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Legislation: The 1977 Maryland Wiretapping and Electronic Surveillance Act

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LEGISLATION

THE 1977 MARYLAND WIRETAPPING AND ELECTRONIC SURVEILLANCE ACT

I. INTRODUCTION

In 1977, the Maryland General Assembly enacted a comprehensive Wiretapping and Electronic Surveillance Act,[1] patterned after Title III of the Omnibus Crime Control and Safe Streets Act.[2] Consolidating prior wiretapping and bugging provisions in the Maryland Code, the 1977 Maryland law expands the permitted use of participant monitoring and provides a civil remedy for violations under the Act. This article will trace the history of Maryland wiretapping and electronic surveillance laws, contrasting the present Act with previous Maryland law and with corresponding federal provisions. Suggestions for clarification and changes to the Act will be drawn from various sources.

II. HISTORICAL BACKGROUND

A. *Federal History in a Nutshell*

During the first half of this century, the Supreme Court did not regard wiretapping as a search and seizure within the context of the fourth amendment, since wiretapping could be conducted without physical invasion of person or property.[3] In handing down its landmark decision in *Katz v. United States,*[4] the Court not only rejected the physical invasion theory, but laid the groundwork for enactment the following year of a comprehensive federal wiretapping statute, Title III of the Omnibus Crime Control and Safe Streets Act of 1968.[5] The *Katz* Court refused to "retroactively validate"[6] an unauthorized wiretap even though the investigating agents had carefully circumscribed their search. Only if a magistrate issued a pre-search order establishing precise limits for the search, and was later informed of all that had been "seized" would the agents' conduct be proper under the fourth amendment.[7]

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1. Act of May 26, 1977, ch. 692, 1977 Md. Laws 2798.
2. 18 U.S.C. §§ 2510-2520 (1970).
3. Olmstead v. United States, 277 U.S. 438 (1928).
4. 389 U.S. 347 (1967).
5. 18 U.S.C. §§ 2510-2520 (1970) (hereinafter cited as Title III).
6. 389 U.S. at 356.
7. Wiretapping would be found to be permissible where conducted "in response to a *detailed factual affidavit* alleging the commission of a *specific criminal* offense . . . for the *narrow and particularized purpose* of ascertaining the truth of the affidavit's allegations." Osborn v. United States, 385 U.S. 323, 330 (1966) (emphasis added).

In *Berger v. New York,*[8] the Court set exacting guidelines for constitutional wiretapping and electronic surveillance,[9] many of which were adopted by Title III. Included among the *Berger* requirements were:

> (1) a neutral magistrate;
> (2) a warrant stating with particularity the specific crime which had been or was being committed and the type of conversation sought;
> (3) an authorization period of less than two months;
> (4) a showing of probable cause for extensions of the authorization period;
> (5) a termination date for interception set for the date on which the conversation sought is obtained;
> (6) a giving of notice to the subject of the wiretap or a showing of exigent circumstances justifying the failure to give notice; and
> (7) a return of the warrant and all seized materials to the issuing magistrate.

B. *Early Maryland History*

Well before the turn of the century, Maryland felt compelled to enact legislation of its own to protect against unnecessary intrusion into its citizens' privacy.[10] The common law crime of sitting under the eaves of a house to overhear the latest gossip became a more serious and less discoverable offense with the development of electronic communications systems.[11]

Since 1868, Maryland has provided criminal penalties for telegraph company employees who divulged the contents of messages.[12] With the arrival of the telephone, the law was expanded

8. 388 U.S. 41 (1967).
9. Electronic surveillance, as distinguished from wiretapping, is not restricted to interception of telephone conversations; rather, it includes any interception of oral communications through means of an electronic device.
10. *See, e.g.,* Act of March 30, 1868, ch. 471 § 135, 1868 Md. Laws 911 (current version at MD. ANN. CODE art. 27, § 556 (1976)).
11. Due to the rapid growth of technology, many electronic eavesdropping devices have been developed that could not have been foreseen by the drafters of early electronic surveillance legislation. Consequently, there has been much litigation over whether such items as pen registers (devices which record the telephone numbers dialed from a particular line) are within the purview of state and federal laws. The Supreme Court recently set the question to rest for future federal cases in *United States v. New York Telephone Co.,* in which the Court held that pen registers were not covered by Title III. 98 S. Ct. 364 (1977). *See also* Dowling, *Bumper Beepers and the Fourth Amendment,* 13 CRIM. L. BUL. 266 (1977) (discussing radio devices used to track moving automobiles); Hodges, *Electronic Visual Surveillance and the Fourth Amendment: The Arrival of Big Brother?,* 3 HASTINGS CONST. L.Q. 261 (1976) (discussing visual surveillance methods).
12. MD. ANN. CODE art. 27, § 556 (1976) (repealed 1977).

to penalize individuals "connected with any telegraph or telephone corporation, company or individuals operating said lines for profit in this State, either as clerk, operator, messenger, or in any other capacity, who shall wilfully divulge the contents or nature of the contents of any private communication entrusted to him for transmission or delivery."[13] The penalty for violation of Maryland's early eavesdropping law was a maximum three months imprisonment or a $500 fine or both.

Despite such legislative exhortations against the interception of private communications, evidence procured through means of wiretapping has not always been inadmissible in Maryland courts. In *Hitzelberger v. State,*[14] the Maryland Court of Appeals held that evidence obtained by wiretapping could be admitted, even though a Maryland law[15] expressly made evidence derived from an illegal search and seizure inadmissible in a trial of misdemeanors. The *Hitzelberger* court based its holding on the absence of language in the Bouse Act[16] specifically referring to the interception of wire communications.[17]

Like the early Supreme Court cases, the *Hitzelberger* court adopted the stance that investigation by wiretapping did not violate the fourth amendment prohibition against unreasonable searches and seizures.[18] Similarly, the interception was not made illegal by Congressional enactment of the Federal Communications Act of 1934,[19] which proscribed interception of wire communications. The *Hitzelberger* court observed that the federal Act applied only to interstate or foreign communications. Five years later in *Weiss v. United States,*[20] the Supreme Court expanded the Federal Communications Act to prohibit the interception of intrastate as well as interstate communications.[21] Even though the *Weiss* court broadened the reach of the federal Act, the Maryland Court of Appeals in

13. Act of April 10, 1900, ch. 610, § 252, 1900 Md. Laws 941 (current version at MD. ANN. CODE art. 27, § 556 (1976).
14. 174 Md. 152, 197 A. 605 (1938).
15. Bouse Act, ch. 194, 1929 Md. Laws 533.
16. *Id.*
17. *Accord,* Leon v. State, 180 Md. 279, 285, 23 A.2d 706, 709 (1942). The Act stated in part, that

> [n]o evidence in the trial of misdemeanors shall be deemed admissible where the same shall have been procured by, through, or in consequence of any illegal search or seizure, . . . nor . . . if procured by, through or in consequence of a search and seizure, the effect of the admission of which would be to compel one to give evidence against himself in a criminal case.

Bouse Act, ch. 194, § 4A, 1929 Md. Laws 533.
18. Olmstead v. United States, 277 U.S. 438 (1928).
19. Communications Act of 1934, 47 U.S.C. § 605 (1970).
20. 308 U.S. 321 (1939).
21. *See also* Nardone v. United States, 308 U.S. 338 (1939) (derivative evidence also inadmissible); Nardone v. United States, 302 U.S. 379 (1937) (evidence obtained in violation of Federal Communications Act inadmissible in federal court).

McGuire v. State[22] commented that messages made inadmissible in federal court were not automatically made inadmissible in a Maryland court.[23]

Not until the mid-1950's did Maryland have statutory guidelines for court-ordered wiretapping and admissibility of wiretapping evidence. In 1956, the Maryland General Assembly passed the Maryland Wiretapping Act,[24] which set standards for all state-conducted wiretapping. Together with the subsequently-adopted Title III federal requirements[25] and the Maryland Electronic Surveillance Act,[26] the Maryland Wiretapping Act remained the state's governing law for more than twenty years. Announcing the policy against the "interception and divulgence of a private communication by any person not a party thereto . . . except by court order in unusual circumstances,"[27] the Act declared that "detection of the guilty does not justify investigative methods which infringe upon the liberties of the innocent."[28]

Under the 1956 Act, telephonic or telegraphic communications could be intercepted only upon application to a circuit court judge or judge of the Baltimore City Supreme Bench by the attorney general or a state's attorney. The applicant was required to set forth circumstances necessitating a wiretap and to state reasonable grounds for believing that "a crime has been . . . or is about to be committed"[29] or that "evidence will be obtained essential to the solution of such crime."[30] The Act further required a showing that there were no other means readily available for obtaining the information other than through wiretapping. If the statements made in the application were based solely on "information and belief,"[31] the applicant had to give grounds for his belief. To insure minimum infringement upon privacy, the particular telephone or telegraph line from which information was obtained had to be identified as fully as possible. For the same reason, no order could be effective longer than thirty days, after which time it could be renewed or continued for another thirty-day period upon application by the same officer who

22. 200 Md. 601, 92 A.2d 582 (1952).
23. According to the *McGuire* court, the federal statute is " 'presumed to be limited in effect to the federal jurisdiction and not to supersede a state's exercise of its police power unless there be clear manifestation to the contrary.' " *Id.* at 607, 92 A.2d at 584 (quoting Harlem Check Cashing Corp. v. Bell, 296 N.Y. 15, 16, 68 N.E.2d 854, 855 (1946)).
24. Wiretapping Act, ch. 116, 1956 Md. Laws 294 (repealed and recodified 1973).
25. Omnibus Crime Control and Safe Streets Act, Pub. L. No. 90-351, 82 Stat. 212, ch. 119 (codified at 18 U.S.C. §§ 2510-2520 (1970)).
26. Electronic Surveillance Act, ch. 706, 1959 Md. Laws 1065 (repealed 1977).
27. MD. ANN. CODE art. 35, § 92 (1971) (repealed and recodified 1973).
28. *Id.*
29. *Id.* § 94(a)(1).
30. *Id.* § 94(a)(2).
31. *Id.* § 94(b).

