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Title **Commonwealth of Pennsylvania vs. Worley Andrew Right, Jr. and John Thomas Draper -- First Preliminary Hearing**

Date 1977-11-01

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IN THE MAGISTERIAL DISTRICT OF MONROE COUNTY,

PENNSYLVANIA

DISTRICT 4-2

COMMONWEALTH OF PENNSYLVANIA :

Plaintiff :

vs. :

JOHN T. DRAPER and :
WORTLEY A. WRIGHT, JR. :

Defendants :

B E F O R E:

MARJORIE J. SHUMAKER, Magistrate, Municipal
Building, Mountainhome, Pennsylvania, on Tuesday,
November 1, 1977, commencing at 3:30 p.m.

A P P E A R A N C E S:

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Notary Public for the State of Pennsylvania, Commission Expires 12/31/1978

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I N D E X

<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
William Beam	4	37, 62, 77	78	82
Kenneth D. Hopper	82	87, 96, 99	105	106, 108

THE COURT: We will proceed at this time. This is a preliminary hearing on behalf of the Commonwealth. Trooper James R. Harris, Jr., of the Pennsylvania State Police, Barracks at Swiftwater, Pennsylvania, has charged --

MR. GOLDSTEIN: We will waive the reading of the complaint.

MR. WESTERVELT: We will do the same.

THE COURT: The two defendants, John Thomas Draper and Wortley Andrew Wright, Jr., and both the attorneys have waived the reading of the complaints. Attorney Matergia --

MR. GOLDSTEIN: We move to sequester the Commonwealth witnesses.

MR. WESTERVELT: We join in that motion.

MR. MATERGIA: Discretion of the Court.

THE COURT: Yes, we will allow that, to sequester the witnesses who are not testifying.

All the witnesses who are not testifying will have to step outside. You are being sequestered. You will be called in one at a time.

MR. WESTERVELT: Before the witnesses leave, Squire, I would ask that you instruct the witnesses that when one is done and comes outside he or she should not discuss his testimony with the others.

THE COURT: So be it.

You understand that?

WILLIAM BEAM, having been first duly sworn, was examined, and testified as follows:

DIRECT EXAMINATION

BY MR. MATERGIA:

Q Would you give your name to the Court, please.

A William Beam, B-e-a-m.

Q Mr. Beam, where are you employed?

A I'm employed with Bell Telephone Company of Pennsylvania, located in Conshohocken, Pennsylvania.

Q And, in what capacity?

A I am security manager for Bell of Pennsylvania and Diamond State telephone companies.

Q Did you have the occasion during the month of October, 1977, to investigate suspected phone fraud in Monroe County?

A I did.

Q And, would you describe the nature of your investigation?

A I'm sorry. Would you --

Q Would you describe the nature of your investigation?

A Starting October 14 I had received information that John Draper was located in Pennsylvania somewhere in the 717 area. On the 17th the identity of a telephone number where John Draper was supposedly residing was established, and on October 19 an investigation commenced. On that date a dialed number recorder was placed on the telephone number that was subscribed to by Andrew Wright. Telephone calls were identified that were 800 codes going to various subscribers or customers in different parts of the country, inasmuch, Florida and Iowa, as an example. It was known --

MR. GOLDSTEIN: Objection as to what was known.

BY MR. MATERGIA:

A All right. The telephone exchange where the telephone service for Andrew Wright is dial pulse only or rotary dial only, and through the equipment and the accesses to the 800 numbers it was identified that the --

MR. GOLDSTEIN: Objection to what was identified. That is, again, a conclusion.

BY MR. MATERGIA:

A The 800 numbers that were accessed for specific entered a dimensioned PBX. And, a dimensioned PBX has the capability of reseizure of an out-WATS

number, which provides a second dial tone. And, to extend that call to a new location, touch tone is employed. The pen register -- and I referred to that prior as a dialed number recorder -- decoded the rotary dialed numbers or pulses, identifying the exact 800 codes that were seized.

MR. GOLDSTEIN: Is that in Court, by the way, that pen register?

THE WITNESS: No, it's not.

MR. GOLDSTEIN: The data? Because, otherwise I object to anything in your testimony as to the --

THE WITNESS: The data is here.

MR. GOLDSTEIN: Good.

BY MR. MATERGIA:

A The calls were then extended using touch tone, which is not provided in the central office to the telephone service provided to Andrew Wright. Touch tone is foreign to that exchange.

At the same time, the pen register was decoding calls that followed the seizure of the 800 number, five additional digits, which was entering and breaking the security code to that particular equipment. By breaking that security code, it then provided the second dial tone with the ability by touch tone to extend the call to any given point.

One particular call on the 19th, again, was extended to Iowa. That terminated in the ESS, which is electronic switching center. It is a Number 1 long line toll switcher. The number that was accessed provided a tone, and in this circumstance it is used for long line toll testing from one long line toll switcher to another. This particular code that was accessed cut in on a tone. At the same time, if another party were to call that number a second time, a conference circuit would be provided. This particular switching center -- this particular number is used only for the Bell System. It is used for testing. And, it is a proprietary code used for the Bell System, not for conferencing by the normal subscriber. The code is not known by normal subscribers.

MR. GOLDSTEIN: Objection as to what people know or don't know. That has to be stricken.

THE COURT: I will sustain that objection.

BY MR. MATERGIA:

A This code was accessed more than once during the investigation. With the pen register this piece of equipment has the capability of not only identifying rotary dialed numbers, it has the capability of identifying and decoding touch tone and it also has

the capability of decoding multi frequency tones. Multi frequency tones are not provided, again, in the switching office where Andrew Wright subscribes to. This office, again, has only rotary dial.

The night of the 19th, calls were placed into 800 in-WATS numbers subscribed to again by different parties. At that point the pen register identified and decoded the frequency of the 2,600 cycle tone, which is used for -- and is used as a control feature on our toll switching train between -- trunk to trunk. The pen register identified that tone emanating from the telephone service subscribed to by Andrew Wright. And, it decoded a key pulse frequency, which opens and unlocks the gate the same as an operator would employed by the Bell System as a long distance operator.

And, then multi frequency tones were received, identified and decoded. The last frequency that was identified was an St or start, which is the command signal for all of those frequencies to emanate out over the network and control the switching. These tones are accessible through a device that is commonly called a blue box. It is a unit that is portable or foreign, again, to that office in Cresco. And, at the same time multi frequency tone is used only between

trunk to trunk over the Bell System switching network or by an operator accessing those particular type of trunks. They are not provided to any subscriber.

Subscribers are provided rotary dial or touch tone. At the same time, again I'm referring back to the 19th, it was assumed by myself that the exchange area of Cresco was selected, which is a step by step office. It is operator number identified, as we refer to it, ONI. This means that a person within that exchange area that dials a long distance call or that would dial one and place a long distance call would place the call by dialing, and then an operator would come on the telephone and would ask what your number is. And, a subscriber would then give their telephone number that is so identified on the telephone so that the operator would then place that number by key pulsing it into our computer for billing purposes.

I assume, as the security manager and as a security agent working this case, that this exchange area was picked, that the type of telephone service was picked, that third number billing would be used should toll charges occur, and at the same time to totally avoid identity.

MR. GOLDSTEIN: Objection.

MR. WESTERVELT: This is purely his

conjecture, as far as I understand what he is saying.

Is that correct?

THE WITNESS: No, it is not. If I may continue --

MR. WESTERVELT: Well, I object to any conjecturing about what he assumed was being done. If it was done he can say that.

THE COURT: All right. You limit yourself to what you know -- have knowledge of is done. Would you continue.

BY MR. MATERGIA:

A The calls that were placed the afternoon of the 19th, there were four calls that were accessed into the 800 codes. At that point calls were extended through those 800 codes -- having received the second dial tone as I had referred to, and were extended. One call went to the 415 area, the answering service. And, the telephone, as it was so identified as --

MR. GOLDSTEIN: Objection as to whose phone it is. Objection as to answering service. It is hearsay.

BY MR. MATERGIA:

A The second number went to New York, and the third also went to the NPA area of California. At that time, approximately 3:30 to four o'clock on the

19th, I asked that a manual readout of the AMA, which is automatic message accounting, tape be read to identify the same call or calls that were decoded by this pen register.

I spoke -- or the conversation was with Don Ransom, who is the wire chief or central office foreman located at Stroudsburg. The tape was manually read, and it was for billing purposes, not the telephone number of Andrew Wright, but it was the telephone number --

MR. GOLDSTEIN: Again I would object.

Is that person here to testify today?

BY MR. MATERGIA:

Q Did you have the occasion to examine this manual readout?

A I -- yes, I have seen the -- I have read it. We have it. The --

MR. GOLDSTEIN: Is it here?

BY MR. MATERGIA:

Q You have it with you here?

A Yes -- that -- it went to another telephone subscriber. The second and the third also have been identified on that tape, and they went to two other subscribers.

I talked with one of the subscribers.

At no time --

MR. WESTERVELT: I object.

MR. GOLDSTEIN: Objection.

BY MR. MATERGIA:

Q You can't get into what he said.

A Fine. It was identified through this readout. That third number billing and third number identification was being used. By this toll, interrogations were started on the 800 codes that were being decoded. Also that particular number -- or those numbers that were manually read were also interrogated on the computer. At the -- in addition, a file print edit was run of every telephone access, one -- or long distance call that was placed from the Cresco central office covering the period of October 19 through the 22nd, inclusive.

Matches of the calls placed from the telephone of Andrew Wright were identified and are still being identified as to the billable or party that by the computer was placing the calls, if that is clear at that point.

Surveillance was conducted of the location where Andrew Wright, John Draper were living, on the dates of the 18th and 20th. That person is here who ran that surveillance identifying the motor

vehicles that were at that location.

The calling from the telephone, the 19th, ran approximately -- starting at 2:10 that afternoon until 5:28 -- I can be ten minutes off -- the following morning. There were sporadic stops and periods of stops, but the phone calls and to the same type of telephone numbers that I had just described were being accessed. And, at the same, the codes that were being decoded, the pen register was identifying that, five digit security codes were being accessed into the PBX's, or dimensional PBX computers.

The subsequent day, the 20th, the calls were approximately of the same starting frame, two or -- it was after two o'clock, but it was sometime early that afternoon. And, again the calls continued through until after two o'clock in the morning.

The same for the next day. And, on the 22nd there were calls placed. I think the first was around noontime, and then again an 800 call was placed giving access to a second dial tone where that call was then extended over an out-WATS condition.

There was a total of 165 calls accessed during the period of time. And, that is excluding some local calls that were placed. To have accessed from the same points to the same -- or from the same

point to the same terminating locations, be it California or be it Iowa, under the tariff of both the PUC and the FCC for billing purposes -- but those calls amounted to \$632 and some odd cents, counting the federal tax -- or including the federal tax.

The night of the 20th there was one applique of 2,600 cycle tone, again, a reseizure of that tone, possibly five or six times. And, it was following the 19th. Okay, Your Honor? That the morning of the 20th through the request authorization -- or the authorization request that the company -- the law department of our company -- that that afternoon of the 20th the dialed number recorder, which is theoretically or conceptually the same as a computer in its abilities to identify and decode, it was connected and activated to a recorder -- or it was connected to a recorder. With a capability of stereo, we had the capability of placing on one channel the computer time announcement. The recorder does not activate on any legitimate or dialed direct call that would be placed over the network. It will activate only if it identifies the foreign 2,600 cycle tone emanating from a subscriber's residence or from that telephone to the subscriber.

And, it was the evening of the 20th at

approximately 8:31 p.m. that the machine did identify the 2,600 cycle tone being applied over the network over the 800 circuit that had been seized. And, the recorder did activate on its own. The office was unattended, the equipment being locked and secured in an electronic room that has access only to the three parties that are here today.

And, a voice interception was made. The total seizure of the unit was 120 seconds. It did identify tones emanating out over the network. It did identify two parties talking.

And, then the final switching, and a called party at the distant end did answer.

On the 21st -- it was on the 22nd through the senior security agent, John Eizenhouth, who has the locality assignment of the entire Pocono area including the Stroudsburg area. Contact was made to the District Attorney's office and to the state police, and a meeting took place the afternoon of the 21st.

A review of the evidence was made. The morning of the 22nd, through Pennsylvania State Trooper James Harris, a meeting took place at the District Magistrate's office, and papers were drawn by the Magistrate's office for both search warrant and for specific charges.

Q Did you have the occasion to search a premises located at Canadensis?

A I accompanied that search with the state police.

Q Where was this premises located?

