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Article 13

CPL § 700.10: 30-Day Limit on Eavesdropping Warrant Begins on Date of Issuance

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tionally deprived the accused of his right to a speedy trial. The Court's conclusion that the Calendar Judge's deferral of the motion constituted a waiver of the defendant's speedy trial right is contrary to the accepted principle that such a waiver must be exercised "knowingly and voluntarily."[34] It is suggested that the defendant should not be required to surrender this fundamental right because the failure to submit a timely motion occurred at the direction of the court and not by the defendant's own volition.

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CPL § 700.10: 30-day limit on eavesdropping warrant begins on date of issuance

CPL 700.10 authorizes the issuance of eavesdropping warrants to certain law enforcement officers for the purpose of crime detection in New York State.[1] Consistent with federal guidelines,[2] CPL

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[34] *See* Barker v Wingo, 407 U.S. 514, 529 (1972) (prosecution has responsibility to demonstrate that claimed waiver of constitutional speedy trial right was knowingly and voluntarily made); People v Rodriguez, 50 N.Y.2d 553, 557, 407 N.E.2d 475, 477, 429 N.Y.S.2d 631, 633 (1980) (only "an intentional relinquishment or abandonment" of constitutional speedy trial right will be sufficient to constitute waiver) (citing Johnson v. Zerbst, 304 U.S. 458, 464 (1938)); People v. White, 32 N.Y.2d 393, 399, 298 N.E.2d 659, 663, 345 N.Y.S.2d 513, 518 (1973) (waiver of constitutional speedy trial right must be both "knowingly and voluntarily" made) (citations omitted).

In *White*, while defendant's motion to dismiss for denial of a speedy trial was pending, the prosecution offered the defendant the opportunity to plead guilty to a lesser crime. *See* 32 N.Y.2d at 394, 298 N.E.2d at 660, 345 N.Y.S.2d at 514. This offer, however, was made only on the condition that the defendant accept it before his speedy trial motion was decided. *See id.* at 394-95, 298 N.E.2d at 660, 345 N.Y.S.2d at 514. Defendant subsequently pleaded guilty and was convicted. *Id.* The Court of Appeals reversed the conviction, holding that the waiver of the right to a speedy trial was coerced—contrary to the principle that a waiver must be exercised knowingly and voluntarily. *See id.* at 400-01, 298 N.E.2d at 666, 345 N.Y.S.2d at 519-20. The New York Court of Appeals has indicated that the right to a speedy trial in New York does not depend entirely on state statutes, but rests on a broader constitutional basis. *See* People v. Johnson, 38 N.Y.2d 271, 273, 275-76, 342 N.E.2d 525, 528-29, 379, 735 N.Y.S.2d 735, 737, 740 (1975); *cf.* Klopfer v. North Carolina, 386 U.S. 213, 222-26 (1967) (constitutional right to speedy trial is binding on states through fourteenth amendment). It is submitted, therefore, that in *Lawrence*, the Calendar Judge's deferral of the defendant's speedy trial motion effectively caused the defendant to waive involuntarily his right to a speedy trial, thereby raising constitutional issues that transcend the mere statutory requirements respecting speedy trial motions.

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[1] *See* CPL § 700.10(1) (McKinney 1985). CPL § 700.10(1) states

> Under circumstances prescribed in this article, a justice may issue an eaves-

700.10(2) and 700.30(7) dictate that an eavesdropping warrant may be issued only by judicial order and may not be authorized to intercept any communication for a period in excess of thirty days.[3]

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dropping warrant upon ex parte application of an applicant who is authorized by law to investigate, prosecute or participate in the prosecution of the particular designated offense which is the subject of the application.

Id.

The CPL authorizes eavesdropping warrants for the detection of the specific felony offenses designated in article 700. *See* CPL § 700.05(8) (McKinney 1985). The list of designated offenses includes, but is not limited to, murder, rape, burglary, and possession and trafficking of controlled substances. *See id.*

[2] *See* 18 U.S.C. § 2518 (1982). Section 2518(5) of the federal eavesdropping statute provides in pertinent part:

No order entered under this section may authorize or approve the interception of any wire or oral communication for any period longer than is necessary to achieve the objective of the authorization, nor in any event longer than thirty days . . . .

