in the courts now; that is, whether the defense can go behind the face of an affidavit to question the accuracy or the honesty of the affiant.

Q Well, do you think - and I hate to interrupt you, but it is a very important consideration that we have discussed - that the defense should be allowed that prerogative?

A I would not hesitate to accept that position when there is a basis for alleging the intentional falsification of an affidavit by the affiant. In other words, if in the case of that affidavit there is a basis for the defense coming forward and saying

we have some evidence here that a certain portion of the affidavit was falsified, I would have no hesitation to permit the court to resolve that. I didn't try the case. I am giving you my personal view, rather than my understanding of what the law is.

Q Did the court then make no recrimination of the truth of what Mr. Mc Clellan said subsequent to his affidavit?

A I don't believe that the court did.

Q The court was bound by the maxim that it had to accept the affidavit on its face?

A I believe that that was the case. Now, again, I was not present in court. I am going on the basis of what I have learned from the attorney that did try the case and from a quick review of a portion of a transcript of that argument in that hearing.

MR. MARTINEZ: Let me interrupt here. Senator Dugan, there were a number of issues raised on the motion to suppress evidence. In fact, in the case in reference here there were two separate affidavits, one involving a search warrant and one involving a wiretap that were both brought into question by Detective Mc Clellan's testimony.

The court seemed to skirt around. The court heard his testimony in the first case on a motion to suppress in advance of trial.

In the second instance, during the trial when Mr. Mc Clellan testified out of the presence of the jury, the court ascertained in a general fashion that none of the testimony was relevant or admissible in a sweeping fashion, including the two affidavits.

Now, the court never expressly said, as I recall the transcript, that with respect to the wiretap affidavit or the search affidavit that it was relying on the Petillo case.

SENATOR DUGAN: Well, would that present any problems to you if the Petillo case did not shield you from the inquiry that I am sure Mr. Weissbard would like to make of some of your affiants? What problem would that present to you?

MR. MARTINEZ: Senator, with respect to that particular case, I don't want to comment about any problem, because I am advised ---

SENATOR DUGAN: In the abstract.

MR. MARTINEZ: In the abstract, okay. In this case, trial counsel made a motion for a new trial based upon these hearings. I would say in the abstract as you will hear from Major Baum, as he recites the cause of his inquiry into Detective Mc Clellan's allegations, we would perhaps be required to bring forth our own witnesses and the other individuals involved in the allegation of impropriety in the preparation of the affidavit and leave it up to the court to decide on the basis of weighing the present testimony as to who is correct.

I agree with Mr. Steir's suggestion or opinion with respect to what the law could be, but we have to attempt to bring forward some form of showing that there was an intentional wrongdoing, and I think the prosecution should be put to its proofs.

SENATOR DUGAN: The unfairness of that, assuming the worst situation, that there was an intentional misrepresentation knowingly made in affidavit form to support a wiretap that resulted in a conviction, it seems to some members of the committee that that presents and intolerable situation to the concept of justice as we seem to have developed it in this country.

Do you share that feeling?

MR. MARTINEZ: Well, there clearly would be a remedy in all cases where a prosecuting agency must specify in advance the grounds for the relief it seeks judicially. For example, in establishing probable cause for a search warrant it would, I think, fall precisely in the same category. We have to instruct our police and prosecuting agencies in such a fashion that the legislature and the public can have confidence that the people who are responsible for them have devised a sytem of checks and balances to assure that where there is a complaint or allegation of impropriety the proper investigation is made.

Our discovery rules are designed precisely to permit the defense attorneys the opportunity to approach the type of information they would need to develop this.

SENATOR MENZA: To do what? Let's assume for the sake of argument that the affidavit is a complete falsehood. I was wrong in my comments before with regard to Mr. Mc Clellan.

Let's assume that there are always reliable informants. The judge must accept the affidavit on its face and rule thereby. If there is no objection to it, the judge must thereby rule that the wiretapping is admissible, even though the affidavit may be completely false. Don't you think this is basically very, very unfair to the defense?

MR. STEIR: I would like to respond to that. Somewhere along the line - and the Constitution in the Fourth Amendment recognizes this - we have got to stop and say these are the facts on which the decision of the court has to be based; that is, we can't penetrate further and further and further. There would be nothing to stop a dishonest police officer ---

SENATOR MENZA: Overzealous prosecutor?

MR. STEIR: Overzealous is not necessarily synonomous with dishonest, because when you are talking about dishonesty you are talking about a crime. You are talking about the crime of perjury in putting a fact in an affidavit which is untrue.

There would be nothing to stop a criminal police officer who decided he was going to falsify an affidavit from producing a name of an informant or even producing a person. There are a lot of people around who would be prepared, I am sure, to swear falsely if the price were right. There would be nothing to stop that. Where then does the judge draw the line? How far must he investigate to assure himself that the man he is dealing with is not a criminal?

In my experience in law enforcement, people I have dealt with try to do an honest job. There are really live informants. Detective Mc Clellan testified in a prior hearing about some of his experience with informants. It is no trick to find an informant who can give you information about gambling and narcotics. They are relatively easy to find. In terms of the complexity of conducting your investigation, it is probably more difficult - certainly technically and you take greater risks - to engage in illegal electronic surveillance to develop your information. At the beginning there must be some source of information. You have to start some place.

SENATOR MENZA: Keep in mind that I premise my remarks on the testimony of Judge Kingfield and Judge Guiliano who testified last time. Their statistics have demonstrated that there has not been one wiretap order denied, ever, in the State of New Jersey. These orders are based solely and completely on affidavits. What you are saying in effect is that the court must accept the affidavit when orders are issued and that when the order is attacked or the affidavit is attacked that you can't go into that?

MR. MARTINEZ: I didn't mean to suggest before that the Petillo case applied in the instance of an ex parte application for a wiretap order. In fact, Detective Mc Clellan himself testified that he has been questioned on presenting an application or upon going with an attorney to present an application to Judge Guiliano or Judge Kingfield with respect to the

matters in the affidavit and so forth.

SENATOR MENZA: But from the practical point of view and the way the situation exists now, you can have a false affidavit, and you still always have a court order issued. That is the way it has worked in the past. I am not saying that they have been false affidavits, but there has never been one denied, never.

MR. STEIR: I think we are talking about two different questions here.

SENATOR MENZA: We are. But the point is this: I presume the police officer goes up to the judge with the affidavit. The judge questions him on the affidavit, ex parte.

MR. STEIR: But he really shouldn't, unless he has him under oath and has a transcript made, because the Constitution requires that the warrant be issued on probable cause under oath. So if he asks the detective questions without swearing him and without making record of it, that is really of no value to the court later on in determining whether or not that warrant was issued on the basis of probable cause.

SENATOR MENZA: Then we are not talking about two different things. We are talking about one thing. The affidavit is false - and many affidavits read, "based upon a reliable informant that we used in the past," et cetera, et cetera, and all of a sudden an order is signed.

MR. STEIR: More must go into an affidavit than that, I submit.

SENATOR MENZA: I submit to you that I have seen hundreds of these affidavits, and I could write one up right now.

MR. STEIR: Writing a false affidavit or sitting here fabricating and hypothesizing an affidavit is really not that difficult for anyone who has ever seen one. Writing an affidavit on the basis of an investigation in which you want to use it and where you honestly expect the device of electronic surveillance to be productive is very difficult. You have to start out with certain basic information. To say that a detective would sit there and fabricate an affidavit that he is going to use as a basis for using a wiretap arbitrarily on a telephone means that tremendous resources would be wasted, because the odds of picking up criminal conversation in the course of the wiretap are reduced by the fact that he has no probable cause to begin with. And if he has the probable cause to begin with, it is really not that difficult to take that information and put it in the form of an affidavit. There is no reason for the degree of illagality to go on that you seem to indicate that you suspect.

SENATOR MENZA: Not suspect, perhaps suggest that it exists on ocassions.

MR. STEIR: I am certainly not going to ---

SENATOR MENZA: Just one last question very quickly. Would it not be very fair, though, in the light of a basis for criminal justice, such as presumption of innocence, et cetera, that the defense have an opportunity to go behind the face of the affidavit ? Forgetting the perjury of the police officer, what the defense counsel is trying to do now is defend a guy who is entitled to all his rights. Now, wouldn't that be fair?

MR. STEIR: I understand the argument on that side of the ledger. Let me present an argument on the other side. We deal in a business where people's lives in many cases - and I don't want to overdramatize - are in jeopardy, the lives of potential witnesses and informants. Our system thrives, that is, the law enforcement system as I know it, and I have seen it on the Federal and State level, on the basis of informant information. There are very few other major sources of information on which we base investigation, and to put informants in the position where they might have to be identified and where they might have to be subjected to cross-examination by the very individuals about whom they are giving information means that that source of information, a major avenue of penetration of organized crime, would be shut off, in my view.

Now, I am prepared to accept the situation where, if there is an indication of illegality, then let us investigate it. Let's have it out. Let's air it in court. Give the defense an opportunity to pursue it and force the prosecutor to come in and produce his evidence. But until there is some indication of illegality, to start out with the presumption that a police officer is going to be dishonest in preparing an affidavit, I think you are going to bury your system, and I think it is unfair to the system, and I think it will create very serious problems for law enforcement.

SENATOR MENZA: If you carry that line of reasoning all the way, that means that you start off with the presumption that every witness who is cross-examined is lying. We have a system of cross-examination of witnesses. We have a system of presumption of innocence and being proven guilty beyond a reasonable doubt. I use moral certainty, and a defense counsel may use a different term, but it would seem to me that if you are going to balance the scales with the rights of the informant against the rights of the defendant, under our Constitution, I think the defendant has to win out. He must have a right to cross-examination.

MR. STEIR: But the Constitution sets out a very specific procedure for search warrants and that procedure does not envision consultation of witnesses. That particular provision of the Constitution has been explored at great length by the U. S. Supreme Court and many other courts and no court has come to the conclusion that at any stage an adversary proceding ought to take place with regard to the basis of an affidavit.

BY SENATOR DUGAN:

Q Mr. Steir, let me ask you a very naive question, perhaps. I think most of us, except attorneys who have criminal practice experience, look at Kojak and the rest of them, and the informant is the guy who sells newspapers, and he is really a nice little old man who is just trying to help Telly Savalas, but I don't think that is the case. What usually motivates an informant?

A Self-interest of one kind or another.

Q What kind?

A In some cases, informants are people who are in trouble with the law. In some cases, they are people who are in trouble with the subject of the investigation. In many cases, they are people who have some personal antagonism toward the individual about whom they are giving information. I think that that is the reason why the Constitution as interpreted in many Supreme Court cases requires that in the affidavit there be some independent corroboration for the information.

Q Well, if they fall into those categories, it would seem to me that if they are in trouble with the one on whom they are informing, they also realize they would be in worse trouble if they informed. That would be restraint on them. I would suspect, and do you think that I am right, that most of the informants are doing so to curry favor with law enforcement and to protect themselves from the consequences of a criminal prosecution?

A It is very difficult for me to make that kind of a generalization. Maybe Major Baum, who has spent a great many years with the State Police, could give you some kind of a percentage figure, but I think self-interest, from my experience, in one way or another is the common denominator in the informant situation.

SENATOR DUGAN: I will ask Major Baum about that.

M A J O R W I L L I A M B A U M, having been duly sworn, was examined and testified as follows:

BY SENATOR DUGAN:

Q What do you have to say about that situation, Major Baum?

A Quite honestly I have never really tried to equate it into a percentile situation.

Q No, I am just asking you about this in general terms.

A I would have to say this: everything that Mr. Steir mentioned about informers and self-interest, et cetera, is true. There are those people who do legitimately come into possession of very important information through the criminal justice system that are decent, honest people who want to come forth with the information and present it for the common good. This has happened in the past many times.

In New York there was the classic example of the man who informed on Willy Sutton. He was killed.

Q I am not interested in the classic, isolated case. I am interested in what usually happens in your day-to-day operations. Is the informer usually responding to your promise of some kind of help in minimizing the exposure that he has to criminal prosecution?

A A great many informers do fall into that category, yes.

Q Do you have any on the payroll, so to speak?

A Have we paid informer fees? Yes, we have. Do we maintain on a regular payroll? Normally, no.

Q No, no, I'm not---

A We don't have that type of money, I might say.

MR. STEIR: I hope we don't get any applications.

BY SENATOR DUGAN:

Q You know, Kojak puts the $20 dollar bill in the newspaper and this guy would have you think that he does

it on a continuing basis. Are informers often rewarded by monetary compensations?

A Informers have been rewarded by monetary compensation.

Q Is it a common practice?

A The more common practice is the other situation where they are looking for something in return. I would just like to go a little bit beyond that. When you say they are looking for something, let's say, that they are perhaps not telling the truth, and if we accept the fact that at the time they are not telling the truth, I think that really is doing yourself an injustice or doing us an injustice. Because we do not believe these people at first blush without thoroughly checking the circumstances surrounding the information that they give us.

Q Thank you, Major. I would like to see if we could put the line of questioning back on the track. The side bars have been very interesting, but we wanted you, first of all, to respond to the specific instances of possible irregularity, if not criminality that were engaged in by the State Police, if you take the worse inference from the testimony offered by Mr. Mc Clellan. Can you respond to those specifically?

A Yes, I can, Senator. I was assigned by the Superintendent, Colonel Olaff, to review the testimony given at the previous hearing by Mr. Mc Clellan and conduct such inquiries into alleged irregularities by the State Police. I have prepared an outline here in my notes. They are not necessarily in the order in which the committee questioned Mr. Mc Clellan. I don't believe it will cause you any problems to go that way, do you?

Q I see it is very voluminous. Can you make copies of that for us?

A It will take me about five minutes.

Q Okay.

A The first instance is ---

Q I don't mean to cut your testimony off, but I would like copies of that to supplement your testimony.

A I will have to get my notes retyped.

Q Okay, fine.

A The first instance is the matter of the two men who were not members of the electronic surveillance acting without court orders. They were described as stringing telephone wire across the rooftops. We had said before that Mr. Mc Clellan has supplied us with the names of the two detectives which I didn't have before and we will submit reports to you regarding that matter.

The second instance was the state police sergeant and a leader of a unit engaged in investigating organized crime and being accompanied with a private investigator. They were discovered on a pole in the Plainfield area. The sergeant was identified by Mr. Mc Clellan as John Roscoe who is presently a lieutenant assigned as an investigation officer to Troop A, Hammonton. Lieutenant Roscoe was interviewed concerning this allegation. I interviewed him. He advised that during the period of time in question he was assigned to the Criminal Investigation Section, Troop B Headquarters in Morristown, and this would be in the time frame of 1971 to 1973.

His principal responsibility in that assignment was the investigation of gambling. He claimed that he recieved information from a State Police Detective

that a telephone number located in the Plainfield area was being used to receive illegal bets. Roscoe advised that upon receipt of this information he followed the normal investigative procedures to develop this informational lead, including obtaining the name and address of the subject to whom the phone number in question was listed.

He stated that subsequent routine investigation including checking of available intelligence and criminal information failed to disclose any information on the subject in question.

Roscoe advised that he was familiar with an individual who had provided him with information in the past who was familiar with the central New Jersey area and queried him about this subject. The subject advised that he had no information. But he did know someone who lived in that particular area of town who might have information. Together they drove to the subject's house. The man had no information.

Further, it was assumed that this man's house might be used for a surveillance point but it was not properly located. He couldn't see the house, and he could not use it for a surveillance point.

He further advised that it was an old section of Plainfield, a residential area with large Victorian type houses. A routine surveillance would be very obvious. There was a large telephone pole on the corner. He claimed that he climbed the pole to use as a surveillance point. I might mention to the committee, inasmuch as you mentioned the T. V., Detective Toma from Newark has made a lot of money assuming various disguises. Our people are not less clever.

Q Do you mean he was imitating a telephone pole? (Laughter)

A I am referring to -- during the time he was up the pole, a telephone supvervisor came along and asked him what he was doing there. He identified himself as a member of the State Police and subsequently left.

There was no illegal activity taking place according to the report that I got from Lieutenant Roscoe.

Q Were both of the men on the pole?

A No. One man was on the pole.

Q And he was up there conducting a surveillance?

A That's right. It is a very good place to conduct one, I might say.

BY SENATOR MENZA:

Q This sounds kind of stupid, but don't you really need equipment to climb a pole. If they can see you -- say, if you are outside the door looking in or across the street, I would think they could see you pretty well on top of a pole looking in, couldn't they?

A Just like Toma, he is very obvious with his hot dog wagon, but you blend into the scenery. You are not there standing on the corner with your hat.

BY SENATOR DUGAN:

Q I think, Major, that the questions that Senator Menza and I ask suggest that in our view, the laymen's view, it wasn't the high point in police work to come up with the surveillance point on top of the pole in the residential neighborhood that you have described. It just seems very unusual to us.

A It is.

Q It is unusual and ineffective to us.

A Not necessarily so.

Q What was he looking for?

A He was looking to see any questionable individuals. When I say questionable, I mean a pattern of persons leaving

the house.

Q Where was the house in relationship to the pole?

A The way he explained it to me, he was on the corner and it was a step pole. You didn't need climbing gear to go up.

BY SENATOR MENZA:

Q What about the private investigator? Was there one present also?

A He claimed that it was a source of information of his. I did not press him as to the name of the individual. Again, as Mr. Steir related in his testimony that this man has cooperated with the State Police, and I believe that it would prejudice his reputation.

Q We are satisfied with that.

A The next issue was the State Police Detective, a member of the electronic surveillance unit atop a pole in Patterson. Mr. Mc Clellan identifed the men as possibly being Siebert, Logan and/or Weir. It is common practice that we conduct a survey of the type of equipment necessary to effect an electronic surveillance or a wiretap prior to the installation. In other words, we go up there and take a look at what is there and determine what kind of equipment we need. That is mainly to reduce the time period between the issuance of an order and the implementation of that order.

SENATOR BATEMAN: That is a normal procedure?

MR. BAUM: Yes, sir.

BY SENATOR DUGAN:

Q The concern of some is that you have the attitude, "Well, we know what we need and coincidentally we have it in our bag so we will hook it up and wait for the order."

A Senator, I have to say this to you: it is not in our interest to hook it up beforehand, because we can't use it. This is a great misconception that lay people have concerning electronic surveillance. Electronic surveillance to us, without being able to use it in court, is useless.

If we are getting an order, it would be ridiculous for us,to use your vernacular, to hook it up ahead of time.

SENATOR BATEMAN: In that case, you eventually got an order?

MR. BAUM: I believe we did. As I say, I don't know what case he is talking about. He mentioned today that it was a survey outside of the Cotton Club. In his previous testimony there was no mention of that. He mentioned the City of Patterson only. We have had a number of wire installations in the Patterson area.

SENATOR MENZA: Mr. Mc Clellan thinks it is unusual, though. He said he was there for five years, and he has been with the State Police for thirteen years. He said he thinks going up on top of a pole to determine the correct line to tap was unusual.

MR. BAUM: Well, Mr. Mc Clellan was not a member of the electronic surveillance unit. I would question his expertise in those matters. I am sure he was a very good detective in investigating gambling, but he was not an electronics expert.

BY SENATOR DUGAN:

Q Do you have anything further, Major Baum?

A Yes. Mr. Mc Clellan mentioned a State Police Detective conducting a class for the members of a unit on the methods of illegally tapping a telephone box.

I surveyed our Organized Crime Bureau Supervisor and all the unit leaders and I have been unable to determine that any such activity did take place.

Q You categorically deny that the hierarchy of the State Police knows or knew anything about such an allegation?

A We have no knowledge whatsoever. I might say this to you: we conduct classes in burglary. We conduct classes in the investigation of almost any type of crime. It is to our advantage to recognize the illegal in itself. The fact that someone would recognize or have knowledge of how an illegal wiretap might be implemented, I don't see that that has any real relevance here.

The fact is that we do in the State Police conduct investigations of illegal wiretaps.

Q And do you have classes to show how illegal wiretaps are instituted for purposes of demonstrating that fact ?

A No, we have not. I say it is possible that somebody might have talked about it. I don't know. In the formal school, definitely not. Categorically, no.

Q There is no point in the curriculum in one of your courses or one of your classes where the instructor says, "Look, here is how an unauthorized wiretap by someone else is installed"?

A There is no difference mechanically, Senator Dugan, between a legal and an illegal wiretap.

Q Yes, I understand that. But I am trying to reconcile Mr. Mc Clellan's allegation with what your practice is. That is the purpose of my question.
A It is not a practice for us to have a class in illegal wiretapping.
Q No, I am not suggesting that. I want to know if there is a class in wiretapping technique?
A Only for men in the electronic surveillance. It is more or less on-the-job training.
Q But there is a class devoted to that particular type of technique?
A It is more or less on-the-job training. We do not have a formal student fee.
Q Well, is there some theory or practice or technique that is taught in some formalized way in the classroom, or something like that, in connection with your general training program?
A All detectives are trained in monitoring, but as far as supplying a tap, definitely not, with the exception, as I say, of the men in the electronic surveillance unit.
Q But most State Police are trained in the techniques of affecting taps?
A Oh, absolutely.
Q Do you have anything further?
A The next issue was one that was not discussed today, but I think it is important. A State Police Detective monitoring a court authorized wiretap, intercepted a call from a known bookmaker who read verbatim the detective's affidavit for a wiretap application the previous day. Lieutenant Scalzone, the present supervisor of the Organized Crime Bureau in north Jersey advised on April 14, 1971, two wiretap authorizations were made in the Patterson area. Detective Mc Clellan

reported that he received information from a confidential source to the effect that the subjects of these wiretaps were aware of the fact that the State Police made application to tap their phone.

It was later learned that the subjects in question changed the site of their operation. Subsequently new wiretap orders were obtained which resulted in 9 bookmaking locations being raided and 13 subjects arrested and later indicted. It is noted that in the statement by Mr. Mc Clellan to this committee that he alleged this information was obtained over an existing wiretap. In fact it was received from a source known to him only.

Lieutenant Scalzone further advised that he was present in the office of the Organized Crime Bureau, North, when Detective Mc Clellan received a phone call from his source of information advising him that the principals who were the targets of this investigation were aware that a wire order had been issued.

Q To your knowledge, there was no recitation of the facts or no statement in the supporting affidavit which was read or substantially reported over a monitored phone call?

A No, it was just the fact that they were aware, and through the system they became aware that an order had been issued somehow.

SENATOR BATEMAN: Is that information easy to come by?

MR. BAUM: No, it is not.

SENATOR BATEMAN: How would somebody get that information?

MR. BAUM: When we receive and order for the

authorization of a wiretap, we have to go to the phone company for certain information, and particularly cable information.

SENATOR GREENBERG: Do you tell them that you have the order?

MR. BAUM: We have to advise them of the order. Unfortunately, at times, people who are not authorized might see something like this.

SENATOR BATEMAN: Are you suggesting that that information can only get out through the telephone company?

MR. BAUM: No, I am not suggesting that at all, sir. In fact, our relationship with the telephone company has been excellent.

BY SENATOR DUGAN:

Q Well, the opportunity for that being read lies within the State Police, the telephone company, and in the court; is that right?

A That's correct.

Q You don't have any idea where the lead was?

A What we did was conduct a rather extensive investigation at that time. We were unable to determine where the information did come from. We had a suspicion. As a result we tightened up our procedures. We have had no further problem such as this.

Q Okay, fine. Go ahead, Major.

A There was an allegation that an extension of the wire order for Ruby Odum's phone was obtained after the illegal wiretap indicated no illegal activity had taken place. Miss Ruby Odum was the girlfriend of Emil Asa, a known narcotic and lottery operator who was the principal of a state police investigation in Passaic County. The state police

developed probable cause to indicate that Asa did make and receive telephone calls on a phone listed to Ruby Odum in her home in Patterson in furtherance of the gambling and narcotics operation. Further incoming calls were intercepted on that phone that resulted in Asa's indictment. This matter is still pending trial.

Q I think that is the call that Mr. Mc Clellan made reference to as the tap that was in effect for two months without any evidence during the early part of that that there was any activity; was that so?

A That is the one he was referring to, yes.

Q Well, is that so, that the tap went on for three months?

A The tap was for two months and we did receive information over the tap.

Q That lead to what?

A That lead to indictment.

Q Was the conversation used?

A In the indictment, yes. I believe that he has been served with an inventory of it.

Q How early in that tap was this information picked up, do you know?

A I'm not prepared to give you that information. I don't have it. The fact is that the extension was not based solely on the original application. We received additional information for additional probable cause that this phone was being used in furtherance of his illegal activity.

Q In spite of the fact that nothing came forth in the last month or so?

A That's correct. It is not unusual that the first day or the first week or the first several weeks that you

are on a line that you fail to get incriminating conversation.

Q I know that that would be the case the first day or week or so, but when it stretches a month or two months and it is still unproductive, I would imagine that there might be some suggestion that that should be it.

A I would say this, Senator, I think that there are certain special conditions that apply here. This is not the normal type of gambling operation where it is on a daily basis. This is where there were conversations intercepted in furtherance of a conspiracy. Whereby, if you have a bookmaking operation you can tell in a day or so whether or not it is going to be fruitful. In this type of a conspiracy, particularly in narcotics, it is very, very common to go quite awhile until you get that critical phone call.

Q I see.

A In conjunction with the wiretap, we were using other investigative techniques to freshen our probable cause in matters such as this.

MR. STEIR: If I might add something with respect to that, in that investigation, as I indicated, it was a very broad investigation involving a number of electronic surveillance installations. On the basis of conversations that were intercepted on that particular installation, extension were obtained and other wiretaps were obtained, and all of that evidence was presented to the court in the affidavits that were submitted in support of the applications, and the matter is currently awaiting trial. The defendant will have an

opportunity to fully explore all those issues on a motion to suppress. If we were wrong, I'm sure the court will take appropriate action.

BY SENATOR DUGAN:

Q Since we are at that point, Major, I asked you for the percentage of something before. What is your batting average in producing evidence of criminality on all of the taps that you have had within a year? Are they all productive or half of them productive?

A I would say better than 90%.

MR. STEIR: Statistics are available. I have not calculated it, but I think the percentage is very high. I would think certainly in excess of 75% to 80%.

BY SENATOR DUGAN:

Q The next instance, Major.

A State police detective, after days of reviewing wiretap logs advises superior officer he could find no probable cause for a search warrant to be issued and was told by the officer, "I don't care what goes into that paper, I want to hit the house."

Lieutenant King, who was Supervisor of the Organized Crime Bureau North at that period, advised of an incident that occurred during the Passaic County investigation where Detective Mc Clellan was given the assignment to review all available information for the purpose of drawing an affidavit to obtain search warrants to permit the search of several locations suspected by the State Police of conducting illegal activity, illegal lottery and narcotics.

Lieutenant King advised that after several days it became apparent that Detective Mc Clellan was procrastinating,

and subsequently Detective Santelli was assigned to conduct this interview. It is noted that Santelli did in fact find probable cause for the issuance of search warrants which were later executed, resulting in the uncovering of evidence which lead to arrest, indictment, and conviction of the principal subject of this target investigation.

Q Can you identify this for the record? Who was the subject of that investigation?

A Emil Asa and a number of his gambling and narcotic operations.

Q It was in connection with that?

A That's right. All the information here basically involves the Patterson investigation.

SENATOR BATEMAN: You are saying that another detective eventually found probable cause in the same investigation?

MR. BAUM: That's right. Detective-Sergeant Santelli reviewed the matter, and using available information, including surveillance reports and information from existing logs, he was able to draw an affidavit to support a search warrant.

SENATOR MENZA: Why didn't Officer Mc Clellan do it? He used the logs also, didn't he?

MR. BAUM: Yes.

SENATOR MENZA: Why didn't he make up the affidavit?

MR. BAUM: I am unable to read Mr. Mc Clellan's mind.

SENATOR MENZA: You used the word "procrastinating." What do you mean?

MR. BAUM: Lieutenant King advised that after several days he asked Mr. Mc Clellan if he was able

to be effective in determining this information, and he said, "No." Lieutenant King then took the job away from him and gave it to someone else.

SENATOR MENZA: Mc Clellan was a monitor, wasn't he?

MR. BAUM: He was one of many monitors.

SENATOR MENZA: Was Santelli a monitor also?

MR. BAUM: Yes.

SENATOR MENZA: What about the gentelman who signed the affidavit, was he a monitor?

MR. BAUM: I believe he did some monitoring, yes. The fact as to whether he is a monitor or not really is irrelevant because all the reports, all the logs, and in fact the tapes themselves were available for review.

SENATOR MENZA: So, in other words, you yourself could have picked up the log and made up the affidavit?

MR. BAUM: That's right. The logs really are almost like a table of contents. It tells you where a pertinent conversation is, and you can find it. But actually the affidavits were not made totally on the electronic surveillance. It was based on the electronic surveillance along with other investigative information.

SENATOR MENZA: So the state police detective referred to here is Mr. Mc Clellan? The paragraph states: "Also consider the fact that a state police detective, after days of reviewing wiretap logs," et cetera.

MR. BAUM: According to Lieutenant King that was the statement referred to.

BY SENATOR DUGAN:

Q Would you please continue, Major.

A Yes. The next incident is that involving Colonel Kelly at the dinner in Jamesburg. The statement referred to by Mr. Mc Clellan was, "Let's get the job done. I don't care how you do it, where you go, or who you step on, do it."

Former Colonel Kelly was interviewed and he advised that he recalled the fact that he attended the dinner held by the Organized Crime Bureau at the Forsgate Country Club in Jamesburg. But he had no recollection of making that statement. He stated that he did make a statement in an effort to stimulate the activity on the part of the Organized Crime Bureau. He did not intend that members engage in any illegal activity in the performance of their duties.

I might say here, gentlemen, strict administrative controls and review of investigations are maintianed at all levels in the State Police. There is no carte blanche type of activity permitted.

SENATOR MENZA: When was the speech made?

MR. BAUM: I believe it was 1969. Again, I am going by Mr. Mc Clellan's testimony that it was the first anniversary of the Organized Crime Bureau. They went into operation sometime in 1968.

SENATOR DUGAN: We took that as a matter of his recollection and his interpretation of the meaning of those remarks. I don't think you have to go into that.

MR. BAUM: Okay, fine. There are just two other points I would like to go into. With

reference to the Cotton Club in Mr. Mc Clellan's testimony and the fact that he was ordered to effect a surreptitious entry into the Cotton Club, I discussed this matter with Lieutenant King and he advised that it was a misstatement of fact.

BY SENATOR DUGAN:

Q What was a misstatement of fact?

A The fact that Mr. Mc Clellan was ordered to make an entry into the Cotton Club. In fact, what did happen, according to Lieutenant King was that, A, the Cotton Club was a target of our investigation. B, we were interested in the possibility of putting a bug or electronic surveillance in the club. Prior to making application or writing the order, it was necessary to determine if we could physically gain entrance into this club in a surreptitious manner.

Detective Mc Clellan and Detective Furer were assigned to do a survey to ascertain if it was practical for us to attempt this type of entry.

After the survey, it was determined that it was not practical, mainly because there was an apartment on the second floor of the club that was the residence of a family. We felt that the probability of success of this operation was so slim that it was abandoned.

Q Did you have someone there who was an undercover agent?

A Yes, we had an undercover agent in the bar.

Q Why couldn't he tell you about the opportunity for entry?

A The fact of the matter is, Senator, that you have

to get in when there is no one else there. He wasn't in the position to tell us that. The problem was when ---

Q You mean he was not in an excellent position to tell you how to get into the club?

A No, sir. When the place was open he was there. We had to get in when there was no one there, when the place was closed.

SENATOR MENZA: So he in fact was correct.

