MEMBERS PRESENT: Chairman Stewart
Vice Chairman Sader
Mr. Thompson
Miss Foley
Mr. Beyer
Mr. Price
Mr. Chaney
Mr. Malone
Mrs. Cafferata
Mrs. Ham
Mr. Banner

MEMBERS ABSENT: None

GUESTS PRESENT: William D. Mathews, Washoe Co. Sheriff's Dept.
Cal Dunlap, Washoe County District Attorney
Larry Ketzenberger, Las Vegas Metro P.D.
Marian Hurst, Welfare Division
John Crossley, LCB - Audit
Chuck King, Cen Tel
Brooke Nielsen, Attorney General's Office
George Taggett
Dave Small, Carson City District Attorney
Bill Curran, Clark County District Attorney
Dick Bryan, Attorney General

Chairman Stewart called the meeting to order at 8:08 a.m. and asked for testimony on SB 415.

SB 415: Expands definition of "condominium" to cover mobile home parks.

Julius Conigliaro, representing the City of Las Vegas, stated that SB 415 expands the definition of "condominium" to cover mobile home parks. The City of Las Vegas, Department of Community Planning & Development, recently received several inquiries from developers who are interested in developing mobile home condominium parks. These parks would contain a common area, inclusive of recreational facilities, such as swimming pools, tennis courts, etc., which would be owned in common by the legal membership of the mobile home park. The current statutes do not contain language which would accommodate such developments, specifically, the ownership of common area. Mr. Conigliaro stated there are common recreational facilities in mobile home parks, but are provided as part of the rental agreement. In concluding, he suggested the addition of the language providing for separate air space in mobile parks would allow the development of mobile home facilities with provisions for common area ownership. If spaces were sold as part of the common interest, that would include a part ownership in the

recreational areas, the mobile home park owners would be able to control their own destiny with regard to the fees they would have to pay on the maintenance. Currently, the developers sell air space in these parks and maintains the facilities at the expense of the owners. These fees are continually raised as the developers see fit.

Mr. Conigliaro stated this concept started in California which necessitated the change of their laws to include mobile home parks in condominium projects.

Mr. Beyer asked how this bill would be included in AB 432. Chairman Stewart stated that under AB 432, if they wanted to change a regular mobile home park to a condominium park, the tenants would have to be provided with 9 months notice. There would also be the notice required with the necessary zone change.

SB 449: Permits diversion of telephone lines in situations involving hostages and recording of conversations with permission of one party.

William D. Mathews, representing the Washoe County Sheriff's Department, stated that the provisions of SB 449 would greatly enhance the effectiveness of law enforcement in dealing with hostage and other crisis situations. This would add a provision to the law that would enable law enforcement to intercept and to control telephone communications dealing with a hostage situation. It was felt that these provisions would greatly enhance the capabilities of law enforcement to effectively control such a situation without the loss of life.

Further on in the bill is a provision which allows for one party consent to intercept any wire communication. Mr. Mathews stated it was felt that this addition to the statute is to the benefit of not only law enforcement, but to the citizens of the state. Currently, if an extortion call is made to an individual who, in an effort to assist law enforcement, records the call, he has committed a felony. He indicated that these situations are common in law enforcement with situations dealing with threats to life, extortion demands, obscene phone calls, etc. This change would allow that, in an effort to assist law enforcement in the prosecution of this person, a one party consent would allow the taping of such a call. Mr. Mathews stated his department is in favor of SB 449.

Mr. Sader asked if this one party consent would apply in all situations and not just in criminal situations. Mr. Mathews felt it would. He added that to his knowledge, the only provisions now allowing for recording calls is in the case of law enforcement agencies which have recording devices in their communication centers.

Mr. Stewart asked if calls to police stations and fire departments would be currently exempted from the law. Mr. Mathews felt that any area which receives emergency calls can legally record the call since it would be critical to the function.

Larry Ketzenberger, representing the Metropolitan Police Department in Las Vegas, stated that SB 449 was originally requested by the police department and submitted to the law enforcement group at their meeting prior to the start of the session. It was highly endorsed by that group. The reason it was necessary was because of the hostage situations experienced in Las Vegas where outside people are able to contact the hostage-taker and to divert his attention from the matter at hand. It also allows him to call whoever he wants to either draw attention to his cause or cause confederates to assist him. He added that this was experienced in the jail hostage situation in 1979, in a bankrobbery situation in the late '70's, as well as other situations. This would allow the officers to bring the hostage situation to a close without injury if possible.

