

~~R.S. 146-1 et seq.~~

2A:156A-1 et seq.

April 9, 1969

(Cg 2)

LEGISLATIVE HISTORY OF R.S. 2A:146-1 et seq.
(Wire-tapping)

Previous bills introduced (1954-1968):

- 1954 - S188 (Hannold, Dumont)
Prescribes method for electronic surveillance.
March 29 - Judiciary Committee.
Died in Committee.
Statement on bill.
- 1955 - S235 (Forbes)
Raised wiretapping from misdemeanor to high misdemeanor.
March 28 - Educ. Committee.
Passed in Senate - May 2.
Died in Assembly Rev. & Amend. Committee.
No statement on bill.
- 1955 - S236 (Forbes).
Requires training course for police in wiretapping detection.
March 28 - Educ. Committee.
Died in Committee.
No statement on bill.
- 1955 - S51 (Shershin).
Prohibits use of evidence gained from wiretapping.
January 30 - Judiciary Committee.
Died in Committee.
No statement on bill.
- 1955 - S62 (Shershin)
Prohibits wiretapping as a misdemeanor.
February 2 - Judiciary Committee.
Died in Committee.
No statement on bill.
- 1955 - SCR 4 (Forbes).
6 Member joint Leg. Com. to investigate wiretapping and recording of speech.
January 30 - Passed in Senate.
Feb. 6 - Passed in Assembly.
Feb. 7 - Filed.
Members: Sens. Forbes, Shershin, Fox; Assemblymen Cundari, Salsburg, Thuring.
No statement on bill.
- 1957 - A501 (Stepacoff).
Prohibits use of evidence gained by wiretapping.
May 6 - Judiciary Committee.
Died in Committee.
Statement on bill.

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57. - SCR 4 (Forbes)
Continues Jt. Leg. Com. created by SCR 4 in 1956.
January 14 - Passed both houses.
January 25 - Filed.
No statement on bill.
- 1962 - A58 (Keith).
Authorization of wiretapping by Superior Ct. Assignment Judge.
Jan. 16 - Judiciary Committee.
March 14 - Public hearings held (974.90 C5815 1962).
No statement on bill.
- 1962 - A557 (Musto & 2)
"Eavesdropping Act" - eavesdropping made a misdemeanor
March 26 - Judiciary Committee.
Died in Committee.
Long statement on bill.
- 1962 - A705 (Keith, Gross).
"Eavesdropping & Wiretapping Law" - Permitted Super. Ct. judge
to authorize wiretapping, etc.
April 30 - Judiciary Committee.
Died in Committee.
No statement on bill.
- 1963 - A98 (Keith, Gross)
"Eavesdropping & Wiretapping Law" - Permitted Super. Ct. judge
to authorize wiretapping, etc.
January 14 - Judiciary Committee.
Died in Committee.
No statement on bill.
- 1968 - S897 (Forsythe)
"Eavesdropping Warrant Act".
June 24 - Law, Pub. Safety & Defense Committee.
Sept. 16 - Public hearing held.
Died in Committee.
State on bill.
- 1968 - SCR 44 (Forsythe, McDermott)
14 member legislative committee to study Criminal Law
system.
March 11 - Passed both houses.
March 14 - Filed.
March 25-29; April 2-5.
Public hearing held (974.90 C5815 1968d).
No statement on bill.

Bill which became law was:

- L. 1968, Chapter 409 - S943 (Forsythe & 2)
"N.J. Wiretapping & Electronic Surveillance Control Act".
Nov. 15 - No Ref., Nov. 18, passed Senate, Nov. 25, Lost in
Assembly; Nov. 25, Laid over; Approved Jan. 14, 1969.
Statement on bill.

WB/PC

CHRONOLOGICAL LIST OF PUBLICATIONS ON WIRETAPPING IN NEW JERSEY

MISSING
NJ Forbes, Malcolm S., Def.
TB94 Moors v. Forbes Briefs - "The wiretap
W7 case". N.J. Superior Court, 1956.
F694

974.90 N.J. Legislature. Jt. Com. to Inquire into and
C5815 Investigate Wiretapping & Unauthorized Recording
1956 of Speech [created by SCR 4, 1956].
Public hearing - July 23, 1956.

974.90 Same as above.
C5815 2nd and 3rd public hearings - Sept. 25 & 26, 1956.
1956a - cannot locate

974.90 Same as above.
C5815 4th public hearing - Nov. 21, 1956.
1956b - cannot locate

974.90 N.J. Legislature. Jt. Com. to Study Wiretapping &
C5815 Unauthorized Recording of Speech (Above Com.)
1958 [created by SCR 4, 1956]. Report, 1958.

974.90 N.J. Legislature. Assembly Judiciary Committee.
C5815 Public hearing on wiretapping, held
1962 March 14, 1962.

974.90 N.J. Legislature. Senate. Committee on Law, Public
C5815 Safety and Defense.
1968c Public hearing[s] on S897, 802 & 803
(Eavesdropping & Dept. of Criminal Justice).
Sept. 16-18, 1968.

974.90 N.J. Legislature. Senate. Committee on Law,
C5815 Public Safety and Defense.
1968d Report on S897, Electronic Surveillance, 1968.

974.90 N.J. Legislature. Jt. Committee to Study Crime &
C929 Criminal Justice System in N.J. [created by SCR 44, 1968].
1968d Public hearing[s] held March 26-29, April 2-5,
1968. No de

vol. 1, p. 75-81, 92-96, 168-170
vol. 4, p. 139, 152-54, 244-245, 291, 302-305
vol. 5, p. 34-36
vol. 6, p. 166-163
vol. 7, p. 176
vol. 8, p. 98-100, 123

For newspaper clippings see file:

N.J.--Wire-tapping.

974.90 N.J. Legislature. JOINT COMMITTEE TO STUDY CRIME AND
C929 CRIMINAL JUSTICE IN N.J.
1968b REPORT, APRIL 22, 1968 (RECOMMENDATION NO. 7, p. 12)

May 5, 1975

FURTHER DEVELOPMENTS

Legislative History of P.S. 2A:156-1 et seq.
(Wire-tapping)

See

"Wiretapping and Electronic Surveillance; the
New Jersey Experience", by William F. Hyland
and Robert P. Martinez. (This article, published
in the New York Law Journal, appeared in 3 parts:

- Pt. 1 - 173 N.Y.L.J. 1, 4 (April 22, 1975)
- Pt. 2 - 173 N.Y.L.J. 1, 6 (April 23, 1975)
- Pt. 3 - 173 N.Y.L.J. 1, 6 (April 24, 1975)

also, now at

NJ

TB 94

W7

H996

JA/ks

CHAPTER 409 LAWS OF N. J. 1968

APPROVED 1/17/69

SENATE, No. 943

STATE OF NEW JERSEY

INTRODUCED NOVEMBER 15, 1968

By Senators FORSYTHE, WOODCOCK, DOWD and McDERMOTT

Referred to Committee on Revision and Amendment of Laws

AN ACT concerning the interception of wire and oral communications, authorizing interception in certain cases under court order and prescribing procedures therefor, prohibiting unauthorized interception, use or disclosure of wire and oral communications, prescribing penalties for violations and repealing N. J. S. 2A:146-1.

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

1 1. This act shall be known and may be cited as the "New Jersey
2 Wiretapping and Electronic Surveillance Control Act."

1 2. As used in this act:

2 a. "Wire communication" means any communication made in
3 whole or in part through the use of facilities for the transmission
4 of communications by wire, cable or other like connection between
5 the point of origin and the point of reception furnished or operated
6 by a telephone, telegraph or radio company for hire as a commu-
7 nication common carrier;

8 b. "Oral communication" means any oral communication uttered
9 by a person exhibiting an expectation that such communication is
10 not subject to interception under circumstances justifying such
11 expectation;

12 c. "Intercept" means the aural acquisition of the contents of any
13 wire or oral communication through the use of any electronic,
14 mechanical, or other device;

15 d. "Intercepting device" means any device or apparatus that can
16 be used to intercept a wire or oral communication other than

17 (1) Any telephone or telegraph instrument, equipment or
18 facility, or any component thereof, furnished to the subscriber or
19 user by a communication common carrier in the ordinary course of
20 its business and being used by the subscriber or user in the

21 ordinary course of its business; or being used by a communication
22 common carrier in the ordinary course of its business, or by an
23 investigative or law enforcement officer in the ordinary course of
24 his duties; or

25 (2) A hearing aid or similar device being used to correct sub-
26 normal hearing to not better than normal;

27 e. "Person" means that term as defined in R. S. 1:1-2 and in-
28 cludes any officer or employee of the State or of a political sub-
29 division thereof;

30 f. "Investigative or law enforcement officer" means any officer
31 of the State of New Jersey or of a political subdivision thereof who
32 is empowered by law to conduct investigations of, or to make
33 arrests for, any offense enumerated in section 8 of this act and any
34 attorney authorized by law to prosecute or participate in the
35 prosecution of any such offense;

36 g. "Contents," when used with respect to any wire or oral com-
37 munication, includes any information concerning the identity of the
38 parties to such communication or the existence, substance, purport,
39 or meaning of that communication;

40 h. "Court of competent jurisdiction" means the Superior Court;

41 i. "Judge," when referring to a judge authorized to receive
42 applications for, and to enter, orders authorizing interceptions of
43 wire or oral communications, means one of the several judges of
44 the Superior Court to be designated from time to time by the Chief
45 Justice of the Supreme Court to receive applications for, and to
46 enter, orders authorizing interceptions of wire or oral communica-
47 tions pursuant to this act;

48 j. "Communication common carrier" means any person engaged
49 as a common carrier for hire, in intrastate, interstate or foreign
50 communication by wire or radio or in intrastate, interstate or
51 foreign radio transmission of energy; but a person engaged in
52 radio broadcasting shall not, while so engaged, be deemed a com-
53 mon carrier;

54 k. "Aggrieved person" means a person who was a party to any
55 intercepted wire or oral communication or a person against whom
56 the interception was directed.