originally secured the warrant. For failure to comply with the requirements of the Act in obtaining evidence, that evidence would be rendered inadmissible in court, and the violator subjected to a possible fine of $1,000 or maximum sentence of ninety days, or both.[32]

In *Manger v. State,*[33] the first case interpreting the 1956 Wiretapping Act, police conducted a wiretap on a telephone to monitor incoming bets on horse races. The police obtained a search warrant for the premises and subsequently arrested the appellants, who contended at trial that all information illegally obtained in the wiretap had to be excluded from admission into evidence. Rejecting the appellants' contention, the court explained that they had no standing to complain since they were not participants in the overheard conversations. Their situation was compared to that of persons who, by virtue of holding no proprietary interest in the premises searched, had no standing to charge police with an illegal search and seizure.[34]

The next Maryland case decided under the 1956 wiretapping statute, *Robert v. State,*[35] declared that the admissibility of evidence derived from the wiretap of an interstate telephone call was not controlled solely by the Federal Communications Act. Holding that the federal statute was applicable to intrastate as well as interstate calls, the court emphasized that the federal Act has not preempted the field.[36] The court cited *Schwartz v. Texas*[37] for the proposition that evidence obtained in violation of the federal Act may be admitted in a state prosecution if permitted by state law. According to the *Robert* court, the supremacy clause created no conflict between federal and state acts. The state Act, the court commented, "simply excludes evidence obtained in violation of the state statute, which would otherwise be admissible . . . notwithstanding the Federal Act."[38]

In *Robert,* the police listened to a conversation by means of a headset connected with a hotel telephone switchboard, without obtaining the consent of the parties or complying with the

32. Essentially the same penalty was added to Article 27 of the 1957 Cumulative Supplement of the Maryland Code at § 670A. Those persons subject to penalties were "[a]ny [one] who shall wilfully intercept or tap any telephone or telegraphic communication in any manner other than pursuant to an order under the provisions of §§ 100 to 107 . . . of Article 35." MD. ANN. CODE art. 27 § 670A (Cum. Supp. 1957) (repealed 1977).
33. 214 Md. 71, 133 A.2d 78 (1957).
34. *See* Rizzo v. State, 201 Md. 206, 209-10, 93 A.2d 280, 281-82 (1952); Baum v. State, 163 Md. 153, 161 A. 244, 245 (1932). *But cf.* United States v. Ramsey, 503 F.2d 524 (7th Cir. 1974) (a family member or other regular user of a telephone may have standing at a minimization hearing).
35. 220 Md. 159, 151 A.2d 737 (1959).
36. *Id.* at 168, 151 A.2d at 741 (citing Benanti v. United States, 355 U.S. 96 (1957)).
37. 344 U.S. 199 (1952).
38. 220 Md. at 168-69, 151 A.2d at 741.

wiretapping statute's requirement of a prior court order. The court stressed that the statute required the consent of *all* participants,[39] basing its conclusion largely on the legislative history of the Act. Before passage into law, language in the bill requiring consent of "at least one of the participants" was amended to require consent of "the participants."[40]

In 1959 the General Assembly added sections 125A-C to Article 27, making it

> unlawful for any person in this State to *use any electronic device or equipment of any type whatsoever* in such manner as to overhear or record any part of the conversation or words spoken to or by any person in private conversation without the knowledge or consent, express or implied, of that other person.[41]

Thus, the scope of eavesdropping requiring a prior court order was expanded to encompass devices not commonly used in connection with telephone or telegraph lines.

The procedures for obtaining a court order for use of an electronic eavesdropping device differed somewhat from those required for receiving permission to tap telephone or telegraph lines. Under section 125A(b), a law enforcement officer who found that a crime "[had] been or [was] being or [would] be committed"[42] and that the use of the electronic device was "necessary" to prevent the crime or to apprehend the criminals, was required to submit evidence in support of his contention to a State's Attorney. After passing on the evidence presented, the State's Attorney was to apply to a circuit court judge or Baltimore City Supreme Bench judge for an order authorizing use of the device. Rather than having to show only that there were "no other means readily available for obtaining such information"[43] as required for a wiretap order, the State's Attorney also had to demonstrate that use of the device was "necessary" to prevent commission of or to obtain evidence of the crime. Applying the rule of statutory construction that ordinary words will be given their plain and ordinary meaning, "necessary" has been defined as "that which cannot be dispensed with, essential, indispensable."[44]

39. *Id.* at 171, 151 A.2d at 743 (emphasis added).
40. *Id.*
41. Electronic Surveillance Act, ch. 706, 1959 Md. Laws 1065 (emphasis added) (codified at MD. ANN. CODE art. 27, § 125A (1976) (repealed 1977)).
42. *Id.* The Attorney General was not authorized to apply for an order under the electronic surveillance statute as he had been under the wiretapping statute.
43. MD. ANN. CODE art. 35, § 94(a)(3) (1971) (repealed and recodified 1973).
44. WEBSTER'S NEW WORLD DICTIONARY 980 (College ed. 1962). *But see* BLACK'S LAW DICTIONARY 1181 (4th ed. 1968): "This word must be considered in the transaction in which it is used, as it is a word susceptible of various meanings. It may import absolute physical necessity or inevitability, or it may import that which is only convenient."

Showing that the use of a method of investigation is "indispensable" or "essential" is arguably more difficult than demonstrating that "there are no other means *readily* available,"[45] because the latter suggests only that some degree of hardship would result from the use of other methods. While as a practical matter, the distinction between the two showings might not be significant, the requirement seems to have represented a legislative judgment that a stronger showing of need should be made before the more intrusive electronic devices were used.

The facts required on electronic surveillance applications likewise made obtaining a surveillance order more difficult than obtaining a wiretapping order. More specific than the corresponding provisions in the 1956 Wiretapping Act, the electronic surveillance statute required that

> [t]he affiant shall identify, with reasonable particularity, the device or devices to be used, the person or persons whose conversation is to be intercepted, the crime or crimes which are suspected to have been, or about to be committed, and that the evidence thus obtained will be used solely in connection with an investigation or prosecution of the said crimes before any such ex parte order shall be issued.[46]

By contrast, the Wiretapping Act did not require identification of the persons whose conversation was to be intercepted, only identification of the particular telephone or telegraph line which was to be tapped.[47] Strangely enough, the Electronic Surveillance Act did not provide for suppression of evidence obtained in violation of its provisions. Unlike the Maryland Wiretapping Act, the only statutory sanction for violation of the electronic surveillance law was the criminal misdemeanor penalty.

In 1965, section 125D was added to Article 27,[48] requiring persons possessing any electronic eavesdropping or wiretapping device to register that device with the superintendent of state police, including with the registration the name, address, identifying characteristics, and occupation of the possessor, an identifying description of each device possessed, and any further information the superintendent required.[49] The provision made it unlawful for any person to make any device unless it was registered before or immediately upon its completion. Registration was also required before any device could be transferred.[50] The equipment to be registered was broadly defined as

45. MD. ANN. CODE art. 35, § 94(a)(3) (1971) (repealed 1977).
46. *Id.* art. 27, § 125A(b) (1976) (repealed 1977).
47. *Id.* art. 35, § 94 (1971) (repealed and recodified 1973).
48. Act of April 8, 1965, ch. 201, 1965 Md. Laws 212 (repealed 1977).
49. MD. ANN. CODE art. 27, § 125D(a) (1976) (repealed 1977).
50. *Id.* § 125D(b).

> every device, instrument, apparatus, or equipment, which is designed or especially re-designed to be adapted or actually adapted for the purpose of (1) secretly overhearing or reporting any part of the conversation or words spoken to or by any person in private conversation without the knowledge or consent, express or implied, of that person, (2) intercepting or obtaining or attempting to obtain the whole or any part of a telephonic or telegraphic communication without the knowledge and consent of the participants thereto.[51]

The registration provision was not directed to a law enforcement officer in the duly authorized performance of his duties.[52] Also exempt from the registration requirement was a telephone or telegraph employee engaged in company business "while in the regular course of his employment."[53]

C. *Maryland Law After Title III*

Maryland wiretap and electronic surveillance law entered a new phase upon passage of Title III of the Omnibus Crime Control and Safe Streets Act in 1968.[54] In *State v. Siegel,*[55] the Maryland Court of Appeals considered whether the provisions of Title III were constitutional, and whether they were properly implemented by the existing provisions of the Maryland Code governing wiretapping and electronic surveillance. The court concluded that the federal statute complied with requirements set forth by the Supreme Court in *Katz, Osborn*, and *Berger,*[56] noting that:

> [*T*]*he federal act is not self-executing* as applied to the states. Under § 2516(2), the principal prosecuting attorney of any state or political subdivision, if "*authorized by a statute of that State,*" may apply "to a State court judge of competent jurisdiction for an order authorizing" the interception of wire or oral communication . . . . That section also states that the issuing judge may grant the order "in conformity with section 2518 of this chapter and with the applicable State statute."[57]

Not only must the state have enacted its own statute before Title III can be effectuated, the *Siegel* court explained, but the state

51. *Id.*
52. *Id.*
53. *Id.* Penalties for violation of § 125D were the same as penalties for violation of § 125A-C, that is, a maximum of one year in prison, maximum $500 fine, or both. *Id.* § 125D(c).
54. 18 U.S.C. §§ 2510-2520 (1970).
55. 266 Md. 256, 292 A.2d 86 (1972).
56. *See* text accompanying notes 3-9 *supra.*
57. 266 Md. at 271, 292 A.2d at 94.