Section 3 was added at the request of the law enforcement group and another agency. Mr. Ketzenberger stated that his department supports the addition of the one party consent. It is the same standard which is currently the law under the U.S. Code at Chapter 139, Title 18, Section 2510 to 2520 (EXHIBIT A). Mr. Ketzenberger read from Section 2511(2)(c) and (d). He added that the American Bar Association also takes a position for model legislation, recommending that one party consent be allowed in taping telephone conversations. He stated that their standard suggested it be allowed without the necessity of court order as long as the communication is not recorded for the purpose of committing a crime or other unlawful harm. (See EXHIBIT B)

Mr. Ketzenberger referred to Mr. Mathews' comments regarding the recording of obscene or threatening phone calls, stating that this puts the law enforcement agency in the position of having to tell that person that the tape recording made is not admissible in a court of law and that they have actually committed a crime. He commented that it is confusing to a citizen who has suffered these types of calls to be told that this evidence cannot be used and that he can be prosecuted for violating the law himself. He referred to a letter received from an officer in his department which stated that from time to time those tapes are used to get back to the harasser and to advise them that there is a recording of their call. Once it is brought to the attention of the suspect that he is known, he will often times cease with the calls.

Mr. Ketzenberger felt that the current law is archaic in its application, adding that there are too many people who feel that they have the right to protect themselves. He reminded the committee that when the telephone is used to commit a crime against

another person, the person against whom the crime is being committed has a right to try to bring that person to justice and protect himself. He felt that when a telephone is used to commit a crime, the individual's right to privacy ought to end.

Mr. Ketzenberger stated that an attorney had advised him that this law would make the state in conformance with the entire body of federal statutory law as it relates to taping telephone conversations. Concurrence of judicial decisions indicates that this is not a violation of a person's constitutional rights. He added that the news media calls and tapes interviews without advising the party. He did not feel there was any intent in those cases to violate the law, but it does happen. This taping is a felony crime.

Mr. Ketzenberger next addressed the usefulness of this provision in cases where a husband may threaten a wife as it relates to custody of the children or the division of property, putting the wife in fear of what might happen. If she recorded such a conversation, it could not be used in any court of law to see that she was treated fairly or to prove that she was forced to not take what was rightfully hers.

It was Mr. Ketzenberger's understanding that Nevada is in the minority of states which require both parties' consent to the taping of a conversation. Some of states which allow one party consent are Washington, D.C., Florida, Minnesota, Nebraska, New Jersey, Virginia, Wisconsin, New York, Oregon, California and Georgia. The Delaware statute allows one party to record its own conversation as the result of a court interpretation of the statutes.

Mrs. Cafferata asked for an explanation of the section dealing with intercepting telephone lines in a hostage situation. Mr. Ketzenberger stated that in a hostage situation, negotiations must be made with the individual in order to resolve the situation. If he can call anyone he wants or anyone can call him, such as the news media, this can divert his attention from the negotiations at hand. In some cases the individual may have been encouraged to continue for the sake of recognition. The law enforcement people want to be able to make the decision on who this individual communicates with. He may also attempt to contact a confederate in an attempt to escape.

To Mrs. Ham's question, Mr. Ketzenberger stated that there are representatives of the telephone company who will comment on the bill and passed out EXHIBIT C as an amendment resulting from talking with the telephone company and a local prosecutor. He explained that the amendment does not allow for the intercepting of telephone lines except by the telephone company's people.

Mrs. Ham asked who was going to bear the costs of intercepting telephone lines. Mr. Ketzenberger stated that the telephone company has always been very cooperative with law enforcement where they have been legally allowed to do so and have not billed for the services. He assumed that the telephone company would probably pick up the costs.

There was discussion about telephone answering recorders where Mr. Ketzenberger did not feel the intent or spirit of the law was violated if accidentally recording a conversation.

Chairman Stewart asked if it is legal to record a conversation in person without the consent of both parties. Mr. Ketzenberger thought it is.

Cal Dunlap, Washoe County District Attorney, stated that in the case of telephone conversations across state lines being recorded, the Nevada law would apply if more restrictive than the federal law. If a Nevada party recorded a call across a state line, the Nevada law would apply. If it were the other party, then either the local or federal law would apply, depending upon which was more stringent. He added that the physical act of recording controls which jurisdiction applies to the situation.

To the question asked previously on who would bear the costs involved in intercepting telephone lines, Mr. Dunlap stated that the telephone company has always been extremely cooperative with their only concerns being the liability involved. Expenses have been worked out with them with no difficulty.

Mr. Dunlap continued by saying that it is legal to record people if they are in your physical presence as opposed to being on wire. The only prohibition is as it relates to telephone calls. He added that there is a daily violation of the law by many people who have speaker phones since there are some people who may not know that they are on a speaker and many other people are receiving and are a party to the phone call.

Mr. Dunlap concluded by reiterating the majority of Mr. Ketzenberger's testimony to the usefulness of being allowed to record telephone conversations with one party's consent.