1 3. Except as otherwise specifically provided in this act, any
2 person who:

3 a. Willfully intercepts, endeavors to intercept, or procures
4 any other person to intercept or endeavor to intercept any wire
5 or oral communication; or

6 b. Willfully discloses or endeavors to disclose to any other
7 person the contents of any wire or oral communication, or

8 evidence derived therefrom, knowing or having reason to know
9 that the information was obtained through the interception
10 of a wire or oral communication; or

11 c. Willfully uses or endeavors to use the contents of any wire
12 or oral communication, or evidence derived therefrom, know-
13 ing or having reason to know, that the information was obtained
14 through the interception of a wire or oral communication;
15 shall be guilty of a misdemeanor and shall be fined not more than
16 \$10,000.00 or imprisoned not more than 5 years, or both. Sub-
17 sections b and c of this section shall not apply to the contents of
18 any wire or oral communication, or evidence derived therefrom,
19 that has become common knowledge or public information.

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

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

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

15 c. A person not acting under color of law to intercept a wire or
16 oral communication, where such person is a party to the communica-
17 tion or one of the parties to the communication has given prior
18 consent to such interception unless such communication is inter-
19 cepted for the purpose of committing any criminal or tortious act
20 in violation of the Constitution or laws of the United States or of
21 this State or for the purpose of committing any other injurious act.

1 5. Except as otherwise specifically provided in section 6 of this
2 act, any person who:

3 a. Willfully possesses an intercepting device, the design of
4 which renders it primarily useful for the purpose of the surreptitious
5 interception of a wire or oral communication;

6 b. Willfully sells an intercepting device, the design of which
7 renders it primarily useful for the purpose of the surreptitious
8 interception of a wire or oral communication;

9 c. Willfully distributes an intercepting device, the design of
10 which renders it primarily useful for the purpose of the
11 surreptitious interception of a wire or oral communication;

12 d. Willfully manufactures or assembles an intercepting
13 device, the design of which renders it primarily useful for the
14 purpose of the surreptitious interception of a wire or oral
15 communication; or

16 e. Willfully places in any newspaper, magazine, handbill,
17 or other publication any advertisement of any intercepting
18 device, the design of which renders it primarily useful for the
19 purpose of the surreptitious interception of a wire or oral
20 communication or of any intercepting device where such
21 advertisement promotes the use of such device for the purpose
22 of the surreptitious interception of a wire or oral com-
23 munication;

24 shall be guilty of a misdemeanor and shall be fined not more than
25 \$10,000.00 or imprisoned not more than 5 years, or both.

1 6. It shall not be unlawful under this act for:

2 a. A communication common carrier or an officer, agent or
3 employee of, or a person under contract with a communication
4 common carrier, in the usual course of the communication
5 common carrier's business; or

6 b. A person under contract with the United States, a state
7 or a political subdivision thereof, or an officer, agent, or
8 employee of a state or a political subdivision thereof;

9 to possess, sell, distribute, manufacture or assemble, or advertise
10 any intercepting device, while acting in furtherance of the appro-
11 priate activities of the United States, a state or a political sub-
12 division thereof or a communication common carrier.

1 7. Any intercepting device possessed, used, sent, distributed,
2 manufactured, or assembled in violation of this act is hereby
3 declared to be a nuisance and may be seized and forfeited to the
4 State.

1 8. The Attorney General, a county prosecutor or the chairman of
2 the State Commission of Investigation when authorized by a
3 majority of the members of that commission or a person designated
4 to act for such an official and to perform his duties in and during
5 his actual absence or disability may authorize, in writing, an
6 ex parte application to a judge designated to receive the same for an
7 order authorizing the interception of a wire or oral communication
8 by the investigative or law enforcement officers or agency having
9 responsibility for an investigation when such interception may pro-
10 vide evidence of the commission of the offense of murder, kid-
11 napping, gambling, robbery, bribery, extortion, loan sharking, deal-
12 ing in narcotic drugs, marijuana or other dangerous drugs, arson,
13 burglary, embezzlement, forgery, receiving stolen property, escape,

14 alteration of motor vehicle identification numbers or larceny
15 punishable by imprisonment for more than one year, or any con-
16 spiracy to commit any of the foregoing offenses or which may pro-
17 vide evidence aiding in the apprehension of the perpetrator of any
18 of the foregoing offenses.

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

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

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

9 c. A particular statement of the facts relied upon by the appli-
10 cant, including:

11 (1) The identity of the particular person, if known, committing
12 the offense and whose communications are to be intercepted;

13 (2) The details as to the particular offense that has been, is being,
14 or is about to be committed;

15 (3) The particular type of communication to be intercepted;

16 (4) The character and location of the particular wire communica-
17 tion facilities involved or the particular place where the oral com-
18 munication is to be intercepted;

19 (5) A statement of the period of time for which the interception
20 is required to be maintained; if the character of the investigation
21 is such that the authorization for interception should not auto-
22 matically terminate when the described type of communication has
23 been first obtained, a particular statement of facts establishing
24 probable cause to believe that additional communications of the
25 same type will occur thereafter;

26 (6) A particular statement of facts showing that other normal
27 investigative procedures with respect to the offense have been tried
28 and have failed or reasonably appear to be unlikely to succeed if
29 tried or to be too dangerous to employ;

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

34 e. A complete statement of the facts concerning all previous
35 applications, known to the individual authorizing and to the in-
36 dividual making the application, made to any court for authoriza-
37 tion to intercept a wire or oral communication involving any of the
38 same facilities or places specified in the application or involving

39 any person whose communication is to be intercepted, and the
40 action taken by the court on each such application; and

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

1 10. Upon consideration of an application, the judge may enter an
2 ex parte order, as requested or as modified, authorizing the inter-
3 ception of a wire or oral communication, if the court determines
4 on the basis of the facts submitted by the applicant that there is or
5 was probable cause for belief that:

6 a. The person whose communication is to be intercepted is en-
7 gaging or was engaged over a period of time as a part of a con-
8 tinuing criminal activity or is committing, has or had committed or
9 is about to commit an offense as provided in section 8 of this act;

10 b. Particular communications concerning such offense may be
11 obtained through such interception;

12 c. Normal investigative procedures with respect to such offense
13 have been tried and have failed or reasonably appear to be unlikely
14 to succeed if tried or to be too dangerous to employ;

15 d. The facilities from which, or the place where, the wire or oral
16 communications are to be intercepted, are or have been used, or are
17 about to be used, in connection with the commission of such offense,
18 or are leased to, listed in the name of, or commonly used by, such
19 individual; and

20 e. The investigative or law enforcement officers or agency to be
21 authorized to intercept the wire or oral communication are qualified
22 by training and experience to execute the interception sought.

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

6 If the facilities from which, or the place where, the wire or oral
7 communications are to be intercepted are being used, or are about
8 to be used, or are leased to, listed in the name of, or commonly used
9 by, a licensed physician, an attorney-at-law, or practicing clergy-
10 man, or is a place used primarily for habitation by a husband and
11 wife, no order shall be issued unless the court, in addition to the
12 matters provided in section 10 above, determines that there is a
13 special need to intercept wire or oral communications over such
14 facilities or in such places. No otherwise privileged wire or oral
15 communication intercepted in accordance with, or in violation of,
16 the provisions of this act, shall lose its privileged character.

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

3 a. The judge is authorized to issue the order;

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

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

9 d. A particular description of the type of the communication to
10 be intercepted and a statement of the particular offense to which
11 it relates;

12 e. The identity of the investigative or law enforcement officers
13 or agency to whom the authority to intercept a wire or oral com-
14 munication is given and the identity of whoever authorized the
15 application; and

16 f. The period of time during which such interception is author-
17 ized, including a statement as to whether or not the interception
18 shall automatically terminate when the described communication
19 has been first obtained.