Id.

The federal eavesdropping statute, Title III of the Omnibus Crime Control and Safe Streets Act of 1968, was enacted in response to two key Supreme Court decisions, Berger v. New York, 388 U.S. 41 (1967), and Katz v. United States, 389 U.S. 347 (1967), which severely curtailed the use of electronic surveillance for the purposes of crime detection. *See* S. REP. No. 1097, 90th Cong., 2d Sess. 218, *reprinted in* 1968 U.S. CODE CONG. & AD. NEWS 2112, 2268 [hereinafter cited as S. REP. No. 1097].

After noting that the right of privacy in the fourth amendment has been declared enforceable against the states through the Due Process Clause of the fourteenth amendment, *see Berger*, 388 U.S. at 53, the Court in *Berger* asserted that state officials are "required to comply with the basic command of the Fourth Amendment before the innermost secrets of one's home or office are invaded" because "[f]ew threats to liberty exist which are greater than that posed by the use of eavesdropping devices," *id.* at 63. *See generally* Note, *Use of Surveillance Evidence Under Title III: Bridging the Legislative Gap Between the Language and Purpose of the Sealing Requirement*, 36 VAND. L. REV. 325, 327 (1983) (requirement of Title III that jurisdictions having eavesdropping statutes comply with minimum standards); Fishman, *The Interception of Communications Without A Court Order: Title III Consent, and the Expectation of Privacy*, 51 ST. JOHN'S L. REV. 41, 53 (1976) (state statutes modeled in whole or in part upon Title III).

[3] *See* CPL § 700.10(2) (McKinney 1985); *id.* § 700.30(7) (McKinney 1985). CPL § 700.10(2) provides:

No eavesdropping warrant may authorize or approve the interception of any communication for any period longer than is necessary to achieve the objective of the authorization, or in any event longer than thirty days.

Id. § 700.10(2); *see also* People v. Gnozzo, 31 N.Y.2d 134, 141, 286 N.E.2d 706, 708, 335 N.Y.S.2d 257, 261 (1972) (after former New York eavesdropping statute, which allowed two month duration, declared unconstitutional in *Berger*, maximum period reduced to thirty days), *cert. denied*, 410 U.S. 943 (1973); People v. Meranto, 86 App. Div. 2d 776, 776, 448 N.Y.S.2d 59, 60 (4th Dep't 1982) (conceded by both parties that eavesdropping warrant expired thirty days after issuance).

Article 700 of the CPL was enacted in 1969 by the New York State Legislature to conform to the provisions of the federal eavesdropping statute. *See* Governor's Memorandum on Approval of L. 1969, ch. 1147, N.Y. Laws (May 26, 1969), *reprinted in* [1969] N.Y. Laws 2586 (McKinney); *see also* J. ZETT, 4 NEW YORK CRIMINAL PRACTICE ¶ 26.3[1], at 26-62 (1973 & Supp. 1985) (article 700 adopted pursuant to and in conformity with Title III of federal

CPL 700.30(7) requires that such warrants be executed "as soon as practicable."[4] The statutes do not clarify whether the thirty days begin to run at the time of issuance of the warrant or at the time it is executed.[5] Recently, however, in *People v. Paluska*,[6] a case of first impression, the Appellate Division, Third Department, held that "the policy of strictly construing eavesdropping statutes dictates that the period begins on the date of issue unless another

