

STATE OF NEW JERSEY

Report

of the

NEW JERSEY

N.J. Legislature
JOINT LEGISLATIVE COMMITTEE TO
STUDY WIRETAPPING AND THE UN-
AUTHORIZED RECORDING OF SPEECH

Submitted to the Governor and the
Legislature of the State of New
Jersey November, 1958

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LETTER OF TRANSMITTAL

To: The Honorable Robert B. Meyner,
Governor of the State of New Jersey

The Senate and General Assembly
of the State of New Jersey

The Joint Legislative Committee to
Study Wiretapping and the Unauthorized Recording
of Speech, created February 7, 1956, and extended
by the Legislature on January 15, 1957, herewith
submits its report.

Malcolm S. Forbes,
Chairman

PERSONNEL OF THE COMMITTEE

The Committee:

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Senator Donal C. Fox,
Vice Chairman
Senator Frank W. Shershin
Assemblyman Paul M. Salsburg
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WHY THE INVESTIGATION?

New Jersey Legislators could not help but notice newspaper stories of the New York City wiretapping scandals which were revealed in 1955. The investigation of the murder of the wealthy Serge Rubinstein disclosed that this New York financier acquired financial business information from his competitors through wiretapping and used it to his advantage. Also uncovered was a flourishing illegal wiretapping business operating from an apartment on East 55th Street, New York City, where a vast number of telephones were tapped for private purposes and at high prices. The New York State Legislature swiftly saw an area which needed study, and created the New York Joint Legislative Committee to Study Illegal Interception of Communications. This Committee, after extensive hearings, reported that "electronic eavesdropping, particularly wiretapping, has been a lively, active, lucrative private business within New York State," and recommended that "eavesdropping be legally redefined to include modern practices, and that these be entirely outlawed, except as specifically recognized by the Constitution of the State for purposes of investigating crime."

Word that a New Jersey private detective agency, and perhaps a law enforcement officer, had working arrangements with a New York wiretapper confirmed the thoughts of New Jersey State Senators and Assemblymen that what could happen

in New York could happen here.

A glance at N.J.S. 2A:146-1 (Appendix page 46) disclosed that New Jersey had a Wiretapping Statute enacted in 1930, prohibiting "willful and malicious wiretapping," but that there was no indication that there had ever been a conviction or a judicial interpretation under this Act.

Is wiretapping practiced in New Jersey by private individuals, business men, private investigators, or law enforcement personnel? Do the telephone companies operating within the State furnish telephone monitoring services or otherwise assist in or condone the tapping of their wires for the purpose of intercepting telephone messages? Does our New Jersey Statute adequately protect the public from the evils of eavesdropping? Does the Statute need revision because of the fabulous modern developments in the electronics field? These and other questions in the minds of New Jersey Legislators led to the adoption of New Jersey Senate Concurrent Resolution No. 4 (Appendix page 44) on February 7, 1956, which established the Committee submitting this report.

COMMITTEE ORGANIZATION AND PROCEDURE

The Committee created by the Senate Concurrent Resolution met, elected a Chairman, and chose a legal consultant and a counsel. The latter were authorized to and did enlist the aid of committee investigators who were approved by the Committee.

Ascertaining whether or not wiretapping or the unauthorized recording of speech was being carried on in New Jersey was not an easy task because of the limited funds available and the natural reticence of those possessing knowledge of practices long considered illegal, or, in the case of unauthorized recording, unpopular in New Jersey. The Committee staff followed leads from every possible source. A State Senator had publicly announced that his wires had been tapped. Time was taken to check the incident. Records were inspected to ascertain whether or not a tap or unlawful connection was made at a New Jersey race track. Anonymous letters and telephone calls produced leads, some of which were fruitful. Manufacturers and dealers in electronic equipment were quizzed as to the equipment available for wiretapping or other methods of eavesdropping. Private detectives were interrogated as to their use of such devices for business clients and in matrimonial cases. State

County and Municipal law enforcement personnel related the extent to which wiretapping and eavesdropping practices were enlisted by their respective offices. Committee staff members met several times with New Jersey Bell Telephone Company officials to learn company procedures in the investigation of wiretaps, and the Company's policy with respect to monitoring and lending assistance to law enforcement personnel. During the course of the investigation, staff members traveled to almost every County in the State.

An individual possessing knowledge of wiretapping or the unauthorized recording of speech was, as a rule, served with a subpoena to attend a Committee hearing. At or before such hearings, each witness was instructed as to the purpose of the Committee and with respect to his rights and duties as a witness under oath. Any witness desiring counsel was encouraged to avail himself of representation at the hearing. At least one Committee member and Committee counsel were present at each hearing, the testimony of which was stenographically transcribed. Committee members and staff conducted the questioning of witnesses with respect to the subjects under investigation.

The Committee broadened its scope to some extent to obtain information concerning mechanical and electronic eavesdropping where a recording may not have been present. Such an extension seemed justified, as the decision as to whether or not a conversation was to be recorded depended on the use the eavesdropper intended for it, or the particular equipment on hand.

WIRETAPPING AND EAVESDROPPING LAWS

IN NEW JERSEY

As the terms "eavesdropping", "wiretapping", "bugging", and "unauthorized recording" were used in the course of questioning at Committee hearings, and will be referred to throughout this report, it will be helpful to outline the Committee's definitions of these words. "Eavesdropping" is the general term describing the practice of overhearing or recording, by means of a mechanical or electronic device, a conversation between two or more persons, whether it be a personal or telephone conversation. Therefore, if A, by a device, overhears or records a conversation between B and C, A is an "eavesdropper". Clearly then, "wiretapping" is a type of "eavesdropping" and may be defined as the overhearing or recording of a telephone conversation by means of mechanical or electronic devices. "Bugging" is still another type of eavesdropping where a microphone or transmitter is used in the overhearing or recording of a conversation between two or more persons. In "wiretapping" or "bugging" there of course may, on occasion, be some element of consent by one or more of the parties to the conversation. An "unauthorized recording" is a recording made of a conversation by one party to the conversation without the knowledge and consent of the other party.