statute cannot be less restrictive than the federal statute. The *Siegel* court emphasized the mandate in section 2515 that evidence obtained by the interception of communications in violation of Title III cannot be received into evidence in any court, federal or state. According to the *Siegel* court, "a state act which is more closely circumscribed than the federal law in granting eavesdrop authority is certainly permissible."[58]

One of the more significant holdings of the *Siegel* court was that the federal Act required strict compliance. Title III "sets up a strict procedure that *must* be followed and we will not abide *any* deviation, *no matter how slight,* from the prescribed path."[59] In *Siegel,* the magistrate "deviated" from the Act by not including in his order the required statements that the interceptions must begin "as soon as practicable," "shall be conducted in such a way as to minimize the interception of communications not otherwise subject to interception under this chapter," and "must terminate upon attainment of the authorized objective, or in any event in thirty days."[60] In dismissing the indictment, the court rejected the state's argument that "substantial compliance" with the Act was sufficient so long as the court scrutinized the manner in which the wiretap was carried out.[61] However, two years after *Siegel* was decided, the Supreme Court in *United States v. Giordano*[62] held that evidence derived from wiretapping must be suppressed under Title III only where there is "failure to satisfy any of those statutory requirements that *directly and substantially* implement the congressional intention to limit the use of intercept procedures to those situations clearly calling for the employment of this extraordinary investigative device."[63]

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58. *Id.* at 272, 292 A.2d at 94 (citing Robert v. State, 220 Md. 159, 168-69, 151 A.2d 737, 741 (1959)).
59. *Id.* at 274, 292 A.2d at 95 (emphasis added).
60. 18 U.S.C. § 2518(5) (1970).
61. *Id.; accord,* State v. Lee, 16 Md. App. 296, 295 A.2d 812 (1972). *But see* Everhart v. State, 274 Md. 459, 486-87, 337 A.2d 100, 116 (1974) (court held that, in view of recent Supreme Court decisions, the fact that evidence is tainted no longer gives defendant right to have indictment dismissed).
62. 416 U.S. 505 (1974) (a Maryland case on appeal).
63. *Id.* at 527 (emphasis added). The Court based its decision upon 18 U.S.C. § 2518(10)(a) (1970), which provided three instances in which the evidence is inadmissible:

> (i) the communication was unlawfully intercepted;
> (ii) the order of authorization or approval under which it intercepted was insufficient on its face; or
> (iii) the interception was not made in conformity with the order of authorization or approval.

The Court lended some credence to the government's argument that paragraph (i) does not cover statutory as well as constitutional violations. If such were the intent of Congress, the purely statutory violations of paragraphs (ii) and (iii) would be unnecessary since they add nothing to the grounds for suppression already provided in paragraph (i). However, the Court read the words "unlawfully intercepted" in paragraph (i) as referring not only to interceptions

Although the Maryland Court of Appeals has not explicitly departed from its "strict compliance" standard in *Siegel,* cases after *Giordano* have limited strict compliance to those "precondition[s] to obtaining intercept authority . . . central . . . [to the] statutory scheme."[64] In other words, only when the judge or officer fails to abide by the Act's requirements for the application and court order will strict compliance be required.[65] Failure strictly to comply with the law during and after interception will not necessarily render the evidence obtained inadmissible. For example, in *Spease v. State*[66] the Maryland Court of Appeals held that "[w]here prejudice is not shown" or where "actual knowledge of the wiretap is evident,"[67] failure to serve the intercepted party with an inventory after interception precisely as set forth in the Act does not necessitate suppression of evidence. Emphasizing that the "opinion wasn't intended as a departure in any way from the holding in *Siegel,*"[68] the court explained that the "fatal defect" in *Siegel* had been an essential "precondition" to obtaining authorization to intercept.[69]

During the regular 1973 session,[70] an extensive revision of wiretapping and electronic surveillance laws was enacted by the

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made unconstitutionally, but to those made in violation of those requirements that "directly and substantially implement the congressional intention." 416 U.S. at 527.

64. *See* Spease v. State, 275 Md. 88, 108, 338 A.2d 284, 296 (1975); Calhoun v. State, 34 Md. App. 365, 367 A.2d 40 (1977); Haina v. State, 30 Md. App. 295, 352 A.2d 874 (1975). *But see* 30 VAND. L. REV. 98 (1977). This casenote examined the Ninth Circuit Court of Appeals decision in United States v. Hall, 543 F.2d 1229 (9th Cir. 1976), which held that despite a state statute disallowing interceptions and the admission of evidence derived from interceptions without exception, the federal courts may allow evidence obtained in violation of the state statute to be admitted in a federal criminal trial, so long as the evidence is not obtained in violation of either the fourth amendment or Title III.
65. *See, e.g.,* Haina v. State, 30 Md. App. 295, 352 A.2d 874 (1976).
66. 275 Md. 88, 338 A.2d 284 (1975).
67. *Id.* at 105, 338 A.2d at 294. In *Spease,* one of the appellants received a copy of a search warrant with its underlying affidavit 12 days after the wiretap's termination. He never received an "inventory," which under 18 U.S.C. § 2518(d) is to be sent not later than ninety days after termination of the period of an order or its extensions. The court also ruled that the circuit court did not err in refusing to suppress intercepted conversations of another appellant despite 18 U.S.C. § 2518(9) which prohibits use of evidence of intercepted conversations against a party unless at least ten days prior to trial he has been furnished with a copy of the application and wiretap order. The appellant had actual notice of the wiretap almost six months before trial.
68. *Id.* at 108 n.3, 338 A.2d at 295 n.3.
69. The court of special appeals in *Poore v. State,* reiterated the *Spease* distinction between *pre-order* and *post-order* compliance standards:

> In the former, a defect will void the order and cause suppression of the evidence, but in the latter, a defect will not vitiate the order if there has been substantial compliance and no prejudice to the defendant is shown.

Poore v. State, Daily Record, March 21, 1978 at 2, col. 1, 39 Md. App. 44, 53–54, 384 A.2d 103, 110 (1978).
70. During the state's 1973 Special Session, the Maryland General Assembly enacted the Courts and Judicial Proceedings Article which included the substance of Article 35, §§ 92–99. Act of August 22, 1973, ch. 2, 1973 Md. Laws Spec. Sess. 4.

general assembly, but was later vetoed by Governor Mandel. Explaining his veto in a letter to the Speaker of the House of Delegates,[71] the governor stressed that proposed House Bill 962 repealed by implication the portion of section 93 of Article 35, which prohibited wiretapping without the consent of all parties to the conversation. House Bill 962 would have allowed interception without consent of all parties under three circumstances: 1) by a person acting "under color of law" where such person was a party to the conversation; 2) by a person acting "under color of law" where *one* of the parties had given prior consent; or 3) by a person not acting "under color of law" under the same restrictions, but with the additional limitation that such interception not be "for the purpose of committing any criminal or tortious act in violation of the constitution, or federal or state law, or for the purpose of committing any other injurious act."[72]

The governor expressed his concern that the new law would

> allow . . . anyone . . . to intercept, listen in, and record the private conversations of people where only one party . . . has given consent . . . . The other party . . . is thus subject to having his conversation intercepted without his knowledge [or] . . . prior court approval, and without any need to show probable cause to believe that criminal activity of any kind may be afoot. The very opportunity for unwarranted spying and intrusions on people's privacy authorized by this bill is frightening; and recent revelations have given clear indication that the possibilities of abuse are more real than theoretical.[73]

An equally concerned legislature established an investigating committee in 1975 to examine allegations that state police were conducting illegal surveillance of citizens.[74] The dual purpose of the investigation was to uncover any unwarranted information-gathering activities and to make recommendations to the next session of the general assembly for legislation permanently to correct the abuses found.[75]

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71. 1973 Md. Laws 1924.
72. *Id.*
73. *Id.* at 1924-25. While House Bill 962 was defeated, the language which the governor had so vehemently opposed is the language which was adopted by the 1977 Act. MD. CTS. & JUD. PROC. CODE ANN. § 10-402(c)(2), (3) (Supp. 1977).
74. A Baltimore City grand jury began an investigation in the fall of 1974 of alleged police surveillance of citizens not suspected of criminal activity. Although the grand jury was not able to complete its investigation before the term expired, it submitted a report on January 10, 1975, recommending that the investigation be continued by the incoming grand jury. REPORT TO THE SENATE OF MARYLAND BY THE SENATE INVESTIGATING COMM. ESTABLISHED PURSUANT TO SENATE RESOLUTIONS 1 AND 151 OF THE 1975 MARYLAND GENERAL ASSEMBLY (1975) [hereinafter cited as 1975 SENATE REPORTS].
75. *Id.*

One significant area of police surveillance investigated by the senate committee was wiretapping. Sworn testimony and affidavits from former police officers revealed that the Baltimore Police Department from the mid-1960's until 1973 used Chesapeake and Potomac Telephone Company employees to monitor particular telephone lines without court order. By virtue of this unauthorized monitoring, the police were able to obtain a telephone subscriber's name and address and other information relating to illegal activities. In turn, this data was used to prepare affidavits for search warrant applications.

As a result of their study, the committee recommended that a comprehensive state act be passed, patterned along the lines of Title III. The committee observed that the "current laws . . . regulating [wiretapping and electronic surveillance] are inadequate both in substance and in form and lack necessary specificity in such critical areas as wiretapping. These laws are located in various sections throughout the Maryland Code and many are all but obsolete in view of Maryland case law construing them and federal enactments."[76]

III. THE 1977 MARYLAND WIRETAPPING AND ELECTRONIC SURVEILLANCE ACT

A. *Pre-Interception Provisions*

In enacting Maryland's Wiretapping and Electronic Surveillance Act, the general assembly adopted substantially all of the language in Title III. One major difference between the two acts is the definition of the type of communication which would require a judicial order before interception. The federal statute defines "oral communication" as "any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation."[77] By contrast, the Maryland Wiretapping and Electronic Surveillance Act defines "oral communication" as "any conversation or words spoken to or by any person in private conversation."[78]

The "justifiable expectation of privacy" reasoning adopted by the federal law originated in *Katz v. United States*.[79] According to

76. *Id.* at 67. The Senate Report made several specific recommendations for reform which will be noted when the relevant provisions are discussed.

