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Report of the Director of the Administrative Office of the United States Courts

on

Applications for Orders Authorizing or Approving the Interception of Wire, Oral, or Electronic Communications

The Omnibus Crime Control and Safe Streets Act of 1968 requires the Administrative Office of the United States Courts (AO) to report to Congress the number and nature of federal and state applications for orders authorizing or approving the interception of wire, oral, or electronic communications. The statute requires that specific information be provided to the AO, including the offense(s) under investigation, the location of the intercept, the cost of the surveillance, and the number of arrests, trials, and convictions that directly result from the surveillance. This report covers intercepts concluded between January 1, 2005, and December 31, 2005, and provides supplementary information on arrests and convictions resulting from intercepts concluded in prior years.

A total of 1,773 intercepts authorized by federal and state courts were completed in 2005, an increase of 4 percent compared to the number terminated in 2004. One application was denied. The number of applications for orders by federal authorities fell 14 percent to 625. The number of applications reported by state prosecuting officials grew 17 percent to 1,148, with three more state jurisdictions providing reports than in 2004. Wiretaps installed were in operation an average of 43 days per wiretap in 2005, the same as in 2004. The average number of persons whose communications were intercepted dropped from 126 per wiretap order in 2004 to 107 per order in 2005. The average percentage of intercepted communications that were incriminating was 22 percent in 2005, compared to 21 percent in 2004.

Public Law 106-197 amended 18 U.S.C. 2519(2)(b) to require that reporting should reflect the number of wiretap applications granted for which encryption was encountered and whether such encryption prevented law enforcement officials from obtaining the plain text of communications intercepted pursuant to the court orders. In 2005, no instances were reported of encryption's being encountered during a federal wiretap. State jurisdictions reported 13 instances in which encryption was encountered in wiretaps terminated in 2005; however, in none of these instances did the encryption prevent law enforcement officials from obtaining the plain text of communications intercepted.

The appendix tables of this report list all intercepts reported by judges and prosecuting officials for 2005. Appendix Table A-1 shows reports filed by federal judges and federal prosecuting officials. Appendix Table B-1 presents the same information for state judges and state prosecuting officials. Appendix Tables A-2 and B-2 contain information from the supplementary reports submitted by prosecuting officials about additional arrests and trials in 2005 arising from intercepts initially reported in prior years.

Pursuant to 18 U.S.C. 2519(2), prosecutors must submit wiretap reports to the AO no later than January 31 of each year. This office, as is customary, sends a letter to the appropriate officials every year reminding them of the statutory mandate. Nevertheless, each year reports are received after the deadline has passed, and the filing of some reports may be delayed to avoid jeopardizing ongoing investigations. The percentage of missing state and local prosecutors' reports was 3 percent, the same as in 2004. Information received after the deadline will be included in next year's *Wiretap Report*. The AO is grateful for the cooperation and the prompt response we received from many officials around the nation.

Leonidas Ralph Mecham Director

Applications for Orders Authorizing or Approving the Interception of Wire, Oral, or Electronic Communications

Reporting Requirements of the Statute

Each federal and state judge is required to file a written report with the Director of the Administrative Office of the United States Courts (AO) on each application for an order authorizing the interception of a wire, oral, or electronic communication (18 U.S.C. 2519(1)). This report is to be furnished within 30 days of the denial of the application or the expiration of the court order (after all extensions have expired). The report must include the name of the official who applied for the order, the offense under investigation, the type of interception device, the general location of the device, and the duration of the authorized intercept.

Prosecuting officials who applied for interception orders are required to submit reports to the AO each January on all orders that were terminated during the previous calendar year. These reports contain information related to the cost of each intercept, the number of days the intercept device was actually in operation, the total number of intercepts, and the number of incriminating intercepts recorded. Results such as arrests, trials, convictions, and the number of motions to suppress evidence related directly to the use of intercepts also are noted.

Neither the judges' reports nor the prosecuting officials' reports contain the names, addresses, or phone numbers of the parties investigated. The AO is **not** authorized to collect this information.