A It was located outside of Canadensis off of Bear Creek Road, if my recall is right, Fern or Fern Hill Lane in what is known as the Hamlet, Price County, Monroe County.

Q Price Township?

A Price Township.

Q Did you enter the premises?

A I entered the premises following the state police and following Trooper Harris presenting the search warrant and the papers.

Q What happened upon entering the premises?

A When I entered, there was a computer directly in line with the sliding glass door. Andrew Wright was present. At the opposite end of the room was a computer that was not enhoused. It was on a desk table. There were cassette tapes adjacent to it, and there was different paper, paraphernalia and items.

Q Were you able to determine whether any of this equipment was in an operable stage?

A Both computers were in an operable stage.

Andrew Wright turned his equipment on. I believe it was already on with a visual display on the video screen. It was off when I saw it.

Andrew Wright sat down and put a cassette tape on it, and a display did come on the video tape. The other unit was connected to the AC electric. At the same, it was hard wired to the telephone connecting terminal. The equipment, as I immediately entered, was identified by Andrew Wright as being his equipment. And, he did identify the other equipment as being John's.

MR. GOLDSTEIN: Objection.

THE COURT: State your objection.

MR. GOLDSTEIN: Ask Mr. Draper.

THE COURT: I didn't rule on this, and I want to hear --

MR. GOLDSTEIN: Objecting to a statement one defendant made after he was in custody regarding the other defendant. That is inadmissible.

THE COURT: Isn't there an exception to the hearsay --

MR. GOLDSTEIN: Certainly is.

THE COURT: That is an exception, though.

MR. GOLDSTEIN: After they are arrested there is no conspiracy statements of co-conspirators.

During the course of an arrest conspiracy may be admitted into evidence. However, once a person is arrested, conspiracy ends. Therefore, any statement made would come under the rule of North Carolina versus Pierce, which says that no statements of co-defendants may be admitted into evidence against another co-defendant to implicate that defendant, but may only be admitted into evidence as against the maker of the statement. So, I therefore am objecting to any statements Mr. Wright may have made after he was in custody which may affect Mr. Draper.

THE COURT: Was he under arrest at this time? He was under arrest.

MR. MATERGIA: You are being asked a question.

THE COURT: Was he --

THE WITNESS: Yes, he was.

THE COURT: I will sustain the objection.

I am not familiar with the case that is being cited.

BY MR. MATERGIA:

A Later, as the items were being marked for identification and tagging and boxing by Trooper James Harris, John Draper requested that care be taken of his equipment and of his cassette tapes.

Q Did he identify the equipment which you refer to as his?

A At that time Trooper Harris was in the process --

MR. GOLDSTEIN: Objection. He is not answering. The question requires yes or no.

THE COURT: I think he is answering the question.

MR. GOLDSTEIN: Requires a yes or no answer, Your Honor.

BY MR. MATERGIA:

A Yes, he did.

Q And, how did he do that? Go ahead. You may continue testifying.

A In addition -- Trooper Harris was boxing and tagging the equipment -- and was placing it in boxes. There was a discussion on taking the equipment out to a police van that was outside. And, it was at this time that John Draper, looking, asked that the care be taken of this equipment. In addition, John Draper had requested, and permission was granted by Trooper Harris, to place a telephone call. He needed a number, and he asked -- he asked if permission could be granted to go into his bedroom to get his number -- or get this number. Permission was granted, and Trooper Harris had another trooper accompany him to the doorway.

It became out of my sight while that was done. It was also during the search by Trooper Harris of that room that papers --

MR. GOLDSTEIN: I am going to object. He said it was out of his sight, Your Honor.

THE WITNESS: No -- well, this was later. That was identified by the request with what I just went through.

MR. GOLDSTEIN: I ask that all this testimony be stricken.

THE COURT: Just a minute, now.

MR. MATERGLIA: I think you have changed subjects, and you have confused both counsel and Squire.

THE WITNESS: Yes, I did.

THE COURT: Let's go back where he went in to get a number. He was accompanied by a trooper, right? Okay. Now.

BY MR. MATERGLIA:

A Right up to the point of not getting his tapes damp and his equipment damp, John Draper was identifying, you know, his equipment, you know, as his, that was on the desk table.

THE COURT: As opposed to anything else that was there. Is that right?

THE WITNESS: Yes, as opposed to anything else that was there.

MR. MATERGIA: Why don't we stop at this point and mark some things for identification. That will probably help to identify what we are doing.

MR. GOLDSTEIN: Why don't we also refer to a property receipt.

THE COURT: Are you entering this as Exhibit A?

MR. MATERGIA: I am asking that that be marked -- why don't you mark it on the back as C-1, and we will use C.

THE COURT: C-1?

MR. MATERGIA: Yes. You can mark this one C-2, this photograph, C-3.

MR. WESTERVELT: While you are doing that --

(Thereupon a discussion was held off the record.)

THE COURT: Ralph, we have eliminated, what, 4 and 5 there. Do you want to just go on with these?

MR. MATERGIA: Yes, just these three. Those other ones we don't need, I don't believe. Where are those three?

MR. GOLDSTEIN: Identify your equipment.

BY MR. MATERGIA:

Q I hand you what has been identified as Commonwealth's Exhibit Number 1, and ask if you would identify that, please.

A This is a mini-computer with component parts, which was identified as John Draper's.

Q Now, in referring to your prior testimony, you indicated that there was a setup located near the glass entrance and another one located at another part of the room. To which does that identify, if any?

A This would be at the extreme far end of that room.

MR. GOLDSTEIN: May I see the photo, please. Okay. I have seen it already. Thank you.

THE COURT: This was equipment identified as John Draper's?

THE WITNESS: Yes.

THE COURT: Okay.

BY MR. MATERGIA:

Q And, I hand you Commonwealth's Exhibit Number 2, and ask if you will identify that photo.

A This was the equipment that was identified by Andrew Wright as his equipment.

Q Where was that equipment located?

A As you immediately came up the stair rise to the second level going through the sliding double door, it is directly in front of you.

Q And, handing you Commonwealth's Exhibit 3, could you identify that?

A This is the telephone connecting -- connector, wall-mounted directly in -- directly across from the equipment identified as John Draper's. That equipment was wired, as this picture shows, to the telephone service. The telephone went over onto a stand, and then this proceeded back to the central office.

Q And, are those three photos that I handed you fair and accurate representations of what you observed?

A Very accurate. They -- yes.

Q Now, you referred in your testimony to hard wiring at one point. Would you explain what that means.

A An electronic device, blue box, can be audible or acoustically placed on the Bell System network through the telephone, or it can be metallically wired directly to the telephone facility. And, hard wire -- this was wired directly to the telephone facility.

MR. GOLDSTEIN: Means it was hooked up?

THE WITNESS: Yes.

MR. MATERGIA: I move the admission of

Commonwealth's Exhibits 1, 2 and 3.

THE COURT: It has been admitted.

MR. GOLDSTEIN: Are they exhibits of this Court?

MR. MATERGIA: I don't understand.

MR. GOLDSTEIN: In other words, they are not going to be returned to the state police, they will now be exhibits of this Court?

MR. MATERGIA: They will be exhibits of this Court, and they will be available at any other proceeding, if the Commonwealth provides.

MR. GOLDSTEIN: They will be filed with the Court. Is that right?

MR. MATERGIA: They will not be filed with the transcript. They will be returned to the Commonwealth.

MR. GOLDSTEIN: But, my understanding, if they are exhibits they will be public and we will have the right to examine them at any time. Is that right?

MR. MATERGIA: Certainly, you do have that right.

Admitted?

THE COURT: Yes.

MR. MATERGIA: Thank you.

One moment, please.

(Thereupon a discussion was held off the record.)

BY MR. MATERGIA:

Q Did you have the occasion to inspect this equipment, Mr. Beam?

A I did.

Q And, in your examination were you able to ascertain the capabilities of this equipment?

A I accompanied Trooper Harris over to Bell Laboratories in New Jersey.

MR. GOLDSTEIN: I object. He is not answering the question. It requires a yes or no answer, can he tell if the capabilities of the equipment are --

THE COURT: Answer yes or no.

BY MR. MATERGIA:

A To a degree, yes.

Q What are the capabilities?

MR. GOLDSTEIN: I object, unless it is within the development of the expertise.

THE COURT: I am going to overrule your objection. He has been -- well, he has qualified himself as an expert in this field.

MR. GOLDSTEIN: I object, Your Honor,

that he has not qualified himself. He has merely given his title, and there are no evidences as to his qualifications, background, training or experience.

MR. MATERGIA: May we continue?

THE COURT: Yes, go ahead.

BY MR. MATERGIA:

Q You may continue.

A Would you reask that question, please?

Q I am asking what are the capabilities of the equipment that you had occasion to inspect.

A This equipment is capable of storing and releasing rotary dial pulses, touch tone frequencies, the identification of 2,600 multi frequency tones, key pulse and start frequencies. It has the capabilities of storing and then releasing 800 codes as identified by our pen register.

Q Were you able to ascertain whether, in fact, this equipment did perform such a function?

A It has performed --

MR. GOLDSTEIN: Objection.

THE COURT: Your objection --

MR. GOLDSTEIN: It requires a yes or no answer, not saying what it has or has not done.

MR. MATERGIA: Wait a second. Let's allow George to reenter the hearing.

(Thereupon a discussion was held off the record.)

MR. WESTERVELT: Sorry.

THE COURT: Do you want to repeat your question and objection?

We had an objection to the question -- last question.

MR. GOLDSTEIN: I didn't object to the question. I objected to the answer.

THE COURT: Well, let's start with the question again, please.

BY MR. MATERGIA:

Q I think the question was whether, in fact, this equipment -- were you able to ascertain whether this equipment did, in fact, perform in accordance with the capabilities that you have just --

MR. WESTERVELT: Now, I am going to object to that question. I don't know what equipment he is talking about. We have a laundry list of equipment here. There is a page and a half.

THE COURT: All right. Let's qualify that.

BY MR. MATERGIA:

Q Would you describe the nature of your investigation with respect to this equipment.

A At the present time the computer and some of the tapes identified as John Draper's has, as I previously described, the capabilities of emitting the touch tone frequencies, the rotary dial pulses, the storing and releasing of the 800 codes into 800 in-WATS, and likewise the identification of the security codes, the seizure into the out-WATS of these dimensional PBX's.

The test has been -- the test substantiates that seizure to the in-WATS down at Florida was successful through the computer.

MR. GOLDSTEIN: I object because this is a test that he gave referring to something that we know nothing about. I think the answer is just too vague. What test, whose test, what calls? I think I object to that answer.

BY MR. MATERGIA:

Q Why don't you explain yourself.

MR. GOLDSTEIN: Doesn't say anything.

BY MR. MATERGIA:

A Trooper Harris, James Dunne, a security agent working with me, we and Jerry Orner, a security agent, went to Bell Telephone Laboratories with this equipment.

MR. GOLDSTEIN: Is this witness present?

THE WITNESS: Myself. I was one of the four, yes.

MR. GOLDSTEIN: Okay.

BY MR. MATERGIA:

A Ken Hopper, Walter Heintze of Bell Laboratories the name skips me -- a federal agent from the Hoover Building of Washington, D. C. was also present.

This equipment, having previously been tagged and marked by tape by Trooper Harris, as to all of the interconnecting plugs and the hard wire, was reassembled. And, by the photograph that was shown this afternoon, a mock-up of that equipment was established.

MR. WESTERVELT: Now, you are talking about the, what, Apple computer, identified as John Draper's?

THE WITNESS: I am talking about the Apple keyboard and the C-1 exhibit, I think it was, of John Draper's --

MR. GOLDSTEIN: Okay, C-1.

THE WITNESS: May I look at the photograph to be certain of that?

C-1.

THE COURT: Okay.

BY MR. MATERGIA:

A The video screen, while I was standing observing, the technicians used the cassette tapes and programmed into the computer, and then using a visual display, recalled from the computer the intelligence of the 800 codes. Some of these 800 codes were the same that the pen register decoded, the WATS extenders and the key pulse and the multi frequency data. It is at that point we left.

And, these two gentlemen, Ken Hopper and Walter Heintze, are here today with documents. I was told by these two gentlemen --

MR. GOLDSTEIN: Let's have them testify.

MR. MATERGIA: Well, we will let them testify as to what their findings were.

BY MR. MATERGIA:

Q What was the capabilities, do you know the capabilities of the equipment referred to as, I believe it is, C-2 -- Commonwealth's Exhibit 2?

A Only Mr. Hopper and Walter Heintze has that. I do not.

MR. MATERGIA: One moment, Squire.