77. 18 U.S.C. § 2510(2) (1970). *See generally* Note, *The Reasonable Expectation of Privacy — Katz v. United States, A Postscription*, IND. L. REV. 468 (1976).

78. MD. CTS. & JUD. PROC. CODE ANN. § 10-401(2) (Supp. 1977). This definition is derived from the former Article 27, § 125A provision which made it "unlawful for any person . . . to overhear or record any part of the conversation or words spoken to or by any person *in private conversation without the knowledge or consent, express or implied, of that other person.*" MD. ANN. CODE art. 27, § 125A (1976) (repealed 1977) (emphasis added).

79. 389 U.S. 347 (1967).

the *Katz* court, when a person closes the doors of a telephone booth, he may justifiably rely upon the privacy of his conversation.[80] In *Hoffa v. United States*,[81] the Court stated that such reliance is not justified where a "wrongdoer" mistakenly believes "that a person to whom he voluntarily confides his wrongdoing will not reveal it,"[82] nor can the defendant justifiably expect privacy upon confiding to a government agent who records the conversation electronically without the defendant's knowledge.[83]

The refusal of the Maryland legislature to incorporate the federal definition of "oral communication" into the Maryland Act may indicate either an intent to impose stricter standards or to clarify the existing federal provision. In *United States v. Curreri*,[84] the United States District Court for the District of Maryland commented that a state wiretapping and electronic surveillance law may be stricter than Title III, but may not fall below minimum federal standards.[85]

While the 1977 Maryland Act has adopted the federal consensual/participant monitoring allowed in *Hoffa* and *Lopez*, it has somewhat restricted the scope of participant monitoring.[86] Before the new wiretapping and electronic surveillance law, the state status of participant monitoring was uncertain. The Maryland Court of Special Appeals in *Pennington v. State*[87] remarked that the Maryland wiretapping statute "does not prohibit participant monitoring,"[88] but reserved the question of whether the state's electronic surveillance statute similarly allowed such monitoring.

Despite this prior disparity in treatment of participant monitoring between Maryland's wiretapping and electronic surveillance laws, the legislature has now left no doubt that a person's conversation may be intercepted under certain conditions without a court order and without his permission.[89] Section 10-402(c)(2) of the 1977 Act allows "an investigative or law enforcement officer . . . to intercept a wire or oral communication in order to provide evidence of the commission of [certain enumerated offenses] where the person is a party to the communication or *one* of the parties to the communication has given prior consent to the interception."[90]

Section 2511(2)(c), the comparable provision in the federal wiretap statute, states that "it shall not be unlawful . . . for a person

80. *Id.* at 352.
81. 375 U.S. 293 (1966).
82. *Id.* at 302.
83. *See* Lopez v. United States, 373 U.S. 427, 438-39 (1963).
84. 358 F. Supp. 607 (D. Md. 1974).
85. *Id.* at 613.
86. MD. CTS. & JUD. PROC. CODE ANN. § 10-402(c)(2) (Supp. 1977).
87. 19 Md. App. 253, 310 A.2d 817 (1973), *cert. denied*, 419 U.S. 1019 (1974).
88. *Id.* at 277 n.13, 310 A.2d at 830 n.13.
89. MD. CTS. & JUD. PROC. CODE ANN. § 10-402 (Supp. 1977).
90. *Id.* § 10-402(c)(2) (emphasis added).

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."[91] Rather than using the possibly ambiguous terminology "person acting under color of law," the new Maryland statute clearly delineates those persons who may intercept under such circumstances, limiting the scope of such interceptions to the enumerated felonies in section 10-402(c)(2).

Under the Maryland Act, only "an investigative or law enforcement officer" may intercept a conversation upon the consent of only one party.[92] Under the federal statute, anyone may intercept a conversation, provided:

> (1) the "person is a party to the communication [;] *or*
>
> . . .
>
> [(2)] one of the parties . . . has given prior consent to such interception."[93]

The interception may not be for the purpose of committing tortious or criminal acts, however. In Maryland, such an interception may be undertaken by a person who is not a law enforcement officer only if:

> (1) the "person is a party to the communication *and* [;]
>
> . . .
>
> [(2)] *all* of the parties . . . have given prior consent."[94]

By making both participation and consent mandatory, the Maryland law has imposed stricter requirements for civilian monitoring than has Title III.

Monitoring is further restricted in Maryland "to provide evidence of the commission of the offenses of murder, kidnapping, gambling, robbery, bribery, extortion, or dealing in controlled dangerous substances, or any conspiracy to commit any of these offenses."[95] The federal Act's list of crimes for which surveillance

91. 18 U.S.C. § 2511(2)(c) (1970) (emphasis added).
92. MD. CTS. & JUD. PROC. CODE ANN. § 10-402(c)(2) (Supp. 1977).
93. 18 U.S.C. § 2511(2)(d) (1970) (emphasis added).
94. MD. CTS. & JUD. PROC. CODE ANN. § 10-402(c)(3) (Supp. 1977) (emphasis added). Maryland has also incorporated the federal stipulation that the interception not be to further a criminal or tortious act. *Id.*
95. MD. CT. & JUD. PROC. CODE ANN. § 10-406 (Supp. 1977). House Bill 475, enacted during the 1978 Legislative Session, adds arson to the list of crimes which may be grounds for interception within the state. House Bill 475 was signed into law on May 2, 1978. Law of May 2, 1978, ch. 339, 1978 Md. Laws ____ Another bill was introduced which would have included larceny and receiving stolen goods among the Act's enumerated offenses. H.B. 701 (1978) (filed Jan. 13, 1978, unfavorably reported March 15, 1978).

can be conducted is considerably broader.[96] While Maryland rightfully could have added to its enumerated offenses any crime "dangerous to life, limb, or property, and punishable . . . for more than one year,"[97] the general assembly narrowed the list of interceptable offenses.

Less discretion is allowed under Maryland law than under Title III in the performance of certain procedures by the issuing judge. For example, where the federal Act states that a court order "may" require periodic progress reports to be made to the judge,[98] the Maryland Act states that all interception orders "shall" require progress reports.[99] Similarly, section 10-408(g)(4) mandates that the judge make available to the persons named in the order[100] portions of the intercepted communications, applications, and orders pertaining to that person and the alleged crime.[101] On the other hand, Title III leaves to the judge's discretion whether in the "interest of justice" inspection of the intercepted communications and other materials is needed.[102]

In Maryland, only a "judge of competent jurisdiction"[103] can authorize an interception under specified conditions. The new Maryland statute defines a "judge of competent jurisdiction" as a "circuit court [judge] or [a judge of] the Supreme Bench of Baltimore City."[104] Section 10-403 of the previous Maryland wiretapping law, however, included district court judges among those authorized to issue orders.[105] The district court judges are omitted from the new law, since interceptions may be authorized only in cases where they will reveal evidence of particular felonies that lie outside district court jurisdiction.[106] The previous Maryland statute addressed itself to "crimes" rather than to specific, enumerated felonies.[107]

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96. 18 U.S.C. § 2516(1)(c) (1970) (*e.g.*, bankruptcy fraud and obstruction of criminal investigation are included).
97. *Id.* § 2518(d) (1970). *See, e.g.*, NEV. REV. STAT. § 179.460 (1973).
98. 18 U.S.C. § 2518(6) (1970).
99. MD. CTS. & JUD. PROC. CODE ANN. § 10-408(f) (Supp. 1977).
100. Other parties to intercepted communications may also be included within the judge's discretion. *Id.* at § 10-408(g)(4).
101. *Id.*
102. 18 U.S.C. § 2518(8)(d) (1970).
103. MD. CTS. & JUD. PROC. CODE ANN. § 10-406 (Supp. 1977).
104. *Id.* § 10-401(8).
105. *Id.* § 10-403(a) (1974) (repealed 1977). *See* Adkings, *Code Revision in Maryland: The Courts and Judicial Proceedings Article*, 34 MD. L. REV. 7 (1974) (notes that former Article 26, § 145(b)(6) was written into § 10-403, despite apparent conflict with federal law which, according to 18 U.S.C. § 2510(9)(b), allowed authorization only by judges of courts of "general criminal jurisdiction of a State").
106. The district court presently has criminal jurisdiction in the case of misdemeanors and certain other crimes: false pretenses, larceny, larceny after trust, receiving stolen goods, and shoplifting, which may be felonies or misdemeanors. MD. CTS. & JUD. PROC. CODE ANN. § 4-301 (1974).
107. *See id.* § 10-403(a)(1)-(2) (1974) (repealed 1977).

B. *Treatment of Violations Under the 1977 Maryland Act*

The Maryland Wiretapping and Electronic Surveillance Act provides maximum criminal penalties of five years imprisonment or a fine of $10,000 or both for the person who "manufactures, assembles, possesses, or sells any electronic, mechanical or other device, knowing or having reason to know that the design of the device renders it primarily useful for the purpose of the surreptitious interception of wire or oral communications."[108] Under the federal Act, manufacture or sale is a felony only if the person had reason to know that such a device or its components has circulated or is about to circulate through the mail or in interstate or foreign commerce.[109] The practical effect of the changed Maryland law, however, may be relatively insignificant. It is doubtful that violations under the Act will involve devices completely unconnected with interstate commerce, especially considering the numerous components which comprise most wiretapping devices and the likelihood that at least one of those components has been manufactured outside the state. Thus, a violator of the federal Act would generally violate the Maryland Act as well. The new section 10-403 merely increases the chances of prosecution for these violations by providing a state forum in addition to the forum already existing in the federal courts.

