

SENATE JUDICIARY COMMITTEE

1: 42

MINUTES OF MEETING HELD

7th DAY OF FEBRUARY, 1973

The meeting was called to order at 9:40 a.m. Senator Close in the Chair.

PRESENT: Senator Foley
 Senator Bryan
 Senator Dodge
 Senator Hecht
 Senator Swobe
 Senator Wilson
 Mr. Jesse Jones, Central Telephone Company
 Mr. Neil Beller, Attorney, Central Telephone Co.
 Mr. Noel Clark, Public Service Commission
 Mr. Jim Thompson, Attorney General's Office

S.B. 28 - Technical amendment deleting reference to repealed law and alerting recipients of wiretap of further statutory requirements.

Chairman Close explained that this bill would give the Public Service Commission (PSC) the obligation to get the names of people who have had wiretaps. Chairman Close had contacted Mr. Clark previously and he stated that he had no desire to obtain names, but would like the number of taps within a given period of time and the agencies requesting the taps. However, when the committee again discussed the bill, they wondered whether they should go beyond the scope of this bill and desired to inquire into wiretaps; how they work and if there should be any additional statutory changes. Chairman Close then asked Mr. Jesse Jones to briefly give the committee some background information on wiretaps, the telephone company's role in placing wiretaps, and the mechanics of how they are installed.

In answer to several questions by the committee, Mr. Jones indicated that the telephone company could determine an illegal wiretap by checking the lines, but would only have reason to do so on the complaint of a customer who had trouble with his phone service. He said that illegal wiretaps on individual residences would be difficult to perform because most cables are located underground where they would be impossible to get to without going through the central or a satellite office, and an overhead cable would entail cutting into the cable. However, on an industrial or hotel-type building where there is a main frame, it would be possible to have an illegal tap going through the equipment room.

It was determined after further questioning that there are three basic kinds of interception involved: 1) Physical tap done in the central or a satellite office, 2) interception by microphone into the instrument through an FM transmitter or wired to another point of interception, and 3) a inductive electronic device placed in the instrument and wired to another point of interception.

Mr. Neil Beller indicated that if the telephone company did detect an illegal tap, they would notify the person being tapped and remove the tap. In the case of a legal tap, they would inform the person of the tap but not necessarily tell him the agency that requested the tap or the reason for the tap. He stated that in any case, the tap would be for a certain time period and would be pulled at the end of that period unless notified sooner by the requesting agency. In most cases, the taps are pulled before the time specified in the court order.

Chairman Close asked Mr. Clark to testify as to whether it is appropriate that the PSC be aware of the number of legal wiretaps. Mr. Clark explained that the law has been in effect for 5 years but has not been enforced because it was felt that there was no real reason for it, that the PSC does not have the security devices to maintain these records, and most all of the PSC's records are of public record. Senator Dodge questioned Mr. Clark if there was any purpose beneficial to the public in having the responsibility placed on the telephone companies to provide the PSC with this information. Mr. Clark stated that customers could bring a complaint to them regarding suspected wiretapping and the commission would be obligated to investigate. They would have no way to determine whether a tap was legal or if an unusual number of wiretaps were being performed by one particular agency. If there were an illegal wiretap, the commission would investigate and determine if the telephone company had knowledge of it, and if not they would instruct the telephone company to remove it.

Senators Dodge and Wilson questioned if there shouldn't be some procedures and some repository for this information. Senator Dodge remarked that this information could be required for legislative judgment regarding the restriction of wiretaps in numbers and areas. Senator Wilson felt that there should be some procedure for judicial supervision if wiretapping is being abused since it was testified that there were dozens of court orders for wiretaps signed by district judges all over the state.

Mr. Beller remarked that the number of wiretaps were not substantial but more than minimal, but that as far as dozens being issued, there was nowhere near that. He stated that before a judge signs the court order, he should take the time to read it and be sure there is probable cause. Mr. Beller also indicated that he had turned back several court orders that have not complied with the statutes.

Senators Bryan and Wilson were concerned that the person receiving the wiretap be notified and the records be public. Noel Clark stated that he felt it should be the personal business of the recipient of the wiretap, but not available to the public at large. Mr. Beller stated that the court order would become part of the public record if a criminal suit was filed.

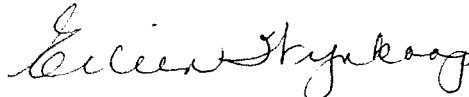
Mr. Jim Thompson testified that the Attorney General's Office has made several changes to a bill regarding wiretap which was drafted for introduction in the Assembly. He explained that it would conform the Nevada wiretap statute to the federal law and would provide safeguards for both sides on several of the points discussed thus far. Mr. Beller had stated earlier that several supreme court cases held that the states' statutes must comply with the federal law or the court order requiring the tap would not be valid.

The committee reviewed the draft and discussed briefly the changes recommended by the Attorney General's office. Senator Wilson stated his concern about the prevalent abuse of wiretapping in industry (industrial espionage), and felt that there should be a criminal sanction rather than just a civil penalty for violation of the statute. The committee agreed to have the proposed bill redrafted, discuss it further, and consider it for committee introduction.

Senator Foley asked Mr. Beller his thinking on the penalty for violation. Mr. Beller replied that he felt that there should be both a criminal and civil penalty. He also indicated that there should be a provision for notifying the recipient of the wiretap within a period of time whether or not the appropriate agency decides to pursue a suit. The law does not specify that now.

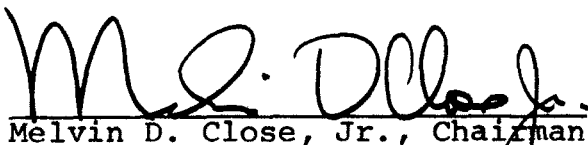
The meeting was adjourned at 11:10 a.m.

Respectfully submitted,



Eileen Wynkoop
Secretary

APPROVED:


Melvin D. Close, Jr., Chairman