This report tabulates the number of applications for interceptions that were granted or denied, as reported by judges, as well as the number of authorizations for which interception devices were installed, as reported by prosecuting officials. No statistics are available on the number of devices installed for each authorized order. This report does not include interceptions regulated by the Foreign Intelligence Surveillance Act of 1978 (FISA).

No report to the AO is required when an order is issued with the consent of one of the principal parties to the communication. Examples of such situations include the use of a wire interception to investigate

obscene phone calls, the interception of a communication to which a police officer or police informant is a party, or the use of a body microphone. Also, no report to the AO is required for the use of a pen register (a device attached to a telephone line that records or decodes impulses identifying the numbers dialed from that line) unless the pen register is used in conjunction with any wiretap devices whose use must be reported. Pursuant to 18 U.S.C. 3126, the U.S. Department of Justice collects and reports data on pen registers and trap and trace devices.

Regulations

The Director of the AO is empowered to develop and revise the reporting regulations and reporting forms for collecting information on intercepts. Copies of the regulations, the reporting forms, and the federal wiretapping statute may be obtained by writing to the Administrative Office of the United States Courts, Statistics Division, Washington, D.C. 20544.

The Attorney General of the United States, the Deputy Attorney General, the Associate Attorney General, any Assistant Attorney General, any acting Assistant Attorney General, or any specially designated Deputy Assistant Attorney General in the Criminal Division of the Department of Justice may authorize an application to a federal judge for an order authorizing the interception of wire, oral, or electronic communications. On the state level, applications are made by a prosecuting attorney "if such attorney is authorized by a statute of that State to make application to a State court judge of competent jurisdiction."

Many wiretap orders are related to large-scale criminal investigations that cross county and state boundaries. Consequently, arrests, trials, and convictions resulting from these interceptions often do not occur within the same year as the installation of the intercept device. Under 18 U.S.C. 2519(2), prosecuting officials must file supplementary reports on additional court or police activity that occurs as a result of intercepts reported in prior years. Appendix Tables A-2 and B-2 describe the additional activity reported by prosecuting officials in their supplementary reports.

Table 1 shows that 47 jurisdictions (the federal government, the District of Columbia, the Virgin Islands, and 44 states) currently have laws that authorize courts to issue orders permitting wire, oral, or electronic surveillance. During 2005, a total of 23 jurisdictions reported using at least one of these three types of surveillance as an investigative tool.

Summary and Analysis of Reports by Judges

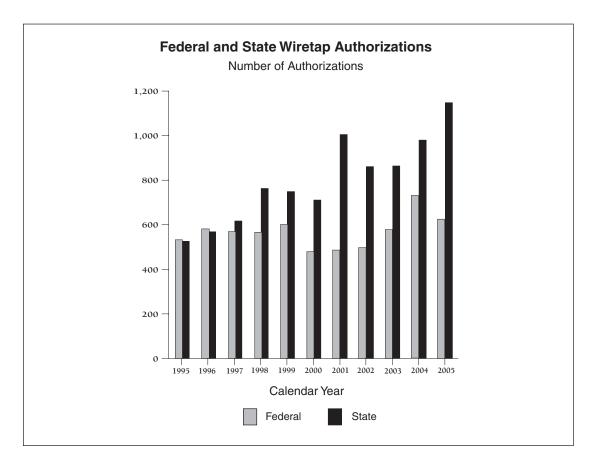
Data on applications for wiretaps terminated during calendar year 2005 appear in Appendix Tables A-1 (federal) and B-1 (state). The reporting numbers used in the appendix tables are reference numbers assigned by the AO; these numbers do not correspond to the authorization or application numbers used by the reporting jurisdictions. The same reporting number is used for any supplemental information reported for a communications intercept in future volumes of the *Wiretap Report*.