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act); R. PITLER, NEW YORK CRIMINAL PRACTICE UNDER THE CPL 510 (1972) (New York Legislature amended CPL to conform to federal statute). Thus, when the New York Legislature enacted CPL article 700, it used the federal statute as a definitive guideline. *See* Memorandum of the Commission on Revision of Penal Law and Criminal Code, [1968] N.Y. LAW REV. COMM'N REP., *reprinted in* [1968] N.Y. Laws 2293 (McKinney). "The purpose of this bill is to provide a comprehensive scheme for the restricted issuance of eavesdropping warrants . . . designed to comply with the constitutional standards enunciated . . . by the Supreme Court . . . ." *Id.*; *see also* People v. Shapiro, 50 N.Y.2d 747, 763, 409 N.E.2d 897, 906, 431 N.Y.S.2d 422, 431 (1980) (state law not to be drawn more broadly than standards of Title III); People v. Sher, 38 N.Y.2d 600, 604, 345 N.E.2d 314, 317, 381 N.Y.S.2d 843, 845 (1976) (provisions of CPL article 700 track language of federal law); People v. Zendano, 62 App. Div. 2d 537, 540, 405 N.Y.S.2d 347, 349 (4th Dep't 1978) (New York courts' interpretation of CPL article 700 based on federal law).

In accordance with the federal statute, the CPL provides that eavesdropping warrants may be issued only by judicial order upon a showing of probable cause *and* that normal investigative procedures have been unsuccessfully attempted. CPL § 700.15 (McKinney 1985). In addition, the application for the warrant must articulate with specificity the target person and place of such surveillance, as well as the manner in which surveillance is to be undertaken. *Id.* § 700.20(2)(b).

[4] *See* CPL § 700.30(7) (McKinney 1985). CPL § 700.30(7) provides in pertinent part: An eavesdropping warrant must contain:

> A provision that the authorization to intercept shall be executed as soon as practicable, shall be conducted in such a way as to minimize the interception of communications not otherwise subject to eavesdropping under this article, and must terminate upon attainment of the authorized objective, or in any event in thirty days . . . .

Id.; *accord* 18 U.S.C. § 2518(5). Subdivision (7) of § 700.30 has been recognized by courts and commentators as requiring the minimization of eavesdropping warrants. *See, e.g.*, People v. Edelstein, 54 N.Y.2d 306, 308-09, 429 N.E.2d 803, 804, 445 N.Y.S.2d 125, 126 (1981) (minimization requirement of CPL § 700.30(7) rooted in fourth amendment ban on unreasonable search and seizure); People v. Floyd, 41 N.Y.2d 245, 249, 360 N.E.2d 935, 940, 392 N.Y.S.2d 257, 261 (1976) (minimization requirement founded on concerns expressed in *Berger*); *see also* CPL § 700.30, commentary at 488 (McKinney 1985) (among various requirements in § 700.30, minimization requirement of subdivision (7) is more important); R. PITLER, *supra* note 3, at 520 & n. 428 (section 700.30(7) requires that eavesdropping be conducted in manner which will minimize interceptions not subject to the warrant). Overall, this section of the CPL was designed to prevent expansion of eavesdropping warrants and must be strictly construed so that constitutional guarantees are not threatened. *See* People v. Calogero, 75 App. Div. 2d 455, 460, 429 N.Y.S.2d 970, 973 (4th Dep't 1980).

[5] *See supra* notes 3 & 4 and accompanying text. The commentary accompanying the statutes does not specify when the warrants begin to run. *See* CPL § 700.10, commentary at 469 (McKinney 1985); CPL § 700.30, commentary at 488 (McKinney 1985).

[6] 109 App. Div. 2d 389, 491 N.Y.S.2d 999 (3d Dep't 1985).

date is specified in the warrant by the issuing court."[7]

Pursuant to an investigation of the trafficking of controlled substances in Chemung County, the state police, on June 13, 1983, obtained an eavesdropping warrant for the interception of telephone conversations at a certain residence.[8] A provision in the warrant stated that the eavesdropping would begin "as soon as practicable," and would continue for a period of thirty days from the date of the commencement of interception.[9] Police interception of telephone calls began ten days later, on June 23, 1983.[10] On July 2d and July 8th, the police overheard telephone calls in which the defendant agreed to sell a large quantity of lysergic acid diethylamide (LSD) to the owner of the residence.[11] No extension of the warrant was ever granted and the tape recordings of the incriminating conversations were not sealed until July 22, 1983, the date on which the District Attorney believed the warrant expired.[12] The defendant subsequently was indicted for the criminal sale of a controlled substance in the second and third degrees.[13] After a hearing, the County Court for Chemung County denied defendant's motion to suppress, holding that the eavesdropping warrant and the procedures followed pursuant thereto were proper.[14] The defendant subsequently pleaded guilty to criminal sale of a controlled substance in the second degree in Supreme Court, Trial Term, Chemung County.[15]

A divided Appellate Division reversed, vacating defendant's plea of guilty and remitting the matter to the supreme court. [16]

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[7] *Id.* at 390, 491 N.Y.S.2d at 1000.