MR. BAUM: Yes, sir. But he was not ordered to go in. He was ordered to make a feasibility study to see if it was feasible for us to apply for a wiretap order. There is no use in applying for a wiretap order if you can't implement it technically, because we waste our time, the judge's time and everyone else's time.

Mr. Mc Clellan responded to a question by Senator Zane, "How frequently do you think illegal taps were used to get search warrants to make an arrest?"

Mr. Mc Clellan responded, "From my own experience, 4 or 5 times."

The present and former supervisors of the Organized Crime Bureau were interviewed, and all denied having knowledge of any illegal wiretapping activity by personnel assigned to their commands.

I can say this to you, gentlemen, that I was in command of the Intelligence Bureau, which included the Electronic Surveillance Unit at the time the Wiretap Law was passed. One issue that was brought forth to our people at all times was that illegal wiretapping would not be tolerated

in the New Jersey State Police. There were no exceptions to this.

BY SENATOR DUGAN:

Q That is the part of your testimony that we are most interested in because you know, of course, that there is public suspicion that law enforcement agencies are engaged in illegal wiretapping as a matter of routine. It is very difficult to determine if that is the case or not. But I just want to be reassured by your statement.

A The reason why the electronic surveillance unit was structured in the Intelligence Bureau and not under the Investigations Officer was to provide a series of checks and balances. In the organizational structure of the state police, the intelligence officer is responsible to and only to the superintendent. All electronic surveillance operations are supervised by him. He does not have an operational responsibility.

Presently in my position as Investigations Officer, although I do review every request for wiretaps as a matter of policy, I cannot implement that request without the consent of the Intelligence Officer. That is before it goes to the attorney.

Q We share Mr. Steir's characterization of this as a "potentially dangerous device." We are looking for reassurance that this potentially dangerous device is thought of and treated in just that fashion.

A We in the State Police share your feelings in the matter, and further, those of us who have been in law enforcement for any length of time realize how valuable this tool is, and we do not intend to do anything to have it taken away from us.

Secondly, as I have said before, with the advent of legalized wiretapping, whereby you could use the fruits of the tap in court as evidence, it would be ridiculous to

conduct illegal taps. It is just wasting time, quite honestly.

SENATOR MENZA: Major, I am more concerned with the court ordered illegal tap than anything else. I would think the State Police would not as a practice illegally tap. That is kind of crazy. I'm concerned with the evidence presented to the court to obtain a tap.

And I am really very, very concerned about the fact that not one in five or six years has ever been denied, ever.

MR. STEIR: Can I respond to that?

SENATOR DUGAN: Surely.

MR. STEIR: I think that both Judge Kingfield and Judge Giuliano, if my memory serves me correctly, indicated that there were times when they would tell the prosecutor that there was not enough there, and the prosecutor might take the affidavit back and develop some additional evidence or rework it in a way that would be consistent with the Judge's feelings in the matter. In a sense I suppose that is a denial, but perhaps more important than that, I can speak about our own point of view on the quality of information that must go into an electronic surveillance application. Probably the same holds true of the prosecutors, although they are here and perfectly prepared to speak for themselves. We do not push the law to its limits in our applications. We want to make sure that there is more than ample information in our applications when they are finally presented to the courts.

We don't think it serves anybody's interests to push the law to the limit only to have the application thrown out on a motion to suppress and all the time and effort put into the investigation was wasted.

There are many, many applications that come up through the system that are turned down by Major Baum, or by me. We review all of them, and we turn them down because of a number of reasons, including the fact that there is not sufficient probable cause presented to us.

After we review it we can be certain that there is probable cause. I have been in this business since the law was passed in the State, and I think that I am cautious in my judgements. I'm sure that I have probable cause in that affidavit, and that it more than meets the minimal legal standards. That is why when that affidavit is ultimately taken to court, the chances are the judge is going to say this does satisfy the legal standards.

SENATOR BATEMAN: Do you turn down more in the system than you approve?

MR. STEIR: I think yes. I think that is true from my experience. At various stages of the development of the affidavit, I would think that would be correct.

MR. BAUM: I think there is a bit of a misconception on how a request for a wiretap evolves. There was testimony previously that perhaps might give the impression that a detective goes to an attorney general and an order is written and in effect they take it to

the judge. It is far more complicated than that.

First of all, as Mr. Steir has said, this is a very expensive tool for us to use. We choose up our resources at a high rate. First of all, the first thing that we determine is, is this particular operation worthy of using a tool as powerful as wiretapping? We don't go hunting for rabbits with an elephant gun.

Secondly, is this particular application in keeping with our priorities and policies at that time? It might be probable cause or it might be a reason that we don't go because that particular item that the detective might come in with does not fit into our operational plans at that time.

The next issue, of course, would be, do we have the manpower? Many, many times we turn them down because we do not at that time have enough manpower to put on the job. This is really at the operational level. This is even before we start talking about probable cause.

When a commander comes to me with a request for a wiretap order, he has to assure me that he has the resources to implement that order. I have turned down, I think, 8 or 10 this year because we didn't have the manpower resources to implement them. What this in effect means is that we are highly selective.

SENATOR DUGAN: This is not the appropriations committee. (Laughter.)

MR. BAUM: We don't take the issuance of a

wiretap order lightly. There is one more point. Mr. Mc Clellan referred to a telephone tap in Passaic County, stating two men were talking about a subject who was running for sherriff and in a heated moment as if to say "I'll punch him in the nose," he said, "I'll kill him." He stated that the next day a court order was issued for conspiracy to commit homocide.

That is a misstatement. The statement in question, "I'll kill him," was one of 18 points of probable cause used to obtain an extension of a legal tap, which ultimately lead to the arrest, indictment and conviction for misconduct in office of a county official.

SENATOR DUGAN: I don't have any further questions. Mr. Martinez, do you have anything further to add?

MR. MARTINEZ: No, sir. I think that concludes our presentation with respect to the allegations that we have, except for the incident involving Demasi and Castelano.

SENATOR DUGAN: All right. Thank you very much. I would like the reporter to mark this letter from Mr. Boylan as an exhibit and part of the record. (See page 53x) We will now adjourn for lunch, and we will reconvene at two forty. Thank you.

(Whereupon there was a luncheon recess taken.)

AFTERNOON SESSION

SENATOR DUGAN: I announced earlier that Mr. Weissbard would be the first speaker this afternoon. However, because of a change in plans, Assemblyman William Hamilton will speak first.

W I L L I A M J. H A M I L T O N, J R.:

I speak today as one who has been a federal prosecutor at a time when court authorized wiretaps were tools we did not possess and which, on at least limited occasions, we could have used to good advantage for valid law enforcement purposes. I am also speaking as a sometimes criminal defense counsel and, more importantly, as a citizen concerned with potential abuses in the area of wiretaps as they involve invasion of personal freedom and privacy.

I have not had intimate professional experience with the New Jersey wiretap law, never having dealt with a case that involved that kind of evidence, but I have read with concern each of the required annual reports concerning the wiretap law for the years that the law has been in effect. There are three significant things which I have noted from my review of the annual reports:

1. No application for a court authorized wiretap has ever been denied. The reports themselves will bear this out without further elaboration.

2. Wiretaps have been approved in an apparently disproportionate number of gambling and gambling-related offenses, and I do not intend to minimize that kind of violation when it does involve elements of so-called organized crime.

I note, in picking one of the reports at random, that for the year 1970, there were 137 orders, allowing for some duplication and overlap between lottery and gambling and bookmaking. There were 101 authorized

taps involving gambling and some 86 that were characterized as involving conspiracy. I suspect that some number of the gambling offenses also involved conspiracy. In the following year, 178 orders were issued of which 52 were characterized as gambling, 90 as bookmaking, 42 as lottery, and 101 as conspiracy. Again, for fairness and accuracy, I would point out that there is some overlap in those figures. In the next year, there were 70 for gambling, 48 for bookmaking, and 57 for lottery out of a total of 228 orders.

I am not going to read the figures from the rest of the reports, but I think that was enough to highlight an area of possible concern and to point out that the court authorized wiretap is being used rather extensively in one limited area. I would say from past experience in the law that those are the types of offenses that have always been prosecuted and, perhaps, could have been prosecuted without the use of electronic surveillance and court authorized wiretaps.

3. There appears to be a great disproportion in the use of wiretaps as an investigative and evidence gathering technique among the various prosecutors' offices in the State. There seems to be a great growth in some counties and a rather dramatic fall-off, as I read it, in the use of it, as the Attorney General himself admits, as an investigative technique. I think that is a matter that perhaps deserves the concern and inquiry of the committee.

I would also note the concern frequently expressed by attorneys in legal arguments before the courts of this State that the requirement in the statute of showing, as a precondition for court authorized wiretaps, that other investigative techniques have not worked or will not work has been honored in the breach. Generally, no more than a conclusionary statement to this effect

has been presented - the so-called boiler plate - to the judge considering the application for the court approved wiretap.

Before giving you the conclusion that I would draw from all of that, I would like to deviate slightly into an area that has recently come to light and which I think ought to be a matter of concern to your committee regarding the question of invasion of privacy. I refer in this connection to the recent disclosures in the hearings before our State Public Utilities Commission in late February and continuing through the month of March. I will try to set those disclosures forth as succinctly as possible.

Bell Telephone has maintained that it undertook a monitoring program based upon the discovery of electronic toll fraud of an unknown magnitude and that this was an alternative to a program of network modification that would have involved a substantial investment. Bell further maintains that, between 1966 and 1970, legitimate calls were randomly recorded and immediately erased and that calls presenting evidence of fraud were recorded for analysis. They assert that no legitimate calls were ever listened to during this or any other period that did not contain initial indications of possible fraud. During that period, from 1964 to 1970, AT&T scanned more than 30 million calls for preliminary indications of fraudulent use, and some 1.5 to 1.8 million calls were placed on a master tape for further analysis. This yielded 500 actual cases of toll fraud in which 270 convictions have been obtained, according to the information I have, on the basis of evidence Bell produced before the PUC.

In our State, 2.6 million calls were scanned by a unit Newark, and approximately 280,000 calls were recorded. This amounts only to about two calls in 10,000.

However, there is another aspect to this industrial surveillance or industrial monitoring, if you will, and that involves the supplying of equipment and service by the telephone company to customers to enable them to evaluate the quality of service they are provided. There are about 175 business customer installations, according to a recent story in the New York Times, which subscribe to this service. There are restrictions put on obtaining the service: It must be a business subscriber. A signed letter is required stating that the purpose is for supervisory control and the training and development of employees. The employees must be informed that their business lines are subject to supervisory control, and the subscriber must agree that the equipment cannot be used for any other purpose.

I cite this because I believe my purpose here today, in addition to commenting on court approved wiretaps, is to ask your committee to take steps to determine whether legislation is required to curb or regulate the practice of monitoring. I, and I am sure you, have not read the entire 403 page record of the PUC hearing which I have obtained from Commissioner Joel Jacobson. I am not making any judgments of my own at this time about this practice which was vigorously defended by the New Jersey Bell, but I think we ought to note that considerable credit should be given the PUC, which, under Commissioner Jacobson, issued a show cause order and undertook on its own initiative to investigate this problem. I suggest that your committee might well communicate with Commissioner Jacobson to get copies of that record, analyze it, and defer any final decisions on whether to act in that area until the PUC issues its report on the subject. I would suggest too that the committee obtain a copy

of Maryland house bill 768 which was referred to in the testimony of a representative, Mrs. Clara Allen, of the Communications Workers of America. That bill, according to the witness, achieves by statute what the California PUC did by regulation to clarify issues surrounding monitoring. The things that are included in that bill, as I understand it, are as follows: It would allow telephone companies to continue to monitor for service quality purposes. It would prohibit the telephone companies from making any form of written or electronic record of the substance of any monitored conversation, and it would prohibit the telephone companies from using the concept of service quality monitoring for discipline purposes. Finally, it would require service quality problems that are discovered by way of service monitoring to result in retraining which is considered the normal means; that is, non-disciplinary in nature.

I have a copy of the letter that New Jersey Bell sends to subscribers who secure the monitoring service. The Bell representatives admitted before the PUC that they accept the good faith assurance from the firms that they are complying with the requirements but make no check of their own. They reported only one instance of abuse which involved discovery of abuse of the equipment by an employee. Possibly either the telephone company or the PUC should have the responsibility of insuring that monitoring equipment is not abused.

I think that it is important to note also that Bell representatives said that the New Jersey wiretap law recognizes the right of the telephone company to engage in service, observing quality control programs, and also expressly recognizes the right of the telephone company to intercept and disclose telephone communications

when it is necessary to the protection of the rights of the property of the communications carrier. For this reason, and because of their belief that the 1968 federal act had the same thrust, the phone company did not seek judicial approval of monitoring because its counsel felt it was authorized by statute.

I note these things for two reasons: first, to show that the subject is properly before the committee as a part of its review of the wiretap law, and secondly, to suggest that a review should be made of the law, specifically as it relates to monitoring, to see if there should be judicial involvement or guidelines or controls based on legislative or administrative action.

As to the specific or more direct questions before your committee, it is my considered judgment that the existing law has provided inadequate measurement tools to accurately weigh the balance between legitimate law enforcement needs and the impact on personal privacy. I would suggest, therefore, on balance, that a continuation of the law is probably justified over a relatively short period of time, something on the order of two years, while more objective data on the balance between these two competing interests are obtained and considered.

For the purpose of providing such data, there was introduced, in both this and the last legislative session, legislation aimed at providing the information to make a re-evaluation. In this session, that bill, A-1082, has passed both houses and awaits only the Governor's signature to become law.

A-1082 would require the annual report, provided for by statute, to include the specific crimes in connection with which interceptions are authorized and the number of indictments and convictions resulting

from each. In this way, the effectiveness of the Act, measured in terms of convictions, can be more objectively evaluated.

A-1082 would also protect confidential communications, that is, communications between clergymen, physicians, and attorneys with their penitents, patients, and clients, by providing a statutory definition of "special need." "Special need" is required under present law for the interception of communications on telephones belonging to clergymen, physicians, and attorneys, as well as telephones that are public in nature and installed in a place customarily used by husband and wife. There is at present no definition, however, of "special need." The need for such a definition is demonstrated from the number of applications involving telephones used by these classes of persons whose communications have traditionally been protected. I would point out that in the report before me involving the year 1970, there were no orders issued which involved findings of "special need." More recently, in 1973, of the total of 220 orders, 162 orders involved findings of "special need," although that term, again, is not defined. For the year 1974, which involved a total of 138 orders, some 93 of those orders involved a finding of "special need." I would suggest that the need for such a definition is demonstrated by these numbers. In order to intercept communications on a telephone used by these classes of persons whose communications have traditionally been protected, under A-1082, the application would have to demonstrate grounds for believing that the clergyman, physician, or attorney was personally involved in a violation of the law and not merely that his penitents, patients, or clients might be so involved.

With the added data that that bill and, perhaps, amendments that your committee may formulate would provide, this committee, in a year or two, can more validly consider whether the law enforcement results from court authorized wiretaps justify the invasions of personal privacy and possible abuses in this area so as to warrant a longer term continuation of the law or whether, at that time, the law should be further amended or repealed.

SENATOR DUGAN: Thank you, Assemblyman. The committee shares your concern about 1984 arriving prematurely with the monitoring practices that were made reference to in the PUC hearings. I have directed our staff to get a copy of that 400 page document, and I will go over it carefully so that I can bring to the other members of the committee your recommendations. We also share your interest in the other amendments that you suggested, and we will very carefully consider your testimony.

ASSEMBLYMAN HAMILTON: Thank you, Senator. There are a limited number of copies of that PUC document, and I would be happy to make the one that was made available to me available to your staff.

SENATOR DUGAN: We'll take you up on your offer, and we'll also request one for our own records.

Thank you very much for your testimony.

Mr. Weissbard will be the next witness.

H A R V E Y W E I S S B A R D: My name is Harvey Weissbard. My home address is 6 Colonial Terrace, Maplewood, New Jersey. I am a practicing attorney with offices at 55 Park Street, Montclair, New Jersey. I want to thank you, Senator, for inviting me to attend these hearings, and I would like to say right at the outset that I am speaking here on behalf of no group, for no special interest except my own. I do speak as an

attorney who has been involved in wiretap cases almost from the very inception of the law, an involvement which I admit has been exclusively as a defense counsel. I have been personally involved in several of the major court decisions on wiretapping as well as having tried several cases in court involving wiretapping.

Prior to coming here today, I directed to most of the members of the committee a brief, which I called an open letter, presenting my views on two specific areas of the wiretapping law. I don't intend to repeat those comments at length here today. I do have some extra copies of that which I would like to leave with the committee for those members to whom I failed to send it initially.

I merely want to emphasize to the committee that, in reviewing this statute, as the committee has undertaken to do, your attention should be directed to the court decisions that have construed the law since it was enacted. I think that it is essential that every member of the committee, whether they are attorneys or not, read those decisions. I think it is clear to you, as it should be, that the courts, through misinterpretation or imposition of their own philosophy, can totally undo the painstaking work of any Legislature. I suggest that this is precisely what has happened here in two important areas. I want to touch briefly on those and comment on the way in which the bill, 1417, would affect those two requirements, and those are the ones dealing with "special need" and the minimization of interceptions of communications not subject to interception otherwise. Let me deal with "special need" first.

As I pointed out in the brief that I submitted, the Appellate Division decision, State v. Sidoti, and the Supreme Court decision, State v. Dye, I feel have literally written the "special need" requirement out of

the statute by interpreting it in such a way as to make it require no more than just probable cause. Obviously, since probable cause is required anyway, that interpretation leaves "special need" as surplusage. I do think, however, that S-1417 and Assemblyman Hamilton's bill, A-1082, go part of the way toward restoring some meaning to "special need," and I, therefore, would favor those amendments.

Unfortunately, the one gap that I do see is that those bills fail to deal with the question of "special need" to tap a public telephone. But, I think that a strict control on the so-called minimization requirement would do much to protect the public from unwarranted intrusion on public telephone calls.

With respect to minimization, the situation, as I see it, as it exists today, and as it would exist under this bill, S-1417, is critical. Apart from probable cause, the minimization requirement is probably the most important part of the wiretapping law. As you know, it forbids law enforcement officials conducting an otherwise lawful wiretap from listening in on conversations which obviously have no bearing on the matter under investigation. As Judge Handler pointed out in the Molinaro case, our Legislature, the one that originally enacted this bill, specifically added language to the provision which showed an intention to make it even stricter than the federal law on which the New Jersey law had been modeled. I will quote briefly what he said in Sidoti and Molinaro: "The New Jersey Legislature evinced a sensitivity to the unique threat to individual privacy posed by electronic invasions." Again, he said, ". . . the New Jersey Legislature attempted to be scrupulous about the protection which it fashioned for individual privacy." Let's see what has happened to the legislative intention.

I would respectfully suggest, as I did in the brief, that the New Jersey Supreme Court decision, State v. Dye, which I cited in the brief, has completely destroyed the usefulness of the minimization requirement. The court decided there that, if there was a violation of the minimization rule, and as a result, innocent, noncriminal calls were overheard, as a sanction for that violation, only innocent calls would be suppressed under section 21 of the wiretap law. It seems to me that just to state that proposition is to recognize its absurdity. If suppression of evidence is going to be the sanction for noncompliance with the statute, it obviously must contemplate suppression of that which the autorities want to use, not that which they don't care about.

SENATOR DUGAN: Weren't they talking about the question of identity of the speaker and suppressing material that would only bear on that?

MR. WEISSBARD: No, I don't think so. I think the Molinaro case was a case where the state police, pursuant to the power that they have, listened in on all the calls. They did not monitor them to screen out anything. They just put on the wiretap and recorded all the calls within the court authorized period. The result was that they overheard a tremendous number of completely innocent calls, calls between a young teenager and her girlfriend discussing their boyfriends, calls between the wife of the home and her grandmother or mother discussing recipes, things that were not even arguably relevant.

SENATOR DUGAN: What do you suggest? I know what the court suggests, but what do you suggest?

MR. WEISSBARD: I think that what has to be done is this, and I had intended to get to this.

SENATOR DUGAN: I'm sorry; I didn't mean to interrupt you.

MR. WEISSBARD: I will definitely get to that. I'll go through this as quickly as I can. I know it's late.

I think that the decision has taken the heart out of the minimization requirement. It removed any incentive for the law enforcement authorities to comply with the provision, and the door was left open for listening to all calls just as was done in Molinaro.

Unfortunately, this bill, S-1417, would go even further, in my view, in destroying the minimization requirement. It would limit the minimization to merely "making reasonable efforts, whenever possible, to reduce the hours of interception authorized by said /court/ order." While the intent behind that proposal may have been to limit the invasion of privacy, I suggest that the result is going to be just the opposite. By limiting minimization to this one area, that is, limiting the hours of interception, permission is granted to listen to and record every call within that period no matter how innocent, and this is precisely the kind of activity that was condemned in Molinaro. In fact, it is not surprising to me that this proposal emanates from the Attorney General's office - I think this is their bill - because it has been their practice, as shown in Molinaro, to do precisely that: listen and record every call within the authorized period. On the contrary, it is possible in many investigations to have the monitoring officer turn off the devise when an innocent call commences. In fact, this is the procedure that is followed by the Essex County prosecutor's office, and I am sure that Mr. Matthews, who is here, or Mr. Lordi can testify to that. They have used that with notable success since the inception of the statute. The insertion of that

language in the bill is unnecessary because I feel that the courts are already in a position to conclude that minimization hasn't been accomplished if the hours of tapping are not limited. On the other hand, inclusion of the language in it leaves the door open to serious invasion of privacy which might otherwise be curtailed by a court decision.

If it is felt that some language should be inserted to clarify the minimization provision, then I think further language should be added to make clear that this is not the sole minimization requirement, or further specific limitations should be added as suggested in the Molinaro case. Most importantly, however, I think something should be done, re-enacting this law, to overrule the Dye decision. One alternative would be to amend section 21, the suppression section, to state clearly and unequivocally that "where suppression is ordered as a result of the violation of any of the substantive provisions of the Act, all the calls intercepted as a result of the wiretap must be suppressed, innocent and incriminating." While that is a possibility, it strikes me that insertion of that kind of language would really clutter up section 21, which is, the way it stands now, a very clear expression of intention. At least, it is to me if not to the Supreme Court in the Dye case. A better alternative, I think, would be to include a statement in the legislative history that is going to be attached to this new law, if you re-enact this bill, to the effect that "by re-enacting section 21, the Legislature intends to overrule State v. Dye insofar as it mandated only suppression of innocent calls when that section was violated." I think it would be difficult, if not impossible, for the courts thereafter to ignore the legislative intention or to distort it as it was done

in Dye. That is my suggestion on that score. I think that, if the committee puts a clear statement in the legislative history that is going to accompany the bill stating that this is the intention of the Legislature, it would cover that aspect.

During the hearing last month, which I attended, it was also suggested that, in wiretapping cases, the State should be required to disclose to the judge, in camera, pertinent information concerning a confidential informant whose information is relied upon to obtain a wiretap warrant. This is the concern that was expressed by Senator Menza this morning. I am fully in accord with that suggestion. Nearly every wiretap warrant that I have seen, as Senator Menza reflected, has been supported by information initially obtained from a confidential informant. That assertion, as was also mentioned this morning, is permitted to go completely unchallenged under the Supreme Court decision in State v. Petillo. That case held - it was dealing not with a wiretap, but with a regular search warrant - that, on a suppression motion, the truth of the matter contained in the affidavit for a warrant cannot be challenged. I don't think there is any suggestion--- I think I understood Mr. Steir to agree that that applies just as much to wiretap warrants as it does to search warrants. Thus, there really is no effective check at all on the officer submitting the affidavit. He knows that whatever he says must be accepted by the courts. Whatever one thinks of the doctrine in the regular search cases - and I think it's a terribly pernicious doctrine - certainly something more should be required in the area of wiretapping. In camera disclosure of information about the informant is at least a bare minimum which should be required in these situations.

In conclusion, though I am opposed to wiretapping generally, in principle, I suspect that it is a little late in the day to hope that the law is now going to be discarded. As with any law enforcement tool, once the authorities use it for awhile, and have success with it as undoubtedly they have done, the pressure becomes too great to abandon the weapon, and so it is with wiretapping. Unfortunately, pressure tends to build for further expansion of any useful law enforcement devise, and, as you are aware, such expansion is always at the expense of individual rights. Here we are talking about the right of privacy. I urge the committee to resist the pressure to expand wiretapping powers and to continue to limit them strictly as you attempted to do when this law was originally enacted.

I would like to conclude with one quote that I think is very pertinent from a federal case dealing with a regular search, but I think it is just as pertinent to wiretapping. The very famous federal judge said this:

> We meet in this case, as in many, the appeal to necessity. It is said that if such arrests and searches cannot be made, law enforcement will be more difficult and uncertain, but the forefathers, after consulting the lessons of history, designed our Constitution to place obstacles in the way of too permeating police surveillance which they seemed to think was a greater danger to a free people than the escape of some criminals from punishment . . .
>
> If the rule were otherwise, then in the pursuit of the guilty, many innocent persons would be subjected to very grave harrassment. A free country cannot afford to indulge the theory that the apprehension of the guilty by any means whatsoever is justified, for that is the path of tyranny. Doubtless, more violators would be captured, but at the expense of vast intrusions upon the liberty and privacy of guiltless persons as well, an unacceptable price in a free society.

SENATOR DUGAN: The committee shares your concern about all of the matters that you brought to our attention. We also want to thank you for putting all the time and effort that you did into making your presentation and brief. We are very much aware of the anxiety that you and many of our citizens share in regard to the things that you brought to our attention. You can be assured that every one of the suggestions that you made in your letter and in your testimony today will be individually considered by the committee. So, each of the suggestions will be considered on its merits, and a determination will be made on that basis.

MR. WEISSBARD: I am sure, from everything I have heard today and the last hearing, that that will be the case. Thank you very much.

SENATOR DUGAN: Thank you.

I notice that there are several prosecutors here. We'll hear from Prosecutor Woodcock of Bergen County unless you prosecutors have agreed on some order of presentation so there is no overlapping or repetitious testimony.

MR. WOODCOCK: Senator, I think the President of the Prosecutors Association should be first. I will, therefore, yield to Prosecutor Williams.

MR. WILLIAMS: I think, Senator, that perhaps Karl Asch would be a good person to start.

SENATOR DUGAN: Fine. Mr. Asch, would you come forward, sir? Welcome, sir.

Prosecutor, we would like to generally hear your views on whether or not this committee should extend the presently existing wiretap law, whether it should be amended in your view, what the hazards are that you see in any prospective action we might take, and what your suggestions are.

K A R L A S C H: I am Karl Asch, prosecutor of Union County. I want to thank you for the opportunity to appear here today. I also want to thank you for the invitation which was extended to me previously while I was President of the Prosecutors Association. I also thank Mr. Williams, Mr. Woodcock, and my brother prosecutors for their courtesy in permitting me to go first.

Let me say first, before getting to my prepared statement, that I was at a law enforcement conference with Director Boylan, which prevented me from hearing all of Mr. Weissbard's remarks. However, if I could, I would like to read for the record the last statement that he made which took two or three minutes to be read by him and with which I completely agree. Before talking about our experiences and our views, I would like to explain that I do not like snooping or snoopers, and I do not enjoy, as some kind of private gratification, wiretapping per se. I have a greater abhorrence, however, for criminality which can strike at the vitals of our society, and we are sworn to a certain duty. Consequently, where technology is used by the criminal element, it is our sworn duty to follow them, to apprehend them, and to property prosecute them, and to do it within the law.

I have for each of you, if you wish, a chart which shows the results of electronic surveillance in New Jersey by the prosecutors and the New Jersey State Police from 1970 through 1973 as well as that of other jurisdictions.

Court authorized electronic surveillance was not the result of a demand by law enforcement officials to make their job easier; it was the direct result of a state of affairs which existed in the United States, but even more dramatically apparent in New Jersey, evidenced by the influence of organized crime upon our lives, and the ability of organized crime to corrupt public officials through the use of illegally-gained fortunes. That public outcry for a return to the dominance of organized law enforcement over organized crime led to the hearings in Congress, and to the formation of the President's Commission on Law Enforcement and Administration of Justice. The result of those efforts was the Omnibus Crime Control Act of 1968. That federal statute permitted the States to enact wiretap statutes as long as the procedural requirements for obtaining the wiretap order were as strict or more strict than the requirements required of federal officers. New Jersey enacted such a law, N.J.S. 2A:156A-1 et seq. Now, after five years of court authorized electronic surveillance, after all of the motions and arguments attacking the constitutionality of the statute, the conduct of the wiretap and the sufficiency of probable cause, and after rulings by the trial and appellate courts throughout this state, there has been no proof of illegal conduct by the intercepting officers nor of any intentional scheme to invade privacy and embarrass persons who were the subjects of the interceptions.

Any fears of the public, which I would consider justifiable in a vacuum, concerning widespread, indiscriminate wiretapping and bugging by police officers,

should be put to rest, once and for all. The only persons who, to our knowledge, speaking as the Union County prosecutor, are the subject of electronic surveillance by police officers are those persons who are committing certain specified offenses, or are part of a continuing conspiracy to commit one of those specified offenses. The law-abiding citizen has nothing to fear.

In the total picture of criminal investigations, electronic surveillance represents a rather minimal part. However, the results produced by court authorized electronic surveillance only serve to emphasize further the necessity for this investigative technique in the continuing battle against organized crime and criminal conspiracies.

The greatest problem facing a Prosecutor in explaining, or justifying, to a layman the use of electronic surveillance is making the person understand just how difficult it is to obtain a wiretap order.

You members of the committee know, but, for the record, let me relate once again the difficulties we have.

First, experienced detectives and prosecutors decide that an investigation is particularly suited for electronic surveillance.

SENATOR DUGAN: Would you please do this in the first person? In your office in Union County, how does it come about that an application is made for a wiretap in a hypothetical but usual case?

MR. ASCH: We receive information, through intelligence or informants, people who may be willing to cooperate with the law. That information is then checked.

SENATOR DUGAN: Information about what?

MR. ASCH: About an alleged organized or ongoing criminal conspiracy.

SENATOR DUGAN: Specifically what? Somebody tells you what?

MR. ASCH: The majority of the cases involve gambling. However, there are many other crimes.

SENATOR DUGAN: Let's use one of the majority of cases. Let's use a typical gambling case. What happens? Who comes in and says what to whom in your office?

MR. ASCH: An informant advises us that the telephone is being used for certain criminal purposes, and he tells us what the number is. We ascertain, through our own checking, that the information appears to be true.

SENATOR DUGAN: How do you do that?

MR. ASCH: Typically, an investigator checks as a call is made and he, himself, overhears it. He hears the bet being put in, or he, himself, may be put into the operation so that he, himself, can make the bet, one way or the other. We ascertain that this ongoing conspiracy is indeed proceeding.

SENATOR DUGAN: In a typical case, who is this informant who comes forward?

MR. ASCH: He could be somebody that we busted who may be seeking some cooperation from the State. He may be somebody who has been beaten physically or beaten financially. He could be a person from many possible sources who has some reason to relate this to us.

SENATOR DUGAN: In the usual case, is this someone whom you have busted?

MR. ASCH: Sometimes.

SENATOR DUGAN: Is this coming forth with this information a product of your going forward and saying, "Look, we have this, and we are going to make a certain disposition of this charge against you, and

do you know of any gambling activity in the County?" Is that the typical way in which the information comes to your attention in the prosecutor's office?

MR. ASCH: Most of the information does not come to me directly.

SENATOR DUGAN: I'm talking about your office.

MR. ASCH: It is my understanding that this information comes in various ways, although I have had informants come to me directly who may have wanted revenge on people who hurt them badly.