20 No order entered under this section shall authorize the inter-
21 ception of any wire or oral communication for a period of time
22 in excess of that necessary under the circumstances. Every order
23 entered under this section shall require that such interception begin
24 and terminate as soon as practicable and be conducted in such a
25 manner as to minimize or eliminate the interception of such com-
26 munications not otherwise subject to interception under this act.
27 In no case shall an order entered under this section authorize the
28 interception of wire or oral communications for any period exceed-
29 ing 30 days. Extensions or renewals of such an order may be
30 granted for periods of not more than 30 days. No extension or
31 renewal shall be granted unless an application for it is made in
32 accordance with this section, and the court makes the findings
33 required by sections 10, 11 and this section.

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

1 13. Whenever, upon informal application by an authorized
2 applicant, a judge determines there are grounds upon which an
3 order could be issued pursuant to this act, and that an emergency
4 situation exists with respect to the investigation of conspiratorial

5 activities of organized crime, related to an offense designated in
6 section 8 of this act, dictating authorization for immediate inter-
7 ception of wire or oral communication before an application for
8 an order could with due diligence be submitted to him and acted
9 upon, the judge may grant verbal approval for such interception
10 without an order, conditioned upon the filing with him, within 48
11 hours thereafter, of an application for an order which, if granted,
12 shall recite the verbal approval and be retroactive to the time of
13 such verbal approval. Such interception shall immediately
14 terminate when the communication sought is obtained or when
15 the application for an order is denied. In the event no application
16 for an order is made, the content of any wire or oral communication
17 intercepted shall be treated as having been obtained in violation of
18 this act.

19 In the event no application is made or an application made
20 pursuant to this section is denied, the court shall require the wire,
21 tape or other recording of the intercepted communication to be
22 delivered to, and sealed by, the court and such evidence shall be
23 retained by the court in accordance with section 14 and the same
24 shall not be used or disclosed in any legal proceeding except in a
25 civil action brought by an aggrieved person pursuant to section 24
26 or as otherwise authorized by court order. Failure to effect delivery
27 of any such wire, tape or other recording shall be punishable as
28 contempt by the court directing such delivery. Evidence of verbal
29 authorization to intercept an oral or wire communication shall
30 be a defense to any charge against the investigating or law enforce-
31 ment officer for engaging in unlawful interception.

1 14. Any wire or oral communication intercepted in accordance
2 with this act shall, if practicable, be recorded by tape, wire or other
3 comparable method. The recording shall be done in such a way as
4 will protect it from editing or other alteration. Immediately upon
5 the expiration of the order or extensions or renewals thereof, the
6 tapes, wires or other recordings shall be transferred to the judge
7 issuing the order and sealed under his direction. Custody of the
8 tapes, wires or other recordings shall be maintained wherever the
9 court directs. They shall not be destroyed except upon an order of
10 such court and in any event shall be kept for 10 years. Duplicate
11 tapes, wires or other recordings may be made for disclosure or use
12 pursuant to subsection a of section 17 of this act. The presence of
13 the seal provided by this section, or a satisfactory explanation for
14 its absence, shall be a prerequisite for the disclosure of the contents
15 of any wire or oral communication, or evidence derived therefrom,
16 under subsection b of section 17 of this act.

1 15. Applications made and orders granted pursuant to this act
2 and supporting papers shall be sealed by the court and shall be
3 held in custody as the court shall direct and shall not be destroyed
4 except on order of the court and in any event shall be kept for 10
5 years. They may be disclosed only upon a showing of good cause
6 before a court of competent jurisdiction.

7 Any violation of the provisions of this section may be punished
8 as contempt of the issuing or denying court.

1 16. Within a reasonable time but not later than 90 days after the
2 termination of the period of the order or of extensions or renewals
3 thereof, or the date of the denial of an order applied for under
4 section 13, the issuing or denying judge shall cause to be served on
5 the person named in the order or application, and such other parties
6 to the intercepted communications as the judge may in his discre-
7 tion determine to be in the interest of justice, an inventory which
8 shall include :

9 a. Notice of the entry of the order or the application for an order
10 denied under section 13;

11 b. The date of the entry of the order or the denial of an order
12 applied for under section 13;

13 c. The period of authorized or disapproved interception; and

14 d. The fact that during the period wire or oral communications
15 were or were not intercepted.

16 The court, upon the filing of a motion, may in its discretion make
17 available to such person or his attorney for inspection such por-
18 tions of the intercepted communications, applications and orders as
19 the court determines to be in the interest of justice. On an ex parte
20 showing of good cause to the court the serving of the inventory
21 required by this section may be postponed.

1 17. a. Any investigative or law enforcement officer who, by any
2 means authorized by this act, has obtained knowledge of the con-
3 tents of any wire or oral communication, or evidence derived
4 therefrom, may disclose or use such contents or evidence to another
5 investigative or law enforcement officer to the extent that such
6 disclosure or use is appropriate to the proper performance of his
7 official duties.

8 b. Any person who, by any means authorized by this act, has
9 obtained any information concerning any wire or oral communica-
10 tion or evidence derived therefrom intercepted in accordance with
11 the provisions of this act, may disclose the contents of such com-
12 munication or derivative evidence while giving testimony under
13 oath or affirmation in any criminal proceeding in any court of this
14 or another State or of the United States or before any Federal or
15 State grand jury.

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

1 18. When an investigative or law enforcement officer, while en-
2 gaged in intercepting wire or oral communications in the manner
3 authorized herein, intercepts wire or oral communications relating
4 to offenses other than those specified in the order of authorization,
5 the contents thereof, and evidence derived therefrom, may be dis-
6 closed or used as provided in subsection a of section 17. Such
7 contents and any evidence derived therefrom may be used under
8 subsection b of section 17 when authorized or approved by a judge
9 of competent jurisdiction where such judge finds on subsequent
10 application that the contents were otherwise intercepted in accord-
11 ance with the provisions of this act. Such application shall be made
12 as soon as practicable.

1 19. Except as specifically authorized pursuant to this act any
2 person who uses or discloses the existence of an order authorizing
3 interception of a wire or oral communication or the contents of, or
4 information concerning, an intercepted wire or oral communication
5 or evidence derived therefrom, is guilty of a misdemeanor.

1 20. The contents of any wire or oral communication intercepted
2 in accordance with the provisions of this act, or evidence derived
3 therefrom, shall not be disclosed in any trial, hearing, or proceed-
4 ing before any court of this State unless not less than 10 days
5 before the trial, hearing, or proceeding the parties to the action
6 have been served with a copy of the order and accompanying
7 application under which the interception was authorized.

8 The service of inventory, order, and application required by this
9 section may be waived by the court where it finds that the service
10 is not practicable and that the parties will not be prejudiced by the
11 failure to make the service.

1 21. Any aggrieved person in any trial, hearing, or proceeding
2 in or before any court or other authority of this State may move
3 to suppress the contents of any intercepted wire or oral com-
4 munication, or evidence derived therefrom, on the grounds that:

- 5 a. The communication was unlawfully intercepted;
- 6 b. The order of authorization is insufficient on its face;
- 7 c. The interception was not made in conformity with the order
8 of authorization.

9 The motion shall be made at least 10 days before the trial, hear-
10 ing, or proceeding unless there was no opportunity to make the

11 motion or the moving party was not aware of the grounds for the
12 motion. The court, upon the filing of such motion by the aggrieved
13 person, may in his discretion make available to the aggrieved person
14 or his counsel for inspection such portions of the intercepted com-
15 munication, or evidence derived therefrom, as the court determines
16 to be in the interests of justice. If the motion is granted, the
17 contents of the intercepted wire or oral communication, or evidence
18 derived therefrom, shall not be received in evidence in the trial,
19 hearing or proceeding.

20 In addition to any other right to appeal, the State shall have the
21 right to appeal from an order granting a motion to suppress if the
22 official to whom the order authorizing the intercept was granted
23 shall certify to the court that the appeal is not taken for purposes
24 of delay. The appeal shall be taken within the time specified by
25 the Rules of Court and shall be diligently prosecuted.

1 22. Within 30 days after the expiration of an order or an exten-
2 sion or renewal thereof entered under this act or the denial of an
3 order confirming verbal approval of interception, the issuing or
4 denying judge shall make a report to the Administrative Director
5 of the courts stating that:

6 a. An order, extension or renewal was applied for;

7 b. The kind of order applied for;

8 c. The order was granted as applied for, was modified, or was
9 denied;

10 d. The period of the interceptions authorized by the order, and the
11 number and duration of any extensions or renewals of the order;

12 e. The offense specified in the order, or extension or renewal of
13 an order;

14 f. The identity of the person authorizing the application and
15 of the investigative or law enforcement officer and agency for whom
16 it was made; and

17 g. The character of the facilities from which or the place where
18 the communications were to be intercepted.