A more significant difference between the two acts can be found in Maryland's omission of the federal prohibition against advertising for wiretapping/bugging devices. It would seem incongruous to impose a $10,000 fine for the sale of such devices, yet freely to allow advertisement of devices within the state by the very persons prohibited from selling them. One logical explanation for the Maryland omission is that it was purely an oversight on the part of the legislature.[110]

Both the Maryland and federal Acts create an exception to the manufacturing prohibition for an officer, agent, or employee of federal, state, or local government who manufactures, assembles, possesses, or sells devices in the normal course of his lawful activities.[111] Maryland's section 10-403(b)(3) and (4), however, contains the additional qualification that "any sale made under the authority of [these] paragraph[s] may only be for the purpose of disposing of obsolete or surplus devices."[112] Officers, agents, or

108. MD. CTS. & JUD. PROC. CODE ANN. § 10-403(a) (Supp. 1977). The change was recommended by the Senate Investigating Committee. 1975 SENATE REPORT, *supra* note 74, at 68.

109. 18 U.S.C. § 2512(1)(b) (1970).

110. Among those jurisdictions prohibiting the sale and manufacture of devices, none has seen fit to remove the advertising prohibition. *See, e.g.*, COLO. REV. STAT. ANN. § 18-9-309 (1973); D.C. CODE § 23-543 (Supp. 1970); FLA. STAT. ANN. § 934.04 (1973); MINN. STAT. ANN. § 626A.03 (Cum. Supp. 1978); N.H. REV. STAT. ANN. § 570-A:3 (1974); N.J. REV. STAT. ANN. § 2A:156A-5 (1971).

111. *Compare* 18 U.S.C. § 2512(2)(b) (1970) *with* MD. CTS. & JUD. PROC. CODE ANN. § 10-403(b)(3), (4) (Supp. 1977).

112. MD. CTS. & JUD. PROC. CODE ANN. § 10-403(b)(3) (Supp. 1977).

employees of a Maryland law enforcement agency or political subdivision of Maryland are limited further to manufacturing, assembling, possessing, or selling such devices only if "the particular officer, agent, or employee is *specifically* authorized by the chief administrator of the employer law enforcement agency" to further "a *particular* law enforcement purpose."[113]

Under section 10-411 of the Maryland Act, law enforcement agencies are now required to register all interception devices in their control with the Maryland Department of Public Safety and Correctional Services within ten days of obtaining control or possession of the devices.[114] While the registration requirement has been in existence since 1965, the previous Maryland law imposed no time limit in which the devices were to be registered.[115] Apparently, Maryland is the only jurisdiction to incorporate a registration provision in its electronic surveillance law.[116]

Maryland's new penalty provision[117] is not quite so unique to the state. Borrowed from the corresponding provision in Title III,[118] section 10-402(b) makes interception or disclosure of communications obtained in violation of the Act punishable by a possible $10,000 fine and five-year imprisonment, or both.[119] Before the recent Act, violation of Maryland's wiretapping law was only a misdemeanor with a maximum $1,000 fine or 90-day imprisonment or both.[120] Making violation of the new law a felony also extends the limitation period in which the state may prosecute beyond the one-year limit set for all misdemeanors.[121] The change represents a legislative judgment that the protection of individual privacy is worth reinforcing with stringent penalties.

Section 10-410 of the Maryland Wiretapping and Electronic Surveillance Act further expands the protection afforded private parties. Until the 1977 enactment, Maryland provided the subject of an interception conducted in contravention of Maryland law no civil remedy for the invasion of his privacy. Like the federal Act, Maryland law now grants the injured party the right to sue "any person who intercepts, discloses, or uses, or procures any other

113. *Id.* § 10-403(b)(4) (emphasis added).
114. *Id.* § 10-411. The Senate Investigating Committee recommended that devices should be registered within ten days of their receipt. 1975 SENATE REPORT, *supra* note 74 at 70.
115. MD. ANN. CODE art. 27, § 125D (1976) (repealed 1977).
116. As of February, 1978, no other jurisdiction had enacted a similar registration requirement.
117. MD. CTS. & JUD. PROC. CODE ANN. § 10-402(b) (Supp. 1977).
118. 18 U.S.C. § 2511(1)(d) (1970).
119. MD. CTS. & JUD. PROC. CODE ANN. § 10-402(b) (Supp. 1977).
120. *Id.* § 10-408 (1974) (repealed 1977). Penalties for violation of the Maryland electronic surveillance statute were a maximum fine of $500 or imprisonment of up to one year, or both in the court's discretion. MD. ANN. CODE art. 27, § 125B (1976) (repealed 1977).
121. *See* MD. CTS. & JUD. PROC. CODE ANN. § 5-106(a) (1974).

person to intercept, disclose, or use the communications" obtained in violation of the subsection.[122] The plaintiff in such an action may recover actual damages "computed at the rate of $100 a day for each day of violation or $1,000, whichever is higher,"[123] in addition to punitive damages, reasonable attorney's fees and "other litigation costs reasonably incurred."[124]

Litigants who might have been discouraged from bringing suit in federal court by the inconvenience of travelling to Baltimore from distant parts of the state may now sue in their local circuit courts under the new Maryland law. Others who would not have had standing to sue in federal court for failure to satisfy the jurisdictional "amount in controversy"[125] are provided a forum in which to allege wiretapping or electronic surveillance violations.[126]

When the subject of surveillance conducted in violation of the Act is charged with a crime based on the evidence seized, the Maryland Act differs from Title III in the permissible grounds for suppression of that evidence. Under the federal Act, evidence may be suppressed if "the order of authorization or approval under which it was intercepted is insufficient on its face."[127] The Maryland Act adds the words "or was not obtained or issued in strict compliance with this subtitle,"[128] reflecting the *Spease* holding that suppression is proper only where "preconditions" to wiretapping are violated.[129] The Maryland Act would appear to lay down more exacting procedural requirements than Title III. As interpreted by federal case law,[130] however, Title III demands the same strict compliance to surveillance "preconditions" that is expressed by the Maryland law.

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122. *Id.* § 10-410(a) (Supp. 1977).
123. *Id.* § 10-410(a)(1).
124. *Id.* § 10-410(a)(2), (3).
125. 28 U.S.C. § 1331 (1970) (requiring $10,000 damages to be alleged).
126. It should be noted, however, that the 1976 amendment to § 1331 removed the jurisdictional amount in suits brought against the United States, one of its employees, or an officer or an employee acting within the scope of his office. Since most, if not all, civil suits would be brought against "law enforcement officers," the benefit of having a state forum is somewhat lessened. Under Maryland law, as in the federal statute at 18 U.S.C. § 2520, a "good faith reliance on a court order" shall constitute a complete defense to any civil or criminal action brought. MD. CTS. & JUD. PROC. CODE ANN. § 10-410(3)(b) (Supp. 1977). Under the federal statute, reliance upon § 2518(7) is also a defense. That section allows interceptions to be made without prior judicial authorization when grounds exist for an order with regard to conspiratorial actions of organized crime or threats to the national security when an interception must be made before an order may be obtained. Maryland has not adopted enabling legislation for such interceptions, although § 2518(7) allows the interceptions to be made by "the principal prosecuting attorney of any State or subdivision thereof acting pursuant to a statute of that State." 18 U.S.C. § 2518(7) (1970).
127. 18 U.S.C. § 2518(10)(a)(ii) (1970).
128. MD. CTS. & JUD. PROC. CODE ANN. § 10-408(h)(i)(1)(ii) (Supp. 1977).
129. *See* text accompanying notes 66-69 *supra.*
130. *See* United States v. Chavez, 416 U.S. 562 (1974); United States v. Giordano, 416 U.S. 505 (1974).

One final variation between the two acts is the addition of a state prohibition against breaking, entering, or trespassing with intent to plant or remove electronic surveillance devices.[131] Such actions would not necessarily be crimes under Maryland's existing trespass or breaking and entering laws.[132]

C. *Possible Problem Areas in the Act*

Despite the numerous advantages of the Maryland Wiretapping and Electronic Surveillance Act, the law poses some distinct interpretational problems, particularly where it has departed from the language of Title III. Nowhere is this problem more evident than in the substitution of "private conversation" for "justifiable expectation" to describe what oral communications may not be intercepted without court order.[133] Maryland is one of only two states to have incorporated this definition of oral communication into its wiretapping and electronic surveillance law.[134] State precedent interpreting the meaning of "private conversation" within the context of Maryland's prior wiretapping law is scanty.[135] Decisions from other jurisdictions are likewise meager.

Before 1973, Washington had made no attempt to clarify the meaning of "private conversation" in its wiretapping and electronic surveillance law. Stating that the words should be construed "to best fulfill the purpose of the statute,"[136] a Washington court noted that "the phrase 'private conversation' is all embracing . . . . To construe the words 'private conversation' narrowly and grudgingly would unnecessarily fail to give full effect to the legislative purpose to protect the freedom of people to hold conversations intended only for

131. MD. CTS. & JUD. PROC. CODE ANN. § 10-412 (Supp. 1977).

132. *See* MD. ANN. CODE art. 27, §§ 30, 32, 576-577B (1976). To be an illegal trespass under Article 27, §§ 576-577B, the property owner must have either posted his property, notified the trespasser not to enter the property, or the trespasser must have refused to leave a public building or certain other public property. Even if a violation of §§ 576-577B were found, the maximum fine of $1,000 for the trespass fails to approach the $10,000 figure imposed by the Maryland wiretapping and electronic surveillance law.

Since violation of the wiretapping and electronic surveillance law is now a felony, the violator may also be guilty of violating Article 27, § 30 or § 32, which penalizes those who break into dwellings at night with the intent to commit a felony. While neither § 30 nor § 32 of Article 27 carries fines for breaking and entering offenses, the possible prison sentence for their violation is ten years in the state penitentiary.

133. *See* MD. CTS. & JUD. PROC. CODE ANN. § 10-401(2) (Supp. 1977).