SENATOR DUGAN: How many applications for wiretaps did you make last year?

MR. ASCH: In 1974, the number, I think, was in the 20s.

SENATOR DUGAN: Twenty-five according to this.

MR. ASCH: In 1973, I think we had 56.

SENATOR DUGAN: Is that typical of what happened that year? Did 56 informants, in one way or another, bring these matters to your attention?

MR. ASCH: One way or the other, yes, sir.

SENATOR DUGAN: O.K. Once you get this information, what happens?

MR. ASCH: Sometimes we get the information from other law enforcement agencies which have gotten the information. I would call that a kind of intelligence, but it is checked and verified. After that, we do what we can with surveillance work to see what we can establish as to the complexity of the operation and the way it works - a kind of background and technical work. We have an organized crime unit with a gambling section, and these men have a growing expertise. I think it has to be understood that, before law enforcement started fighting back, the inroads of organized crime had already developed a very effective illicit organization. Thereafter, when we find that we can go no further to

discover the full extent of the operation and that further surveillance might indeed jeopardize the operation, all the legal pleadings, the application, authorization, and orders, are prepared by qualified, experienced assistant prosecutors. Fourth, those assistant prosecutors know enough that they will not even present an application to me for my authorization, or to a judge for the issuance of an order, unless they first satisfy themselves that probable cause exists and that every statutory requirement is met. The county prosecutor or the Attorney General must first authorize the presentation of the application to the judge, thereby placing a level of responsible, appointed authority above the investigative personnel. By that I mean that we seriously scrutinize this application. Sixth, if the prosecutor authorizes the presentation of the application to the judge, then the independent judicial authority, who stands between the citizen and the State, must satisfy himself that this is a proper case for electronic surveillance.

SENATOR BATEMAN: Did you ever have any turned down at that stage?

MR. ASCH: Yes, sir.

SENATOR BATEMAN: How many?

MR. ASCH: I think about three. I remember that, at the last hearing, Judge Guiliano and I referred to one, and I think that Judge Kingfield sent two or three back. What we would generally do in such a case would be to see if we could work it up so that it would satisfy the requirements.

SENATOR BATEMAN: Generally speaking, the difficulty you described is in the process before it goes to the judge; you could almost describe that process as automatic.

MR. ASCH: Well, I wouldn't minimize the judge's role because the judge has that responsibility. He doesn't represent the prosecutor.

SENATOR BATEMAN: But, the history has been that very few have been turned down at the judicial level, very few.

MR. ASCH: Yes; that is our experience.

SENATOR BATEMAN: I think that is statewide.

MR. ASCH: I have turned a few down too.

SENATOR BATEMAN: Oh, I'm sure of that. You were describing the difficulty of the process to the point where you had it prepared to go to a judge.

MR. ASCH: And that judge is one of only seven in the entire State designated by the Chief Justice of our Supreme Court to receive applications and execute orders for electronic surveillance. Those judges require a more convincing showing of probable cause to obtain a wiretap order than to obtain a search warrant. Seventh, at some point after his arrest or the receipt of the required notice that he has been the subject of a court authorized electronic surveillance, the citizen has the right to review all of the papers prepared by the State in connection with the order, to listen to all of the conversations, and thereafter to attack the conduct of the State in the hope of suppressing all of the evidence resulting from the electronic surveillance, as violative of the Fourth Amendment.

It is unfair to judge five years of constructive, professional law enforcement efforts in the field of electronic surveillance by the experience of some isolated aberrant instances, which I too would condemn, or by the experience of, say, the DeCarlo or DeCavalcante tapes. In those latter cases, which involved illegal bugging by federal officers and patently inadmissible evidence, the names of some innocent public officials

were given wide publicity because they were mentioned during conversations between organized crime figures. That information became public knowledge only after a defense attorney required it to become a part of the record.

In every court authorized electronic surveillance, there is of necessity an invasion of privacy. The only innocent parties who suffer an invasion of privacy are those persons who call or are called by the tapped phone and engage in a non-pertinent conversation. In that case, though the courts authorize us to do otherwise, State v. Dye, 60 N.J. 518 (1972), cert. den. 409 U.S. 1090 (1973), we do not record those conversations. We do, however, monitor those conversations, since at any time an innocent conversation can turn to a most critical conversation which goes to the heart of the criminal activity. What is the injury to the non-criminal private citizen in that case? Our statute, N.J.S. 2A 156A-3, proscribes the unauthorized disclosure or use of any intercepted communication, without an order of the court, and sets up penalties that are far greater (5 years, $10,000 fine) than those for other misdemeanors (3 years, $1,000 fine).

SENATOR DUGAN: You're not serious about that question, are you, Mr. Asch? Are you suggesting that there is no injury to somebody who has their private conversation overheard illegally or for no good purpose?

MR. ASCH: Those are two different questions, Senator.

SENATOR DUGAN: Well, answer them in the alternative, then.

MR. ASCH: I think that there is some injury in snooping. It is, to me personally, offensive. When you say "for no good purpose," you are not talking about the use of electronic surveillance as practiced by the prosecutors.

SENATOR DUGAN: I didn't think you asked a rhetorical question; I thought your questions was, "What harm is there when an innocent person's conversation is overheard by someone who has no right to overhear it?"

MR. ASCH: Your criticism, in that sense, is correct, and I would agree with it. That is an unfortunate consequence, but we do not record it, and we do not repeat it.

SENATOR DUGAN: Do you think we should provide in the law that that be mandated in all cases?

MR. ASCH: I think it is required by law. Well, State v. Dye does not mandate it, but it wouldn't bother me if it did because that is our practice anyway, and we lose nothing by not repeating gossip. We are not concerned about gossip.

SENATOR DUGAN: What do you think of Mr. Weissbard's suggestion that, for the abuse of it, the sanction should be the suppression of the entire series of communications?

MR. ASCH: I did not hear that part of his testimony.

SENATOR DUGAN: He said we should overrule State v. Dye.

MR. ASCH: I disagree with that. I don't think you should throw that baby out with the bath water. If some silly investigator blabbed, "Did you hear that Crook X, who is a very bad person and deeply involved in a network of criminal activity, is taking a trip to Florida," and on the basis of that statement, one was to

move for suppression of extremely pertinent evidence, then I think that we would be doing an injustice to what society demands.

SENATOR DUGAN: The example that he cited was when every conversation was recorded over an extended period of time, and the overwhelming majority of the conversations had no relevance at all to the inquiry that should have been made by the law enforcement agency conducting it.

MR. ASCH: I still would not do it, but I, personally, would not want this information recorded, and we don't do it that way.

SENATOR DUGAN: I didn't mean to interrupt you. Please go ahead.

MR. ASCH: I think that the penalties I mentioned, five years, $10,000 fine, should act as a pretty effective prohibition.

Wiretapping involves a weighing of competing interests: The right of the citizen to be protected from criminal activity versus an individual's right of privacy. However, there is no right to have privacy in the conduct of criminal enterprises. I don't think that anyone would postulate that theory. Unless someone outside of law enforcement can point out abuses as a reason for eliminating electronic surveillance as an investigative tool, then we must recognize the value of the instrumentality intrinsically just as we use other technological tools and investigative techniques.

SENATOR DUGAN: What results have you gotten in Union County in the gambling cases? Has there been a diminution of the opportunity to place a bet in Union County by reason of the vigorous use of this?

MR. ASCH: I have been flattered by some condemnatory obscenities that we picked up on the wire. They seem to think so.

I would like to cite, if I may, a few examples of what we have done so that we can get away from mere rhetoric and into the substance of what we have accomplished. May I, sir?

SENATOR DUGAN: A gubernatorial campaign was founded on that type of comment, you know. (Laughter.)

MR. ASCH: I'm running for nothing. (Laughter.)

SENATOR DUGAN: I said that facetiously.

I asked that question very seriously. I wondered what effect these vigorous anti-gaming programs of the prosecutors had? What has the result been? Have they effected suppression of that activity, and if so, to what extent? It seems that it's like pulling weeds out of a garden: You lock one up, and there's another one there doing the same thing the next day. It seems sometimes as if it's an effort that isn't fully productive in terms of preventing the activity.

MR. ASCH: Well, part of it is philosophy, Senator. I think that these are poisonous weeds, and I think that it is worth the effort. I further think that we are performing and that we are suppressing. I am not sanguine, and would not contend, that you cannot put a bet down in Union County, but it is my understanding that we have diminished the opportunity and that we have diminished the "take" from their criminal enterprises. I have a concern about gambling, in part because of the information that we receive from the FBI and other federal sources. They tell us that about $9 billion a year is received from illegal gambling, that this is larger than the gross of the six largest corporations in the country, that all of this money is untaxed, and that all of this money goes to further other criminal endeavors, such as, murders by contract, loan sharking, the importation of heavy amounts of hard drugs, and the gamut of criminal enterprises, and the infiltration into what is described as legitimate business.

SENATOR DUGAN: Perhaps a better way to attack that problem, then, would be to remove the penal sanctions against gambling and just say, it's been with us and will always be with us. Perhaps we had better recognize that and stop trying to suppress an activity that apparently has inherent support in our national and state communities.

MR. ASCH: If that was done, and if that was what the people of the State of New Jersey wanted, and if they further wanted us not to enforce the law, even against people who might then be conducting a semi-legitimate occupation illegitimately - that is to say, the difference between the liquor dealer and the moonshiner, and there still might be that - then that would end it.

SENATOR DUGAN: I'm not suggesting that. I'm suggesting that people might be saying to us, perhaps not overtly when those questions are presented to them on the ballot, but covertly by supporting this type of activity, that they don't think that gambling is a criminal activity, that it's a natural exercise, and that we should decriminalize gambling.

MR. ASCH: Not at trials; they don't tell us that. I think that we are dealing with a minority of the population that is willing to deal in illicit activities. I think the majority of our people are honest and law-abiding. When people are brought to bar, they are found guilty. If the people thought that this was a sanctionable activity, these criminals would be found innocent.

SENATOR BATEMAN: Let me ask the question another way: If you didn't use wiretapping on gamblers, how much would you have used it in Union County?

MR. ASCH: I think that our average was about two-thirds for gambling, sir. The other kinds of activities

have been broken down as follows: In the year 1973, which was the year that some might consider our high-water mark, or our nadir, depending upon---

SENATOR DUGAN: What happened in the succeeding year to cut your applications?

MR. ASCH: Part of it was because we had so much work to do, and there is just so much that one man can do. It is a matter of exhaustion and time. We did not increase our staff in 1974, although our work load continued to increase all the time.

SENATOR BATEMAN: How many of the gambling taps led to other things? Many? Few?

MR. ASCH: I would say not too many. Ordinarily, the things that they would be most likely to relate to, in our experience, would be labor racketeering or loan sharking, and sometimes other activities. We did, in 1973, have one for murder, 33 for gambling, four for larceny and receiving, two for extortion, and 16 for narcotics, controlled dangerous substances. In other years, we have used them for other purposes, but I think that this is a pretty fair average.

If I may, I would like to give you a few examples of some of the accomplishments:

(a) In the fall of 1972, court orders were obtained for a hairdresser's place of business in Union County and for his home in Essex County because he was involved in selling cocaine. After seven weeks, which involved five additional wiretap orders, the investigation was concluded with the arrest of 42 persons and the seizure of $20,000 in cash and more than $200,000 worth of drugs. Had electronic surveillance not been used - and that is what we are asking for, the relative importance - the only arrests would have been the hairdresser and his friend for the sale of a small amount of cocaine to an undercover agent.

SENATOR DUGAN: What was the final disposition of it?

MR. ASCH: They were found guilty.

(b) In the spring of 1973, court orders were obtained for two phones in the home of a numbers controller in Union County and for the apartment of a numbers runner in Essex County. Six weeks and three additional wiretap orders later, the investigation was concluded with the arrest of 30 persons for gambling offenses. One of the persons arrested was an alleged leading organized crime figure whom the federal authorities had been concerned with for 30 years. Twenty-seven thousand dollars in cash was found in planters in the basement of his home. Without electronic surveillance, only two persons would have been arrested, nobody at that high level, and a small amount of lottery slips seized.

SENATOR DUGAN: Were there convictions in that case?

MR. ASCH: That case has not been concluded; there have been some pleas; there have been no acquittals, and we await trial.

(c) In February, 1974, court orders were obtained for apartments in Union County and Middlesex County, for persons involved in a ring transporting large quantities of marijuana from California into New Jersey. After only three days of electronic surveillance, limited to 15 calls, the officers executed search warrants and arrested three persons and seized 160 pounds of marijuana, shortly after the drugs had come

off a plane. Physical surveillance might have been productive, but it would have involved an investment of men and time, around the clock, that no agency in New Jersey could afford, with not much likelihood of success.

(d) In the spring of 1973, a court order was obtained permitting a transmitter to be placed in the shack of a dock boss at a large trucking terminal, to uncover the dock boss who had been extorting monies from truck drivers to give them preferential placement in the loading and unloading lines. None of the drivers were willing to testify, and physical surveillance would have been physically impossible and unproductive. Electronic surveillance uncovered the conduct that the Waterfront Commission had long suspected was going on.

(e) In the fall of 1973, a court order was obtained to wiretap a telephone in a luncheonette in Plainfield, a center of numbers activity. Just two weeks later, the investigation was concluded in Hudson County with the arrest of a person connected with organized crime who was in possession of the daily action and records of 82 numbers writers. Without electronic surveillance,

only the chef and the helper in the luncheonette in Plainfield would have been arrested for an unimportant lottery charge.

(f) In 1972, a widespread Cuban numbers operation existed in the Elizabeth area. There were at that time only four police officers in the Prosecutor's Office and Elizabeth Police Department who could speak Spanish. It would have been impossible for these officers to conduct surveillances, because they were known in the community and because they just did not have the time. Nevertheless, as a result of obtaining court orders for electronic surveillance in three separate investigations over a period of months, 70 persons were arrested for conspiracy and lottery offenses and the numbers operation broken.

SENATOR DUGAN: All of the cases that you referred to will be made part of the record. Prosecutor, we will also incorporate into the record the remainder of your prepared statement, if we may.

MR. ASCH: That will be fine; I know it's getting late and my brother prosecutors still have to be heard. (The remainder of Mr. Asch's prepared statement follows.)

There is now pending before the Senate of this State Bill S-1417. During the last year, much time has been spent by the Prosecutors in discussing different proposed legislative amendments for the wiretap law, discussing the problems that arose during the conduct of wiretaps and in the court proceedings that follow, and discussing constructive solutions to the objections raised by many responsible citizens to wiretapping. The result of those meetings was a Joint Report of the Attorney General and the Prosecutors' Association, dated June 4, 1974 (hereafter Joint Report). Based on all this, I am prepared to urge, on behalf of the Association, that you recommend to the entire Legislature the continuation of the New Jersey Wiretapping and Electronic Surveillance Control Act. The Association further recommends the adoption of all sections of S-1417, except the additional paragraph added to N.J.S. 2A: 156A-12.

The Joint Report recommended the adoption of a provision which would read:

> An order authorizing the interception of a wire or oral communication shall, upon request of the applicant, direct that a communication common carrier shall, at any time during the effective date of the order, furnish the applicant forthwith all information, facilities, and technical assistance necessary to accomplish an in progress trace or interception, unobtrusively and with a minimum of interference with the services that such carrier is affording the person whose communications are to be intercepted. Any communication common carrier furnishing such facilities or technical assistance shall be compensated therefore by the applicant at the prevailing rates.

However, when S-1417 was introduced, that language was changed drastically:

> An order authorizing the interception of a wire or oral communication shall, upon a showing of special need by the applicant, direct that a communication common carrier use its best efforts to furnish forthwith the applicant with all information, facilities and technical assistance necessary to accomplish an in-progress trace or interception. This assistance shall be provided unobtrusively, and with a minimum of interference with the services that such carrier is affording the person whose communications are to be intercepted. Said order shall limit the hours that the carrier shall be obligated to provide said assistance, and shall specify the circumstances under which an obligation to provide assistance shall arise. Any communication common carrier furnishing such facilities or technical assistance shall be compensated for the costs of any assistance rendered to the applicant. Said carrier shall be immune from civil liability for any assistance rendered to the applicant pursuant to this section.

The purpose of the Joint Report proposal was to require the phone company to assist in an in-progress trace "upon request" of the applicant "at any time" during the order. But S-1417 goes further, apparently at the request of the New Jersey Bell Telephone Company, and requires the applicant to first show "special need" for an in-progress trace; requires that the phone company "use its best efforts" to complete the in-progress trace; requires that the order limit the hours during which the phone company must cooperate; requires that the order "specify the circumstances under which an obligation to provide assistance shall arise;" and lastly, grants to the phone company immunity from civil liability arising out of its assistance to the applicant.

The real objection to this section of S-1417 is that it makes it almost as tough to obtain an in-progress trace from the phone company as it is to obtain a wiretap order to uncover criminal activity. But an in-progress trace is not an invasion of privacy. It is not a wiretap. It merely gives law enforcement knowledge of the phone number used by someone, such as a top man in the organization who takes advantage of present procedures. The Joint Report proposal, with the addition of immunity from civil liability, is a more practical solution. After all, it is the phone company which provides the facility which enables the subject to commit the crime.

The Association is also concerned with that portion of S-1417 which would amend Section 12 to require the officers to make "reasonable efforts, wherever possible, to reduce the hours of interception authorized by said order" and thereby minimize or eliminate non-pertinent communications. Again, this has been the practice of most agencies, but conflicts with State v. Dye, 60 N.J. 518 (1972), which permitted the interception of all calls subject to penalties for unlawful publication or disclosure. The problem is that those "reasonable efforts" will require an additional and lengthy hearing, will further delay the trial, will not produce uniformity of practice among agencies nor uniformity of decision among the reviewing courts.

In conclusion, may I state, in the words of Justice Potter Stewart, that the wiretap law balances an effort to prosecute organized crime with an effort to protect personal privacy from unreasonable intrusion. It would indeed be unfortunate, and represent a damaging blow to dedicated, honest law enforcement officers, to deny then the use of an investigative technique in order to properly detect, investigate, arrest and convict those involved in organized crime and premeditated corruption. The choice of the medium whereby the criminality flourishes is up to the criminal. If they would not use it we would have no reason to. But it is the means whereby they conduct highly sophisticated, terribly lucrative operations which undermine the very foundation of an honest society.

We have two alternatives. We can pursue the criminals into their heartland, following the trails that they themselves lay down, and try to root out their cancerous activities. Or we could sit back, pay lip service to the will of our honest citizenry, and use relatively primitive techniques that would give crime the right to laugh at the law's impotence.

For too long New Jersey merited a national reputation as a haven of crime and corruption. Now we have fought back. The

decent, honest citizenry of the state, those who were revolted by the conditions that confronted us, demanded that law prevail over lawlessness. A concerned and reflective legislature enacted the necessary legislation. The executive branch of government enforced it. The Judicial branch continually reviews the implementation of the law, safeguarding the rights of each and every individual while it balances the needs and rights of society in general. Now is no time to turn back. Now is no time to return New Jersey to the state of affairs that predated the enactment of the Electronic Surveillance and Control Act. (End of prepared statement.)

SENATOR DUGAN: Thank you very much, Mr. Asch. I would also like to add our thanks for all the preparation you put into this. I know I have had conversations with you prior to your appearance today, and I know you are concerned about the retention of what you consider an enormously effective tool in getting your job done.

MR. ASCH: That's why - because it's an enormously effective tool. Let me thank you for your concern and for the concern of all the Senators and those who are working with you. We appreciate your interest, and we need your help.

SENATOR DUGAN: Thank you.

The next witness will be Prosecutor Joseph Woodcock of Bergen County.

J O S E P H C. W O O D C O C K, J R.: First of all, I would like to thank you, Senator, and the other members of the committee for the opportunity to be heard on what I consider to be a very important piece of legislative business in the 1975 session.

I have had the unique experience of being a member of the Senate and a member of the commission and committee that considered the original wiretap legislation when it was introduced by then Senator Forsythe. I remember that the purpose in enacting not only that piece of legislation, but much of the legislation that followed dealing with witness immunity, the statewide grand juries, the SCI, etc., was solely to do something about organized crime here in the State of New Jersey. I recall that, at the time that we were considering the legislation in the Senate and the Assembly, there was great concern then, as there is now, with the impact of this kind of legislation on the privacy of the citizens of the State of New Jersey. There was great concern on the part of the legislators that we might be doing something that would be abused and something that would be overused to the detriment of the privacy of the citizens of this State, and not in the interest of better law enforcement against organized crime.

I think, on balance, that the wiretap legislation has not been abused, has not been overused, and has, in fact, been used in and for the betterment of better law enforcement in the State of New Jersey while, at the same time, recognizing the right of privacy of the citizens.

I was here at the last session of the committee when we heard a number of witnesses, and I listened to the questions that evolved from that testimony. It seemed to me that there was some indication

that there might have been too many wiretaps here in the State of New Jersey. Well, I cannot answer for the other 20 prosecutors in the State, but I would just refer briefly to the statistics of my own office, going back to 1970 and running through 1974.

In 1970, the Bergen County prosecutor's office had 10 wiretaps authorized, resulting in 26 arrests in Bergen County and four in counties other than Bergen. In 1971, we had seven wiretaps with 24 arrests, all in Bergen County. We had six wiretaps in 1972 with 26 arrests, all in Bergen County. In 1973, there were eight, resulting in 13 arrests in Bergen County. In 1974, we had, I believe, a total of seven wiretaps, five of them made by our county office, one made on behalf of the Bergen County Narcotics Task Force, and one made in conjunction with the prosecutor's office in Hudson County dealing with a tap that took place in Ridgefield and Fort Lee in Bergen County, but it was in conjunction with the Hudson County office. The total number of arrests from that was better than 20.

SENATOR GREENBERG: Do you have a breakdown sheet of that, Prosecutor, that you could give to the committee?

MR. WOODCOCK: Yes; I could give you this copy.

SENATOR GREENBERG: We would like to have it following your testimony.

MR. WOODCOCK: Fine. I think this will give you the total number of taps that we handled in Bergen County over that period, which amounted to 35 taps, with better than 105 arrests, for the period from 1970 through 1973.

SENATOR GREENBERG: Is the conviction record available?

MR. WOODCOCK: We don't have it here, but I

can make it available to the committee. I would say that the vast majority of the cases involved gambling. There were some loan sharking operations from 1970 on, but basically, they were all in the area of gambling. I think that, when you consider the number of taps in Bergen County or any of the counties in the State, you have to do it in relation to the entire effort made by the prosecutors' offices in the various counties in all areas of crime. For instance, in Bergen County, we now have a Narcotics Task Force which is operated in conjunction with our office. Last year they conducted 1500 investigations, 90 per cent of which involved the sale of hard drugs. There were 345 arrests resulting from those investigations and the confiscation of better than $4.5 million worth of heroin and cocaine. In all of those investigations, there was one application for a wiretap. So, under any statistical study, it could not be concluded that we have done anything to abuse the right we have to apply for taps. Further, in the areas of homicide, arson, loan sharking, gambling, public corruption, and misconduct, the prosecutor's office conducted better than 300 investigations in Bergen County. We used five wiretaps in all those investigations and in all evidence-gathering procedures.

I think the idea that we in New Jersey have more wiretaps than we should comes as a result of looking at it from the standpoint of what they are doing in other States. I think that, if we go back to when we initially legislated to have wiretaps here in the State of New Jersey, it was to be a tool used by the prosecutors' offices, not something that would be left in the back and forgotten about, but to be used. I think that, when we look at the number of taps, we also have to look at the amount of activity that has

gone on in the recent past - I would say, from 1970 on here in the State of New Jersey - dealing with all factors of organized crime: gambling, loan sharking, public corruption, etc. So, I don't think we are abusing our right to have wiretaps with a court order, but, rather, we are doing something about law enforcement in the State, and we are using the tools that the legislators, in their wisdom, provided to us. I don't think there have been abuses.

I think, too, the idea that we are overusing it comes from the misconception, on the part of the public and, I'm afraid, some people in the Legislature, that wiretapping is a tool of first resort. It is not. The fact of the matter is that it is a tool of last resort. First, if we talk in terms of the cost of getting probable cause so that we can go to the judge and present the affidavit so that he can draw the order, it takes, at the very minimum, about a month and a half of surveillance, looking at toll slips, and using many other investigative techniques before you decide that you have enough probable cause to ask a judge to sign an order. The fact that we do use informants should not be a surprise to anyone in law enforcement. We know the prosecutors' offices have the people to go out and do the kind of snooping and gumshoe work that is required to get the information to get the probable cause. So, if we did not use informants, we wouldn't be doing anything because most of the things that we do, and get, come from that area.

When we consider that a wiretap, to an office the size of the one we have in Bergen - and I would say that this follows throughout the State - is too costly to be undertaken in an off-hand manner, it's not something that you would do because you have nothing better to do. If we had a tap for 16 hours a day, it

would require us to put three men on the tap. The total cost to us, if it is a 15 day tap, would be $2700. That would be the cost of paying the men, forgetting how much money it cost us to develop the probable cause to get the order in the first place. That's for one phone on one wire. If it's two, then you have to double that number. If, for any reason, it would require that we have special surveillance, we would have to add another man. Then, there is the time taken in evaluating the tapes, making composites of the tapes, preparing return order to the court, etc. So, any prosecutor who has any other means available to him to get the evidence necessary to get the indictment and conviction would opt to do that first rather than go to the expense of tying up the personnel and committing the money just to listen in on somebody's line. It takes out of the office routine people who could spend their time in some other aspect of the prosecutor's office. So, what I am really saying is this: There is no desire - certainly not on my part, and I think I could speak for every other prosecutor in the State of New Jersey - to go out and drop lines just for the purpose of seeing if there is something there. The only time we do it is when there is no other way of getting the evidence necessary for the conviction.

SENATOR GREENBERG: May I interrupt you for a second?

MR. WOODCOCK: Yes.

SENATOR GREENBERG: On that subject, at the last hearing, some of the Senators expressed some concern with the subject of consensual taps, where some of the deterrents, in terms of financial cost, manpower, etc., might not exist. Aside from the economics of it, could you direct your remarks for a

moment to your view with regard to the effectiveness, usefulness, and necessity of consensual taps as that might relate to the requirement for there being court orders to obtain them?

MR. WOODCOCK: Let me say this: Before I became prosecutor, I was still doing some defense work. I had occasion to argue the other side of the case. At that time, I took a position that the statute, as it is now drawn, would require a court order for a consensual tap if the purpose was to use it in evidence in a criminal proceeding. I did not succeed at that time, and I suppose that I am going to be arguing the other side of the question. I would not think that there is any problem in requiring that an inventory be made of a consensual tap. In other words, if we decide that we are going to send somebody that is part of the conversation in, and he is going to wear a body line, and it is going to be recorded outside, I think that, if we ever intend to go to court, we ought to be required to make an inventory to the court and say that we have done it. I have no great problem with that. I do think, and I know, that there are times when we get what we consider to be a consensual tap because the threatened party, the person whose life is being threatened, says, "Somebody called me on my phone," and we then say, "Would you permit us to put this recorder on your phone, and, as the call comes in from that party, you can tape it?" All I'm saying is this: If you are going to regulate consensual taps in any way, I don't know that you can require the kind of probable cause that the court requires of us in the tap when there is no consent.

SENATOR GREENBERG: Would you please explain for the record why not, because I know there are members of this ccmmittee who are vitally interested in that issue.

MR. WOODCOCK: Well, I think that we would be hard-put in some instances to come up with the kind of affidavit that would satisfy a probable cause. Let's take the situation where a public official feels that he is about to be propositioned. He feels that somebody may be going to offer him the bribe. When you talk to him, you say, "What was the conversation that led you to this conclusion," and he says, "Well, the fellow said that he could make me very happy, and he would like to sit down and talk to me." Now, I don't think that statement standing alone constitutes probable cause.

SENATOR GREENBERG: Do you run into many situations of that type with the consensual tap as opposed to the court ordered tap, where the evidence is a problem in justifying probable cause?

MR. WOODCOCK: You would run into it, particularly where the fellow says, "I've been threatened." You ask, "What was said," and he gives you something that is less than sufficient to make probable cause except that he feels that he has been threatened. Unless you can really spell it out in affidavit form, I don't know that you are ever going to satisfy a judge that there is probable cause for a wiretap. So, I think that you have to get something less than probable cause, whatever that may be. I think it might very well be that the affidavit would read, "Citizen Jones has come to the office and expressed a feeling that he has, in fact, been threatened," or "Officeholder X has come to us and said that somebody is about ready to proposition him. I have very strong feelings with respect to that, and we would like to get it on record." I don't how else you can do it. Again, when we are talking about a consensual taping, we are talking about one of the parties doing just that: taping the conversation. Now, I don't know

how you would prohibit that. I don't know whether the Legislature intends to make that a criminal act or merely say that, if you do it, you cannot use it in a criminal prosecution unless you have a court order.

SENATOR GREENBERG: I think the thrust of the committee's interest, at the moment, is in the utilization of that in the law enforcement vain rather than outside that area. In other words, I am not now talking about my deciding that I am going to have a conversation with you, and I want to record it. I am talking about the situation when the fellow does come to your office, or you talk to him, either way, and the recording might be used by a law enforcement authority. You have expressed a problem with regard to probable cause which may well exist. Are there any other difficulties you have with requiring court orders for that purpose?

MR. WOODCOCK: It's hard to characterize all of them, but I would think that, in the areas of threats to kill or kidnapping, where speed is essential, you would have to get an oral order of the court.

SENATOR GREENBERG: So, you have a time factor also?

MR. WOODCOCK: Right. There may be only one phone call, and you want to get that one. How would we do that if we had some restrictions that would prevent it?

SENATOR GREENBERG: I'm sorry to have digressed.

MR. WOODCOCK: I don't want to take the time of the others who want to testify, but there is one other aspect to this, and that is the very practical problem of legislating in an area where the federal government has concurrent jurisdiction. The federal government has a wiretap law, and we have one. I think that our law cannot be too much different than theirs. If the

legislators were to decide, in their wisdom, that they wanted to - and I'm using our opinion now - unreasonably restrict the prosecutor in his use of electronic surveillance as a tool in combating organized crime or public corruption, the question would really be this: What would I do as a prosecutor if I had a case of public corruption that I could not make because the evidence necessary to indict and convict was only available by means of wiretapping and/or electronic surveillance, and I was prevented, or greatly hindered, from making an application to the court by reason of some amendments to this legislation? What would I do? I'll tell you what I'd do: I'd call up, make an appoint with Jonathan Goldstein, go down and talk to him, and turn that case over to him. I think that would be a mistake, and I think it would be an abdication on the part of the State in doing what it ought to do about crime and corruption in the State of New Jersey. I think that that was never the intention of the Legislature, to begin with, and what I am suggesting to you is this: Let the prosecutors do their job, subject to whatever controls and restrictions that the Legislature wants to put on them in the interest of the the privacy of the citizens. Do not place unreasonable restraints on the prosecutors, the SCI, and the Attorney General in our efforts to deal with these problems, or we will be stymied. We would be duty-bound, I would say, if we knew there was a crime being committed, but we couldn't make the case, to go to somebody else.

SENATOR BATEMAN: What are your thoughts on whether or not the length of time of the taps could be shortened?

MR. WOODCOCK: I don't think there is any problem if it's a 15 day order. It could, on showing of good cause, be extended. There might be good cause

for extending a tap beyond the original date in the application. I think that what we should be required to do in that instance is to again, by affidavit, demonstrate to the court the necessity for continuing the tap. I have no great desire, as I said before, to continue the wiretap or electronic surveillance beyond the time necessary to gather the evidence to get an indictment and conviction. It costs money; it takes personnel, and we have other work to do. We don't lack work in the prosecutor's office, and most of it has nothing to do with wiretapping.