The New Jersey Wiretapping Statute is N.J.S. 2A:
146-1 which was enacted in 1930. It reads as follows:

2A:146-1. Tapping telegraph or telephone lines;
disclosing messages

Any person who willfully and maliciously:

- a. Cuts, breaks, taps or makes any connection with a telegraph or telephone line, wire, cable or instrument belonging to any other person; or
- b. Reads, takes, copies, makes use of, discloses, publishes or testifies concerning a message, communication or report intended for any other person and passing over any such telegraph or telephone line, wire or cable in this state; or
- c. Uses any apparatus unlawfully to do any or such acts - Is guilty of a misdemeanor.

As previously stated, this Statute had not, up until the time of the creation of the Committee, been interpreted by any reported judicial decision. The Committee almost immediately ran into a divergence of opinion as to the meaning and proper construction of the words "willfully and maliciously." Many witnesses when questioned with respect to this problem stated that they had always considered all types of wiretapping illegal in New Jersey and that by using the words "willfully and maliciously" the Legislature did not intend to permit any form of legalized wiretapping. It was brought out that the word "willful" meant "intentional" or "deliberate" while the word "malicious" meant "without justifiable cause." At least one law enforcement officer takes the position that wiretapping to detect crime is a justifiable cause and not in

violation of the Statute. In answer to this, others point out that stealing bread for a starving family may be a justifiable cause, yet it is clearly contrary to law. The Attorney General of New Jersey takes the position that anyone wire-tapping in New Jersey does so at his peril and that it is up to the grand jury in each case to determine whether or not the tap was performed "willfully and maliciously" so that an indictment should be returned. These varied constructions point out a need for clarifying legislation.

The next query might be: Are the words "cuts, breaks, taps or makes any connection with" broad enough to cover the evil sought to be prevented in view of the fact that today no physical breaking or even touching of a wire or instrument is necessary to intercept a telephone conversation. This thought occurred to Judge Leon Leonard, of the Atlantic County Court, in the unreported case of State v. Gribbin in 1952 where a small microphone device was held against the receiver by the listener in the same hand as was the hand receiver. The point in question involved the admissibility into evidence of the recorded conversation. As evidence illegally obtained is admissible in New Jersey, that portion of the decision dealing with the interpretation of N.J.S. 2A:146-1 constituted dicta, but it clearly revealed the court's thinking on the subject. Judge Leonard ruled:

"A reading of the New Jersey Statute (N.J.S. 2A:146-1)

in my mind does not make this conversation a violation thereof. There were no cuts, breaks, taps or connections, according to the testimony. It was just held up against the receiver."

New wording, therefore, is required to plug this possible loophole in the Statute.

Judge Leonard touched upon another aspect of the Statute, as follows:

"And, also, in addition to that the Statute provides a telephone belonging to any other person, and this telephone for the purpose of the Statute, in my opinion, belonged to Pearl Faulcon, one of the parties to the conversation. The fact that the physical title was in the telephone company does not, or the Statute, that is, in my opinion does not mean to imply that the telephone belongs to the telephone company. When it says 'belonging to any other person,' I take that to mean the subscriber and not the actual owner of the physical instrument."

Does "belonging to any other person" mean one other than the subscriber, and, if so, who is the subscriber, the one who makes the application, the one who pays the bills, or the one in whose name the telephone is listed? Knowing that most residential telephones are listed in the name of the husband, does this mean, for example, that the husband may tap his own telephone to ascertain the contents of his wife's telephone conversations, but if the wife does the same she is guilty of a crime? A Deputy Attorney General takes the position that "belonging to any other person" might mean a person other than the person to whom a particular telephone instrument is assigned and used rather than a person other than the one who

pays the bill. For instance, if Mr. X in the A.B.C. corporation is assigned extension number 25, under this interpretation the words "belonging to any other person" refer to a person other than Mr. X and not to a person other than the A.B.C. corporation. This distinction is important because one professional wiretapper earns a portion of his living by tapping for employers the telephones assigned employees suspected of using the telephone to the detriment of the employer. This wiretapper takes the position that such tapping is legally permissible under the New Jersey law.

It was imperative that the Committee consider these and other possible constructions of the Wiretapping Statute. The fact that although the Statute has been in effect since 1930, without a conviction having been obtained under it, might indicate that the Statute needed rewriting.

While the Committee was conducting its investigation it became involved in litigation over whether the Committee could require a county prosecutor to reveal the name of an individual who had performed wiretapping services for the prosecutor. In holding that the Committee was entitled to learn the identity of the wiretapper, the court in Morss v. Forbes, 24 N. J. 341, (Supreme Court, 1957) interpreted N.J.S. 2A:146-1 for the first time. The court there held that the Statute prohibits all wiretapping and makes no exception for officials charged with law enforcement.

Accepting the fact that wiretapping is but one type of eavesdropping, it is today the law of New Jersey that there is no statutory prohibition of eavesdropping except for the Wiretapping Statute, N.J.S. 2A:146-1. Any eavesdropping not included in this Statute is now permitted in New Jersey unless the common law crime of eavesdropping is violated. Eavesdropping as it was known in the common law, and which is still a crime in this State, was defined in Book IV, Chapter 13, of Blackstone's Commentaries as follows:

"(6) Eavesdroppers, or such as listen under walls or windows or the eaves of a house to hearken after discourse, and thereupon to frame slanderous and mischievous tales, are a common nuisance and are punishable at the court-leet; or are indictable at the sessions, and punishable by finding sureties for their good behavior."

However, the eavesdropping evil of today is not so much the listening under a window, but the microphone or transmitter hidden in a lamp or in the wall, the transforming of an ordinary telephone into a room microphone-transmitter, and the ultrasensitive parabolic-type microphone which may secretly pick up conversations some distance from the parties. Clearly science has virtually outdated Blackstone's definition and has created the need for this study and the recommended legislation which follows.