134. The Washington statute also makes it unlawful to "intercept, record, or divulge any . . . [p]rivate conversation." *See* WASH. REV. CODE ANN. § 9.73.030 (1977).

135. The court in Avery v. State, 15 Md. App. 520, 292 A.2d 728 (1972), however, used the justifiable expectation test to determine if it was a violation of the fourth amendment to film a criminal act in progress. The court failed to state whether the same test would similarly apply to "private conversations" within the Maryland Wiretapping and Electronic Surveillance Act.

136. State v. Grant, 9 Wash. App. 260, 265, 511 P.2d 1013, 1017 (1973).

the ears of the participant."[137] While the Washington interpretation of "private conversation" is persuasive authority in the Maryland courts, it should be noted that Washington, unlike Maryland, still requires the consent of all parties to a conversation before interception will be allowed.[138] The recent removal of the all-party consent requirement for police-conducted surveillance from the Maryland law casts some doubt on whether the Maryland courts will be able to attribute to the phrase "private conversation" the same broad construction given it by Washington's state courts.

How Maryland courts will interpret the legislature's decision to eliminate from the Act prior prohibitions against the advertising of electronic devices is equally doubtful.[139] While clearly a less egregious offense than manufacturing, distributing, or selling devices, allowing advertising does not serve to encourage the Act's purpose of limiting the number and type of persons to whom devices will be made available.

Another minor difference between the Maryland and federal Acts has the potential for causing some confusion. Under Title III, the "Attorney General, or any Assistant Attorney General specially designated . . . *may authorize* an application to a Federal judge of competent jurisdiction."[140] The corresponding provision in the Maryland statute states that the "Attorney General or any State's Attorney *may apply* to a judge of competent jurisdiction"[141] for a court order. The Maryland law then requires that each application include "[t]he identity of the investigative or law enforcement officer *making the application,* and the officer authorizing the application."[142] On the strength of section 10-408(a)(1), a "law enforcement officer" may apply directly to a judge for a court order, even though the earlier provision in the act allowed only the attorney general or

137. *Id.* The *Grant* court held that conversations between the defendant und his attorney and between the defendant and a police detective were "private conversations" within the meaning of the Washington Act, where conducted at the police station without knowledge of interception and without consent of both parties. *See also* State v. Smith, 85 Wash. 2d 840, 540 P.2d 424 (1975), where the court held that a tape recording made by a murder victim which recorded screams, shouts, and gun shots did not fall within the definition of "private conversation."

138. *Compare* MD. CTS. & JUD. PROC. CODE ANN. § 10-402(c) (Supp. 1977) *with* WASH. REV. CODE ANN. § 9.73.030 (1977). In Maryland, the consent of all parties is needed only when interception is not under the direction of a law enforcement officer.

139. The 1974 ABA Standards Report on Electronic Surveillance recommended that advertising be prohibited in Maryland's Wiretapping and Electronic Surveillance Act. THE JOINT COMMITTEES OF MARYLAND JUDICIAL CONFERENCE AND MARYLAND STATE BAR ASSOCIATION, TO IMPLEMENT THE AMERICAN BAR ASSOCIATION STANDARDS FOR CRIMINAL JUSTICE § 585C(b) (1974) [hereinafter cited as ABA STANDARDS REPORT].

140. 18 U.S.C. § 2516(1) (1970) (emphasis added).

141. MD. CTS. & JUD. PROC. CODE ANN. § 10-406 (Supp. 1977) (emphasis added).

142. *Id.* § 10-408(a)(1) (emphasis added).

the state's attorney to make such an application.[143] The apparent inconsistency between the two provisions should be resolved for the purpose of clarity.

IV. PROVISIONS NOT INCLUDED IN THE MARYLAND ACT

In its 1974 Report on ABA Standards on Electronic Surveillance,[144] joint committees of the Maryland Judicial Conference and the Maryland Bar Association made a series of recommendations for changes to the Maryland wiretapping and electronic surveillance law. Among the joint committee suggestions not adopted by the Maryland legislature[145] is one particularly worthy of note.

In recognition of the sensitive and legally privileged nature of certain communications, the committee proposed that the interception of communications in places "primarily used" by practicing, licensed physicians, attorneys, and clergymen be prohibited unless "special need" is shown.[146] Some jurisdictions have already enacted electronic surveillance laws which incorporate similar protective language.[147] In the interest of minimizing unnecessary interception, other jurisdictions have imposed a "special need" requirement whenever the law enforcement officer anticipates that public facilities will be tapped.[148]

143. As a practical matter, "officer" will likely be interpreted to mean attorney general or state's attorney rather than "law enforcement officer." *Cf.* United States v. Giordano, 416 U.S. 505, 520 (1974) ("The authority to apply for court orders is to be narrowly confined . . . to those responsive to the political process."). *Accord,* Poore v. State, Daily Record, March 21, 1978, at 1, col. 1, 39 Md. App. 44, 384 A.2d 103 (1978).

144. ABA STANDARDS REPORT, *supra* note 140.

145. The Maryland legislature did not adopt the following major recommendations made in the ABA Standards Report:
   (1) To follow the federal definition of "oral communications";
   (2) To include in the definition of "investigative or law enforcement officer" United States as well as state officials;
   (3) To disallow interception where not all parties consent, even where acting under police direction;
   (4) To prohibit advertising of electronic devices in any newspaper, magazine, handbill or other publication;
   (5) To add to the crimes for which wiretapping could be conducted (a) arson (b) maliciously burning certain property, (c) attempting to burn certain property, (d) breaking and entering with intent to steal, (e) rape, (f) carnal knowledge of a child under 14 years of age or an insane or incompetent woman. *See* MD. ANN. CODE art. 27, §§ 6-10, 29, 30, 32, 461, 462 (1976 and Supp. 1977);
   (6) To allow the applicant for a court order to base his application on "information and belief," supported by affidavits of law enforcement officers or others having knowledge of the facts;
   (7) To add grounds for suppression where "the order was based on an affidavit or material known by the applicant to be materially false."

146. ABA STANDARDS REPORT, *supra* note 140, § 585H(5).

147. *See* CONN. GEN. STAT. ANN. § 54-41h (West Cum. Supp. 1978); R.I. GEN. LAWS § 12-5.1 (Supp. 1977).

148. *See, e.g.,* CONN. GEN. STAT. ANN. § 54-41d(7) (West Cum. Supp. 1978); N.J. REV. STAT. § 2A:156A-11 (Cum. Supp. 1977); R.I. GEN. LAWS § 12-5.1, 1-4(b) (Supp. 1977).

While there now exists a provision in Maryland against admission of evidence derived from the interception of a privileged communication,[149] it would be a greater safeguard to prevent privileged communications from being intercepted unless absolutely necessary.[150] However, the use of the vague language "special need" does not clarify for either law enforcement officers or the judiciary exactly what must be shown in addition to the Act's already strong requirements.

Section 10-403 now mandates that the application include "[a] full and complete statement as to whether or not other investigative procedures have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous."[151] It is difficult to conceive of a stronger showing of need that could be made by a law enforcement officer, with the exception of showing that he has actually tried all other available procedures before requesting a wiretap or bug.[152] Yet, without resorting to the use of "special need," a provision could be fashioned which would further protect privileged communications from unwarranted interception. The provision could require that the applicant demonstrate a belief that the attorney, physician or clergyman whose telephones, office or home are to be tapped or bugged is, himself, suspected of one of the Act's enumerated offenses. In the case of the attorney, an interception could also be allowed upon showing that there is reason to believe the attorney is concealing information on the proposed criminal acts of a client, in direct violation of the American Bar Association's Code of Professional Responsibility.[153]

In seeking conformity with Title III, the Maryland General Assembly may have failed to consider seriously provisions in other jurisdictions' wiretapping and electronic surveillance laws which either supplement or clarify language in the federal Act. Many of these provisions might be beneficial additions to the Maryland

149. MD. CTS. & JUD. PROC. CODE ANN. § 10-407(d) (Supp. 1977). Section 10-407(d) provides that "[a]n otherwise privileged wire or oral communication intercepted in accordance with, or in violation of, the provisions of this subtitle, does not lose its privileged character."

150. A privileged conversation may now be excluded from interception where the monitor conducts "spot checking" of the conversation being recorded. In reality, "'most agents have been reluctant to unplug their earphones for fear that they will miss an important conversation.'" Poore v. State, Daily Record, March 21, 1978, at 2 col. 5, 39 Md. App. 44, 70, 384 A.2d 103, 118 (1978) (quoting Low, *Post-Authorization Problems in the Use of Wiretaps: Minimization, Amendment, Sealing, and Inventories*, 61 CORN. L. REV. 92, 96 (1975)). Consequently, limiting inteceptions of communications conducted on attorney's, physican's and clergymen's phones may be the only means for truly minimizing intrusions into privileged conversations.

151. MD. CTS. & JUD. PROC. CODE ANN. § 10-408(a)(3) (Supp. 1977).

152. *See* Trovinger v. State, 34 Md. App. 357, 361, 367 A.2d 548, 551 (1977), where the court held that "[t]he state need not exhaust all conceivable investigative possibilities before seeking a wiretap."

153. ABA CODE OF PROFESSIONAL RESPONSIBILITY, D.R. 7-102(A)(3) (1976).

statute. For example, Connecticut requires that the application for a court order state that the person who will be conducting the wiretap or electronic surveillance be qualified to do so by training and experience.[154] Such a provision serves to implement the Act's policy that wiretaps should be conducted carefully so as to reduce the chance that unnecessary or excessive intrusions into privacy will occur.[155] Also minimizing unnecessary intrusions are the Connecticut and Massachusetts provisions which require the applicant to demonstrate that secret entry to install a device is necessary, if such installation is to be made.[156]

A few jurisdictions that substantially have adopted Title III impose upon telephone and telegraph companies the duty to report to the police department or state's attorney any violations of the surveillance law of which they may be aware.[157] While Maryland imposes no equivalent reporting duty, the state does require "communication common carrier[s], landlord[s] . . . or other person[s]" to furnish law enforcement officers with "all information, facilities, and technical assistance necessary to accomplish the interception unobtrusively."[158] To require the reporting of unauthorized tapping by those facilities most likely to discover such interceptions would be in keeping with the statute's expressed intent to encourage cooperation of third parties in the effective enforcement of the Maryland law.

