# PUBLIC HEARING

New Jersey. Legislature.

Before

ASSEMBLY JUDICIARY COMMITTEE

on

ASSEMBLY BILL No. 58
(Wiretapping)



Held:
March 14, 1962
Assembly Chamber
State House
Trenton, New Jersey

Members of Committee Present:

Assemblyman Samuel L. Biber (Chairman)

Assemblyman Nelson F. Stamler

also

Assemblyman Irving E. Keith



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ASSEMBLYMAN SAMUEL L. BIBER (THE CHAIRMAN): Gentlemen and those who are interested in this hearing, will you please be seated. I think we are about to start.

The public hearing on Assembly Bill 58 is now open and, as Chairman of the Judiciary Committee, I have the privilege of presiding. I am Assemblyman Biber from Passaic County and to my right, and a member of the Judiciary Committee, is Assemblyman Nelson Stamler from that great county of Union.

I think it is the purpose of the Committee to give everyone present the opportunity of expressing his sentiments on this particular piece of legislation. We have another hearing scheduled for 2:30 this afternoon and it is my hope and the hope of the Committee that we can be finished with this particular piece of legislation by that time. Accordingly, it might be necessary to limit the remarks of those who speak.

I think first I ought to have the name of everyone who plans to speak and the organization or association or the office with which he is identified. Suppose we do that now.

ASSEMBLYMAN IRVING E. KEITH: May I introduce myself first - Irving E. Keith, Assemblyman from Monmouth County and sponsor of the bill.

[The following persons identified themselves:

John J. Bergin, Assistant Attorney General, Director of Criminal Investigation.

H. Russell Morss, Jr., New Jersey State Bar Association and the County Prosecutors Association of New Jersey.

Jeffrey Albert, New Jersey Council, Americans for Democratic Action.

H. Douglas Stine, Prosecutor of Union County and President of the County Prosecutors Association of New Jersey.

Aloysius J. Bittig, New Jersey Bell Telephone Company.

George Gelman, County Prosecutors Association.

Sam Brown, Executive Director, New Jersey State Region, American Jewish Congress.]

MR. STINE: I had thought perhaps that the Assistant District Attorney of New York, Mr. Scotti, might be here. I don't see him. He said he would be here by 11. I would like to have him have a few minutes.

MR. BIBER: Gentlemen, I think we ought to try to observe a limitation on time of ten minutes. I think it might be advisable that when one is completed with his statement he ought to expect to submit to questions at the hands of the Committee and thereafter questions to be submitted by those in the audience.

If anyone has a prepared statement or several copies, he could leave a few at the desk here and one for the young lady.

Let us then try to observe this time limitation so that everyone can be heard.

Assemblyman, you are going to lead off the procession? Assemblyman Irving Keith.

ASSEMBLYMAN IRVING E. KEITH: Thank you very much.

Mr. Chairman and Assemblyman Stamler, and distinguished people gathered here today, I am the sponsor of A-58 and, of course, I feel it is vital and necessary legislation for the welfare of the people of our State. I think it is rather common knowledge that we have had a great amount of increase in our population, which has created many economic problems. And I think it has been catastrophic in so far as the crime explosion that has been taking place, not only in the United States but throughout the State of New Jersey.

In a very recent report distributed by the Associated Press, statements and statistics attributed to J. Edgar Hoover and United States Attorney General Kennedy, the largest single problem relative to the explosion of crime deals with organized crime, and I would like to read just a small portion of that article:

[Reading] "Organized crime is a multi-billion dollar industry. The vice lords are no longer Al Capone type loud mouths but shrewd manipulators who keep out of the public eye, wear bankers' gray, send their kids to private schools , and take European jaunts. They traffic in extortion, labor racketeering, narcotics, prostitution, bootlegging, gambling, and anything else that can turn a profitable dollar. They have steadily invaded legitimate business. Gambling alone produces a profit of forty-seven billion dollars, or more than the 1960 United States budget."

It is my feeling that in order for the welfare of our public to be safeguarded, our law enforcement authorities should have every conceivable tool at their advantage in

order to fight this outbreak in the continuing crime rate that we have.

As a matter of fact, Governor Hughes - I think it was on January 25th or 26th of 1962 - in a prepared statement that was delivered to the County Prosecutors Association, said that professional gamblers and racketeers are using modern techniques, while many police stick to oldfashioned, outmoded methods.

What we are trying to do with this bill is to place in the hands of law enforcement officials modern methods that will at least be on the same advantage and par as the criminal syndicates.

There has been a great amount of support for this type of legislation, editorial as well as others, and I read from an editorial of the Asbury Park Evening Press of November 15, and I quote: "In their failure to permit law enforcement agents to tap wires upon the issuance of a court order authorizing them to do so, the Congress and the State Legislature are in effect asking the police to drive a horse and buggy while trying to catch a criminal in a high-speed automobile."

In a further editorial of the Press: "if a properly authorized wire tap makes possible the procuring of evidence which may lead to the conviction of a criminal, we cannot understand why law enforcement officers should not be permitted to use it. If the police have reasonable cause to believe that a suspected criminal has important evidence in his home, they apply to the courts for a search warrant.

If they have reasonable evidence that a suspected criminal is conducting incriminating telephone conversations, they should have the same recourse to the courts for permission to listen in. What is the difference between a properly authorized search of a suspected criminal's house and a properly authorized monitoring of a telephone conversation? Courts should be ever on the alert to protect the rights of the individual and we would not have it any different, but making it easier for a criminal to commit crime should never be mistaken for protection of civil rights. Every conceivable weapon should be placed in the hands of the authorities in their battle against crime. So long as the weapon is fair and is utilized under proper judicial supervision, it should be permitted. Certainly properly authorized wiretapping falls into this category."

Now, I am very cognizant of the fact of civil rights, and I fight for them constantly. I am very much aware of the right of our public citizens not to have their privacy invaded, and I fight for that constantly as well. And so I say that wiretapping which is not under proper supervision and control would be improper. But A-58, I wish to point out to the Committee and to the public, does have the safeguards that are necessary to protect the privacy of the individual.

In this particular bill I have provided that there are only two people in the State of New Jersey who can make an application for an order authorizing wiretapping, and that is the Attorney General of the State or a County

Prosecutor, and this application can only be made on oath or affirmation and the application must be made to an Assignment Judge of the Superior Court of the county. Additionally, the Judge who is going to determine whether or not there is reasonable ground to believe there is evidence that a crime is being committed has the right to examine under oath any other witnesses, and then the application must particularly specify the telephone number or the telephone or the telegraph line to be tapped and particularly describe the person or persons whose communications are to be intercepted. And, also, this cannot be an open standing application or order. It's limited to a period of two months and can only be extended upon application.

Another thing that I think is important to point out is that the evidence that is obtained in this bill or by the purposes set forth in this bill cannot be used in any courts of the State but can only be used in the criminal courts in criminal processes.

There are many legal aspects also that I am aware of, and I know that there may be some questions on it and I will go into that in a moment. But I had occasion recently, as I am certain that the Committee is aware, of finding out that United States Attorney General Kennedy has also proposed federal wiretapping legislation, and I communicated with the United States Attorney General and he was kind enough to send me a copy of his letter of transmittal to Vice-President Johnson. And I would like to read, if I may, just one or two short paragraphs from Attorney General Kennedy's letter to Vice-President

Johnson. He states: "For many years the problems presented by wiretapping have been matters of concern to the public, the Congress, the judicial and executive branches of government, state legislatures, and law enforcement officials and the bar. Existing law has proved ineffective both to prevent indiscriminate wiretapping, which seriously threatens individual privacy and to afford a clear-cut basis for the legitimate and controlled use of wiretapping by law enforcement officials. The public has been concerned and apprehensive because of the increasing and widespread use of wiretapping by private individuals for personal gain. Use of wiretapping by law enforcement officials under specified controls would serve also to implement the renewed federal effort to combat organized crime.

"As recognized by Congress during the past session, the unrestricted utilization of interstate facilities such as the telephone by large-scale criminals presents a problem of paramount national concern. Investigation has documented the ease with which leading racketeers can insulate themselves in their illegal operations and rely on the nation's elaborate communication system to direct such activities. To deny law enforcement officers the right to monitor telephone communications is to permit our nation's vast communications network to be used as an irreplaceable tool of the underworld."

In this month's Readers Digest, March 1962, there is a very interesting article by United States Senator Kenneth B. Keating of New York, and I would like to point out to the Committee, of course, that New York State has

a wiretapping law in existence and Senator Keating has introduced a bill authorizing wiretapping in the United States Senate. But in this article, Senator Keating says: (Reading) "Last November a New York City courtroom was the scene of a shocking drama: a district attorny asked a judge to dismiss without prosecution seven defendants charged with conspiracy to sell narcotics valued at some $500,000. He made this request despite the fact that he had evidence 'which could prove the guilt of the defendants beyond all doubt.'...

"Why should these known criminals go free? Because none of the evidence obtained through wiretapping (or as a result of it) could be used against them, and without this evidence they could not be convicted!

"On the same day, in a Brooklyn court, 98 persons indicted in criminal gambling cases, including bookmaking and the numbers racket, were also freed without trial - because there, too, the prosecutor's case was based on wiretap evidence.

"In my home city, Rochester, N. Y., 25 cases of organized gambling have also been dismissed for the same reason. In New York, District Attorney Frank Hogan has reported that he has about two dozen cases of labor racketeering, abortion, official corruption and other crimes which he cannot prosecute because they involve the use of wiretap evidence...

"Scores of underworld characters under indictment have gone scot free. Communist agents pass messages back

and forth across our telephone wires. The 'call girl' business thrives in many major cities. Criminals have discovered that the ordinary telephone is the safest, most efficient tool of crime and espionage to appear in a century...

"Some people see no danger to law enforcement in this wiretapping muddle.They portray wiretapping as the 'lazy' policeman's way of solving crimes and insist that crimes could be solved without it if the police would only work harder. These armchair opinions are refuted by men of unquestioned integrity and broad experience in law enforcement. For example, last May District Attorney Hogan told the Senate Subcommittee on Constitutional Rights:

"'How valuable in the fight against organized crime is this court authorized power to intercept telephone conversations? Without it I do not think that our office could have convicted Charles "Lucky" Luciano, Jimmy Hines, Louis "Lepke" Buchalter, Jacob "Gurrah" Shapiro, Joseph "Socks" Lanza, George Scalise, Frank Erickson, John "Dio" Dioguardia or Frank Carbo. These men would be major figures in anybody's "Who's Who of Gangsters".' Hogan concluded that wiretapping "is the single most valuable weapon in the fight against organized crime....

"Wiretapping is attacked by a second group of sideline experts. They argue that even if it is essential for solving certain crimes, the danger of abuse outweighs its benefits. I cannot agree. No doubt wiretapping can be abused, but so can many other essential law enforcement techniques; the right of arrest, interrogation, extradition,

fingerprinting, cross-examination. But no one has suggested abolishing these procedures. Instead, we try to surround them with safeguards to prevent abuse without forfeiting their essential value to law and order."

And it's because of that that I have also put these safeguards in this bill, because we know that in the hands of incompetent or improper officials there can be abuses. But the mere fact that an incompetent law enforcement official might improperly use his gun doesn't mean that we are going to take the position that we shall not give guns to law enforcement officials in order to effectively enforce and fight crime.

New York District Attorney Edward Silver of Kings County, who was going to be here today but couldn't be because of a conference he had to attend, wrote to me and I believe sent the Chairman a copy of this letter, and I would like to quote just a portion: "Those with vivid imaginations who have conjured up the dire consequences that will flow from intercepting telephone conversations of criminals likely ignore twenty long years of experience with this law in the State of New York. As late as September of 1959, the New York State Joint Legislative Committee that exhaustively investigated wiretapping in New York State for a number of years said: 'The New York system of control has worked well for twenty years. It has had the overwhelming support of our people, as well as our highest state officers, executive, legislative and judicial. May I respectfully state that unless something is done about

this problem soon, law enforcement will lose a most important instrument in fighting crime. What is more, they will witness a gigantic legal jail break. Hundreds of defendants now indicted will go scot free. Many more who can be indicted will not be indicted.'"

I have also received a number of letters from many of the prosecutors of our counties, but I know that they have a representative here so I will not take the time of the Committee to read the favorable comments of these many prosecutors and their opinion being in favor of it.

Before I close, and I know you want to limit time, I would just to touch briefly, if I may, the legal aspects that may come up on the floor for discussion, We know that there is a question between the status of wiretapping evidence in so far as our federal courts are concerned and in so far as our state courts are concerned; we know the numerous cases that the United States Supreme Court has decided, starting of course with the leading one of Olmstead vs. United States, 277 U.S. 438, decided by the United States Supreme Court in 1928. Now, in 1928 there was no federal communications act, as we know. And in that case the United States Supreme Court has ruled and decided that wiretapping is not in violation of the United States Constitution. It specifically has determined that this is not an invasion of constitutional rights, and wiretapping was permissive under the decision of Olmstead.

In 1934, of course, along came the federal communications act, and particularly Section 605. And then we

had our first case of Nardone vs. United States, 302 U.S. 379, decided by the United States Supreme Court in 1937. And it was in the Nardone case where the court held that it was not a United States Constitutional prohibition, but it was a prohibition in federal courts in so far as Section 605 of the Federal Communications Act was concerned. And, of course, this was a very surprising decision, because the Federal Communications Act makes no reference to wiretapping but it makes reference to the interception and divulgence of intercepted messages over telegraphic and telephonic communications. And the amazing part is that when the Olmstead case was decided in 1928, there was in existence at that time the United States Radio Act of 1927, with almost the identical provision of 605, but the court did not rule on the Radio Act.

And so we started to have the decision to decide where and when and how could wiretapping evidence be used. But in the Nardone case the court held that it could not be used in the federal court, federal law enforcement agencies, but nothing in so far as state courts were concerned. And it wasn't until some time later in several decisions, such as Schwarz vs. Texas, 344 U.S. 199, and the Benanti case that we know about, and the case of Pugach vs. Dolinger, which is a very recent case. And in those cases the court held that wiretapping would be in violation of Section 605 of the Federal Communications Act, but held that the court would not enjoin the use of wiretapping evidence in state courts when obtained by state law enforcement authorities.

So that is the flux of the matter; this is the posture of it from a legal standpoint.

I might point out to the Committee a recent case in June 1961, Mapp vs. Ohio, which may be brought up in someone's mind, where the court did restrain evidence, but that case, the Mapp case, was not a wiretapping case. That was an unlawful search and seizure case, as distinguished from wiretapping, and I take you back to the Olmstead decision to point out that the U.S. Supreme Court has ruled and held that wiretapping is not an unlawful search or seizure. Therefore, I contend that the Mapp case is not stare decisus and not a determination for the Committee in so far as the prohibition of the using of unlawfully obtained evidence under an unlawful search and seizure. Wiretapping, the United States Supreme Court has held, is not unlawful search, is not a search, as a matter of fact, at all, nor a seizure of evidence.

And so I respectfully submit to the Committee and to the public that it is necessary that we place in the hands of our law enforcement officials within our State the modern techniques. There is no reason for the criminal syndicate and the gambling syndicate and all that they stand for to have the advantage and the benefit of our modern electronics, our modern telephones, without placing at least the law enforcement authorities in the same position as they. And I say that this can be done with all due respects to civil rights. This can be done without an invasion of privacy. This is done under this bill by proper

application, under court supervision, under court order, and because of the various reasons I have expressed I certainly ask the Committee to favorably pass upon this bill.

Thank you very much, Mr. Chairman.

MR. BIBER: Are there any questions?

MR. H. DOUGLAS STINE: No, I have no questions, but I just wanted to ask that if the Chief Assistant to District Attorney Hogan could be heard after Assemblyman Keith, we would appreciate it. He has to return to New York.

MR. BIBER: Are there any questions?