Chairman Stewart commented that he had talked with the attorney for Harvey's who suggested that holding a building hostage be included in the bill. Mr. Dunlap felt that appropriate. He added that through tape recordings will enable voice identification at a later date rather than relying on the memory of a witness.

Chuck King, representing Central Telephone, and George Taggett, representing Nevada Bell, testified concurrently on SB 449, and specifically to the diversion of telephone lines. Mr. King commented that the telephone companies have no problem with the cost of line diversion with just a couple of lines. In the situation where it was necessary to divert 40 trunks from a switchboard into a building, there may be a little problem with the cost. As amended, the telephone companies have no objection to the bill. Mr. King stated that without the amendment, anyone could divert the telephone lines at any point. Mr. Taggett stated the telephone companies had worked with the law enforcement people on the language of the amendment to accomplish what protects the interest of the plant so that there would be no unauthorized interception or connection at any place other than the telephone instrument or the interception would be performed by or under the supervision of telephone people.

To Mr. Beyer's questions about the interception, Mr. Taggett commented that the police department would want them to interrupt the line so that they could control where the call would go and the receipt of the call. They could also allow a call if they wished and monitor it. It was Mr. Taggett's understanding that the intent of the bill is to isolate the communications to the hostage or the barricaded suspect. In that manner, the telephone company would be able to identify the telephone going to the hostage and by intercepting the line, the police could talk to the suspect and could connect the suspect to another person if they choose. In the case of a hotel which had purchased its own internal communications system or telephone lines, the telephone company would have no ability to intercept or act on it.

Dave Small, Carson City District Attorney, stated that recorded information on telephones is admissible in this state if, in the place it was obtained, it is lawful and admissible. If there is a conversation between a Nevadan and a Californian and either side recorded, it would be admissible in federal court against either party. It would be admissible in Nevada if the Californian did the recording and brought it to Nevada. If the Nevadan recorded the call, it would be inadmissible and would be a felony. He reiterated the testimony that the body recorder is legal and admissible. He suggested there should be no difference between that and a telephone conversation. He referred to a case where an individual had a police officer listen on an extension to an incriminating phone call. In the court's opinion, that conversation never took place. If a person were to record a conversation and not tell the district attorney, he would be able to testify to the conversation while the best evidence of the conversation must be kept secret. If the truth were to come out, in the court's eyes, the conversation never took place.

On behalf of the District Attorneys' Association, Mr. Small urged that the committee pass SB 449.

Bill Curran, Clark County District Attorney's office, expressed further support of the bill and commented that he agreed with the previous testimony.

SB 482: Authorizes attorney general to investigate and prosecute crimes of state officials.

Attorney General Dick Bryan stated that this bill in its original form was proposed by his office. It is frequently said that the Attorney General is the state's chief law enforcement officer. That is a misnomer as the law presently reads. In 1972 a case was decided by the State Supreme Court involving a public official in Clark County -- Ryan v. District Court, 503 P2d 842 (1972), which says that there is no common law prosecutorial authority for the Attorney General in the State of Nevada. In order to find the authority to conduct a prosecution, one must look and find a particular statute which gives the Attorney General the authority to do so. General examples given were that the Legislature, by statute, has provided that the Attorney General does have the authority to prosecute violations of the open meeting law. At the State Prison, if an inmate commits an offense in the prison system, the Attorney General's office very clearly has the authority to prosecute by statute. However, if at the same institution a corrections officer committed some criminal offense, the Attorney General would not have the authority. The Carson City District Attorney would prosecute.

SB 482, in its original form, would have conferred upon the Attorney General concurrent jurisdiction to prosecute state officials and state employees for acts of misconduct arising out of their official duties. It would not include a state employee who, not acting within the course and scope of his employment, may have been involved in some other kind of criminal misconduct such as a traffic offense or burglary. It was Mr. Bryan's belief that it is a logical expectation that where misconduct involves state officials and state employees that the Attorney General's office should have the authority to conduct such investigation and prosecution. It is clearly the expectation on the part of the public.

Under NRS 218.880, Mr. Bryan stated that legislative audits are required to be submitted to the Attorney General as well as other agencies. There is an implication there that the Attorney General would take action if there was something wrong. Clearly, under the present law, the Attorney General would have the ability to institute a civil proceeding, but there is no authority to institute any criminal action. In those circumstances, the Attorney General must submit whatever information is available to the

local district attorney's office who would then analyze, review and make an appropriate determination.