According to some states, wiretapping laws should not be so stringently enforced where the need to make routine recordings of conversations for purely legitimate purposes would make obtaining a court order unduly burdensome.[159] Massachusetts carves out an exception to the requirement for a court order in addition to those already created under Title III of the federal statute.[160] When an "intercommunication system" is used in the "ordinary course of . . . business," Massachusetts does not make it unlawful for that business to intercept intercommunications without the supervision of a law enforcement officer.[161] The major difficulty with this

154. CONN. GEN. STAT. ANN. § 54-41d(8) (Supp. 1978).

155. *See, e.g.*, MD. CTS. & JUD. PROC. CODE ANN. § 10-408(e) (1977), which provides that "[e]very order and extension thereof shall contain a provision that the authorization to intercept . . . shall be conducted in such a way as to minimize the interception of communications not otherwise subject to interception." *See generally* Berger v. New York, 388 U.S. 41 (1967).

156. CONN. GEN. STAT. ANN. § 54-41c(10) (West Cum. Supp. 1978); MASS. GEN. LAWS ANN. ch. 272, § 99 (West Supp. 1974) (must be "reasonably" necessary).

157. *E.g.*, MINN. STAT. ANN. § 626A.15 (Cum. Supp. 1978); ARIZ. REV. STAT. § 13-105 (Supp. 1977), § 13-3009 (Special Pamphlet 1977, effective Oct. 1, 1978).

158. MD. CTS. & JUD. PROC. CODE ANN. § 10-408(d)(2) (Supp. 1977).

159. *See, e.g.*, MASS. GEN. LAWS ANN. ch. 272, § 99 (Supp. 1974).

160. *Id.* Title III exempts switchboard operators and telephone and telegraph employees citing in the "normal course" of their employment, as well as law enforcement officers and those persons acting under their direction in conducting participant monitoring. 18 U.S.C. § 2511 (1970).

161. MASS. GEN. LAWS ANN. ch. 272, § 99 (Supp. 1974).

exception is interpreting the precise meaning of "intercommunication system." Without substantially narrowing the type of equipment falling within the definition of "intercommunication system," the exception could be abused easily. Less likely to be abused is the Florida provision that makes the tapping of telephones to trace obscene, harassing, or threatening telephone calls an exception to the court order requirement.[162] In Colorado, an exception is provided for news agencies and their employees where "reasonable notice of use"[163] is given to the public.

One of the more controversial provisions to be drafted into a state surveillance law is the Virginia requirement that the judge who considers the application for an order disqualify himself from trying the case based on evidence obtained in the interception.[164] The controversiality of the provision may explain why Virginia is thus far the only state to have mandated judicial disqualification.[165] Not only does such a provision question the independence and fairness of the judiciary, but it can pose some practical problems as well. In those Maryland circuits where judges are separated by as much as twenty or thirty miles from one another, disqualification can result in geographical inconvenience and administrative delay.

The American Bar Association's Code of Judicial Conduct does not expressly forbid a judge from trying a case based on his earlier *ex parte* orders.[166] Nevertheless, the Code states that

> a judge should disqualify himself in a proceeding in which his impartiality *might reasonably be questioned,* including but not limited to instances where . . . he has . . . personal knowledge of disputed evidentiary facts concerning the proceeding.[167]

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162. FLA. STAT. ANN. § 934.03(f) (Cum. Supp. 1976). It should be noted, however, that this exception may already be covered under the provision making it lawful for a "communication common carrier" who "in the normal course of . . . employment" intercepts oral communications "while engaged in any activity which is a necessary incident to the rendition of . . . service." *See* MD. CTS. & JUD. PROC. CODE ANN. § 10-402(c)(1)(i) (Supp. 1977). Because it is unclear whether tracing such calls is "incident to the rendition of service," the Maryland legislature might be advised to expressly provide for such interceptions by telephone companies.

163. COLO. REV. STAT. ANN. § 18-9-305(1) (1973) states, in part, that "nothing . . . shall . . . prevent a news agency, or an employee thereof, from using the accepted tools and equipment of that news medium in the course of reporting or investigating a public and newsworthy event."

164. VA. CODE ANN. § 19.2-68(b) (Supp. 1977). The Virginia law provides: "The judge who considers an application for an interception under this chapter, *whether issuing or denying the order,* shall be disqualified from presiding at any trial resulting from or in any manner connected with such interception, *regardless of whether the evidence acquired thereby is used in such trial."Id.* (emphasis added).

165. As of February, 1978.

166. AMERICAN BAR ASSOCIATION, CODE OF JUDICIAL CONDUCT (1975).

167. *Id.* Canon 3C.(1) and 3C.(1)(a) (emphasis added).

The Code also strongly cautions against consideration by the judge of *ex parte* communications concerning impending proceedings, "except as authorized by law."[168] Naturally, the *ex parte* nature of a surveillance order can work to the detriment of the absent party, the potential criminal defendant. To counteract this detrimental effect, the issuing judge should evaluate carefully the application to determine the existence of probable cause. Careful scrutiny, however, may not be sufficient to adequately safeguard the interests of the party whose conversations are to be intercepted. Should the same judge later be called upon to reexamine the propriety of his order and the probable cause determination upon which it was based, his impartiality and ability to invalidate the order "might reasonably be questioned."[169] No doubt, a concern with maintaining high standards of judicial ethics and with counteracting the potential adverse effects of the *ex parte* order were partly responsible for the Virginia legislature's enactment of a judicial disqualification provision.

V. CONCLUSION

The Maryland Wiretapping and Electronic Surveillance Act is a marked improvement over the earlier Maryland statutes in several notable respects. Not only does the Act increase the punishment for violation of its provisions, it provides a previously unavailable civil damage remedy. The Act further allows for suppression of evidence seized in violation of the statute, a procedure which did not exist under the former Electronic Surveillance Act. Unlike the prior law, the Act penalizes the breaking and entering of premises to plant a wiretapping or electronic surveillance device, and creates a ten-day period in which all devices must be registered. Undoubtedly, the most significant and controversial change from earlier Maryland law is the provision which now permits wiretapping and electronic surveillance without the unanimous consent of all the participants to the communication.

While the Maryland Wiretapping and Electronic Surveillance Act closely follows Title III, it imposes certain procedural requirements which are stricter than the corresponding requirements in the federal Act. The definition of "oral communications" for which court-ordered interception is required has conceivably been broadened by a departure from the objective federal "justifiable expectation" test. In espousing the participant monitoring permitted by federal law, Maryland has limited the types of offenses for which such monitoring is allowed. When an interception is not conducted by a law enforcement official, the Act requires that the person intercepting the communications be a party to that communication and that the other parties consent to the interception. Title III allows

168. *Id.* Canon 3A.(4).
169. *Id.* Canon 3C.(1)(a).

civilian monitoring when there is either unanimous consent or participation by the intercepting party.

The judge authorizing a Maryland surveillance must demand periodic progress reports during the interception and must provide the subject of surveillance with "portions of the intercepted communication" upon request after completion of the interception. It is solely within the discretion of the federal judge whether either of these actions are to be performed.

Facially stricter than the federal statute, the Maryland Act provides essentially the same grounds for suppression of evidence as Title III. Less strict than the federal provision is Maryland's failure to prohibit the advertising of electronic devices.

Improvement though it may be, the Maryland Act contains several provisions which call for clarification by the legislature and lacks other provisions which could demonstrably add to the force and purpose of the Act. Where intrusion into constitutionally protected rights is made permissible by statute, that statute should periodically be re-examined to determine its continuing validity and effectiveness.

Marianne B. Davis

Laurie R. Bortz

APPENDIX

Section 10-409(c) of Maryland's Wiretapping and Electronic Surveillance Act requires a report to be submitted by the state court administrator to the general assembly each February concerning "the number of applications for orders authorizing or approving the interception of wire or oral communications and the number of orders and extensions granted or denied during the preceding calendar year."[1] The 1978 report made pursuant to section 10-409(c) reflects wiretapping and electronic surveillance activities conducted over the six-month period from July through December, 1977,[2] as reported by ten of the state's twenty-four political subdivisions.[3]

As summarized in the report, four of the ten subdivisions indicated no activity,[4] whereas Prince George's County, Baltimore City, Harford County and Montgomery County, in that order, reported the most activity. None of the twenty-seven court orders applied for was refused. The most common interception was conducted by the telephone wiretap (96.3 percent) of a single-family dwelling (51.9 percent), for either gambling (85.2 percent) or narcotics (11.1 percent) offenses, for a period of thirty days and at an average cost of $5,020. While 44.53 percent of the total interceptions were found to be incriminating, roughly 4.2 percent of all persons whose conversations were recorded were found guilty of the offense(s) charged.[5]

The following charts were included among the data provided to the general assembly in the 1978 report.

1. MD. CTS. & JUD. PROC. CODE ANN. § 10-409(c) (Supp. 1977).
2. A full calendar year could not be reported because of the July, 1977 effective date of the Act.
3. Among those not reporting was Maryland's Office of the Attorney General. The Attorney General's Office conducted one wiretap under the order of the Baltimore Supreme Bench during the period from July 1 through December 31, 1977. A business phone was tapped for 23 days at a cost of $750 for the specified offenses of bribery and extortion. At the conclusion of grand jury proceedings, the Attorney General's Office anticipates that two persons will be arrested as the result of the wiretapping conducted. *See* OFFICE OF THE ATT'Y GENERAL, REPORT OF APPLICATION &/OR ORDER AUTHORIZING INTERCEPTION AND POLICE & COURT ACTION RESULTING FROM INTERCEPTED COMMUNICATION (Feb. 14, 1978).
4. Carroll, Charles, Somerset and Talbot Counties.
5. The report notes, however, that some of the 111 persons arrested are still awaiting trial.