EXTENT OF EAVESDROPPING IN NEW JERSEY

Wiretapping

By Private Individuals:

The Committee investigation established that private individuals and business concerns are resorting to various types of wiretapping to overhear telephone conversations. One New York wiretapper stated that he had made approximately fifty wiretaps in this State during the last two and one-half years, but that most of these were for commercial business concerns for self-protection purposes. A typical case would be that of a company which thought an employee was leaking business secrets to competitors. A wiretapper would be employed to place a wiretap on the telephone used by the employee unbeknowning to the employee so that the employee's telephone conversations could be monitored or recorded.

Instances of private wiretaps in matrimonial matters were disclosed to the Committee. Either a wiretapper would be hired or the subscriber possessing some technical ability would place a hidden tap on his telephone to ascertain whether or not his spouse was being unfaithful.

If a husband and wife are separated and one wishes to obtain evidence for a divorce action against the other, the problem is more difficult. A wiretapper would be engaged to place a wiretap wherever he could - probably not in the home, but at a junction box perhaps some distance away. The hope would be to learn of a meeting between the

spouse and his or her paramour, and then to conduct a raid to obtain the necessary evidence.

Some evidence was unearthed indicating that wiretapping was used by a waterfront mobster to protect his position in an alleged conspiracy to frame a well-known public official. A recording was made of a telephone conversation which eventually fell into the hands of police officials and lead to indictments of the alleged conspirators.

A dealer in music, records, and recording equipment furnishes a service to the public, whereby one may walk into his store, place a telephone call, and, for a price, walk out with a tape or a recording of the entire conversation.

Business and professional men are today recording their telephone conversations without the consent or knowledge of the party on the other end of the line. They indicate that it is very useful to have a record of important telephone calls in order to refresh their recollection as to the contents of the conversation, and to confront the other party with the transcript if he attempts to dispute the contents. Such recordings do not violate the present wiretapping statute but do violate telephone tariff regulations in the absence of a "beep".

By Law Enforcement:

The Committee ascertained from police officials in one large New Jersey city, that its communications department prior to 1951, tapped private telephone conversations on an

average of twenty times a year. The information obtained from the taps was used to further investigations of gambling, murder and other criminal matters. Wiretaps by other law enforcement personnel throughout the State were also revealed. When asked on what type of cases the taps were made, the usual answer was "gambling."

As earlier reported, one police department, to obtain evidence against a fellow police officer, placed a tap on a subscriber's telephone with the subscriber's permission. In this case, the subscriber had known gambling connections, and when the police officer called, the conversation was recorded and later admitted into evidence in the trial of his indictment.

With New Jersey being located across the river from New York City, it is inevitable that some New Jersey criminal activities would be tied in with New Yorkers. Knowing this, New Jersey law enforcement personnel have, on occasion, travelled to New York City, and with the cooperation of the New York District Attorney's Office, placed legal wiretaps in New York to intercept telephone conversations between New York and New Jersey. These taps have been helpful in closing down interstate gambling operations. Whether or not these activities violate the New Jersey wiretapping statute has never been judicially determined. However, under a recent U. S. Supreme Court decision, handed down on December 9, 1957 (Benanti v. U. S.), such practices violate Sec. 605 of the Federal Communications Act, dealing with wiretapping.

Some New Jersey law enforcement agencies record "emergency" telephone calls coming in to their switchboard reporting crimes, fires, etc. The recordings are helpful, they say, to eliminate error on their part and to establish some record with respect to the exact location of a particular "emergency" as reported in the telephone call. The recording also might aid authorities in tracking down sources of "false alarms."

On kidnapping and extortion cases a telephone tap is useful as the demand for money is frequently conveyed by telephone. In these cases law enforcement authorities, with the permission of the subscriber, either listen-in on a telephone extension or set up a tap and recording device to intercept incoming calls.

By the Telephone Companies:

The New Jersey Bell Telephone Company, a few years ago, furnished a telephone monitoring service to their subscribers whereby, at the request of a subscriber, the Telephone Company would dispatch to the offices of the subscriber telephone personnel and equipment, for the purpose of overhearing the telephone conversations of the subscriber's employees. By means of this service, an employer could determine how courteously or efficiently his employees were handling incoming and outgoing calls. Obviously, an unscrupulous employer could utilize such a system for eavesdropping on employees. The Committee was informed that this service was no longer available, however.

Bugging in New Jersey

Private Eavesdropping:

A New Jersey private investigator told the Committee that he performed no wiretapping activities but that he used microphone devices some fifty times during the last ten years in the course of his investigations. On one occasion, a manufacturing concern which had, through an audit, determined that unexplained shortages were occurring, hired him to place microphones at strategic points in the plant in order that conversations of certain employees might be overheard. Recordings were made and, as a result, an \$18,000.00 embezzlement case was solved. The same investigator indicated that most of his eavesdropping was performed for business concerns for self-protection purposes to uncover wrongdoing by employees.

Private investigators also reported, however, that microphones or transmitters were used in matrimonial cases. Usually the permission of one of the home owners was obtained prior to the placement of a secret transmitter in a house, whereupon a wire would be laid from the transmitter to a speaker or recording machine to ascertain whether or not the spouse was unfaithful, or to ascertain the time when a raid might produce the necessary evidence for a matrimonial action.

A South Jersey citizen inadvertently found that he could hear telephone conversations on the aircraft band of his radio. Further investigation disclosed that in this area long

distance telephone calls were carried by radio for a short distance so that one listening to that certain frequency could intercept telephone conversations. This means of sending telephone conversations by radio is now outdated, and is being replaced, the Committee was informed.

By Law Enforcement:

Many New Jersey law enforcement agencies employ mechanical or electronic "bugging" devices to obtain information for the detection of crime. Microphones are placed wherever they might be of the most use. Some are permanently installed in prosecutors' offices and jail cells. Others are secretly planted in hotel rooms, or otherwise, for individual investigations. Recording machines may or may not be attached.