Mr. Bryan continued by saying that on February 27, 1980, the Legislative Commission authorized legislation to be introduced to correct this deficiency. In that connection, there was correspondence generated to Mr. Bryan, Mr. Small and to Mr. Bob Johnson, the District Attorney in Ely. It was indicated by Mr. Small that concurrent jurisdiction was appropriate under the circumstances as was Mr. Johnson's indications. Mr. Bryan stated that the bill was processed through the Senate Government Affairs Committee which added a couple of amendments it believed would ease any potential conflict between the Attorney General's office and any local district attorney. Mr. Bryan believed their amendments achieved the opposite result by providing the potential for friction between the two offices. The amendments require that the Attorney General submit to the local district attorney any such actions and requires that the district attorney take action within 15 days. If he fails to do so, then the Attorney General's office would be authorized to proceed. Mr. Bryan did not know if 15 days was a reasonable time frame and certainly not with respect to a major investigation. Moreover, the notice requirement is subject to potential abuse and would not be in the best interests of a harmonious working relationship between the two offices. Another amendment adopted in an attempt to clarify by definition what a public officer or employee is was the incorporation of the language found in NRS 169.164 which states, "Public officer means a person elected or appointed to a position which (1) is established by the Constitution or statute of this state or by charter or ordinance of a political subdivision of this state and (2) involves the continuous exercise as part of the regular and permanent administration of the government of a public power, trust or duty." That definition goes far beyond the original intent of the bill which was to confine the prosecutorial authority to state officials. The definition of public officer is broad enough to include county and municipal officials as well.

Mr. Bryan stated he had talked with representatives of at least 3 district attorneys' offices. Two of the men stated they would have no objection to providing that the Attorney General would have primary jurisdiction with respect to state officials. Mr. Small and Mr. Johnson suggested concurrent jurisdiction. It was further suggested that there be clearly established a priority so that there would not be two offices simultaneously conducting an investigation. Mr. Bryan had no objection to that.

Mr. Beyer asked what Mr. Bryan's suggestion would be as to the time period mentioned in the bill. Mr. Bryan felt it might be unreasonable and stated he is opposed to the concept that notice be given to the district attorney, seeing the potential for abuse. He did not feel this would foster the relationship which he has strived to have with the local district attorneys. He felt also that the district attorneys take exception to that provision. He commented that the Government Affairs Committee felt it might ease any kind of friction, but Mr. Bryan felt it would tend to exacerbate it.

Miss Foley commented on the possibility of a situation occurring where both the district attorney and the Attorney General might want to prosecute. Mr. Bryan stated that the theoretical potential does exist, but felt that if that should occur they would work together with the primary jurisdiction falling on the Attorney General. He stated that if the district attorneys had no objection to primary jurisdiction, he did not. To a further question from Miss Foley, Mr. Bryan did not feel that the passage of this bill would necessitate an increase in his criminal staff. He commented to the frustrations involved with the public and press assuming the Attorney General has primary responsibility when in actuality he does not. He cited the Ryan case which reads in part, "The Attorney General may appear in and take exclusive charge of a prosecution when, in his opinion, it is necessary or when requested to do so by the Governor." The next line of the opinion indicates, "This provision, however, contemplates a pending prosecution." He felt it a sound public policy to have misconduct at the state level prosecuted by the Attorney General.

Mr. Stewart asked who would undertake the prosecution of a county official where the district attorney was his legal counsel. Mr. Bryan stated that if there were a sitting grand jury, the Attorney General can act. If there is no grand jury, the district judge would appoint the Attorney General to act.

Cal Dunlap, Washoe County District Attorney, echoed Attorney General Bryan's testimony. He stated that district attorneys have guarded their prerogatives and jurisdiction as it relates to the common variety of crime. It was his belief that there was the potential of concurrent jurisdiction, but felt there would be no problem in that event since both offices have been able to work well together. He felt that the Attorney General should have primary responsibility in these cases, alleviating any possibility of squabbles between future district attorneys and attorney generals who might be presented with such a situation. He concurred in the testimony that the district attorney should be primarily concerned with local offenses and officials, with the Attorney General being involved with state offenses and officials.

Mr. Dunlap continued by saying that he did not like the 15 day notice requirement since these types of cases do not lend themselves to a 15 day investigation even with the cooperation of the two offices. When there is public corruption or misconduct of officials, it is much more complex than a burglary.

Mr. Dunlap concurred in Mr. Bryan's suggested amendments with respect to both jurisdiction and the definition of public official. By way of explanation of the jurisdiction, Mr. Dunlap stated that in the event of a state official committing burglary, robbery or murder or something which has nothing to do with his position, that would be prosecuted by the district attorney. In the case of an official committing a crime against the state such as embezzlement, official misconduct, etc., the Attorney General would prosecute in most of those cases. In the event of a malfeasance of office where there is perhaps some involvement of the Attorney General as a legal advisor, they can either go to the district attorney for prosecution or a special prosecutor can be appointed.