ASSEMBLYMAN NELSON F. STAMLER: I have one or two, Mr. Keith, on the bill, rather than do it at a session of the Legislature: You provide in the bill that two officials, the County Prosecutor or the Attorney General, may apply to the court for the ex parte order.

MR. KEITH: That's right, Mr. Stamler.

MR. STAMLER: Now, you provide that this will be under oath or affirmation.

MR. KEITH: That's right.

MR. STAMLER: Well, now, from the bill itself, will this not be an oath, or at least an affidavit, on hearsay of another public official?

MR. KEITH: I wouldn't think so. It would be my impression that the oath or affirmation of the Prosecutor would have to spell out his reasons and his facts for his application and would spell out substantial or sufficient information for the court to come to a conclusion that there is reasonable ground to suspect the violation that we are concerned with.

MR. STAMLER: Well, your bill further says at line 9 "that evidence of crime may thus be obtained." The Attorney General of the United States provided in his bill that this would give law officers a new tool to combat subversive activities and organized crime, and then pins it down very closely that the wiretap would be limited to investigations of murder, kidnaping, blackmail, bribery, and illegal narcotics. Now, your bill provides that the order may be obtained for any crime.

MR. KEITH: Assemblyman Stamler, I might say that I have been in communication with the United States Attorney General's Office on the point that you are making, and I have been in communication with Deputy United States Attorney General White and have pointed out to him that in my opinion the provisions of the bill prepared by the administration, the United States administration, might be lacking in some respects in so far as the elaboration of the crimes that are permitted. The federal bill prepared by the Attorney General's Office has a distinction between wiretapping permission for crime on behalf of federal agencies and wiretapping for other specified crimes in so far as state officials are concerned, and I have communicated to him my thoughts that they should be enlarged. I might say this to the Committee, however, that if the Committee should ascertain in its mind that there should be a set limitation on the specific crimes that wiretapping might be authorized for, I would be happy to discuss it with them. However, I would feel as a practical matter that where the protection

and safeguard is that the application is made by only the Prosecutor or the Attorney General and the Assignment Judge has to grant the order, that an application made for some minor, lesser, picayune crime, the application would never be made for that, nor would an order be granted.

MR. STAMLER: One last question, Assemblyman Keith:

Your bill provides again for the application by two people - the Prosecutor and the Attorney General. Attorney General Kennedy's statement to the press provided that all telephone eavesdropping by private parties be outlawed and that strict procedures be laid down for the use of wiretaps by federal, state, and local authorities. Don't you think that by precluding any local authority from obtaining this order, you may be possibly providing for an open door to an investigation of a higher authority. Supposing for the sake of example that a police department were investigating a Prosecutor. How could he possibly obtain the evidence, or it obtain the evidence?

MR. KEITH: Through the Attorney General.

MR. STAMLER: Only by the Attorney General.

MR. KEITH: That's right.

MR. STAMLER: But you preclude him completely from applying.

MR. KEITH: You mean the local man. I absolutely do. I don't think this right or application privilege should be in the hands of the local enforcement, the ordinary police officer. I think it should be on the highest level of law enforcement authority; namely, the Prosecutor and the Attorney General as a further safeguard to improper use of wiretapping.

And, of course, I might point out to the Committee that we know that under our existing statute there is a further safeguard that anybody who might illegally wiretap is subject to prosecution for violating - 2A:146-1. So we have that provision too. And I think that one of the problems we have too is the designation of the name "wire-tapping." It might be well if we could change that name to something like "crime tapping" or give it some other name that wouldn't be as frightening.

MR. BIBER: Are there any other questions?

(No response)

Thank you very much.

MR. KEITH: Thank you.

MR. BIBER: I did promise that I would call Mr. Scotti.

MR. STINE: May I introduce my guest.

MR. BIBER: Surely.

MR. STINE: I have the pleasure this morning of having with us the Chief Assistant in District Attorney Hogan's Office, Alfred J. Scotti, who is the head of the Rackets Bureau, and I am sure that he can bring some current material to our attention.

MR. BIBER: Mr. Scotti, may I just make one observation. When this hearing began, you were not here and we did indicate that we would like to have everyone here given the opportunity of expressing his views, with the result that we are trying to restrict, if we can, the remarks of those who are going to make a statement - as close to 10 minutes as we can possibly keep it. And then

we would like to have you submit yourself to questions.

MR. STAMLER: May I, before Mr. Scotti makes his statement, make the statement that even though I got a great deal of credit and blame for the Bergen County investigation, the Bergen County investigation of some eight or nine years ago would have been a complete failure without Mr. Scotti's and Mr. Hogan's assistance. Whether this was due to wiretapping or not, I don't know, but I would think it was due to a very good enforcement office.

ALFRED J. SCOTTI: Thank you very much.

Frankly, I did not anticipate being restricted to 10 minutes, because I had prepared a longer statement in which I endeavored to present the position of our office, but I shall try to adhere to the gentle admonition given to me by the Chairman.

I wish to state at the very outset that I am grateful for the opportunity to appear before all of you to attest to the value of legalized wiretapping to law enforcement, particularly in the area of organized crime. Perhaps my desire to discuss legalized wiretapping as a vital weapon of law enforcement is due to the increasing realization that organized crime is not necessarily confined to any particular locality but is in fact a national problem which requires the combined resources and the coordinated efforts of all of the law enforcement officials of the various states where organized crime is evident. Now, while the utilization of wiretapping has enabled our office to obtain the necessary legal evidence to successfully prosecute a number of underworld characters in different areas of organized crime, such

as gambling, labor-management relations, sports, and narcotics, I must say that our efforts have been at times limited but not frustrated by reason of the fact that some of these dominant underworld characters have directed their criminal operations outside of New York, in states where they have used the telephone to carry out their criminal designs with the virtual sense of impunity, since it has been known that wiretapping by law enforcement officials has been forbidden in these states.

It is, therefore, our hope that the states where organized crime is a serious problem and where law enforcement officials cannot resort to this device because it is proscribed by law, through their legislatures they will express the approval of this investigational device as an important aid to law enforcement. It seems to me that such action by the legislatures of these various states will indeed exert a tremendously persuasive influence on Congress to amend Section 605 of the Federal Communications Act so as to exclude from its operation state legalized wiretapping.

Now, it seems to me that whether wiretapping should be legalized is an issue that can be determined by the answers to three basic questions: 1. Is it necessary? 2. How effective is it? And 3, Are there safeguards against possible abuse of legalized wiretapping?

Now, the experience of our office in the investigation of organized crime and other serious crime, for virtually over a quarter of a century, has clearly demonstrated the urgent need for legalized wiretapping. We have found that evidence in certain areas of organized crime could

only be obtained through wiretapping.

Let us consider, for instance, the area of labor-management relations. It has been our experience that the businessman who is a victim of the depredations of the labor racketeer does not come forward to disclose his experience to the authorities. Fear of underworld reprisal deters him from going to the authorities. Even when he is called to our office, he not only refuses to tell us the truth but at times takes positive steps to obstruct our efforts to uncover the truth by either falsifying or destroying his records. No matter how fervant our appeals may be to his sense of civic duty, no matter how we may beseech him to cooperate with us, he steadfastly refuses to tell us the truth. In plain language, he places the fear of the underworld above law and order.

This attitude is just as evident, and more so I should say, in the case of the chiseling businessman who callously colludes with the underworld to prevent a legitimate union from organizing the employees. For a price, this businessman obtains from a certain union controlled by the underworld what is commonly called a "sweetheart contract" or a "soft contract" that confers virtually no benefits upon the worker, but provides protection to the employer, under our labor laws, against any attempt that a legitimate union may make to organize his employees. He is thus able to compete to his very great advantage with those competitors whose employees are organized by legitimate unions.

Our experience has shown that the businessman who either has been victimized by the labor racketeer, or has used underworld influence to his advantage, has not co-operated with law enforcement unless he has been confronted with the alternative of being prosecuted for perjury or contempt. And I say that this alternative could only be produced by evidence that our office obtained through wire taps. For example, it was only when the businessman was confronted with a recording of his own conversation, that reflected a payment to the potential defendant, that he grudgingly affirmed the truth before the grand jury.

Furthermore, the manner in which underworld characters direct their criminal operations in different areas of organized crime has made wiretapping indispensable to law enforcement officials, particularly in their efforts to obtain evidence against the so-called "higher-ups." Now, let us consider, as an illustration of this problem that is peculiar to virtually every form of organized crime, the operation of a policy racket. Those who physically perform the necessary acts required by the operation of this racket are actually the runners who collect the wagers and pay off the winners and the clerks who compute the profits and losses on the basis of the wagers received. They are the ones who are exposed to the forces of detection. But those who control and direct the operations of the racket do so at a distance quite insulated from the scene of the criminal operations. These underworld characters or bosses would have operated with virtual impunity if it hadn't been for the use of legalized wiretapping.

We have established a long time ago that no matter how carefully racketeers seek to conceal their operations, they must use the telephone to carry on their conspiracies. The telephone is, therefore, indispensable, not only to decent people in the conduct of their normal lives, but also to the underworld in the conduct of its dirty, nefarious business. In fact, the more the underworld grows in influence and the more it widens the area of its criminal operations, the more necessary the telephone becomes. I ask then why shouldn't society, through the law enforcement agents, have access to the very means - the telephone - which the racketeer uses in his criminal activities? To deny law enforcement this most essential right is to give to the underworld virtually a license to carry on its dangerous criminal business. As Justice Jackson, while Attorney General of the United States, said on behalf of federal law enforcement: "Criminals today have the free run of our communications system but the law enforcement officers are denied even the carefully restricted power to confront the criminal with his telephonic and telegraphic footprints."

Now, the next question that is of primary concern to this body is how effective is legalized wiretapping in investigations of serious crimes, including particularly organized crime. To give you a vivid idea of the effectiveness of this investigional device, I would like to allude briefly, mindful of the admonition the Chairman has given me, to some of our important prosecutions that involved organized crime and possibly other serious crimes.

In 1949, wire taps alone enabled our office to uncover the intricate conspiracy involving a ring of crooked policy operators who succeeded in fixing the winning number so as to reduce the payoffs to a minimum. I believe that was the investigation that my good friend Mr. Stamler referred to prior to the time I was privileged to make my remarks. Not content with profits made because of the tremendous odds in a normally operated, though illegal, policy, these racketeers sought to increase their income, which annually amounted to several million dollars, by deliberately picking the least-played number as the daily winning combination. This rigged policy racket, as our evidence disclosed, was made possible through the manipulation of the Cincinnati Clearing House figure released daily by its secretary-treasurer. As a result of this prosecution, about 10 underworld characters were convicted, including such powerful figures as Danny Zwillman, William Tiplitz, Irving Bitz, and the brother of the powerful underworld figure Tony Bender. We were even able to expose and convict Dennison Duble, the apparently respected businessman in Cincinnati who received a weekly bribe for his part in the operation of the crooked policy racket.

In 1951, we had a so-called basketball investigation that uncovered corruption in this college sport on a nationwide scale. This scandal involved 15 professional "fixes," 33 players, 6 colleges, and 49 college games in which score-rigging deals were negotiated in New York and in 22 cities in 17 states. In the 14-month investigations, information obtained over the telephone enabled us to piece

together an accurate picture of the workings of the bribery ring. Thirty-eight arrests resulted and of these 36 were convicted, including 14 of the fixers. Without wiretapping, this case could not have been made.

Another instance of the value of legalized wiretapping is furnished by our exposure of racketeering in certain union welfare funds. The case that comes to my mind is the one that involved a powerful labor racketeer, the notorious George Scalise, and his front, the secretary-treasurer of the International Liquor Union, Sol Cilento. Only on the basis of the intercepted conversations on the telephones used by both George Scalise and the crooked union official were we able to establish a conspiracy involving these two and an insurance agent by the name of Louie Saperstein, to syphon annually over three hundred thousand dollars from the union welfare fund through the subtle process of splitting the high commissions paid to Saperstein with George Scalise, Sol Cilento, and a powerful underworld character, the late Augie Pisano. Saperstein, who had refused to testify and later equivocated when he did testify so as to be guilty of contempt, decided to cooperate with the People and thus made possible the conviction of George Scalise and Sol Cilento.

In 1956, our office, in the course of an extensive investigation of underworld influence in the Teamsters Union, uncovered a conspiracy involving two powerful underworld characters, Johnny Dio and Tony "Ducks" Corallo, to capture control of the Teamsters Union in the Northeast. All of this information, which provided the basis for a great number

of indictments, as well as the exposure of this conspiracy, was turned over to the McClellan Committee and was later publicized on a nationwide basis.

The successful prosecution of Frank Carbo, known as the underworld czar of professional boxing, for his undercover role in the management of boxers and the promotion of fights, was also made possible by wire taps.

The successful prosecution of the underworld boss of the waterfront on the East River, one Mike Clemente, and three of his associates was also made possible by wire taps.

During the years between 1954 and 1958, wiretapping alone made possible the successful prosecution of about 25 labor racketeers, the majority of whom exercised influence in the Teamsters Union as officials.

Now, the fear that legalized wiretapping may result in the invasion of the privacy of decent law-abiding citizens is completely unwarranted so far as the experience of our office is concerned.

An examination of the law authorizing wiretapping by law enforcement agents only under certain conditions, and the procedure adopted in our office should dispel any fear that legalized wiretapping means indiscriminate invasion of the privacy of individuals.

Our Constitution, as adopted in 1938, authorized interception of telephonic communications by state law enforcement officers under judicial supervision through the issuance of an ex parte order. In 1942, legislation implementing this constitutional provision was enacted. Article 813-a of the Code of Criminal Procedure provides

safeguards against possible abuses by requiring state officers to comply with the following requirements:

1. Applications for orders may be made only by the Attorney General, the District Attorney, or a police officer above the rank of Sergeant.

2. Applications must be based on the officer's oath or affirmation that there is reasonable ground to believe that evidence of crime will be thus obtained.

3. The particular telephone line of the person or persons whose phone is to be tapped must be identified and the purpose of the tap must be set forth.

4. The officer must apply to one of the group of judges sitting in courts of record. In New York City they are the Court of General Sessions, County Court, and the Supreme Court.

5. The Judge may examine the officer or other witness under oath and shall issue the order only if satisfied as to reasonable grounds.

To these statutory requirements, our office has added certain additional rules which are designed, first, to avoid the indiscriminate use of wire taps and, second, to insure maximum secrecy with respect to the existence of the wire tap and the content of the intercepted conversations. These may be summarized as follows:

1. Wire tap applications are largely restricted to investigations involving organized crime, although there are certain specific situations that make imperative the tapping of a telephone.

2. A wire tap can be applied for, only if the Assistant District Attorney in charge of the investigation can convince both his bureau chief and the District Attorney that it is necessary. All applications recite whether a previous application has been made to another judge.

3. The fact that a wire-tap order has been obtained and a plant is installed is only known to the Judge, the telephone company's special office and the District Attorney's office.

4. The fact that a wire tap has been installed, the name of the person whose line is being tapped, and the contents of the intercepted communications are never disclosed unless specifically authorized by the issuing or trial judge.

5. Wire taps are most frequently used for leads and information. The intercepted conversations are offered in evidence in court only if necessary.

In 1957, legislation was enacted by the State Legislature which provided additional safeguards concerning wire tapping.

1. Section 813-a of the Code of Criminal Procedure was amended so as to make the order authorizing the interception of telephonic communications effective for two months only instead of for the six months as was permitted previously.

2. Section 813-b was enacted making it a felony for any law enforcement officer to tap a wire without a court order. Such crime is punishable by a term of not more than

two years in state prison.

3. Section 745 of the Penal Law was adopted by the State Legislature making it a misdemeanor for anyone to disclose the identify of a person whose phone was tapped, except in a trial, hearing, or other proceeding.