Unauthorized Recording in New Jersey

By Private Individuals:

The Governor of New Jersey reported that after a confidential conversation in his office with a certain party, the individual, upon leaving the Governor's office, announced that in his briefcase, which had been on the floor in the office during the talk, there was an ultra-sensitive recording machine which had recorded the entire conversation. Other common cases of unauthorized recordings are when professional or business men turn on dictating-recording machines during conversations without the knowledge of the other party.

By Law Enforcement:

The miniphon, a pocket-sized microphone and recording machine, is used by law enforcement investigators to record interviews with suspected criminals, especially in narcotics cases. The device is concealed during the interview and can even be in use while walking down the street. Investigators tell us that people would not talk as freely if they knew the conversations were being recorded.

The automobiles of law enforcement detectives have been "bugged" to record conversations of suspected criminals who are picked up and questioned from time to time.

At least one County Prosecutor conceals a microphone in his office to record conversations with suspected criminals who may relate important information leading to the detection of crime. The prosecutor also states that the recording acts as a protection to him from unfounded claims that a payoff was demanded from the prosecutor's office.

COMMITTEE FINDINGS AND RECOMMENDATIONS

The duties of the Committee as specifically outlined in Senate Concurrent Resolution #4 were to:

I. Eavesdropping and wiretapping

A. Make a study of the subject of wiretapping and recording of speech;

B. Investigate whether unauthorized wiretapping and recording of speech is being carried on in the State by private or public individuals or agencies;

II. Determine the need for broadening, if necessary, the existing wiretapping statute;

III. Determine the need, if any, for legislation concerning the unauthorized recording of speech.

The Committee's findings and regulations with respect to its assigned duties are as follows:

I. Eavesdropping and Wiretapping

A. An Invasion of Privacy vs. A Tool to Combat Crime.

Eavesdropping is the practice of overhearing or recording by device, a conversation or telephone communication by one who is not a party thereto. Wiretapping is eavesdropping by the interception of telephone communications.

All types of eavesdropping are infringements upon the privacy of the person whose conversation is overheard. Justice Holmes' dissent, in the case of Olmstead v. U. S., 277 U. S. 428 (1928), referred to wiretapping as a "dirty business." Justice Roberts in Nardone v. U. S., 302 U. S. 379, called wiretapping "inconsistent with ethical standards and destructive of personal liberty." Justice Brandeis, in a dissent in Olmstead v. U. S., 277 U. S. 428 (1928), emphasized that the right to be let alone is the most comprehensive of rights, and the most valued by civilized men. The words of Justice Hofstadter of New York in Matter of Interception of Telephone Communications, 207 Misc. 69 (1955) echo the views of this Committee, as he speaks of legalized wiretapping, "A tapped wire is the grossest invasion of privacy possible. However rationalized, its authorized use has its roots in the amoral doctrine that the end justifies the means, hence, the most drastic safeguards cannot be too stringent."

* * * * *

"A telephone interception is a far more devastating measure than any search warrant. A search warrant is confined to a definite place, and to specific items, or at least, to items of a stated class or description. Those in possession of the searched premises know the search is going on, and when the officer has completed his search, whether successful or not, he departs. Not so, in the case of a telephone inter-

ception. The interception order is obtained ex parte and the person whose line is to be tapped, is, of course, in ignorance of the fact. The tap is maintained continuously day and night. Everything said over the line is heard however foreign to the stated objective of the law enforcement officers. The most intimate conversations, personal, social, professional, business or even confidential, of an unlimited number of persons may be laid bare. In effect, the line of everyone who is called from, or makes a call to the tapped line, at any time, is being tapped during the maintenance of the tap."

The same undesirable consequences apply to eavesdropping other than by wiretapping. It is also an invasion of one's right to be left alone, when a secret microphone is placed in one's home, with the purpose of intercepting the conversations that may there take place.

On the other hand, the Committee can understand the drive that New Jersey law enforcement personnel are making for legalized wiretapping and eavesdropping. Any tool which will make their job easier, or which may tend to deter crime, is in the best interests of the public, they feel. County prosecutors are commanded by law to be zealous in their attempts to detect crime, and they are subject to criticism and even prosecution if they are anything less than diligent. It is also evident that the detection and apprehension of criminals create particular difficulties and demands in the

performance of duty by police, county and state officers. Modern criminals have access to and employ extensively all of the latest techniques and devices designed and developed by modern technology. Law enforcement officers urge that they be given the opportunity to combat the criminal on equal terms. Such officials also realize that legalized eavesdropping will infringe upon the freedom of some citizens but they feel that with the proper safeguards abuses will be minimized and law enforcement will be more effective.

One cannot help agree with Justice Brandeis that the right to be left alone is a most comprehensive and valued right that should be closely guarded. It is obvious then that a need exists to protect the public in this field which the Legislature can and should meet.

The Committee's study revealed that the only statute relating to the subject of eavesdropping is the wiretapping statute, N.J.S. 2A:146-1.

The New Jersey Supreme Court in Morss v. Forbes, 24 N. J. 341 (Supreme Court, 1957) decided during the existence of this Committee, held that this statute did not permit legal wiretapping by anyone. Whether or not the statute needs modification will be discussed later.

The only other law relevant to the subject under discussion is the common law crime of eavesdropping which makes listening under windows for the purpose of spreading

malicious tales, a criminal act. This crime, of course, does not affect the more common modern practice of eavesdropping by microphone or other mechanical or electronic device. Thus there is no law in New Jersey against the interception of conversations by placing a microphone in a bedroom, as was done in the recently publicized Wolfson case in New York; or "bugging" the executive offices of a union, which was the case with the New York Transport Workers Union.

The findings and recommendations of the Committee concerning its study of the recording of speech will be discussed in a later paragraph.

