

Wiretap Facts

Ben Levitan, Telecommunications Expert is one of the developers of the wiretap system that "caught" Illinois Governor Rod Blagojevich

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Wiretap Facts in the Case of Illinois Governor Blagojevich

The use of wiretap is widely credited for the arrest of Governor Blagojevich on charges that he was attempting to sell President Elect Obama's vacant Senate seat to the highest bidder. The Illinois Governor was authorized to select a replacement.

Wiretap System Facts

- In October of 1994, President Clinton signed into law the Communications Assistance for Law Enforcement Act (CALEA) as drafted by the 104th Congress.
- This law required any company offering phone service or other telecommunications services to develop as "standard" wiretap system so law enforcement could wiretap a user on any type of phone easily.
- Until the 1994 law was signed, telephone companies provided wiretap service to law enforcement on a voluntary basis. Each phone company had their own methods of wiretap.
- The FBI was instrumental in championing the new law to "maintain surveillance capabilities" lost due to rapidly changing technology. In other words, the FBI was having difficulty wiretapping people who used cellular phones, Nextel Push-to-Talk walkie talkie type devices and text messaging.
- Congress required law enforcement (represented by the FBI) and the telephone industry (represented by standards engineers) to develop the system together.
- The first implementations of CALEA were rolled out in early 2000.
- Failure to provide wiretap service to law enforcement is punishable by fines of \$10,000 per day.
- 75% of wiretaps are authorized for drug conspiracies.

Wiretap Use Facts (Mr. Levitan is not an attorney. These facts are requirements on Telephone companies)

- There are two types of wiretap; "Pen Registers" and "Title III"
- Pen Registers allow law enforcement only to receive the phone numbers called by the "target" and the phone numbers of those who call the "target". The time and duration of the call is also provided by the phone companies standard CALEA system.
- Title III (a reference to the wiretap laws) allows law enforcement to also obtain the contents (voice, conversation, text messages) of a call between the target and the target's "associates".
- Under CALEA, a court order must be presented to a telephone company in order to require a phone company to start a wiretap.
- Once the wiretap order is received and verified, the phone company enters the phone number(s) to be wiretapped, the type of wiretap (Pen Register or Title III) and the duration of the wiretap (generally 30 days) into an administrative system. Law Enforcement must also tell the phone where the information and voice is to be delivered. This may be an FBI office or "wire room" that monitors multiple wiretaps. The law requires that the facility be OUTSIDE of the phone companies property.
- Only a few thousand wiretaps are authorized annually. In 9 of 10 wiretaps authorizations by judges are for "Pen Register Only".

Governor's Wiretap Facts

- The purpose of a wiretap is **NOT** to collect evidence against a target. In order for law enforcement to be authorized for a wiretap, they must have already had enough evidence on Illinois Governor Blagojevich to arrest him for a crime.
- The purpose of a wiretap is to collect evidence of conspirators. Wiretaps attempt to determine who else may be involved in the crime. Governor Blagojevich was already alleged to be in violation of the law prior to the start of the wiretap. The wiretap was used to determine who else was involved. Law enforcement wanted to determine who was engaged in assisting the Governor in allegedly selling the open Illinois Senate seat. Further, the wiretap had the goal of determining who was actively seeking to buy the Senate seat.
- Wiretaps are authorized by a Judge for a specific period of time. It is likely that law enforcement was authorized a "Pen Register" for a period of 30 days. After 30 days, law enforcement likely returned to the judge with a list of phone numbers that had frequent or regular contact with the target, Governor Blagojevich.
- Based on a review of the evidence collected in the 30 day Pen Register period, the judge likely authorized a Title III wiretap, however, the judge likely limited the calls that law enforcement could record to a short list of phone numbers that appeared to be part of the conspiracy. Further, the judge likely ordered that law enforcement discontinue monitoring of any call that did not relate to the specific charges against the Governor. This is known as "minimization".
- Minimization means that law enforcement monitors only calls to or from the phone numbers of the associates authorized by the judge's order. Further law enforcement listens to the calls for approximately 30 seconds to determine if the discussion taking place is related to the charges against the Governor. If the Governor is speaking with his wife and they are discussing arrangements for Thanksgiving, law enforcement must discontinue recording of the call after approximately 30 seconds. If the call continues for a period of time, law enforcement may occasionally listen in on the call to determine if the topic of the call has changed.
- If the call is with a known associate and the discussion is related to a crime that is not the subject of the wiretap, I understand that the monitoring must be discontinued because it is not part of the wiretap order.
- Why did the wiretap end? After each wiretap authorization period ends, law enforcement is required to return to the judge to request an additional authorization to continue the wiretap. It is likely that law enforcement determined that they had collected all the associates they could reasonably collect so chose to discontinue the wiretap. In a similar manner, the judge may have determined that there was no valid reason to continue the wiretap.
- A final reason that the wiretap may end is that a dangerous or serious action is imminent. In drug cases, a group of conspirators may be ready to commit a crime involving firearms. In the interest of public safety the wiretap is ended and arrests are made.
- In the case of the Governor, a transaction for the Senate seat may have been eminent and an announcement of a replacement for President Elect Obama's Senate seat was to take place. The damage to the public trust of allowing the Governor to fill the seat may have been the reason for the timing of the arrest and end of the wiretap.

What's Next?

- Arrests of the conspirators obtained during the wiretap. These may be far ranging and shocking.

Note: Mr. Levitan was a pioneer in the CALEA wiretap system and was involved in its design since 1993 (prior to the signing of the law). Mr. Levitan has worked primarily for cellular telephone companies, but has also been a consultant to the FBI representing their interests in wiretap. Mr. Levitan is not an attorney. These facts presented are from his experience in Telephone companies and his work as an expert witness in wiretap matters.