(Thereupon a discussion was held off the record.)

BY MR. MATERGIA:

Q Mr. Beam, what other equipment did you have

the occasion to discover on the day of the search?

A I again accompanied Trooper Harris. In the bedroom that John Draper identified as his, the dresser -- the bottom drawer, there were manila folders and other written data. This all had reference to --

MR. GOLDSTEIN: Objection as to what it had. Has to have evidence of the data itself.

BY MR. MATERGIA:

A This evidence contained terminology of the Apple computer of John Draper's, also many telephone names -- numbers, component parts on a table, many integrated circuits, IC units. And, I believe the figure was eight small black plastic boxes with three red buttons on the units, small speakers. And, these were approximately the size of a pack of cigarettes -- slightly smaller perhaps than a pack of cigarettes. There was --

Q Is there a common terminology that is attached to this equipment that you're just referring to?

A The buttons -- yes. The component parts, the makings of red boxes. There was different notes that described duties of John, Andy, Judy. There was a list on a pad -- or on a clipboard of names and telephone numbers, and it said something similar to those invited.

MR. GOLDSTEIN: Again I object, Your Honor. If we have this evidence in Court, we can see it. In fact, we demand it be produced because we would like to see it because saying something similar to or something like is not evidence.

THE COURT: Do you have it here with you?

THE WITNESS: It's in custody of the state police.

MR. WESTERVELT: I would like to add, for my two cents worth, that we are really getting way off the point here. I think that 90 percent of this last five minutes was even completely irrelevant.

MR. MATERGIA: Squire, I would like to have a five or ten -- about a five minute recess --

THE COURT: All right. Okay.

MR. MATERGIA: -- with my witness. Perhaps I can clear up some of where we are going with this.

MR. GOLDSTEIN: Well, I would object.

MR. MATERGIA: You object to it?

MR. GOLDSTEIN: Yes, I think so, if you want to talk with him about his testimony.

THE COURT: All right. You are trying to shorten this, you are trying to shorten the hearing,

is that your point?

MR. MATERGIA: Believe me.

THE COURT: It will benefit everybody.
I am going to grant a recess.

MR. GOLDSTEIN: I would like to examine the items seized. I have a right to examine in a preliminary hearing according to the rules. The Supreme Court said I can.

THE COURT: All right. Okay. Let's go ahead so we can expedite this hearing.

MR. WESTERVELT: Maybe we can talk about the logistics of this before we break. What is your plan?

THE COURT: Well, we haven't heard.

MR. MATERGIA: I don't see any -- we are going to have to take another hearing.

THE COURT: Well, I think you will. You only had one witness, and he is not finished yet. So, we will probably have to.

MR. MATERGIA: May I make a suggestion that we --

THE COURT: Break at five and continue?

MR. MATERGIA: Please.

THE COURT: Okay.

MR. WESTERVELT: Start another morning

at 9:30 or ten.

THE COURT: We are trying to schedule this as far as we can at the convenience of everyone.

MR. GOLDSTEIN: Well, just go all night, Judge.

THE COURT: No way.

MR. GOLDSTEIN: You are all lucky. You go in Lancaster County where they start at eight and stop maybe at eight.

(Thereupon a recess was taken.)

MR. GOLDSTEIN: Judge, I am going to move to strike his testimony because of violation of the sequestration order. They were going over documents. I move to strike his testimony.

MR. MATERGIA: I would oppose the motion.

MR. GOLDSTEIN: Sequestration order of this Court has the same validity of any other Court.

THE COURT: Well, the purpose of this was -- you were just talking to him outside. Is that right?

MR. MATERGIA: I was looking where we could shortcut his testimony as it relates to possessory offenses.

MR. GOLDSTEIN: Well, they were going over some documents, Your Honor. One man was showing

or talking about certain papers. I don't know what they were talking about.

MR. MATERGIA: I reviewed with this witness a documentation which is called pen register. No, that is not -- computer printout.

THE COURT: And, that was the only thing that you discussed?

MR. MATERGIA: That is right. I want to know what that relates to his testimony about capabilities. He has already testified to what that shows about whether their equipment was, in fact, capable of intervening the system.

THE COURT: Right.

MR. MATERGIA: If I am saying that in some form of lay language.

MR. GOLDSTEIN: Who were the gentlemen that you were discussing it with?

MR. MATERGIA: The two gentlemen that he indicated were present during that demonstration or examination. Wait, I will have the names for you.

BY MR. MATERGIA:

Q I believe one is Mr. Hopper, and the other is Mr. Heintze?

A Yes, sir.

MR. MATERGIA: Those three gentlemen were

present.

THE COURT: I am going to overrule your objection at this point, and we will proceed. Let's just talk -- it is almost five, 20 minutes of five. Let's decide what we are going to do. Now, a lot of these people are traveling quite a distance. Would it be better to break for dinner and come back and finish tonight? Think we can get done tonight? Are there any --

MR. MATERGIA: Well, I have got matters to attend to this evening. I have got two meetings to be in. All right. Only one that has a problem.

MR. WESTERVELT: I have a problem, too, but I can adjust it.

THE COURT: Can you possibly adjust yours, Ralph?

MR. MATERGIA: I will have to make some calls. You want to conclude?

MR. WESTERVELT: Why don't you?

(Thereupon a discussion was held off the record.)

THE COURT: Let me announce, now, we have two witnesses. We are going to conclude with this witness, and then we have one other witness the Commonwealth is going to call. So, we are going to

hang in and just proceed until we finish tonight. Okay?

BY MR. MATERGIA:

Q Mr. Beam, in examination of the premises, did you also locate a manual?

A Yes.

Q What is the nature of that manual?

A The manual is a Bell System practice manual on CAMA, that's C-A-M-A, centralized automatic message accounting, also 4 type switching, I believe. This is an advanced copy. It's dated 1976. The document is designated that it is proprietary information, not for republication or distribution or sale without authority by A.T.T. And, that is done to associated companies -- or independent telephone companies, rather.

Q Is the contents of the information in that manual exclusive in nature?

A Yes. It pertains only to Bell System switching networks and the information relative to the Bell System switching.

MR. MATERGIA: Cross examination.

CROSS EXAMINATION

BY MR. GOLDSTEIN:

Q Mr. Beam, what was the information received on October 14th that Draper was in the 717 area?

A From John Gregg, security manager, I believe

that is his correct title. It's security supervisor, I guess, from California. John Whitman from New York Telephone Company, security manager.

Q What did they tell you, they just told you he was in the area?

A That John Draper was moving into the 717 area, located somewhere in the Poconos.

Q Were they the source of your information on the October 17th date, as well?

A I -- on October 17 through the -- again, those two gentlemen, and through the U. S. probation officer, Santana. The rest was through the telephone company billing records, service order request.

Q Do you know how Mr. Gregg got his information?

A No, I don't.

Q Do you know who, if anyone, made these phone calls?

A On the one recording that we have --

Q Where is that recording?

A That is secured at the present time. There is only one. There is no -- there is no other recording.

Q Has a transcript been made of that recording?

A No, there hasn't.

Q You don't know who placed these calls, do you?

A Not until voice comparison would be made positively on that tape.

Q At the present time you don't know who made these calls, do you?

A No.

Q You mentioned a manual. Can you tell us where that appears on the receipt for inventory of seized property?

A I believe that the BSP practice manual came out of a manila folder. There is a second Xerox copy of that same practice in a manila folder.

Q Now, where on the inventory form that is listed --

THE COURT: Look at this one. This is a little clearer than that one.

BY MR. GOLDSTEIN:

A On the second page I'm certain that it is the Item 5, one box containing miscellaneous papers.

Q Do you know where these papers were found, this box?

A It was an open box that was found on the desk drawer with the computer on the right-hand drawer. There were papers --

MR. WESTERVELT: Wait a minute. Which computer?

THE WITNESS: The Apple.

BY MR. GOLDSTEIN:

Q Well, do you know whether this was found in the box or in that desk or where it was found, this manual?

A The manual -- and again, now I did not pick them up. I've looked at them in the box with Trooper Harris. I believe they came from the bedroom, the bottom drawer, along with the other manila folders that were in the bottom drawer -- the bedroom identified as John Draper's.

Q But, you are not certain of that?

A At this point I would say that I am certain that they came from the bottom drawer, the left-hand side. There was -- may I see the box that that came out of? It came from the bedroom identified as John Draper's, from the dresser, bottom left drawer.

Q And, you say this is a secret manual, or is it sent out to the various phone companies?

A It is printed by A.T. and T. Company. May I have the practice that I can look at the front of it? It is a Bell System practice, American Telephone and Telegraph Company. It is printed in the U. S. A., and it states notice, not for use or disclosure outside the Bell System except under written agreement.

Q Now, this is a preliminary manual. Is that right?

A This is an advanced printing, which is relative to computers, computerized recording automatic message accounting, and in capital letters, CAMA, C-A-M-A-dash-C, equipment design requirements, cross bar, tandem Number 4 type toll switching system.

Q This is an advanced manual, is that right, advanced printing?

A It is an advanced copy so that the engineers can look at it, and then it goes --

Q I don't want to know what it is. I just want to know is it an advanced copy, yes?

A It was an advanced printing.

Q It was printed in '76. Is that right?

A It was printed in '76 -- March of '76.

Q And, in a year and a half since March '76, has that been updated or has a permanent one been printed?

A There would be another print, yes. Whether there is any changes, I cannot answer that.

Q Do you know whether that has been updated?

A I cannot answer that. I don't know.

Q Do you know whether that is still in use, that manual?

A I know that the equipment and the CAMA-C is still in use, and the 4 type toll switching is still in use.

Q No. If a Bell Systems man got that and it was superceded, what would he do with it, throw it away?

A Long line people would have this. It should be safeguarded and destroyed.

Q Yes, but --

A It should be destroyed.

Q Burn it?

A It should be --

Q Put it in the trash?

A It should be put in the trash and destroyed or taken to our record centers and destroyed.

Q Now, do you know whether this is done, or are they just throwing it in the trash can when not used anymore?

A I cannot answer that.

Q Are these kept locked up in any secret vault in the phone company?

A They are kept secured in binders in the switching control room if it would pertain to, let's say, that particular control center.

Q Is there anything in there which is not of

general knowledge in the scientific community?

A Yes.

Q What?

A The general knowledge would not have, as I quote -- this is the basic description. And, if there is press here I would as soon not even read this because it would be, you know, taken verbatim. And, that would be Section 1.04. It pertains to our AMA and CAMA-C. And, CAMA-C, right now, is new. It has capabilities that we never had as a switching center including the capabilities for electronic toll fraud discovery. It is classified.

Q This was in 1976. Is that right?

A March '76.

Q Hasn't the CAMA-C and this computer application been subject to a number of articles in scientific -- in magazines of scientific interest?

A Some aspects of -- I can't answer that accurately at all. I don't think that I have ever seen or read one other than Bell System operation. But, again, it's -- it would be information that would normally not be used.

Q Doesn't IBM have access to this information?

A IBM has access to this information in the extent that they interface into us under certain

conditions. And, those conditions -- again, the one aspect is totally a security aspect, and that information of those parties that had it in IBM, the security aspect. It is completely classified as to --

Q How do you know that?

A The safeguards that are taken, the meetings, the disseminations because of what it has the capability of doing.

Q But, this --

A We're now talking other aspects of CAMA, as you were asking.

Q I am asking you about this article. I am not asking about other aspects. I am asking about this article itself.

A That particular article opens the door to other aspects of the CAMA-C and the 4A. And, if you get one aspect, then you can experiment and break the code of something else.

Q The testimony today is that this is not known, this information is not known in the scientific community. Is that correct?

A You mentioned IBM, and there are some factors of the IBM, because they do interface, where we buy and lease their equipment. So, there is an interface capability.

Q Now, my question was you say this is not -- this information -- use and application of this system is not known in the scientific community?

A Specific scientific communities, yes.

Q Outside of the Bell System. Is that correct?

A We just mentioned IBM.

Q So, other people have this information, is that correct, other than the Bell System?

A Whether or not they have that practice, I cannot answer that.

Q But, do other -- you don't know that. Is that correct?

A No.

Q Do you know whether or not this is given to people outside of Bell?

A Would you clarify that?

Q Well, this is a Bell System manual, a practice manual, right?

A Yes.

Q A.T. and T. And, it says not for use or disclosure outside the Bell System except under written agreement. Is that right?

A Yes.

Q Now, do you know whether other individuals or companies outside the Bell System have this?

MR. WESTERVELT: Commonwealth Telephone?