The number of wiretaps reported increased 4 percent in 2005. A total of 1,773 applications were reported as authorized in 2005, including 625 submitted

to federal judges and 1,148 to state judges. One application was denied. Compared to the number approved during 2004, the number of applications reported as approved by federal judges in 2005 fell 14 percent (see sidebar on page 8). The number of applications approved by state judges rose 17 percent. Wiretap applications in New York (391 applications), California (235 applications), New Jersey (218 applications), and Florida (72 applications) accounted for 80 percent of all applications approved by state judges. The number of states reporting wiretap activity was higher than the number for last year (22 states reported such activity in 2005, compared to 19 in 2004). Ninety-seven separate state jurisdictions submitted reports for 2005, which is 12 more than the total for 2004.

Authorized Lengths of Intercepts

Table 2 presents the number of intercept orders issued in each jurisdiction that provided reports, the number of amended intercept orders issued, the number of extensions granted, the average lengths of the original authorizations and their extensions, the total number of days the intercepts actually were in



operation, and the nature of the location where each interception of communications occurred. Most state laws limit the period of surveillance under an original order to 30 days. This period, however, can be lengthened by one or more extensions if the authorizing judge determines that additional time for surveillance is warranted.

During 2005, the average length of an original authorization was 28 days, the same as in 2004. A total of 1,360 extensions were requested and authorized in 2005, an increase of 1 percent. The average length of an extension was 28 days, the same as in 2004. The longest federal intercept occurred in the Southern District of New York, where an original 30-day order was extended nine times to complete a 287-day wire-tap used in a racketeering investigation. Among state wiretaps terminating during 2005, the longest was used in a gambling investigation conducted in Queens County, New York; this wiretap, in use for 559 days, required a 30-day order to be extended 19 times. In contrast, 18 federal intercepts and 53 state intercepts each were in operation for less than a week.

Locations

The most common location specified in wiretap applications authorized in 2005 was "portable device, carried by/on individual," a category included for the first time in the 2000 Wiretap Report. This category was added because wiretaps authorized for devices such as portable digital pagers and cellular telephones did not fit readily into the location categories provided prior to 2000. Since that time, the proportion of wiretaps involving fixed locations has declined as the use of mobile communications devices has become more prevalent. Table 2 shows that in 2005, a total of 91 percent (1,610 wiretaps) of all intercepts authorized involved portable devices such as these, which are not limited to fixed locations. This is an increase of 3 points over the percentage in 2004, when 88 percent of all intercepts involved portable devices.

The next most common specific location for the placement of wiretaps in 2005 was a "personal residence," a type of location that includes single-family houses, as well as row houses, apartments, and other multi-family dwellings. Table 2 shows that in 2005, a total of 3 percent (57 wiretaps) of all intercept devices were authorized for personal residences. One percent (21 wiretaps) were authorized for business

Federal Wiretaps

The Department of Justice indicated that it examined the decrease in the reported use of wiretaps in federal investigations reflected in this year's report to Congress as opposed to last year's report and provided the following comments: "While it appears that the number of federal wiretap-assisted investigations conducted pursuant to 18 U.S.C. 2518(1) declined last year, the numbers reported in the Administrative Office's report do not reflect a number of investigations not reported to the Department by the reporting deadline, as well as a large number of complex and/or sensitive investigations that continued into 2006 and thus could not be reported at this time. We believe that if these matters could have been included in the report, the report would reflect an increase in the use of federal wiretap-assisted investigations during Calendar Year 2005."

establishments such as offices, restaurants, and hotels. Combinations of locations were cited in 49 federal and state applications (3 percent of the total) in 2005. Two percent (28 wiretaps) were authorized for "other" locations, which included such places as prisons, pay telephones in public areas, and motor vehicles.