John Crossley, the Legislative Auditor, distributed EXHIBIT D and explained that he had been instructed to investigate this area by the Legislative Commission. Through his contact with the Attorney General and several district attorneys, he submitted EXHIBIT D to the Commission. He added that his authority as Legislative Auditor extends only to State employees, having no jurisdiction to audit local governments or get involved in local governments. His findings relate strictly to state employees. He next referred to the Exhibit and the attached letters which express the feelings of the Attorney General and district attorneys.

David Small, Carson City District Attorney, stated that he stands by his comments as reflected in his letter attached to EXHIBIT D and participated in recommending language to go into a request for a bill draft, resulting in the original bill. He concurred in the testimony of Mr. Dunlap and Mr. Bryan. He gave examples of some of the cases which had been prosecuted by the county and should have been prosecuted by the Attorney General since they dealt with state employees, commenting that as such, the expense should have been borne by the state. He did not support the amended version of SB 482.

Chairman Stewart asked the Attorney General to draft the proposed amendments, to which Mr. Bryan commented he would like to work with Mr. Small on it.

Chairman Stewart adjourned the meeting at 10:25 a.m.

Respectfully submitted,

Jor Jan M. Martin
Committee Stenographer (Committee Minutes)

EXHIBIT A

US Code see P2

Library References

Telecommunications ⇐491 et seq. C.J.S. Telegraphs, Telephones, Radio, and Television §§ 287, 288.

Notes of Decisions

Generally 2
Retroactive effect 1

Sanitary Corp., D.C.Pa.1968, 288 F.Supp. 701.

1. Retroactive effect

This chapter applies only prospectively. U. S. v. American Radiator & Standard

2. Generally

This chapter is directed to reliability components of confession-exclusion rules, not to extrinsic policy components. U. S. v. Schipani, D.C.N.Y.1968, 289 F.Supp. 43.

§ 2511. Interception and disclosure of wire or oral communications prohibited

(1) Except as otherwise specifically provided in this chapter any person who—

(a) willfully intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept, any wire or oral communication;

(b) willfully uses, endeavors to use, or procures any other person to use or endeavor to use any electronic, mechanical, or other device to intercept any oral communication when—

(i) such device is affixed to, or otherwise transmits a signal through, a wire, cable, or other like connection used in wire communication; or

(ii) such device transmits communications by radio, or interferes with the transmission of such communication; or

(iii) such person knows, or has reason to know, that such device or any component thereof has been sent through the mail or transported in interstate or foreign commerce; or

(iv) such use or endeavor to use (A) takes place on the premises of any business or other commercial establishment the operations of which affect interstate or foreign commerce; or (B) obtains or is for the purpose of obtaining information relating to the operations of any business or other commercial establishment the operations of which affect interstate or foreign commerce; or

(v) such person acts in the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States;

(c) willfully discloses, or endeavors to disclose, to any other person the contents of any wire or oral communication, knowing or having reason to know that the information was obtained through the interception of a wire or oral communication in violation of this subsection; or

(d) willfully uses, or endeavors to use, the contents of any wire or oral communication, knowing or having reason to know that the information was obtained through the interception of a wire or oral communication in violation of this subsection;

shall be fined not more than $10,000 or imprisoned not more than five years, or both.

(2) (a) It shall not be unlawful under this chapter for an operator of a switchboard, or an officer, employee, or agent of any communication common carrier, whose facilities are used in the transmission of a wire communication, to intercept, disclose, or use that communication in the normal course of his employment while engaged in any activity which is a necessary incident to the rendition of his service or to the protection of the rights or property of the carrier of such communication: *Provided*, That said communication common carriers shall not utilize service observing or random monitoring except for mechanical or service quality control checks.

(b) It shall not be unlawful under this chapter for an officer, employee, or agent of the Federal Communications Commission, in the normal course of his employment and in discharge of the monitoring responsibilities exercised by the Commission in the enforcement of chapter 5 of title 47 of the United States Code, to intercept a wire communication, or oral communication transmitted by radio, or to disclose or use the information thereby obtained.

(c) It shall not be unlawful under this chapter for a person acting under color of law to intercept a wire or oral communication, where such person is a party to the communication or one of the parties to the communication has given prior consent to such interception.

(d) It shall not be unlawful under this chapter for a person not acting under color of law to intercept a wire or oral communication where such person is a party to the communication or where one of the parties to the communication has given prior consent to such interception unless such communication is intercepted for the purpose of committing any criminal or tortious act in violation of the Constitution or laws of the United States or of any State or for the purpose of committing any other injurious act.

(3) Nothing contained in this chapter or in section 605 of the Communications Act of 1934 (48 Stat. 1143; 47 U.S.C. 605) shall limit the constitutional power of the President to take such measures as he deems necessary to protect the Nation against actual or potential

attack or other hostile acts of a foreign power, to obtain foreign intelligence information deemed essential to the security of the United States, or to protect national security information against foreign intelligence activities. Nor shall anything contained in this chapter be deemed to limit the constitutional power of the President to take such measures as he deems necessary to protect the United States against the overthrow of the Government by force or other unlawful means, or against any other clear and present danger to the structure or existence of the Government. The contents of any wire or oral communication intercepted by authority of the President in the exercise of the foregoing powers may be received in evidence in any trial hearing, or other proceeding only where such interception was reasonable, but shall not be otherwise used or disclosed except as is necessary to implement that power.

