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M E M O R A N D U M

TO: GOVERNOR JIM FLORIO
FROM: GREGORY E. LAWLER
EDWARD J. MCBRIDE, JR.
Assistant Counsel
DATE: September 16, 1991
SUBJECT: ATTORNEY GENERAL INITIATIVE ON WIRETAPPING

The Attorney General recently sent over a proposed bill to update New Jersey's wiretapping act. The AG feels that this is an important initiative for law enforcement, particularly in drug investigations. The County Prosecutors also support the proposal.

We think that this is a proposal that you can publicly support up front and call on the Legislature to enact. It is anti-crime and anti-drugs, and there are examples of why the bill is needed that are easily understood by the public and legislators. Below is a description of the origin and main provisions of the draft bill.

Origin of Proposal

In 1986, Congress extended the federal wiretapping statute to cover "electronic communications." These are communications that do not involve the transmission of the human voice. Examples are fax, beeper, and computer-to-computer transmissions.

The effect of extending the statute to cover these communications is that the unauthorized interception of these communications is a federal criminal offense. More importantly, federal law enforcement officials can obtain court authorization to intercept these communications the same way they can get

authorization to intercept telephone calls or to place a "body wire" on an informant.

Another part of the 1986 legislation provided that unless a state adopted a comparable state statute by October 1988, thereafter law enforcement officers in that state could not intercept electronic communications. The New Jersey wiretapping act has not been updated to reflect the 1986 federal legislation.

For this reason, since October 1988 New Jersey officers have been unable to intercept electronic communications. This has become a major law enforcement problem because of the widespread use of beepers among drug dealers. Dealers in this part of the country are well aware that state and local police in New Jersey cannot intercept beeper transmissions. This awareness has spurred even greater use of beepers.

Main Provisions

This proposal would update the Act in conformance with the federal law. Nearly all of the bill's language is identical to the 1986 federal law.

The key provision is that "electronic communications" will be included in the act, so New Jersey law enforcement officials would be able to get a court order to intercept beeper and other electronic communications among criminals. There are two other key features.

The first will allow the police in certain circumstances to get a court order to tap any phone that a particular person uses. Under current New Jersey law, the police can only get a wiretap order by specifying the phone to be tapped. Drug dealers and organized crime people know that they can avoid detection by placing calls from randomly selected public phones. Under the proposed bill, if the police make a showing that the target will purposely change phones to avoid detection, the judge can issue an order authorizing a "roaming bug."

Second, currently the only basis for an emergency, oral court order is a showing that an organized crime conspiracy is involved. Under the proposed bill, an emergency, oral order would also be authorized on a showing of immediate danger of death or serious injury to any person.

c. Joseph C. Salema