B. The Occurrence of Wiretapping, Eavesdropping,
and the Recording of Speech

As previously indicated the Committee conducted an intensive investigation to ascertain whether there are wiretappers operating in this State.

It can be reported that private individuals and private detectives participate in eavesdropping activities, not only by wiretapping, but by placing hidden microphones and transmitters. The Committee's investigation developed that private eavesdropping is sometimes employed in matrimonial cases, and sometimes at the request of an employer to check on the activities of employees. The State Police, County Prosecutors and Municipal Police also employ eavesdropping methods in the detection of crime. Whether or not the intercepted conversations are recorded in the foregoing instances is purely up to the eavesdropper, and whether or not he has the equipment available. Recording intercepted conversations is easily accomplished and is in use in this State.

Businessmen on occasion record telephone calls or conferences without the permission of the other party, and without a beep device. When speaking with criminals, police and other law enforcement officers frequently conceal devices to record the conversations. Such recordings are presently legal although unknown to one of the parties to the conversation.

The Committee elicited admissions by a large police department of as many as twenty wiretaps per year. One private investigator indicated he had placed approximately the same number of taps for private customers during a one year period. Thus, the Committee feels that eavesdropping practices do deserve public attention.

The Committee did not uncover any instances where law enforcement personnel used wiretapping for personal reasons other than to detect or prevent crime. There is, of course, always the danger that when eavesdropping is permitted for legal purposes, someone may employ it illegally. It came to light in New York that police officers, instead of using information obtained by wiretapping to convict criminals, used the information to obtain pay-offs from the gamblers whose lines had been tapped. Advocates of legalized wiretapping admit to the possibility of such abuses, but urge that with strict safeguards such abuses would be rare.

C. Committee Recommendations Concerning
Eavesdropping and Wiretapping.

1. Majority.

As a result of the Committee's study and investigation, the majority of the Committee find that there is not at the present time a sufficient need for legalized eavesdropping and wiretapping for law enforcement personnel in New Jersey. A summary of the majority's reasoning follows:

Wiretapping and eavesdropping constitute invasions of some of the basic freedoms with which we Americans are endowed. Some courts and authors have indicated that these practices violate the Fourth Amendment to the Constitution as unreasonable searches and seizures. Others indicate that "the right of privacy" or the "right to be left alone" is protected by the Ninth and Tenth Amendments. In New Jersey, our courts have held that "the right of privacy having its origin in the natural law, is immutable and absolute and transcends the power of any authority to change or abolish it, and that it is one of the natural and unalienable rights recognized in Article I, Section 1 of the Constitution of this State ---". Mc Govern v. Van Riper, 137 N.J.Eq. 24. State Legislatures therefore should closely guard such a fundamental right and halt, rather than encourage, further infringements upon it.

The fact that the right of privacy is not an absolute right and may yield to a greater public right in some cases should not be over-emphasized in the case of eavesdropping which violates privacy in a much more extensive way than in the instances of

searches and seizures by warrant, fingerprinting, photographs, blood tests, and the like. An eavesdropping or wiretapping court order would presumably be in effect for weeks at a time, during which period the conversations of hundreds of innocent persons might be overheard and recorded.

Opponents of legalized eavesdropping cite that legal wiretapping in other States has proved to be successful in only a limited way and usually in the less heinous type of crimes. District Attorney Hogan of New York testified before this Committee that with respect to his office, in about 50% of the cases where wiretaps are made, no indictment results although frequently useful information is obtained. Some New Jersey County prosecutors, when asked for what crimes they would need legal eavesdropping, responded "book-making" and "gambling."

There is no question but that if legal eavesdropping is permitted in New Jersey, abuses will follow. In New York and Philadelphia, police have used wiretaps for their own personal gain under the guise of attempting to detect crime. Also, the more individuals instructed in the art of eavesdropping, the greater is the chance that such persons may utilize their taps without court orders for private reasons. Further, recent and proposed scientific advances in the electronics field will make eavesdropping immeasurably more easy to accomplish and more successful in results. It is well known that tape and wire recordings of conversations have been and can be altered to produce statements not made by the participants at all. New Jersey prosecutors admit that in general crime is fairly well under control in their jurisdictions, but state that with eavesdropping

techniques their job would be easier and more efficiently performed. Advocates of civil liberties feel that since crime is not running rampant, the public would be better served by protecting the right of individuals to be left alone, than by whittling away this basic freedom at a time when it is not absolutely necessary.

Accordingly, the majority recommends that the New Jersey Legislature adopt Sections 1 to 8 of the proposed legislation as set forth in the appendix hereto.

Committee members supporting the majority's position are

Senator Malcolm S. Forbes, Chairman

Senator Frank W. Shershin

Assemblyman Paul M. Salsburg

Assemblyman Dominic A. Cundari

Assemblyman Joseph M. Thuring

2. Minority.

The minority feels that legalized eavesdropping and wiretapping should be made available to New Jersey law enforcement personnel in high misdemeanor cases as long as adequate safeguards are established. A summary of the minority's reasoning follows:

Law enforcement personnel have been urging for years that they be given the right to wiretap in the course of their investigations. The criminal of today possesses and uses all available means of communications to carry out his raids against

society. Police feel that through wiretapping they can shorten immeasurably the time necessary to apprehend law violators and that the mere possibility of its use will tend to discourage or impede criminal activity.

A large segment of the bookmaking and betting business is conducted over the telephone. Records are kept to a minimum so they can be easily destroyed in the event of a police raid. Thus, constant surveillance is necessary to trap a bookmaker. Narcotics "meets" are frequently arranged by telephone. Extortion and kidnapping demands are commonly made over the wire. Wiretaps might close these investigations quickly and produce the necessary evidence to convict. Any type of organized criminal activity or corruption in government might be planned in a telephone conversation. If the criminal knew the police could wiretap, he might reduce his criminal contacts by telephone and make them in person. This would tend to force him into the public eye somewhat for better surveillance by police detectives.