Pursuant to the Electronic Communications Privacy Act of 1986, a specific location need not be cited if the application contains a statement explaining why such specification is not practical or shows "a purpose, on the part of that person (under investigation), to thwart interception by changing facilities" (see 18 U.S.C. 2518 (11)). In these cases, prosecutors use "roving" wiretaps to target a specific person rather than a specific telephone or location. The Intelligence Authorization Act of 1999, enacted on October 20, 1998, amended 18 U.S.C. 2518 (11)(b) to provide that a specific facility need not be cited "if there is probable cause to believe that actions by the person under investigation could have the effect of thwarting

interception from a specified facility." The amendment also specifies that "the order authorizing or approving the interception is limited to interception only for such time as it is reasonable to presume that the person identified in the application is or was reasonably proximate to the instrument through which such communication will be or was transmitted."

For 2005, authorizations for eight wiretaps indicated approval with a relaxed specification order, meaning they were considered roving wiretaps. This is an increase from 2004, when one wiretap was reported as a roving wiretap; however, the 2005 total is similar to those reported for 2003 and 2002 (six and nine, respectively). One roving wiretap approved in 2005 was a federal wiretap used in a racketeering investigation. The other seven roving wiretaps were reported by state authorities: four were used in narcotics investigations, one in a murder investigation, one in a racketeering investigation, and one in a money laundering investigation.

Offenses

Violations of drug laws and racketeering laws were the two most prevalent types of offenses investigated through communications intercepts. Homicide/ assault was the third most frequently recorded offense category, and gambling the fourth. Table 3 indicates that 81 percent of all applications for intercepts (1,433 wiretaps) authorized in 2005 cited a drug offense as the most serious offense under investigation. Many applications for court orders indicated that several criminal offenses were under investigation, but Table 3 includes only the most serious criminal offense named in an application. The use of federal intercepts to conduct drug investigations was most common in the Southern District of New York (37 applications), the Northern District of Illinois (31 applications), and the Central District of California (24 applications). On the state level, the largest number of drug-related intercepts was reported by the New York City Special Narcotics Bureau (148 applications), followed by Queens County of New York (100 applications) and Los Angeles County of California (85 applications). Nationwide, racketeering (94 orders) and homicide/assault (82 orders) were each specified in 5 percent of applications as the most serious offense under investigation. The categories of gambling (42 orders) and larceny/theft/robbery (16 orders) were specified in 2 percent and 1 percent of applications, respectively. Among the applications citing offenses counted under the category "other" in Table 3, the most frequently reported offenses were conspiracy (19 orders), fraud (17 orders), and corruption (11 orders).

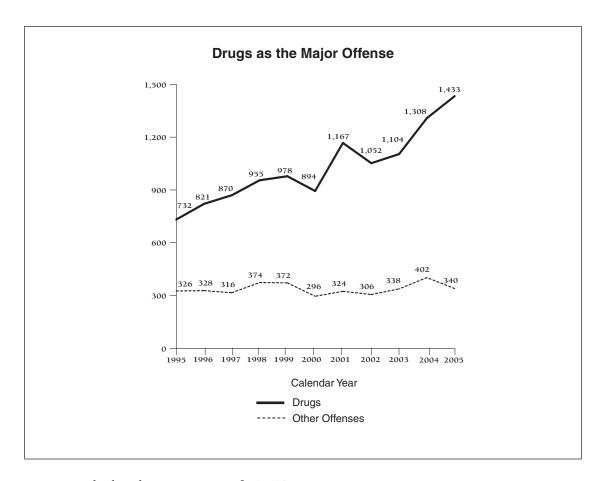
Summary and Analysis of Reports by Prosecuting Officials

In accordance with 18 U.S.C. 2519(2), prosecuting officials must submit reports to the AO no later than January 31 of each year for intercepts terminated during the previous calendar year. Appendix Tables A-1 and B-1 contain information from all prosecutors' reports submitted for 2005. Judges submitted 57 reports for which the AO received no corresponding reports from prosecuting officials. For these authorizations, the entry "NP" (no prosecutor's report) appears in the appendix tables. Some of the prosecutors' reports may have been received too late to include in this report, and some prosecutors delayed filing reports to avoid jeopardizing ongoing investigations. Information received after the deadline will be included in next year's *Wiretap Report*.