BY MR. GOLDSTEIN:

Q Commonwealth Telephone?

A I mentioned independent telephone companies. Commonwealth would be an independent telephone company.

Q Would they have this?

A As I stated, if they were working on the concepts of CAMA-C itself, where A.T. and T. by authority could transfer or whatever, they could over to Commonwealth, let's say.

Q Do you know whether any other companies have this --

A CAMA-C?

Q Have this manual.

A Oh, no.

Q You don't know that?

A No, I don't.

Q And, this manual, in fact, has been updated and replaced, is that correct, since March, '76, is that correct?

A I can't answer that. I know -- I can't answer it.

Q Will you tell us whether this is still completely relevant, the material in here, or whether it has been updated?

A I said independent companies might. If they are in the process of, you know, going CAMA-C, they could.

Q And, what about other people in research or in other lines of work, might they have this manual, too, from the Bell Company?

A I would doubt it, but I cannot answer that.

Q But, this manual by its very terms is not classified as within the Bell System only. Is that correct? I will refer you to the notice on the front that is not for disclosure except under written agreement.

A And, that basically pertains to independent companies that are not members of the A.T. and T. system, such as Bell of Canada.

Q Well, that would apply to anybody else the Bell Company might want to give it to, isn't that right?

A Under certain controls by A.T. and T., not as you're indicating.

Q Pursuant to written agreement they might want to give it to somebody else, isn't that right?

A I would have to be asked what that someone else would be.

Q Let's say Western Electric.

A Western Electric is part of the Bell System.

A It would be relevant to the first office that we would install under this type of aspect. That office would stay that way for a period of time, and then another office would go in with another type of a generic. And, that office then would have another update on that. But, right now we have in the neighborhood of, let's say, like, six different generics in one particular type of switching. But, because we go to Generic 6 in this type of a switching system, we don't, as a Bell System because of the expense, change the first one that just went in.

Q Do you know whether this one is in operation?

A No.

Q Do you know if it is still in operation?

A If we went into that operation in 1976 with the --

Q Do you know?

A No, I don't know.

Q Do you know whether it is still in operation, whether this manual is still operative within the Bell System?

A No.

Q You don't know that?

A No.

Q Nor, I believe, you yourself don't know whether

the Apple computer can make telephone calls extending calls through a WATS number, do you?

A I have not seen it, no.

Q And, I believe we discussed during the break the fact that you are really not qualified to discuss the technical aspects of this computer. Is that correct?

A That's correct.

Q So, I don't have to get into a whole lot of questions then.

A None.

Q Now, tell me, if I were given the security code for a WATS -- an in-WATS line to make an out-WATS call on that line, basically that is what happens, isn't that right?

A If you were given that security code?

Q Yes, right.

A If you were authorized to have that code, yes.

Q Then I could use it then, couldn't I?

A Yeah.

Q And, then even if I used a 26 -- 26 Hz, Hertz tone to open the line that would be legal, wouldn't it?

A If granted permission by that firm, yes.

Q And, do you have the firms -- know what firms

are used in this instance?

A The identity of these firms have been identified, and the identity by the customers that --

MR. GOLDSTEIN: I object, now. That is all I am asking.

BY MR. GOLDSTEIN:

Q I asked you if the firms were identified. Is your answer yes?

A Yes.

Q What firms were they?

A I can't name them offhand.

Q Is anybody from any of those firms here to testify?

A No.

Q Now, of your own knowledge, not as to what somebody else told you, you don't know whether the maker of these calls using the security number was authorized or not, do you?

A Starting that with the third number billed call?

Q I am just saying using the security code you don't know whether the person making that call is authorized or not, do you?

A On the third number aspect I did call the customers on that.

Q Of your own knowledge --

A Well, I'm answering it.

Q I am not asking you what somebody else told you.

A I spoke to the owner of the company, the president of the company.

Q But, he is not here to testify, is he?

A No. I just, you know, talked to him myself.

Q Now, you have the readouts here -- AMA readouts?

A The AMA readout?

Q Yes.

A Which one or what type?

Q For the calls of October 19th.

A Well, AMA covers many aspects, many different -- what does he mean?

Q I mean the calls -- I don't know what he means because he didn't tell me to ask the question -- the calls that extended through the 800 numbers for the 19th as per your testimony.

A We have a printout that shows that.

Q Could I see it.

This is on Mr. Ransom, I believe.

A Pardon?

Q You testified Mr. Ransom examined that with you.

A Yes.

Q That is what I am talking about.

You keep this in Conshohocken?

A It's kept in Conshohocken.

Q Do you have the printout from this printout --
on this printout?

A I asked for this. Now, I have a printout,
yes. It's right there.

Q Yes. The printout?

A Yeah, I have one.

Q Good.

A What would you like to see?

Q October 19th, nine extended calls October
19th, for example.

MR. WESTERVELT: Off the record for a
minute.

(Thereupon a discussion was held off the
record.)

BY MR. GOLDSTEIN:

Q I notice certain numbers are marked in red.
Are they 800 calls?

A On the particular one that we are looking at,
yes. This is an 800 call. If I may take that call in
sequence --

Q Go ahead.

A Starting at 1821.43, hour which is 6:21 and 43 seconds in the afternoon, the telephone number, 1-800-327-8333, which is an 800 in-WATS number, was accessed.

At 1822.03, 2,600 cycle tone, you can't print out 2,600 cycle Hertz, et cetera. And, the code is in black dots. This is the indicator for 2,600 cycle tone. Tone, again, was applied two seconds later, and 12 seconds later tone again was applied.

On the first call and seizure to this 800 number an established connection was made between the telephone service at Canadensis to the 800 number. When the 2,600 cycle tone was applied the first time and then the second time and the third time, the called 800 customer was disconnected from this network. But, the trunk was held with the connection by holding the telephone in the hand. And, then at this time 1822.17 -- the slash is the key pulse frequency. The dash is the start frequency, but the call went out and switched right back to, again, this number 800-327-8333. And, then a code of 7036 was still applied by multi frequency.

Now, this, again, is the same. This, again, is the same. This. This. This.

Q That was done after the code was applied?

A And, this. After the 800 call was seized.

In another case --

Q No. Let's stay with the one we were on, right down here. 7036, I see, is the code?

A Right. 7036 was a sequence on a code.

Q And, then what happened?

A At this point touch tone was then used instead of multi frequency, and on sequential aspect right down the line. But, 37037, 37038, 37039, 3703, what this is doing --

Q Was it illegal, whatever it is?

A Totally illegal. Number one, the call was first originated by third number billing, which was giving another telephone number to avoid identity. Secondly --

Q When a call is made --

A He is of 2,600 cycle, and a multi frequency tone is foreign to this customer -- foreign to the Cresco office, is a blue box. And, at this point this is code accessed to identify the security code of this particular customer, where the computer is hunting and scaling to hit 3703.

Q What part of it is billed for that --

A We'd have to go back and take a look on that particular call.

Q Somebody was billed for that 800 call?

Somebody was given, as I had testified to, a card number -- telephone number was given to either dial or bypass billing and to avoid identity as to where this call was being identified from.

You mean the 800 calls are not -- the operator dial 1 picks up on an 800 call?

In this particular office, yes.

If you dial 0 and make a call --

THE AUDIENCE: Dial 1 and the operator will identify yourself.

MR. GOLDSTEIN:

Dial 0 and then 800 --

He --

If you dial 0 and ask the operator to place an 800 call, does she ask for your number?

I don't know. That wasn't the case here.

You don't know?

The case is not that. The case is that I was billed, 800-327. This was done, not what was just stated.

Is anybody billed for an 800 call?

Yeah. This customer is billed up to \$1,700, possibly. I don't know what band this customer is, and where the billing does take place.

If I had an 800 call to my telephone for an

in-WATS line, am I billed for that call?

A You aren't, but another person is.

Q Who is?

A The person who is paying for this.

Q In-WATS customer?

A Absolutely. And, then you seize the out-WATS or portion of it and come out on the extender. We haven't reimbursed --

Q I don't know. I want to see -- I see what you say. You say they are looking for a security code?

A Yeah, that's exactly what.

Q I don't say that a call was made so that when a -- when I make a call to an 800 number, do I pay for it on my phone?

A I thought you were repeating to her.

Q When I make a call to an 800 number, do I pay for it through my phone bill?

A I said you don't, but someone else does.

Q And, that someone else is the person who has the 800 number. Is that right?

A That is correct.

Q And, by having an 800 number, the subscriber invites me to call him for nothing, right?

A It depends on the 800 customer, sir. If this was a Gulf credit card or Holiday Inn, yes. But, if

this is a customer, as some of these are, the answer is no. It is for that customer only to use. That's why we reimbursed the customers.

Q For in-WATS calls?

A For in and switching out, like this was done. That's why we reimbursed the customers.

Q What is the language of that out-WATS when that switched out?

A Right now I couldn't begin --

Q But, you don't know who did it anyhow, do you? I said, and you don't know who did it anyhow, do you?

A That particular call, the hour and the continuance?

Q You don't know who did it, do you?

A No.

Q Now, you seized certain items? And, I say you because you signed the inventory, I believe.

A Yes, I did.

MR. GOLDSTEIN: And, Mr. Westervelt, I don't want to step on your toes.

BY MR. GOLDSTEIN:

Q But, you seized these items because they are illegal. Is that correct?

A Yes.

Q What is illegal about Number 1 on the receipt

of inventory?

THE COURT: Do you want to read those aloud so I am aware of what you are talking about as well?

BY MR. GOLDSTEIN:

Q Panasonic CCTV Model TR-9001M, is there anything illegal about that?

A Depending upon how it is connected to other equipment.

Q It is connected to a Sol terminal computer. Is that right?

A This particular one -- let me look down before I -- yes.

Q Which is Number 2 on the list. Is that correct?

A That is correct.

Q And, Number 3 was the tape recorder which was connected to the computer as well. Is that right?

A That is correct.

Q Were these hooked up to the phone system?

A Not at that time, no.

Q Do you know if they were ever hooked up to the phone system?

A No.

Q What was illegal about them when you walked

in and saw them, what caused you to seize them?

A The tapes -- the capability of that computer associated with --

Q What tapes were found with that computer that were illegal?

A Right now I can't answer. That's being looked at.

Q You don't know of any tapes associated with that computer that are illegal. Is that right?

A No, I don't.

Q And, it is true that any computer has a capability to make any illegal calls, and any tape recorder has the capability to play back multi frequency?

A I can't answer that.

Q If I put a frequency with any tape recorder?

A Go that one again, would you?

Q If I have a cassette tape recorder and I put frequencies on the tape, any tape recorder that could play that tape could play it back, right?

A And, that's a violation of the penal code of Pennsylvania.

Q Any tape recorder would be illegal, is that correct, but it could play the tape?

A The tape is the illegal aspect, but if it is in that computer it would be.

Q Did you find any illegal tape in this computer?

A I can't answer that. As we had talked before, and back there, there is another person that can only answer that.

Q So, you don't know now what is illegal about Number 3, one process or technology?

A That was removed by the Pennsylvania State Police along with some of the other items in that. It was all associated to Andrew Wright's computer.

Q What is illegal about it?

A I said before -- you know, right now, the way that these were hooked up, someone else will have to testify to that. I have not --

Q You don't know what is illegal about it then. Is that right?

A I haven't testified to it, no.

Q What is illegal about Number 6, the sheets of lined paper with numbers, one tablet of lined paper with codes and diagrams?

A Again, that still falls in with the same other categories.

Q Will that be true of everything else on this inventory?

A I can't answer that.

Q Tell me, Number 17, one Hewlett-Packard

transformer, what is illegal about that?

A That Number 17 was connected to Number 16, which was connected to Number 15, which was connected to Number 14, which was associated to Number 13, which was all hard -- or which was physically connected to the telephone terminal, which was Photograph C-1.

Q Now, as a matter of fact, when you seized these items -- and let's talk about Items 1, 2 and 3, you didn't know whether they were illegal or not, did you?

A Right at that time? No.

Q But, you seized them, didn't you?

A With the codes and the sequences -- or the codes and the decoding, yes.

Q And, you seized them despite the fact that they were not wired into the Bell System, isn't that correct?

A At that time, yes.

Q Well, you said you don't know at any time whether they were wired in there, don't you?

A Well, that's right, I said that.

Q Yes, you did.

You don't know whether either computer had the capability of making calls, do you, you don't know whether either computer actually could make calls

or did make calls, do you?

A Could or did?

Q Did.

A No.

Q Any computer can be programmed to make a phone call if it is hooked into a phone line, can't it?