Law enforcement officials contend that the possibility of abuses with respect to wiretapping by police has been greatly exaggerated. The great majority of police are honest, hardworking individuals whose job is not an easy one. Admittedly abuses will exist and have existed. Abuses could be minimized by permitting a tap only on the order of a high judicial officer after a detailed application by a responsible law enforcement officer to the effect that there is reasonable ground to believe that evidence of crime may be thus obtained.

The highly publicized gangland meeting at Appalachin,

New York, on November 14, 1957, points up the need for strengthening law enforcement on a statewide basis, by permitting them to use modern electronic devices to combat organized crime. Law enforcement officials have described this gathering of 65 individuals as a "convention of underworld leaders." The State of New Jersey was represented with 8 of its residents present. Law enforcement agents, federal and state, investigated. The New York District Director of the United States Bureau of Narcotics testified that in his opinion, the Appalachian gathering represented a meeting of the infamous Maffia. The Maffia, as a secret society, has never been completely uncovered or exposed. Once the surveillance of the meeting place by State Troopers and Federal Agents had been detected, a mass exodus took place by auto, through fields and into the forest. By virtue of good police work, most of the visitors were stopped and questioned. However, due to the inability of the police to discover some violation of law, these men could not be detained. Several of these people were later called to testify, but the few who failed to invoke privilege testified to the effect that the meeting on this particular day at this particular place was sheer coincidence.

For the purpose of describing the type of people assembled, only 9 had no criminal record. The remaining 53 who were identified had an aggregate of over 100 convictions and more than 275 arrests.

A New York Legislative Committee, in its interim report, concluded that "the Appalachian meeting emphasizes the

need for a bureau of centralized police intelligence and continuous investigative action directed at organized crime and racketeering on a State-wide basis."

The United States Department of Justice has recently announced a long-range campaign to combat crime. Hoodlums with prison records have invaded the legitimate fields of business and labor unions and are suspected of well-organized racketeering, extortion, and interstate fraud. Some editorial writers recall that such drives have been conducted before, but syndicated crime continues to flourish. They urge a relaxation of the restrictions on wiretapping and the rules of evidence which lend protection to the guilty.

Representative Kenneth B. Keating has introduced a bill in Congress to allow Federal wiretapping in national security cases and freeing states to pass their own wiretap laws to combat racketeers and subversives. He declared,

"We should at once put this weapon in the hands of those charged with protecting our safety and security. To deny it to them is tantamount to guaranteeing to criminals and spies a sanctuary or no man's land in which to conduct their operations.

"It is high time Congress recognized we are in an all-out war against criminal conspiracies and subversives. There can be no compromise with these enemies just as there should be no infringing of civil liberties. The delicate balance is achieved in my proposed bill."

Police investigators emphasize that their job is not an easy one, and that they need every available aid, including legalized wiretapping and bugging, to successfully wage their war against crime.

The minority recommends that the New Jersey Legislature adopt sections 1 to 10 as set forth in the appendix

hereto. The Committee member supporting the minority is

Senator Donal C. Fox.

If the Legislature should contemplate the adoption of statutes authorizing legalized wiretapping, the Committee recommends that Chief Justice Warren's opinion in Benanti v. U.S., 78 S.Ct. 155, be carefully studied as that decision casts doubt upon whether a state may validly adopt such legislation in view of the Federal Public Policy established by Sec. 605 of the Federal Communications Act.

The Committee is informed that a New York legalized wiretapping case in point is now under consideration in the Appellate Courts. A Supreme Court decision in this case should resolve the question. The possibility also exists that other Federal wiretapping or eavesdropping statutes may become law. These should, of course, be carefully checked for possible conflict.

II. The Existing Wiretapping Statute

As a result of its investigation and study, the Committee has determined that the New Jersey Wiretapping Statute N.J.S. 2A:146-1 is inadequate and should be repealed. The Committee has reached this conclusion for several reasons, among which are the following:

1. N.J.S. 2A:146-1 prohibits willful and malicious wiretapping. As previously indicated, with respect to wiretapping, these words mean different things to different people. A County Prosecutor was convinced that a wiretap to detect crime was lawful because he was not acting maliciously. The Attorney General of New Jersey was of the opinion that a person, even in law enforcement, wiretaps at his peril and that it was the Grand Jury's job to determine whether or not the tapping might have been performed "willfully and maliciously." Another interpretation was that the words meant that all wiretapping was illegal.

The recent New Jersey Supreme Court in Morss v. Forbes, 24 N. J. 341 (Supreme Court, 1957) held that N.J.S. 2A:146-1 made all wiretapping illegal and made no exception for law enforcement personnel.

2. The words "cuts, breaks, taps, or makes any connection with" are apparently not broad enough (despite Section (c) of the Statute) to clearly include modern electronic wiretapping equipment which can intercept telephone messages

without cutting, breaking, tapping or making connections. Such equipment is being employed and was referred to and discussed in the case of State v. Gribbin ante.

3. The phrase "telegraph or telephone line, wire, cable or instrument belonging to another person" is one which causes confusion. Actually, all telephone equipment is owned by or belongs to the Telephone Company. Do then the words in the Statute refer to the Telephone Company, or the subscriber? If subscriber, is he the applicant for the telephone, the one who pays the bills, or the one in whose name the telephone is listed?

4. Eavesdropping other than by wiretapping is a practice equally objectionable in our society. The Committee feels, therefore, that the Statute prohibiting wiretapping should prohibit all types of eavesdropping by device.

5. Though wiretapping has been practiced here during the years, there has never been a conviction under N.J.S. 2A:146-1. Though this is probably due in a large part to the fact that law enforcement people do not favor the prohibition of wiretapping, it may also be true that the Statute is inadequate or out-dated.