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

12 The Chief Justice of the Supreme Court shall annually report to
13 the Governor and the Legislature on such aspects of the operation
14 of this act as he deems appropriate including any recommendations
15 he may care to make as to legislative changes or improvements to
16 effectuate the purposes of this act and to assure and protect in-
17 dividual rights.

1 24. Any person whose wire or oral communication is intercepted,
2 disclosed or used in violation of this act shall have a civil cause of
3 action against any person who intercepts, discloses or uses or
4 procures any other person to intercept, disclose or use, such com-
5 munication; and shall be entitled to recover from any such person:

6 a. Actual damages, but not less than liquidated damages com-
7 puted at the rate of \$100.00 a day for each day of violation, or
8 \$1,000.00, whichever is higher;

9 b. Punitive damages; and

10 c. A reasonable attorney's fee and other litigation costs reason-
11 ably incurred.

12 25. A good faith reliance on a court order authorizing the inter-
13 ception shall constitute a complete defense to a civil or criminal
14 action brought under this act or to administrative proceedings
15 brought against a law enforcement officer.

1 26. If any section, subsection or portion or provision of any
2 section or sections of this act or the application thereof by or to
3 any person or circumstances is declared invalid, the remainder of
4 the section or sections or subsection of this act and the application
5 thereof by or to other persons or circumstances shall not be affected
6 thereby.

1 27. Section 2A:146-1 of the New Jersey Statutes is repealed.

1 28. This act shall take effect January 1, 1969, and remain in effect
2 until December 31, 1974.

STATEMENT

This bill is in substitution of Senate Bill No. 897 introduced by Senator Edwin Forsythe in June to implement Recommendation No. 7 of the Joint Legislative Committee to Study Crime and the System of Criminal Justice in New Jersey (see page 12 of the April 12, 1968 Report of the Joint Committee). A redraft of Senate Bill No. 897 was dictated by enactment by the Congress, on June 19, 1968, of Title III of the Omnibus Crime Control and Safe Streets Act of 1968 (P. L. 90-351) which contains precise limitations on the content of any State statute on wiretapping and electronic

surveillance some of which were injected into the Federal legislation after Senate Bill No. 897 had been prepared.

This bill is designed to meet the Federal requirements and to conform to the Federal act in terminology, style and format which will have obvious advantages in its future application and construction. The bill also incorporates, to a major extent, provisions of a draft of a model state statute prepared, subsequent to enactment of the Federal law, by Professor G. Robert Blakey, a member of the faculty of the Law School of Notre Dame University, and supplied to the Senate Committee on Law, Public Safety and Defense in connection with his testimony before that committee at a public hearing held September 16, 1968.

In preparation of this bill every effort has been made to provide a useful tool to combat organized crime and corruption but to permit its use only where normal, vigorous investigative methods fail or cannot safely be used. It is also designed to protect individual rights and liberties by prescribing rigid controls of use of wire taps or electronic surveillance under court permission and supervision. In one respect the bill provides more strict control than required of Federal law enforcement agencies in that it prohibits any wire-tapping or electronic surveillance even in emergent situations without prior court approval.

a st.

them, and I've noted that recently some legislation has been presented before this Legislature for enactment.

And in the main they are a witness immunity law, my office has prepared a wire tapping legislation, which we think conforms in the case of Katz against the United States and to some extent is predicated upon what was indicated by the President's Crime Report Commission.

Q Does it include eavesdropping as well as wire tapping?

A Yes. I used wire tapping, actually I should say electronic eavesdropping.

Q And you recommend such a bill?

A I recommend that there be a dialogue with respect to such a bill.

Q What does that mean?

A What that means is that there be people get up and speak on both sides of the question, that is what I understand dialogue to be.

Q Has the Governor taken a position on that bill?

A I don't know whether the Governor has taken a position on it or not.

Q What I'm trying to get at, you are giving us a list of your plans to combat organized crime.

A Yes.

Q I'm trying to find out if among your plans there be a recommendation that there be electronic eavesdropping.

Attached pages from:

Source: N.J. Legislature. Joint Committee to Study Crime + Criminal Justice System in N.J. Public Hearing [1968]

A This is one of the things which I have been wrestling with for quite a period of time, that is with respect to electronic eavesdropping.

I wrote an article on the computer in the invasion of privacy, which preceded an article that you wrote in the Council ^{of} States publication, and I think some of my views are expressed there. I do believe that there is a lot to be said about invasion of privacy, and I think it becomes very important that we weigh all of these things in the balances, and it is very difficult for me to make up my mind while on one side that I recognize that there is organized crime and I recognize that there are people who say you cannot get to the higher-ups unless you have some wire tapping, and I recognize on the other side that there has been a great deal of wire tapping by many agencies, certain agencies in the country for many years, and not withstanding that, there has not been too much conviction with the so-called real higher-ups.

Q That's due to legal problems which have only recently begun to see daylight.

A Well, I don't know. If you read Katz against the United States very carefully, I think you will see the manner in which you can wire tap is so circumscribed that it might not be so all encompassing as you might think. You

have still got to be able to say to the court that you've engaged in all other kinds of surveillance and investigative methods first, and that you've been unable to do anything with respect thereto, and you still have to indicate to the court the nature of the conversation that you expect to seize.

Q Is there any doubt in your mind that in order to get the evidence that you must get to convict the higher-ups, the right to eavesdrop is essential?

A Yes, there is some doubt in my mind.

Q Have you been getting that evidence in the past several years without the right to eavesdrop?

A That's a loaded question. We are not allowed to wire tap in New Jersey by law. So, of course, we haven't had that evidence.

Q That's what I'm getting at.

A It's true that we haven't gotten to the higher-ups, but then I don't know that the F.B.I. has been so terribly successful in these many years with respect to these 24 families in the United States, and they've been able to wire tap for many, many years.

Q General, I wouldn't agree with that on any aspect of the statement about the bureau, whether they have the right to wire tap, the right to use it or have or have not been effective.

A I don't say whether they have the right to use it, but I think the history will recall to you that attorney generals have issued directives from World War II on giving the F.B.I. the right to wire tap in certain cases period. Section 605 was interpreted by the attorney general as not permitting them to wire tap and pass on the information to other people. But this was also interpreted by the Attorney General of the United States as indicating that it could be used within the department.

Q General, you are not really saying that you think the federal agencies have had a clear road to eavesdropping in the past few years?

A No, I wouldn't say a clear road. Again, that's a very broad use of language. One would have to understand what you mean by a clear road. A clear road could also mean that they not have to go to a court in order to get a warrant in a certain situation. This would mean the indiscriminate wire tapping and electronic eavesdropping, which I, very frankly would oppose. If this were your idea of a clear road, I would be opposed to it.

Q I don't have a clear idea of a road of that nature. I think both of us would share the view that any such system would have to be under court control, and very tight control.

The question is, however,

assuming you do have a court controlled system which is tightly controlled, do you recommend electronic eavesdropping as a useful and important tool to fight organized crime in New Jersey today?

A I say this would be a useful tool. At the present moment I am not sure whether in the balance -- this is myself speaking personally -- whether in a balance it would be an effective tool even to the extent of clearing up organized crime problems. I note that, as a matter of fact, in the report which emanated from the Oyster Bay conference, that there was an indication that these so-called higher-ups did not use telephones, that is directly themselves, did not become engaged in the criminal activities themselves, but saw to it that others lower down in the line did. Now, I am not sure that if that is the case, and I accept it as such from the report of those that were present, that electronic eavesdropping or wire tapping would assist you in getting evidence to these particular people. But let me say this, because I think there is something first and foremost which has to be done which has not been done in these United States, and that is the professionalization of police forces, and you have to have that first and foremost before you start talking about a tool such as this.

Q Well, organized crime is a current problem in New Jersey,

is it not?

A Yes.

Q As you say, there are seven families operating here now. Could one venture safely that a goal such as professionalization of police, however important, is five years away, four years away; and by making such a decision and judgement, don't you leave the field sort of abdicated during the interim of upgrading and professionalization?

A Again you are ^{getting} broad and pervasive. It does not leave the field abdicated, because we work on this problem every day using hard and very good investigative law enforcement methods even without the use of wire tapping.

Q Shouldn't both roads be pursued?