[8] *Id.* at 390, 491 N.Y.S.2d at 999. On three occasions state police officers purchased controlled substances at the home of one Dennis Brown. *Id.* at 389, 491 N.Y.S.2d at 999. Relying on these purchases and other evidence, the police obtained an eavesdropping warrant for the interception of Mr. Brown's private telephone conversations. *Id.* at 389-90, 491 N.Y.S.2d at 999.

[9] *Id.* at 390, 491 N.Y.S.2d at 999.

[10] *Id.*

[11] *Id.*

[12] *Id.* According to the facts in *Paluska*, an extension of the June 13, 1983, warrant was applied for by the police on July 13, 1983. *Id.* The District Attorney, however, believed that because the interception did not begin until June 23, 1983, it was unnecessary to apply for an extension of the original warrant until July 22, 1983. As a consequence, the application for extension was never processed. *See id.* at 390, 491 N.Y.S.2d at 999-1000.

[13] *Id.* at 390, 491 N.Y.S.2d at 1000.

[14] *Id.*

[15] *Id.*

[16] *Id.* at 392, 491 N.Y.S.2d at 1001.

Justice Mahoney, writing for the majority,[17] held that both CPL 700.10(2) and 700.30(7) mandate a thirty day limit on the duration of an eavesdropping warrant, beginning to run on the date of issuance.[18] The *Paluska* court reasoned that while the statutory provisions do not expressly state that the thirty-day period commences on the date of issuance, the policy of strictly construing eavesdropping statutes dictates such a result.[19] In the court's opinion, the language in the warrant requiring the commencement of interception "as soon as practicable" could not change the rule that an eavesdropping warrant expires thirty days after its issuance,[20] and, therefore, the warrant in question expired on July 12, 1983, rather than on July 22, 1983 as the District Attorney asserted.[21] According to the court, the actual interception of conversations sought to be admitted into evidence fell within the valid thirty-day period, which would suggest harmless error except that the error in the expiration date of the warrant in turn caused the date on which the tapes were sealed to fall well beyond the time limitations mandated by the sealing requirement of the CPL.[22] Thus, the court

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[17] *Id.* at 394, 491 N.Y.S.2d at 1001. Presiding Justice Mahoney was joined in his opinion by Justices Kane, Main, and Weiss. *Id.* Justice Casey authored the dissent. *Id.*

[18] *Id.* at 390, 491 N.Y.S.2d at 1000; *see also* CPL § 700.10(2); CPL § 700.30(7); *supra* notes 3 & 4 and accompanying text. The *Paluska* majority noted that the thirty-day limit on the duration of the eavesdropping warrant begins to run on the date of issuance, unless another date is specified in the warrant by the issuing court. 109 App. Div. 2d at 390, 491 N.Y.S.2d at 1000.

[19] 109 App. Div. 2d at 390, 491 N.Y.S.2d at 1000.

[20] *Id.* The *Paluska* court considered the history behind the enactment of article 700 of the CPL, noting that article 700 was enacted in response to the Federal Omnibus Crime Control and Safe Streets Act of 1968, Title 18 U.S.C., which was Congress' response to the *Berger* decision of the Supreme Court. *Id.* at 391, 491 N.Y.S.2d at 1000. The court further noted that the *Berger* decision not only struck down New York's former eavesdropping regulation as unconstitutional, but also directed that any intrusion by eavesdropping be strictly limited so as to minimize the invasion of individual privacy necessarily threatened by electronic surveillance. *Id.*

[21] *Id.* at 391, 491 N.Y.S.2d at 1000.