Thank you, gentlemen, for the opportunity to present our views.

SENATOR GREENBERG: Thank you very much. We appreciate your taking the time to be with us today.

The next witness will be Prosecutor Joseph Lordi of Essex County.

J O S E P H P. L O R D I: Senators, I also appreciate the opportunity to ---

SENATOR GREENBERG: Excuse me. But I want to apologize for the delay today. I appreciate very much - we all do - the fact that you have remained here throughout the day.

MR. LORDI: That is all right. It has been a very interesting hearing. I learned a great deal about wiretapping and electronic surveillance myself. Although my county has been accused of obtaining the most wiretap orders, maybe I can justify them in the few words I have to say.

I did submit a 16-page statement to the Committee. We have additional copies that we will submit later.

SENATOR BATEMAN: We have all gotten copies of your statement.

MR. LORDI: Good.

I would like, if I may, to expand on two or three of the areas that I have touched in that statement, specifically with respect to gambling. There has been some suggestion there has been an excessive use of wiretapping and electronic surveillance in the area of gambling violations. I would like to point out, one, that as Prosecutor of one of the most populous counties in the State - and I didn't want to take issue with Joe Woodcock on that - and having been a lifelong resident of Essex County, I can assure you that we have had historically and today a problem with organized crime.

I would call to the Committee's attention a special Grand Jury that was empaneled in 1961 in Essex County to investigate gambling and shylocking. That special Grand Jury returned a presentment in which they found that gambling was the very lifeblood of organized crime and that a highly-organized criminal conspiracy to

violate the gambling laws existed there and this conspiracy extended beyond the boundaries of Essex County.

If I may, I should like to quote from that presentment a certain section, which I think points out the concern that this special Grand Jury had with respect to the problem of gambling. And when I say gambling, I am talking in terms of syndicated gambling, not gambling, per se. On page 4 of that presentment, the Grand Jury said:

"The bettor's contribution places fantastic sums of money in the hands of those individuals least concerned with the public interest and the community welfare. The wealth thus reposed is used to finance other illegal activities which strike at the very roots of normal society and business intercourse and then by devious means is in a position to attack the very governmental structure we all live by. The door is open to police and official corruption in a manner incomprehensible to the citizen when he placed the bet. Of course, none of the above is any the less important than the moral decay that must necessarily come about in any community that is subject to organized gambling." (See page 23 X.)

Before that presentment was returned --- and I was the First Assistant Prosecutor in Essex County at the time and worked very closely with this special Grand Jury. From the very beginning, the Assistant Foreman of that Grand Jury was unalterably opposed to any form of wiretapping and electronic surveillance. But,after he heard the testimony that was presented to this Grand Jury, he asked for the opportunity to write the recommendation. There were many recommendations that were made by that Grand Jury, including a special rackets Grand Jury immunity statute, longer custodial terms for gamblers and loan sharks. But the most important of all was the recommendation with respect to electronic surveillance and wire tapping. The Assistant Foreman, as I said, drafted it and it was

incorporated as part of this presentment. And I would like to read it if I may:

"The Legislature should consider the desirability of enacting a wiretapping statute." And I might point out - and this is a significant part of it - this Assistant Foreman was not only opposed to all forms of wiretapping, but he worked for the Telephone Company. So he had some knowledge of telephones and communications. The recommendation continues: "The Legislature should consider the desirability of enacting a wiretapping statute. We believe that the privacy of communications should be very carefully protected. However, we realize that this individual right, like many others, may be subject to the overriding needs of society as a whole. Our investigation has revealed that those in high echelons of organized crime are frequently not apprehended because they are not directly involved in the physical operational aspects of the organization. Contact is made in most instances by telephone communications. Thus, by wiretapping, law enforcement officials could obtain information leading to the apprehension of individuals who have in the past escaped detection. Balancing this against the need to protect privacy in communications, the Legislature, after full deliberation, might conclude that problems of national security and of serious organized crime warrant some limited wiretapping by public authority. These exceptions to the general rule should be very carefully considered and should be accompanied by every reasonable safeguard against abuse."

This presentment was returned by a special rackets Grand Jury investigating gambling and shylocking in 1961. Those words are as significant today as they were back in 1961. And, if I may, Senator, I would like to make it a part of the record.

With respect to that particular presentment, what I want to emphasize is that when we talk in terms of gambling, we are concentrating more on syndicated gambling. That Grand Jury recognized, and I recognize as one who has been connected with law enforcement on and off since 1955, that when you talk in terms of a person connected with syndicated gambling, by and large,you are also talking about a loanshark. When you talk about a loanshark, you are also talking about the fence. And when you talk about the fence, you are talking about the corrupter. There isn't a major organized crime figure in Essex County and,I dare say,in practically every part of the State of New Jersey that has not at one time or another been associated or connected with syndicated gambling. That is where he got his money. That is the way organized crime began to grow. At least it did in Essex County and I think it has grown in other counties too. And that is the reason why organized crime has become a problem in our State.

I say, when we address ourselves to gambling, we are addressing ourselves to the entire problem of organized crime in the State itself.

Back in 1968 when Congress passed the omnibus Crime Control and Safe Streets Act, at that time New Jersey was identified as a haven for organized crime. To counteract that suggested indifference, the Legislature adopted an Electronics Surveillance Act patterned on the federal law. Once that statute was passed, - I was Prosecutor at the time of Essex County - a special squad was established by me in the office to handle all investigations within the county involving electronic surveillance. Four investigators were trained in the use of electronic equipment and occupy that same position today. They are the only four men in my office that have been trained to use and install electronic equipment. And they are the only ones

that are authorized in the county to conduct such electronic surveillance, and these are within rigid standards.

If I may, I would like to point out the rigid administrative procedures and standards we did establish in the county once the statute was enacted. Back on the 18th of February, 1969, I addressed a letter to all the Chiefs of Police of Essex County, in which I, among other things, stated, and underlined it and put it in large type, that "All electronic surveillance within the County of Essex will be conducted only by members of the Prosecutor's staff, until further notice." That directive to the Chiefs of Police has never been changed.

So, with the exception of the Attorney General's Office or with the exception of the SCI or some federal agency, no one within Essex County is authorized to conduct any electronic surveillance, except through the Essex County Prosecutor's Office.

If I may, I would like to make that part of the record. (See page 31 X.)

We then followed this up and we set forth procedures for applying for wiretaps or electronic surveillance. On March 28th of 1969, we addressed another letter to the Chiefs of Police, in which we asked the Chiefs to designate someone within their respective departments that would have the authority to apply to the Prosecutor's Office for a wiretap or electronic surveillance in a particular investigation. That sets forth the various procedures that must be followed, the application - what should be included and why. I would like to make that a part of the record too. (See page 32 X.)

SENATOR DUGAN: That will be very useful to us.

MR. LORDI: Then, we had within the office sometime thereafter, a memorandum directed to all Assistant Prosecutors and Supervisory Personnel assigned to the

Confidential Squad - that is our City-County Organized Crime Task Force - in which we set forth the guidelines to be followed in evaluating whether or not electronic surveillance should be used in investigations conducted by them and the guidelines that they should use in determining whether electronic surveillance should be used by other persons who come to us for our assistance. In that statement, for example, we say, "Electronic surveillance should be used by this office only when all other means have failed and is not to be used to shorten investigations. In all cases, maximum use of the statute requires careful diligence in the applications submitted to the court." This is another directive within the office itself that lays down, as I say, rigid administrative standards and guidelines for anyone that has any connection within the office or in the County of Essex with respect to wiretap or electronic surveillance. (See page 34 X.)

We also have here a directive setting out the responsibilities of the co-ordinator. You may recall I mentioned there are only four men in my office that are trained to use and install electronic surveillance equipment. Each of these four men would be considered a co-ordinator. So when a wiretap order has been obtained and they have made the installation, they are then responsible for co-ordinating the day-to-day monitoring of that particular wiretap or electronic surveillance. Set forth herein are the procedures that they should follow and the manner in which they should keep their logs. I think this would be helpful to the Committee to show the steps that are being taken, not only by my office, but I think by other Prosecutors' Offices in making sure that the privilege of a wiretap for law enforcement is not being abused. (See page 36 X.)

Also we have - and this is very significant because it points out something that Mr. Weissbard said in his remarks to the Committee - a memorandum to the monitors,

outlining their duties and the procedures they should follow. I call your attention specifically to Paragraph 8, which reads as follows: "While monitoring, the monitor shall in the event of a non-criminal conversation, immediately shut off the tape by means of the stop button and mark the log 'unrelated' -- tape off." That means that what we do is attempt to follow as close as we can the statutory requirement that we minimize or eliminate non-subject or non-incriminating conversations. Of course, the monitors in my office must follow that directive. (See page 38 X.)

There are other procedures that we have established in the office too. For example, there is only one Assistant Prosecutor in the Essex County Prosecutor's Office that has the authority to entertain an application for a wire-tap or electronic surveillance. He is the head of the City-County Organized Crime Task Force. When the statute was first enacted it was Marty Holleran who then left the office to become Executive Director of the SCI and he was succeeded by John Matthews who is here. And John Matthews is now in charge of the City-County Strike Force. He reviews every application before it comes to my desk and he must be satisfied that all other means of investigative tools have been exhausted and that the objective sought can only be achieved through the electronic surveillance.

I can tell you this, that more than half of the requests that are made for electronic surveillances in the office are turned down at that level. I have got to be satisfied as well. So after he has reviewed the application, after he is satisfied that it warrants the use of electronic surveillance and after the papers have been drafted, they are then submitted to me. I have to be satisfied too that each and every one of these particular

requirements are met. Having been satisfied, then, of course, I would then sign the authorization and the application is then brought to one of the Assignment Judges designated by the Chief Justice. Generally speaking, usually the Assignment Judge of Essex County because of the number of applications that are applied for is designated as one of those Judges. It was, of course, Judge Giuliano before he retired; it is now Judge Blake. I might point out that Judge Blake does not, nor did Judge Giuliano, take these applications very lightly. With Judge Blake, we must submit the application to him in advance; that is, we turn it over to him one day and he takes it home. We know the procedure he follows because he tells us. An appointment is made the next morning at 8:30 or quarter to nine, at which time the Assistant Prosecutor always goes up to the Judge's chambers and he is accompanied by the person who made the affidavit or is familiar with the affidavit, if he is not available. At that time, if the Assignment Judge has any problems or questions with respect to the application itself, of course, he asks them. I know of no instance in which an application for a wiretap or electronic surveillance has been turned down by an Assignment Judge. But the reason is quite clear. There have been times when it has been returned because we have been asked to get some additional information which we may have had available. Sometimes we have had to go out and get the additional information which we have been able to do within a short period of time. So, basically, we are talking about the same application. But the reason why these applications are not returned is because of these rigid administrative regulations and procedures that we have established within the office. So, by the time it gets to the Assignment Judge, the Assistant Prosecutor in charge is satisfied that it meets all the statutory requirements and

the Prosecutor, himself, is satisfied that it meets all the statutory requirements too, including probable cause. As I said before, he then may very well ask us to expand on the affidavit or make certain additions or corrections. I know this has been done, and has been done on many occasions.

The reason it works out this way and that it has been so effective and really no applications are generally turned down is because you have an Assistant Prosecutor and the Prosecutor reviewing it. Presumably we are trained in the law and presumably we understand what goes into an application of this kind.

I might point out in Essex County, for example, back about two or three years ago, we were having many problems with search warrants. Many motions to suppress were being granted that were directed to the affidavits, themselves. So I sent out a directive to all the Chiefs of Police within the county, including the Sheriff of Essex County, and I had the support of the Assignment Judge and the Judges within the county and on the municipal level that no application for a search warrant could be made in Essex County unless and until the Prosecutor and the Assistant Prosecutor designated by the Prosecutor had seen that affidavit and had approved it in writing. Gentlemen, I can say that since we have instituted that procedure, we have not lost to my knowledge a motion to suppress directed to the affidavit for a search warrant, meaning what? Meaning if you get an attorney and you allow him to review those affidavits, it is quite obvious he is not going to let anything go through unless he knows it meets the statutory requirements and there is a decision of law interpreting those statutes.

These, as I say, are the administrative steps we have taken to see that no abuses take place. Speaking of abuses, I might point out that while there has been a

great deal of talk about it, I know of no such abuses. No one has ever come to me as Prosecutor of Essex County within the county, itself, and suggested or inferred or complained that we had in any way abused the statute through the use of electronic surveillance or wiretapping. I know of no law enforcement agency in the State about whom I have heard indirectly or directly anything to that effect.

I heard Detective McClellan. I did not hear his complete testimony. That is the first time it has been suggested to me - and I don't think there is really any basis for it, but that is my own opinion. As I say, since the wiretap statute has been enacted, no one has complained to me nor have I heard of any abuses on the part of anyone in Essex County or any other law enforcement agency. If anything, we did have several cases in which non-law enforcement personnel had violated the statute. I can recall that one actually ended up with an indictment, an investigator. It was a husband and wife situation. I think the husband was aquitted. But in any event, the fact remains there has been, to my knowledge, no abuses by law enforcement personnel.

As far as the effectiveness ---

SENATOR DUGAN: Don't leave that point, Mr. Lordi. The illegal wiretaps by other than law enforcement agents, to your knowledge it is just an isolated case?

MR. LORDI: Just isolated.

SENATOR DUGAN: To what do you attribute the widespread belief that illegal wiretapping goes on, whether it is done by law enforcement agents or others? To what do you attribute that widespread belief?

MR. LORDI: I don't think I can attribute it to any one thing. It was with us even before we enacted a wiretap statute. There was always some concern that

phones were being tapped, that body mikes were being worn and things of that nature.

I can recall, as I said, having been in law enforcement since 1955, many, many times a person calling me on the telephone and saying, "Can I talk," suggesting that perhaps the phone was tapped and someone was recording the conversation. So I don't think it has anything to do with the statute itself. It is just that now that we have the statute and people are aware of it, there is, I suppose, more concern. But whether we had a statute or not, there would still be people that might illegally conduct a wiretap.

SENATOR DUGAN: It is just the national phenomenon.

MR. LORDI: I think that is it.

SENATOR BATEMAN: Every time you hear a noise on your phone, you think that might be the case, and I always hope on my phone it is illegal.

MR. LORDI: Let me tell you, if it is done properly, you are not going to hear any noise on your phone; that's for sure. But I wanted to point out how effective I think the statute has been, permitting us to do this.

SENATOR DUGAN: It is reassuring to have you go through the requirements that you insist be met before your office makes application for a tap. That is one of the concerns of the Committee. There has been suggested to some of our members that these matters are relatively casually handled. One of the purposes of this hearing was to inquire or let the facts of the routine application come out and let us make a judgment whether those charged with the use of that tool are casual in their application of it. It is reassuring to know that you are doing it with the care and circumspection you are doing it.

MR. LORDI: Thank you, Senator.

SENATOR BATEMAN: I have been impressed by the testimony

that there is a lot of care exercised up through your level. Is there anything more that the courts can or should do in reviewing what they get?

MR. LORDI: I think you posed a question, Senator Bateman, about the time. Actually we have reduced the time administratively. In the last two years or so, we have not requested a wiretap longer than a 20-day period; that is, with respect to gambling; I think 15 days with regard to narcotics and some other organized criminal activities. We have done administratively what you have been talking about doing legislatively.

But as far as anything else that can be done -- of course, there have been certain recommendations made by the Attorney General that you have before you. I might say that the Prosecutors' Association has had some input on that. Other than those recommendations and other than what I have said today, I don't think there should be any real concern on the part of the Legislature with respect to the present statute.

I do feel that perhaps some consideration should be given to that section of the statute dealing with minimizing or eliminating non-subject conversations. As I said before, we follow what has been known as the Essex County system. We followed it from the very beginning. While I am aware of State versus Dye, we still nevertheless follow that procedure. We think we are mandated by the Legislature. Many times we might lose an incriminating conversation. But we would rather lose the incriminating conversation than violate the spirit and intent of the statute.

Gentlemen, I have submitted a prepared statement. I just wanted to point out the effectiveness of the statute, itself. Then I will conclude my comments. This is up to December 31st, 1974. The office received

authorization for electronic surveillance in 212 instances, resulting in the arrest of 937 individuals, leading to a total of 432 convictions, 371 pending dispositions, 30 no bills, and only 19 acquittals.

Gentlemen, that is an excellent record. The reason for it is, as I say, most of these cases end up in a plea because there is a chilling psychological effect on an individual who hears his voice in an incriminating conversation. It usually carries the plea and usually with justification.

I wanted to concentrate some of my remarks on gambling and point out, when we are talking about gambling, we are talking about syndicated gambling. And when we are talking about a syndicated gambler, someone high in that echelon, we are talking about an individual who is engaged in organized criminal activity; and that was the very purpose, as I understood it, of this statute, to direct the efforts of law enforcement agencies, not only on the county level but on the State level, against organized criminal activities.

Senator Dugan, if I may, I share your concern about syndicated gambling and where we are going. In a conference I had with a member of the Daily News, I suggested ---

SENATOR BATEMAN: We have read your thoughts on that.

MR. LORDI: Perhaps we should have a Study Commission and once and for all we should decide whether we should legalize gambling and eliminate the penalties or whether we should be more stringent in our efforts to wipe out gambling in the State. I think it calls for a study. The reason for it is that no matter how concerted our efforts, no matter how much we try to drive out the syndicate, the fact remains the profits that one realizes from this are such that as soon as you arrest one, there is always another fellow willing to take his chance. If we don't take some affirmative action, we are always going to have

organized crime in our midst.

SENATOR DUGAN: We will send a copy of your last remarks to the Appropriations Committee. Perhaps they would be interested in tapping that source as well.

Thanks very much, Mr. Prosecutor, for the effort you put forth in the preparation of your remarks and the care that you exercise within your office in the treatment of these applications. It should be reassuring to the Committee and to the people in the State who are concerned about it.

MR. LORDI: Thank you, Senator.

(Mr. Lordi's prepared statement can be found beginning on page 7 X.)

SENATOR DUGAN: William Bender.

W I L L I A M J. B E N D E R: Thank you, Senator.

Senator, I live in Montclair, New Jersey and I am an attorney in this State and I am also on the faculty of the Rutgers University School of Law. I have been asked by the New Jersey Chapter of the ACLU to prepare testimony and appear today. I have prepared a lengthy statement and submitted it for the record. The hour is late. I shall not repeat it here. I hope it will be made a part of the record so the Committee in its deliberations will have it.

SENATOR DUGAN: It will be. Give us the other side of the coin, Mr. Bender.

MR. BENDER: I will. I just want to sum up what I have said in my statement in a few words and then make a suggestion at this late hour to the Committee, almost by way of a trial balloon, to sharpen your thinking on this problem.

The suggestion I have made in my testimony and which Professor Singer, by the way, has made in his, also part of the record, is that we should really recognize that as an experiment, the New Jersey Wiretap legislation

has failed. And we ought now experiment in such a fashion that we live without a wiretap bill for a couple of years.

SENATOR DUGAN: Why do you say it has failed?

MR. BENDER: Because the statute as interpreted and the statute as applied has led to many abuses. There is no greater monument to that than the comments of the very Prosecutors who have appeared here today.

SENATOR DUGAN: Specifically?

MR. BENDER: It matters not, as Karl Asch suggests, whether the Prosecutor listens to the conversations that are minimized and doesn't bother to record them. If the Prosecutor is hearing conversations irrelevant to law enforcement and lends his ear, the uninvited ear, to the conversations he is overhearing, the violation of privacy has taken place.

SENATOR DUGAN: He doesn't know whether it is illegal or not until he hears it.

MR. BENDER: But he can stop; he certainly can stop. What he does is, he listens and possibly doesn't record, but doesn't stop. So you are faced with what has got to be the kind of intelligence surveillance the Constitution does not permit.

SENATOR DUGAN: How in practice, could a wiretap law be invoked if that wasn't the case? They would have to listen to the conversation in the first instance to determine whether it was relevant or not. If they can't listen ---

MR. BENDER: Senator, they might, and, if that is what happens, we might have to conclude the experiment has failed. In an Essex County case, Judge Handler in State versus Molinaro, recognized there were many lengthy conversations between children in which they exhibited typical youthful interest in shopping, clothes, fashions, hair styles, gifts ---

SENATOR DUGAN: These were recorded?

MR. BENDER: They were recorded. (Continuing) --- and it matters not whether they were recorded or listened to.

SENATOR DUGAN: We could cure that legislatively. But those conversations can't be determined as being irrelevant or not unless they are heard.

MR. BENDER: Unless the law enforcement official is prepared to stop after he hears the first few words and then waits until the next ring before he begins to listen again.

SENATOR DUGAN: Is that practical?

MR. BENDER: Senator, I don't know; but, if it is not, I would conclude the experiment has failed. The invasion of privacy is not worth the result.

SENATOR DUGAN: We are concerned about the invasion of privacy. We are also concerned about balancing the equities or balancing the protection that the public is entitled to, as well as the privacy the individual is entitled to. But I can't see how it could be done unless there was listening and listening to more than just the first few words of a conversation. If that was the law, everybody would come on with, "Hello. How are you," and put the kids on for 20 or 30 seconds.

MR. BENDER: And then insulate the hard-core conversation in the mist.

SENATOR DUGAN: Sure.

MR. BENDER: Listen to my kids before I talk about gambling. Then listen to my kids again.

SENATOR DUGAN: Talk about the Wepner-Ali fight for a couple of minutes and then get into the real stuff.

MR. BENDER: Let me suggest, Senator, what I think might be a notion that the Committee may want to explore in considering this whole problem. We, in this State, have had the benefit now of several months of the operation of the Public Advocate's Office, where in many areas of public life, the Public Advocate speaks for public interests,

either as Rate Counsel before the Public Utility Commission or in a wide variety of public interest litigation. Maybe we need a privacy advocate in that court. Maybe we need somebody who can speak for the privacy rights of our citizens.

SENATOR DUGAN: That is what I hope we are doing.

MR. BENDER: Yes, but the problem is you are not before the Assignment Judge or the seven Judges who authorize wiretaps when the Prosecutor comes in,in a ex parte fashion.

SENATOR DUGAN: We are going to set the rules that will govern what the Assignment Judge and the Prosecutors do.

MR. BENDER: But isn't the difficulty that you face, having set the rules, the State Supreme Court in cases like the State versus Dye has undercut the rules you have attempted to fashion?

SENATOR DUGAN: We can reinstate that very easily.

MR. BENDER:--- by requiring minimization and suppression if there has been a failure in that regard in the statute. But you also could legislate a permanent watchdog who could at the intersection of the Prosecutor with the Assignment Judge in every application appear on behalf of the people and oppose the application, if warranted, and if granted in such a fashion that it be overly broad, take an interlocutory appeal to our Appellate Courts and also maintain the ongoing kind of statistical report that this Committee needs to perform its function and report to you on a regular basis.

SENATOR DUGAN: I would imagine that the Public Defender's Office in the Public Advocate's Department should be charged with that on a case-by-case basis.

MR. BENDER: Well, they are, Senator, but only after indictment and then only as to the object of the surveillance who was indicted because he was the object of

the surveillance. Our problem really is not that occasionally people are prosecuted successfully from wiretapping, but in the process the privacy rights of your constituents are violated; that is the hard problem. And who represents their interests when the over-zealous prosecutor conducts a dragnet investigation? Do you really want to rely on the Prosecutor who is an advocate in that circumstance or can't this Committee propose legislation whereby the privacy interests of the people can be protected at that point?

SENATOR DUGAN: You don't feel there is enough legislation to insure that privacy right is protected either by the Public Advocate, the Public Defender or the SCI or one of the many agencies that we have that address themselves to official misconduct?

MR. BENDER: No, because the privacy violation has already occurred and there is nobody with standing with the interest to redress it.

Now, the gambler who is prosecuted pursuant to wiretap moves to suppress and either succeeds or fails. But who represents all the people who call the diner or all the people who call the bar as in State versus Dye, who have absolutely nothing to do with the matter under investigation and who,when the application comes up for renewal, after 15 days or 30 days, whatever it may be, looks at that inventory and says, "Wait a minute. The invasion of privacy here is just too gross to justify this continuing investigation" or "the invasion of privacy is such---"

SENATOR DUGAN: Isn't a judge supposed to do that on the application for renewal?

MR. BENDER: My question to you is that as you sit here and listen to the Prosecutors and read the opinions such as Judge Handler's in State versus Molinaro, are you satisfied that after this initial experiment of wiretap

that is what has happened? I submit the record is that is not what has happened. The record is that large numbers of citizens, having nothing to do with the probable cause showing and the crime investigation have been overheard. And that is the privacy interests which this Committee by its very charge must pay attention to.

It won't be good enough if three years later upon review of the operation of a newly-amended statute ---

SENATOR DUGAN: You want the Committee not to renew the bill?

MR. BENDER: That's my position. I am also suggesting an alternative for your consideration; and that is, if you are going to renew it, build in certain highly-specific protections to insure your own purpose.

SENATOR DUGAN: Are they contained in the memorandum of testimony?

MR. BENDER: We suggest a broader rule of suppression as the court avoided in State versus Dye. I am now submitting for your consideration something else; and, that is, you provide for somebody to represent the public's interest on every occasion that a wiretap application is made to one of the seven Judges authorized by the statute to hear the application, and that person be mandated by legislation to report to this Committee on an on-going basis and also be empowered by legislation in representing the privacy interests of the citizens to appeal to the Appellate Courts of this State when the privacy rights of the citizens have been aggrieved or transgressed. Without that, I think we are talking about meaningless gestures and legislation which cannot accomplish the purpose which, as I have heard this Committee, the Committee is setting out to accomplish through the legislative process.

SENATOR DUGAN: What other specific recommendations do you have in the event that we renew the bill?

MR. BENDER: I would also suggest you change the statute of limitations with regard to criminal prosecutions,

so in a circumstance where illegal wiretapping has been concealed, in other words, the circumstance where there is no inventory, that the statute is automatically held until the party aggrieved learns of the overhearing, so the criminal process may be meaningful. In my experience with federal cases, more times than not where a warrantless wiretap has taken place, there are serious statute of limitations problems with regard to prosecution because it is only through belated disclosure that the object of the tap -- or the incidental overhear learns of the fact he or she has been overheard. So I would change the statute of limitations.

I would also require disclosure of the informant to the court and require scrutiny of the informer basis for probable cause in the initial probable cause showing to the magistrate.

Finally, I would suggest that the only way you can insure that privacy be protected is to make the warrant application process and the administration process something other than ex parte, and that you designate a public official in the State to be intersected by statute in that process, that person to be bound by secrecy not to reveal what that officer of the court heard, but the charge of that person would not be prosecuting crime, but protecting privacy. Then we might get down to the business of ferreting out whether or not each of these applications and their continuation from time to time makes any objective law enforcement sense whatsoever, and whether or not, even if they do, the privacy price that the people pay it so great that it far outweighs the law enforcement need for that particular tap. Otherwise, you are listening to my self-serving comments about privacy and the Prosecutors' self-serving comments about the prosecution of crime, and you, the legislator, are forced to make a decision in the world of Alice in Wonderland where the real facts are

not available for your scrutiny or mine. And I can think of no other administrative device whereby legislation can accomplish the balance to which this Committee has paid very careful and deliberate attention. Otherwise, I think frankly, Senator, we are kidding ourselves.

I bring to this discussion my own experience in litigating in the last three or four years in the national security wiretap field wherein all the promises of law enforcement bona fides, all the lofty words as to the need to protect the privacy rights of the American people, have now in the face of demonstrable facts gone down the drain. It simply wasn't true.

SENATOR DUGAN: Do you think the testimony that was offered by the previous witnesses who represented the Attorney General's Office or the Prosecutors, themselves, of several counties was inaccurate?

MR. BENDER: No. I think in some respects it was highly accurate and, in that sense, revealing. For example, the report from the Attorney General which suggests that wiretapping be continued through the guise of this bill to permit ---

SENATOR DUGAN: Do you think Mr. Lordi was kidding us when he told us just before you testified of his concern in theory and in practice for the protection of the right of privacy by setting up the mechanics by which his office is guided and the guidelines that he tells us are adhered to? Do you think those guidelines are Alice in Wonderland or do you think his representation to us is something less than candid about his insistance that they are adhered to?

MR. BENDER: I am sure his bona fides is sincere. My concern is that any law enforcement investigator who can conduct an open-ended intelligence tap, as in Molinaro, and not face the ultimate remedy of suppression of all the overhearings, including the incriminating ones,

would have to be nuts to minimize the conversations that that investigator is overhearing. There is no benefit whatsoever; if the job is to listen to what is going on, gather intelligence, pick up some evidence of crime and then prosecute, what motivation would there be not to listen to the parties talking about buying clothes, draperies, going to the hairdresser and everything else? When they turn the tape on or listen would make no objective difference.

No, I am sure he is bona fide in his effort. The problem is, he is working within a legislative framework which is guaranteed to cause abuse. I submit that your job and mine in suggesting it to you is to create a framework where abuse can't take place. If it does, then we have obliterated the Fourth Amendment and obliterated your own legislative efforts. The only way to do it is to have on-going, on-the-spot scrutiny with a bill with teeth in it which provides for review and redress as it happens. Otherwise, I think we are wasting our time.

SENATOR DUGAN: Then, instead of being in the world of Alice in Wonderland or the world of Oz, we are in the world of utopia, if that is a situation that we could legislate.

MR. BENDER: You can do what Pennsylvania has done and what Illinois has done; and, that is, do away with wiretapping. I have listened to the needs of the Prosecutors in prosecuting organized crime with wiretapping. Illinois has just gone through three years of extensive prosecutions, both in Cook County and in the Federal Court, of high-ranking officials for official corruption, without one wiretapping conversation in evidence. They have done a grand job. They have done just fine. They have lived without wiretapping for a period of several years now, at least legal wiretapping, and they have lived successfully. And Pennsylvania, I gather, has done the same thing.

So New Jersey would not be tilling new ground if it were to try and function for a period of time without wiretapping.

But as I hear this Committee and hear the Prosecutors and attempt to get a sense of this Legislature, I don't see an abolition of wiretapping in the State. So what I am suggesting is that if you are serious about legislating in this area some very stringent and far-reaching protections are called for, not the kind ---

SENATOR DUGAN: I wish you hadn't qualified your statement with "if we are serious about it." Do you think we are wasting our time here in all these hearings on some flight of fancy that we have?

MR. BENDER: No, I am sure you are serious about it.

SENATOR DUGAN: I can assure you we are.

MR. BENDER: I think in order to accomplish your purpose that a device has got to be found, a legislative device, to cut through this pattern. Without it, we are nowhere.

I am sure, Senator, that you feel as I do that the recitation of the overhearings in Molinaro is indicative of abuse. If not, you would not have made the comments that I heard you make here this afternoon to the Prosecutors. What device do we have today in the legislative arsenal to stop it from happening in Essex County or any other county?

SENATOR DUGAN: I hope ultimately that the Prosecutors are aware of some of the language of the National Wiretap Commission that concluded its section in commenting on the Attorney General's Office by saying that, "Perhaps the best way to assure good practices is to make sure that those who use the power are, in fact, watched by those who can take the power away."

That is the purpose of these hearings. If we are not satisfied that it is used judiciously, we have no

hesitancy about taking it away. But if we are satisfied that it is not abused to the extent that you would suggest, we won't do that. We will do what is necessary to amend it to insure improvement in the practice for the protection of the individual. But let me assure you that if there were credible evidence presented to us in these hearings that there are widespread abuses, this Committee would have no hesitancy at all about denying the law enforcement agencies renewal of this tool that they have. But to date, I might say, such evidence hasn't come to us.