A Well, that's the question you're asking me, and we're getting back to the same thing all over again. If this Legislature and the majority of the people are of the opinion that the kind of a wire tapping bill which my office has prepared and which I believe to be in the conformity with constitutional standards, and that's my job as attorney general, this Legislature passes such a bill, this instrument will be used and used in accordance with the law and the constitution. Now, you asked me my candid views, and these are my private views. It is just my feeling that there is this question of invasion of privacy involved. No one, as far as

I'm concerned, I respectfully disagree with you, has been able to show that through wire tapping or electronic eavesdropping they will be able to put the 24 families out of existence. New York used wire tapping and used the evidence in wire tapping up until the Bergen case, and this was good evidence in the State of New York, but New York has as big, if not a bigger organized crime problem than the State of New Jersey. So, this is no cure-all, this is a tool -- and the question, and I say at least in my personal mind is, and this is only a personal observation, do we do society more good or more harm with this kind of a tool? Now, this is the dialogue about which I'm speaking. I think the people of the state in a situation such as this have a right to speak their mind. The Legislature will then determine as representatives whether they feel it is more useful to have this and not be concerned with the invasion of privacy, and as I say, if they pass such legislation, I can assure you that it will be used to its fullest extent. This is my personal view, and this is not the view of the Colonel of the State Police, the superintendent, he favors it. His view may be better than mine, but you asked me for my view, I'm under oath and I'm giving you my honest view.

Q Now, let's come back --

A If I may, you asked me what else I thought was necessary.

A Sure. They can get a witness beyond county lines.

Q For investigative purposes?

A Sure, of course. But the investigation starts before the Grand Jury, and when you have an investigative unit --

MR. LUMBARD: May I only say that the Chairman has said to me that it is lunch time?

SEN. FORSYTHE: It is now 12:40, we will take a full hour, return at 1:40. We will adjourn for lunch.

(At which time the hearing adjourned until 1:40 P.M. for lunch.)

SEN. FORSYTHE: We will call the hearing back into order, and, Mr. Lumbard, if you wish to proceed?

CONTINUATION BY MR. LUMBARD:

Q General, when may the Legislature expect the eavesdropping bill that you said you had drafted?

A Well, if I may explain this way -- you will recall I indicated to you that I thought that a bill of this type was of such public importance that I felt that there should be what I termed a dialogue, that the public be aware of this kind of a measure and that the representatives of the public have some idea as to what the people might think with respect to this on both sides. In line with that, the Governor of our State appointed an execu-

tive commission known as the Council against Crime. This was along the lines of some thirty other states, and in accordance with the President's crime commission report with its primary import to obtain funds when possible from the so-called Safety in the Streets Act, which we hope Congress will enact sometime in this late spring now. Just the other day, last Thursday I believe it was, we took the draft of the bill which my office had prepared, from a period of time emanating from after Katz until February, and as a matter of fact, I've had conversations with respect to this bill with Elliott Richardson of Massachusetts and Herbert De Simeone of Rhode Island and James Irwin of Maine, all of whom are interested in pretty much the same thing. And, after collating information with them and having some ideas with respect to what should be contained in such a bill, we put ours together and we presented it to the Council Against Crime last Thursday. In addition to that, the Council was also visited by Mr. Andreoli, who I believe you know, who is a senior D. A. in Mr. Hogan's office in New York, and he explained to them the manner in which wire tapping could be used and what he thought to be the effectiveness of -- when I say wire tapping, I mean electronic surveillance too. What he thought to be the use of it and so on.

In addition to that, there

was a demonstration given by the telephone company, and then there was a dissertation on the law by my first assistant, Mr. Hoffman, who sits next to me, and who was in charge of criminal investigations up until this past January when my first assistant became a Superior Court judge and Mr. Hoffman succeeded to his position, at which time Mr. Hayden, who sits next to Mr. Hoffman became the criminal investigation director. Mr. Hayden being the senior man in that position prior thereto. So now it's before this Council Against Crime, and I hope to get a recommendation from the particular committee in that council to which it was given, which is known as Organized Crime Committee, and then it can be taken up with the entire council, and then a recommendation from them will emanate to the Legislature.

Q When?

A Well, it's all a question of time. I don't know. I can't answer that. As a matter of fact, I may point out to you that this council now was created on January 4. We've had meetings on 2/9/68, 3/8/68, 3/11/68, 3/19/68, 3/21/68 and 3/22/68.

Q All on eavesdropping?

A No, no. These are matters on witness immunity, on everyday crime, rioting -- as a matter of fact, there are six committees which have been established. These committees

are planning committees, training and standards committees, committee on correction, a committee on organized crime, a committee on local crime and civil disorders, and a committee on science and technology. It is my function to try to channel the workloads so that we can move as quickly as possible and not have one committee backed-up. This I feel, this wire tapping I feel, could be more pertinent to the organized crime area and that's the reason why I funnelled it into the organized crime section. That organized crime section happens to be headed by a Mr. Thompkins, who was a former U. S. attorney and a former assistant United States Attorney General, and I'm sure that he will act quite promptly with respect to this matter which is before me. But, I'm not in a position of giving you a timetable with respect to when Mr. Thompkins and his committee will work on this. Now, of course, in the meantime this does not prevent the Legislature or any member thereof from drafting its own bill.

Q All I did was start out with a simple question, "When might the Legislature expect your bill?"

A I gave a simple answer.

Q The way you've described this group, it goes far beyond the scope of a mere recipient agency for, federal money, under the Safe Streets and Crime Control Act if and when it comes. Do you plan to use this Council

of
in effect, for the task/reorganization of the state level
law enforcement structure?

A Yes. You had asked me a question before and I hadn't finished the answer. Unfortunately in a dialogue of this kind, a question leads to another question and another question, and we never get back to the original question which from you to me was, "What were your plans with respect to dealing with crime in the State?" And I had indicated to you certain things, the first thing was, I think, the question of manpower, and I don't think we can overlook that. That is first and foremost, the problem here in this State, even if we have wire tapping, it's my understanding, as Mr. Andreoli's, if you desire to have a twenty-four tapping, you'd need eight to ten men for that one tap. Now, this means manpower. I appreciate the reason why, but, I wasn't able to give you our entire workload, but, if I can give you my entire workload, you would see that whatever available manpower we have is more than utilized at the present moment, so that even if the Legislature should pass an electronic eavesdropping or wire tapping piece of legislation, we would still be in need of the manpower to man the tools.

Q General, I think we are drifting off here. I agree with you, but the question I have pending is the Council, as you have described it, a first or final^{step} looking toward a

and I understand that there is legislation.

Q Your problem is to get evidence?

A Yes. We don't know who has borrowed from whom. We will have allegations, but they are not provable in court.

Q Well, let's talk about two specific ways of getting evidence that might assist them. One would be immunity, is that correct?

A Yes.

Q And the other would be electronic eavesdropping, is that correct?

A Yes.

Q Do you have a recommendation or an opinion regarding either?

A Both.

Q What is it?

A I'm for eavesdropping, I'm for electronic devices and I'm for witness immunity.

Q Could you spell out to the Committee why you think New Jersey should have an electronic eavesdropping statute?

A Well, I want to qualify this. I am all for the rights of individuals, the rights of the people to be protected, Eavesdropping devices would have to be

used with the judicial restraints.

I think that because of the times and the trend and the complexities of our investigations, we have to have these devices either for investigative purposes or evidential purposes, and even if it is not evidential, it is at least investigative, and again I'm concerned with the rights of individuals, and I think there should be the proper restraints and restrictions on this. But it is an absolute necessity for us to function, because practically everything that is done now in terms of interstate, intrastate, is by wires or communications, and we have to be as tricky as the people that are tricking us. That's the only way I can explain it to you.

Q Would it be fair to say, Colonel, that in your opinion it is absolutely essential to have electronic eavesdropping to obtain evidence if there is to be any pretense of the successful fight against organized crime?

A I would have to say yes. It is a necessity right now. Whether it would be an absolute necessity, I don't know, but I know that it is a necessity, and I'm speaking for my own organization and the problems that we do have.

Q What kind of laboratory services do you provide to the local police departments?

A Well, the Attorney General told you some of the

services that we have, and we provide all of the services to all of the police departments that want to use them. Some of the major cities may use a commercial service. We provide all of the services, technical, toxicological and other services that would be required.

Q I understand that Newark and others, for example, hire private laboratories and persons who are not under the discipline of civil service or government employment who are entrusted with very valuable evidence. Do you think that's a good practice?

A I don't know if it's a good practice or not, but I surely wouldn't recommend it.

Q Why is it that the State Police laboratory, which is open to all comers, is not utilized by these local communities for something that I think we could agree is very significant, and why do the taxpayers go out and buy the services of these other laboratories at an extra cost?

A Well, the answer, of course, is that that we are taxed right up to our ears with a workload, in terms of an examination by the municipalities. One of the biggest problems that we encounter, and I don't know whether it's been said before or not, we have six chemists, and about 40% of their time is spent in court.

area where we had been extremely successful apparently is no longer open to us. This was the summer block recreation program which the Newark Police initiated and was imitated by other departments in the United States. The Federal government this year, in spite of all our entreaties, has not seen fit to finance this program because they lack funds.