[22] *Id.* The *Paluska* court cited People v. Basilicato, 64 N.Y.2d 103, 474 N.E.2d 215, 485 N.Y.S.2d 7 (1984), as the basis for its determination that the sealing requirement of CPL § 700.50 was also violated by the People in this case. 109 App. Div. 2d at 391, 491 N.Y.S.2d at 1000. In *Basilicato*, the Court of Appeals held that a violation of the statutory requirement that tapes obtained pursuant to an eavesdropping warrant be sealed by order of the issuing Judge "[i]mmediately upon the expiration of the period" of the warrant, cannot be justified when there is no satisfactory explanation for the delay between the expiration of the warrant and the sealing of the tapes. *See* 64 N.Y.2d at 111, 474 N.E.2d at 217, 485 N.Y.S.2d at 9. In *Paluska*, the court stated that the prosecution gave no explanation for the nine days that elapsed between the expiration of the warrant and the sealing. 109 App. Div. 2d at 391, 491 N.Y.S.2d at 1000.

concluded that the eavesdropping evidence had to be suppressed.[23]

Dissenting, Justice Casey maintained that the eavesdropping warrant met requirements of CPL article 700.[24] Noting the history behind the creation of the thirty-day period, the dissent argued that CPL 700.10(2) and 700.30(7) do not mandate that this time period commence on the date of issuance if the warrant itself provides otherwise.[25] Justice Casey asserted that unlike the former CPL 813-a,[26] the current statutory language does not provide for such a restriction.[27] Furthermore, the dissent posited that such a construction of article 700 is not constitutionally required.[28] Justice Casey added that the majority's objection to the use of the phrase "as soon as practicable" was unfounded, because the language is required to be included in every eavesdropping warrant and has long been accepted by New York courts.[29] Thus, the dissent concluded that the thirty days should not begin to run until

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[23] 109 App. Div. 2d at 392, 491 N.Y.S.2d at 1001. The *Paluska* court rejected the prosecution's contention that the defendant failed to preserve the issue of the expiration of the warrant for appeal. *Id.* at 391, 491 N.Y.S.2d at 1000. In the court's opinion, the defendant's motion, pursuant to CPL § 710.20(2), to determine the admissibility of the statements intercepted by means of the warrant sufficiently apprised the County Court of his objection to the eavesdropping warrant as a whole. *Id.*

[24] *Id.* at 392, 491 N.Y.S.2d at 1001 (Casey, J., dissenting).

[25] *Id.* at 393, 491 N.Y.S.2d at 1002 (Casey, J., dissenting).

[26] *See* Criminal Procedure Law, ch. 924, § 813-a, [1942] N.Y. Laws 2031 (repealed 1968). Section 813-a provided in pertinent part that:

> An ex parte order for the interception of telegraphic or telephonic communications may be issued by any justice of the supreme court or judge of a county court or of the court of general sessions of the county of New York . . . [and] . . . [a]ny such order shall be effective for the time specified therein but not for a period of more than six months unless extended or renewed . . . .

Id.

[27] 109 App. Div. 2d at 393, 491 N.Y.S.2d at 1002 (Casey, J., dissenting).

[28] *Id.* (Casey, J., dissenting). According to the dissent in *Paluska*, the fundamental right at issue was the fourth amendment protection against arbitrary intrusions by the state. *Id.* (Casey, J., dissenting). Justice Casey asserted that no such intrusion occurs until the police actually begin the interception authorized by the warrant. *Id.* (Casey, J., dissenting).

[29] *Id.* at 394, 491 N.Y.S.2d at 1002 (Casey, J., dissenting). The dissent cited Mighty Midgets v. Centennial Ins. Co., 47 N.Y.2d 12, 389 N.E.2d 1080, 416 N.Y.S.2d 559 (1979), in support of its argument that the phrase "as soon as practicable" has long been accepted by New York courts as adequately specific language for delineating a statutory time period. *See* 109 App. Div. 2d at 394, 491 N.Y.S.2d at 1002. However, *Mighty Midgets* was a civil case involving the reasonableness of time limitations for notifying an insurance carrier of a claim for personal injury. *See Mighty Midgets*, 47 N.Y.2d at 16-17, 389 N.E.2d at 1082, 416 N.Y.S.2d at 561. It is submitted, therefore, that this is not proper authority for the proposition for which it was cited. Criminal statutes containing the language "as soon as practicable" are unlike civil statutes in purpose and must be strictly construed.