Added Pub.L. 90-351, Title III, § 802, June 19, 1968, 82 Stat. 213.

Historical Note

References in Text. Chapter 5 of title 47 of the United States Code, referred to in par. (2) thereof, is chapter 5 of Title 47, Telegraphs, Telephones, and Radiotelegraphs. Such chapter 5, set out as sections 151 et seq. of Title 47, is the Communications Act of 1934.

Section 605 of the Communications Act of 1934 (48 Stat. 1143; 47 U.S.C. 605), referred to in par. (3), is section 605 of Title 47, Telegraphs, Telephones, and Radiotelegraphs.

Legislative History. For legislative history and purpose of Pub.L. 90-351, see 1968 U.S.Code Cong. and Adm. News, p. 2112.

Library References

Telecommunications ⇐491, 493, 494.

C.J.S. Telegraphs, Telephones, Radio and Television §§ 122, 272, 287, 288.

Notes of Decisions

Crimes 3
Enforcement 2
Probable cause 1

---

1. Probable cause

General rule, to the effect that [illegible] are [illegible] with probable cause and a warrant, Alderman v. U. S., Coplon & N.J. 1969, 89 S.Ct. 961, 394 U.S. 165, 22 L.Ed.2d 176, rehearing denied 89 S.Ct. 1177, 394 U.S. 959, 22 L.Ed.2d 475.

2. Enforcement

Without experience showing the contrary Supreme Court should not assume that this chapter prohibiting unauthorized electronic surveillance will be cavalierly disregarded or will not be enforced against transgressors. Alderman v. U. S., Coplon & N.J. 1969, 89 S.Ct. 961, 394 U.S. 165, 22 L.Ed.2d 176, rehearing denied 89 S.Ct. 1177, 394 U.S. 959, 22 L.Ed.2d 475.

3. Crimes

Telephone subscriber is not [illegible] to use his telephone [illegible] State v. Holliday, Iowa 1969, [illegible] 708.

Am Bar Assn Standards

EXHIBIT B

tended to reflect the basic fourth amendment requirement of reasonableness.

The danger that foreign security surveillance will be conducted as a pretext to uncover evidence relating to domestic security or criminal acts appears to have been considerably reduced by the decision in *United States v. United States District Court*,[1] in which the Supreme Court held that warrantless surveillance of a domestic organization violated the fourth amendment. Consequently, there would be little benefit to be gained from using foreign security surveillance in the investigation or prosecution of criminal activities.

Moreover, by permitting the use and disclosure of foreign security surveillance information in judicial proceedings, the standard makes possible judicial regulation of this activity. A defendant is entitled to move to suppress such evidence, which will require judicial review of the circumstances and approval of the surveillance as reasonable.[2]

PART IV. OVERHEARING OR RECORDING WITH CONSENT

Standard 2-4.1. Overhearing or recording; authenticity

The surreptitious overhearing or recording of a wire or oral communication with the consent of, or by one of, the parties to the communication should be permitted without the necessity of a court order, provided such communication is not overheard or recorded for the purpose of committing a crime or other unlawful harm. When law enforcement officers engage in a recording practice permitted under this standard, they should employ devices and techniques which will ensure that the recording will be, insofar as practicable, complete, accurate, and intelligible. Administrative procedures should be followed under the supervision of the

1 407 U.S. 297 (1972)

2 See proposed Foreign Intelligence Security Act of 1978, S. Rep. No. 95-701, March 14, 1978).

2173

principal prosecuting attorney similar to those set forth in standards 2-5.12, 2-5.13, and 2-5.17.

History of Standard

Original standard 4.2, relating to the recording and accuracy of recordings, has been incorporated, with minor changes, into the present standard. The change is solely organizational, and reflects no alteration of substance.

Related Standards

None

Commentary

Standard 2-4.1 corresponds to §2511(2)(c) of Title III,[1] the federal electronic surveillance statute, which permits "a person acting under color of law to intercept a wire or oral communication, where such person is a party to the communication or one of the parties to the communication has given prior consent to such interception." Several states have incorporated §2511(2)(c) or essentially similar provisions into their statutes.[2] Like the standard, §2511(2)(c) and corresponding state statutes do not require a prior judicial warrant or review. Several other states allow warrantless law enforcement consent surveillance, either under specific statutes that differ in form from §2511(2)(c)[3] or, in the absence of statute, pursuant to judicial acceptance of the practice.[4] Although the states exhibit considerable variety in their provisions, their effect is to allow consent surveillance as provided by the standard.