In the field of organized crime, Newark is not too different from many large urban cities in the United States. As a matter of fact, it is my opinion that it is cleaner than most cities.

We have no organized prostitution whatsoever. We have no organized card games and dice games anywhere in the city. However we do have lottery operations and bookmaking. Bookmaking operations are extremely difficult to combat. Most bookmaking operations in Newark occur in apartment houses and ordinary residences. All business is done by telephones. Inasmuch as electronic bugging of telephones is illegal, we are unable to fight

this evil with much success. We have been more successful with lottery operations. The major difficulty in this form of gambling is that it is necessary to obtain warrants to search and arrest the runners and the pickup men. Our Intelligence indicates that there are no banks for lottery operations in the City of Newark and that because of the constant surveillance, banks have been moved to suburban towns and other counties.

Of the shylocking operations, we know that this is current and perhaps extensive; and again, because we have no complainants, we are unable to fight this type of illegal activity successfully.

It is my opinion that the majority of Americans gamble in some form or other. Therefore, gambling is not offensive to our citizens and we do not get the assistance or information that we need to stamp out organized crime. Make no mistake--organized crime is dangerous because the illegal cash that the professional gambler receives,

influences politicians, thereby creating a danger to democracy. In 1963 I addressed the Essex County Grand Jury Association and I recommended that gambling in the form of lottery and off-track gambling be legalized. I do not believe that all types of gambling be legalized, especially that type of gambling which makes it possible for the gambling fraternity to handle or manipulate gambling paraphernalia. In the legalization of gambling, it deprives the racketeer of much-needed money with which he corrupts politicians and police departments. It also frees for the fight against violence in the streets, much needed manpower in the police department.

Last, but not least, it is a source of income for the State Government. There is a need for greater centralization of all agencies to combat organized crime. There is a need for information to flow back and forth between local police departments and federal agencies. At the present time, this

is a one-way street by pressure on local police departments to filter information to the federal agencies. There is never any information coming down from federal agencies.

There is a need to, as has been stated over and over again, for law enforcement agencies to enact a Witness Immunity Law. We in law enforcement cannot understand why this bill has not been moved at our request years ago.

There is a need to have legislation, under Court jurisdiction, for wire-tapping and permission for electronic bugging. We in law enforcement plead for these tools to fight this menace.

Bad however as is the spectre of organized crime, it is not as alarming to us in law enforcement as the violence and terror in the streets of our cities. Much of it is due today in the State of New Jersey because of the prevalence of narcotic addicts. Newark statistics indicate that 75% of arrests for

armed robbery are narcotic addicts--75% of burglars arrested are narcotic addicts--99% of the prostitutes arrested are narcotic addicts. There are over 2000 registered addicts in our city of Newark. We estimate that there are probably 4000 addicts in our city. Newark ranks fifth nationally in the number of narcotic arrests.

Over 50% of the crime that is committed today in the City of Newark is committed by these unfortunate addicts. There was a time when the addict came from the lower socio economic strata. Today the addict comes from every strata of society and not only from the core centers of our cities but in every town and hamlet in New Jersey. We in law enforcement have repeatedly warned members of the State Legislature and the executive department of the alarming increase of addiction. We predicted years ago that what is happening today in New Jersey was certain to take place and unfortunately, this is true. The narcotic addict today is not

the passive, submissive, sick individual of eight or ten years ago. Today he is belligerent, violent and commits every crime possible to obtain money to satiate his craving. Unfortunately again, it is apparent that well-meaning judges do not understand this problem. They feel sorry for the addict and repeatedly give him probation or the benefit of the doubt.

Our Narcotic Bureau took a survey of the sentencing by judges in Essex County of all cases of sale or possession of narcotics. The chart which I have here shows that Essex County judges gave suspended sentences of three of them, gave probation to 137 and gave prison terms to 157. These were all Newark cases for 1967 that were heard by Essex County judges."

I have the charts here but I prefer not to give them out because I list the names of judges and I don't think this is proper. If you like, I will cut the names off of the judges and give you the charts.

MR. LUMBARD: Could you do that, please?

DIRECTOR SPINA: Yes, sir.

"Narcotics, contrary to what is heard around the state, is only a minor problem in our high schools with a few students experimenting with marijuana. All arrests that have been made of these students indicates that literature which they read gave them the impression that marijuana is not dangerous. I, as one of the founders of the New Jersey Narcotic Officers Enforcement Association, had been interested along with the members of the Association, for the prevention of addiction in our state. We have repeatedly recommended that there should be some course of education by specially qualified school teachers to give instructions to the youngsters in our schools about this problem of narcotic addiction. Unfortunately, up to the present time, the New Jersey Board of Education has not successfully produced a regular manual and guide for these teachers. We

recommend that this be done as expeditiously as possible."

Incidentally, I might say we met with them on at least three occasions in the past three years. We haven't received the kind of results ~~that~~ we think should have been given.

MR. LUMBARD: What is the reason for their resistance?

DIRECTOR SPINA: There isn't a resistance. This is the bureaucratic frustration that I always experience in State, County, and in municipal courts and federal court. I think that there has not been unanimity of opinion between the members of the Board of Education. They did set up a manual, but I don't think that the manual is acceptable to everybody. I am also a member of the New Jersey State Narcotics Advisory Council and we have discussed this, too, with the State Board of Education. But, again, they have not produced a suitable manual. They have set one up, but nobody seems to

agree that it's a good one. And I think that time is of the essence and it is something that should be done.

"The Newark Police Department has one of the finest Narcotic Squads in the United States. They are a dedicated group of men, they work above and beyond their tours of duty and have made increasing arrests every year.

In summation of the narcotic problem, it is the opinion of almost all law enforcement personnel involved in narcotic crimes, that there is much needed legislation in this field. It is our opinion, and a strong one, that there must be mandatory imprisonment of any pusher, whether he is an addict or not, to go to jail for treatment and rehabilitation for at least three years. There is an urgent need for a program for treatment of addicts and this under civil commitment by the state government. The present program is a flat failure. The legislature must be cautioned that millions of dollars must be

spent for new security buildings to treat these addicts. We in law enforcement insist that this be done as expeditiously as possible to save innocent sons and daughters of our citizens from this unfortunate course and to save thousands of prospective victims of possible criminal attacks.

We find that in juvenile problems, Newark is in a very sorry situation. Newark is in the throes of a population explosion. We have thousands of young people under the age of 15. The situation in the school system is so acute that there is a need for security officers to keep intruders out and to help maintain discipline within the schools. Because of the dangers in the school buildings, large numbers of qualified teachers have resigned to work in suburban schools. This helps to create an educational crisis."

I might add these teachers that we do have in the school system are so busy trying to maintain discipline that they are unable to teach.

"Over 75% of the young people who are arrested come from broken homes. We in law enforcement have noted a delinquency pattern which repeats itself over and over again. However, because of the shortage, guidance counsellors, psychologists, psychiatrists, etc., very little is being done in this area.

The typical delinquency pattern starts with cutting classes, chronic truancy, defiance of school authorities, vandalism, larceny of small objects, mass larceny of bicycles, larceny from automobiles, larceny of automobiles and then into various crimes including narcotic addiction."

This is truly over and over the pattern, gentlemen.

"We in Newark Police Department, because of the large number of young people who are becoming involved in crime, are extremely fearful of what may occur in the next decade. Ironically, three years ago, I had introduced before the City Commission, an ordinance to license and regulate and to give instruction for safety purposes of young people in re-

gards to bicycles. The City Council refused to pass this ordinance.

Another problem in relation to the delinquents is the large number of young people who repeatedly become involved in crime and are never sent away to an institution for treatment. The failure of the courts to send these young people to an institution makes justice a hollow mockery, fails to deter the young delinquent and fails to deter other possible delinquents. I have in my possession, many names of young people who have come before the juvenile courts for possible sentencing. Sometimes as many as seven to nine different charges on different dates. These have never been sent away for treatment. It isn't the fault of our juvenile judges. The fault lies with the fact that there is no room in these institutions for these children to be sent away for treatment. We have a dire need for the construction of more institutions and we also have a need for more probation officers to

supervise smaller numbers of these children."

I have names and records of young people who have been involved in crimes-- as many as 40 here and if you would like the list I will give it to you--indicating that at no time in the courts in four or five years have these young people been sent away to an institution. And some of these crimes are fairly serious, including rape, et cetera.

We have bad situations in our city. For example, at Broad and Market for a long time we had pursesnatching and larceny from persons and pocketbooks and we would arrest these young people, bring them to the juvenile courts--there is one here in particular, seven times on seven different occasions arrested for pocketbook snatching at Broad and Market and he is still out on probation. And people complain to us.