WIRETAPPING AND ELECTRONIC SURVEILLANCE PURSUANT TO § 10-409(c) OF THE COURTS ARTICLE JULY 1 — DECEMBER 31, 1977

REPORTS BY JUDGES

Reporting Number*	Official Authorizing Application	Offense	Type of Intercept[1]
BALTIMORE CITY			
(Criminal Court)			
1	State's Attorney	Gambling Conspiracy	PW
2	State's Attorney	Gambling Conspiracy	PW
3	State's Attorney	Gambling Conspiracy	PW
4	State's Attorney	Gambling Conspiracy	PW
5	State's Attorney	Gambling Conspiracy	PW
6	State's Attorney	Gambling Conspiracy	PW
7	State's Attorney	Gambling Conspiracy	PW
8	State's Attorney	Narcotics	PW
BALTIMORE COUNTY			
(Circuit Court)			
1	State's Attorney	Gambling Conspiracy	ME
CARROLL COUNTY — REPORT FILED INDICATING NO ACTIVITY			
CHARLES COUNTY — REPORT FILED INDICATING NO ACTIVITY			
HARFORD COUNTY			
(Circuit Court)			
1	State's Attorney	Gambling	PW
2	State's Attorney	Gambling	PW
3	State's Attorney	Gambling	PW
4	State's Attorney	Gambling	PW
MONTGOMERY COUNTY			
(Circuit Court)			
1	State's Attorney	Gambling	PW
2	State's Attorney	Gambling	PW
3	State's Attorney	Gambling	PW
4	State's Attorney	Gambling	PW
PRINCE GEORGE'S COUNTY			
(Circuit Court)			
1	State's Attorney	Gambling	PW
2	State's Attorney	Gambling	PW
3	State's Attorney	Gambling	PW
4	State's Attorney	Gambling	PW
5	State's Attorney	Gambling	PW
6	State's Attorney	Gambling	PW
7	State's Attorney	Gambling	PW
8	State's Attorney	Narcotics Conspiracy	PW
9	State's Attorney	Narcotics Conspiracy	PW
SOMERSET COUNTY — REPORT FILED INDICATING NO ACTIVITY			
TALBOT COUNTY — REPORT FILED INDICATING NO ACTIVITY			
WICOMICO COUNTY			
(District Court)			
1	State's Attorney	Murder Conspiracy	PW

* Corresponds to same number on reports by prosecuting officers.

[1] TYPE: PW = Phone wire; ME = Microphone-eavesdrop.

[2] LOCATION: S = Single family dwelling; A = Apartment; B = Business location; PP = Pay phone; NR = Not reported.

WIRETAPPING AND ELECTRONIC SURVEILLANCE PURSUANT TO § 10-409(c) OF THE COURTS ARTICLE JULY — DECEMBER 31, 1977

REPORTS BY JUDGES

Location[2]	Date of Application	AUTHORIZED LENGTH		
		Original Order (Days)	Number of Extensions	Total Length (Days)
B	09/29/77	30	—	30
B	10/10/77	30	—	30
S	10/25/77	30	—	30
S	10/27/77	30	—	30
S	10/27/77	30	—	30
S	11/02/77	30	—	30
S	11/04/77	1	—	1
S	11/29/77	30	—	30
B	11/17/77	30	—	30
B	11/15/77	60	—	60
S	12/08/77	30	—	30
S	12/14/77	30	—	30
B	12/14/77	30	—	30
S	07/19/77	20	—	20
S	08/06/77	20	—	20
A	08/06/77	20	—	20
A	10/13/77	16	—	16
PP	08/10/77	23	NOT EXECUTED	
PP	08/16/77	20	NOT EXECUTED	
PP	08/18/77	23	NO INFORMATION FILED	
S	09/06/77	30	—	30
S	09/01/77	20	—	20
A	09/14/77	20	—	20
S	09/23/77	20	—	20
A	09/27/77	21	3	40
S	11/26/77	21	—	21
NR	10/23/77	30	—	30

WIRETAPPING AND ELECTRONIC SURVEILLANCE PURSUANT TO § 10-409(c) OF THE COURTS ARTICLE JULY 1 — DECEMBER 31, 1977

REPORTS BY PROSECUTING OFFICERS

Reporting* Number	Number of Days in Operation	Average Number of Intercepts per Day	NUMBER OF Conversations of Individuals Intercepted	NUMBER OF Intercepts	NUMBER OF Incriminating Intercepts
BALTIMORE CITY					
1	24	8	10	184	112
2	20	15	15	303	60
3	18	21	24	380	219
4	15	7	8	118	38
5	15	14	9	223	90
6	4	19	6	78	41
7	1	35	4	35	18
8	NO REPORT FILED				
BALTIMORE COUNTY					
1	19	5 hrs.	30	831	111
CARROLL COUNTY—REPORT FILED INDICATING NO ACTIVITY					
CHARLES COUNTY—REPORT FILED INDICATING NO ACTIVITY					
HARFORD COUNTY					
1	7	NO INFORMATION FILED			
2	8	26	68	215	90
3	4	5	20	34	20
4	4	5	33	162	21
MONTGOMERY COUNTY					
1	8	NO INFORMATION FILED			
2	5	NO INFORMATION FILED			
3	5	NO INFORMATION FILED			
4		NO INFORMATION FILED			
PRINCE GEORGE'S COUNTY					
1					
2					
3					
4	23	8	15	130	59
5	6	RELATED TO NO. 6			
6	20	35	139	2,987	2,934
7	8	75	23	423	286
8	40	16	135	3,273	198
9	8	8	7	268	0
SOMERSET COUNTY — REPORT FILED INDICATING NO ACTIVITY					
TALBOT COUNTY — REPORT FILED INDICATING NO ACTIVITY					
WICOMICO COUNTY					
1	2	15	16	31	12

* Corresponds to same number on reports by judges.

REPORTS BY PROSECUTING OFFICERS					
COSTS		NUMBER OF			
Total ($)	Other than Manpower ($)	Persons Arrested	Trials	Motions to Suppress Intercepts	Persons Convicted
RELATED TO NO. 3					
RELATED TO NO. 5					
$ 4,250	$ 250	22	21		21
RELATED TO NO. 5					
$11,547	$ 203	10	PENDING		
RELATED TO NO. 7					
$ 1,150	$ 150	3	3		3
$ 2,014		7	PENDING		
$ 1,425	$ 105	1	PENDING		
$ 1,332	$ 100	4	PENDING		
$ 205	$ 25	1	PENDING		
$ 180	0	1	PENDING		
$ 2,000	$ 350	4			
$29,758	$1,050	34			
$ 2,000	$ 350	9			
$36,848	$ 674	13			
$ 1,501	$ 61	0	RELATED TO NO. 8		
$ 1,170	$ 150	2	PENDING		

SUPPLEMENTARY REPORT ON WIRETAPPING AND ELECTRONIC SURVEILLANCE PURSUANT TO § 10-409(c) OF THE COURTS ARTICLE JULY 1 — DECEMBER 31, 1977

REPORTS BY JUDGES

Reporting Number *	Court	Official Authorizing Application	Offense Specified
BALTIMORE CITY			
9	Criminal Court of Baltimore	Attorney General	Bribery/Extortion

REPORTS BY PROSECUTING OFFICERS

Reporting Number	Number of Days in Operation	Average Number of Intercepts per Day	NUMBER OF Conversations of Individuals Intercepted	Intercepts	Incriminating Intercepts
BALTIMORE CITY					
9	23	5	8	64	2

* Corresponds to same number on report by prosecuting officer.

[1] TYPE: PW = Phone wire.

[2] LOCATION: B = Business location.

SUPPLEMENTARY REPORT ON WIRETAPPING AND ELECTRONIC SURVEILLANCE PURSUANT TO § 10-409(c) OF THE COURTS ARTICLE JULY 1 — DECEMBER 31, 1977

REPORTS BY JUDGES

Type of Intercept[1]	Location[2]	Date of Application	AUTHORIZED LENGTH		
			Original Order (Days)	Number of Extensions	Total Length (Days)
PW	B	11/20/77	26	—	26

REPORTS BY PROSECUTING OFFICERS

COST		NUMBER OF			
Total ($)	Other than Manpower ($)	Persons Arrested	Trials	Motions to Suppress Intercepts	Persons Convicted
$750	$50	INVESTIGATION CONTINUING			

* Corresponds to same number on report by prosecuting officer.

[1] TYPE: PW = Phone wire.

[2] LOCATION: B = Business location.

STATE-WIDE SUMMARY OF WIRETAPPING AND ELECTRONIC SURVEILLANCE FOR JULY 1 — DECEMBER 31, 1977

OFFENSE		LOCATION		TYPE OF DEVICE	
Gambling	— 23 (85.2%)	Single Family Dwelling	— 14 (51.9%)	Phone Wiretap	— 26 (96.3%)
Narcotics	— 3 (11.1%)	Apartment	— 4 (14.8%)	Microphone/eavesdrop	— 1 (3.7%)
Murder	— 1 (3.7%)	Business	— 5 (18.5%)		
		Pay Phone	— 3 (11.1%)		
		Not Reported	— 1 (3.7%)		
	27 (100.0%)		27 (100.0%)		27 (100.0%)

CONVERSATIONS OF INDIVIDUALS INTERCEPTED	INTERCEPTS	INCRIMINATING INTERCEPTS
562	9,675	4,309 (44.53% of Total Intercepts)

ARRESTS DURING PERIOD	CONVICTIONS*
111	24

* NOTE: IT SHOULD BE OBSERVED THAT MANY OF THOSE ARRESTED ARE STILL PENDING TRIAL.