Nature of Intercepts

Of the 1,773 communication interceptions authorized in 2005, reports submitted by prosecutors indicated that intercept devices were installed and results were reported in conjunction with a total of 1,694 orders. As shown in Table 2, orders for 22 wiretaps were approved for which no wiretaps actually were installed, and results from 57 wiretap orders were not available for reporting by the prosecutors. Table 4 presents information on the average number of intercepts per order, the number of persons whose communications were intercepted, the total number of communications intercepted, and the number of incriminating intercepts. Wiretaps varied extensively with respect to the above characteristics.

In 2005, installed wiretaps were in operation an average of 43 days, the same as the average number of days wiretaps were in operation in 2004. The most active federal wiretap occurred in the Southern District of New York, where a racketeering investigation involving the interception of cellular telephone



communications resulted in the interception of 51,712 messages over 287 days. The second most active federal intercept, also a cellular telephone wiretap, occurred in the Northern District of Texas as part of a racketeering investigation; this wiretap was active for 169 days and resulted in a total of 42,628 interceptions. The next most active federal wiretaps also involved cellular telephone intercepts: one wiretap lasting 109 days that was used in a prostitution investigation in the District of New Jersey produced an average of 335 interceptions per day, and one wiretap used in a smuggling investigation in the Central District of California for 135 days led to an average of 232 interceptions per day. For state authorizations, two jurisdictions reported wiretaps that produced an average of more than 600 intercepts per day: a wiretap used in a 30-day murder investigation in Los Angeles County, California, with an average of 666 intercepts per day, and a wiretap used in a 30-day narcotics investigation in San Diego County, California, with an average of 605 intercepts per day. Nationwide, in 2005 the average number of persons whose communications were intercepted per order in which intercepts were installed was 107, and the average number of communications intercepted was 2,835 per wiretap. An average of 629 intercepts

per installed wiretap produced incriminating evidence. The average percentage of incriminating intercepts per order was 22 percent in 2005, compared to 21 percent in 2004.

The three major categories of surveillance are wire communications, oral communications, and electronic communications. In the early years of wiretap reporting, nearly all intercepts involved telephone (wire) surveillance, primarily communications made via conventional telephone lines; the remainder involved microphone (oral) surveillance or a combination of wire and oral interception. With the passage of the Electronic Communications Privacy Act of 1986, a third category was added for the reporting of electronic communications, which most commonly involve digital-display paging devices or fax machines, but also may include some computer transmissions.

Table 6 presents the type of surveillance method used for each intercept installed. The most common method of surveillance reported was "phone wire communication," which includes all telephones (land line, cellular, cordless, and mobile). Telephone wiretaps accounted for 95 percent (1,609 cases) of intercepts installed in 2005. Of those, 1,537 wiretaps involved cellular/mobile telephones, either as the only type of

device under surveillance (1,495 cases) or in combination with other types of telephones (42 cases).

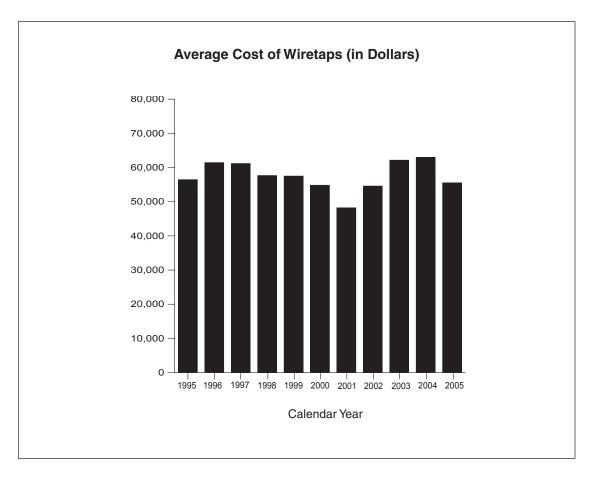
The next most common method of surveillance reported was the electronic wiretap, which includes devices such as digital display pagers, voice pagers, fax machines, and transmissions via computer such as electronic mail. Electronic wiretaps accounted for 1 percent (23 cases) of intercepts installed in 2005; 15 of these involved electronic pagers, and 8 involved computers. Oral wiretaps including microphones were used in 1 percent of intercepts (18 cases). A combination of surveillance methods was used in 3 percent of intercepts (44 cases); of these combination intercepts, 93 percent (41 cases) included a mobile/cellular telephone as one of the devices monitored.