"There are many areas in which the State Legislature can assist law enforcement in New Jersey. There is a dire need for a

'watchdog' legislative committee for the Senate and the Assembly to push through needed legislation. I have already mentioned legislation to assist in recruitment, also legislation for 'witness immunity law' and for the legalization of wiretapping under proper judicial control."

MR. LUMBARD: When you say wiretapping, do you really mean electronic eavesdropping which embraces both wiretapping and eavesdropping?

DIRECTOR SPINA: Exactly.

"New Jersey has been negligent in enacting clear legislation concerning the specific powers under which law enforcement personnel can make arrests as stated in State v. Smith some years ago. In this area of law enforcement, there is a need for specific procedures for 'Stop and Frisk' as laid down by the American Law Institute and a modified uniform arrest law. Because of the unbelievable violence used in criminal acts, it is the consensus of opinion by people in law enforce-

ment that there should be a mandatory jail sentence where weapons or force is used.

There is a need for more courts and more judges and more assistant prosecutors to speed up justice. One of the failings for the administration of justice are the long delays. These long delays are detrimental to the prosecution because memories are short and witnesses are prone to forget for many reasons. As stated repeatedly by J. Edgar Hoover, Director of the F.B.I., 'Justice is best served when it is swift and sure.'

We in law enforcement sincerely deplore the trend of many courts to accentuate the rights of the individual. We believe that society too has rights--the right to be secure in their homes, and secure on the streets against rape, robbery and murder. This new cult, the worship of the right of the individual, against the rights of society, do not make for justice. We deplore, too, the fact that no longer do courts serve

as a search for the truth as stated by Blackstone.

Today it is a search for a legal error with the result that many hardened criminals walk our city streets without any deterrent and in search of more innocent victims. The criminal today is indeed living in a golden age and crime does pay.

One of the most important deficiencies and problems that face our cities and especially Newark, is the lack of radio frequencies. For example, in the City of Newark, we have only one frequency."

I want to explain that, what I mean by one frequency. We do have two, but we can't use the other one, as I will explain later on.

"I have tried desperately since I became the Police Director to get other frequencies. But unfortunately, have only been able to obtain one other frequency, which is impossible for Newark to use because it is too far away on the spectrum. The F.C.C.

and with the State Police in intelligence and in enforcement. I would think we could use some legislation in this particular area, wiretapping, as the Senator mentioned. For instance, there is the use of water soluble paper that we have come into in a number of raids. I think that the use of this in a gambling operation should be made a misdemeanor. We are finding it very difficult to get the evidence once we get in.

ASSEMBLYMAN DICKEY: Would you explain water soluble paper?

CHIEF MELLEBY: Yes. I have a sample with me if you would like to see it. In all raids that we have encountered we have encountered barricaded doors. By the time we take the door off with a sledge hammer the papers that the bets have been written on are bathed in a bucket of water and it just dissolves. The paper dissolves.

I will demonstrate it if you want to put it in water.

MR. LUMBARD: Go ahead.

(Witness demonstrates.)

CHIEF MELLEBY: There. It's going.

This is one of our biggest problems in the gambling area. I would think that and the distribution and use of telephone equipment and lines in gambling operations should be a misdemeanor and I think there should be a mandatory jail sentence on conviction for a gambling offense.

THE CHAIRMAN: Any other comments?

CHIEF MELLEBY: No, sir.

MR. LUMBARD: Thank you very much.

THE CHAIRMAN: Thank you very much.

(Witness excused.)

THE CHAIRMAN: Senator, would you identify yourself for the record?

DIRECTOR KEEGAN: For the record, my name is Joseph M. Keegan. I am Director of the New Jersey Division of Alcoholic Beverage Control and of the Games of Amusement Chance Commission with its counsel of the parts statutorily given to my office.

County. In addition, it would seem that the assistance of the Federal Government in this area would be needed and appropriate.

I have several recommendations that I wish to offer at this time for the Committee. I submit that legislation is needed so that the Prosecutor can obtain an eavesdropping order from the court and thereby attempt to gather evidence which, particularly in the area of organized crime, might otherwise be made unavailable. I believe the Constitution and the most recent decisions of the Supreme Court of the United States permit such an eavesdropping statute to be enacted.

I think, also, that a central corps of undercover men under the supervision of the Attorney General of New Jersey should be created for assignment to a given prosecutor upon request. Anyone who has ever been involved with law enforcement recognizes the value of an undercover man. The limitations on personnel in the Prosecutor's Office makes it impractical to utilize any

the top people and puts them in jail for a substantial period.

MR. LORDI: I think that the job can be done by the present structure of law enforcement. I think it could be done if you give them the manpower and you give them the tools. I spent a great deal of time in an attempt to point out the areas where the prosecutor is involved and how he utilize his manpower and the time that they have to give to their contacts, and their energy. I say this: If I were given a squad with at least ten investigators and detectives with about four or five assistant prosecutors, if I were given surveillance equipment and wiretapping, if I were given immunity statutes, if I were given a special Grand Jury, I think the job could be done. But I think we have to face it today and not tomorrow.

As I said before, we had the benefit of the grand jury investigation

about eight or nine years

ago.

Everyone is trying to do a job in this area.

MR. LUMBARD: I gather that you and I, at least, would agree that there is a problem of organized crime current today in your county and in Northern New Jersey?

MR. LORDI: Well, we would have to be very naive if we said there wasn't. Of course, there is.

MR. LUMBARD: The question is, really, what do we do about it?

MR. LORDI: What we do about it is see to it that we reinforce our system of law enforcement and enable them to do the job by giving them the manpower and giving them the tools. Once we have done this, I think we can accomplish something in the area of organized crime.

Other areas of crime represent an entirely different situation, such as the increase in the number of breakings and enterings

and similar crimes you have been hearing about in the past several days. But when you talk in terms of organized crime I think the job can be done. I think at this time it can be done with the Prosecutor's Office, with the assistance of the Attorney General, and the State Police. But I think the Legislature has to recognize that they have to give us the manpower, they have to give us the tools, and I don't believe I've heard of any prosecutor or any of the chiefs of police and directors say that they did not need the tools and the manpower.

MR. LUMBARD: Everybody says that they need more.

MR. LORDI: It's obvious that they do. But if we are limiting our remarks for the moment to organized crime, definitely you do. How can you penetrate that wall of secrecy that organized crime works behind unless you have the tools to get beyond it?

They're not going to carry on their unlawful activities in the presence of law officials. It requires a great deal of surveillance to make one arrest.

MR. LUMBARD: Doesn't it require even a whole new intelligence concept that isn't now effectively operating around here?

MR. LORDI: Well, I think in the State of New Jersey there is a greater awareness of organized crime, more so than fifteen or twenty years ago. You say a new concept. I don't think that it's a new concept as much as it's coordination and cooperation with/^{exchange of}intelligence. I have an intelligence squad within the office in the area of organized crime. We have developed it. We have a lot of names, we have a lot of places, we have a history of these individuals. The problem is that we don't have the time, we don't have the tools, we don't have the manpower to go out after them.

I think they'll tell you, they're not operating in Bergen County. I can tell you that I know where they go, but I rather not do that in public, unless I'm charged.

MR. LUMBARD: You mean they're living in your County and operating elsewhere?

THE WITNESS: They're operating elsewhere. They play golf in my County.

MR. LUMBARD: From your experience, which I gather has been extensive do you think it would be advisable or useful to you and to other law enforcement officials for the Legislature to pass a statute authorizing electronic surveillance under strict court standards?

THE WITNESS: Yes, sir, I definitely do.

MR. LUMBARD: Could you spell it out a little bit?

THE WITNESS: I'm opposed to it and it is so repugnant to me that anybody should be listening on my phone, so I'm against this evasion of privacy on anybody in the whole world, but I must say, wire-tapping and eavesdropping under proper supervision

and control, I don't say that every Tom, Dick and Harry that goes to the Court and files a piece of paper and wants to tape his phone should get it, I'm saying, you can make it strict, so that only the Assignment Judge of the County could be permitted to authorize a tap, after an affidavit has been presented, just as in the case of a search, and it can only be obtained by the Prosecutor of the County, or you could name any other individual, although since the Winne case may the Prosecutor the chief law enforcement officer, I think he would have that responsibility too. I think that would be helpful.

Other people are tapping our phones. It seems ridiculous. We can't do anything about it. You have to fight fire with fire in this business.

I hate to see anything like this invade anybody's privacy, and anything that can be done by the Legislature to put the safeguards around that kind of a law, I would be completely in favor of.

MR. LUMBARD: Have you had your office phone tapped or local police tapped by organized crime?

THE WITNESS: All I can tell you, in more than several cases when we prepared to make raids and we got there, the phones were torn off the

walls and there was nobody there. So someone must have given some information somewhere, and we made it a practice that only certain individuals in the office are given the information, and I don't know how that information could have gotten out.