MR. BENDER: My suggestion though is that to monitor on an ongoing basis and not every two or three or four years when the legislation is revisited is to create the presence in the process whereby somebody who speaks for the privacy rights of the people can be heard. And then, I would submit, it should be reported back to you precisely what is going on. Records, by the way, could be created in such a fashion so as not to interfere with ongoing law enforcement in any way. We need not have names of defendants or even the name of the county or the investigator who makes the application or the name of the informant. Careful statistical reporting devices would suffice.

SENATOR BENDER: Thanks very much, Mr. Bender. We appreciate the time and effort you put into preparing your testimony.

(Written statement submitted by Mr. Bender can be found beginning on page 39 X.)

We will take Mr. Hartman of the Bar Association next. Will you give your name, address and your affiliation, Mr. Hartman.

F R A N C I S J. H A R T M A N: My name is Francis J. Hartman. My office address is 129 High Street, Mount Holly, New Jersey. I am an attorney-at-law of the State of New Jersey. I am Chairman of the Criminal Law Section

of the New Jersey Bar. Although I am a trustee of the New Jersey Bar Association and I am designated by the President to appear here today, I must disclaim any statements that I make on behalf of the Bar Association because for them to bind the Association, they would have to be approved by the entire Board of Trustees and we haven't had the opportunity to accomplish that.

I would like to talk to you against the background of criminal defense work with some fair amount of experience in the field of electronic surveillance cases, but not wiretaps primarily, as you have been talking about them most of this afternoon. I would like to just say philosophically first and by way of background, I think you should keep in mind that the burden of proof should be on law enforcement to show the necessity for the continuation of the Electronic Surveillance Law and that they really have to justify the invasion of privacy against that necessity. I share some of the attitude of the last speaker. I don't know that there is such a great necessity. I think it is a shame that the foot got in the door when the act was originally passed and now the attitude is, let's keep it and just make it a little stricter.

SENATOR DUGAN: Is the Bar Association going to have an opportunity to pass on a resolution that would endorse the discontinuance of wiretapping?

MR. HARTMAN: Yes, we will have an opportunity.

SENATOR DUGAN: When are you meeting next?

MR. HARTMAN: April 18th.

SENATOR DUGAN: Is this matter on your agenda?

MR. HARTMAN: I don't know, but I can see that it gets on the agenda.

SENATOR DUGAN: I would appreciate it if you could accomplish that so we would have your official position.

MR. HARTMAN: All right.

May I continue with another thought or two. I don't intend to be very long. I didn't prepare any formal statement for you.

One thing I would like to mention to you is that in our County of Burlington, to my knowledge over a great number of years, we have had no wiretapping used in any county prosecutions. The only time you see wiretaps in our county is when the Attorney General decides to transfer the venue from North Jersey down to our county.

SENATOR DUGAN: Senator Parker, a member of this Committee, tells me there is no crime in Burlington County.

MR. HARTMAN: But we have a lot of imported criminals. But in all seriousness, I think it is interesting because, apropos of the question of necessity, we seem to get a fair number of gambling convictions and a great many convictions in other areas, but we just do not have wire-tap evidence produced in the sense of over-the-telephone wiretapping. What we do have, both through the Attorney General and through our own, is this consensual tapping of conversations, recording of conversations. This is the thing I would like to talk about with you in two regards.

First of all, I think the concept of consent of the one party is fictional. The person who is supposedly consenting is usually someone whom the Prosecutor has in a captive situation and either he "consents" or he goes to jail himself for a long period of time. So the process then is to go out and do what, if it were done by a police officer, would amount primarily to entrapment. He gets a conversation going with you and every time that you try to avoid the subject of criminality, he leads the subject back to criminality. I have observed among young people whom I represent, if you are with a girl and you have your mind on sex, the important thing to do is to keep the conversation about sex, and sooner or later you might produce the desired result. Whereas, if you talk

about innocent things, you won't get the result.

I have listened to conversations that were taped and time and time again a man tries to get out of a situation until finally the conversation is somehow led into words which incriminate him. So I think that is one of the things your Committee might try to do; and, that is, either make some meaningful limitations on the concept of consent or eliminate it altogether.

SENATOR DUGAN: For instance?

MR. HARTMAN: Well, for instance, not to permit somebody who is presently, himself, under investigation as a target defendant to be able to use a non-court-ordered consensual interception of an oral communication. That would be a specific one.

SENATOR DUGAN: That is the first time we have heard that suggestion at these hearings and it is very interesting.

MR. HARTMAN: I recognize that the law enforcement people won't like the idea. But it seems to me, as I suggested a minute ago, that in the summation to the jury, we tell them in a normal criminal case that an accomplice's testimony is to be considered very carefully; and it seems to me that we should be very careful about allowing somebody who is involved in criminality himself to be the interceptor of a conversation.

There is another aspect of that that I would like to talk about because I don't think anyone else is going to talk about it. I am very much trial conscious. Prosecutor Lordi said everybody pleads guilty after they hear their voice reciting a criminal activity. I think it is more than that. When you have a trial where there has been a body tape used, you have the most theatrical demonstration I have ever seen. Before the jury walks in, the courtroom is rigged up as if you were in a space ship and about to launch a rocket to the moon. Everybody sits there intently listening with their special sets of

earphones. The general public does not normally hear well what is going on. The sinister connotation that is conveyed to the jury through that process, I think is not to be ignored, which brings me to another suggestion I have to make.

Before I get to that, I want to point out the second danger; that is, when you have the transcriptions of the tapes and the presentation of the transcript to the jury, you have another great advantage afforded the prosecution, which is not present in any other trial that I know of, that being, that you are assaulting two senses simultaneously with that testimony, which is not true of the testimony of other witnesses. I am sure if I had a psychologist here before you, he could tell you that it makes more of an impression on your mind to hear something while you are reading it than either simply to read it or simply to hear it.

I submit to you - and I have had this problem many times - that when the tapes are transcribed, things are left out, things are incorrectly reported, and you can't get the judge to change them because under the law in its present form, all he has to do is say that is what the person who transcribed it heard. The only way you could combat that would be to have somebody else who transcribed it present his statement and let the judge decide which transcript is going to go to the jury.

Then the jury sits there and they have this and they are hearing it. If I said to the judge, "Judge, when my defendant gets on the stand, I want to hand out to the jury mimeographed copies of the questions and answers. I am going to ask these questions and he is going to give these answers," he would say that was ridiculous. But that is, in effect, what the State is doing and those transcripts are enormously successful in getting a prosecution.

So I suggest to you for the reason of the theatrical effect and for the reason of the extra impact of the tapes that you say that,if there is to be some recording, as there presently is under a consent situation,which is contrived in the nature of entrapment by someone who is trying to save his own skin, you do not permit them to do anything except literally play the tape of the conversation. That, to me, would be a great step forward in curbing the effect of the Electronic Surveillance Act.

As far as continuing it on, I would say to you that I am in favor of not extending the act at all. If it has to be extended, I would like it without the consent provisions. If it has to be extended, I would like the provisions in it which are covered by Assembly Bill 1082, which I think are restrictive and, therefore, I am in favor of them. If you are going to extend it, I would suggest you redefine Article 2A:156A-5 because I submit it is rather vague. It uses the word "primarily" throughout. As I was trying to decide what kind of equipment it referred to, I thought it may refer to the dictating machine in my office. I think there should be some more specific provisions with respect to that.

Senator, those are the contributions I would like to make to your Committee and I thank you for the time you have given me.

SENATOR DUGAN: We appreciate that, Mr. Hartman. You are telling me now that the Bar will have an opportunity to hear your views and to vote on this matter on April 18th?

MR. HARTMAN: Yes. I am telling you that ---

SENATOR DUGAN: Your section or the Bar?

MR. HARTMAN: Let me just tell you briefly that any section or any person can submit a resolution to the trustees and the trustees have to adopt a resolution in order for it to become the policy of the State Bar Association.

SENATOR DUGAN: What is going to happen on April 18th?

MR. HARTMAN: There will be a meeting of the Board of Trustees. They will consider any resolution which has been submitted to them and they will either defeat it or ---

SENATOR DUGAN: Are you a member of the Board?

MR. HARTMAN: I am a member of the Board of Trustees.

SENATOR DUGAN: I can just about represent to you that we would hold our final vote in the Committee until after April 18th if you could give me some assurance that the Board of Trustees would act on that resolution.

MR. HARTMAN: Suppose I communicate with Mrs. Donath tomorrow to tell her that I can give her that assurance that they will act on that day.

SENATOR DUGAN: Fine.

MR. HARTMAN: I wouldn't hold you up if for some reason they can't.

SENATOR DUGAN: All right. Thanks very much.

Mr. Williams.

R I C H A R D J. W I L L I A M S: My name is Richard Williams. I am the Prosecutor of Atlantic County and President of the New Jersey Prosecutors Association.

Senator, first of all for myself and for all of the other Prosecutors, I would like to express our appreciation and the appreciation of the Association for giving us the opportunity to appear here today and testify. I will attempt also to express my appreciation by keeping my remarks somewhat brief.

I don't believe that in certain areas I can improve or even begin to compare with the Prosecutors who have spoken with regard to wiretap. There are a couple areas that have not been covered by my brothers and I would like to address them.

There are two matters obviously of primary interest here today. One involves wiretap and the other involves consent taping. I will limit my remarks primarily to

the second. I will indicate simply with regard to wiretap that the Prosecutors Association formally supports the position of the Attorney General as indicated in his testimony and the report submitted by the Attorney General, and supports the positions articulated by the Prosecutors who spoke here today.

With regard to my particular office, we are a growing office. We do not have the capacity for wiretapping and we have not done it. We have relied on the State Police. My experience with this, however, has been that the State Police have used this in Atlantic County sparingly and where they have used it, they have used it with success.

SENATOR DUGAN: Well, do you feel that your mission is being thwarted to any extent by the fact that you haven't used wiretapping or electronic surveillance?

MR. WILLIAMS: Quite frankly, Senator, I would like the capability and I would hope to develop that capability within our office, assuming that the law still provides for that. I believe that that is a capability that prosecutors and law enforcement officials should have to be used, but only when absolutely necessary.

SENATOR DUGAN: But you are going along pretty well without it?

MR. WILLIAMS: I think we could get along better with it.

SENATOR DUGAN: How long have you been the Prosecutor?

MR. WILLIAMS: Just short of three years, Senator.

SENATOR DUGAN: Law and order hasn't broken down because of your inability to fund wiretapping or electronic surveillance activities?

MR. WILLIAMS: From the standpoint of law and order, I don't think it is a question of its breaking down, but I do think you could question as to how most effectively can we perform our jobs and can we do a better job? I think that is one of the key questions that we have to

ask and we have to answer. We should not be satisfied with mediocrity. I think we have to strive all the time to do the best job we possibly can.

SENATOR DUGAN: I know you are really in a very difficult position. You are not suggesting that you are satisfied with mediocrity for the past three years.

MR. WILLIAMS: I am certainly not.

SENATOR DUGAN: We are at a point now where we have Prosecutors that don't use it for one reason or another.

MR. WILLIAMS: We have not used it because we have what I would consider a medium, small-sized office that is growing.

SENATOR DUGAN: In any event, you haven't used it. Why should you use it?

MR. WILLIAMS: I think because there are experiences, Senator, that we have had within our county where it has been used. It has been used in our county, but it has been used by the State Police.

SENATOR DUGAN: Has the operation of your office been frustrated in any way by your inability to have this device available to you, within your own office?

MR. WILLIAMS: I think to some extent. I would not say that our operation has been frustrated to a great extent.

SENATOR DUGAN: Can you think of a recent investigation that was not concluded with the desired result and would have been if you had wiretapping available to you?

MR. WILLIAMS: Off the top of my head, I cannot. But we have had it available through the State Police and we would attempt to do it in that manner.

SENATOR DUGAN: How many taps did they institute last year in Atlantic County?

MR. WILLIAM: That figure I don't have available, but I would say to you that the number of taps they instituted probably could be counted on one hand.

SENATOR DUGAN: These were all at your request?

MR. WILLIAMS: No. These either would have been matters in which we have worked with them or with Stier's and Richards' section in Trenton.

SENATOR DUGAN: Were any at your request to the exclusion of anyone else?

MR. WILLIAMS: No.

SENATOR DUGAN: Okay.

MR. WILLIAMS: What I want to address myself to primarily with those remarks-- and I would support the testimony of my brother Prosecutors on wiretapping -- is the consent taping matter. This, I believe, is an extremely vital tool for law enforcement for two reasons: first, obviously because it is essential in terms of building successful prosecutions where they cannot be done otherwise; and, secondly, because it is essential to protect law enforcement officials, both in terms of their person and in terms of their reputation. And I can go beyond simply law enforcement officials to instances where it would be necessary to protect the public officials.

With regard to, first of all, building successful prosecutions, I am aware in this particular area, because when I first took office we did not have the capacity to do consent taping and we do have that capacity now, of investigations that were frustrated, either that the investigation was not able to be conducted or where what investigations and subsequent criminal procedures followed were not successful because of a situation where the conversation which took place was a one-on-one situation or, even worse, a one-on-two or more situation, with one being the law enforcement official and the other being the defendants who were charged. It makes obviously for an extremely difficult presentation where you get into

the matter simply of credibility and you do have that one-on-one situation. We now have that capacity and I have seen successful prosecutions since we have had that capacity. There are presently - and I am reluctant to go into great detail because the case is pending - but I would indicate that there presently exists a prosecution involving a substantial number of officials of a major police department in our county, the largest police department in our county, as well as other public officials, approximately ten percent of the police department. The prosecution of this case rests heavily on the use of the consent tape because we are talking in some instances here about a one against possibly as many as 25 or 30 people in that particular instance.

There have been other cases in which public figures - I think particularly of the Chief of Detectives in my office - were offered bribes and the person offering the bribe was indicted and subsequently convicted. But that conviction was aided by the fact that there was a body tape used in that particular instance and, in fact, a plea was obtained. So there have been instances that I have seen, with a capacity we did not have before, we eliminated a one-on-one situation in that particular case, where successful prosecutions have been maintained.

Now, what about safeguards in this particular area? First of all, I would indicate that we have a policy in our office - and Prosecutor Lordi who spoke indicated he had a similar policy - where no taping will be done of any individual without his knowledge unless it is expressly approved by either the First Assistant Prosecutor or myself. Any taping that is done, absent that, by our office, the person must be advised and consent to having his conversation recorded.

Some question has arisen on the part of the Committee and some question have been asked with regard to whether

or not some kind of a judicial order should be obtained before consent taping may be done. I would not think that this would be desirable or practical for two reasons: first, because in many instances you are talking about time problems; but, secondly, for a more important reason, as Prosecutor Woodcock indicated, that the information which you have may not rise to the level of probable cause. As Prosecutor Woodcock indicated, if someone were to contact one of the Senators and say, "How about meeting me somewhere; I think I can make you very happy," under those circumstances, that certainly would not constitute probable cause, and yet it might very well be a situation in which a Senator or a law enforcement official would not want to go in there on a one-on-one situation without some protection.

So, I don't think, although that question has been raised, that we can find a practical way of doing that, and I don't think that it would be particularly desirable.

Some question has also been raised with regard to -- I have been talking about law enforcement officials engaging in consent taping -- private citizens. Particularly at the previous hearing there was some discussion about private citizens taping and then coming into law enforcement offices. I can only indicate in my experience that the instances where that has occurred have been extremely limited, three in number, and that in none of those instances have indictments or criminal prosecutions resulted. In fact, in one instance, the very person who ordered the taping may be the target of the criminal prosecution, as a result of that.

So we have not experienced in Atlantic County a significant problem with regard to private citizens doing their own taping and then coming into law enforcement offices.

I indicated that there were two basic reasons: one, the need to build successful prosecutions. There is

a second reason, however, that has not been touched upon that I think is equally important to support the use of consent taping, and, that is, the protection of law enforcement and particularly career law enforcement officials, for two reasons: First, for the physical safety of the particular law enforcement official involved, there very well may be a necessity that when he goes into a very difficult situation - and we have had this with regard particularly to women agents who would be involved in narcotics work going into very difficult areas -- there is a need to be able to monitor that conversation and to be ready to protect that agent upon a moment's notice if that becomes necessary.

Secondly, however, even more important is the protection of reputation. Where you have a situation with a law enforcement official in a non-consent tape situation and where he must testify as to a conversation in a one-on-one or a one-on-two situation, in a sense his reputation rides on the decision the jury is going to make. If a jury is to return an acquittal in a case, that in turn will damage the reputation of this particular career law enforcement official, and you are going to find, I think, some hesitancy to get into that type of a situation. I think to demonstrate this, we only need to look at the situation, going back to Prosecutor Woodcock's suggestion, if someone were to call a Senator and say, "I think I can make you very happy," and consider whether you would want to go into that conversation one on one with some kind of recording device or whether you would not. I think that the danger, if you went in without that and if a trial ensued and particularly if the State must bear that burden of reasonable doubt and if an acquittal were to occur as a result of that, is that the reputation of the law enforcement official or the public official would be seriously damaged and probably impair his ability to perform

his job the way in which he should.

So, I simply ask that these factors be given consideration by the Committee.

In conclusion, we have heard a lot about problems in New Jersey over the past few years. New Jersey may have developed a reputation that is not a good reputation. I prefer to think about this in another light, however, because I think we have to realize that while there are problems that have become evident in New Jersey, those problems have become evident in good part because law enforcement at all levels, federal, State and local, have worked hard to expose those problems. And, if New Jersey appears to have more problems than some other jurisdictions, it may very well be because law enforcement in New Jersey, having been given the tools in the late '60's and early '70's, has effectively used those tools. And because law enforcement has worked to expose the problems that New Jersey faces, we may be ahead of a lot of states in terms of correcting those things.

As time goes on, I think we have a better future because of it.

We appreciate the time that this Committee is putting in in consideration of this matter. We simply ask you to help us to continue this fight. Thank you very much for your consideration.

SENATOR DUGAN: Thank you very much, Mr. Prosecutor.

SENATOR DUGAN: We will hear next from Prosecutor O'Halloran of Hudson County. Welcome, sir. You have been here most of the day, and you attended our last public hearing. You are, let's say, the summation witness for those involved in wiretaps on the prosecution side. Would you please give us the benefit of your thinking insofar as what you think the committee should be most impressed with from your perspective?

J A M E S T. O ' H A L L O R A N: Very well. I'd like to add my thanks to the committee for the opportunity to appear and testify on what we consider to be probably the most important piece of legislation to come along.

You have heard today from some of the heavy-hitting prosecutors, those whose tenure and experience in the use of wiretaps are much more extensive than mine in Hudson County. During their presentations and your questioning, the committee heard a statistical and conceptual analysis of the present electronic surveillance statute, its employment, and a unified view of the prosecutors of the State of New Jersey, the view that the statute ought to be extended. I am not going to review all of the areas of consideration which they presented. However, as the prosecutor in Hudson, I wish to endorse the position expressed by the spokesmen for those offices.

The Hudson County prosecutor's office takes the position that the wiretap statute, so-called, has been properly utilized, and, when properly utilized, it is the most effective tool that law enforcement possesses to combat organized criminal activity. I hope that the committee now appreciates that the provisions of this statute are employed discriminately. When they are so employed, under strict legal supervision

and with conscientious regard for the regulatory provisions contained in the statute, they are being properly employed.

I had intended to go into some specific cases, but I think that, because of the lateness of the hour, there is no real need to go into the number of arrests and the number of taps that our office was involved in. I would say, though, that, in my brief tenure in Hudson County - and today marks the ninth month of my tenure as prosecutor in Hudson County - one area that is open to criminal prosecution and---

SENATOR DUGAN: That's the normal period of gestation for a prosecutor, you know.

MR. O'HALLORAN: I'm sure.

One area in which I think the wiretap tool is eminently indispensable is in the combined or multi-county investigations, particularly in the two criminal activities of gambling and narcotics. Without the wiretap tool, such multi-county activity, I think, would be impossible.

I suspected that Prosecutor Lordi might have gone into some detail regarding an investigation in which his office and mine conducted over, about, a 40 day period. That and another investigation in which our office was involved with Prosecutor Asch in Union County, I think, are excellent examples of the kind of activity that electronic surveillance can produce. It may sound a little bit hackneyed, but I think it should be said that the only way that organized criminal activity can be effectively fought is with organized law enforcement activity. I think this is the tool that provides it.

As I have heard it expressed by some members of the committee, yes, we do concentrate heavily, in our wiretap investigations, on gambling activity. I

think it should as well be said that, although wiretaps in many, many instances involve gambling operations, I am sure that no one connected with these hearings is naive enough to believe that wiretaps should not be utilized because "it's just a few gamblers." Behind the scenes activities engaged in by those participating in such operations present an every-present danger. At the point in time when legislators can say that gambling activities and operations and the related activities, such as, loan sharking, extortion, hijacking, armed robbery, and police and political corruption, are no longer worth investigating, then, at that time, prosecutors can say, "We have no further need for the wiretap."

Prosecutor Williams had some comments concerning what I prefer to call "consensual recordings" rather than "consensual taps" as some have expressed it, because they are not really taps in the same sense as wiretaps in the language of the statute. The consensual recording is now, as you know, specifically excepted from the regulatory terms of the statute. If the overall concept of the wiretap is to remain a useful and workable investigative tool, then consensual recordings, both face-to-face and telephonic, must remain excepted.

Among the only grounds for entry of an order authorizing a wiretap is that which requires that the applicant present to the issuing judge information that indicates that the telephone in question is being used in connection with the commission of a particular offense. This, as has been expressed not only by Prosecutor Williams, but as well by Prosecutor Woodcock, is not an easy burden to meet. Certainly, there are several ways to infer that a telephone is being used in connection with a crime, but the most concrete way is to actually

discuss the criminal activity on a telephone by use of the consensual recording. This technique, because of its simplicity and clarity, is used in the investigative preparation of most wiretap cases, using either an informant or an undercover officer.

As you know, a wiretap application is an extensive and thorough document. To further complicate the preparation of this paper work, by requiring intermediate authorizations for consensual recordings, would be unduly burdensome and unnecessary in view of the fact that these types of consensual recordings are incorporated in the wiretap application for the ultimate review of one of the judges. To take away the excepted status of the consensual recording would be, in effect, to give the prosecutors permission to conduct wiretap investigations and then take away, or severely restrict, our principal means of showing that a wiretap is necessary and appropriate.

Now, as a kind of recap, it is undoubtedly true that wiretap cases usually make press headlines because of the fact that a great number of individuals are arrested, and large amounts of cash are generally seized. Perhaps subconsciously the impression builds up that law enforcement agencies utilize the wiretap to an inordinate degree. One point I would like to make is to correct that impression. Hudson County is the third largest county in the State, and we utilize wiretapping. For the calendar year, 1974, our office initiated about 9000 man-count cases, and, of that total, wiretapping accounted for only 52 man-count cases. I would submit that, while individual statistics will vary from county to county, this is a representative example which indicates that wiretaps are not overutilized and abused, but are used

only when no other suitable law enforcement investigative technique is available.

In summary, I would suggest to this committee that the prosecutors are not seeking here some benefit for themselves as prosecutors; they are not seeking legislation having to do with salary or staff increases; what we are seeking is a very important benefit for the public. We are not seeking something that will make our job easier, but we are seeking the continuation of an investigative instrument, an instrument without which the successful prosecution of organized criminal activity is virtually impossible.

I thank you for the opportunity to address your committee.

SENATOR DUGAN: Thank you very much. My compliments to you and your staff for putting together the presentation you made today. I have been singularly impressed with everyone who spoke today on this important subject, from both sides of the aisle, the law enforcement people and those who are defense oriented. It was a very interesting and rewarding experience for the committee.

We will conclude now with Captain Dintino of the State Police.

J U S T I N J. D I N T I N O: Mr. Chairman, I am Captain Justin Dintino of the New Jersey State Police. I am commander of the Intelligence Bureau. I am here today to represent Colonel Eugene Olaff, who is the superintendent of the State Police, and to make our official statement regarding our recommendations about the continuation of the wiretap law. I would like to read a brief statement which I have prepared.

SENATOR DUGAN: Since your presentation will conclude the testimony, why don't you submit the statement for inclusion in the record and give us the benefit of your observations? You have been here all day and have heard everything that was said. I assume that you agree with the conclusion that all the other law enforcement witnesses came to; that is, that this is a necessary tool and you cannot operate without it. Do you share that view?

CAPTAIN DINTINO: Absolutely, sir.

SENATOR DUGAN: What did you do before you had this tool? Did law enforcement grind to a halt in the State?

CAPTAIN DINTINO: Law enforcement did not grind to a halt. We were completely ineffective as far as our enforcement against organized crime in, for instance, the gambling area and the narcotics area.

SENATOR DUGAN: How do Illinois and Pennsylvania attack these law enforcement problems if they don't have that tool?

CAPTAIN DINTINO: I heard a previous gentleman's statements regarding Pennsylvania and Illinois, and I would beg to differ with him. Pennsylvania has the kind of problem we had 10 years ago, and it is not facing up to it. Pennsylvania has attained an image as a State with organized crime and official corruption problems. Its law enforcement agencies have not been provided with the tools, and, as a result, its attack on organized crime is completely ineffective. You ask, "How are they attacking these problems," and I am saying, basically, they are not. We were not either in the mid-60s.

SENATOR DUGAN: It is interesting to note that our reputation seems to have suffered inversely with the effectiveness of the law enforcement agencies'

development. The better you get, the worse we look, the worse we are perceived by the public. It's too bad that that's the way it is.

CAPTAIN DINTINO: To a degree, yes, and to another degree, I would say, no. I have had the opportunity to travel throughout the country and in Canada. I am a member of LEIU, which is the Law Enforcement Intelligence Unit. It represents all States in the United States, and it is international in scope and includes Canada. I attend semi-annual conferences and am used as a consultant and lecturer to various other Intelligence Bureaus throughout the country. Eight years ago, when we first organized our Intelligence Bureau, April 1, 1967, I found that the rest of the country and Canada had a very low image of the State of New Jersey. They were aware that we had a high organized crime problem. They were aware that we had a high corruption problem, and they also were aware that law enforcement was doing very little about it, that the Legislature was doing very little about it, and that the judicial system was doing very little about it.

SENATOR DUGAN: What do they think now?

CAPTAIN DINTINO: The image has changed greatly. In my travels, I find that other States are looking up to New Jersey. They even treat me differently. They are constantly asking for our advice. They know that we are taking action. They want to know why we are so successful, how we can help them, and what advice we can give them. They are constantly coming to the State of New Jersey, seeking us out. The whole image, in my opinion, is changing. Maybe we are getting some bad press because of official corruption cases, etc., but I think eventually that will all pass as we keep the

pressure on. We talk about effectiveness. There is evidence that we've had over 30 major organized crime figures leave this State and go to the State of Florida.

SENATOR DUGAN: Why do you think they left?

CAPTAIN DINTINO: Basically, because the pressure has been put on them by all levels of law enforcement: federal, state, county, and local.

SENATOR DUGAN: Some recent reports in the newspapers would have us believe that the reason they have left is that they fear subpoena by the SCI.

CAPTAIN DINTINO: That's one of the reasons.

SENATOR DUGAN: What evidence do you have to lead you to that conclusion?

CAPTAIN DINTINO: That they are leaving the State because of that?

SENATOR DUGAN: Yes.

CAPTAIN DINTINO: We have conclusive evidence along those lines, evidence that came over wiretap and reliable informants' information. We have informants among organized crime members.

SENATOR DUGAN: Evidence to the effect that they wanted to get out of here and go to Florida because they might be subpoened?

CAPTAIN DINTINO: Major organized crime figures have made the statement that they won't even drive through the State of New Jersey because of the pressure of law enforcement, the numbers of arrests, etc.

SENATOR DUGAN: Do they single out any law enforcement agency that they particularly fear?

CAPTAIN DINTINO: They fear the SCI, if you're driving at that, as far as its subpoena power is concerned, but I think it is a combination of all law enforcement agencies and the fact that we have the tools and techniques provided to us in this State: wiretapping, witness immunity, state grand juries, the SCI. It's the whole package that they fear.

MAJOR BAUM: Senator, could I make a comment on that?

SENATOR DUGAN: Certainly.

MAJOR BAUM: Briefly, organized crime is basically a service industry. It provides goods and services that are not available by legal means. It can only flourish in an environment that will accept it. These people are in business to make money. When the profit factor is taken out, they go to a place where they can make money. They don't leave this State and go to Florida to lie in the sun. Captain Dintino indicated that we were not doing much prior to 1967. As a matter of fact, since the enactment of the wiretap law and the other package that the Legislature enacted in 1968, I believe that we have arrested some 86 or 87 major organized crime figures. During the six or seven year period prior to that, we arrested none, because we did not have the tools to do it.

The question comes up: Why do we have so many gambling wires? It is because gambling is a big problem, and it's a problem that we are attacking through the use of the wiretap. Through the use of the wire, it renders their operation, many times, financially impractical. It has come to the point in our investigations that we have found bookmakers moving across the river, either into New York or into Pennsylvania, and getting foreign exchange lines so their bettors can make a local call and yet be outside of our jurisdiction. We have cooperated with federal authorities in investigations concerning that.

So, it is effective, and our position is that we are interested in keeping it that way.

SENATOR DUGAN: Captain, would you continue? I didn't mean to interrupt you.

CAPTAIN DINTINO: Basically, I'm just about finished. We strongly recommend the continuation of the wiretap. Our evaluation of it is that it has been an effective tool, and we feel that we have been extremely successful with it. We concur with Attorney General Hyland's recommendation; we are concerned about the right of a citizen's privacy too. He suggested a few further restrictions, one being reducing a line from 30 days to 20 days, and we concur in that area too. We have implemented, throughout our system, strict guidelines and controls so as to further cut the hours of non-pertinent conversation. In other words, when we apply for an order, for instance, a bookmaking order, it would be a 15 day order, and we would apply for the hours between 10 a.m. and 5 p.m. After the first day, we internally review the logs, and, if we ascertain that the bookmaker is only in operation between 12 and 3 p.m., the order immediately goes out to our monitoring plant to only monitor between 12 and 3 p.m. That's the way it is carried out from that point on. So, we are concerned also.

SENATOR DUGAN: There has been a wealth of information given to us. It will take us awhile to digest it. Again, I say to you, as I did to past witnesses, we appreciate all the effort that the State Police put into your testimony, the Major's, and the others that came from, represented, or had anything to do with your organization, in helping us to come to some of the conclusions that we are about to make. This has been a very meaningful experience for myself and the other members of the committee.

CAPTAIN DINTINO: Mr. Chairman, I would like to conclude with one comment. Approximately three years ago, I was watching television, and a major organized crime figure from the New England area,

who was second to Joe Valachi in starting to inform, during the course of his interview, made mention - and he included the State of New Jersey, in particular - that the second and third teams were now running the show. The indications were that there was a crack starting to show in the organized crime empire. He also indicated that previously - and he was referring to about five years before that - organized crime was laughing at law enforcement in the State of New Jersey, and they were laughing at the State - period. He indicated that they were no longer laughing at the law enforcement in the State of New Jersey or the citizens of the State. They were now becoming concerned with the pressures and with the success, and they were getting out of the area. I think that, in itself--- You asked about proof, and here was a major member of organized crime making those statements.

SENATOR DUGAN: It was a very interesting observation that you made in your short recitation of the history of the development of the law enforcement tools that the Legislature has given you since the late 60s. Thank you very much, Captain.

CAPTAIN DINTINO: Thank you. (Captain Dintino's prepared statement may be found at 1 X.)

SENATOR DUGAN: The hearing is now adjourned.