A I can't answer that.

Q You can't. And, you can't answer whether the computers you seized could make phone calls, could you?

A Myself?

Q Yes.

A Other than having been told and --

MR. GOLDSTEIN: No other questions.

CROSS EXAMINATION

BY MR. WESTERVELT:

Q Mr. Beam, this pen register that you talked about --

A Yes.

Q -- what is the product -- or what is the meaning upon which that renders the information it gathers?

A Over an integrated circuit that is provided, you know, through our own switch network from point to point.

Q And, where does that circuit end up?

A It terminates in my security office -- in another security room adjacent to my office.

Q And, does that make an -- on what medium does it record the information?

A The paper.

Q This is the paper you have shown us, that you refer to, with the 800 numbers on it?

A Right, what we just looked at.

Q The pen register does not make voice recordings?

A In itself, no. But, as I stated, you can come out of it.

Q And, that was done in this case?

A Not until the day of the 30th, that afternoon, upon authority.

Q So, voice recordings were made on the 30th?

A No. The 20th.

Q And, on whose authority was that?

A By my authority, upon approval by our legal counsel.

Q Who is --

A The legal counsel of Bell of Pennsylvania.

Q Do you know his name?

A The one that signed it, William Hebrank,

H-e-b-r-a-n-k.

Q Is there a physical piece of paper that is an authorization to you from Mr. Hebrank, or an authorization from you to your underlings?

A No. I'm right there. And, you know, I'm part of it. There is -- that I received. But, I have likewise the authority to take it verbally.

Q What did you do in this case?

A Both.

Q Do you have a piece of paper with Mr. Hebrank authorizing you to intercept voices?

A I have it.

Q Do you have it with you?

A I can't answer that. I'm not sure.

Q Would you check and see whether you do?

A Yes..

THE COURT: I was just wondering if it is necessary to sequester these people outside. It is getting chilly. There is one man you are going to use, is that right, and one other witness? Can the others come in?

MR. MATERGIA: I would like to have them come in.

MR. WESTERVELT: If they are not going to be witnesses, they are not under the --

MR. GOLDSTEIN: I don't care. Let them all in.

Do you care?

MR. WESTERVELT: No, not now that we are on cross examination. I don't think it matters.

THE COURT: All right. I was just thinking about them being out there. It is getting pretty chilly.

MR. WESTERVELT: You want to see this, George?

BY MR. WESTERVELT:

Q. What medium are the voice recordings made on?

A. A two -- a reel tape stereo unit.

Q. And, where are those -- they are then in the form of reel tapes, r-e-e-l tapes?

A. Small reel tape, not plural.

Q. Where is that tape now?

A. That tape is here.

Q. Do you have a machine to play it for us?

A. Yeah, I have a machine.

Q. What is the total time of the tape?

A. The cut, 120 seconds, and then a second one probably of that same time.

Q. Two calls?

A. Yes.

Q And, that is all that is voice taped?

A That is correct.

Q On this billing on 800 numbers, will you explain to me, please, what the incremental cost to a WATS subscriber is of another call going onto another system?

A Well, it's very complex. And, I'm not gonna be total because this is our rates group. We have different bands from different areas. Pennsylvania calling, let's say, the -- you know, in a sweep of a circle covering part of the New England states and maybe down into Maryland, would be a Band 1. The further you go, Band 2, and then Band 3, up to a Band 5. That gives you the total state, anything lesser.

At the same time it's full-time or measured. Full-time under normal business is 240 hours on-line time. Measure time is ten hours. Anything over that then becomes on an overtime base, and the billing is, you know, subsequent to.

Now, full-time from Band 1 to Band 6 varies immensely on a monthly aspect, and dependent again, you know, where we are. And, here we're talking, you know, from Florida going out to California, let's say, in different areas. But, it varies up to and including \$1,700 per month without overtime.

Q Let me see if I can boil that down. You tell me if I am stating this inaccurately. If I have a WATS line, I have a certain -- when I pay for the WATS line, I get a certain number of credits that is divided by distance of calls and the type of WATS service I take, whether it is full-time or overtime. Is that correct?

A Very clear.

Q Very basic way?

A Yes.

Q So, in a particular situation, if I had a full line -- is it called?

A Full-time.

Q Full-time WATS system, if -- no matter where the first call in comes from, there is no increment, and the cost to the subscriber for that call, is there, if he's paid 1,700?

A There's no additional, no.

Q And, the same is true for the second call until he gets up to his time limit?

A That's correct. There is a register on the circuit that identifies on a cumulative base the duration, so that when you hit 240 or likewise the ten. Now, in addition, there is another meter, yes. There is another meter, and that identifies all trunks busy.

In other words, you only have one WATS line as you have described.

Now, if I'm talking on it but someone else calls in on it, you get a busy. And, that is a registration. And, in turn, we then in -- through marketing identify, study, analyze, and then we would recommend to you either go to another --

Q That is just for purposes of selling additional service, isn't it?

A It's true, but it's very often, in some cases that we have had, misleading in that these circuits are being seized, you know, as this particular case. They were seized for non-business purposes of that customer, and that customer is being cumulatively timed, the duration going up to the ten hours or passing the 240. And, they get billed in addition on an overtime base.

Q In this case, can you say whether any of these in or out-WATS calls resulted in monetary billing to any of the WATS line subscribers?

A Yes.

Q Which subscribers and how much?

A Right now I -- again, now I can't answer which subscribers they are and how much. That's still being computed by all of the independent -- or all by our

associated telephone companies where they are located because it's in computers right now, coming back out. So that part of it --

Q Well, how do you know it resulted in actual monetary charges? How do you know it wasn't just part of the minimum, as allocated to the subscriber?

A It was not the subscriber using it. And, in turn, as it has happened on other bases, and as it will be here, they will be reimbursed for these calls.

Q Well, maybe I am not making this clear. If I have a WATS line and just, for example, say the amount of service I take gives me 200 free calls from anywhere in the country -- I realize that is basically inaccurate, in a sense, but say that is my system --

A Fine.

Q -- and if somebody makes a call in and then an extended call out on the first day of the billing cycle, when there has been no other call before that, that doesn't result in any monetary billings as subscriber, does it?

A No.

Q The only time a monetary billing results to a subscriber is if the subscriber's use during the period is reaching the overtime period and he is then into overtime, isn't that right?

A That is correct.

Q Then he gets billed for the excess over his monthly minimum?

A That is correct.

Q Now, the question is, in this case did any of the calls that you say were made from this number result in a monetary billing to any of the customers?

A That can't be answered yet. That is in computers and, in turn, is coming back out. A. T. and T., as a support group, has communicated with each of these companies. And, those companies are getting detailed billing, detailed calls and cumulative data for that.

Q I take it your answer is you cannot testify that that was the result in any of these calls?

A At this time.

Q Now, who conducted the surveillance of the house?

A John Eizenhouth.

Q Is he one of your subordinates?

A No. We are associates.

Q Is he present today?

A Yes, he is.

Q Is he the other witness who is going to testify?

A I don't think so.

Q Do you know the days the surveillance was conducted on?

A The 18th and the 20th.

Q And, you know the hours?

A On the 20th it was -- and I'm gonna give an approximate here within a half an hour, sometime -- 2:30.

Q a.m.?

A No. That's p.m.

Q Until --

A I can't answer that.

Q Starting at approximately 2:30?

A Yes. It wasn't long. It was basically identification of motor vehicles.

Q Do you know what motor vehicles were identified on that day? The 20th, now, we are talking about.

A On the 22nd, the Saturday, talking --

Q We are getting a little confused here. I thought that your testimony --

A I'm trying to answer your question. On the 22nd, in person, facing -- talk with Mr. Eizenhouth, Mr. Eizenhouth identified that on the 20th the two vehicles that were observed by him were the same two vehicles that were at the residence, one being

registered to John Draper, the other to Andrew --
Wortley Andrew Wright, Jr., as the registration was.

Q And, were they there also on the 18th?

A I'm not -- I'm not sure, on the 18th.

Q Did he tell you where the vehicles were
physically on the property?

A They were backed in, you know, facing the
dwelling. It would be on the left-hand side -- the
left-hand side, which would be, you know, coming in
on the drive.

Q Now, directing you to the inventory of the
search warrant again, which of these items do you say
are Mr. Wright's, and also if you would indicate how
you -- why you have formed the conclusion that they
are Mr. Wright's?

A Item 1 -- may I just go down, make it inclu-
sive?

Q Yes.

A Item 2, Item 3, the Panasonic recorder, Item
4, Item 5, Item -- if I can stop at Line 5, 1 through
5 were identified by Mr. Wright.

Q He acknowledged those were his?

A Yes, he did.

You know, from that -- from 6 down --
now, I'm not sure, you know, seeing them and that

association with them, and that would be Number 6. That's lined paper. 7, one small memo book. 8 is a clipboard from a drop-leaf desk. So, 8 is not. And, you know, the cassette tapes, now, down on 10, one box containing 16 cassettes. You know, I can only assume on that without seeing them or Trooper Harris. I cannot answer that. The computer -- one, now, as I said, he identified for me.

Q Some of these other things were acknowledged by Mr. Draper to be his?

A Oh, yes.

Q And, in fact, there was a bedroom identified as Mr. Draper's, which was searched, right?

A It was.

Q And, some of these items were found in that bedroom?

A They were.

Q Was a bedroom identified to you as being Mr. Wright's?

A Not to me, but apparently to someone which was on the next level, which would be, you know, counting the underground level, the third level.

Q To your knowledge was that room searched?

A By the state police, yes. All rooms apparently were searched by the state police.

Q And, to your knowledge, was anything seized from that room?

A I know -- and I know when I accompanied Trooper Harris to that room nothing was taken.

Q How many people lived in this house, do you know, do you know how many people lived in this house?

A No.

Q How many people were present when you arrived to conduct this search -- or when you arrived accompanying the state police who were going to do the search?

A How many were there, and how many were still coming?

Q Well, just how many were there.

A Well, I couldn't answer that. When I came up the steps, there were plainclothes state troopers that, you know, I did not know. There were, you know, other parties, possibly three or four, possibly, you know, there at that time.

Q Three or four, nonlaw enforcement personnel or Bell people?

A Right. And, that's, you know, an approximate, right at that time.

Q Well, you know Mr. Draper was there, right?

A No, not at that time.

Q He was not there at that time of the search?

A Matter of a few minutes he was. As Mr. Wright stated, you know, he had just left for a walk. He was there, had just left for a walk, and then, you know, they found him. So --

Q Mr. Wright was present?

A Yes.

Q And, he is seated at the table here next to me?

A Yes.

Q That is Mr. Wright.

This young lady in the first row with the yellow jacket, was she present?

A I think -- well, I'm sure I saw her at some point. Right at that time I don't know, but at some point. I think she was the one with the bag of groceries, with the ice cream.

Q So, other than Mr. Wright, there were two or three other non-police or non-Bell people in the house at the time you arrived?

A Precisely at that time I think I'm accurate with that figure.

Q Do you know if anybody got their names?

A The state police did, and I think, you know, the state police have that.

Q I think Mr. Goldstein asked you whether

specific items on this inventory were illegal items.

You recall that?

A He did.

Q Part of your cross examination.

A Yeah.

Q Are any of the items that you can identify as Mr. Wright's items illegal, or were being used illegally when they were seized?

A I said it was not connected at that time to the telephone. And, I'm speaking now of Andrew Wright's computer.

Q This is the Sol terminal computer?

A That is correct. The Items 1, 2 and 3. My ability to identify the capability of that computer and those tapes -- I do not have that capability to identify the intricacies of a computer.

Q Well, any computer can be used illegally, can't it, with the telephone?

A I truthfully can't answer that. As we said here on the other questioning, there is parties here that can answer that accurately.

Q Any tape recorder can be used to generate tones that will result in fraud on the telephone company, isn't that correct?

A If it is one that has the capability of

emanating multi frequency tones, you know, with the right code sequence programmed, absolutely.

Q Is there anything about the items marked 1 through 5 on the inventory that leads you to believe they have been used illegally or were being used illegally?

A Being outside -- or being on the outside with the information that you saw on that tape, one or both or either of those computers, you know, had the capability. I did not know which one or both had that capability.

Q But, when you arrived, one was wired on the phone terminal?

A At that time one was wired to the telephone.

Q And, it was not the one identified as being Mr. Wright's?

A That is correct.

MR. WESTERVELT: I have no other questions.

MR. GOLDSTEIN: Can I have an additional question, Your Honor, before redirect? Then we can maybe --

THE COURT: Yes, go ahead.