The constitutionality of warrantless law enforcement consent surveil-

1. 18 U.S.C. §2511(2)(c) (1976).
2. D.C. Code §23-542-(b)(2) (1973); Fla. Stat. Ann. §934.03(2)(c) (West Cum. Supp. 1978); Miss. Stat. Ann. §6289.02(2)(c) (West Cum. Supp. 1978); Neb. Rev. Stat. §86-702(2)(b) (1976); Nev. Rev. Stat. §200.620(2)(a) (1975); N.J. Stat. Ann. §2A:156A-4(b) (West Cum. Supp. 1978-1979); N.Y. Penal Law §250.00(1), (2) (McKinney 1967); Or. Rev. Stat. §165.540(1), (2) (1977); Va. Code §19.2-62(2)(b) (1975); Wis. Stat. Ann. §968.31(2)(b) (West 1971).
3. J. Carr, The Law of Electronic Surveillance 93-95 (1977).
4. *Id.*

EXHIBIT C

AMENDMENT TO NEVADA SENATE BILL 449

Amendment No. 1

On page 2 of the printed bill, on line 22, after the word "made," insert: "AT THE TELEPHONE INSTRUMENT"

~~"by officers or agents of a law enforcement agency"~~

Amendment No. 2

On page 3 of the printed bill after line 10, insert:

Sec. 6 NRS 200.640 is hereby amended to read as follows:

200.640 UNAUTHORIZED CONNECTION WITH FACILITIES PROHIBITED. Except as otherwise provided in NRS 179.410 to 179.515, inclusive, *and NRS 200.620,* no person shall make any connection either physically or by induction, with the wire or radio communication facilities of any person engaged in the business of providing service and facilities for such communication unless such connection is also authorized by the person providing such service and facilities.

tja

5/18/81

John Crossley
SB 42

EXHIBIT D

MINUTES OF THE
MEETING OF THE LEGISLATIVE COMMISSION
NEVADA LEGISLATIVE COUNSEL BUREAU
Carson City, Nevada
May 6, 1980

TABLE OF CONTENTS

(more)

Chairman Ashworth said it is anticipated that he will assume the chairmanship of the Western Conference of the Council of State Governments in Jackson, Wyoming, this year, and he is recommending that the 1981 conference be held in Reno.

Item 3--Legislative Auditor:

(a) Report on attorney general and district attorney communications (NRS 218.880). In response to the commission's previous request, Mr. Crossley presented letters from the Attorney General and the District Attorney of Carson City, copies of which are attached as Exhibit B. He asked Mr. Daykin to comment on the opinions contained in the letters.

Mr. Daykin said that clearly the Attorney General was correct and technically Mr. Small is correct. He further said that if the situation is to be corrected, it would have to be by legislation since it would take legislation to vest the authority to prosecute these offenses directly in the Attorney General.

Mr. Dini expressed disbelief that state employees could embezzle money and no one would prosecute. Mr. Daykin referred to the lack of a statute of limitations for gross misdemeanors and suggested that this situation be corrected by legislation during the 1981 session.

SENATOR JACOBSEN MOVED THAT LEGISLATIVE COUNSEL BE INSTRUCTED TO PREPARE PROPER LEGISLATION FOR THE JUDICIARY COMMITTEE OF EITHER HOUSE TO INTRODUCE DURING THE 1981 SESSION. SECONDED BY MR. BARENGO AND CARRIED.

Mr. Daykin assured Mr. May that the commission had done everything that it could do to attempt to prosecute the employees involved. He also told Senator Blakemore he would advise him in regard to malfeasance suits.

(b) Audit reports:

(1) Statewide Receipts and Disbursements--Payroll Function. Mr. Crossley stated that the centralized payroll system was completed and in operation but, as this report points out, in order for it to function properly the Personnel Division and all other agencies must monitor it closely.

Mr. Clarence Fuss presented the report and read the summary of significant findings.

Senator Close asked how much the errors had cost the state. Mr. Crossley estimated that it would be between $25,000 and $50,000 a year for terminations and leave without pay since most errors occurred in those categories. Mr. Fuss said he believed over 50 percent of the errors existed because of the anticipated pay aspect and this item is going to be eliminated by the Personnel Division.

MR. DINI MOVED TO ACCEPT THE REPORT. SECONDED BY SENATOR BLAKEMORE AND CARRIED.

(2) Revenue Sharing Trust Fund. Mr. Hanson presented this report.

SENATOR DODGE MOVED TO ACCEPT THE REPORT. SECONDED BY MR. MAY AND CARRIED.