(Hearing Concluded)

A P P E N D I X

STATEMENT OF CAPTAIN JUSTIN J. DINTINO

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

BECAUSE OF TERRITORIAL DISPUTES AND MANY CASUALTIES DURING THE PROHIBITION ERA, INDEPENDENT CRIME GANGS OPERATING AT THAT TIME DECIDED TO UNITE IN AN ASSOCIATION TO FURTHER THEIR OWN CAUSE. IN 1931 THESE INDEPENDENT GANGS BANDED TOGETHER AND TOOK ON A FORMAL ORGANIZATIONAL STRUCTURE MADE UP OF TWENTY-ONE GROUPS FROM ACROSS THE NATION: A NINE MAN RULING COMMISSION WAS, BY AGREEMENT, SET UP TO ARBITRATE DISPUTES AND MAINTAIN ORDER BETWEEN THE GROUPS. AT THAT TIME, OF THE TWENTY-ONE CRIME GROUPS IN THIS ORGANIZATION, SEVEN WERE OPERATING WITHIN THE STATE OF NEW JERSEY. AS OF TODAY, FORTY-FOUR YEARS LATER, THERE ARE STILL TWENTY-ONE PRINCIPAL CRIME GROUPS IN THE UNITED STATES WITH THE SAME SEVEN ORGANIZATIONS OPERATING WITHIN NEW JERSEY, IN ADDITION TO NEW INDEPENDENT GROUPS THAT ARE EMERGING. WE HAVE IDENTIFIED OVER FIVE HUNDRED PRINCIPAL ORGANIZED CRIME MEMBERS AND OVER FIVE THOUSAND ASSOCIATE MEMBERS RESIDING OR OPERATING WITHIN THE BOUNDARIES OF NEW JERSEY, WHO MAKE THEIR LIVELIHOODS EXCLUSIVELY BY ILLEGAL MEANS.

IT WAS RECOGNIZED EARLY IN THE 1960'S, AFTER NUMEROUS CONGRESSIONAL INVESTIGATIONS AND HEARINGS, THAT NEW JERSEY HAD A VERY SERIOUS ORGANIZED CRIME AND OFFICIAL CORRUPTION PROBLEM. IN SPITE OF THE EFFORTS OF LAW ENFORCEMENT AGENCIES AT THAT TIME THE PROBLEM CONTINUED TO GROW. IT WAS FINALLY RECOGNIZED THAT ADDITIONAL

TOOLS WERE NEEDED TO COMBAT THIS GROWING MENACE. THIS REALIZATION RESULTED IN NEW LEGISLATION WHICH PROVIDED FOR THE ESTABLISHMENT OF A STATEWIDE GRAND JURY, COURT APPROVED ELECTRONIC SURVEILLANCES AND WITNESS IMMUNITY. THROUGH THE UTILIZATION OF THESE NEW TECHNIQUES, SIGNIFICANT PROGRESS HAS BEEN MADE IN THIS STATE AGAINST ORGANIZED CRIME AND OFFICIAL CORRUPTION, AND AS A RESULT NEW JERSEY IS RECOGNIZED NATIONALLY AS BEING ONE OF THE MOST PROGRESSIVE STATES IN THE FIGHT AGAINST ORGANIZED CRIME AND OFFICIAL CORRUPTION.

IT HAS BECOME APPARENT THAT CRIME IS BECOMING MORE ORGANIZED AND SOPHISTICATED IN ITS APPROACHES; ITS OPERATIONS HAVE EXPANDED VIA MASS COMMUNICATION; AND IT IS LIKELY THAT TELEPHONES AND RECORDERS WILL TAKE THE PLACE OF PERSON TO PERSON CONTACT. WE HAVE FOUND THAT IN LARGE GAMBLING OPERATIONS AND IN A SIGNIFICANT NUMBER OF LARGE NARCOTICS OPERATIONS, THE TELEPHONE IS THE PRIMARY INSTRUMENT IN THE FURTHERANCE OF THESE ACTIVITIES. IF LAW ENFORCEMENT DOES NOT MEET ORGANIZED CRIME WITH EQUAL SOPHISTICATION, IF CRIME IS PERMITTED TO OUTDO THE LAW, THE SECURITY OF OUR SOCIETY WILL BE IN JEOPARDY.

A STATISTICAL REVIEW OF THE SIX YEAR PERIOD OF THE NEW JERSEY STATE POLICE CASES SINCE THE ENACTMENT OF THE NEW JERSEY ELECTRONIC SURVEILLANCE CONTROL ACT IS AS FOLLOWS:

NUMBER OF WIRETAPS	332
NUMBER OF EAVESDROPS	17
TOTAL	339

NUMBER OF ARRESTS	876
BOOKMAKING & LOTTERY	675
NARCOTICS	158
OTHER	43

OF THE 876 PERSONS ARRESTED BY THE STATE POLICE ON EVIDENCE OBTAINED BY ELECTRONIC SURVEILLANCE, 771 WERE MEMBERS OF ORGANIZED CRIME, OF THESE 89 WERE PRINCIPAL MEMBERS OF SYNDICATED OPERATIONS.

A REVIEW OF THE SIX YEAR PERIOD PRIOR TO THE ENACTMENT OF THE ELECTRONIC SURVEILLANCE CONTROL ACT REVEALED THAT NO EFFECTIVE INROADS WERE MADE AGAINST ORGANIZED CRIME OPERATIONS. DURING THIS PERIOD, IT WAS COMMON KNOWLEDGE WITHIN THE UNDERWORLD AND UPPERWORLD THAT THE HIGHER YOU CLIMBED THE LADDER IN ORGANIZED CRIME THE MORE YOU BECAME IMMUNE FROM THE LAW. IF OUR STATE HAD NOT TAKEN ACTION, WE WOULD HAVE DETERIORATED TO A LEVEL THAT OTHER SOCIETIES HAVE EXPERIENCED IN THE PAST WHERE ORGANIZED CRIME CONTROLLED THE GOVERNMENT TO SUCH AN EXTEND THAT LAW ENFORCEMENT WAS RENDERED INEFFECTIVE AND THE CITIZENS WERE AT THE MERCY OF ORGANIZED CRIME AND THEIR RUTHLESS TACTICS.

OUR EXPERIENCE HAS SHOWN THAT THE MAJORITY OF CORRUPTION CASES SUCCESSFULLY INVESTIGATED AND PROSECUTED WERE THE RESULTS OF CONSENSUAL INTERCEPTS. BECAUSE OF ELECTRONIC SURVEILLANCE AND CONSENT TAPES, WE HAVE BEEN ABLE TO PENETRATE ORGANIZED CRIME GROUPS AND SECURE EVIDENCE ON CORRUPT OFFICIALS WHO WERE PREVIOUSLY INSULATED FROM ARREST.

CONCERNS ABOUT THE ABUSE OF ELECTRONIC SURVEILLANCE

THERE IS OPPOSITION TO WIRETAPPING, ESPECIALLY IN THE AREA OF THE CITIZEN'S RIGHT TO PRIVACY. ALL OF US AGREE THAT ONE OF OUR MOST CHERISHED RIGHTS AS AN AMERICAN IS THE RIGHT TO PRIVACY. HOWEVER, IT IS IMPORTANT TO NOTE THAT AN ELECTRONIC SURVEILLANCE IS USED ONLY WHEN ALL OTHER INVESTIGATIVE EFFORTS HAVE FAILED.

ALL REQUESTS FOR COURT ORDERED ELECTRONIC SURVEILLANCE BY THE DIVISION OF STATE POLICE ARE SUBJECT TO A FIVE PHASE INTERNAL REVIEW. THESE REQUESTS ARE CLOSELY SCRUTINIZED BY EACH REVIEWING OFFICER AND AT ANY PHASE THE INVESTIGATOR MAY BE DIRECTED TO UTILIZE OTHER INVESTIGATIVE MEASURES. WHEN FORMAL APPLICATION IS DRAWN UP, IT IS THEN SUBJECT TO A FOUR PHASE EXTERNAL REVIEW BY A DEPUTY ATTORNEY GENERAL. THE SUPERVISOR OF THE ORGANIZED CRIME AND SPECIAL PROSECUTION SECTION, THE DIRECTOR OF THE DIVISION OF CRIMINAL JUSTICE, AND THE ATTORNEY GENERAL BEFORE IT IS SUBMITTED TO THE SUPERIOR COURT FOR APPROVAL. ONCE AN ELECTRONIC SUR-

VEILLANCE IS UNDERTAKEN, THERE ARE PROTECTIVE MEASURES TO KEEP NONPERTINENT CONVERSATIONS PRIVATE; THE TAPES ARE SECURELY STORED AND ONLY PERTINENT CONVERSATION IS USED IN ANY COURT TRIAL.

PERSONS REVIEWING THE ELECTRONIC SURVEILLANCE ACT HAVE EXPRESSED CONCERN THAT INFORMATION OBTAINED BY THE USE OF COURT AUTHORIZED ELECTRONIC SURVEILLANCE COULD BE USED FOR THE PURPOSE OF BLACKMAIL OR EXTORTION. THE CONTROLS BUILT INTO OUR PROCEDURE FOR INTERCEPTING COMMUNICATIONS SUCH AS SECURITY OF TAPES, LOGGING OF CALLS AND A RECORD OF PERSONS MANNING THE PLANT, MAKE IT VERY UNLIKELY THAT ANYONE COULD SUCCESSFULLY USE INFORMATION FROM COURT AUTHORIZED ELECTRONIC SURVEILLANCE FOR HIS OWN BENEFIT. TO MY KNOWLEDGE, THERE HAS NOT BEEN ONE COMPLAINT RECEIVED BY ANYONE IN THIS STATE SINCE THE ELECTRONIC SURVEILLANCE ACT WENT INTO EFFECT CONCERNING THE MISUSE OF INFORMATION OBTAINED ON A COURT APPROVED WIRETAP OR EAVESDROP.

THROUGH ARRANGEMENT WITH THE NEW JERSEY BELL TELEPHONE COMPANY, ALL SUSPECTED ILLEGAL WIRETAPS ARE REPORTED TO THE DIVISION OF STATE POLICE INTELLIGENCE BUREAU SUPERVISOR. A DETECTIVE FROM THE ELECTRONIC SURVEILLANCE UNIT IS IMMEDIATELY SENT TO REMOVE THE SUSPECT EQUIPMENT AND CONDUCT AN INVESTIGATION. SINCE 1971, WE HAVE INVESTIGATED 68 SUCH CASES OF ALLEGED ILLEGAL WIRETAPPING. WHILE MOST CASES HAVE BEEN DOMESTIC (I.E. HUSBAND

RECORDING WIFE), SOME INVESTIGATIONS HAVE RESULTED IN ARRESTS. IN 1974 THE STATE POLICE INVESTIGATED AN ILLEGAL BUGGING OF THREE LAWYERS WHO AT THE TIME WERE IN THE MIDDLE OF A TRIAL IN FEDERAL COURT; THIS WAS AN ATTEMPT TO DISRUPT THE TRIAL BY MAKING IT APPEAR AS THOUGH LAW ENFORCEMENT MAY HAVE USED ILLEGAL MEANS TO OBTAIN EVIDENCE. WE WERE ABLE TO TRACE THE EQUIPMENT TO THE MANUFACTURER AND OUR SUBSEQUENT INVESTIGATION RESULTED IN THREE ARRESTS FOR VIOLATION OF THE ELECTRONIC SURVEILLANCE ACT AND TEN ARRESTS FOR VARIOUS FEDERAL VIOLATIONS.

WHILE WE HAVE FOUND THE ELECTRONIC SURVEILLANCE ACT A VERY USEFUL TOOL IN ENFORCEMENT IN ITS PRESENT FORM, WE CONCUR WITH ATTORNEY GENERAL HYLAND'S RECOMMENDATIONS FOR AMENDMENTS TO THE ELECTRONIC SURVEILLANCE CONTROL ACT. WE SHARE HIS CONCERN TO PROTECT FURTHER THE RIGHTS OF THE CITIZENS OF THIS STATE.

WE IN THE DIVISION OF STATE POLICE STRONGLY URGE THE CONTINUANCE OF THE NEW JERSEY WIRETAPPING AND ELECTRONIC SURVEILLANCE CONTROL ACT. WE FEEL THAT ANY RESTRICTIVE CHANGES BEYOND THE RECOMMENDATION OF THE ATTORNEY GENERAL WILL NULLIFY ANY ADVANTAGES OF THE ACT. WITHOUT THE USE OF ELECTRONIC SURVEILLANCE TECHNIQUES, LAW ENFORCEMENT EFFECTIVENESS AGAINST ORGANIZED CRIME AND OFFICIAL CORRUPTION WOULD BE REDUCED TO A LEVEL COMMENSURATE WITH THAT OF THE 60'S, PRIOR TO THE ENACTMENT OF THESE PROGRESSIVE AIDS TO LAW ENFORCEMENT.

STATEMENT OF ESSEX COUNTY PROSECUTOR JOSEPH P. LORDI
TO
THE SENATE JUDICIARY COMMITTEE

In 1961 a special Grand Jury was empaneled to conduct an investigation of organized criminal activity within Essex County. Upon completion of that investigation, they returned a Presentment in which they concluded that gambling was the "heartbeat" of organized crime on a local and national level. More specifically, the Grand Jury found there was, within Essex County, a highly organized criminal conspiracy to violate the gambling laws which extended beyond the boundaries of Essex County; and that this highly organized criminal conspiracy operated much like any other business; that is, with a table of organization, territorial franchises, delegated authority and strong discipline. The organization provided all necessary services, including money and paraphernalia, but was distinguished from the usual businesses by the presence of violence, fear, corruption and silence. In one particular passage, they discussed the role of the bettor and his financial contribution in very hard terms:

> The bettor's contribution places fantastic sums of money in the hands of those individuals least concerned with the public interest and the community welfare. The wealth thus reposed is used to finance other illegal activities which strike at the very roots of normal society and business intercourse and then by devious means is in a position to attack the very governmental structure we all live by. The door is open to police and official corruption in a manner incomprehensable to the citizen when he placed the bet. (Page 4)

In a publication entitled, "Police Guide on Organized Crime," published by the Law Enforcement Assistance Administration, it is estimated that the untaxed underworld proceeds from gambling alone are estimated at approximately $600,000 per hour.(Page 6). Thus, it is apparent that where organized crime exists, illegal gambling flourishes. During my tenure as Prosecutor it has always been my policy to vigorously pursue all violations of the law related to syndicated gambling activities because of the causal connection between the presence of this type of activity in a community and the other syndicated criminal activities which accompany it.

As one of its recommendations in 1961, the special Grand Jury strongly requested the Legislature to consider the enactment of a wiretap statute. They found that the individual right to privacy was subject to the over-riding needs of society as a whole, and the serious problem of organized crime might warrant some limited wiretapping by public authorities. The Grand Jury based this recommendation in part upon their finding that those involved in the higher echelons of organized crime were frequently not apprehended because they were not directly involved in the physical, operational aspects of the organization, but rather made contact in most instances through telephone communications.

In 1968 Congress passed the Omnibus Crime Control and Safe Streets Act which, inter alia, authorized Electronic Sur-

veillance by Federal agencies in conformity with the guidelines established by the United States Supreme Court in Berger v. New York, 388 U.S. 41, 18 L.Ed. 2d 1040, 87 S.Ct. 1873 (1967) and Katz v. United States, 389 U.S. 347, 19 L.Ed. 2d 576, 88 S.Ct. 507 (1967). One provision of that Act allowed the several states to adopt, if they desired, an Electronic Surveillance Control Act, which could be no less restrictive than the Federal Act adopted.

At the time the Federal Act was passed, New Jersey was identified as a haven for organized crime with little, if any, effort on its part to deal with the problem. To counteract this image of indifference, the legislature, after public hearings, adopted an Electronic Surveillance Control Act patterned almost completely after the Federal Act. This statute, along with other far reaching legislative action has placed New Jersey in the forefront of the fight against organized crime.

Upon passage of the Act, a special squad was created in my office to handle all investigations throughout the County in which Electronic Surveillance was to be used. Four investigators assigned to this squad were trained in the use of the technical equipment necessary to conduct Electronic Surveillance. These four men still occupy the same positions. They are the only men in my office--indeed, the only men in Essex County--who have been trained to use this equipment, and they do so under the most rigid controls.

At the same time this unit was created, then Assistant Prosecutor Martin G. Holleran--subsequently appointed Executive Director of the State Commission of Investigation--was placed in charge of that group and had the responsibility of reviewing and scrutinizing every request made for Electronic Surveillance. When Mr. Holleran resigned his position, Assistant Prosecutor John A. Matthews, III, was appointed to head this unit. Before any application for electronic surveillance comes to my desk for approval, it is thoroughly reviewed by Mr. Matthews, in accordance with strict and fixed standards. He must be satisfied that the results desired in the investigation can only be achieved through the use of Electronic Surveillance, that all other means and investigative tools have been exhausted, and the nature of the investigation warrants the use of Electronic Surveillance. Before any authorization is signed, I also must be satisfied that these criteria have been met.

During the period from 1969 until the present, there have been instances where an order for Electronic Surveillance has not been signed by a Judge when requested; but; these instances have been few and far between. I attribute this fact to the screening process which I have established, and to the thorough review given all requests within the office. My best estimate is that less than half the requests for Electronic Surveillance made to my office actually result in an order permitting Electronic Surveillance.

I might point out, that while the statute permits applications where there is reason to believe that a crime has been, is being, or is about to be committed over a particular telephone, it is the policy of the office to insist that all applications for Electronic Surveillance detail specifically that criminal activity of a continuous nature is occurring over any telephone for which an order is sought, and that Electronic Surveillance is the only effective method to identify those persons engaged in the criminal conduct.

In the statute, certain situations are set forth wherein a special need is required before an order for Electronic Surveillance can be obtained. These areas include the so-called privileged communications; that is, attorney/client, doctor/patient and priest/penitent. From the enactment of the statute until the present time, this office has never sought an application for any telephone covered by a privilege of the type listed above. This is not to say that in an appropriate investigation, Electronic Surveillance would not be used or sought were it necessary for the successful completion of that investigation. I can assure this Committee, however, that any such requests would receive the same thorough screening given any application which comes to me.

Under the New Jersey statute, the Chief Justice of the Supreme Court is required to designate certain Judges to sign orders authorizing Electronic Surveillance. The procedure as

set forth in the statute requires a written application for authorization to intercept conversations to be submitted by the County Prosecutor or the Attorney General to one of the designated Judges. There is also a provision in the statute which permits authorization upon verbal request in an emergent situation to intercept one conversation. This provision requires that a written request and order be submitted within twenty-four hours of the granting of the oral request. Although this section has been available, it has never been used by my office.

As indicated above, under the New Jersey Statute both the County Prosecutor and the Attorney General are authorized to apply for court authorized Electronic Surveillance. It has been suggested by some New Jersey Legislators that the authority of the County Prosecutor to apply for Electronic Surveillance should be made subject to the written approval of the Attorney General, and that all technical assistance be supplied by the State Police. It is my firm belief that such a provision in the law would weaken the effectiveness of the statute and the ability of local Prosecutors to conduct meaningful investigations into organized criminal activity. Such a requirement would unduly delay any application because of the necessity of obtaining the written consent of the Attorney General and the technical assistance of another law enforcement agency unfamiliar with the background of the individual under

investigation.

From the enactment of the statute until December 31, 1974, my office has received authorization for Electronic Surveillance in 212 instances. This figure does not reflect the number of investigations conducted, because many investigations involved more than one order for Electronic Surveillance. I would estimate that during this six-year period approximately 140 investigations utilized Electronic Surveillance. These investigations resulted in the arrest of 937 individuals as of December 31, 1974. The number of arrests, though large, does not completely reflect the true value of Electronic Surveillance. During this six-year period, the use of Electronic Surveillance has made possible the arrest and conviction of major organized crime figures in Essex County and caused many others to leave its jurisdiction.

Our society today has become very mobile, and criminal activity reflects that changing pattern. Just as society itself places more and more emphasis on the telephone as a means of transacting business, so too, does organized crime use the telephone as an instrument for criminal activity. In order for law enforcement to effectively stem this type of organized criminal activity, it is essential that law enforcement agencies be permitted the continued use of Electronic Surveillance as an investigatory tool.

When a decision has been made by my office to utilize

Electronic Surveillance, the amount of manpower used depends upon the nature of the crime being investigated. For example, in narcotics investigations, it is necessary that Electronic Surveillance be conducted on a twenty-four hour basis requiring a minimum of eight detectives to monitor the communications. While we do receive assistance from local police during these investigations, each investigation involving Electronic Surveillance requires a tremendous amount of man-hours and an increase in the number of men necessary to conduct an investigation and prosecute the case. The use of extra manpower does increase the cost of the investigation, an expenditure, however, justified by the results achieved. During the calendar year of 1974, my office had occasion to investigate over 10,000 complaints of criminal violations in Essex County, and in only 45 investigations did we utilize Electronic Surveillance. Clearly, it is a tool which is used very sparingly--but very effectively--by the office.

By way of example, in gambling investigations, the use of Electronic Surveillance has enabled the office to arrest every individual in a particular operation, from the bosses right down to the writers. In 1971 we conducted an investigation which resulted in the arrest of 55 individuals, each of whom was an integral part of one of the largest lottery operations ever uncovered in the State of New Jersey. The use of Electronic Surveillance enabled us to convict everyone in the

operation, even though physical evidence (lottery slips and/or account sheets) was not found on each individual. The bosses of the operation, who never ventured out of a room containing a telephone, were also convicted. Needless to say, they would never have been identified, let alone convicted, without Electronic Surveillance.

Electronic Surveillance has been an effective tool with regard to the large-scale narcotics distribution ring because it enables us to identify not only the street dealers, but the suppliers. Experience has shown that a large-scale narcotics supplier generally does not touch the narcotics himself, but has others in his employ who pick it up and move it from location to location. Electronic Surveillance is most effective in identifying such people.

In a loansharking operation, quite often the loanshark converses with his victim over the telephone, discussing, among other things, the terms of the loan and the interest due and payable to the loanshark. By the use of Electronic Surveillance, such terms are memorialized through the lips of the loanshark. Thus, the fear engendered in the victim by the loanshark no longer operates as a bar to successful prosecution.

In organized high-jacking rings, the telephone quite often is used to arrange for meetings of co-conspirators, and for the transfer of goods from location to location. The effective utilization of Electronic Surveillance in this area

allows law enforcement to conduct physical surveillance; and by using both the physical surveillance and the telephone conversations, tie the entire operation together. No longer are just the drivers, who are often dupes, subject to arrest.

An area of concern within Electronic Surveillance is the so-called "bugging" problem. The New Jersey Statute permits interception of a conversation where one of the parties to that conversation consents to its recording. This is true whether the recording is made by law enforcement or private citizens; and is also true whether the conversation is a telephonic one or a face-to-face conversation. It has been suggested that the right of a citizen to record his own conversations should be removed from him. In addition to the questionable constitutionality of such a provision, it would also be virtually impossible to enforce such a provision, since in most cases an individual does not reveal to others that he has recorded a conversation. The only time authorities would become aware of such a violation would be when an individual came forward with a recorded conversation indicating criminal activity on the part of another. If what this individual did in making this recording was illegal, law enforcement authorities could be placed in the position of arresting the victim of a crime and letting the criminal escape prosecution. With proper safeguards and a thorough check of any tape brought in by a private citizen to make sure a tape has not been altered, my office has

found these tapes to be an invaluable tool.

There has also been some suggestion that law enforcement officials should be required to seek an order before they can record any conversation where one of the parties consents to that recording. It is my opinion that such a requirement would place an undue burden on law enforcement and operate to the detriment of many innocent public officials and individuals. In instances when an individual comes to my office and alleges that a telephone is being used to conduct criminal activity, it has been my practice to require this individual, in the presence of a detective, to call that number and verify the information given us. When an outside agency comes in with such an informant, it is my policy to require that a recording of a conversation between the informant and the other individual in a telephone conversation be produced. This internal control has been established to insure that no investigation is undertaken merely on the naked allegations of an individual. It means that when the office seeks an order for Electronic Surveillance, we know that the telephone is being used as an instrument of crime. I would estimate that during the course of a year my office records 200 such conversations, many of which do not result in an application for Electronic Surveillance. To require a court order for each such interception would place an undue and unnecessary burden on the staff.

During the period that the New Jersey Electronic Sur-

veillance statute has been in effect, the office has conducted approximately 30 investigations involving consentual interception of conversations in which criminal charges were brought. As a safeguard, whenever anyone comes to my office with a complaint of official corruption, extortion, and crimes of that nature, the individual is asked to consent to have a body mike placed on him to record any conversations regarding the transaction complained of. On several occasions when such a request has been made an individual has withdrawn his charge. Such consentual intercepts enable the office to more effectively evaluate the factual situation based on the words as actually spoken and the tone of voice in which those words were uttered. It also enables Grand Juries and Trial Juries to properly evaluate the entire transaction by actually hearing what the individual said and the manner and context in which he said it. There is no doubt that a portion of a conversation can be taken out of context and a meaning placed on that portion which is not consistent with the entire conversation, but through the use of consentual recordings of conversations, the entire conversation is recorded, and thus not subject to that problem.

An objection raised to the consentual intercept is that the conversation is not subject to cross-examination. The trial of a criminal case is a search for the truth and that search is considerably aided by a memorialized recording of the conversation rather than relying on the recollection of an individual

as to what was said in a conversation which in most instances has occurred six months or longer before he testifies in court. Other areas, such as motivation of the victim and the meaning of a particular phrase, are still subject to cross-examination. But, to know the wording of the phrase itself and the tone of voice in which it was said is of inestimable aid to the jury.

Another area where the use of consentual monitoring of conversations is essential is the protection of undercover police officers. It is usual practice for a police officer acting in an undercover capacity to have a body mike placed on his person so other officers can remain away from the immediate scene but be available to assist him should any problems occur in the investigation and transaction in which he is involved. It is this communication with fellow officers which insures his safety and enables him to go into areas where he otherwise might not be safe.

As indicated above, the diligent use of Electronic Surveillance in both consentual and non-consentual investigations has resulted, not only in numerous arrests, but in arrests of people previously immune from judicial process. The effectiveness of Electronic Surveillance does not rest merely on the arrest of these individuals, but also on their conviction and removal from society. At a time when the criminal justice system is staggering from the backlog of criminal cases, it is interesting to note that cases involving Elec-

tronic Surveillance usually result in the entry of pleas of guilty. There is a chilling psychological effect upon an individual when he hears the actual criminal conversation in which he participated. In instances involving extortion and/or corruption, the recording of a conversation between the victim and the person demanding the money greatly increases the chances of conviction and results in a more successful attack by law enforcement authorities on corrupt public officials, officials who use their public trust for private gain.

Another benefit to law enforcement from the use of Electronic Surveillance has been the fostering of closer relationships between various law enforcement officials. Local police are dependant upon the County Prosecutor or the Attorney General for any investigations in which they wish to utilize Electronic Surveillance. To my knowledge, no local police officers within Essex County have been trained in the use of such equipment.

Experience has also shown that in many instances once investigations are undertaken involving Electronic Surveillance they spill across county lines. Before Electronic Surveillance there may have been a tendency on the part of law enforcement officials to limit investigations to their jurisdiction. Not so today! In investigations crossing county lines--and even state lines--those effected law enforcement agencies have been compelled to work very closely with each other and concomitantly

accomplish a great deal more. In a time when organized crime is becoming much more flexible and less tied down by artificial boundaries, such cooperation between law enforcement agencies is absolutely essential.

At the time of the enactment of the statute, concern was expressed about possible abuses of the statute by law enforcement. I can assure this Committee that in the use of this tool my office has exercised the most stringent controls and utmost discretion. No case has ever been brought to my attention wherein it was alleged--or even inferred--that my office abused its discretion in the use of Electronic Surveillance. Indeed, I have not heard of any violations of the New Jersey Statute by any law enforcement agency within this state. Any abuses involving Electronic Surveillance have been committed by people not associated with law enforcement. The New Jersey Statute prohibits anyone other than law enforcement officials from possessing and/or using certain equipment necessary to conduct Electronic Surveillance. The fact is my office has conducted several investigations in cases involving unauthorized Electronic Surveillance by persons not connected with law enforcement and undertaken prosecution in certain cases. The only measure taken to insure that these tools are not used by non-law enforcement people is the awareness of the general public that, should they possess or use any of this equipment, they will be prosecuted. I might point out that the criminal

penalties for violation of this provision of the New Jersey Act call for imprisonment for five years and a fine of $10,000.

If this Committee desires, I can set forth numerous specific documented examples detailing investigations made possible only by the use of Electronic Surveillance. I can graphically demonstrate for this Committee how its effectiveness combats crimes associated with organized criminal activity, including, but not limited to, syndicated gambling, distribution of controlled dangerous substances, receiving stolen goods, loansharking and corruption. The substantial impact made in this state on the problem of organized crime would not have been made without Electronic Surveillance.

In summary, it is my feeling that Electronic Surveillance has been the most effective tool given to law enforcement in this century. Historically, Essex County has long been an area where substantial activities connected with organized crime have been conducted, and part of the problem stems from antiquated investigatory techniques. Electronic Surveillance has enabled my office as well as other similar offices in New Jersey to successfully prosecute many major organized crime figures and has also caused other organized crime figures to leave our state. If this statute is not reenacted and the most effective of all law enforcement tools is denied us, I am fearful we will return to conditions as they existed prior to 1969, and organized crime will again infest our community.

Superior Court of New Jersey

Essex County

(CRIMINAL)

IN THE MATTER

of

THE INVESTIGATION OF ORGANIZED GAMBLING AND SHYLOCKING WITHIN THE COUNTY OF ESSEX.

PRESENTMENT

BRENDAN T. BYRNE,
County Prosecutor of Essex County.

JOSEPH P. LORDI,
First Assistant Prosecutor.

SANFORD M. JAFFE,
Special Legal Assistant Prosecutor.

Adams Press Corp., 11 Commerce Street, Newark, N. J.—Market 3-8611-12

ESSEX COUNTY GRAND JURY

Sixth Grand Jury—1960 Term

MARSH, JOHN C.
Foreman

ROMANET, RAYMOND L.
Deputy Foreman.

MAHER, JAMES P., JR.
GUNTHER-MOHR, MRS. FRANCES L.
NEUMANN, EDWARD M.
GREEN, JACOB
CRAVEN, MRS. GLADYS T.
EADIE, MRS. EVELYN
DONALDSON, MRS. JANE P.
WEINER, MRS. BEATRICE
SILVESTRI, JOSEPH
MAYER, HERBERT J.
MAGUIRE, WILLIAM A.
STALNECKER, STEWART
BAUSUM, HARRY W.
FREER, FRANK, JR.
MASINI, FRANK G., JR.
HOLLINGSWORTH, HENRY T.
TRACY, MRS. CECELIA M.
HELLRIGEL, CHARLES B.
SCHONGER, HERMAN G.
BRYDON, NORMAN F.
MACK, GEORGE F., JR.