Public Law 106-197 amended 18 U.S.C. 2519(2)(b) in 2001 to require that reporting should reflect the number of wiretap applications granted in which encryption was encountered and whether such encryption prevented law enforcement officials from obtaining the plain text of communications intercepted pursuant to the court orders. In 2005, no instances were reported of encryption encountered during any

federal wiretap. State jurisdictions reported 13 instances of encryption encountered in wiretaps terminated in 2005; however, in none of these cases was encryption reported to have prevented law enforcement officials from obtaining the plain text of communications intercepted. In addition, state jurisdictions reported that encryption was encountered in 40 wiretaps that were terminated in calendar year 2004 or earlier, but were reported for the first time in 2005; in only one of these instances did the encryption prevent law enforcement officials from obtaining the plain text of communications intercepted.

Costs of Intercepts

Table 5 provides a summary of expenses related to intercept orders in 2005. The expenditures noted reflect the cost of installing intercept devices and monitoring communications for the 1,525 authorizations for which reports included cost data. The average cost of intercept devices installed in 2005 was \$55,530, down 12 percent from the average cost in 2004. For federal wiretaps for which expenses were reported in 2005, the average cost was \$70,480, a 7 percent de-



crease from the average cost in 2004. The average cost of a state wiretap fell 13 percent to \$45,454 in 2005. For additional information, see Appendix Tables A-1 (federal) & B-1 (state).

Arrests and Convictions

Table 6 presents the numbers of persons arrested and convicted as a result of interceptions reported as terminated in 2005. As of December 31, 2005, a total of 4,674 persons had been arrested based on interceptions of wire, oral, or electronic communications, 4 percent more than in 2004. Wiretaps terminated in 2005 resulted in the conviction of 776 persons as of December 31, 2005, which was 17 percent of the number of persons arrested. Federal wiretaps were responsible for 50 percent of the arrests and 31 percent of the convictions arising from wiretaps during 2005. A state wiretap in Somerset County, New Jersey, that resulted in the most arrests of any intercept terminated in 2005 was the lead wiretap of six intercepts authorized for a narcotics investigation that led to the arrest of 62 persons. The Southern District of New York reported the most arrests of any federal wiretap; a wiretap used in a racketeering investigation there yielded the arrest of 51 persons. The leader among state intercepts in producing convictions was a wiretap that was the lead wiretap of ten intercepts authorized in Rockland County, New York, for a narcotics investigation, which led to the conviction of 39 of the 40 persons arrested. The next largest number of convictions reported to have resulted from a state wiretap occurred in Queens County, New York, where the lead wiretap of nine intercepts authorized in a gambling investigation yielded the conviction of 31 persons. The District of South Carolina reported the most convictions of any federal wiretap; there the lead wiretap of two intercepts authorized in a narcotics investigation produced convictions for 32 of the 49 persons arrested. A wiretap that was the lead wiretap of two used in a narcotics investigation in the Eastern District of Wisconsin resulted in the conviction of all of the 27 persons arrested.