OFFICE OF THE
DISTRICT ATTORNEY
OF
CARSON CITY
708 NORTH CARSON
CARSON CITY, NEVADA 89701
(702) 882-3276

DAVID B. SMALL
DISTRICT ATTORNEY

May 5, 1980

Legislative Commission
Legislative Building
Carson City, Nevada

Re: Rural Clinics: FY 1978 Audit

May it please the Commission:

In response to the request of the Commission, this office has considered the alleged irregularities disclosed in the audit report of Rural Clinics for fiscal year 1978. We do not intend to pursue the matter further.

Without doubt, evidence exists which tends to show criminal activity with a Carson City nexus involving persons of Rural Clinics and public monies. Certainly the law does not contemplate the knowing submission of false vouchers for the establishment of government office slush funds. The statutory proscriptions of most obvious application, however, describe gross misdemeanors. The alleged offenses occurred in 1976-1977 and were discovered no later than the end of 1978. Prosecution is barred by the statute of limitations.

We also understand that disciplinary action was initiated in early 1979. With one exception, the employees involved were terminated and have since scattered. This office was first informed of the problem in February, 1980. Even if a prosecution could be initiated, it would be difficult and unjustifiably stale.

Finally, it must be added that criminal matters of this nature might more appropriately be pursued by the Office of the Attorney General. Interest in preventing the misuse of State funds is not limited to Carson City citizens. The initiation of civil action to recover State monies is now an Attorney General perogative; concurrent jurisdiction to prosecute a criminal action under such circumstances should lie in that office as well.

Yours truly,

David B. Small

DBS/d

STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL
CAPITOL COMPLEX
CARSON CITY 89710
(702) 885-4170

RICHARD H. BRYAN
ATTORNEY GENERAL

LARRY D. STRUVE
CHIEF DEPUTY ATTORNEY GENERAL

April 14, 1980

John R. Crossley, C.P.A.
Legislative Counsel Bureau
Legislative Building
Capitol Complex
Carson City, NV 89710

Dear John:

In response to your inquiry of March 13, 1980, concerning this office's involvement upon our receipt of the legislative auditor's report pursuant to NRS 213.990, it appears that the statutes are silent as to what this office should or must do upon receipt of the auditor's report of inadequacy of fiscal records.

The Attorney General's criminal jurisdiction is set forth in NRS 228.120. This office may institute criminal prosecution only where specifically authorized to do so by statute. My staff advises that no statute exists which authorizes the Attorney General to prosecute violations of criminal law that have been discovered as a result of legislative audits. Accordingly, the normal rules of criminal jurisdiction that apply, i.e., the District Attorney's office which has the appropriate venue would have the jurisdiction to institute the prosecutions in the event any larceny, perjury, making or submission of false reports and like crimes are revealed.

However, this office would, upon receipt of the auditor's report, contact the appropriate district attorney and perhaps monitor the progress of the case on an informal basis. The district attorney could, pursuant to NRS 228.130, request prosecutorial or investigative assistance. This office additionally could consider intervention into pending criminal proceedings when appropriate, or presentation of a case before a grand jury in those counties where they are impanelled.

Lastly, NRS 228.170 provides that the Attorney General may commence a civil action where it becomes necessary to protect the interest of the state. The civil alternative to criminal prosecution may well be the reason

why NRS 218.890 requires notification of the Attorney General. Thus, this office may institute suit for the recovery of state money obtained illegally.

I hope this reply satisfactorily answers your inquiry.

Very truly yours,

RICHARD H. BRYAN
Attorney General

RHB/gh

2180

Robert J. Johnston
DISTRICT ATTORNEY

White Pine County District Attorney
White Pine County Courthouse
P.O. Box 240 • Ely, Nevada 89301
(702) 289-8828

May 3, 1980

Mr. Keith Ashworth, Senator, Chairman
Nevada Legislative Commission
Legislative Building
Capitol Complex
Carson City, Nevada 89710

Re: Department of Human Resources, Rural Clinics

Dear Mr. Ashworth:

This office has recently reviewed information produced by the Legislative Auditor regarding the alleged unauthorized use of public funds by employees of the Rural Clinics. Upon due consideration of all facts involved and the appropriate law, it is the opinion of this office that no cognizable criminal offense has been committed in White Pine County.

Additionally, there is a significant question as to the timeliness of any criminal charges arising out of this incident, due to the long delay in referral of this matter to the appropriate law enforcement authorities.

It would be the recommendation of this office, that the Legislature should provide a mechanism whereby the Attorney General's Office could take criminal as well as the already authorized civil jurisdiction of matters involving improprieties by State employees or officials. If you have any questions regarding this matter, please feel free to contact me.

Yours very truly,

ROBERT J. JOHNSTON
District Attorney

RJJ/sm
CC: Mr. John R. Crossley, Legislative Auditor
Mr. Richard H. Bryan, Attorney General