WILLIAM J. CAFFREY
Grand Jury Clerk

JOHN A. BYRON
Asst. Grand Jury Clerk

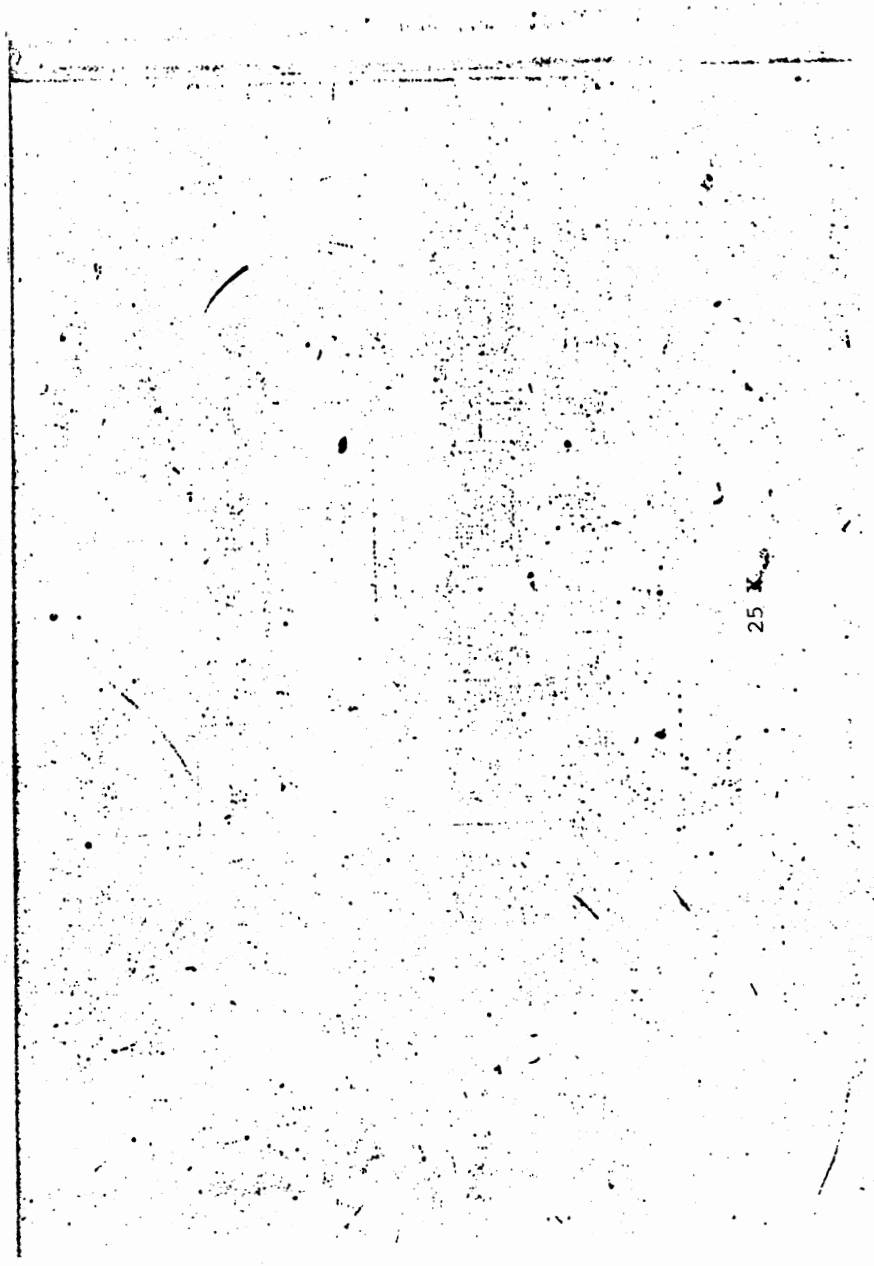
To the Honorable ALEXANDER P. WAUGH,
Assignment Judge of the Superior Court of New Jersey in the County of Essex:

On the 13th day of March, 1961 this Grand Jury was sworn to consider evidence bearing on the problem of organized gambling and shylocking in this County. The catalyst for this investigation was a series of shootings that occurred within our County or had their roots in local illicit activities. The Grand Jury by reason of its investigation is particularly cognizant of the problem that faces the community and through this presentment endeavors to alert the citizens of the County to the very real and serious implications of organized crime.

The problem is not unique to this County. A Senate Investigating Committee has revealed its existence on a national level and every metropolitan area is faced with the organized criminal. In the Foreword of a report of the New York State Commission of Investigation, dated February 1961, entitled "Syndicated Gambling in New York State" the commission notes: "Gambling is the very heartbeat of organized crime both on a local and national scale."

This Grand Jury was in session for a period of 10 weeks during which it heard testimony from approximately 100 witnesses. The magnitude of the problem and the practicalities inherent in a limited term grand jury made it impossible to survey all sections of the county. Although our conclusions are based on a detailed survey of specific areas, we have reason to believe that similar conditions encountered exist in other sections of the county.

Indictments have been returned based on the testimony heard. And in fairness to the individuals who will stand trial, a detailed summary of the facts we have ascertained will not be given. Rather, only a general outline sufficient for purposes of this presentment will be stated.



At approximately 10:00 a.m. on Friday, September 23, 1960, a shooting occurred at the Club Fremont, 463 No. 5th Street, Newark, New Jersey. Three men were subsequently found with bullet wounds in two hospitals. The shooting bore a direct relationship to organized gambling and the attempt on the part of certain individuals to rob the bookmaker, the lottery operator, and other employees of the organization. Shortly thereafter, at the junction of Newark and Bloomfield, a similar brand of justice was meted out. At that time, the victim, with others, had been observing a gambling drop in Bloomfield to determine the feasibility of robbing this place when he was wounded by a shotgun fired from a passing vehicle.

Authorities interrogated one Pasquale Ferrante concerning his knowledge of these shootings. From Ferrante, and other individuals, it was ascertained that Ferrante had been "fingering" bookmakers and lottery operators. Within a short time this information was common knowledge among Ferrante's friends and others who had cause to be interested and apprehensive. Ferrante was then "marked" for death. On January 9, 1961, his body was found in an abandoned auto which was parked in Harrison.

Further investigation revealed that Ferrante was also working for individuals involved in shylocking activities. As a result, an attempt was made to determine the extent of this illicit occupation.

This Grand Jury has been shocked by the evasiveness and hesitancy of many of the witnesses it has called. The search for the truth has been frustrated by the failure of these witnesses to tell what they know. Equally discouraging has been the utter failure on the part of our citizens to come forth and testify to activities that go on in their immediate neighborhoods. Of course, the jurors realize that fear of reprisal has deterred some but it is precisely because of this reason and myriad others that they should

come forth. Elementary obligations inherent in citizenship demand and require such cooperation.

While the facts adduced and the testimony presented by the Prosecutor's staff to this Grand Jury falls short of that required by law to sustain an indictment against certain individuals, the jury is satisfied that a criminal conspiracy to violate the gambling laws of the State of New Jersey exists within the County of Essex. It is highly organized and appears to extend beyond our county lines. The jury's investigation reveals that gambling in this County goes back many years. Evidence has been uncovered to indicate that since the early 40's there has been little change in the organizational structure of gambling. But, the mode of operation has become more subtle and sophisticated. The plush gambling casinos of the past are no longer in existence.

The directors of this conspiracy have followed a table of organization that is comparable to any military establishment. Territories have been allotted, authority delegated through intricate means, discipline demanded and achieved by a set of morals foreign to normal standards, and secrecy made an integral part of the operation. Money, paraphernalia, and all necessary services are made available by the organization. Violence and fear permeates from the top down to prevent any dissidence and provides the cohesiveness that binds an efficient organization. On top of all this is a deliberate effort to obtain a facade of respectability and suburban living, not only for personal reasons but to prevent detection and to foster community apathy.

The testimony reveals that separate gambling organizations operate in the various sections of the City of Newark. Some of these organizations overlap and extend to other areas of the County and State. Although the degree of linkage is not clear, the pattern of their activity indicates a central force which guides and controls the whole operation

The Jury was concerned primarily with bookmaking (i.e. betting on horses and sporting events) and the lottery or policy numbers aspect of the gambling laws. These operations are well known to the public and it would serve no purpose to delineate the method of operation. The bookmaker and the numbers writer can be found in some taverns, neighborhood stores, market places, business establishments, private dwellings and local social clubs. Their whereabouts and availability is common knowledge to the initiated betting public. The relative ease in which a wager can be made provides encouragement which might otherwise not exist and fosters the growth of organized gambling.

Widespread public apathy assists these open violations of the law. Citizens of all strata support these illegal activities by placing bets with bookies and then rationalize the propriety and morality of such acts. The irony, in the limited perspective of the bettor, is the failure to appreciate the direct part he plays in corrupting the very community in which his family lives. The bettor's contribution places fantastic sums of money in the hands of those individuals least concerned with the public interest and the community welfare. The wealth thus reposed is used to finance other illegal activities which strike at the very roots of normal social and business intercourse and then by devious means is in a position to attack the very governmental structure we all live by. The door is open to police and official corruption in a manner incomprehensable to the citizen when he placed the bet. Of course, none of the above is any the less important than the moral decay that must necessarily come about in any community that is subject to organized gambling.

Local Police Departments are not fairly subject to criticism, although in a few instances we have found their approach to the problem less than enthusiastic. But, even with most diligent enforcement, local police action without public support cannot effectively cope with organized gambling.

Existing laws, implemented by recommendations hereinafter set forth, applied vigorously and with continuous pressure on the part of all law enforcement groups together with the active cooperation of the public are necessary before this cancer can be eliminated.

Shylocking

The Grand Jury investigation revealed that shylocking has a less defined organizational structure than gambling. Nonetheless, it is widespread in certain sections of the County. In many cases, the organized gambler is also the shylock and more often than not there is close cooperation between the two activities.

As previously noted in our discussion on gambling, the individual who desires a loan will have no trouble in locating the shylock. Particularly vulnerable are the younger members of the community. The gambler of tender age who loses and fears parental disapproval will often resort to the shylock as a means to pay his losses. The circle is then in full operation and the end result is usually a brutal and savage attack on the borrower for failure to pay. The shylock is, of course, denied access to the courts and his system of redress and collection is predicated on fear and violence.

Apprehension and prosecution of the shylock is extremely difficult within the present legislation. The Small Loans Act is not sufficient to effectively do the job and in many cases the borrowers' fear of reprisal if he testified for the State negates any possibility of prosecution. A very substantial problem exists for the community.

Taverns and Neighborhood Clubs

During the course of its hearings this Grand Jury had occasion to inquire into the ownership and operation of several taverns. The evidence indicates owners of record

in many cases so detached from the actual operation of the business that they have no knowledge of day-to-day developments, seldom visit premises and rarely receive a salary or share in the profits. These conditions, along with other evidence, would indicate undisclosed owners exist with a relationship to organized gambling and other crimes. Although this evidence should not be interpreted as a general criticism of the tavern industry, it is suggested a more careful and exhaustive investigation be conducted on renewal and transfer applications. Such a procedure will protect the public interest and the legitimate tavern owner.

In addition, some comment should be made on the numerous "neighborhood social" clubs that are quite prevalent in the County. Some of these clubs are a breeding ground for illegal gambling activities and at times a front for bookmaking and lottery operations. It is the Grand Jury's recommendation that law enforcement officers learn the actual purpose and activities of these clubs.

Recommendations

The series of shootings that precipitated this investigation has dramatized the seriousness of the problem. Seldom has the public an opportunity to view, in such clear terms, the implications of organized crime.

The core of the problem is community education. Without the full support of all citizens organized crime will not be defeated. Responsible elected and appointed officials in the County and in every municipality, boards of education and teachers, community organizations, and all other means of informing the citizens must be used if the nature and scope of the conspiracy is to be realized. Newspapers have a special obligation to continue to arouse and educate the public. A free press demands that it be put in the forefront of the battle. The morality of the community is at issue.

It is further recommended that:

1. A special Grand Jury be empaneled for an indefinite term to meet as the occasions demand and deal with the problem of organized crime. Such a Grand Jury would be a most effective means of keeping constant pressure and surveillance on these elements. A continuity of investigation would thus be preserved.

2. Consideration should be given by the legislature to enacting an Immunity Statute. We have been informed that the County Prosecutors' Association has repeatedly recommended such a statute without success. It is the Grand Jury's opinion that the search for the truth would be aided by legislation which would enable the court in conjunction with the Prosecutor to grant immunity from prosecution to witnesses.

3. Legislation which would place the bettor on horses and sporting events under criminal responsibility is also recommended. The jury believes that this type of statute when coupled with an Immunity Statute would be an excellent means of tracking down the bookmaker. Such a statute would in clear terms express the moral attitude of the community.

4. Longer custodial sentences with increased fines should be the general rule. Fines alone are universally recognized as mere license fees. Both the bookmaking and lottery statutes should be amended to increase their penalties. If the bookmaker and lottery operator or runner is aware that stiff penalties and jail sentences await all who continue this occupation, then they would be less apt to ply their trade. The directors of the organization cannot exist without a ready and eager source of these underlings.

5. The Legislature should consider the desirability of enacting a wiretapping statute. We believe that the privacy of communications should be very carefully protected.

However, we realize that this individual right, like many others, may be subject to the overriding needs of society as a whole. Our investigation has revealed that those in high echelons of organized crime are frequently not apprehended because they are not directly involved in the physical operational aspects of the organization. Contact is made in most instances by telephone communications. Thus, by wiretapping, law enforcement officials could obtain information leading to the apprehension of individuals who have in the past escaped detection. Balancing this against the need to protect privacy in communications, the Legislature, after full deliberation, might conclude that problems of national security and of serious organized crime warrant some limited wiretapping by public authority. These exceptions to the general rule should be very carefully considered and should be accompanied by every reasonable safeguard against abuse.

6. The jury is aware of certain interstate aspects of organized gambling and racketeering and is encouraged by the increased recognition of this problem by Federal authorities. Where organized crime extends across state lines, we encourage cooperation at the Federal level.

7. Legislation should be enacted requiring all persons in the business of lending money to be licensed and registered by the Department of Banking and Insurance. Such legislation would broaden the scope of the Small Loans Act and include moneylenders regardless of the amount involved.

As brought out earlier in this presentment, organized gambling can only be stamped out by an aroused citizenry and by continuous, consistent law enforcement. There is no question that convicting and placing bookmakers in jail is a powerful deterrent. Essex County has a good record in this connection. The activities of this Grand Jury, which was impaneled at the request of the Prosecutor, has had a heavy impact on law-breakers and has alerted many

people to the dangers confronting society from organized hoodlums in the gambling racket. We cannot afford to let this activity be a one-time treatment. It must be followed up.

It is our belief that for several decades the Prosecutors of this County have sincerely and diligently applied their efforts to this problem. We have been very much impressed with the leadership of the present Essex County Prosecutor, Brendan T. Byrne, and his staff of Assistants. They have pressed a vigorous campaign against illegal gambling and other closely related illegal activities. They have also carried out investigations for this Jury with willing thoroughness. It is our high hope that all decent people in Essex County will realize and understand the seriousness of the problem so that they can form ranks behind the demonstrated leadership and never relax the pressure.

We respectfully request copies of this Presentment be distributed to the following:

The Governor of the State of New Jersey

Chief Justice of the New Jersey Supreme Court

The Attorney General of the United States

The Attorney General of the State of New Jersey

President of the Senate

Speaker of the Assembly

Members of the Essex County Legislature

The United States District Attorney for the District of New Jersey

Director of the Alcoholic Beverage Commission of the State of New Jersey

Chairman of the Alcoholic Beverage Commission of the City of Newark

29 X

Director of Police, City of Newark

County Prosecutors' Association

The daily and weekly newspapers published and circulated in Essex County

FOR THE SIXTH GRAND JURY
OF ESSEX COUNTY—1960 TERM

By: /s/ JOHN C. MARSH,
Foreman

Dated: May 22, 1961

30 X

OFFICE OF
THE COUNTY PROSECUTOR
OF ESSEX COUNTY

COURT HOUSE
NEWARK, N. J. 07102
624-1515

February 18, 1969

TO ALL CHIEFS OF POLICE:

The "New Jersey Wiretapping and Electronic Surveillance Control Act" has been enacted by the New Jersey State Legislature and signed into law by Governor Hughes.

This act permits the County Prosecutor to conduct electronic surveillances subject to the approval of a Superior Court Judge.

Any application for electronic surveillance must be made to the Essex County Prosecutor on the forms which will be forwarded to you in the near future. The decision to institute electronic surveillance will be made by the Prosecutor, based on the information contained in your application.

ALL ELECTRONIC SURVEILLANCE WITHIN THE COUNTY OF ESSEX WILL BE CONDUCTED ONLY BY MEMBERS OF THE PROSECUTOR'S STAFF, UNTIL FURTHER NOTICE.

Electronic surveillance equipment has been selected and staff members are being trained in its use. When said equipment is received and operative, you will be notified and thereafter may submit any applications for electronic surveillance to the Prosecutor using the forms to be provided by this office.

Very truly yours,

JPL:at

OFFICE OF

THE COUNTY PROSECUTOR

OF ESSEX COUNTY

JOSEPH P. LORDI
PROSECUTOR

THOMAS P. FORD, JR.
1ST ASSISTANT PROSECUTOR

COURT HOUSE
NEWARK, N. J. 07102
TELEPHONE 624-1515

March 28, 1969

TO: ALL CHIEFS OF POLICE

RE: Wiretapping Procedure

Dear Chief:

In accordance with our discussion at our most recent meeting, the following is the procedure to be followed by all police departments in all requests for wiretapping:

1. Please forward to me, as soon as possible, the name of a superior officer who will be authorized in your absence to refer requests to this office for wiretap orders.

2. The requests for wiretap order and/or wiretapping by Prosecutor's Detectives shall be in writing and signed by the Chief of Police or the officer designated to act in his absence whose name must be on file in this office. This request shall contain at least the following information:

a). The name of the subject.
b). The location where the electronic surveillance is to take place.
c). The nature of the crime.
d). A representation that other investigative methods have failed or are too dangerous to employ and some factual basis for this representation.

3. The request should be hand delivered to either Lt. Miles, Assistant Prosecutor Zazzali or Prosecutor Lordi by an officer who is completely

familiar with the suspect and the investigation so as to be competent to make a sworn affidavit and if necessary, to testify before the court as to any additional facts which might be required.

4. The request should be accompanied with copies of all reports and documents concerning the investigation and one report should be in a format which parallels the sample application which was distributed to you at the meeting of March 20, 1969. (If this report is properly made in sufficient detail, rest assured that the matter can be expedited).

5. If a wiretap order issues, the following steps shall be taken:

a). A member of your department, completely familiar with the investigation, shall accompany the Prosecutor's Detectives and assist in monitoring the tap.

b). Once a tap is secured, the Prosecutor's Squad must immediately make a return to the court.

c). A transcript of the tap will be made available only to the Chief or his designee who authored the request.

6. Upon completion of the tap and the return to the court, the local police will continue and/or complete the investigation, unless circumstances warrant assistance from the Prosecutor's Office.

No requests will be considered until and unless we have received the name of your alternate designee with authority to make the request.

Very truly yours,

JPL:ko

TO: ALL ASSISTANT PROSECUTORS AND
SUPERVISORY PERSONNEL ASSIGNED
TO THE CONFIDENTIAL SQUAD

FROM: JOSEPH P. LORDI
ESSEX COUNTY PROSECUTOR

RE: ELECTRONIC SURVEILLANCE

The following are guide lines to be followed by you in evaluating whether or not electronic surveillances should be used in investigations conducted by you, and guide lines you should use in determining whether electronic surveillances should be used by other persons who come to you for assistance:

1. Review carefully any supporting police reports, documents, and/or affidavits to determine if all reasonable steps have been taken to complete the investigation without using electronic surveillance. If, in your opinion, other steps can be taken to bring about the arrests do not request authorization for electronic surveillance.

2. Whenever possible, learn the scope and nature of the illegal investigation being undertaken. Attempt to determine what will be gained by the use of electronic surveillance and what will be lost by not using electronic surveillance as far as the number of individuals identified and the part that these individuals play in the illegal operation being conducted.

3. In all cases in which an informant is being used as the basis for electronic surveillance, scrutinize carefully the background of that informant to make sure that he is the kind of individual who has access to the kind of information of which he is relating with respect to the investigation being undertaken.

4. When an outside agency requests assistance with electronic surveillance, evaluate the officer and department making the request to satisfy yourself the request made is a good faith request.

Electronic surveillances should be used by this office only when all other means have failed and is not to be used to shorten investigations. In all cases, maximum use of the statute requires careful diligence in the applications submitted to the court.

RESPONSIBILITY OF CO-ORDINATOR

1. CO-ORDINATOR SHALL LISTEN AND COPY ALL TAPES FROM PREVIOUS DAY.

2. MAKE SURE LOGS COINCIDE WITH WHAT'S ON THE TAPE.

3. DECODE ALL TELEPHONE NUMBERS AND FOLLOW UP WITH TELEPHONE COMPANY --- RE: LOOK-UPS.

4. TWO COPIES OF A SUCCINCT NARRATION OF EACH DAYS ACTIVITIES AS IT UNFOLDS ON TAPE, E.G. IMPORTANT NEW NUMBERS, A SURVEILLANCE, ANY CHANGE IN THE ROUTINE. ONE REPORT TO BE KEPT BY THE CO-ORDINATOR, THE OTHER TO BE FORWARDED TO LIEUTENANT MILES.

5. KEEP HIMSELF AVAILABLE FOR SURVEILLANCE AND CO-ORDINATE ALL REPORTS EFFECTING SAME.

6. IT SHALL BE HIS RESPONSIBILITY TO SEE TO IT THAT ALL LEGAL PAPERWORK, ALL REPORTS FROM BEGINNING OF ASSIGNMENT COMPLETION AFTER ARREST SHALL BE TURNED OVER TO DETECTIVE WILLIAM DAVIS.

IT SHALL BE THE RESPONSIBILITY OF THE CO-ORDINATOR TO ADHERE TO THE ABOVE PROCEDURES.

BY ORDER OF,

Evan E. Miles

EVAN E. MILES
LIEUTENANT OF COUNTY DETECTIVES
CITY-COUNTY STRIKE FORCE

IN REFERENCE TO PARAGRAPH NO. 4

What's required is a capsule narration of what occurred. It is not necessary to go over the same thing that was written about the previous day. However, it will be expected that all exceptions will be high lighted and any deviation from the normal routine shall be noted and brought to my attention. Assuming that the electronic surveillance lasts ten days, then ten of these small reports will be bound together and these too, will be turned over to Detective Davis and made part of the complete file.

BY ORDER OF,

Evan E. Miles

EVAN E. MILES
LIEUTENANT OF COUNTY DETECTIVES
CITY-COUNTY STRIKE FORCE

MONITOR'S DUTIES

S.O.P. ON PLANT

1. Before placing reel on recorder:

   Mark box: Plant number
   Reel number
   Date
   "original"
   Initials of monitor

2. Mark Reel: Plant number
   Reel number
   Date
   "original"
   Initials of monitor

3. Place reel on recorder.

4. Start long entrees: Plant number
   Date
   Reel number
   Names of monitors

5. The first entry on the log shall read:

   Time counter. "Plant opened"

   Then, entrees will be made pertaining to conversations.

6. Only one monitor will make any entrees on any one log sheet and that monitor will sign the log at the bottom.

7. At the end of the day or closing of Plant, the monitor with mark on the log, just below the last entry: "Plant Closed," and the time and sign the log, and Count the number of conversations and record them on the rear of the log and the total number of criminal conversations.

8. While monitoring, the monitor shall in the event of a non-criminal conversation, immediately shut off the tape by means of the stop button and mark the log "unrelated"--tape off.

9. At no time during the monitoring shall the monitor allow anyone to rewind the tape in order to listen to a conversation.

10. The door to the Listening Room shall be kept locked at all times.

11. These rules shall be strictly adhered to and there will be no deviations.

BY ORDER OF,

JAMES T. PALMA
SUPERVISOR, ELECTRONICS SQUAD

TESTIMONY OF

WILLIAM J. BENDER, ESQ.

ON THE NEW JERSEY WIRETAPPING STATUTE

BEFORE THE SENATE JUDICIARY COMMITTEE

January 30, 1975
Assembly Chamber
State House
Trenton, New Jersey

Chairman Dugan and Members of the Senate Judiciary Committee:

I have been asked to testify before you today on behalf of the American Civil Liberties Union of New Jersey. My purpose in coming here is to strongly urge upon you that the New Jersey Wiretapping Statute represents an experiment in legislation that has failed, both in its stated intendment, and in its outright violation of the protections against invasions of privacy guaranteed by the Fourth Amendment to the United States Constitution.

The Fourth Amendment protections represent a balance that was struck by the constitutional framers in the 18th century between the legitimate needs of society in protecting itself, and the interest, fundamental to the protection of individual freedom in a democratic society, in preserving "the sanctity of a man's home and the privacies of life." Boyd v. United States, 116 U.S. 616, 630 (1886).

The Fourth Amendment was born out of the experience of this country when it was a series of colonies under the oppressive Crown rule of Great Britain. Notorious features of that oppressive rule were the infamous general search warrants which enabled agents of the Crown to rummage at will through the homes and personal effects of the citizenry and in their commercial establishments in hopes of turning up evidence of illegal activity. It is indisputible that

any law or practice in the United States which duplicates the fashion of those warrants is obnoxious to the Constitution. It is my opinion that we are here today concerned with such an act.

The statute which is the subject of today's hearings was passed in the aftermath of the United States Supreme Court's decisions in Berger v. New York, 388 U.S. 41 (1967) and Katz v. United States, 389 U.S. 347 (1967), which are, to date, the most recent and definitive articulations by the Court of the constitutional standards applicable to electronic surveillance.

Noting that "the security of one's privacy against arbitrary intrusion by the police--which is at the core of the Fourth Amendment--is basic to a free society," and that "by its very nature eavesdropping involves an intrusion on privacy that is broad in scope," the Court in Berger declared the New York wiretap statute as it existed at that time to be unconstitutional on the grounds, among others, that in its allowance of a sixty-day period to conduct a tap and its failure to require in the warrant a particularization of the material to be seized, the statute in effect conferred such broad discretion in the officer executing the warrant as to make it a prohibited general search. With regard to the extended time period, the Court found the

statutory authorization for a two-month period "the equivalent of a series of intrusions, searches, and seizures pursuant to a single showing of probable cause."

While the Court has promulgated no absolute guidelines, its opinion in Berger indicated that the danger of an unlawful search and seizure is "minimized"--not done away with, but "minimized"--where, as in its holding in Osborn v. United States, 385 U.S. 323 (1960), there was a finding that the search had been carefully circumscribed:

> The invasion was lawful because there was sufficient proof to obtain a search warrant to make the search for the limited purpose outlined in the order of the judges. Through these "precise and discriminate" procedures the order authorizing the use of the electronic device afforded similar protections to those that are present in the use of conventional warrants authorizing the seizure of tangible evidence. Among other safeguards, the order described the type of conversation sought with particularity, thus indicating the specific objective of the Government in entering the constitutionally protected area and the limitations placed upon the officer executing the warrant. Under it the officer could not search unauthorized areas; likewise, once the property sought, and for which the order was issued, was found the officer could not use the order as a passkey to further search. In addition, the order authorized one limited intrusion rather than a series or a continuous surveillance. And, we note that a new order was issued when the officer sought to resume the search and probable cause was shown for the succeeding one. Moreover, the order was executed by

> the officer with dispatch, not over a prolonged and extended period. In this manner no greater invasion of privacy was permitted than was necessary under the circumstances. Finally the officer was required to and did make a return on the order showing how it was executed and what was seized. Through these strict precautions the danger of an unlawful search and seizure was minimized.

And in Katz v. United States the Court dealt with an extremely limited surveillance where the police overheard one side of a telephone conversation only--the petitioner's end of the conversation--for a small number of minutes each morning over a period of a week. The Court held that such an overhearing could be valid, but only if done with a warrant, noting that although the officers acted with restraint, it is not part of the constitutional scheme to relegate the protection of constitutional rights to the self-imposed restraint of the police.

The New Jersey statute as it stands allows broad investigatory surveillances of the type held prohibited in these cases. Initially, I would like to volunteer that the arbitrary cutting in half of the sixty days found objectionable in Berger to the thirty days allowed by the New Jersey statute does nothing to rescue these surveillances from the vice of overbreadth. The Berger figure of sixty is not talismanic. The heart of the proscriptions in Berger and

Katz is circumscription of intervention to the bare minimum necessary to achieve the legal ends. The New Jersey figure of thirty days is no less the equivalent of a "series of intrusions ... pursuant to a single showing of probable cause" which the Court found fatal in Berger.

Broad investigatory surveillances to gather intelligence in criminal activity are per se violative of the constitutional requirements of the Fourth Amendment. The experience with our New Jersey statute indicates an unfortunate tendency to utilize your legislative efforts to justify a program of impermissible investigatory intrusions.

I should like to note that §8 of the statute permits the Chairman of the State Commission of Investigation to authorize an application for a surveillance. As far as I know, the S.C.I. does not have a prosecutive function. It is an investigatory body, and the purpose of surveillances conducted on its behalf could only be investigatory. In this circumstance, the Act directly provides for the unconstitutional vice.

Perhaps more importantly the remaining provisions of the Act have also encouraged broad investigatory abuses. You need not strain to find this conclusion. The Attorney General has clearly admitted to it.

Attorney General Hyland, in his report to the Legislature dated September 16, 1974, has forthrightly characterized

the use of surveillances under the Act:

> [T]he wiretap procedure has provided evidence not only vital to conviction, but to continuing investigations. Evidence so obtained has aided in the discovery of several criminal combinations once undetectable.

I don't suggest that the law enforcement value of such intelligence--the spectre of organized crime combinations--has impressed such a need upon you. What I do intend to convey is that the choice of using this technique for intelligence gathering purposes is one that the constitutional framers expressly prohibited some two hundred years ago. It is not a question which you, as legislators of the state, can revisit because of an argument of an in terrorem nature made by the Attorney General. That argument suggests that constitutional government is too weak to survive in a difficult world and urges worried citizens to return to an acceptance of the security of an overweening government power. We are earnestly urged to believe that this sweeping and awesome power will always be used with discretion.

The practice of tapping for intelligence-gathering purposes has, moreover, been given the imprimatur of legality by the courts of New Jersey. I refer you to the leading New Jersey case of State v. Dye, 60 N.J. 518 (1972). That case involved a wiretap placed on a bookmaker, and it is clear from the opinion that, based on the unaided over-

hearings and observations of the police officers covering the defendant's activities, there was probable cause to arrest and probably enough evidence to convict without resorting to a wiretap. The detectives nevertheless applied for and received authorization to tap the public phone which was being used by the defendant. It is my understanding of the law that the surveillance warrant should have never issued, since it seems the police already had sufficient evidence. Further, once the tap was instituted, and assuming for the moment its validity, the officers were obliged both by the Fourth Amendment and the minimization requirements of the statute to discontinue their surveillance once the overhearings reached into the activities of others, not the subjects of the original probable cause showing. Beyond that point, the surveillance became an intelligence mission involving the kind of rummaging for information that the Fourth Amendment clearly prohibits.

The New Jersey Supreme Court, however, has put quite another interpretation on the matter. In holding the surveillance valid the Court said:

> ... where the tap is authorized because of probable cause to believe that a gambling conspiracy exists, and a major purpose is to uncover as many of those involved as possible, it would seem just and necessary to be more liberal in terms of coverage and content of the calls and persons making them. In such situations, just as in the present one,

> it must be kept in mind that the purpose of the wiretap was two-fold; one was to accumulate evidence of bookmaking against Dye, and the other to discover the scope of the illegal conspiracy, its method of operation and the persons involved in it. Conceivably, there would be some calls where after listening for a period, the officer should realize that the conversation will continue to be innocent and therefore he should terminate the tap. But to command an oversensitive exercise of discretion on pain of exclusion of all the legitimate fruits of the wiretap period, would be to utilize hindsight to impose a mandate for prophecy.
>
> [60 N.J. at 538, 539]

Further, in State v. Sidoti, 120 N.J. Super. 208 (App. Div., 1972), it is made clear that the goal of securing the kind of intelligence necessary to prosecute bookmaking operations requires throwing the constitutionally-mandated requirement of particularity to the four winds.