CROSS EXAMINATION

BY MR. GOLDSTEIN:

Q The mere fact that a computer is wired to a telephone does not make it illegal, does it?

A It is if the proper interface unit would be connected or on -- under the -- under the aspect of being illegal in its applique by the interface.

Q No. You are adding something to my question. I am saying mere fact that it is wired to a phone does not make it illegal, does it?

A It possibly could violate the tariff, but criminally, unless it was being used for something, no.

Q Thank you. That is the only question I have to ask you.

REDIRECT EXAMINATION

BY MR. MATERGIA:

Q Mr. Beam, in reading the tape that you referred to, and the in-WATS 800 numbers that showed up on the tape, were you able to identify to whose number these calls were being billed?

A We identified the 800 customer who would be paying for the in-WATS service, and also if it went into a WATS extender through the security code the out-WATS would be paid for by that subscriber. The third number that was --

MR. GOLDSTEIN: I object, Your Honor. That is beyond the scope of the question. That is not

responsive. He said can you identify who it was.

BY MR. MATERGIA:

A Yes.

Q Explain.

A The third number that was used was used to avoid billing if billing should or would occur, and to avoid identity as to where the calls originated from.

Q How do you identify the use of third number billing?

A With this particular case, the central office -- the tape was read manually, equaling the call that had taken place possibly an hour before -- three calls approximately an hour before. And, these calls were identified having been given a different number for billing purposes. From that point, any number that came up we had the pen register that decoded the 800 number, and interface through the computer was programmed to give us a printout so that all calls could be matched as to the called number and the billing number. And, they were different.

Q How are you able to determine that these calls extended once they reached the 800 in-WATS line?

A Again, by the printout showing that a security code, five digits, was accessed, and then a second dial tone is applied and then the codes, as the one

that was shown there. But, an actual call originating, be it from Florida or Iowa, out to a given location, as we had said before, California or New Jersey or New York --

Q And, was it your testimony that there was access to one of the Bell numbers?

A That is correct.

Q This Bell number which was accessed by a code of 555 and then specific digits, this is a long line Number 1 switching center. It is an ESS office. That particular number is a test number which is used for testmen within the long line switching centers to test from one long line switcher to another long line switcher. It is not for conversation capability or for the outside world to use when that is accessed, that voids the capability of the central office personnel for testing.

Q Were you able to identify from where the calls were made, referring to the calls on the tape that you examined on cross examination?

A Was that made from or made-to?

Q Made from.

A Made from, yes. They were made from -- right now I don't remember the first digits. I believe the last four digits is 3038, but the telephone number --

Q 595, would it be?

A 595, yes, Canadensis out of the Cresco office. But, the service was listed to an Andrew W. Wright, Jr.

Q Was this the same exchange to which the Apple computer was hard wired?

A That is correct.

Q Can you tell me whether the lack of monetary billing to an 800 customer is indicative of the lack of monetary billing to the Bell System? I don't know if that is a clear question.

A Let me try to answer that in the respect that Bell of Pennsylvania -- the Bell System is governed by two operating tariffs, the PUC or the PSF, Diamond State or the FCC. And, it is so worded that if you and I were to make the identical or a similar call from point to point, be it Pennsylvania or to California, that you and I must pay the same equal rates, that we cannot discriminate against one party or another for billing purposes. At the same time we are a utility and at the same time we are a stockholded company, and we have a right to safeguard our job, as asset and review protection. If this billing is not, let's say, identified under the tariff, then other rates for other people would increase.

MR. MATERGIA: I have no further questions.

1 RE-CROSS EXAMINATION

2 BY MR. GOLDSTEIN:

3 Q What was this test number which was called?

4 A I'll have to look at it, if I may get my
5 paper.

6 THE COURT: Go ahead.

7 BY MR. GOLDSTEIN:

8 A The number that was accessed, 319-555-1088,
9 which then by the long lines kept for the test purposes
10 connected to 959-1088.

11 Q Thank you.

12 MR. GOLDSTEIN: No other questions.

13 MR. WESTERVELT: I have no other recross.

14 MR. MATERGIA: You may step down.

15 (Witness excused.)

16 (Thereupon a recess was taken.)

17
18
19 KENNETH D. HOPPER, having been first
20 duly sworn, was examined, and testified as follows:

21 DIRECT EXAMINATION

22 BY MR. MATERGIA:

23 Q Would you give your name, please.

24 A Kenneth D. Hopper, H-o-p-p-e-r.

25 Q Where are you employed, Mr. Hopper?

1 A I am employed by Bell Telephone Laboratories
2 Incorporated, Holmdel, New Jersey.

3 Q What capacity?

4 A I am a member of the technical staff assigned
5 to the security support group.

6 Q And, what is your background with regard to
7 your employment?

8 A I have 30 years of service with the Bell
9 System, of which six years was with the Bell Telephone
10 Company of Pennsylvania, five and a half years with
11 the Western Electric Company and the remainder with
12 Bell Telephone Laboratories.

13 Q Did you have the occasion to examine what has
14 been commonly referred to in this hearing as the
15 Apple computer?

16 A Yes, sir. I believe I've examined that
17 device.

18 Q This is a Commonwealth Exhibit Number 1, and
19 can you identify that equipment?

20 A Yes, I recognize this.

21 Q And, what is it?

22 A This is part of the equipment brought to my
23 office by Trooper Harris on October 27, relating to
24 this case.

25 Q What has been the extent of your involvement

1 with this particular equipment?

2 A We've attempted to bring expert help in from
3 computer areas of Bell Laboratories to understand the
4 computer programming and memory functions of this
5 equipment. We have equipment in our laboratory capable
6 of recognizing signals that would be used to manipulate
7 the telephone network. However, we felt that the
8 expert opinion of others more involved with computer
9 technology would be useful. So, I've worked with the
10 computer people, and we have obtained certain signals
11 from this equipment which we have analyzed -- or I have
12 analyzed on our laboratory devices.

13 Q What is this particular item I am handing to
14 you now?

15 A This, sir, is a copy of a printout that was
16 obtained from a magnetic tape cassette which was part
17 of Item 30 of the items of evidence brought to me by
18 Trooper Harris. The start of this printout is the
19 program that was on the cassette. It was put on a
20 teletypewriter, which we attached to the Apple computer.
21 Later on, on this roll chart is also other printouts
22 from a readout memory, a ROM, which was found on the
23 Apple computer board, but which in conversation with
24 the Apple Company was indicated not their product.
25 So, we ran a complete printout of everything in that

1 ROM, of the readout memory, and also we have printouts
2 of programs on two other cassettes later on.

3 Q Did your examination of the Apple computer
4 disclose to you an ability of that particular device
5 to extend calls?

6 A Yes, sir. We believe it has that capability.
7 However, I think I should make the statement that this
8 examination is still going on, and that the --

9 Q Well, just tell us what examination --

10 MR. GOLDSTEIN: Objection, Your Honor.
11 He interrupted the witness.

12 Let him finish his statement, please.

13 MR. MATERGIA: I thought he was finished.

14 BY MR. MATERGIA:

15 A That is true. We are not through with this
16 examination of this equipment.

17 Q I was going to say to limit your testimony to
18 what you have done, your examination has concluded at
19 this time.

20 A Yes. I recognize patterns on here. Am I
21 responsive to your question?

22 Q Okay.

23 A I recognize patterns in the printout which is
24 indicative of fraud capability.

25 Q And, how so?

A I should mention that a blue box type telephone fraud call involves the presence of a 2,600 cycle signal applied to the telephone line followed by signals that are in a format known as multi frequency key pulsing. These signals are always preceded by a pulse known as the KP pulse, which has, as one of its frequency constituents, 1,100 Hertz. And, the multi frequency signals are always followed by the St signal, which has, as one of its constituency frequencies, 1,500 Hertz.

I find references in this computer print-out ordered in the right manner to manipulate the telephone network in a manner entirely consistent with blue box fraud. That is, specifically, 2,600 is mentioned, MF is mentioned, KP 1,100 cycles, St 1,500. This, to me, is an indication that by further probing we may very well establish fraudulent signaling capability.

Q Have you employed the Apple computer to extend calls?

A Yes, sir. At one point in the program, a number of 800 type telephone numbers -- 800 in-WATS numbers appeared. We were successful in having the Apple computer outpulse these calls into the network. And, we actually completed a call to a Marine Insurance

Company, I believe located in Florida, through one of these 800 numbers.

Q What else has your investigation produced?

A Very early in the program a password routine is present, which is to discourage easy use of this. It's necessary to put in a string of letters in the proper order to permit the program to run. Also, at another point we found it was necessary to bring about a phase lock loop. This is a technical term that involves having a circuit come back on itself in such a manner that the program would advance. We successfully cause the equipment to function through that path also, and it would appear that that path was put in as a harassing means to prevent someone unfamiliar with the program easy operation of the program.

MR. MATERGIA: Cross examine.

THE COURT: Mr. Goldstein.

CROSS EXAMINATION

BY MR. GOLDSTEIN:

Q Have you made -- extended any calls to an 800 number by using this computer?

A Yes, sir, we have, at least one.

Q What was that call?

A That call was outpulsed to a Marine Insurance Company in --

Q And, then did you, by use of that computer, apply 2,500 tone?

A Oh, no, sir, not at all.

Q So, all you have done is made a phone call with a computer. Is that right?

A We have done that and other things.

Q Is that illegal?

A Not in the manner that we placed the call, no, sir.

Q Nor would it be illegal in the manner that anyone who had that computer would place that call, if it was just placed to an 800 number. Is that right?

A We really can't state at this point, Mr. Goldstein. There's much about this that is not understood at this point.

Q In other words, you have established that this computer can make phone calls, isn't that right?

A In a variety of ways, sir.

Q Are any of the ways which this computer makes phone calls illegal?

A It is pointing in that direction, sir.

Q Can you answer yes or no, and then explain, please?

A It's pointing in that direction.

Q Does that mean yes or does that mean no?

A Neither term applies.

 MR. MATERGIA: I think he is --

BY MR. GOLDSTEIN:

Q In other words, what you are saying is that it might be illegal. Is that correct?

A Would you restate your question, sir.

Q I will withdraw it.

 Do you consider yourself a scientist?

A No, sir.

Q What are you, a technician?

A A member of the technical staff of Bell Laboratories.

Q And, you have established that this computer, when you push the proper buttons, will make a telephone call. Is that right?

A Yes, sir, we have established that much.

Q From what you have established to date, is the manner in which this computer makes telephone calls illegal?

A I can't answer the question as you've set it up.

Q Well, I will rephrase it -- or I will say it again.

 From what you have established in working with this computer, is the manner in which it places

telephone calls against the law?

A I see indications of fraudulent potential.

Q Potential?

A Yes, sir.

Q And, by that you mean that it could be used illegally if something else was done?

A Yes, I think that's a fair statement.

Q From what you have established to date, and without conjecture as to what could be done, has your examination indicated that its application is illegal?

A We have not reached conclusions in that regard, sir.

Q So, your answer would be no, it is not illegal, from what you seem to think?

A That would not be my answer, sir.

Q Will you point to an illegal use of this computer that you have established to date?

A All right, sir. This one manner entering into an 800 number as a distant subscriber.

Q Is that illegal to call an 800 number?

A No, sir. It's what you do after you get there.

Q What can you do with this computer after you get there that you have established from your own work with it?

A We've not reached that stage.

Q So, you can't establish any illegality, can you?

A At this point the evidence is such that it is in that direction, that illegal use is a real possibility.

Q You are in a Courtroom now.

A That's correct.

Q And, you are testifying in a case that involves a person being accused of doing illegal acts. Can you point to this machine doing illegal acts today, and, if so, testify in what way?

A I can say, sir, that our examination is proceeding, and that we will know a lot more in a few weeks.

Q That wasn't my question. My question was can you tell us today what, if anything, is illegal here?

A I can point to this printout that we have here, and I can say that I see things on this printout that could only be put in there to commit telephone toll fraud, entirely --

Q Can you tell me what those things mean consistent with right --

A -- entirely consistent with telephone toll fraud.

Q Computer language is its own thing, is it not?
Are you trained in computers, by the way?

A Not extensively.

Q Are you familiar with computer language?

A Not that much. However, I am familiar with plain English.

Q Well, that is not plain English to me, sir. They all seem to be abbreviations, numbers. And, you may relate to them in one manner, but can you specifically state that that computer language relates to phone company terminology?

A I can only say that in the 30 years of my experience with the Bell System that that type of ordered signals and information relate only to a method of fraudulent use of the network.

Q How long have these 2,600 Hertz numbers been in existence?