III. Legislation Concerning the Unauthorized Recording of Speech

By the words "unauthorized recording of speech" the Committee means a recording of a face to face conversation by one who is a party to it, which recording is made without the knowledge and consent of the other party. The South Jersey police officer who conceals in his pocket a small recording machine and records conversations with narcotics users is making an unauthorized recording as is the insurance investigator using the same equipment. Not included in the unauthorized recording category, by Committee definition to avoid confusion, are recordings made in the course of eavesdropping.

Unauthorized recording is perfectly legal under New Jersey law at the present time. Though permissible under the law, the Committee does not look with favor on the practice of unauthorized recording. It constitutes a surreptitious invasion of the straight-forward person to person relation. It falls short of high ethical standards and fair play. However, the conversation was intended for the ear of the party recording it. He could subsequently repeat what was said -- why not then permit him to record it, and perhaps retain a more accurate record? It is difficult to draw a line in this area delineating what should be criminal activity, and what should not. Some people feel that such recordings should be permitted, but that evils arise in their use or when the wire

or tape is altered.

Because of the obvious difficulties to establish rules in this field, the Committee has concluded that it should not recommend legislation concerning unauthorized recording as herein defined.

The reliability and value of recorded conversations and communications, regardless of how obtained, is not considered here inasmuch as this would be a study in and of itself.

APPENDIX

PROPOSED LEGISLATION

Eavesdropping

Section 1. Short Title.

2. Eavesdropping.
3. Exemption.
4. Punishment for eavesdropping.
5. Person defined.
6. Eavesdropping instruments.
7. Divulging and obtaining information and access wrongfully.
8. Duty to report to law enforcement agencies.
9. Disclosing confidential information.
10. Court order for eavesdropping.

PROPOSED LEGISLATION BY MAJORITY OF COMMITTEE

(Sections 1 to 8)

§ 1. Short Title.

This act may be cited as the "Eavesdropping Act."

§ 2. Eavesdropping. A person:

(1) not a sender or receiver of a telephone or telegraph communication who willfully and by means of instrument overhears or records a telephone or telegraph communication, or who aids, authorizes, employs, procures or permits another to do so, without the consent of either a sender or receiver thereof; or

(2) not present during a conversation or discussion who willfully and by means of instrument overhears or records such conversation or discussion, or who aids, authorizes, employs, procures or permits another to do so, without the consent of a party to such conversation or discussion; or

(3) who, not a member of a jury, records or listens to by means of instrument the deliberations of such jury or who aids, authorizes, employs, procures or permits another to do so; is guilty of eavesdropping.

§ 3. Exemption.

There shall be exempt from the provisions of this act the normal operation of a telephone or telegraph company.

§ 4. Punishment for eavesdropping.

A person who violates any paragraph of section two of this act shall be guilty of a misdemeanor.

§ 5. Person defined.

As used in this act, the word "person" shall mean any person, whether natural or artificial, without regard to the relation he may hold to others, or the capacity in which he may act, including but not limited to the subscriber of the telephone or telegraph service involved and any law enforcement officer.

§ 6. Eavesdropping instruments.

A person who has in his possession or under his control, any device, contrivance, machine or apparatus designed or commonly used for eavesdropping, as described in section two of this act, and who commits any overt act evincing an intent to unlawfully use or allow the same to be so used for eavesdropping, is a disorderly person.

§ 7. Divulging and obtaining information and access wrongfully.

A person who:

(1) wrongfully, whether by trick, false representation, impersonation or otherwise, obtains or attempts to obtain information concerning the identification or location of any wires, cables, lines, terminals or other apparatus used in furnishing telephone or telegraph service; or

(2) being an officer or employee of a telephone or telegraph company, gives information concerning the identification or location of any wires, cables, lines, terminals or other apparatus used in furnishing telephone or telegraph service, to any other person, knowing said person is not entitled to said information; or

(3) wrongfully, whether by trick, false representation, impersonation or otherwise, obtains or attempts to obtain access to any installations, wires or cables of a telephone or telegraph company upon any premises; is a disorderly person.

§ 8. Duty to report to law enforcement agencies.

It shall be the duty of every telephone or telegraph company to report to a law enforcement agency having jurisdiction, any violation of paragraph one of section two, section six, and paragraphs one and three of section seven of this act, coming to its attention. Any violation of this section shall constitute the violator a disorderly person.

PROPOSED LEGISLATION BY MINORITY OF COMMITTEE

Eavesdropping

NOTE: The Minority adopts the prior proposals of the Majority of the Committee with the following changes and additions:

§ 3. Exemption. There shall be exempt from the provisions of this act:

(1) the normal operation of a telephone or telegraph company; and

(2) eavesdropping pursuant to court order granted pursuant to section ten of this act.

§ 9. Disclosing confidential information.

Any person who, knowing the existence of, or contents in, the application or order for eavesdropping, pursuant to section ten of this act, discloses the same to any other person is a disorderly person.

This section shall not apply to a disclosure by testimony under oath in any trial, hearing or other proceeding, nor to a disclosure to the judge concerned or his authorized

agents or employees, nor to the applicant himself or his authorized agents or employees, nor, when necessary, to meet a challenge of the right to so eavesdrop, to the person whose facilities are involved or to a law enforcement officer.

§ 10. Court order for eavesdropping.

An ex parte order for eavesdropping as defined in paragraphs one and two of section two of this act may be issued by a judge of the Superior Court upon oath or affirmation of the Attorney-General or a County Prosecutor that there is reasonable ground to believe that evidence of crime constituting a high misdemeanor may be thus obtained. Such application must contain the name of the person or persons whose communications, conversations or discussions are to be overheard or recorded; the facts upon which petitioner relies in making said application; the necessity and purpose of said application; in the case of a telephonic or telegraphic communication, the telephone number or telegraph line involved; and in the case of eavesdropping as described in paragraph two of section two of this act, the place where the conversations or discussions are expected to take place. In connection with such application, the judge concerned must satisfy himself of the existence of reasonable grounds for the granting of such application. If the application is granted, any order pursuant thereto shall be effective only for the period specified therein, but such period cannot exceed two weeks; however, such order can be

extended for the same, or a shorter, period, by the judge who signed the original order, upon satisfying himself that such extension is in the public interest. A certified copy of said order shall be sufficient authority for the person so authorized to carry on the activities therein specified.