I trust the people I give this information to with my life, one of them being Captain Kirkerk. When we got there, they weren't there. So somebody who knew something -- and on Judgment Day maybe I'll find out who told or who tapped -- to this day, I don't know. So I have a very strong suspicion that this goes on, and I have other reasons that I will be glad to discuss with you in private, on that basis, too.

MR. LUMBARD: Do you think it will be useful in fighting organized crime or the narcotics traffic or perhaps some other instance as well, or the Legislature to pass a witness immunity Statute?

THE WITNESS: Yes, I do.

MR. LUMBARD: Spell that out, please.

THE WITNESS: It makes it very difficult, because you know a witness will give you information, providing the witness isn't indicted, and there is no way I can say to the witness -- well, there is a way, it's been done, but they have to

MR. BERCIK: Yes, sir.

MR. SIRIGNANO: May I elaborate? I am sure the Commission will join with me. I have had law experience, law enforcement experience since 1939, First Assistant District Attorney of Tom Dewey and then Frank Hogan and since 1954 with this Commission, and Commissioner Kaitz has a similar background in law enforcement, and we are in agreement with all people who are experienced law enforcers that there is no more effective tool in the proper case than the eavesdropping technique.

MR. KAITZ: I join in that.

MR. LUMBARD: Now, the second proposal that is presently before the legislature concerns a Witness Immunity Statute. Would your Commission have any views in that regard?

MR. SIRIGNANO: We are fortunate in this respect: We are one of the few agencies that has any relation to Jersey that has the power to grant immunity. We got that power in 1955 through the passage of law by the States of New York and New Jersey and we have used it very effectively. There are many times with the investigation of people who are on the waterfront as to whether they should remain there or not, that their associates may have been acquainted with an illegal enterprise, brought to court but because of lack of

evidence they have been released. Now, once that case is disposed of we use these people as witnesses by granting them immunity and get the testimony about the people who are on the waterfront who should not be there.

MR. LUMBARD: In other words, you have a peculiar immunity statute confined only to your Commission?

MR. SIRIGNANO: Yes; confined to matters that are within the jurisdiction of the Compact.

MR. LUMBARD: Now, since you are perhaps the only one that I am aware of that has this to use in the State of New Jersey, can you dwell a minute, therefore, and particularize for us how it has been used and what use and what effective use it is?

MR. SIRIGNANO: Yes. In one connection we took the statute and had it tested right to the Supreme Court of the United States. Coincidentally, however, that test came in connection with a New Jersey investigation. We were investigating at that time whether the Murphy brothers of Hoboken were instrumental in backing up and starting an unlawful course of strikes against the American Export Lines. In that particular case the American Export Lines, being desirous of beefing up its guard and its protection against the loss of cargo by pilferage or theft, hired an ex-police officer who had also served with the Commission as a chief security

officer, and Willy Murphy and his brother, Frank Murphy, led a strike against the American Export Lines until they said they would dismiss the security officer.

In that case we questioned Willy Murphy and he refused to answer on the grounds that it would incriminate him. Now, at first he refused to answer. We took him into court and held him in contempt and he was fined and sent to prison and then he came back and he claimed his privilege of not answering. We granted him immunity. He still refused to answer. We put him in jail and brought him back again and then he claimed a federal privilege on the basis that if he answered our questions in the state proceeding he might be involved in federal crimes, and this case went up to the Supreme Court of the United States and it was in that case that the Supreme Court established that immunity given by a state would also carry with it immunity as to answers in a federal proceeding and vice versa.

MR. LUMBARD: As to matters revealed in the answer, not as to general testimony?

MR. SIRIGNANO: We argued before the court that if independent evidence would be developed and was not in any way linked to the answer, he would be permitted to be prosecuted.

MR. LUMBARD: And if he does answer falsely, he is

subject to prosecution for perjury?

MR. SIRIGNANO: That is correct.

MR. LUMBARD: And if he doesn't answer at all, he is subject to contempt.

MR. SIRIGNANO: And to be incarcerated until he answers.

MR. BERCIK: We had another one.

MR. SIRIGNANO: In another case we had an ex-police officer of the City of New York who, because of his associations with certain underworld figures that had fringe interests in the waterfront--one was "Buster" Bell, who was recently convicted in the bribing of a jury trial together with Hoffa down in Tennessee--"Buster" Bell was a former Vice President of the ILA and we kicked him out--but it turns out that "Buster" Bell is on the payroll of this former police officer's maintenance company, where they do maintenance work on ships, painting, cleaning, and he has him on his Baltimore payroll. We also find that he has another fell ^{OW} /by the name of John Keefe, who is a member of the mob, on the payroll, the mob that had been thrown out of the union, A 24, and he was on the payroll. We also found in the investigation that Mr. Kogan was doing quite well, that he was getting a lot of money out of people for services he did not provide. In other words, he was overbilling. He would

A That is my understanding:

Q What do you do by way of encouraging or discouraging better pay for police personnel?

A We are foremost I think in New Jersey for advocating more education, better pay and more respect for law enforcement officials on every level.

SENATOR WOODCOCK: I have no questions.

EXAMINATION BY
MR. LUMBARD:

Q What is your personal view about electronic eavesdropping?

A Well, I guess my personal view corresponds with my personal view about a good deal of the trend of law enforcement today, and that seems to me to be that the defendant is getting an awful lot of help from everybody and the State isn't getting very much. And as was said here Tuesday, if eavesdropping equipment is so readily available to anybody who wants to go out and buy it, then it seems to me that under the proper control, the State ought to be allowed to use it, too, under the proper circumstances.

SENATOR FORSYTHE: Thank you very much.

It has been curtailed in others. But you're always going to have a gambling problem in New Jersey and elsewhere, where you're going to get federal law enforcement, but local law enforcement to spend money and make it more efficient to knock it down.

I don't stop with gambling. You then get into the problem of corruption, then you get local officials, some who care more and some less, about the problem.

MR. LUMBARD: I have an area of very quick questions, Mr. Satz. The Committee is interested in general or specific recommendations you have to make to it. Let me make this offer to you right now.

It also has had presented to it proposals for electronic eavesdropping within the State of New Jersey. Would you have any comment or recommendation regarding that?

THE WITNESS: Well, the departmental position may be known to you, and I am a United States attorney, and I do work for the Attorney General of the United States, that is in the present, but you have the McClellan Bill and the Administration Bill, and whether that twain will meet or not --

MR. LUMBARD: We're concerned with the New Jersey Legislation.

THE WITNESS: Yes. You have an outline.

MR. LUMBARD: Yes. There are proposals that it be reversed.

THE WITNESS: Yes. I have mixed feelings about eavesdropping and wiretapping. Frankly, I think, naturally if properly handled, it would be a useful tool, if done under Court control.

MR. LUMBARD: Court control?

THE WITNESS: I think it has to be done under Court control.

I feel the recent Supreme Court decision in the Katz case, where the door was left open, looking at a straight Fourth Amendment problem, is one, which to me, gives some room in which to operate here.

My feelings, on the other hand, of the use of this equipment, where it is so increasing at the corporate and private level, there have to be controls, and it is a problem of detection and so on, and I would limit it to law enforcement and the Court.

I have misgivings, because I know in cases

we have to review before we can prosecute.

We have turned down several possible indictments because of this problem. You get into an area, forgetting the criminal you're looking at, but side effects, we really invade privacy.

So I think this is very general. I have mixed thoughts about it. I do feel with the increase in scientific equipment and trying to be more efficient, we should be able to avail ourselves of something along this line.

MR. LUMBARD: Another area is a witness immunity bill, which has generally been mentioned in organized crime.

THE WITNESS: I like a witness immunity bill. I think it is a touchy area. We have not had much success as we wanted to. We have given quite a lot of immunity in certain areas to people.

There are certain types of people who are extremely leery about it, and if you give them that step, suddenly they don't know anything, unless you have them squeezed the right way. You can lose a lot of effect, because having immunity, you lose a potential defendant, or a witness later on, where facts may develop and you can use it.

I think it is a useful tool. I don't think

anything to lose by bringing such a prosecution.

In that sense, we think somebody operating, in effect, out of a state office, would be able to accomplish that. I think a comparable situation is in the deep south, of the crimes performed against rights leaders by the Department of Justice, when the department moved in.

It seems to me the same situation exists with police officers in this type of conduct.

SENATOR DUMONT: I notice you made a passing reference to wiretapping. Is it your position to be opposed to it in any form or prohibition or prevention as to its use?

THE WITNESS: We thoroughly recognize that the Supreme Court last term made certain conditions for the existence of wiretapping legislation. I would like to say -- let me put it this way. There are policy considerations, leaving aside the constitutional considerations, and I think I can say that we would feel that wiretapping legislation would be acceptable, only if it could provide that such wiretapping would not constitute what we term a general search and I do not see the kind of legislation coming out that could provide for that kind of