the date of interception, if the warrant so specifies.[30]

It is submitted that the majority properly construed the durational provisions of CPL 700.10(2) and 700.30(7), setting forth sound precedent for resolving future questions arising out of the area of electronic surveillance for crime detection. In accordance with federal law,[31] eavesdropping statutes are to be strictly construed due to the threat they pose to the right of privacy safeguarded by the fourth amendment.[32] In recognition of this, each and every time limitation within article 700 of the CPL requires strict compliance because each has the purpose of protecting individual liberties and due process.[33] It is submitted that any lan-

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[30] *See* 109 App. Div. 2d at 394, 491 N.Y.S.2d at 1002 (Casey, J., dissenting).

[31] *See* 18 U.S.C. §§ 2510-2520 (1982) (complete federal eavesdropping statute); *see also supra* note 2 and accompanying text (synopsis of history behind federal eavesdropping statute). For a discussion of the purpose of the federal eavesdropping statute, see S. REP. No. 1097, *supra* note 2, at 2113.

[32] *See* United States v. Capra, 501 F.2d 267, 276 (2d Cir. 1974) (in conformity with federal statute, New York's eavesdropping statute to be strictly construed to minimize threat to right of privacy), *cert. denied*, 420 U.S. 990 (1975); Application of United States, 427 F.2d 639, 643 (9th Cir. 1970) (federal eavesdropping statute directly affecting fourth amendment right of privacy must be given limited construction to withstand constitutional challenge); Application of U.S. Authorizing Interception of Wire Communications, 413 F. Supp. 1321, 1331-32 (E.D. Pa. 1976) (federal eavesdropping statute, through stringent regulation, protects individual privacy while allowing limited government surveillance according to uniform standards).

When Congress passed Title III in 1968, it severely limited the scope of electronic surveillance to strike a balance between the need for such investigative procedures and the need to protect the privacy of individuals. *See* S. REP. No. 1097, *supra* note 2, at 2266. All states enacting statutes allowing eavesdropping within their borders must keep their statutes within the guidelines of the federal act, *see supra* note 2 and accompanying text, to avoid violation of the Supremacy Clause, *see* Memorandum of the Commission on the Revision of the Penal Law and Criminal Code, [1968] N.Y. LAW REV. COMM'N REP., *reprinted in* [1968] N.Y. Laws 2293, 2293 (McKinney); *see also supra* note 3 and accompanying text.

The purposes underlying the federal act are, in essence, the same as the purposes underlying the New York statute; thus, the provisions of the CPL must be strictly construed to further the articulated federal purposes. *See* People v. Rodriguez y Paz, 58 N.Y.2d 327, 332, 448 N.E.2d 102, 105, 461 N.Y.S.2d 248, 251 (1983) (eavesdropping statutes usually given strict construction); People v. Sher, 38 N.Y.2d 600, 604, 345 N.E.2d 314, 316-17, 381 N.Y.S.2d 843, 845 (1976) (requirements of article 700 of CPL reflect controlling federal law and must be strictly complied with); People v. Nicoletti, 34 N.Y.2d 249, 252-53, 313 N.E.2d 336, 338, 356 N.Y.S.2d 855, 857-58 (1974) (sealing requirement, among other requirements of CPL eavesdropping statute, to be strictly construed). *See generally* Cook, *Electronic Surveillance, Title III, and the Requirement of Necessity*, 2 HAST. CONST. L.Q. 571, 587 (1975) (strict construction of eavesdropping statutes necessary to protect fourth amendment right of privacy).