SENATE CONCURRENT RESOLUTION NO. 4

A CONCURRENT RESOLUTION creating a joint committee of the Legislature to inquire into and investigate wire tapping and the unauthorized recording of speech generally by mechanical or electronic devices or any other apparatus.

BE IT RESOLVED by the Senate of the State of New Jersey (the General Assembly concurring):

1. There is hereby created a joint committee of the Legislature to consist of 6 members, 3 to be appointed from the membership of the Senate by the President thereof and 3 to be appointed from the membership of the General Assembly by the Speaker thereof, who shall serve without compensation. Vacancies in the membership of the committee shall be filled in the same manner as the original appointments were made.

2. The committee shall organize as soon as may be after the appointment of its members and shall select a chairman from among its members and a secretary who need not be a member of the committee.

3. It shall be the duty of said committee to make a study and investigation of the subject of wire tapping and the recording of speech generally by mechanical or electronic devices or any other apparatus; to inquire into and investigate whether unauthorized wire tapping and unauthorized recording of speech, generally, by mechanical or electronic devices or

any other apparatus is being carried on by public or private bodies or agencies or by individuals in the State; to determine the need for broadening, if necessary, our present statutory provision covering wire tapping, and the need, if any, for legislation covering unauthorized recording of speech.

4. The committee shall have all the powers of a joint legislative committee provided by chapter 13 of Title 52 of the Revised Statutes and shall be entitled to call to its assistance and avail itself of the services of such employees of any State, county or municipal department, board, bureau, commission or agency as it may require and as may be available to it for said purpose, and to employ such stenographic and clerical assistants and incur such traveling and other miscellaneous expenses as it may deem necessary, in order to perform its duties, and as may be within the limits of funds appropriated or otherwise made available to it for said purposes.

5. The committee may meet and hold hearings at such place or places as it shall designate during the sessions or recesses of the Legislature and shall report its findings and recommendations to the Legislature, accompanying the same with any legislative bills which it may desire to recommend for adoption by the Legislature.

Filed Feb. 7, 1956.

NEW JERSEY STATUTES

2A:146-1. Tapping telegraph or telephone lines;
disclosing messages. Any person who willfully and maliciously:

- a. Cuts, breaks, taps or makes any connection
with a telegraph or telephone line, wire, cable or instrument
belonging to any other person; or
- b. Reads, takes, copies, makes use of, discloses,
publishes or testifies concerning a message, communication or
report intended for any other person and passing over any such
telegraph or telephone line, wire or cable in this state; or
- c. Uses any apparatus unlawfully to do any of such
acts--

Is guilty of a misdemeanor.

FEDERAL COMMUNICATIONS ACT

SECTION 605

No person receiving or assisting in receiving, or transmitting, or assisting in transmitting, any interstate or foreign communication by wire or radio shall divulge or publish the existence, contents, substance, purport, effect, or meaning thereof, except through authorized channels of transmission or reception, to any person other than the addressee, his agent, or attorney, or to a person employed or authorized to forward such communication to its destination, or to proper accounting or distributing officers of the various communicating centers over which the communication may be passed, or to the master of a ship under whom he is serving, or in response to a subpoena issued by a court of competent jurisdiction, or on demand of other lawful authority; and no person not being authorized by the sender shall intercept any communication and divulge or publish the existence, contents, substance, purport, effect, or meaning of such intercepted communication to any person; and no person not being entitled thereto shall receive or assist in receiving any interstate or foreign communication by wire or radio and use the same or any information therein contained for his own benefit or for the benefit of another not entitled thereto; and no person having received such intercepted communication or having become acquainted with the contents, substance, purport, effect,

or meaning of the same or any part thereof, knowing that such information was so obtained, shall divulge or publish the existence, contents, substance, purport, effect, or meaning of the same or any part thereof; or use the same or any information therein contained for his own benefit or for the benefit of another not entitled thereto: Provided, That this section shall not apply to the receiving, divulging, publishing, or utilizing the contents of any radio communication broadcast, or transmitted by amateurs or others for the use of the general public, or relating to ships in distress.
(June 19, 1934, ch. 652, 605. 48 Stat. 1103.)

NEW JERSEY PUBLIC UTILITIES COMMISSION
GENERAL EXCHANGE TARIFF

New Jersey Bell Telephone Company

Special Arrangements for the Connection of Facilities of
the Telephone Company with Facilities Provided
by Customers

VI. Voice Recording Equipment

A. Regulations

1. General

Voice recording equipment provided by the subscriber for the recording of telephone conversations may be used in connection with the facilities of the Telephone Company subject to the regulations specified herein.

2. Basis of Connection

a. Connection of voice recording equipment provided by the subscriber with the facilities of the Telephone Company shall be made only through recorder connector equipment which contains a device automatically producing a distinctive recorder tone that is repeated at intervals of approximately fifteen seconds when the recording equipment is in use, except that in the case of services provided by the Telephone Company which have no connection with the exchange or toll system of the Telephone

Company, recorder connector equipment which does not contain the automatic tone device may be used at the option of the subscriber.

b. Permanent connection shall be made only through recorder connector equipment furnished, installed and maintained by the Telephone Company.

c. Temporary connection for a period not to exceed thirty days may be made for trial or demonstration purposes through portable recorder connector equipment furnished by a recorder manufacturer or his agent, provided such equipment is obtained from and is maintained by the Telephone Company and is connected with the telephone line through jacks installed on the line by the Telephone Company for that purpose.

d. The voice recording equipment provided by the subscriber shall be so arranged that at the will of the user it can be physically connected to and disconnected from the facilities of the Telephone Company or switched on and off.