A 2,600 Hertz, sir?

Q Yes, these switching kind of equipment you have now, how many years has this been in existence?

A 2,600 cycles has been used for signaling since just after World War II.

Q And, how about the manner in which it is used today?

A It's been in use -- well, they have been

changed in the network. We went to direct distance dialing, which gave customers more direct access and --

Q For how many years have the systems been the way they are now, about two or three, maybe?

A It's in a constant state of change.

Q In your 30 years experience you are talking about something which might have changed yesterday.

Is that right?

A This didn't.

Q So, show me where illegal calls were made using that machine.

A I cannot show you where an illegal call was made.

Q Did you make any illegal calls or calls which would be illegal if a private citizen made them using this computer?

A No, sir.

Q Can you now make any calls that would be illegal for a private citizen to make using this computer?

A Can I now?

Q Are you able to, now, today, this moment?

A We don't understand that much about it.

Q Is your answer no?

A It would have to be at this moment. It might

be in two weeks --

Q Do you know where the tapes came from that you put into those machines?

A They were brought to me by Trooper Harris.

Q Were they marked in any way?

A Yes, sir, they were marked with Trooper Harris' identification. They were bundled. They were inventoried. We read the inventory and marked them ourselves.

Q What numbers were on the tapes that you got?

A I'll have to refer to papers that I have --

Q Please do.

A -- back here.

Q Please do.

A I have with me only the inventory sheets furnished by Trooper Harris and the receipt signed --

Q I am interested in the numbers of his inventory as to the tapes you placed.

A All right. The first one, which has the indications of 2,600 multi frequency, KP 1,100 and St 1,500.

Q Just give me the numbers of the tapes you tested. You don't have to testify as to what they said. If you do, I will have you read the whole thing in evidence.

A I'll have to identify it that way to pin it down. It is part of Item 30 in a list of a total of 31 items. And, Item 30 consists of one Panasonic portable tape recorder, Model RQ309DS, with cassette. And, that is the cassette part of Item 30.

Q What other items did you get?

A All right. The ROM, readout memory portion of this printout is a part of the Apple computer, which is identified on the inventory.

MR. GOLDSTEIN: To save some time, Trooper, can you point out which ones?

MR. HARRIS: I don't know which ones he's referring to, counselor. I'd be happy to, except I don't know which ones he has --

BY MR. GOLDSTEIN:

A Item Number 21 is a printed circuit board for the Apple computer. And, on that printed circuit board for the Apple computer is plugged in the ROM, the readout memory unit.

Q What other tapes did you examine?

A The reverse side of the cassette, which is part of Item 30, so this would be the reverse side of the cassette. That was Item 30. And, that's -- that's all that's printed out here.

Q That is all you -- okay.

A Now, this represents the -- I would estimate maybe 3 percent of the total cassette capabilities. So, we've got a lot of work to do.

Q And, you don't know what, if anything, these cassettes have on them, do you?

A Not those that we haven't looked at.

Q How many have you looked at?

A Well, here we have just about two sides of one.

Q Have you looked at any others?

A Yeah, we've looked at others, but we don't understand them at this point.

Q So, you don't know if they are illegal or legal?

A Not at this point, no, sir.

Q They could be used to play a game on a computer, they could be for some legitimate purpose, couldn't they?

A Well, yes, sir, that's true.

MR. GOLDSTEIN: I don't have any other questions.

CROSS EXAMINATION

BY MR. WESTERVELT:

Q Mr. Hopper, you have identified this equipment that you have been working on as the items that

are shown in Commonwealth's 1?

A Yes, sir, that is correct.

Q That is an Apple computer?

A Yes, it is.

Q Now, I understand your testimony to be that one of the applications of this computer could be -- or any computer, for that matter, could be to commit telephone fraud?

A Yes, that's true. I wouldn't be so all inclusive as to say any computer. Certainly there'd have to be an acoustical or electrical connection to the telephone network to bring about manipulation of the network. Now, in the case of the one in this exhibit, there is such an interface circuit. And, it's this board here.

Q Now, I am showing you Commonwealth's 2. Can you identify that?

A Yes, sir. This is part of the inventory of equipment also brought by Trooper Harris. It's a process or technology SOL terminal Model Number 20, and accessory equipment.

Q It's the thing we have been calling the Sol computer today?

A Possibly. I haven't heard that.

Q Oh, that's right. You were out.

Is there a phone interface on that?

A We have not examined this, sir.

Q So, you can't say that there is?

A That's correct.

Q Now, the computer that you have examined, the Apple computer, is this piece of equipment uniquely used for telephone fraud?

A Oh, I'm sure it isn't, no. I'm sure its principal application is not for telephone fraud.

Q So, it is fair to say, isn't it, that this machine, or this electronic equipment, whatever it is, might have thousands and thousands of legal applications and --

A Yes, indeed.

Q And, maybe there are others. But, one application is illegal. That is use of it with the telephone?

A Where circumvention of billing and that type of procedure is involved, yes, sir.

Q Right. Now, the fact that somebody owns one of these mini-computers, even with the equipment shown in, say, Commonwealth's 2, is absolutely no indication that there is telephone fraud being practiced with the computer?

A That is correct.

Q This is roughly analagous to a person owning a crow bar, isn't it? I mean, a crow bar is something that has one illegal use and a million legal uses?

A Completely.

MR. WESTERVELT: I have no other questions.

MR. GOLDSTEIN: I have one other question, sir.

CROSS EXAMINATION

BY MR. GOLDSTEIN:

Q Do you still have this equipment, these tapes in your custody?

A Yes, sir, they're in our vault.

Q In New Jersey?

A Yes, sir.

Q This is under the custody of the Bell Telephone Company?

A In my custody -- Mr. Heintze and myself and two other people have the combination to the lock on the door. It is secured in our evidence repository.

Q And, you got this from the Pennsylvania State Police. Is that right?

A Yes, sir.

Q Was this at your request?

A No, sir.

Q Was this at their request?

A Yes, sir.

Q Was it accompanied with any Court order, this stuff you got?

A Only with the Commonwealth inventory.

Q Thank you, sir.

A There was a -- let me make one mention.

There was a request for laboratory analysis form. I might add that we perform services of this type as a regular thing. We perform examinations for the FBI. We perform examinations for --

Q Telephone fraud cases?

A Telephone fraud and wire fraud cases, and it's not unusual for us to receive a request for examination --

Q In other words, you examine evidence relating to your company's claim as fraud. Is that right?

A Relative to our area of expertise. Now --

Q Your area of expertise is fraud against the telephone company, right?

A My area of expertise is strictly telephone technology. And, that's all I ever testify to.

Q But, when you examined this evidence of the

Pennsylvania State Police, you were examining it to determine that that is fraud to the phone company, right?

A That it does or does not have that capability. And, as I say, at this point our examination is on-going.

Q And, it is inconclusive at this point, too, right?

A We see things that have a definite sense of direction.

Q But, you haven't found anything yet, have you?

A We're working hard on it.

Q But, you haven't?

A We're working.

Q But, have you found it?

A We're working.

Q Have you found it, yes or no? Then explain, please.

A Make it look like we are --

Q Let me hear a yes or no first, whether you found it.

A Yes or no is not a good answer to your question. We are --

Q Is this one finger or is it two fingers?

A Yes, sir. You've got one finger up.

Q One finger, right?

A Right.

Q Is this one finger or no fingers?

A That's zero.

Q So, you can tell the different there, right now, is that correct, you can tell the difference between one finger or no fingers?

A I hope so.

Q Now, can you tell the difference between if this computer can make an illegal phone call presently or whether it can't presently?

A We completed one call that went to an 800 number. Now, what happens beyond that point we are not at this point capable of answering.

Q So, your answer would be that right now, as we said before, no, you can't testify as to whether it can make illegal calls, right?

A You cannot put my answer in my mouth because I would not say that. I can say only that we are headed in a direction that will reveal that or will not reveal it.

Q But, you don't know now, do you?

A No. That's right. We don't know now.

Q And, if you were to testify under oath, can

this Apple computer make an illegal phone call, based on your prior state of knowledge, what would your answer be?

A Probably yes.

Q And, what is it based on?

A Our examination to this point.

Q And, will you tell me how this could make an illegal call? I caution you now, sir, because you previously testified that you can't show -- you can't tell whether this computer can make an illegal call presently.

A My answer would be probably yes, and I would use both words.

Q Have you been able to make an illegal call with it up to date?

A We have made an 800 call.

Q Have you been able to make an illegal call with it up to this date?

A We're working on it.

Q Yes or no?

MR. GOLDSTEIN: Would you please direct him to answer, Your Honor. I have asked him a direct question, has he now been able to make any illegal call on this phone, and he says we're working on it. And, I would like a yes or no answer because it is the

crux of this prosecution, Judge.

THE COURT: Answer the question, please.

BY MR. GOLDSTEIN:

Q Yes or no?

A We have not made a blue box type call at this point.

Q And, you can't testify that this machine absolutely can make a blue box call, you just think it might be able to. Is that right?

A I just don't think, sir. I have indications, and on here that there is something in here intentionally to bring about blue box type fraud.

Q But, you don't know that it can be done, do you, you think it can be done, but you don't know it, do you?

A When this case goes to trial we'll be in a good position.

Q Sir, you are putting the horse before the cart right now. You don't know that this can be done, you just think so, right, am I right?

A How many times do you want me to restate that?

Q I want you to just give a direct answer. I don't want you to loop around it, to use a phone company term. Don't filter out your answer.

A At this point we have not succeeded in

outputting a blue box call.

Q Thank you.

MR. GOLDSTEIN: That is all I have.

MR. WESTERVELT: Nothing further.

THE COURT: Any other questions?

MR. MATERGIA: Yes.

REDIRECT EXAMINATION

BY MR. MATERGIA:

Q I believe that my question on direct examination was whether or not the equipment which you have examined has the capabilities of making such a call.

A There are indications that that will -- that that could be.

MR. GOLDSTEIN: I object to the use of the word indications, Your Honor. Indications is surmising, and that is not testimony in Court. The word indications means he is guessing.

MR. MATERGIA: I think it is a perfectly descriptive word. I think indications means that there are things which he is able to determine, and it is a perfectly acceptable way of a witness to describe how he is able to conclude an answer to my question. I would ask that he would be able to continue answering.

THE COURT: All right. I am going to overrule his objection.

Go ahead. Answer the question.

BY MR. MATERGIA:

A Well, I think I already responded in that we see things on this printout which are completely consistent with blue box type toll fraud. There are a lot of things about this equipment that we don't understand, and we are in the process of trying to understand just what it does do, what its capabilities are.

MR. MATERGIA: Nothing further.

THE COURT: No further questions.

Do you want to call any other witnesses?

Do you have a question here?

REXCROSS EXAMINATION

BY MR. WESTERVELT:

Q The last question by the Commonwealth, I think, was to the capabilities of this machine. Is that right?

A Yes.

Q And, I don't want to hash this over again and again, but we have agreed that any computer has this capability if it has a system to either make sounds or wire pulses into a telephone?

A If it has the interface circuit that permits this type of signal output, yes.

Q Or, you could put a speaker on it and have

it makes these actual sounds?

A You've still got to have a generator to produce those tones, yes.

Q So, any computer has that capability with the proper interface?

A With the proper interface.

Q And, this computer we have been talking about all through your testimony is the Apple computer?

A That's correct.

Q Is that one Commonwealth's 1?

A Yes, it is. If I might see my inventory list, which seems to have disappeared --

MR. GOLDSTEIN: I have it, sir.

THE COURT: You can use this one.

BY MR. WESTERVELT:

A I'd like to refer to the -- that's not the only sheet. I have other sheets that are -- that I'd like to refer to.

MR. GOLDSTEIN: Well, I think these are all the same, aren't they?

BY MR. WESTERVELT:

A Yes, it's the -- it's the Apple. That consists of 23 and 24 and various other -- Item 29, various other components. But, it is not Item 7, Item 6 of this list, which is the Sol. That's different.

Q It is not --

A It's not Item 7 and Item 6, which is this.

Q It is not the Sol computer terminal and process or technology or the Sol resources manual?

A That's correct.

Q Thank you.

MR. WESTERVELT: I have no other questions.

MR. GOLDSTEIN: Well, then I have one other question.

RE-CROSS EXAMINATION

BY MR. GOLDSTEIN:

Q To date you have been able to establish -- all you have been able to do is make an outgoing call with this computer. Is that right?

A That isn't all we've been able to establish.

Q What else have you been able to do telephone-wise with this computer other than make an outgoing call?