So it is quite evident from an examination of the law and the procedural safeguards adopted by our office that it is exceedingly difficult, if not impossible, under our procedure to injure any innocent person through legalized wiretapping. I may add at this time that in all my experience as a prosecutor, which covers over a period of 24 years, I have not been aware of a single instance of an innocent person being harmed by legalized wiretapping. I understand that other prosecutors have made similar assertions either to the State Legislative Committee or the Congressional Committee investigating wiretapping. In fact, our State Legislative Committee, in its investigation of wiretapping practices, did not find one single instance of an injustice to an innocent person through legalized wiretapping.

Now, there has been a lot of talk about the extent of legalized wiretapping in New York City. What are the facts? Not long ago it was estimated by the authorities that for a number of years legal wiretapping in New York City had not exceeded 500 for each year, which is not excessive by any standard in a city of eight million people.

With respect to our office, our records show that during the 14-year period, 1942 through 1955, we had obtained an average of 68 wire-tap orders a year for a

total of 957 in the course of 353 separate investigations.

Now, if there was any doubt about the importance and need of legalized wiretapping in the area of organized crime, it should be completely dissipated by the effect of the federal decisions in the cases of Pugach against Dollinger and Benanti against the United States. Under these decisions, a prosecutor, notwithstanding the authorization granted him by the Constitution and the Legislature of his State, would be violating Section 605 of the Federal Communications Act and would, therefore, be committing a federal crime if he should offer wire tap evidence in court.

Though our office has contended that Section 605 of the Federal Communications Act of 1934 was never intended to apply to state law enforcement officials, we were nevertheless obliged to obey the law of the land as interpreted by our federal courts and, therefore, decided to discontinue introducing wire tap evidence in any court proceeding until Congress expressly authorized the introduction of such evidence.

The crippling blow dealt to law enforcement by these federal court decisions was reflected by the following statement made by our office at the time we reluctantly recommended the dismissal of an indictment against seven underworld characters because their conviction could only be secured through wire-tap evidence:

> "The lack of realistic wire tap legislation has frustrated law enforcement in this case and will continue to do so in other cases. This is a travesty of justice in which the District Attorney's office plays the part of a most unwilling accomplice. We have evidence of the most vicious

type of criminality. The Constitution of the State of New York and our Code of Criminal Procedure specifically authorizes us to obtain and to use such evidence. But the federal courts, by their interpretation of 31 words in the Federal Communications Act of 1934, have erected a road block which deprives us of the right to go forward with a case which, in all likelihood, would put seven of society's most depraved enemies behind bars for many years to come. Congress, which never intended to usurp the police power of New York State when it passed the Federal Communications Act of 1934, has, to date, failed to act in this crucial area of criminal justice."

We hope that it may be inspired to take action in the near future.

Now, the unhappy developments resulting from the federal decisions in the Pugach and Benanti cases point up the compelling need for this vital weapon of legalized wire tapping especially in the investigation of organized crime.

To those who oppose legalized wire tapping because of the fear that it may result in abuses, I wish to state what has been practically regarded as axiomatic, that no basic civil right has absolute protection. While all of us acknowledge the basic right in our democracy to privacy in the use of the telephones in our homes, we should also acknowledge the basic right of society to be secure against the depredations of the criminal. A balance should be maintained between these basic rights. I am convinced that legalized wire tapping, with all of the safeguards designed to prevent abuses, achieves this very balance.

MR. BIBER: Mr. Scotti, I just want to direct one or two questions - I am sure that Assemblyman Stamler has several questions. Did you read this bill, A-58?

MR. SCOTTI: The one that is pending before -

MR. BIBER: Yes.

MR. SCOTTI: No, I haven't. In fact, I was asked by Mr. Hogan the latter part of last week whether I would be free to come down here and express the views of our office concerning the value of legalized wiretapping as an aid to law enforcement, and I want to apologize for not having familiarized myself with the provisions of the pending bill. I merely assume that the objective is one which is known to all of us, but I did not familiarize myself with the details of the bill.

MR. BIBER: My next question is: If you were to read the bill, if I understand it correctly, wiretapping would be permitted in a case of the suspected commission of any crime.

MR. SCOTTI: You must have reasonable basis to believe that evidence of crime will be obtained by the interception of telephonic communications. You must have some factual basis upon which to predicate that reasonable belief.

MR. BIBER: I believe there is a statement in the bill to that effect. But in view of the fact that A-58, the bill that we are now discussing and which is the subject matter of this hearing, doesn't limit or outline the crime which may form the basis for an application for a wire tap, do you not think that this bill is too broad as distinguished from the federal bill which outlines only five, six, or seven crimes?

MR. SCOTTI: When you say, "doesn't outline the crime," you mean that wiretapping would be authorized -

MR. BIBER: Kidnapping, extortion -

MR. SCOTTI: Any kind of crime.

MR. BIBER: Yes.

MR. SCOTTI: Well, now, we have no restriction under our Constitution or legislation. However, from a practical standpoint, we only utilize this very valuable weapon in the area of organized crime and sometimes in cases involving other types of crime which make recourse to wiretapping imperative. But I may say, on the basis of my experience, that wiretapping would not ordinarily be used in connection with the ordinary crimes that prosecutors are called upon to prosecute, like burglary, ordinary larceny and assault, and other crimes like that.

MR. BIBER: Do you think that the bill that we are discussing now, in view of the fact that it doesn't set forth that an application can be made only in cases of bribery or extortion, or crimes involving narcotics - we are talking now about the crimes set forth in the bill which is pending now in Congress - that this bill is too broad. Do you think it is or not?

MR. SCOTTI: I believe so. If a prosecutor would feel free to utilize this weapon in all cases he may in his judgment feel called upon to use it, it may lend itself to abuse, although we have not, as I said before, notwithstanding the unlimited authority we have, used it indiscriminately; we have only used it in connection with certain crimes, particularly in the case of organized crime.

But I would like to add to the category of crimes that you have suggested that this bill should be restricted to. I think you should include gambling and, in fact, I differed very, very vehemently with Bob Kennedy when I spoke to him about this and his associates. Gambling is a very important crime or criminal activity in which the underworld is quite active. Strangely, Congress has seen fit to authorize the Attorney General of the United States to tap in cases involving gambling, but has deprived the local authorities of that same right and not withstanding the fact that law enforcement is most effective on the local level - let's face it. And we should not impede law enforcement on the local level by depriving them of the use of this valuable weapon in a particular area where the underworld is particularly active.

MR. BIBER: Just one other question: Do you feel that there should be something in this bill that would provide for the imposition of some penalty in a situation where a person's telephone was tapped without first having obtained a court order, or if a person were to disclose the identity of a person whose telephone was tapped without first having obtained a court order?

MR. SCOTTI: I agree. We have such a law that makes that a crime.

MR. STAMLER: I have just one or two, Al. In New York State who has the right to apply for an ex parte order?

MR. SCOTTI: As I said before, the District Attorney and his representatives - the Attorney General and

any police officer above the rank of Sergeant. Now, that's pretty broad in that last category.

MR. STAMLER: Now, you have made the statement that the federal government in its present bill - and, incidentally, I thought when you said you spoke with Bob Kennedy that you were lucky to find him home. But in the new legislation proposed by Mr. Kennedy, you said that on the local level of enforcement-- that the present bill deprives the local level of enforcement of authority on gambling.

MR. SCOTTI: That's right.

MR. STAMLER: Now, if I were to say to you that this bill also deprives the local level of enforcement, would you agree then that this should be changed?

MR. SCOTTI: I think I indicated that.

MR. STAMLER: Oh, I'm sorry.

MR. SCOTTI: I probably didn't make myself clear. I said I would like to add to the category of crime to which you restrict this right to tap wires. I said you should include crimes involving gambling.

MR. STAMLER: Well, I'm speaking of our bill.

MR. SCOTTI: Your bill. I'm speaking of your bill.

MR. STAMLER: Yes, but on the local level.

MR. SCOTTI: On the local level. Gambling, in fact, is the major criminal activity of the underworld.

MR. STAMLER: I would agree with you. But, of course, too, coming back to this bill particularly, this bill provides that either the County Prosecutor, any one of them, or the Attorney General may apply, and it stops there.

And that's the reason I submitted that question to you, because it deprives completely at the local level in any capacity.

MR. SCOTTI: I see, you mean the local prosecutor.

MR. STAMLER: No, no, the local level - I am talking about above the rank of Sergeant as you have in New York.

MR. SCOTTI: How about the Prosecutor? Never mind the police.

MR. STAMLER: The Prosecutor may apply under this bill.

MR. SCOTTI: The Prosecutor assigned to a particular county.

MR. STAMLER: Well, we have 21 Prosecutors and sometimes -

MR. SCOTTI: And all of those 21 Prosecutors could use this.

MR. STAMLER: Yes.

MR. SCOTTI: The right by obtaining a court order, I take it, under your bill.

MR. STAMLER: Yes, and the Attorney General.

MR. SCOTTI: And the Attorney General. The only difference is that the police officer would not have the right to do so.

MR. STAMLER: Well, using your statement as to the local level.

MR. SCOTTI: Yes. Well, now when I say "local level," I meant that some authority on the local level at

least should be empowered to use this weapon. Now, I could understand violent objection to entrusting this authority to a Lieutenant of the Police, for instance; under our law he can use that, and possibly there have been abuses in the past, of which I am not aware, although I have heard rumors to that effect. I should think, however, that that power could be exercised by the head of the police. You take our Commissioner of Police - I don't see any reason why he should not be authorized to use that power, and he may deem it necessary to investigate a district attorney if he turns out to be sour. Why should he be deprived of the right to resort to this valuable weapon? He is a responsible person and it is reasonably expected that a person of such authority would be quite discriminate and discreet in the exercise of this power.

MR. STAMLER: One last question: As an old law enforcement officer, do you honestly think that wire-tapping will ever replace a well-trained and honest policeman in the enforcement of the law?

MR. SCOTTI: It's not a question of replacing. I think your concept, if I may say so, is not justified, let me put it that way, by the experience we have had. It is not a question of replacing the policeman; it is a question of supplementing a conscientious police officer. We have many conscientious police officers, diligent, circumspect, determined, tenacious, honest, but they are faced with certain inherent limitations which I tried to explain in the course of my statement. You know what happens in the area of organized

crime. Your higher-ups are insulated, as I said previously, from the scene of criminal activity. They don't expose themselves to the forces of detection; they don't commit their crimes on the street; they are not seen conspiring with cohorts in the consummation of their conspiracies. It's done on a very quiet and intimate basis, and it's done by remote control, and the only way you could pry into that insulated area of criminal activity on a higher level is by recourse to wiretapping and also another good device is "bugging." Otherwise, you would be hamstrung, no matter how good you are.

MR. STAMLER: I know what bugging is. We don't allow that either in New Jersey.

MR. BIBER: What is bugging, Mr. Scotti?

MR. SCOTTI: It is eavesdropping. Bugging is a common term, a sort of legal term. It is common parlance used in the area of law enforcement officials. The technical name is eavesdropping - overhearing conversations between two or more persons by the recourse to certain electronic devices. You insert a little dictaphone in a room, let's say, where you expect certain underworld characters will meet and discuss their criminal designs, and overhear what they say. It does not involve Section 605 because you are not using the telephone.

MR. BIBER: Is that permitted in New York?

MR. SCOTTI: That is admissible even in the federal courts. Evidence obtained in that fashion has been admitted in the federal courts, because there is no

violation of Section 605, and it does not constitute a violation of the Fourth Amendment, provided - now, in the federal court it is a little different - provided you don't commit trespassing in a room. If you put something outside the room and overhear, that's all right. In our State, we have specific legislation authorizing law enforcement officials to plant a dictaphone in the place, room, or anywhere where two persons are expected to conduct a discussion in furtherance of a criminal conspiracy. In other words, we have implicit the authorization to go into a person's home or a room or office and overhear what he has to say, provided we satisfy the court that there is reasonable basis to believe that evidence of crime would be obtained by such overhearing.

MR. BIBER: Do you have a question, Mr. Bittig?

MR. ALOYSIUS BITTIG: In view of the Pugach case, has the New York District Attorney discontinued wiretapping?

MR. SCOTTI: No. Frankly, I didn't intend to make such an open disclosure of what we are doing in New York, but I think you can assume that a better way to put it is that there is no need to discontinue recourse to this device, because under Section 605, in order to commit a crime, two elements must be established: (1) the interception, and (2) the divulgence. Now, if you intercept for your own personal guidance in order to obtain leads to uncover other evidence which would be admissible in court, that is perfectly proper, so that even today it

has a tremendous value in that it provides valuable leads. Now, theoretically, we could present that evidence in court, because, on the basis of the Schwartz case and other cases and even the Pugach case and the Benanti case, that evidence, if it is competent, relevant, material, it's admissible. The Supreme Court does not interfere with the conduct of state courts. However, they say to us if you want to use it, go ahead, but you can be prosecuted for committing a federal crime.

MR. BITTIG: The next question I have is: Does New York State intend, if you know, to introduce a bill similar to this federal bill by Attorney General Kennedy?

MR. SCOTTI: First of all, there is no indication that they will introduce such a bill, but it seems to me, if this bill is passed by Congress, practically we would be restricted to the requirements set forth in the Congressional bill and there is really no need to amend the existing bill.

MR. BIBER: Are there any other questions? (No response)

Mr. Scotti, I want you to know that the Judiciary Committee is most grateful to you for taking time from your busy schedule to come here to Trenton and give us the benefit of your experience and knowledge. We want to thank you very much.

MR. SCOTTI: Thank you. It's been a pleasure.

MR. BIBER: I have been asked to take the next person out of turn. It has been indicated to me that there is a member of his family sick and I am going to yield to his request.

MR. SAM BROWN: My name is Sam Brown, New Jersey Director of the American Jewish Congress.

Thank you, Mr. Chairman, Assemblyman Stamler and Mr. Keith.

I would say to those individuals who come from out of the State of New Jersey that I think that brotherhood in this State is practiced not merely in February but twelve months a year. And we who are citizens and not Attorneys - and I realize that I am in the company of distinguished District Attorneys and Prosecutors - while sometimes we are thrown to the wolves, we appreciate the New Jersey Legislature, the higher officials, for making available continuously the right of dissent. And this right of dissent we really cherish in our State in terms of civil liberties and civil rights. And the record of the State Legislature, over the past few years, will show that this State is outstanding in protecting the civil rights and the civil liberties of people regardless of race, creed or color. And I think it sets an example for the entire country. I would like to wrap myself in the flag of New Jersey in that regard.

The American Jewish Congress is a voluntary association of American Jews committed to the dual and, for us, inseparable purposes of defending and extending American democracy and preserving our Jewish heritage and its values.

The American Jewish Congress has, therefore, always been unequivocally opposed to communism, fascism and all other forms of totalitarianism. We know full well the meaning

and nature of communist tyranny and of its debasing and dehumanizing effects on all who have been forced to live under its dictates.

Together with all Americans who prize the blessings of Freedom, we have repeatedly affirmed our readiness to make those personal and collective sacrifices reasonably calculated to safeguard our democracy. We have also insisted that our nation's security is not enhanced when we resort to measures that violate the essential liberties whose preservation is our basic purpose. Accordingly, we urge particular care when proposals are offered in the name of security that infringe upon basic liberties.

The American Jewish Congress believes that all persons, including Federal and State officials, should be prohibited from engaging in wiretapping. Wiretapping, we believe, gravely violates the right of privacy, one of the basic rights guaranteed by a free society. Political surveillance of private conversation is one of the distinguishing characteristics of all totalitarianisms; it is abhorrent in any democratic society.

Resort to wiretapping, we believe, can be justified only by an unanswerable demonstration that it would yield results clearly decisive for our national security. We submit that no such demonstration has yet been made. To intercept a single remark of a suspect that might possibly be of relevance would require listening to hundreds of the intimate personal, business and professional confidences and conversations of innocent and loyal persons. The sense

of distrust and disquiet that must inevitably follow the awareness that anonymous government agents may be listening to one's private conversations can have a shattering effect on the morale of our community.