Federal and state prosecutors often note the importance of electronic surveillance in obtaining arrests and convictions. The Northern District of Georgia reported that a federal wiretap involving cellular telephone surveillance during a narcotics conspiracy investigation led to 28 arrests; in addition, the reporting officials stated that this wiretap "resulted"

in the seizure of 10 vehicles, 10 weapons, 40 pounds of marijuana, 592 kilos of cocaine, and \$8,000,000 in cash." Reporting officials in the Northern District of Illinois described a federal wiretap in use for 30 days in a narcotics investigation that resulted in 7 arrests, along with the seizure of 10 vehicles, 1 weapon, more than \$500,000 in cash, 100 pounds of marijuana, and 20,000 pills of MDMA (commonly known by the street name "ecstasy"). Incriminating communications obtained from a wiretap in the District of Arizona produced 11 arrests and the seizure of 4 vehicles, 15 weapons, 1 ton of marijuana, 5 kilos of cocaine, and more than \$100,000 in cash. Surveillance of cellular telephone communications reported by the Northern District of New York contributed to 15 arrests and the seizure of 13 vehicles, 80 kilos of marijuana, more than 4 kilos of MDMA, and more than \$1,000,000 in cash.

On the state level, officials in the office of the Wisconsin state attorney general reported that a standard telephone wiretap was used in a murder investigation, stating that "the case involves a 25+ year old homicide; without an admission by the conspirators it is unlikely we would be able to file charges." Officials in Los Angeles County, California, noted that a cellular telephone wiretap in use for 7 days resulted in 500 incriminating communications, the arrest of 5 persons, and the seizure of 81 kilograms of cocaine and approximately \$600,000 in U.S. currency. The district attorney in Davidson County, Tennessee, reported that interceptions obtained from a cellular telephone wiretap conducted over 201 days in a drug conspiracy investigation "allowed investigators to determine the identities of the out-of-state cocaine suppliers and allowed investigators to track drug loads being delivered in Nashville." In another investigation in Davidson County, Tennessee, the reporting official stated that "the interceptions were necessary to uncover a plot to have witnesses in a pending case murdered."

Because criminal cases involving the use of surveillance may still be under active investigation or prosecution, the final results of many of the wiretaps concluded in 2005 may not have been reported. Prosecutors will report additional costs, arrests, trials, motions to suppress evidence, and convictions related directly to these intercepts in future supplementary reports, which will be noted in Appendix Tables A-2 and B-2 of subsequent volumes of the *Wiretap Report*.

Summary of Reports for Years Ending December 31, 1995 Through 2005

Table 7 provides information on intercepts reported each year from 1995 to 2005. This table specifies the number of intercept applications requested, authorized, and installed; the number of extensions granted; the average length of original orders and extensions; the locations of intercepts; the major offenses investigated; average costs; and the average number of persons intercepted, communications intercepted, and incriminating intercepts. From 1995 to 2005, the number of intercept applications authorized increased 68 percent. The majority of wiretaps consistently have been used for drug crime investigations, which accounted for 81 percent of intercept applications in 2005. Between 1995 and 2005, the percentage of drug-related wiretaps has ranged from 69 percent to this year's high of 81 percent of all authorized applications.

Supplementary Reports

Under 18 U.S.C. 2519(2), prosecuting officials must file supplementary reports on additional court

or police activity occurring as a result of intercepts reported in prior years. Because many wiretap orders are related to large-scale criminal investigations that cross county and state boundaries, supplementary reports are necessary to fulfill reporting requirements. Arrests, trials, and convictions resulting from these interceptions often do not occur within the same year in which the intercept was first reported. Appendix Tables A-2 and B-2 provide detailed data from all supplementary reports submitted.

During 2005, a total of 1,451 arrests, 1,638 convictions, and additional costs of \$10,492,657 arose from and were reported for wiretaps completed in previous years. Table 8 summarizes additional prosecution activity by jurisdiction from supplemental reports on intercepts terminated in the years noted. Sixty-one percent of the supplemental reports of additional activity in 2005 involved wiretaps terminated in 2004. Of all supplemental arrests, convictions, and costs reported in 2005, intercepts concluded in 2004 led to 67 percent of arrests, 55 percent of convictions, and 84 percent of expenditures. Table 9 reflects the total number of arrests and convictions resulting from intercepts terminated in calendar years 1995 through 2005.