> While it is desirable for an order to be more specific as to which person's communications are to be intercepted, what hours of the day and the number of days the tap should last, bookmaking is a continuing operation, carried on with a myriad of persons, thus defying such specificity.

The legislature should take no comfort in the safe-guards against wholesale intrusions it attempted to provide in the statute. As I read State v. Dye, the minimization requirement of §12 is a dead letter. In an opinion which Attorney Harvey Weissbard, in his open letter of

September 11, 1974 to the Legislature, has called reminiscent of the fantasy world in Alice in Wonderland, the New Jersey Supreme Court refused to suppress evidence gathered in the course of a surveillance that concededly went far beyond the limitations of the statute, and instead held that only those portions of the surveillance irrelevant to the prosecution could be suppressed.

It is thus clear that New Jersey is, due to the conspiratorial nature of the crime it has selected as its prime target, either unwilling or unable to follow the minimization requirements of Berger and Katz.

The Court's failure to suppress the entirety of patently overbroad surveillances indicates that it is blinding itself, in the pursuit of a questionable goal, to the underlying purpose of the exclusionary rule. The purpose of the rule must be the protection of the innocent--indeed, society at large--from government intrusion even at the expense of occasionally sacrificing the conviction. Mr. Weissbard put it very well in his letter to you which I have just mentioned:

> It is respectfully suggested that the court, in its usual zeal to uphold the conviction of those who are "obviously" guilty, completely misunderstood the essential nature of the suppression remedy and the particular importance of its application in the new field of electronic surveillance. Suppression is a sanction imposed upon

> law enforcement authorities in order to discourage them from future illegal, and generally unconstitutional, conduct. How, it may be asked, will an officer be deterred from the extensive invasions of privacy such as took place in Molinaro if the only sanction is that the innocent conversations (which the officer has no interest in) are suppressed and the incriminating calls are admitted. Surely, this amounts to no sanction at all! Any intelligent wiretapper armed with this knowledge will continue to monitor and record all calls, however private or sacred they may be, secure in the knowledge that his investigation will not be in any way frustrated. Thus, the result of Dye is that only the calls the police don't need or want anyway will be barred from introduction in evidence. This is Alice-in-Wonderland at its best.

Under decisions like these, the breadth of the surveillance now possible under the Act in New Jersey is illustrated by the following, which is taken from an opinion by Judge Handler in State v. Molinaro, 117 N.J. Super. 276 (Law Div., 1971):

> There were many lengthy conversations between children in which they exhibited typical youthful interest in shopping, clothes, fashions, hair styles, gifts, parties, social events, family outings, games, sports, friends, classmates, teachers, homework, school situations, religious school and music lessons. In other instances adult females discussed prosaic subjects such as draperies, getting their hair done, buying clothes, their children's problems at school, food and cooking, bingo, relatives, racial attitudes and church membership.

Is that what this legislative body had in mind when it

promulgated a statute which sought to protect the privacy rights of its constituents?

I am mindful of a letter written by the Director of the Criminal Justice Division, Matthew Boylan, in answer to Mr. Weissbard, which was published in the January 9, 1975 edition of the New Jersey Law Journal. Mr. Boylan suggests that the Legislature take comfort in the fact that the majority of the taps instituted under the statute have been directed at organized gambling crime. I would caution you that a weapon retains its essential character regardless of whom it is pointed at. To suggest that unconstitutional or illegal practices are, after all, only directed at criminals is to beg the question.

But even if you do find comfort in this, let me ask the rhetorical question, "Where does it end?" Right now, it is possible to secure a surveillance directed at the offenses of murder, kidnapping, gambling, robbery, bribery, extortion, loan sharking, violations of the drug laws, arson, burglary, embezzlement, receiving stolen property, alteration of motor vehicle identification numbers, larceny, and conspiracy to commit any of these. With regard to proposed further inclusions, I refer, again, to the report of Mr. Hyland:

> The offenses of unlawful manufacture, purchase, use or transfer of firearms,

> or unlawful possession or use of bombs or explosives should be added to those crimes for which electronic surveillance could be authorized. These offenses pose grave threats to the safety of persons and property, and often have consequences beyond those of the immediate offense. Most important, the electronic surveillance capability could be effective in preventing wholesale destruction and terrorism.

As we have already seen, in the gambling cases I have referred to, the conspiratorial nature of the object crime has necessitated, in the view of the New Jersey courts, emasculation of constitutional and legislative protections, to permit broad intelligence-gathering surveillances. The language in those cases is easily transposed to conspiracy to commit any of the the substantive offenses enumerated in the statute. From the language of Mr. Hyland's suggestion it requires no broad leap of imagination to arrive at the kind of domestic counterintelligence program here in New Jersey that the nation has only recently begun to see in the aftermath of the Watergate affair. Imagination or not, the cold reality is that the statute as construed by the New Jersey courts authorizes it. The proposed amendment would expand the existing vices.

The foregoing is a summary of what I consider to be the most serious problems with the New Jersey wiretap statute. There are other areas of concern which, for lack

of time, I should like to draw to your attention by referring you to the Note entitled "New Jersey Electronic Surveillance Act" 26 Rutgers Law Review 617 (1973).

I should like to close my remarks by expressing my regret that I must come before this body to express such a profound disagreement with this state's courts in the matters before you today. But I must stress that the holdings in Dye and the other cases which I have brought to your attention, in what they do to the guarantees of the Fourth Amendment, indicate that this state's courts are on a collision course with the imposing safeguards of the Fourth Amendment. The legislation you are asked to re-enact is the tool which has been construed and abused to cause this dilemma. You should conclude that as an experiment, it has failed. Its continuation can only compound a manifest injustice to your fellow citizens and constituents.

-- William J. Bender

January 30, 1975

State of New Jersey

DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CRIMINAL JUSTICE
STATE HOUSE ANNEX
TRENTON, NEW JERSEY 08625

WILLIAM F. HYLAND
ATTORNEY GENERAL

MATTHEW P. BOYLAN
DIRECTOR

April 3, 1975

Honorable James P. Dugan, Chairman
New Jersey Senate Judiciary Committee
New Jersey Senate
State House
Trenton, New Jersey 08625

Dear Senator Dugan:

After my appearance before your Committee on January 30, 1975, I immediately directed all the Prosecutors to provide the Division of Criminal Justice with an analysis of the uses to which consensual "bugging" had been employed by their offices over the past three years. We have not as yet received the information requested from all of the Prosecutors' offices. The general categories of information requested related to when the devices were used for the protection of informants or undercover agents, when they were used to obtain evidence based on prior information indicating alleged crime and when the use of the devices established the innocense of the person or persons bugged. I expect to be able to provide your Committee with the results of our analysis of the reports from the Prosecutors within the next two weeks.

In addition thereto, I have undertaken to review the entire area of whether prior judicial approval would impede the use of consensual bugging since many of the members of your Committee directed questions to this problem. I suggest that your Committee should direct its attention to the following articles which consider formal policy formulation and rule making procedures for investigative agencies: Amsterdam, PERSPECTIVES ON THE FOURTH AMENDMENT, 58 Minn. L. Rev. 349, 409-39 (1974); Davis, AN APPROACH TO LEGAL CONTROL OF THE POLICE, 52 Texas L.Rev. 703 (1974); Quinn, THE EFFECT OF POLICE RULEMAKING ON THE SCOPE OF THE FOURTH AMENDMENT RIGHTS, 52 J. Urban Law 25 (1974).

We intend to submit a formal analysis to your Committee within the next two weeks on this aspect of the problem as well.

Very truly yours,

Matthew P. Boylan
Director of Criminal Justice

MPB:MB

cc: William F. Hyland, Attorney General

Middlesex County Prosecutor's Office
New Brunswick, New Jersey 08903

C. JUDSON HAMLIN
PROSECUTOR

1ST ASSISTANT PROSECUTOR
EDWARD J. BARONE

April 1, 1975

Judiciary Committee
New Jersey Senate
State House
Trenton, New Jersey 08625

Gentlemen:

STATEMENT OF C. JUDSON HAMLIN, MIDDLESEX COUNTY PROSECUTOR, REGARDING S-1417

I was present during the last public hearings on Senate Bill No. S-1417 regarding the future of the New Jersey Wiretap Legislation. I will neither clutter the record nor take the Committee's time by repeating the many arguments and factual circumstances to justify continued legal wiretaps in the course of a bona fide criminal investigation. Suffice it to say, that in these times, a criminal investigation process that does not, under appropriate constitutional safeguards, permit such surveillance is doomed to failure. The long term dissatisfaction of the people who witness ever increasing crime which goes unpunished cannot be, I believe, given further seed.

I address myself to only one point that the Committee has expressed an interest in; the consensual eavesdrop. It is obvious that members of the Committee have a basic revulsion to the idea of speaking to a person who may be recording a conversation without the knowledge of the speaker and that thereafter that speaker may be embarrassed or indicted when that conversation is played. I submit to the Committee that

that revulsion, while understandable in a visceral sense, cannot and should not be raised to the weight of public policy so as either to prohibit consensual recordings or to limit it by way of a warrant requirement.

Regarding the suggestion that a warrant should be obtained before a consensual recording is made, it is clear from my experience both as Public Defender and Prosecutor, that the nature of criminal actions is such that the execution of criminal conspiracy actions are usually done quickly, at odd hours and places with little warning. Classically, in a narcotics, stolen property or other conspiracy, in order to avoid surveillance and detection, undercover police agents or civilian informers are not given advance notice sufficient to obtain a warrant, but are usually called and told to present themselves within fifteen minutes or a half hour at a particular place to consumate the transaction. A warrant requirement would necessarily make this ploy effective in cutting off investigations and successful prosecutions.

Another interesting aspect arises when persons seek to record a conversation for their own protection without any prior contact with a law enforcement agency or as an agent of law enforcement. In the event that those persons are later accused judicially or politically of wrongdoing and the recorded conversation clearly indicates contra, will the Senate adopt a rule which denies those persons the right to use such recording in defense?

The example is obvious. Should any member of this Committee be approached by a person doing business with the State who offered a bribe and thereafter accused the Committee member, within a criminal proceeding, of attempted extortion, would each of you feel it fair to use a recording made by you in defense against the unjust charge?

The answer to those rhetorical questions is patently clear. Justice and fairness demands it. The same applies to the use of consensual eavesdrop recordings in prosecutions. Clearly, there can be no constitutional evidence rule which prohibits the testimony of one party of a conversation regarding the substance of that conversation when such a conversation was incriminating or in violation of the law. If, in fact, one of the parties to a conversation may properly, under rules of evidence, relate that conversation to a jury, there is no rationale as to why his testimony cannot be corroborated or disputed by a consensual recording. I have heard some persons in private indicate that their objection to the recording of a conversation was based on the fact that communication of one person to another person was not meant

to be communication to the world. Legally, however, it has always been a risk in communications that the other party will repeat it. Indeed, the history of political life is that more secrets are repeated than kept. The clear policy effect of prohibiting the use of consensual eavesdrop recordings in the context of a criminal trial even if not intended would be an implicit stamp of approval upon prospective perjury. The criminal defendant, knowing that he is faced only with testimony before a trial jury, can, with impunity, commit perjury regarding that conversation. Permitting the use of the consensual recording removes that unconscionable and unwarranted benefit. There should be, in my opinion, no restrictions on the use of consensual recording of conversations. Indeed, from a constitutional point of view, there can be no limitation of a person's right to record his own conversations. Any limitations which might be sought would be artificial regarding admissibility as evidence .

Regarding possible abuses of the wiretap law, I think it is patently clear that the majority of illegal and improper wiretaps (as opposed to consensual recording) lies in the area of industrial information, matrimonial disputes, private business and persons seeking unauthorized knowledge for financial benefit as opposed to State, County and Local law enforcement agencies who are strictly controlled by statute.

I am appreciative of the Committee's providing me an opportunity to make my remarks part of the record.

Respectfully submitted,

C. JUDSON HAMLIN
Middlesex County Prosecutor

CJH:pw

STATEMENT OF PROSECUTOR THOMAS J. SHUSTED

TO: Honorable James P. Dugan

Honorable Alexander J. Menza

Honorable Matthew Feldman

Honorable Martin L. Greenberg

Honorable John A. Lynch

Honorable Joseph A. Maressa

Honorable John F. Russo

Honorable Raymond J. Zane

Honorable Raymond H. Bateman

Honorable James S. Cafiero

Honorable Barry T. Parker

RE: SENATE No. 1417

Gentlemen:

This statement is made in support of Senate Bill No. 1417. An Act to amend "An act concerning the interception of wire and oral communications, authorizing interception in certain cases under court and prescribing procedures therefor, prohibiting unauthorized interception, use of disclosure of wire and oral communications, prescribing penalties for violations and repealing N.J.S. 2A:146-1."

I have been the Prosecutor of Camden County since July, 1972, and since that date my office has made six applications under the provisions of New Jersey Wiretapping and Electronic Surveillance Control Act.

Since the original Act was signed into law five years ago, Camden County has made 17 applications for wiretaps all of which have been granted. This approval by the Court, in my opinion, is a testimonial to the Prosecutor who makes the application only after many hours of preparation and who receives approval only after the application has been thoroughly scrutinized by the Assignment Judge.

In 1974, the Camden County Prosecutor's Office processed nearly 6,000 complaints. A wiretap application was made on only two occasions.

As Legislators, I am certain that one of your primary concerns is the potential abuse of the wiretap procedure. This is rightly so; however, statistics show that the wiretap Act is rarely used, and then only in situations where all other investigative aids have failed and where all other investigative techniques have been fully explored without results.

Wiretapping is essentially an investigative tool. There are situations where certain types of crimes could not be effectively handled without the aid of wiretapping. The two most prominent areas are gambling and narcotics.

If Senate Bill No. 1417 is not enacted, or if it is "watered down" so that it becomes ineffective, the death knell will be sounded for any prosecution of large scale gambling and narcotic operations, and New Jersey will regain its former position of the No. 1 crime state in the Nation.

For these reasons, I respectfully urge that this Judiciary Committee release Senate No. 1417 with the recommendation that it be adopted by the Senate of New Jersey.

Respectfully,

Thomas J. Shusted

Thomas J. Shusted
Camden County Prosecutor

January 30, 1975

TESTIMONY OF RICHARD SINGER, ESQ., ON EXTENSION OF NEW JERSEY'S WIRETAP STATUTE, ON BEHALF OF THE AMERICAN CIVIL LIBERTIES UNION.

April 3, 1975

THE NEW JERSEY WIRETAP STATUTE ---HOW EFFECTIVE HAS IT BEEN?

I thank you for this opportunity to talk with you today about the N.J. wiretap law, and whether it should be extended. Since many others have spoken to the constitutional aspects involved in the gross invasions of privacy which wiretapping inevitably involves, I seek today to limit my comments to questions about the efficacy of wiretapping, particularly in light of Attorney General Hyland's September, 1974 report, which raises many more questions than it answers about the desirability of wiretapping.

The report fails to talk, in meaningful terms, about the efficiency of wiretapping. Although the Attorney General gives statistics and figures concerning arrests and convictions due to wiretapping, there is no account demonstrating the numbers of arrests and/or convictions <u>per wiretap</u>. We have only gross figures. I have done the calculations which I believe important in this regard, and they demonstrate to me why the report does not have such an analysis, for they clearly indicate not only that wiretapping is NOT an efficient means of law enforcement, but, as well, that it is becoming less and less effective with the passage of time. The figures are outlined below:

Figures from Attorney General Reports

Year	No. Taps	No. Arrests	No. Conv.
1969	45	186	91
1970	120	499	180
1971	81 (A.G.)	232 (A.G.)	158 (A.G.)
	91 (Cty)	323 (Cty.)	(Cty.)
1972	67	107 (A.G.)	41 (A.G.)
	153 (Cty.)	694 (cty.)	
	220	801	
1973	47 (A.G.)	125 (A.G.)	16 (A.G.)
	153 (Cty.)	754 (Cty.)	
	200	879	

Clearly, the figures from 1973 and 1972 may not yet be complete, and there may still be some returns to come from the 1971 wiretaps as well. Extrapolation from the Supplementary Reports, filed with the Administrative Office of the United States Courts, however, tells us that the very large majority of convictions from wiretaps, atleast in New Jersey, are reported within two years of the wiretaps and arrests. Thus, for example, on 1970 wiretaps, 25 % of the convictions indicated were reported in 1971, 66% more reported in 1972, and less than 10% in 1973. Thus, for the years through 1972, we can be relatively sure that MOST of the convictions which will be obtained from those wiretaps are now reported, or known. The Attorney General's report was completed in September, 1974. Extrapolating, then, we can see that if the 41 figure given is the final figure for 1974, the rate is exceptionally low. Even assuming that that number increased by 50% by the end

of the year, however, we would still have only 60 convictions by the end of 1974. Since, if experience runs true, that will be 90% of the convictions obtained through the 1972 wiretaps, that means a total of 67 convictions --- exactly one conviction per wiretap. ASSUMING, that is, that the 41 figure relates only to the AG wiretaps, an assumption I am loath to make for reasons I have already suggested. But even if that is the case, it seems to me that I have given the Attorney General every possible liberal reading and benefit of the doubt, and we STILL come down to only one conviction per wiretap.

Further corroboration for my assumption that the arrest and conviction figures given by the Attorney General are for the state comes from a breakdown of the figures which the Attorney General gives for specific results from wiretapping for specific crimes. Thus, we find:

Chart #2: Drug Taps

Number		No. Persons/Tap Arrested	No. Persons/Tap/Convicted
(1970	2	8 total; 4 per tap	No Figures
(1971)	7	24 total; 3 per tap	14; 2 per tap
(1972)	16	31 total; 2 per tap	16; 1 per tap
(1973)	9	55 total; 6 per tap	3; so far, 1/3 per tap

Chart #3; Gambling Taps

Number		No. Persons/Tap Arrested	No. Persons/Tap/Convicted
(1969)	25	Unclear	76; 3 per tap
(1970)	65	270 total; 4 per tap	156;2 1/2per tap
(1971)	69	206 total; 3 per tap	142; 2 per tap
(1972)	36	68 total; 2 per tap	21; 2/3 per tap
(1973)	29	67 total; 2 per tap	13; 1/2 per tap

Even if this assumption is wrong, however, and we doubled the state's conviction load presented in the Attorney General's report, it would reach only 2 convictions per wiretap. That difference would not be impressive, it seems to me, we can still see that wiretapping is, on a cost/effectiveness basis, exceptionally costly. But the cost figure could either be X, or two X, depending on the final answer to my question. The Attorney General, it seems to me should let us know.

A confusing aspect of the Attorney General's report, which makes my analysis somewhat less than firm, is that it does not clearly indicate the total number of convictions for all wiretaps in the state. Thus, in each year's report, the Attorney General first speaks of the number of taps for which HE applied. This is followed by a chart of "convictions thus far obtained". It is unclear from this whether this refers solely to convictions for the state wiretaps, or whether this figure also encompasses persons convicted because of county wiretaps, which are discussed after the chart. It is more confusing because there is no prose discussion of the number of convictions obtained by the county wiretaps, thus leading one to suspect that the chart accumulates both state and county convictions.

The differences are important. Thus, for example, in 1971, the Attorney General reports a total of 81 state wiretaps and 91 county wiretaps, with a total "conviction load" of 158. If that number is for state wiretaps only, we are talking of slightly less than 2 convictions per wiretap, on the average; if we are speaking of the 172 wiretaps conducted by law enforcement in this state during that year, we are talking about considerably less than 1 conviction per wiretap.

Several factors push me toward considering that it is a cumulative chart, although the report is tantalizingly silent on this point. First, survey of the NATIONAL statistics, given to the Administrative Office of the United States Courts, indicates an average national conviction rate of just about .9 per state wiretap. Second, the strange silence of the Attorney General's report on the convictions for county wiretaps, although the arrest figures are given, suggests that the table is cumulative.

Still another way to analyze the cost/efficiency of wiretapping is to determine whether, in terms of persons convicted, or even arrested, the percentage of persons convicted bears any reasonable relationship to the numbers of persons overheard. As you know, the New Jersey statute, as its federal predecessor, contains a requirement that there be minimization of overhearings. What this means, basically is that persons who have no apparent connection with organized crime or with the criminal activity being overheard should not be overheard at all. Thus, we should be able to equate, in a rough sense,

the numbers of persons overheard with persons actually involved in one way or another with the criminal activity. These figures, too, who an appalling inefficiency in terms of wiretap. Thus: in compiling these figures, we have used, as an average number of persons overheard, the average of persons heard on all STATE wiretaps, taken from the office of the Administrative Office of the United States Courts, but we do not anticipate that New Jersey would vary greatly from these figures, one way or the other.

Year	No. of Taps	Av. No. of Persons Overheard	Total Overheard	Persons Convicted	Convicted/ Overheard Hearing
1969	45	58	2,610	91	3.5%
1970	120	24	4,800	180	3.5%
1971	172	34	5,848	158(+)	2.7%
1972	220	64	14,680	41(+)	-

These figures, then, seem to indicate that only 3% of the actual persons overheard were finally convicted. Now even if we say that only 1/3 of the persons overheard SHOULD have some connection with the criminal activity (because of minimization), this means that less than 10% of the persons actually overheard were ultimately convicted. I suggest to you, gentlemen, that that is an atrociously low efficiency rating. And, of course, the enormous intrusion upon persons' privacy, to achieve even this minimal record, would even further suggest the undesirability of maintaining wiretapping as a law enforcement process.

What does it cost?

Strikingly absent from the Attorney General's report is any analysis of cost-benefit of wiretapping. Here, of course, I speak of the financial cost involved; the social cost of allowing rampant wiretapping (and I consider over 150 county taps per year rather rampant) have already been discussed, and will be discussed, I suspect by many others before this committee. What I seek to raise here is: how many dollars, per conviction, have we spent? It seems to me, again, that the Attorney General's report is incomplete and misleading without some assessment of this factor as well; indeed, the absence of such an analysis raises suspicions about what one would find if the question were pursued.

Here, I make no pretense to final authority. I have, however, quickly glanced over the reports which, by federal law, the Attorney General must make to the Administrative Office of the United States Courts every year. These reports, so far as New Jersey is concerned, show that, in 1973, the total cost of wiretaps in New Jersey, state taps, was approximately $630,000. These taps include, as indication of some of the high costs, taps which cost, respectively;

Cost	Reporting No.
10,000	Mercer #1
10,000	Mercer #2
28,000	Mercer #6
23,118	Mercer #7
22,587	Mercer #9
23,951	Mercer #33
30,149	Mercer #37
29,547	Mercer #38
15,000	Mercer #46
40,180	Essex #4
12,940	Essex #10
12,570	Essex #42

Cost	Reporting No.
12,976	Hudson #1
15,115	Middlesex #2
30,691	Middlesex #3
13,526	Middlesex #4
15,115	Middlesex #5
13,464	Middlesex #6
26,750	Morris #1
16,260	Morris #2

Now the figures for 1973 arrests and convictions are not yet in. But given our earlier figures that every tap results in approximately one conviction, this means that since there were 215 wiretaps in New Jersey in 1973, each conviction cost approximately $3,000. I have already suggested why, in the absence of more specific information from the Attorney General, the conviction rate is approximately one per tap. But even if the tap brings in two convictions, on the average, we are talking about $1500 per conviction.

Is the cost worth it? If one police person were to arrest one criminal every three months (which is what the salary range would be, assuming $3000 per conviction), would we retain that police person on the force? That is what wiretapping is bringing us, roughly.

Now that figure --- slightly, just slightly, over 1 conviction per wiretap --- must give us pause for another reason. The legislation requires, an there is no indication that courts have not been taking it seriously, that there be probable cause against at least one person, or one facility, prior to the authorization of the tap. Now I realize, of course, that not every finding of probable cause would suggest that the police are ready, or able, to both arrest and convict. But the presumption must be that in most

instances where there is probable cause, there is at least ONE person who the police could at least arrest, and quite possibly convict. Even if we agreed that it was a 50% chance, this would mean that for every probable cause finding, there is a 50% chance that one person could be convicted BEFORE the wiretap.

If THAT figure is read into the figures I have already suggested, the ADDITIONAL, WIRETAP-CAUSED convictions diminish by half, and the cost amount doubles. Now, instead of 3000, it costs $6000 to find one more person through a wiretap than we would have caught if there had been no wiretap at all.

Again, I recognize that this is rather swift manipulation with figures. But it is the best I can do, because the Attorney General has told me nothing more. And, it seems to me, that unless there is something more forthcoming, more explanation, more figures, something more --- this committee should not endorse this legislation.

Finally, in terms of financial cost, one more factor --- these cost figures do not include the extra time of judges, lawyers, prosecutors, clerks, etc., which must be considered if we are truly to consider the real cost of wiretapping. There is no way to easily estimate these, but if state judges are truly following the Act, as I think the indications show, then there is a need for continual reporting to the court, which consumes much energy, much time, much paper, much personnel, etc. In short, wiretapping is a VERY, VERY, costly business.

This MIGHT be considered worthwhile if we were truly hurting organized crime --- the prime target of wiretapping. Thus, I think we should now turn to that issue --- who is convicted?

Who is convicted?

At several places in his report, the Attorney General asserts that these wiretaps have led to the arrest and conviction of "high level" figures in organized crime. As an academic, I cannot accept, without more, this bald assertion. Who are these people? What is the "high level" indicated? Clearly, the arrest and conviction of numbers runners, for example, does not suggest "high level" persons. But the report is strikingly silent about the identities and alleged importance of most of the persons who have been convicted.

We are told something about the nature of persons being convicted. Thus, in 1969 and 1970, we are told, the most significant contribution of wiretapping was the conviction of Joseph Zicarelli, and several others. In 1970, twelve "major" gambling enterprises, including one major interstate gambling enterprise, were shut down, as well as a "major" loansharking operation in Morris and Essex Counties, which involved ten individuals arrested and convicted. 1971 saw "several major gambling networks" uncovered, resulting in arrest and conviction of "key organized crime figures" in some counties. Another investigation involved "gambling activity" carried on by a "public officer" in a county courthouse. (This, of course, could be a judge who was managing a state-wide bookie operation, or a guard who was also a num-

bers runner). Also, in 1971, a "major drug distribution network in southern New Jersey" was smashed, and a major loan-sharking figure was indicted. Also, in that year, and 1972, the "most significant investigation of the year" dealt with a series of thefts and resale of construction equipment.

Now I do not want for one moment to be thought to be making light of these accomplishments. For they are, if they are taken on their face, significant in many instances. But these are, if you will, the "tip of the wiretap iceberg". Who ELSE was arrested and convicted in 1970, besides these 12 gambling operations? According to the Attorney General's own statistics, there were 180 convictions in that year due to wiretapping. Even assuming that we have 30 individuals involved in these operations what about the other 150? Were they, too, part of "organized crime"? Or have we unleashed a crime fighting device which captures, at an excessive cost ration, 5 non-entities for every entity? Isn't that a bit expensive? Or, in 1971, there were, again, 158 (atleast) convictions, only a handfull of which are mentioned in the report. Who were the other persons convicted? Was wiretapping really necessary in those cases?

I will go even further. I suppose I have an internal, bodily reaction to what a "major gambling network" is. Yet if twelve of those were totally decimated in one year, --- if twelve "major" rings were really smashed, I would have thought that gambling in New Jersey would be relatively dead. It is not, so far as I can tell. Thus, I must ask, as a citizen, and I think the Attorney General, as a public officer

1. Who were the persons arrested?
2. How much did they make per year in the operation?
3. Were there higher ups who were not caught?
4. Etc.

For a report which seeks to extend for five more years what is admittedly a severe invasion of privacy, I do not see the support here; the details, it seems to me, are required. In the absence of details, again, I suggest a negative presumption, or at least a negative inference that the vast majority of wiretaps are turning up little people, and the cost of doing that this way is enormous. The cost/benefit is simply not there. It may well be that the Attorney General can supply this information, and convince me, at least, that the persons convicted were, indeed, "major" gamblers, and that each enterprise involved at least one "major" organized crime figure. (I find that reference intriguing, by the way; somehow it would seem that if there was one major crime figure involved in an operation, there would have to be others, or there would not be a true involvement of organized crime.).

Connected with this issue, as well, is the question of the sentence lengths which these defendants have received. How many convictions have resulted in short sentences, perhaps concurrent on several counts? The Attorney General's report does not say. But if all we are doing is from time to time convicting one middle-level person in organized crime, and removing him from circulation for, let us say, a year, or even less, given good time credits, etc., I submit that

substitute can be found, so that the operation continues as efficaciously as ever. For others, even if there is no "substitute", the absence for a year may have no long term detrimental effect upon the organization or its operations. In short, we may be shooting only a piece of the mouse with an elephant gun, and not getting the whole mouse.

In his report, the Attorney General further declares that there has been some success in convicting persons against whom other means of law enforcement were unavailable, and clearly that is the major purpose of wiretapping, as the statute points out itself. But one must note that there is every likelihood that if police were able to bust down doors without notice, or without probable cause, we might find a few more criminals than are currently found: this mere fact, however, would not in any way justify such a blunderbuss method of invasion of privacy. Instead, it must be demonstrated, it seems to me, that <u>the vast majority, if not all</u>, the convictions are of this nature, in order to even minimally justify the practice. If, that is, 90%, or 80% or even 50% of those convicted could have been discovered through other means, wiretapping, as broad and gross and sweeping as it is, would not be justified. Yet there is nothing in his report which would suggest that this is the case. I call the Committee's attention to the fact that Congress recently repealed the "no-knock" provisions relating to law enforcement in the District of Columbia in part because the gross power which it gave for invasion of privacy turned out

not to be justified by the NUMBERS of persons who were arrested and convicted by this method.

Still another factor must be considered, it seems to me, if we are to adequately assess the costs --- financial and otherwise --- of the wiretapping process. The Attorney General's report shows clearly --- perhaps one of the few things that is shown clearly --- that someone in this state is wiretap happy. The figures are clear:

Year	A.G. Requests	County Requests
1971	81	91
1972	67	153
1973	47	153
1974	14*	

* Through Aug. 1, 1974

Last May, the New Jersey Law Journal noted that in 1973, this state had reported over 200 wiretap authorizations, compared to 130 signed by ALL the federal judges in the county for federal wiretaps pursuant to Title III. We have demonstrated, here, that once unleashed, wiretapping grows faster, and more irrationally, than Topsy. And the cost increases so rapidly that it becomes surreal.

My aim here is not to nitpick the report to death, but rather to say to this committee two things: (1) What information we do have indicates beyond cavil that the process of wiretapping is exhorbitantly expensive, for its results; (2) the gross lack of information in the Attorney General's

report, as well as elsewhere, strongly suggests that if we KNEW what "drug offenses" and "drug connected" meant, for example, or whether the defendants were mostly marijuana users, or numbers runners, that our estimate of the cost of the wiretapping process would skyrocket; that we might well determine that for every "big fish" we catch, we are putting out $50,000 - $100,000 in equipment. I do not deny that this is important; but what I suggest is that, at this point in time, we have other ways of dealing with the big fish and, perhaps more importantly, we need to find more money to protect our citizens as they walk the streets of their cities at night. $ 50,000 would hire at least three policeman, full time, for a year; we would be exchanging one arrest, and one possible conviction, for possibly hundreds of arrests and convictions, and perhaps even a better use of funding in the correctional system thereafter. I urge this committee, before it decides anything, to ask the attorney general to clarify these, and other, points in his report. And if there is nothing better, in terms of cost-effectiveness, than what the figures now suggest, then we should simple scrap the program, in addition to all the other reasons for doing so, because it simply costs too much money. Whip inflation now.