Disclosures of police assigned to tapping wires reveal that thousands of fruitless but costly hours are spent on wiretapping by law enforcement personnel whose services are extravagantly expended by prosecution officials willing to use any device, however expensive to the public or detrimental to our civil liberties - and I include "bugging" of the previous speaker - in order to gain a conviction. Such taps infrequently result in useful evidence. They do give rise to such abuses as blackmail and extortion but they are in the main unproductive of evidence that can be used to convict criminals.

It is often argued, as a matter of fact, that wiretapping really operates to prevent an effective use of resources for crime detection. As Justice Frankfurter stated in On Lee v. United States, 343 U.S. 747, 761, "Wiretapping makes for lazy and not alert law enforcement. It puts a premium on force and fraud, not on imagination and enterprise and professional training. These short cuts in the detection and prosecution of crime are as self-defeating as they are immoral."

I may say to the gentleman from New York State that the former counsel to the New York City Anti-Crime Committee, William J. Keating, testified at hearings held by a Subcommittee of the House Judiciary Committee that the value of legal

wiretapping has been "greatly exaggerated." He said that as an Assistant District Attorney he had used wiretaps for years and "never got one scrap of evidence or information that was of value."

The use of wiretapping is, moreover, inherently dangerous because of its susceptibility to gross abuse.

Now, what has been the experience of our sister state, Pennsylvania? Pennsylvania has recently seized this nettle firmly by adopting an absolute ban on wiretapping, without exceptions for anyone. And I recall when Judge Blank, then District Attorney, appeared here and made a strong plea for wiretapping.

In a statute passed in 1957, wiretapping was prohibited, being made both a criminal offense and a basis for a civil action or a penalty.

In the following year, a subcommittee of the U. S. Senate Judiciary Committee heard illuminating testimony on the effect of this bill from the then Attorney General of the State, Thomas McBride, now a member of the Pennsylvania Supreme Court. Mr. McBride frankly conceded that the prohibition had placed restraints on law enforcement officials and that they had expressed some unhappiness with it. He was not even prepared to say that it had no overall effect on the amount of crime in the state, though he expressed the opinion that it had not. But the main thrust of his testimony was that a ban on wiretapping was desirable and essential to achieve "the greater good, undoubtedly, that comes from the feeling of freedom people have that they are not being listened to." And he went on to say? "My personal view is that

wiretapping should be banned, that there isn't sufficient good done by it to overcome the harm that is done by that feeling of loss of freedom on decent people."

Now, what has been the New York experience? And I hope the men from New York are still around.

The success of the Pennsylvania experiment with an absolute ban on wiretapping may be contrasted with what has happened in the state that has had the most extensive and widely-studied experience in court-supervised wiretapping of any state. The New York State experience shows that limited police wiretapping, even under a system of judicial supervision, is neither possible nor desirable.

In 1942, the New York State Legislature enacted Section 813(a) of the New York State Code of Criminal Procedure, which established a procedure whereby telephone and telegraph communications could be intercepted upon obtaining an ex parte court order. Subsequent revelations concerning the abuses of this system and the illusory nature of its judicial controls have made it clear that legalized wiretapping in New York State has been a sordid failure. More dishonesty and criminal activity have been bred than have been prevented. So glaring, as a matter of fact, have been the abuses that one legal writer has described legal wiretapping in New York as " a shining example of what a legalized system should not be." Mr. Westin, in an article entitled The Wiretapping Problem, 52 Columbia Law Review 165, 196 (1952). And this same writer characterized the New York State wiretapping program as affected by "corruption, blackmail, misuse of

warrant procedures, failure to prevent unauthorized wiretapping, and loss of general confidence in the security of the telephone as a medium of communication." (Id. at 196-7).

Now, how about national security? To intercept a single remark of a suspect that might possibly be of relevance would require listening to hundreds of the intimate personal, business and professional confidences and conversations of innocent and loyal persons. The sense of distrust and disquiet that must inevitably follow the awareness that anonymous government agents may be listening to one's most private conversations can have a shattering effect on the morale of our community. There has been no showing that our national security hangs on so slender a thread as to justify recourse to such measures. We are confident that we can effectively protect ourselves against criminals by other less oppressive methods.

The American Jewish Congress therefore urges this Committee to disapprove A-58, which would authorize wiretapping by police officials. We do not believe that a case has been made establishing the need for this bill, and we are convinced that experience with such legislation elsewhere proves that it does far more harm than good.

A-58 would permit wiretapping in all cases where a police official thought that "evidence of crime" - any crime - might be obtained. There is not even a provision limiting the use of wiretapping to the case of serious crime.

As this Committee is no doubt aware, recent decisions of the United States Supreme Court make it quite likely that the wiretapping that this bill would permit would nevertheless

be illegal under federal law. The United States Congress is now considering legislation to amend the federal law to permit a limited amount of wiretapping by state officials. We suggest to this Committee that, at the very least, the legislature should withhold action in this area until the federal law has been clarified.

The only sure way to protect the right of privacy that has long been regarded as a precious right of citizens in a democracy is to bar all wiretapping. In that way we can assure to our citizens the feeling of security in their private affairs that is denied to the unfortunate subjects of totalitarian regimes.

Thank you very kindly for giving me this opportunity.

MR. BIBER: Mr. Brown, did you mean what you said when you stated a moment ago that you felt that your organization was opposed to this bill because it would authorize wiretapping by police officials? I am quoting you now from your statement.

MR. BROWN: I think we generally are against all wiretapping whether it is done by police officials or any other government official.

MR. BIBER: But you are aware that this bill would only permit wiretapping pursuant to an application made by either a Prosecutor or the Attorney General?

MR. BROWN: We are aware of what the legal redresses are but we also feel it is opening up a hornet's nest. We would rather not open up the wedge a little bit to the kind of things we see happening in New York State and also happened

in Pennsylvania and other areas. And we also feel again that the question of security and the question of prosecution can very easily be obtained by the present statutes which are on the books of every county.

MR. BIBER: Are there any questions?

MR. MORSS: I have a question.

MR. BIBER: Mr. Brown, would you submit to a further question?

MR. BROWN: Surely.

MR. MORSS: If I understood you correctly, you said that wiretapping has led to blackmail, extortion, etc. Do you know of any instance where a representative of any District Attorney's office or the Attorney General's office has used wiretapping for that purpose?

MR. BROWN: Well, I am merely quoting to you an article that appeared in what I consider a very reputable journal, what I consider an authority, 52 Columbia Law Review 165, 196 (1952), the gentleman's name is Mr. Westin and I will quote again that he characterized the New York State wiretapping program as affected by "corruption, blackmail, misuse of warrant procedures, failure to prevent unauthorized wiretapping, etc."

MR. MORSS: Does that article cite any specific instance?

MR. BROWN: I believe it does. I haven't the citations here.

MR. MORSS: I would like to know what it was if it did.

MR. STINE: Mr. Brown, would you still say that there is no need for any kind of a controlled wire tap bill even after you heard what Mr. Scotti had to say? Absolutely no need?

MR. BROWN: Well, each person presents his own view. I am not an Attorney but on the over-all picture I am somehow representing a certain segment of the citizens. Perhaps our views might be different from those of Prosecutors and District Attorneys. And we say again, why not wait until the U. S. Supreme Court has ruled in this matter which will probably affect your state situation. And if they feel that wiretapping is necessary then I think we might agree with it.

MR. BIBER: Are there any further questions? All right, thank you, Mr. Brown.

I think you are next on the list, Mr. Bergen.

JOHN J. BERGEN: Thank you, Mr. Chairman, Assemblymen Stamler and Keith.

After the eloquent and able presentation by Assemblyman Keith and Assistant District Attorney Scotti, there is no point in my burdening the record with any further remarks on the advantages of wiretapping, so I am going to address my remarks to Assemblyman Keith's particular bill, A-58, and if you accept the designation maybe we will call it "electronic surveillance" instead of wiretapping.

There are many things the Attorney General feels should be added to this bill by way of safeguards. First of all, we have all heard the discussions involved in the

Benanti and the Pugach cases in 605 of the Federal Communications Act. And if this administration bill is enacted into law, it may well preempt the field and limit state acts to those ranges which are in the federal act.

Now, we are concerned primarily with the limitation, or rather the lack of limitation of the crimes in the Keith Bill. We feel there should be delineated areas rather than a general designation of crime.

In addition, we feel that the Judge of the Superior Court, who hears the order, should be made clear that he can in his discretion take the testimony of police officers who naturally would inform the Prosecutor of the reasons why they wanted to tap, etc. or the electronic surveillance.

I would like also, if possible, for your consideration to suggest that other devices be considered for the same legislation, such as the parabolic mike - an instrument, I am told, allegedly can pick up a vis-a-vis conversation at about 300 feet; the sonic wave, which a room can be flooded with; the carbon mike where there is no intrusion of the premises - or the so-called spike mike, which has been outlawed as an intrusion of privacy in the Silverman Case, I think it was, United States v Silverman.

The courts have never ruled, that is, the United States Courts, on these particular electronic devices. And I would just recommend for your consideration that they might very well be included in your act.

In addition, your act, as introduced by Assemblyman Keith, in the 5th paragraph of the last page, says:

"Evidence obtained by means of any such interception, overhearing or recording shall not be held to be incompetent by reason of the manner in which it was obtained, in any criminal proceeding in the courts of this State, if such evidence was obtained pursuant to the provisions of this act."

Although I would imagine that the evidence act would apply, it appears to me that there might be a danger of interception of privileged communications - say between priest and penitent, or lawyer-client, husband-wife, that sort of thing - and it is our suggestion that these things should be specifically spelled out as to be excluded under the rules of evidence if they are excluded under the normal rules of evidence.

Other than that, the Attorney General is of the opinion that the act is a little too general in nature, that the Prosecutors and the Attorney General himself feel that there should be tighter provisions for responsibility, their criminal and civil responsibility if they violate the reason for this act, or if they abuse the power that is given to them by the court or in making some kind of a, we will say, representation that is not in accordance with the facts.

So I will submit to questioning now, just to get those points across.

MR. BIBER: Mr. Bergen, you said something about an administration bill.

MR. BERGEN: Yes. The Kennedy administration bill is what I was referring to.

MR. BIBER: Well, you mean the Attorney General of the United States?

MR. BERGEN: Yes.

MR. BIBER: Well, will there be, since you have summed up this bill, - will the Attorney General of our State submit an administration bill, so far as you know, to cover the salient points and the questions you have raised?

MR. BERGEN: I do not know that at this point but I will be most pleased to take it up with him. I am sure that we can do it by way of memorandum to you, as to our suggestions, but I know of no administration bill on the local level.

MR. STAMLER: Tell me, Jack, the condition of the State today is pretty good, isn't it, so far as organized gambling is concerned?

MR. BERGEN: There is always a problem with numbers. That by its very nature has to be organized. And as District Attorney Scotti pointed out, I have been on some or my Deputies who work with me have been on some 60 or 70 raids in this State since I have become Director of Criminal Investigation, in the various counties. I am getting a little sick and tired of just getting the messenger boys. You will never find the big boys with a policy slip on them or a numbers play or a horse bet. Money has no name or no conscience and it is not admissible in evidence. That's all they have on them.

MR. STAMLER: In line with that, you have been in charge of this Division for some time now.

MR. BERGEN: Two years, yes, sir.

MR. STAMLER: And publicwise you have done a good job.

MR. BERGEN: Thank you.

MR. STAMLER: Have you used wiretapping in the past two years?

MR. BERGEN: Myself? No, sir.

MR. STAMLER: Or any of your subordinates? Do you know?

MR. BERGEN: No, sir.

MR. STAMLER: So, therefore, taking this as a matter of fact, you don't need it.

MR. BERGEN: I wouldn't say that, no, sir.

MR. STAMLER: You think that the reason you need it would be to arrive at the higher-ups in this numbers and gambling racket.

MR. BERGEN: It would be an aid, yes, sir.

MR. STAMLER: And you feel, too, that any -- incidentally, I may ask you this - You have seen the recorders operate, not necessarily wiretapping but recorders?

MR. BERGEN: Yes, sir.

MR. STAMLER: In your experience as a law enforcement officer I think you will agree that tapes can be tampered with.

MR. BERGEN: Yes, sir.

MR. STAMLER: And that a conversation which may be particularly innocent can be made to appear to be evil.

MR. BERGEN: That's very true.

MR. STAMLER: Lastly, would you recommend, as Mr. Scotti testified, that some persons other than the 21 Prosecutors and the Attorney General, possibly the Superintendent of State Police and possibly the Chiefs of our various communities be included within the group of parties who could apply for the ex parte order?

MR. BERGEN: I would go along with the Superintendent of the State Police but my personal feeling is that I would not go any further.

MR. BIBER: Are there any other questions?

Thank you, Mr. Bergen.

MR. BERGEN: Thank you.

MR. BIBER: The next speaker on my list is Mr. Morss, Jr.

RUSSEL MORSS, JR.: Mr. Chairman, Mr. Stamler and Mr. Keith, I came here with some reluctance today. As some of you know, I had rather a bitter experience in this field some five or seven years ago. However, I was asked by the County Prosecutors Association to address this Committee. I was also asked by the Criminal Laws Committee, of which I was formerly Chairman, of the State Bar Association to appear in their behalf. And I would also like to have it recorded that I am appearing as a citizen and in many respects expressing personal views.

As you probably know, when I was Prosecutor of Union County I made use of wiretap evidence. As a matter of fact, I hired a wiretapper. That's a matter of record. Before doing it I had conferred with the Attorney General of New Jersey and it was our opinion that Section 146 of

The Crimes Act did not bar wiretapping by law enforcement officers of this State when they had justifiable belief that a crime was being committed. However, during the course of a legislative investigation, the question was made an issue and the Supreme Court of this State in a decision recorded in 24 N. J. 341, 1957, ruled that all wiretapping in this State, no matter who did it, was a violation of the Criminal Laws of this State.

It was somewhat ironic, in conjunction with that opinion, when the Counsel for the Legislature expressed his opinion in that respect that it was criminal, one of the Justices of the Supreme Court stated that he had done it many times when he was County Prosecutor and the Chief Justice remarked that confession was good for the soul. The ironic part of it is that that particular Justice who had done wiretapping when he was a Prosecutor wrote the opinion declaring it illegal.

I respect the opinion of the opponents of wiretapping. I think in some respects they are misguided, they are somewhat impractical, but there are definitely certain potential abuses that can occur even in conjunction with legalized wiretapping.

The outstanding opponents are the Civil Liberties Union, the ADA, outstanding individuals such as Professor Knowlton, South Jersey Branch of Rutgers Law School; one of the witnesses mentioned Attorney General McBride of Pennsylvania. Mr. McBride, I believe I am correct, before

he was Attorney General of Pennsylvania, was one of the leaders in the Civil Liberties Union in Philadelphia and was opposed to wiretapping at that time. So his expressions as Attorney General just reiterate his philosophy expressed before he became Attorney General.

On the other hand, many outstanding law enforcement officers and citizens favor it. I would like to call the Committee's attention to two Congressional documents put out by the United States Printing Office. In the event you don't have them, one is entitled Wiretapping For National Security, hearings before Subcommittee No. 3, Committee on Judiciary of the House of Representatives of the 83rd Congress, Serial No. 7; another publication entitled Wiretapping, hearings before Subcommittee No. 5, Committee on Judiciary of the House of Representatives; the testimony of outstanding people such as the Honorable Warren Olney, the Honorable Herb Brownell, Jr., Edward S. Silver, District Attorney of Kings County; Frank Hogan, District Attorney of New York County; Samuel Dash, former Assistant District Attorney of Philadelphia - also one of the authors of the book The Eavesdroppers - and, incidentally, if you haven't read that I suggest you read it. It is not entirely favorable to wiretapping but if you want to know how to wiretap, if you want the technical aspects there is a section of the book that will teach you all or give you all you want to know if you want to go out and do some wiretapping.