A Yes, sir, we've produced a whole variety of output systems which have driven our analyzer device in rotary dialing and touch tone, and then a multi frequency type language, which is not totally consistent with the telephone network, but appears to have certain other characteristics.

MR. GOLDSTEIN: No other questions.

THE COURT: No other questions.

MR. MATERGIA: I have no further questions.

(Witness excused.)

MR. MATERGIA: We rest, Your Honor.

THE COURT: Commonwealth rests.

Are you going to call any witnesses?

MR. WESTERVELT: I am not going to call any witnesses on behalf of Mr. Wright.

MR. GOLDSTEIN: No witnesses, Your Honor.

THE COURT: No witnesses.

MR. GOLDSTEIN: Judge, I point to the testimony of the Commonwealth in this very long hearing where they are charging conspiracy, but yet they can't show who, if anyone, made phone calls, a house which was inhabited at the time of the search by we don't know how many, four, five, six, maybe eight people, some of whom came walking up later, some of whom were there when the police came in. I believe the testimony was that at the time of the search Mr. Wright and two or three others were in the house, and that Mr. Draper came up later with some others. So, we have at least four or five different people placed in that house.

The Commonwealth has not been able to show that my client made a phone call. They showed that he's in the house. They show that he possibly claims a computer which can make phone calls, but there has been no showing that this computer was employed to make any phone calls.

Now, he is charged with conspiracy with Andrew Wright. I submit to the Court that there has been no evidence as to any conspiracy between these people to do anything other than to inhabit the same general physical space, being a house, that they both were there at a given time. They have not been shown to have made any phone calls together, to have joined forces in making any phone calls together, to have done anything illegal. I think that is an absolute mischarge.

Possessing devices for theft to telecommunications service, that is Section what, 910, I believe, or something like that, of the code.

THE COURT: That is 910.

MR. GOLDSTEIN: Now, that is written - very generally, possessing any instrument, apparatus, equipment or device designed to adapt, which can be used for commission of a theft of telecommunications services. And, if we read that the way it is written,

it would be unconstitutional because it is too general because anything can be used to steal telecommunications services, any tape recorder can be used for that. So that anybody who owned a tape recorder could be found guilty of this crime because any tape recorder can be employed to play signals or tones into a phone. So, to give the legislature a little bit of credit, we would assume that they would mean this to read any device which is used for that purpose. And, the Commonwealth has not proved this stuff seized was used for that purpose. So, it has been proved that it can make a phone call, but the phone call they have made, as testified, was a legal phone call, a phone call to an 800 number. They may have attempted to extend that phone call. They haven't been able to. With all of his humphing and hawing and all of his talk, Mr. Hopper, when you get right down to the bottom line, says he thinks he can do it, but we haven't been able to do it ourselves.

Now, maybe they are still working with it, maybe they will never find it, maybe it doesn't exist. But, maybe isn't enough even for a prima facie case. A prima facie case has to be sound and found on evidence, evidence that a crime was committed. And, just because he claims that this has the capability,

it might be able to do an illegal act, is not sufficient -- is not sufficient unless it is shown that it was used for some illegal act. It is not illegal to make a phone call with a computer. It is not illegal to employ devices to make phone calls. It is illegal to make illegal phone calls, but there has been no evidence that this machine makes illegal phone calls. And, Mr. Hopper testified that although it may have the capability and they say it may be able to, as of this date, as of this hearing, they absolutely don't know that it does. And, they can't prove that it does. And, at the time of the arrest they certainly didn't know that he could or did. I think that charge can't stand, possessing instruments of a crime. What crime has he committed? What crime have they proved he has committed? If possessing an instrument of a crime relates to possessing a machine which they claim makes illegal phone calls, then I think possessing instruments of a crime is brought improperly because it relates to burglary tools and things like that. And, the statute itself dealing with theft of telephone service deals with possessing of the instrument itself, and therefore would be dual prosecution. You couldn't prosecute for possessing instruments of a crime and also charge him for possessing this

machine at the same time because it is the same crime. So, I don't think they have shown possessing instruments of a crime.

As far as trade secrets are concerned, I imagine they are founding the trade secrets charge on this book -- this booklet, which was testified to. Now, I would note that booklet is available to any number of people. It is not marked secret, do not disclose. It is just marked that basically it is a property of the Bell Company, and it shouldn't be disclosed without written agreement. Now, the crime theft of trade secrets relates to stealing something which is a secret. But, if that which is stolen under that act -- under that section of the act has been disseminated to someone else, it is no longer a trade secret. And, it is a complete defense for prosecution for the defendant to know the information to show the information comprised -- the trade secret was rightfully known or available to him from a source other than the owner of a trade secret. The Commonwealth, by its own testimony, has indicated that this information is disseminated to other phone companies by Bell, that it is available to other parties with written agreement, as it says on the paper itself. So, by its very term, this booklet is not a trade secret because it is

disseminated to others by the owner. And, written on the front of it is a statement that indicates it is disseminated to others. So, therefore this does not come under the definition of a trade secret. And, a trade secret is identified in the Act, confidential, and has not been published. And, also, the Commonwealth was unable to determine -- to tell that that was a trade secret because they weren't able to state whether this, in fact, was currently applicable. It is a year and a half old. It was a preliminary draft. We don't know whether it is still applied in the phone company hierarchy. And, it has not been shown to be a trade secret in that it is so highly confidential that it is not disseminated to other people. And, in fact, I believe that the witness himself testified -- Mr. Beam testified that in the scientific community there has been writing about this type of thing. I just don't think they have made a prima facie case out of any charge at all, certainly not as to conspiracy, certainly not as to testimony of this because they don't know who made the phone calls.

And, take this Court, you would have to guess if you were to say that either he made the phone calls or he made the phone calls or I made the phone calls or he made the phone calls. They don't know who

made the phone calls.. And, they haven't been able to show who made them. So, I just think that the Commonwealth's prosecution maybe is a little premature. If they had tapes, by the way, why didn't they play them, to show who made these phone calls?

THE COURT: Mr. Westervelt.

MR. WESTERVELT: Squire, I think that everything Mr. Goldstein says is correct. But, I don't represent Mr. Draper. So, my opinion on that is really kind of irrelevant to the decision that you have at this point. All during this hearing I have been very impressed with Trooper Harris' investigation and the pictures and the way everything was inventoried and done very nicely. No technical problems with this prosecution whatsoever. But, the only problem as far as Mr. Wright is concerned is that they have said absolutely nothing that ties him into this whole thing. I mean, assuming the worst about the whole program here, there were some calls made. Now, nobody has said who made them, and clearly they haven't attributed them to Mr. Wright. The police agree -- or Mr. Beam agrees -- I think that was the name -- that this was the computer that was identified to be Mr. Wright's. And, there's no phone interface on this computer. There is nothing directing this to telephone lines at

all. Mr. Hopper says that -- or agrees with me when I say that a computer like this is something like a crow bar, it has millions of legal applications and one or two illegal applications. This is agreed by everybody to be Mr. Wright's computer, nothing even connecting it to a phone line. You recall that I questioned Mr. Beam on the search of the house. I said you searched Mr. -- this is a house that Mr. Goldstein says was occupied by more than one person, or at least two people, Mr. Draper and Mr. Wright. I said did you search Mr. Wright's bedroom.

Yes, he was there at least when it was searched.

Anything seized from there.

No, not one thing on the inventory was seized out of Mr. Wright's bedroom, the space that is uniquely under his control.

The computers are in a common area according to what Mr. Beam says, so anybody has access to them. So, I would say in the general case attributing what is done on either of these computers to any particular person can't be done because they can't say who did it, and they are -- there is more than one person there. Anybody can apparently use these. But, in any event, Mr. Wright owns one of these, but it is

not connected to the telephone. It has nothing to do with the telephone. There is nothing illegal about this setup. Mr. Wright has nothing even connecting it to a phone line, so I am at a loss to say why they felt they had the right to seize this thing, never mind why they feel that this gives them the right to charge this man with theft of services and all these tagalong charges that are involved here. Clearly, the only thing they can say about Mr. Wright was that he leased this house -- or subleased the house. That is the only thing they have shown in this case.

Now, there are two defendants here. As I said, I agree with what Mr. Goldstein said about Mr. Draper. But, whatever doubt there is about Mr. Draper -- I agree that there is no prima facie case against him. There is nothing -- no case whatsoever, never mind a prima facie case against Mr. Wright. I asked the Judge to consider in making her decision what these witnesses said. They didn't talk about Mr. Wright. The only mention to him was when they came to make the search that he was there. And, he said this is my computer, the one with no phone interface. And, nobody has denied that -- nobody has made any dispute about any of his statements. There is nothing here at all against Mr. Wright, absolutely not one thing.

And, I can't imagine, Squire, how you could, respectfully, ever find a prima facie case on what they presented against Mr. Wright.

THE COURT: Attorney Matergia.

MR. MATERGIA: Squire, I think in this case you have to examine the testimony, chiefly that of Mr. Beam. Commonwealth's second witness testified really only to the capabilities of this computer to invade the Bell System, the capabilities of itself to invade the Bell System. Mr. Beam testified as to the possessory aspects of that -- the one we call the Apple computer, as belonging to Mr. Draper. He testified Mr. Draper indicated it was his computer, and we put into evidence a photograph of the computer device and how -- as well as testimony in a photograph as to how it was connected to the system in and of itself.

I think that makes out possessory offense with regard to the Section 910 statute. I have a question in my mind as to the trade secrets charge against Mr. Draper, and I am sure Squire does likewise. There was considerable testimony from Mr. Beam in this case that Andrew Wright had the number -- the Canadensis exchange number to which the various pen register -- from the pen register they were able to determine,

one, from that phone calls were placed on various states. Two, that the calls were identified to a number other than the one in which they were placed from. That suggests a fraudulent aspect in and of itself. Three, that the calls went into an 800 exchange, and four, that by way of the pen register's unique identification process, that it was employed by way of an illegal device, a blue box or red box. And, I think that in and of itself makes out the Commonwealth's case of telephone communications fraud.

We had three or four instances where numbers other than the one that was used was operator identified, and calls were then tapped into 800 lines. I think that the Commonwealth's evidence as to the capabilities of this computer are admittedly somewhat weak, but not so weak as to dislodge the prima facie case that was presented here today.

I would ask you to find a prima facie case.

THE COURT: Now, are you speaking about both defendants at this time?

MR. MATERGIA: Yes, I am.

THE COURT: At this time it is my ball game, and I am going to take about ten minutes just to review this in my mind and your arguments. And, I

will announce my decision.

(Thereupon a recess was taken.)

THE COURT: I think I am ready. Please take a seat.

At this time I will address Mr. Draper.

Mr. Draper, I find probable cause for a prima facie case against you for manufacture, distribution or possession of devices for theft of telecommunications services, theft of services and criminal conspiracy to commit the above crimes. I bind you over for the consideration of the Court of Common Pleas in Stroudsburg.

MR. GOLDSTEIN: All the other charges are dismissed, Your Honor?

THE COURT: Yes.

MR. GOLDSTEIN: Will you announce that?

THE COURT: Yes, I will announce that.

I will dismiss the charge of theft of trade secrets against you and possessing instruments of the crime. There is no evidence to show that at this time.

Mr. Wright, addressing myself to you, Wortley Andrew Wright, Jr., I find prima facie evidence in criminal conspiracy and theft of services and bind you over for further consideration of the

Court of Common Pleas on those two charges. The charges of manufacture, distribution or possession of devices for theft of telecommunications services, possessing instruments of crime and theft of trade secrets are dismissed.

Court is dismissed at this time.

MR. GOLDSTEIN: Your Honor, may we ask a question? He has had bail set at \$20,000 for misdemeanors.

THE COURT: Right.

MR. GOLDSTEIN: I think it should be lower.

THE COURT: Right, I agree. We will talk about bail with you at this time.

The rest of you may go.

We will set his bail at five for each man.

(Concluded.)

I, CYNTHIA A. SHOOP, a Registered Professional Reporter and Notary Public in the State of Pennsylvania, certify that the foregoing is a true and accurate transcript of the Magistrate's Hearing re Commonwealth of Pennsylvania vs. John T. Draper and Wortley A. Wright, Jr., at the place and on the date hereinbefore set forth.

I further certify that I am neither attorney nor counsel for, nor related to or employed by, any of the parties to the action in which this Magistrate's Hearing is taken, and further that I am not a relative or employee of any attorney or counsel employed in this case, nor am I financially interested in the action.

Cynthia A. Shoop
A Notary Public in the State
of Pennsylvania