Virgil E. Pearson, the Operations Director of the Chicago Crimes Commission, has emphasized the need for legalized wiretapping.

I don't know whether the Committee has available to it the New York Legislative Report on eavesdropping and wiretapping. This is a duplicate copy. I have another copy and I will be glad to make it available to you.

Also, I would like to call your attention to an article by Assemblyman Savarese of New York in the Bar Bulletin of the New York Lawyers Association, Volume 14, No. 1 of May, 1956, at page 20.

Before proceeding, I think, in fairness to the members of the Criminal Laws Committee, I should advise this Committee that the Criminal Laws Committee of the State Bar Association is divided on the subject of Assembly Bill No. 58 - some accept it with reservations and others are completely opposed.

First, I would like to quote a letter from Stephen N. Maskaleris of the law firm of Van Riper & Belmont who is an officer of the Junior Section, State Bar Association - I quote: "In the event I am not there" - this is a meeting of the Criminal Laws Committee - "I want you to know that I vigorously oppose the passage of this bill on the subject of wiretapping."

A letter from Benjamin Asbell, former First Assistant Prosecutor of Camden County, dated February 27, "Approaching this on the philosophy of civil liberty, which I think is more important than criminal law enforcement, I am opposed to any type of legislation concerning wiretapping as presented in

this bill. Even though many safeguards are set forth in the bill, by my own thinking and experience I do not believe that any more can be accomplished in this fashion than should be permitted by our laws pertaining to criminal law enforcement."

A telephone call from Maurice Krivit on March 9th - he is definitely opposed to Bill No. 58. If you want a letter of opinion from him he will gladly furnish it to you.

A letter from Judge John O. Bigelow, dated February 28th: "I do not like Assembly Bill No. 58. Constitutional Law and sound morals both require equality at law between the state and the accused in the matter of evidence. If the prosecution is permitted to tap a telephone line and introduce the evidence so obtained, the defendant should likewise be allowed the right. The statute should make clear that no interception of conversations between attorney and client, husband and wife, etc., shall be permitted. I make a sharp distinction, in my mind, between the right of a party to a telephone conversation to record it and the right to eavesdrop." If A calls B, he intends B to hear and remember what is said. His only objection to recording is that it makes it difficult if he is lying about it.

Mr. Slurzberg wrote and referred the Committee to two publications, 51 Journal of Criminal Law and Criminology, pages 534 to 544, 1961; 50 Kentucky Law Review, 257, 1961.

Prosecutor Heine of Camden County wrote: "However, I have examined the provisions of Bill 58 and am in accord therewith. I think it is a necessary tool for a Prosecutor to have if he intends to be an effective law enforcement officer.

The inability to tap wire and obtain this type of information has thwarted us for a long time. I have no objection to protecting citizens or the public in any way a reasonable mind could devise to insure the privilege or right to not be exploited by any unscrupulous Prosecutor, although I find a great deal of difficulty conjuring up a picture of such a Prosecutor.

The other members of the Committee who were present at our meeting - some were in doubt, some were in favor, and one or two were opposed.

The passage of a bill similar to Assembly 58, with certain modifications, could be the greatest single step to strengthen organized law enforcement's fight against organized crime that this Legislature could take.

How would such intercepted messages be used? First, as Mr. Scotti has mentioned, to provide leads as to the time and place of meetings of criminals, particularly where there are conspiratorial activities; second, to confront a criminal, as Mr. Scotti has also mentioned, when certain witnesses were confronted with transcripts of their intercepted conversations they then changed their position and admitted that they had engaged in these activities. A third use is as evidence in court. I think the Judith Coplon case is now a standing example of how an outstanding national enemy was acquitted by reason of the fact that the FBI could not use their wiretap evidence.

A deterrent value. If I may cite a personal example - I personally believe that if wiretapping were authorized many

people would get out of criminal activities. We were following a man about whom we had very definite information that he was engaged in gambling. One of my detectives sat next to him in a tavern and tried to get a bet in and he turned to my detective and he said, "You're talking to the wrong man. I won't take your bet, I won't take anybody's bet, that blankety-blank Morss has a radar in the top of the court house and he's watching every bookmaker in the county." At least to that extent I know we drove the man out of business and I think it would be more general if Prosecutors had this authority.

Finally, exoneration by wiretap. This may sound strange but in two cases where I was personally involved in wiretapping we had incriminating evidence, police reports, - one from a local police department and another was from another Prosecutor's office - that a certain well-known, responsible citizen in the county was engaged in gambling activities. When we went on his line we found out that his only connection with the gambling racket was that he was a bettor and a very heavy bettor. We might have gone to the courts with a record of his toll calls and the report we had from Essex County and obtained a search warrant and raided his house. He would have been embarrassed and we would have been embarrassed. But by the use of telephone interception we were able to clear that case up and exonerate the man, although he didn't know a thing about it and till this day I don't think he knows anything about it.

In what areas can we use, or can the Prosecutors

use wiretapping - forgive me, I have been out of this field for four years. In the fraud cases. I think you are familiar with our prosecution of the gas dryer cases and the fire detection cases. Those were organized, criminal, commercial enterprises where the use of the telephone was widest. You all know of boilerroom operations, stock fraud operations - which don't occur in New Jersey as often as they do in New York. In narcotic cases the telephone interception is valuable. In the abortion and prostitution racket, as has already been mentioned; homicide and kidnapping; treason and security cases; in the gambling cases.

I was interested in Mr. Stamler's question to Attorney General Bergen about the state of law enforcement. At one time Union County had more gambling prisoners in State Prison than the eight largest counties put together. I think that's some evidence that I wasn't a lazy law enforcement official. Yet I was not proud of that record because these were all small-fry, people that we could nab on the street. To get the higher-ups, to make any impression upon syndicated or organized crime, I think you have to give the County Prosecutors and the Attorneys General the right to intercept telephone conversations.

I would like to call your attention to another report which is probably available to you - the 8th Report of the New Jersey Law Enforcement Council of this State on Law Enforcement: in Organized Gambling. At pages 15 to 18 of that Report they point out how, despite their successful raids on the lottery banks in Essex County, within a period of three weeks that activity resumed.

I suggest, in a case of that nature, if our senior law enforcement officials could resort to telephonic interception that would not occur, these criminals wouldn't be so bold as to reopen.

People say, "Well all you want this for is gambling. You know that all you Prosecutors are interested in is gambling." Well gambling is important, not per se but for its by-products.

Again I would like to call your attention to the report of the Law Enforcement Council, Report No. 8, page 4, this statement is made: "Organized gambling has long been recognized as a cause of corruption and delinquency, and encourages the commission of other crimes." Statements to that effect are repeated in this report on pages 12, 15, 19 and 23.

We know that narcotics, in many cases, is a by-product of gambling; prostitution is the by-product of the man who has first made his stake in the gambling field.

I won't go into the history of the legislation in this State. I have prepared an excerpt from the report of the President of the County Prosecutors Association, 1956 and '57 which will give you the history of the various bills that have been introduced in this Legislature, and a history of the efforts of Attorney General Richman to have a bill passed. Both Attorneys General Parsons and Richman were in favor of this type of legislation.

Finally, if I may, Mr. Chairman, - I am over-running my time but I would like to outline what type of legislation we think should be enacted.

I have brought with me a copy of a bill, a draft of

a bill - it can still be improved upon - that I prepared for Senator Crane, who asked me to prepare it so he could introduce it in this Legislature at the appropriate time.

This bill, in contrast to Assembly Bill 58, has certain safeguards that are not present in Assembly 58. It does limit these activities to the Attorney General and the County Prosecutors.

I think we must be very careful that not only they make the application but that they supervise the intercepting activities with their own personnel.

We must realize that the law enforcement organization in this State is a little different from any other state. First of all, in the Winne decision, the Supreme Court held that the County Prosecutor was the foremost representative of the Executive Department at local levels. In other words, they didn't put it in these words but it can be paraphrased in this way: The County Prosecutor is the chief law enforcement officer at county level.

Chief Justice Vanderbilt said that the Police Chiefs were subject to his direction.

Now, none of our local police departments, that I know of, have a legal department as does the New York Police Department. And I feel that it is important that this activity be restricted to an office where they have men who are trained in the law and trained in the appreciation of the private rights of citizens. That will minimize any possibility of abuses. It's very simple for a police chief to come to the prosecutor, as they do, and say "I'm up against

this problem. Will you help me?" For that reason, we would limit this activity to Attorneys General and County Prosecutors, as I believe you do in your bill, Mr. Keith.

District Attorney Miles McDonald has what I thought was the ideal system to prevent abuse. He had a leased line, which was later knocked out by court order under Section 605, but all intercepted conversations came into the Kings County Courthouse, not into a store or a cellar or an attic where some patrolman was sitting and getting bored and calling his friends in and they could participate in the interception. It would be ideal if this were authorized, if the tap could be operated right from the Prosecutor's office or the Attorney General's office.

We feel it should be restricted as to the type of offense. You will find that this draft that I have does restrict it to certain types of offense, but I won't go into that.

We feel it should be restricted as to its use. It should be used only in the Grand Jury Room or at trials. And in that conjunction there should be two restrictions on the use at trial. First, like a confession, it should not be admissible until other evidence has been admitted. As you know, a confession is not admissible without corroborative evidence.

We would suggest that, first, the Prosecutor must introduce other evidence of the commission of a crime before he can put in any evidence of an intercepted telephone conversation.

Next, I would suggest that the defense attorney be given the privilege of making a motion to have the tape played back before the Jury hears it. In this way certain parts could be eliminated. For instance, we have picked up conversations of children which have no part, of course, - very intimate matters, maybe daddy and mother had a fight last night and they tell their friends about it. That certainly should not be admitted in evidence. In one case we intercepted a conversation where the suspect's wife was in the hospital, coming home the next day, and he called up a friend and said "remember those chorous girls we were out with in New York the other night, do you suppose we can get a date with them tonight because my wife is coming home tomorrow." Now that sort of thing could be eliminated.

So we suggest that whatever the Prosecutor wants to offer should be screened for that purpose and also to overcome Mr. Stamler's concern of tampering with the tape. Now you can tamper with pictures, you can tamper with almost any type of evidence. We have safeguards. And for that reason we suggest that the bill might provide for a preliminary screening before it is played publicly in court.

Finally, we would suggest that severe penalties be attached, and particularly as the draft which I am offering here provides that, if there are any unauthorized disclosures, the person responsible for the disclosure be held in contempt of court.

We think that would be a very effective safeguard against a detective, a county detective or an assistant

prosecutor going around talking about this evidence.

I appreciate the opportunity to come here, Mr. Chairman, and I just have this one final remark. Governor Meyner had a question in his mind at the time we discussed this with him, that the citizen wasn't ready to accept this. I can't concur. I think the man on the street wonders why police aren't given this power, based on my personal experience of people talking to me on the street, the average citizen. They say, if these criminals can use the telphone to commit crimes, why can't you law enforcement officers similarly use it.

And I would like to leave that with you as a final thought.

Thank you very much.

MR. BIBER: Will you submit to some questions?

MR. MORSS: All right.

MR. STAMLER: You don't agree, do you, Russ, that the Superintendent of the State Police have power -- I will withdraw that question. Under the Winne Case and under the present procedure the Attorney General is technically the boss of the 21 prosecutors.

MR. MORSS: Well in Morss v. Forbes they kind of went the other way.

MR. STAMLER: I know but we have a proclivity for that in this State.

MR. MORSS: But, undoubtedly, for all practical purposes he is the boss.

MR. STAMLER: He is. So that you don't agree then

that the Superintendent of the State Police and high local police officials should be given the right to apply for an ex parte order?

MR. MORSS: No. I would say that it should be done over the Attorney General's signature or the County Prosecutor's personal signature and then it should be limited as to who is going to man the tap.

Now, I would not oppose the State Police manning the tap but as much as I respect Municipal Police, I don't think they should have any access to tapping equipment.

MR. BIBER: Any other questions?

Thank you very much for coming.

Now what we plan to do is, we will have just one more person give a statement and then have him submit to questions and then we will adjourn for lunch for a brief period and I am hoping that by 2:30 we will be finished so that we can take up the bill of Assemblywoman Higgins.

I believe you are next, Mr. Albert.

May I suggest this: Could you possibly avoid repetition or anything that has been touched upon.

MR. JEFFRY ALBERT: In so far as I can, I will, sir. Of course, with the nature of the subject there are certain things that have to be underscored.

MR. BIBER: I know. Do the best you can to try to eliminate that which has been covered.

MR. ALBERT: I think it may facilitate it - I have prepared this and out of pride of authorship I will just read it and I think that might make it a little faster.

My name is Jeffrey Albert. I am a member of the Bar of this State and I am presently Arthur Garfield Hays Graduate Fellow at New York University Law School. In connection with this fellowship I am engaged in several research projects in the general area of Civil Rights.

I appear this morning to present the views of the New Jersey Council, Americans for Democratic Action, on Assembly Bill Number 58. ADA is warmly appreciative of the opportunity this Committee has extended to us by requesting our comments on this proposed legislation.

We oppose A. 58. We believe this Bill represents a serious inroad on one of the key freedoms of a democratic society - the freedom from fear. We are not at all concerned with the fear of the organized racketeer, the kidnapper, or the spy, that he will be caught. We are very much concerned with the fear of innocent, law-abiding members of our community that their intimate conversations, - I might say the type of conversation to which Mr. Morss referred before - their personal expressions, and their business dealings will be subject to surveillance by the State. Such fear stifles the free expression of ideas that our society exists in large part to promote. Such fear tears at the very fabric of the confidence we profess to have in the viability of a democracy.

We are not impressed with the arguments that the need for tapping justifies this tampering with the fundamentals of our polity. The implications of the "necessity" argument

are far too obvious to be belabored. The job of law enforcement would, of course, be easier if we had no Bill of Rights.

We heartily support the vigorous prosecution of organized crime. We would applaud a crusade against all the ugly vice on which organized crime feeds. But we believe that a well-paid, well-trained, and well-treated police force, not the use of wire tapping, is the sine qua non of such a crusade. We believe, with Mr. Justice Frankfurter, as Mr. Cohen cited, that wiretapping and similar investigative techniques make for lazy and not alert law enforcement. You are familiar with the quote. I won't repeat it but I would like to say at this point that Mr. Justice Frankfurter was relying, at that point, on his experience under United States Attorney Stimson in the United States District Attorney's Office for New York, where they claim an excellent record of prosecuting crime without ever having used wiretapping.

I might say at this point that such impractical newspapers as the Wall Street Journal, the St. Louis Post Dispatch, and the Denver Post have objected to wiretapping on similar grounds, as have such fuzzy thinkers as Mr. Justice Stone, Mr. Justice Brandeis, Mr. Justice Frankfurter, and other Justices of the Supreme Court.

We do not believe there is any serious danger that Americans would tolerate the 1984-telescreen-type excess. But any step in that direction, to parody Chancellor Kent, is a "retrograde step in the rear of democracy." The apparent

wide use already of tapping, of detectaphones, and of hidden microphones - not to mention the awesome possibilities of the parabolic microphone - is certainly such a retrograde step.

We believe that the only justifiable legislation in this area would make it clear, unmistakeable, and enforceable, that tapping or bugging, even without disclosure, is a serious crime; that no such tap nor the fruits thereof will be admissible in any action in any court of this State; that possession with intent to illegally use tapping or bugging equipment is illicit; that such equipment is contraband and subject to seizure; and that the telephone companies be required, periodically, to inspect their lines for the presence of taps.

I might add at this point that the last two suggestions were what District Attorney Silver of New York made with regard to wiretapping that he considered illegal.

We believe that tapping, even so-called limited tapping, is repugnant to the protection which the New Jersey and the United States Constitutions give against unreasonable search and seizure. No one can seriously argue today that the fourth amendment permits unlimited wiretapping. Even proponents of permissive wiretap legislation concede as much. The Attorney General of the United States, for example, has recently authorized the following statement:

"A right of privacy is essential to a free community. Upon privacy depends freedom of thought, freedom of association, and freedom of expression.

Skipping part of the quote: "Although the Supreme Court has not overruled the 32-year-old decision in Olmstead v United States, surely one of the essential attributes of privacy in the modern world is the right to communicate by telephone, telegraph or more modern devices without being monitored by wiretappers and this is true whether they be private citizens or Government officials."

Today the proponents of wiretapping argue that so-called limited taps will, at once, serve their purposes and meet the consitutional defects of unlimited tapping. The fact is, however, that there is no such thing as limited tapping. No matter how narrowly a statute is drawn the tapping it permits will interfere with non-criminal calls of the suspect; it will monitor the calls of every one who uses his phone; and it will overhear conversations of all who call him.

To be specific, - If a businessman is suspected of violating some trade or tax law not only will those calls he makes involving such violations be monitored but every call he makes or receives will be overheard. If a criminal is known to use a particular public phone and this phone is therefore tapped, not only his calls but the calls of everyone who uses that phone will be monitored. And this is not a vague speculation but District Attorney Hogan in New York admitted that on many occasions public phones were tapped. If one suspected of a crime calls his lawyer for advice, the conversation between lawyer and client will be monitored. And even though you restrict this by perhaps not admitting the evidence into trial, nevertheless that confidential

relationship has been breached.

In fact, all the talk about so-called limited tapping seems somewhat disingenuous. The only necessity shown by the proponents of tapping is the necessity for unrestricted tapping. Time after time the proponents in Congress of a bill similar to A.58 testified that criminals do not lay their plans unambiguously during one call; that the police must piece together bits and strands from many calls over an extended period of time; and that taps prove their greatest worth where crimes unsuspected at the time surveillance began are revealed.

A. 58, in our opinion, does not even purport to limit tapping. It permits it where there are "reasonable grounds" to believe that evidence of "crime" "may" thus be obtained. After two months it permits the tap to continue, apparently forever, on a showing that it is in the "public interest" - whatever that might be interpreted to mean. It would be hard to conceive of a broader warrant to tap. Given these standards the interposition of judicial discretion by A.58 makes it no less repugnant to our Constitution. It is useful in this connection to remember that the well-know writs of assistance also received judicial sanction. The Townshend Revenue Act of 1767 read, in part: "Writs of assistance shall and may be granted by the Supreme Court of Justice within such colony."

These writs of assistance, issued to warrant inspection of colonial warehouses suspected of containing goods on which the Townshend duties had not been paid, were

in large part the spark of the American Revolution if not the very reason for the adoption of the fourth amendment itself. Yet comparing these with wiretaps Mr. Justice Brandeis was moved to say that "writs of assistance and general warrants are but puny instruments of tyranny when compared with wiretapping."

The proponents of so-called limited wiretapping compare it with searches by warrant which are permitted by the fourth amendment. The analogy fails completely.

As to warrants:

(a) They must describe with particularity the things to be seized.

(b) They may only issue to seize things which are contraband, the tools of crime, or the fruits of crime. They may not be issued to seize mere evidence of crime.

(c) Privacy is invaded by a warrant for only a short time.

(d) The object of a search generally knows of it.

(e) The object is given an immediate opportunity to contest the search by moving to suppress.

As to taps: Judicial orders to wiretap contain none of the above safeguards. A. 58 even substitutes for the constitutional standard of "probable cause" the presumably more flexible test of "reasonable grounds."

Far from being able to describe with particularity the objects of the tap, the police never know what, if anything, will be spoken over the telephone.

Far from being limited to contraband, tools of crime or the fruits of crime, wiretapping is avowedly sought merely to obtain evidence of crime. Moreover, a tap will invade conversations of the suspect not the least connected with his alleged crime, not to mention the conversations of everyone else who uses his phone as well as of those who call his number.

Far from involving a short intrusion on privacy, a tap is usually continued over an extended period.

The object of the tap is never aware of it.

The object of the tap is not given an opportunity to immediately contest it.

As we all know, the ability to bring something to the Court right away can be decisive.

It is no answer to say that if tapping is banned the police will engage in it anyway. We have never really tried to control official wiretapping. This is like saying that Brown v. Board of Education is wrong because many southern areas resist school integration.

Olmstead v. United States is a weak reed on which to rest the justification for tapping. In that case the Supreme Court in 1928, in a 5-4 decision, over the dissents of Mr. Justice Holmes and Mr. Justice Brandeis, and Mr. Justice Stone and Mr. Justice Butler, held that wiretapping was not a violation of the fourth amendment.

I should point out, however, as others have done here, that there was a statute existing at the time, the Communications Act of 1927. It was very similar to the act which 9 years later, in Nardone v. United States, led the

Supreme Court to hold that wiretap evidence was excludable in a federal trial. And for anybody who still thinks that the fourth amendment does not prohibit unlimited wiretapping, I would suggest a rereading of Nardone v. United States, because the court almost admits that there was absolutely nothing in the legislative history of the 1934 act to prohibit official wiretapping. Nevertheless, they go ahead to say that this is repugnant to public policy, etc.

They reaffirm that in the second Nardone Case where the Supreme Court held that evidence secured from leads provided by a tap were not admissible in a federal criminal trial.

In Weiss v. United States this was applied to interstate calls; and in Benanti v. United States the Court held that section 605 applied to state taps sought to be introduced in a federal criminal trial. It seems accurate to say, therefore, that while Olmstead has not been explicitly overruled it has been quietly laid to rest.

The cases of On Lee v. United States and Goldman v. United States are troublesome but it is hard to see what is left of them after Silverman v. United States.

In On Lee a conviction was sustained where a government agent engaged the defendant, in the defendant's laundry, in a conversation which, by means of a concealed transmitter on the agent's body, was transmitted to another agent outside who recorded it. That was a 5-4 decision.

In Goldman a conviction was sustained where agents of the government recorded conversations of the defendant by

attaching a detectaphone to the outside of the wall of his room.

I might say that in the Goldman case one of the concurring Justices, Mr. Justice Douglass, later changed his mind, and in On Lee said that if Goldman was to be decided again he would decide it the other way.

But then in Silverman, decided last year, the Supreme Court held that the use of a spike mike was a violation of the fourth amendment.

What then of On Lee, of Goldman, indeed of Olmstead itself?

In Olmstead the Court had largely relied on the alleged irrelevance of the fourth amendment to the protection of conversations. The Court felt that it applied only to tangible objects. Since Silverman that is all gone. If Silverman only prohibits physical entries, On Lee is probably no longer law but Goldman and Olmstead might stand. Yet thedifference between the entry in Goldman, where the conviction was sustained, and Silverman, where the conviction was reversed, was merely in the words of the court "several inches." Surely great constitutional rights do not depend on such picayune distinctions. If the fourth amendment forbids physical entry, how can we assume that it permits far more pernicious electronic entry?

MR. BIBER: Are there any questions?

MR. STAMLER: I have a couple.

I would assume, Mr. Albert, that whatever the decision of this Committee will be you won't put us in the class of

Justice Brandeis and call us "fuzzy."

MR. ALBERT: I was referring to them facetiously as "fuzzy."

MR. STAMLER: I know. Now I have a couple of questions.

Apparently you base your objection to this wiretap bill on the fourth amendment. If that is so, and since the amendment allows, as I understand it, reasonable search, how can you conform this feeling with the amendment?

MR. ALBERT: Well, as I understand it, the reasonable search that the amendment permits, of a home, has recently been decided in Chapman v. United States, this last term, can be only a search by warrant or a search incident to an arrest. There is no arrest involved here, so we have to use the warrant analogy. And on the warrant analogy a valid search warrant can only be used to seize the tools of crime, the fruits of crime, or contraband material. It has been held again and again by the Supreme Court, as recently as last year in the Able Case, that search warrants cannot be used to secure mere evidence of crime.

In the second place, search warrants have to describe, and this is in the Constitution, not merely judicial gloss, with particularity the objects to be seized. And as I mentioned in my statement, the Police very rarely, if ever, know what's going to be said over the telephone, in fact many of the things that are spoken have absolutely nothing to do with criminal activity.

MR. STAMLER: How long have you been practicing law?

MR. ALBERT: I have been admitted to the Bar since

June of 1960.

MR. STAMLER: We are turning out pretty good lawyers anyway.

Assuming that this statute, 58, or any other statutes, such as the one that General Morss suggested, were to come up for passage, allowing some wiretapping, what safeguards do you think should be put into this bill or into any bill, into General Morss', Mr. Keith's, or any other bill, or an administration bill, should that be prepared?

MR. ALBERT: Well let me say this, Mr. Stamler, I don't want to get into the question at all of safeguards because our position, I may say my personal position, is that the fourth amendment does prohibit pretty explicitly this kind of activity. My suggestion would be, which has been suggested by some, that if we are to make this kind of monumental invasion on what has historically been one of the most favored rights of an American citizen, the right to privacy, then perhaps what we should do - instead of putting it up to the Legislature we ought to introduce a constitutional amendment. Then I think the people would be well aware of the seriousness and the importance of the right that they are asked to give away.

I would be opposed to any legislation permitting wiretapping.

MR. STAMLER: Thank you.

MR. BIBER: Are there any other questions?

Now let's see. There are four more who desire to make statements and they will be given an opportunity. Then

there are one or two letters that I intend to read into the record.

Now, do you think, and I am addressing this question to all of you, that we ought to recess now for a half hour and we can get a repast and come back here at 1:30 and maybe wind up by 2:30.

MR. STAMLER: With ten-minute statements it may take until 4:30.

MR. BIBER: I have noticed too that everyone who spoke went far beyond the ten-minute limitation. I am hoping that those who are privileged to speak this afternoon will try to limit their remarks to ten minutes, and in that way we will be finished by 2:30.

We will reconvene at 1:30.

(Recess for lunch)

* * * * *

DRAFT OF BILL SUBMITTED BY RUSSEL MORSS

AN ACT providing a method for the obtaining of evidence by interception of telegraphic and telephonic communications in certain cases and prohibiting the receipt in any court or tribunal of this State of evidence obtained by interception of telegraphic and telephonic communications by any other method.

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

1. The right of the people to be secure against unreasonable interception of telegraphic and telephonic communications shall remain inviolate and no evidence obtained by the interception of telegraphic or telephonic communications, except such as is obtained pursuant to an order made as provided in this act, shall be receivable in any court or tribunal within this State.

2. An order for the interception of telegraphic or telephonic communications may be made ex parte by any Supreme Court Justice, or any Assignment Judge of the Superior Court, upon application under oath or affirmation of the Attorney General or of a County Prosecutor when there is reasonable ground to believe that evidence may be obtained pertinent to indictable offenses involving the violations of the following criminal laws.

a. The laws pertaining to the security of the Government of the State of New Jersey and the United States;

b. The laws pertaining to gambling and lottery;

c. The laws pertaining to vice, narcotics, prostitution and abortion;

d. The laws pertaining to corruption of public officials and extortion;

e. The laws pertaining to murder, kidnapping and the commission of other offenses of a heinous nature,

3. The application shall include an identification of the particular telegraph or telephone line or means of communication upon which communications are to be intercepted, and shall further include a description of the person or persons whose communications are to be intercepted, where such description of the person or persons be known to the applicant.

4. As the basis for the making of any such order, the Supreme Court Justice or Assignment Judge may examine, under oath, the applicant and any other witnesses who may be produced or whom he may require to be produced, for the purpose of satisfying himself of the existence of reasonable grounds for the granting of such order.

5. Any such order shall expressly provide, by specific reference hereto, that the contents of any recording, transcription, written report or resume of any such intercepted communication, or

any part thereof, shall not be divulged, disclosed or published to any person whatsoever without the express approval, within sixty (60) days of the date of interception, of the Supreme Court Justice or Assignment Judge signing such order, his successor in office, or Judge assigned in his place and stead and that any violation of such express prohibition shall constitute a contempt of court. The Supreme Court Justice or Assignment Judge signing any such order, his successor in office, or Judge assigned in his place and stead, in his sole discretion, may impound or order the destruction of any recording, transcription, written report or resume of any such intercepted communication, or any part thereof, upon being satisfied that it is immaterial and irrelevant or scandalous.

6. Any such order shall be effective for the time specified therein, but not for a period of more than three (3) months from the date of the granting thereof, unless extended or renewed by the Justice or Judge who signed the original order, his successor in office, or Judge assigned in his place and stead, upon satisfying himself that such extension or renewal is necessary and proper, according to the standards that caused the issuance of the original order.

7. Any such order, together with the papers upon which the application was based, shall be delivered to and

retained by the applicant as authority for interception or directing the interception of telegraphic or telephonic communications transmitted over the instrument or instruments therein described, and a true copy of such order shall at all times be retained in his possession by the Justice or Judge making such order.

8. Any person connected or associated with any line of telegraph or telephone or other communication described in such order within this State, whether as superintendent, operator, or in any other capacity whatsoever, shall, upon presentation to him of the original of such order, and the leaving with him of a true copy thereof, permit the interception of communications of the person or persons whose communications are permitted to be intercepted by virtue of the order of the court, over the particular telegraph or telephone line of means of communication described in said order, for and during the period for which said order shall be in effect, and shall cause and permit to be installed and maintained such proper devices and equipment upon such line or lines as may be necessary to accomplish said interception.

9. Any evidence lawfully obtained by the interception of telegraphic or telephonic communications, under any order made pursuant to the provisions of this act, shall be received in any court or tribunal in this State, if the same is otherwise competent, relevant and material to the matters at issue in the action

or proceeding in which the same is offered in evidence; provided, however, that no such evidence shall be offered, received or considered at any trial or hearing until the prosecution shall first submit and secure the admission into evidence of other evidence material and relevant to the offense alleged or set forth in the indictment or accusation.

10. This act shall take effect immediately.

STATEMENT

The use of telephonic or telegraphic means of communications by criminals and other enemies of society has reached a point where it is virtually impossible for law enforcement officials to detect and secure evidence of the guilt of certain types of offenders against the criminal laws of the State. While this Act is more limited in its scope than the law of New York, it will enable law enforcement authorities to operate more effectively in uncovering evidence of certain crimes, whose detection is normally most difficult and expensive, subject to the supervision of responsible representatives of the judiciary.

(AFTERNOON SESSION)

MR. BIBER: I think we can resume and the next gentleman on my list is Mr. Stine.

H. DOUGLAS STINE: My statement is as follows:

Promiscuous uncontrolled wiretapping has been called a "dirty business." Perhaps this is a proper description of any such unbridled activity. The County Prosecutors' Association of New Jersey believes it has recommendations which could be included in a bill on this subject which would preclude it from being "dirty." In any event, please take note that there is no "dirtier business" than the organized criminal syndicate which law enforcement faces. The syndicate's use of huge gambling profits have been used in expanding the narcotics' trade, prostitution, bribing of officials, and it goes without saying that gangland killings are caused by those intent on gaining and keeping criminal syndicate control.

Law enforcement needs modern tools to fight this menace. The organized criminal uses modern scientific methods. Why not put the best law enforcement tools available in the hands of the county prosecutor so he can do a proper job? The syndicate must use the phone to carry on its business. Allow us to deal with serious criminal violations perpetrated over the phone. We can't catch these people by trying to shadow them on the street and trying to overhear their conversation.

Law enforcement officials are permitted by the Constitution to obtain a search warrant to search a private home upon presenting a proper affidavit to a judge. Why not allow "wiretapping" or "electronic surveillance" under similar conditions with appropriate safeguards? Certainly a law-abiding

citizen is entitled to privacy, but if he is not law abiding, shouldn't this right be forfeited in the interest of society as a whole?

I might say that Mr. Gelman of the Bergen County Prosecutor's Office is going to expand more particularly on this point and his comments will just pertain to this Fourth Amendment point.

The criminal defendant today has broad and ever-expanding protection under the law. To find him guilty, a case must be proven beyond a reasonable doubt. The jury verdict must be unanimous. The state cannot appeal a verdict of acquittal nor a court's ruling on admissibility of evidence. The defendant can refuse to testify under the Fifth Amendment. He has a broad right of discovery today which entitles him to obtain copies of almost everything in the Prosecutor's files. Today under the decision of the Mapp Case, we feel that we had better get a search warrant covering a suspicious place first, and then come back hoping that the evidence and the violators are still there.

New York has had a "wiretap statute" under strict controls for 24 years. Give us such a law in New Jersey. It would not permit "fishing expeditions." The Brooklyn District Attorney averages only 53 taps a year, and judges do turn applications down.

We think that we should have such a law on a standby basis even though the Congress of the United States has not yet passed the bill before it.

We feel that A 58 should not only allow wiretapping, but should take into account new modern electronic devices which

would not require a wiretap. A better term for this kind of law enforcement would be "electronic surveillance" to include wiretapping plus other detection activity.

Bill A 58 could be strengthened to dispel the fears of its opponents in some of the following respects:

It could limit the number of crimes to which electronic surveillance might be applied.

It could require that other evidence of the crime be introduced in court before evidence gained by electronic surveillance would be permitted.

You could provide that such evidence may not be divulged except with the approval of the Superior Court judge who granted the order in the first place.

You might provide that the court would hold a prosecutor in contempt if he violated the procedure in any way.

You could provide for the impounding or destruction by the court of any recording, or report of any intercepted communication, if it were found to be immaterial, irrelevant, or scandalous.

You might also provide if a wiretap were allowed, to permit the prosecutor to present a copy of the court order to the telephone company to allow the installation of the device necessary to accomplish the interception.

These last six items are merely some suggestions that we think the Committee might consider in order to perhaps make the bill more palatable for those who are certainly going to oppose it.

That is the sum and substance of what I had to say, Mr.

Chairman.

MR. BIBER: I should point out that you are the only one who has heeded that direction. I want to thank you very much.

Are there any questions? (No response) Thanks so much for being with us and giving us the benefit of your experience and suggestions.

The next one on the list is Mr. Bittig.

ALOYSIUS J. BITTIG: My name is Aloysius J. Bittig and I am an attorney and counselor at law of New Jersey and have been employed by the New Jersey Bell Telephone Company since October 1, 1927. Prior to that I was employed by the New York Telephone Company for approximately 13 years.

I wish to express my sincere appreciation and that of the Company to you, Mr. Chairman, and to the members of this Committee for the opportunity to appear here today.

We in the New Jersey Bell Telephone Company have a vital interest in any legislation which will affect the privacy of communication by telephone and therefore desire to state our reasons in opposition to any wiretap legislation, and more particularly to Assembly No. 58. Perhaps the extent and the nature of this interest can best be demonstrated by briefly considering a few of the facts concerning our operations and policies.

The Company has in service today approximately 3,075,000 telephones. These telephones serve the State Government and its agencies, the United States Government and its agencies, including the military, local municipalities, virtually every business irrespective of type or size, the professions and

2,284,000 of these telephones serve about 9 out of 10 New Jersey households located in the Company's service area. Each weekday there is an average of more than 13,000,000 calls which, on an annual basis, total about 700 conversations for every man, woman and child residing in the Company's service area.

In a relatively short span of years, the telephone has grown from a useful device for the few to a necessity for all. To illustrate: At the close of 1940, slightly more than one-third of all New Jersey households within the Company's territory had telephone service whereas, as previously mentioned, the percentage is now about 90 per cent. Today the telephone is a most important means of communication serving all facets of community and national life. It affords a rapid and economical means of communication between persons and is designed and intended to be held in the same degree of privacy as the United States mails. Those of us in the telephone business know that privacy is an all-important element in this widespread and indispensable usage.

Before commenting on the procedures presently employed by the Company to maintain the integrity of its services and facilities, it may be helpful to briefly describe the nature and the extent of the plant facilities which must be safeguarded. The plant layout and operations of a telephone company are by their very nature exceedingly complex. Briefly, the focal points of telephone operations are the local wire centers or central offices from which cables containing pairs of wires fan out into the geographical area served by the particular center. The size of these areas and the size of the center depends upon

density of the business and residential population served with the largest center serving many thousands of lines and those in rural areas several hundred. We have over 300 local central offices and the cables and other conductors used in providing local exchange service contain in the order of 12 million miles of wire. Each cable and each pair of wires has a number, just as a telephone has a number. In order to gain access to a particular telephone line, it is necessary to be able to identify the pair with the particular telephone to which it is then connected. Telephone numbers do not appear on terminal boxes and the identification of the cable and pair with a particular telephone is found only in the telephone company's records.

Some of the precautions taken by the Company to insure the privacy of its services are as follows:

In the selection of our employees, we strive for dependability and good moral character. Proof of citizenship is required generally. Each new employee is required to read a booklet entitled, "Secrecy and Protection of Telephone Plant and Service," - and I'd be happy to let the Committee have some copies of that - which contains excerpts from Federal and State laws concerning the secrecy of communications. This booklet must be read during the first month of employment and a form acknowledging that the booklet was read and understood is signed by the employee.

Employees, particularly those in the Plant Department, are constantly reminded that information concerning cable and pair assignments must be treated as confidential so as to prevent its use in an unauthorized manner. This item is covered in a

booklet entitled, "You and Your Company's Property," which is reviewed annually with our employees. In addition, periodic checks are made to assure that such information is not obtainable without giving duly authorized identification. Parenthetically, I might add that no tapping as a rule can be done in terminals, on poles or anywhere else except perhaps in a basement of an individual's home, without someone obtaining the pair and wire and multiple appearances in connection with a person's telephone.

Our 3,600 outside plant employees are cautioned to be constantly on the alert for taps or evidence of taps in their day-to-day work, and are instructed to promptly report any irregularities to their supervisors.

Admission to telephone company buildings is gained only after the person seeking admittance has identified himself by name and building pass number to an authorized employee who satisfies himself that the employee seeking admittance is authorized to do so. With the exception of three of the larger and more critical central office centers where guards are maintained on an around-the-clock basis, all of our central office buildings are locked twenty-four hours a day whether occupied or not and entrance is gained only after proper identification.

Cable and pair information of telephone wires is restricted to those employees who have a need to know of it in order to perform their duties.

Any changes in cable pair assignments must be authorized by designated persons in writing and on an appropriate official form.

The buildings where our cable records, outside plant records and assignment records are located, are locked after hours and under constant supervision during working hours.

Waste paper is a possible source by which cable and pair information could fall into unauthorized hands. Steps are taken to assure that copies of forms and orders are torn up before they are thrown out. Through the General Security Committee of the Company, every effort is made to assure that records bearing cable and pair information are disposed of in such a manner that this information cannot be wrongfully obtained.

Cable vaults in buildings so equipped are locked at all times. Smaller buildings without vaults are kept locked.

These practices and procedures are not new. They are, in fact, as old as the business and have been revised from time to time to accord with the new types of plant and equipment used by the Company. The strictest protection of the public's privacy in the use of our service is fully in accord with the present legislative policy of this State, which was first declared in 1877. Thus, New Jersey Statutes Annotated 48:17-19 not only prohibits the disclosure of the contents of telephone and telegraph communications by employees of such companies, but also provides as follows:

> "In all respects the same inviolable secrecy, safekeeping and conveyance shall be maintained by the officers, employees and agents employed on the several telegraph and telephone lines in this State, in relation to all dispatches, messages and other communications which may be sent or received, as is enjoined by the laws of the United States in reference to the ordinary mail service."

In addition, the New Jersey Legislature in 1930 enacted a statute, Title 2A:146-1, making it a misdemeanor to tap telegraph or telephone lines or to divulge or testify to any information thus obtained.

The New Jersey Bell Telephone Company is opposed to any form of wiretapping or to any other interception of communications unauthorized by the parties thereto. We believe that privacy of communication is a fundamental cornerstone of an individual's personal freedom and should be maintained inviolate. Some of the nation's foremost judicial officers have characterized the nature of wiretapping. Mr. Justice Roberts in Nardone v United States, 302 U.S. 379, at page 383 called it "inconsistent with ethical standards and destructive of personal liberty." Mr. Justic Brandeis in his dissent in Olmstead v United States characterized the infamous writs of assistance and general warrants as "puny instruments of tyranny and oppression when compared with wiretapping" as a means of espionage. Similarly, Mr. Justice Holmes dissenting in the same case, described it as "dirty business."

Wiretapping is of necessity a dragnet in its character. It intrudes upon the most confidential relationships and garners the most intimate details of those subjected to it. We believe it a far more drastic interference with personal liberties than would be possible under a search warrant. The latter is confined to a definite place and specific items or, at least, to items of a stated class or description. Those in possession of the searched premises know that a search is being made and when it is completed, the officer departs. A wiretap is a far different

and more sinister intrusion. It is done in secret without the knowledge of the person whose wire is being tapped or those who may call his telephone and can and frequently does involve innocent people who have no criminal involvement with the person whose wire is tapped. Everything said over the line is heard no matter how foreign it may be to the stated objectives. As Mr. Justice Brandeis observed in the Olmstead case, and I quote:

> "... The evil incident to invasion of the privacy of the telephone is far greater than that involved in tampering with the mails. Whenever a telephone line is tapped, the privacy of the persons at both ends of the lines is invaded and all conversations between them upon any subject, and although proper, confidential, and privileged, may be overheard. Moreover, the tapping of one man's telephone line involves the tapping of the telephone of every other person whom he may call, or who may call him..."

Of course, we must and do recognize that law enforcement is a vital governmental function. The extent to which privacy of communication should yield and where the line should be drawn between privacy and the police power is a matter of high public policy which, in the final analysis, must be decided by the Legislative Branch of our Government.

We urge, however, that state legislation at this time can serve no useful purpose. This is so because the federal court decisions, as we interpret them, now hold that wiretap evidence obtained under authority of state law, as for instance in New York State, may not be received in evidence in a criminal proceeding, whether state or federal, and that state officers acting under such a state statute, are themselves in violation of Section 605 of the Federal Communications Act of 1934. The federal courts have ruled that by enactment of Section 605, Congress has pre-empted the field both as to interstate and intra-

state communications and it should be noted that violation of this section is penal in nature.

The Congress presently has before it two bills which would authorize the states to enact wiretap legislation subject to certain restrictions. One bill, generally described as the Administration Bill since it was drafted and strongly supported by the United States Attorney General, was introduced on February 7, 1962 about a month subsequent to the introduction of Assembly No. 58. The Administration Bill, Senate 2813, contains many restrictions upon the procedures to be employed by the states, if they choose to enact such legislation, and also contains restrictions as to the type of suspected criminal activity in which wiretaps may be used. Since the federal courts have held that Congress by enactment of Section 605 of the Communications Act of 1934 has pre-empted the field and since the legislation now under consideration by Congress would continue such pre-emption, it would seem inadvisable to enact any state legislation at this time until federal policy has been determined. Thank you very much.

MR. BIBER: Mr. Bittig, are you in favor of Senate Bill 2813?

MR. BITTIG: Mr. Chairman, in connection with that, I can't comment.

MR. BIBER: Let me ask you this question:

MR. BITTIG: The comment in connection with the Federal bill will be made by the American Telephone and Telegraph Company and I, therefore, would not desire to speak for it.

MR. BIBER: I see. Are there any further questions?

FRANK J. CUCCIO: I am Frank J. Cuccio of the Bergen County Prosecutor's Office. Mr. Biber, I would like to ask Mr. Bittig one question in order to put the record straight with regard to the quote that is often ascribed to Justice Holmes in the dissenting opinion of the Olmstead Case. The Olmstead Case, Mr. Bittig, dealt with the State of Washington making it a misdemeanor for anyone to engage in wiretapping. The Federal officers in that case, U. S. government agents, in connection with a raid and wiretapping of a violation of the Volstead Act or the Prohibition Act as we know it, went in and made taps over a long period of time. The government was paying these Federal agents. Now Justice Holmes in his dissent when he describes the activity of the "dirty business," was referring to the fact that the United States Government was paying officials of the government, was paying them money for violating in effect the legislation that had been enacted in the State of Washington and when he says it's a "dirty business," he was not making reference to the wiretap. He was making reference to the fact that government agents, violating the criminal laws of the State of Washington, were coming into court and admitting their culpability, their voluntary violation of a criminal law of the State of Washington in effect.

And so many times, Mr. Chairman, we hear the expression that Justice Holmes has described wiretapping as a "dirty business." I respectfully say to you, Mr. Bittig, and this is a question, in reading the case - and I want to say this of Mr. Bittig and of the Telephone Company - they have worked with all of the prosecutors, including our office, and a finer man

there isn't in the State of New Jersey, cooperative 100 per cent. But when the words of Justice Holmes are interpreted in the fashion that the Telephone Company wishes to set forth in this hearing, I must protest and ask you, sir: In reading the case - and I have the decision here - do you not agree that Justice Holmes was referring to the activity that I described and not the activity of wiretapping?

MR. BITTIG: I haven't read the case in a little while, but my understanding and belief is that he referred to wiretapping as such.

MR. BIBER: Are there any further questions? (No response.)

Mr. Bittig, thank you very much. Thank you for coming here and making known to us your views and the attitude of your company and yourself.

MR. BITTIG: Thank you very much.

MR. BIBER: Now, before I call on the next one, I would like to mention that I received a letter, the original of which went forward to Assemblyman Keith, and that letter was sent by Mr. Edward Silver, the District Attorney of Kings County. I had intended reading it into the record, but I think that Assemblyman Keith covered the salient points of that letter.

I received a letter from Norman Heine, the Camden County Prosecutor. If I am not mistaken, Mr. Morss in making his statement touched upon the views and attitudes of Mr. Heine and for that reason, I don't plan to read it into the record. Would you want me to read his letter into the record?

MR. STINE: No, sir, I was agreeing with you.

MR. BIBER: If you want me to, I will.

MR. STINE: He is both on the Criminal Law Committee of the Bar Association with me and also the prosecutor of Camden County.

MR. BIBER: Then I received a letter, dated March 7th, directed to me as Chairman of the Judiciary Committee: (Reading)

"Dear Assemblyman Biber:

"The New Jersey Chapter of the American Civil Liberties Union has requested me to appear at your public hearing on Assembly Bill 58 on March 14th. However, due to class commitments, I will be unable to be present and thought that perhaps my views stated in a letter would be helpful to you. I would like to oppose the current bill on two levels.

"On the first level, it seems apparent to me that such a bill is unconstitutional under the 'supreme law of the land clause' of the Federal Constitution in view of Section 605 of the Federal Communications Act. Such a view was clearly suggested by Chief Justice Warren's opinion in Benanti v U.S., 355 U.S. 96 (1957). It is clear that as long as the Federal statute remains unchanged, the testimony given in a state court would be a Federal crime. This has recently been recognized by District Attorney Hogan of Manhattan and according to the papers, he has ceased using wire tap evidence in state prosecutions although it is provided for by New York's constitution and statutes.

"I am aware that Attorney General Kennedy has recommended to Congress certain legislation which would authorize wire

tapping in very limited circumstances by states. This legislation expressly precludes the use of such evidence in state courts unless it was obtained in conformity with the Federal statute. The Federal statute, if the recommended legislation is adopted, is much narrower in scope than the proposed New Jersey statute. For example, it would allow state officers to wire tap only in crimes of murder, kidnapping, extortion, bribery or narcotics. The New Jersey legislation, of course, will allow wire tapping in relation to any crime. In addition, the procedural requirements of the proposed Federal statute are considerably different from those envisioned in the state statute and are, by their terms, mandatory upon the state.

"On the broader issue of whether or not state officials should be allowed to wire tap under court order, it is my belief that they should not. Wire tapping differs materially from a search under a search warrant in at least two respects. In the first place, wire tapping, by its general nature, must be surreptitious, whereas the search warrant requires inventories of the property seized to be given to the person whose property is searched and he is aware of the fact of the search. Secondly, such warrants must describe the property to be seized, whereas wire taps relate to every call placed on a particular telephone for the period of tapping. This is true whether or not the person making a call is suspected of any crime. It would seem to me therefore that wire taps are a much broader invasion of privacy and can be justified only by a clear demonstration of necessity, which is not met merely by a statement of

conclusions by state officials. Under our system of government, the decision for such authorization must be made by the legislature and it would seem that concrete facts should at least be required."

It is signed "Sincerely, Robert E. Knowlton, Professor of Law of Rutgers University, School of Law."

I think the next one on my list is George Gelman.

GEORGE GELMAN: Mr. Chairman and Assemblyman Keith, my name is George Gelman. I am an Assistant Prosecutor of Bergen County. I am making this statement on behalf of Prosecutor Guy Calissi, who unfortunately couldn't be with us today, and also on behalf of the County Prosecutors' Association of New Jersey.

It is our considered opinion that Assembly Bill 58 in its present form is entirely consistent with the constitutionally protected rights of the individual. In its broadest aspect the interception of telephonic communication constitutes a search and seizure within the meaning of the Fourth Amendment to the United States Constitution. This was the very point at issue in the Olmstead Case which has been referred to by previous speakers. This was the point which separated the majority and the minority.

It should be noted that the United States Supreme Court has never held that the interception of a telephone communication constitutes a search within the meaning of the Fourth Amendment. Nevertheless, the so-called civil liberty wing of the United States Supreme Court, of whom Mr. Justice Douglas is certainly an outstanding spokesman, has on numerous occasions sought to

equate wiretapping with search and seizure under the Fourth Amendment.

If we adopt this approach, it also will follow that the Fourth Amendment does not preclude all searches and seizures, but only unreasonable searches and seizures. By the Fourth Amendment, the framers of the Bill of Rights recognized the right of the people to be secure in their homes and their right of privacy and they established a safeguard against the arbitrary invasion of the right of privacy by governmental power. At the same time it was recognized that under certain conditions the government should have the power to search and where probable cause exists the Constitution expressly authorizes searches and seizures. That being the case, it follows as a matter of course that there is no constitutional prohibition against wiretapping in the same manner and to the same extent as in the case of any ordinary form of search.

The only question which arises is whether the conditions to be met for the issuance of the search order and the procedures adopted are reasonable within the constitutional limitations of the Fourth Amendment.

In this connection I should like to refer to the dissenting opinion of Justice Douglas in the Pugach Case, decided by the Supreme Court last term. In that case, the United States Supreme Court in a per curiam decision affirmed a challenge to the New York wiretapping procedure and its intended use or alleged intended use in a New York State criminal prosecution on the basis of and citing the case of Schwartz v Texas, which held in turn that a state was privileged to fashion its own

exclusionary rule with respect to the admissibility of evidence obtained by wiretapping.

Mr. Justice Douglas in dissenting from the affirmants in the Pugach Case states at page 460 of 365 U.S.: "As I indicated in my dissent in Schwartz v Texas, I am of the opinion that a wiretap is a search within the meaning of the Fourth Amendment so that in the absence of illegality under Section 605, I would have to consider if the New York wiretap procedure meets the constitutional test of reasonableness."

The point then to be considered by the Legislature, assuming that it recognizes the legitimate need for the authorization of wiretapping, is whether the conditions to be met satisfy the constitutional limitations of the Fourth Amendment. In this respect we have only our experience in the field of search warrants to guide us inasmuch as no court has ever passed directly upon this question.

In the case of search warrants, as you know, any magistrate may issue a search warrant based upon an application of any law enforcement officer, including a rooky policeman. This procedure satisfies the requirement of the Constitution under existing decisional law.

We recognize, as you do, that special considerations are involved in the case of wiretapping, justifying the imposition of greater safeguards for the protection of the individual than would be the case with respect to the usual type of search warrant.

We believe that the bill in its present form, and most

certainly with the inclusion of other limitations which have been discussed in this hearing this morning, not only meets the constitutional requirements of the Fourth Amendment, but should satisfy those who are legitimately concerned with the protection of the right of privacy of the individual.

MR. BIBER: Are there any questions? (No response.) Thank you very much.

MR. STINE: May I make one further comment about another guest we have. I don't know whether you know about him or not.

MR. BIBER: Yes, I do. I am about to call him.

I think the next gentleman comes from our sister State of Pennsylvania, Mr. Fitzpatrick.

F. M. FITZPATRICK: Mr. Chairman, my name is F. M. Fitzpatrick, Jr. I am the Second Assistant District Attorney for the City and County of Philadelphia. I come today representing Mr. Crumlish, District Attorney. Our office has been requested to send a representative here by members of the County Prosecutors' Association of the State of New Jersey. We are only too glad to cooperate in this venture.

Our background in Pennsylvania I think has been quoted at some length here today. I do not entirely agree with the impressions of some of the writers who were quoted. It has been my experience certainly there are substantial differences of opinion between those writers quoted today and some of the individuals with whom I have been intimately connected.

In the State of Pennsylvania up until several years ago

we enjoyed the rather envious position of being able to tap wires at will with no controlled legislation. As a result of that perhaps and as a result of some abuses, which I certainly cannot doubt would creep into any system, the Pennsylvania Legislature passed an act entirely outlawing wiretapping.

I might say that based on the experience of our office, of the Philadelphia Police Department and many other law enforcement agencies throughout the state, our office is preparing legislation to be submitted to the next session of the Legislature, enabling us to do substantially the same thing which Assembly Bill No. 58 is attempting to enable the prosecutors here in New Jersey to do, that is, tap wires under court decision.

I will not impose upon your time nor will I get into the legal implications of this problem because I think that they have been discussed here today at length and I think that a final determination of the constitutionality of this issue is going to be made either by your state courts or possibly by your Attorney General's office in an advisory capacity.

I will say this: As far as the objections generally to any permissive wiretapping legislation, they seem to me to fall into two categories. I have heard most of them mentioned here today. The first category seems to assume or at least to posit a questionable right to absolute privacy. I say a questionable right because I have never seen it included in any of our constitutions. I have heard it referred to in court decisions, but it has never been

referred to as I have heard it here today or as I have seen it as an absolute right. It is a right like all other rights of citizens which must be subjected to the common good. It has been compared to the right against unreasonable searches and seizures, and unfavorably so I must say by some of the writers, particularly the last letter read by the Chairman.

I think that the distinction drawn between the right to tap wires and the right to search a home is a valid one when it is pointed out that the area is smaller and that the party involved knows about it. That distinction I think is valid.

I question seriously whether, when we are speaking of a theoretical right of privacy, such a distinction is relevant because it seems to me that a man who will keep for reasons best known to himself a dairy of all his personal activities, all his most personal thoughts which may conceivably at some time, under proper circumstances, be subject to a proper search and seizure and, if relevant, might even be introduced in evidence against him - it seems to me that a man's right in that instance is far greater than the right of an individual who voluntarily broadcasts his opinions, his thoughts, no matter how intimate, over a telephone wire to another party. Even without permissive wiretap legislation, I respectfully suggest that the other party on the end of the telephone is qualified and permitted under proper circumstances to broadcast in any way he sees fit whatever he is told. That doesn't require any special legislation. My point is this, that the interception of such a phone call, while a

distinction may be drawn between it and a search and seizure warrant, is not really a comparable situation because a man's right to privacy in his own home, if we are to establish such a sacred group of rights, is in my mind at least far superior to a man's right to something which he voluntarily broadcasts to another individual on the other end of the wire.

I think the second group of objections lay in the area of the danger of abuse. I think certainly that such abuses are going to exist in any system. We in Philadelphia have received a great deal of criticism about the use of search and seizure warrants or the abuse of search and seizure warrants according to our critics. I do not think that legislation should be considered on the premise that prosecuting attorneys or police officials are going to abuse the rights that are given them to enforce their job. I do not think on the other hand we can close our eyes to the fact that they may under some circumstances abuse these powers. But merely because a man may abuse a power, I don't feel is a good reason to keep it from him at all.

Police officials have told me and my limited experience as being the Chief of Investigations in the District Attorney's Office in Philadelphia tells me well that law enforcement officials today need the right to tap wires. We need it only because criminals use the telephone to plan crimes and to discuss crimes. Whether the policemen get fat and lazy doing it or not, I frankly don't know, but I have never regarded the very important and sacred job of law enforcement as some

form of athletic contest which is supposed to make policemen strong, rigorous and in good physical condition, or however else the analogy was meant to apply. If it will help the police in even one per cent of the cases that they are called upon to solve, I think it should be given them. Statistically I do not know that any prosecutor can justify it because I have yet to see statistics on unsolved crimes that could possibly have been solved with the use of wire taps.

I have read your bill. I think it is a good one. There are many suggestions that I could make; most of them have been made by the previous speakers here today. However, if this bill is passed, I give you just one thought: I would suggest that a procedure be established so that the reasonable cause which was given to the district attorney, to the prosecutor or the attorney general may be inquired into in an organized fashion. We in Philadelphia are having a great deal of difficulty with the Mapp decision today. No one seems to know exactly what must be done to justify this reasonable cause, whether, for instance, the judge or magistrate who issues the warrant - in this case it would be a judge of your superior court - is to be the sole judge of whether or not the prosecutor had reasonable cause or reasonable grounds as you set forth or whether this issue may be relitigated at the time or prior to trial and the further problem arises whether or not the doctrine of the fruit of the poison tree would be applied to investigations where a wire tap warrant may have been obtained, may have been used, but turned up absolutely nothing. But yet the prosecutor is put in the position of

showing negatively that he obtained nothing from it, assuming for the moment he did not have what the court may consider by hind sight reasonable grounds. It is possible by applying that doctrine, as we have seen in Philadelphia, that our entire case would fail. I suggest that some thought be given to this problem, and frankly I would like to see the results because we will be preparing similar legislation soon. Thank you for the privilege of speaking before you.

MR. BIBER: Are there any questions.

MR. BITTIG: I have a question if the chairman please. Mr. Fitzpatrick, you indicated a number of times that the user of a telephone broadcasts the conversation, thus intimating that it is or may be or might be or should be made available to the general public. I trust that that was not the intention of your statement.

MR. FITZPATRICK: Not my intention, sir, nor, as I recall, was it my statement. I did not mean to imply that he should make it available to the general public unless he meant to do so. But I do mean to imply that he meant to make it available to someone else; he did not intend to keep it to himself.

MR. BITTIG: However, he intended it to be kept only between the person that he spoke to and himself, not any intruders.

MR. FITZPATRICK: That, sir, I think is true. However, I understand there is under some of the Federal cases some law which I am not frankly too familiar with which holds that if this conversation were overheard on an extension

telephone, this is not an interception and, if that is the case, sir, it then appears to me, since you have nodded your assent and I am sure you are more familiar with this problem, even more ridiculous that a man's switchboard operator or someone on his own line, be he a police officer or a friend or enemy, who has gained entrance to his house, perhaps with a valid search and seizure warrant, may listen to and later testify to his entire telephone conversation. It seems at least inconsistent that the right of privacy, if it exists as an absolute right to use the telephone, is not completely protected in that instance.

MR. BITTIG: Well, the law says that he is, doesn't it?

MR. FITZPATRICK: Says that he is what, sir?

MR. BITTIG: Not subject to interception of his telephone conversation. That's what we are speaking of here.

MR. FITZPATRICK: That's correct. But you have nodded your assent that someone could listen in on his extension phone.

MR. BITTIG: However, that has been held not to be an interception. We are speaking about interception.

MR. FITZPATRICK: That's right.

MR. BITTIG: The interception of someone with a pair of wires between two telephones - that's what we are talking about.

MR. FITZPATRICK: My only point, sir is this: If the information can be gained from that conversation in one fashion, I do not see that you are absolutely protecting a right because you say it cannot be gained with a pair of wires, but it can be gained with a human ear on the telephone instrument.

MR. BIBER: Are there any other questions?

MR. GELMAN: It is not a question, Mr. Chairman. I would just like to offer for the record, by handing you a copy, an editorial which appeared in the New Jersey Law Journal on October 5, 1961, which was addressed to prior proposed Federal legislation in the field, in which the editorial board of the Law Journal expresses its agreement in principle with such legislation.

MR. BIBER: Mr. Fitzpatrick, I want to thank you very much for taking the time to come from the City of Philadelphia and meet with us and make known to us the views and the attitude of yourself and your whole office. Thank you very much.

MR. FITZPATRICK: Thank you, sir.

MR. BIBER: I think Assemblyman Keith has something further to add.

ASSEMBLYMAN KEITH: Thank you, Mr. Chairman. I just want to read into the record a sampling of replies that I received from prosecutors' offices throughout the state. I will be brief and just read portions of the letters to show you a sampling of their expressions as to the need of this bill.

I read first from a letter from Thomas L. Smith, Salem County Prosecutor, wherein he states: "In my opinion the passage of Bill A 58 dealing with wiretapping is almost a necessity so that we may deal with the mounting problems of crime on an equal basis with the facilities available to criminals."

I read from a letter from Guy W. Calissi, Bergen County

Prosecutor, in part: "Assembly Bill No. 58 is a bill which the prosecutors, or at least a majority of the prosecutors, have requested for a long time. I am in favor of the bill. It will give to the prosecutor an instrument which will be of great assistance in the enforcement of the criminal laws of the state. I agree with the provision that applications can only be made by the prosecutor or the Attorney General and the application approved or disapproved by the assignment judge. These safeguards are necessary."

I read from a communication from Augustine A. Repetto, Atlantic County Prosecutor: "I am firmly convinced that the bill in principle is a most necessary tool in the hands of a prosecutor if he is to be able to combat the ever-increasing crimes, the evidence of the planning and execution of which is mostly confined to the use of the telephone."

I read from a letter of James A. O'Neill, County Prosecutor, Cape May County: "As to A 58, you have my wholehearted support and in fact I will urge our Assemblyman, Robert E. Kay, and our Senator, Charles W. Sandman, Jr., to do what they can to promote this bill."

A letter from Clyde C. Jefferson, County Prosecutor, County of Hunterdon: "I would enthusiastically favor A 58."

A letter from Martin J. Queenan, County Prosecutor, Burlington County: "I have reviewed Assembly Bill 58 and am in complete accord with Assembly Bill No. 58, which I hope sincerely passes both Houses of the Legislature and is signed by the Governor."

I read in part from a communication from Lawrence

A. Whipple, Hudson County Prosecutor: "With respect to Item 2 - and that's A 58 - it is my firm believe that it is necessary and important to detect and prosecute all criminals vigilantly. At the same time it is far more necessary to protect the citizens and their right of privacy. However, I am convinced that wiretapping is absolutely necessary if law enforcement agencies are to function efficiently. This bill does not permit indiscriminate wiretapping. Under its provisions the citizens' rights and privacies are protected from unwarranted snooping. Inasmuch as the wiretapping can only be done upon the order of the assignment judge upon oath or affirmation of the county prosecutor or the Attorney General, there is reasonable ground that evidence of crime may thus be obtained. I am of the firm opinion that this affords adequate protection to the citizens' rights of privacy, that a law-abiding citizen should not fear wiretapping under strict judicial authorization. I am in favor of this bill."

Thank you, Mr. Chairman.

MR. BIBER: Does anyone have anything else to offer? (No response.) If not, I will declare this hearing closed.

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