[33] *See, e.g.*, People v. Washington, 46 N.Y.2d 116, 122, 385 N.E.2d 593, 596, 412 N.Y.S.2d 854, 857 (1978) (time limitation of sealing requirement to be strictly construed to further purposes enunciated in *Berger*); People v. Floyd, 41 N.Y.2d 245, 249, 360 N.E.2d

guage that would alter strict compliance—including the phrase "as soon as practicable"— cannot withstand constitutional challenge[34] because it would directly conflict with the purposes of Title III of the Federal Omnibus Crime Control and Safe Streets Acts of 1968.[35] It is further submitted that CPL 700.10(2) must be construed to require the thirty day durational limit on eavesdropping warrants to commence on the date of issuance because this is the only construction that will advance the purpose underlying the federal and state statutes.

As a practical matter, the *Paluska* holding encourages the exercise of the judicial authority to supervise electronic surveillance granted by both federal[36] and state statutes.[37] The commencement

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935, 940, 392 N.Y.S.2d 257, 261 (1976) (purpose of minimization provisions to prevent expansion of eavesdropping warrants violative of fourth amendment); People v. Glasser, 58 App. Div. 2d 448, 450, 396 N.Y.S.2d 257, 261 (1976) (purpose of minimization provisions is to prevent expansion of eavesdropping warrants violative of fourth amendment); People v. Glasser, 58 App. Div. 2d 448, 450, 396 N.Y.S.2d 422, 424 (2d Dep't 1977) (extension orders to be applied for in timely fashion prior to expiration of warrant as mandated by New York statute); *see also* J. ZETT, *supra* note 3, ¶ 26.3[1], at 26-60 to 26-63. "CPL Sections 700.10 and 700.30 [sections relevant to durational limits] were intended to severely limit the scope and duration of any eavesdropping authorization since the lack of meaningful limitation was the basis for holding New York's prior eavesdropping statute unconstitutional." J. ZETT, *supra* note 3, ¶ 26.3[1], at 26-62.

[34] *Cf.* R. PITLER, *supra* note 3, at 519. Pitler explained the need for strict compliance with time limitations and hinted at the problem later addressed by the *Paluska* court concerning the time at which an eavesdropping warrant becomes effective:

> The CPL requirement that the life of the order may not extend more than thirty days is an attempt to comply with the *Berger* holding that sixty days was too great a period. . . . The Supreme Court decisions authorizing any form of electronic surveillance severely limited the period authorized for surveillance. A thirty-day period might be excessive in many situations . . . .
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> The CPL authorizes execution of the warrant as soon as practicable, a provision which may conflict with *Berger's* disapproval of warrants not promptly executed. Execution of a warrant after expiration of the period for which it was authorized would be an invalid execution.

Id. at 519-20; *see* Katz v. United States, 389 U.S. 347, 355 (1967); Berger v. New York, 388 U.S. 41, 59 (1966).

[35] *See* 18 U.S.C. §§ 2510-2520 (1982); *see also* S. REP. No. 1097, *supra* note 2, at 2268. "Title III . . . would authorize carefully circumscribed and strictly controlled electronic surveillance . . . by duly authorized law enforcement officials under a Court order procedure for the purpose of investigating specified crimes . . . ." S. REP. No. 1097, *supra* note 2, at 2264.

[36] *See* 18 U.S.C. § 2518(6) (1982). Section 2518(6) provides:

> Whenever an order authorizing interception is entered pursuant to this chapter, the order may require reports to be made to the judge who issued the order showing what progress has been made toward achievement of the authorized objective and the need for continued interception. Such reports shall be made at such intervals as the judge may require.

of the thirty day durational limit of an eavesdropping warrant affects the date on which the other time limitations within the eavesdropping statute will expire.[38] Therefore, the date on which the thirty days begins to run is relevant to the issue of probable cause, because probable cause must exist to justify the issuance and extension of an eavesdropping warrant by the judge.[39] Indeed, it is submitted that the achievement of the purposes of the statute—the protection of right of privacy[40] and ultimately, the preservation of the defendant's right to a fair trial—require strict judicial supervision of such eavesdropping procedures.

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Id.

[37] *See* CPL § 700.50(1), (2) (McKinney 1985). Section 700.50 authorizes the issuing judge to require progress reports during and after the period designated in the warrant for interception of communications. *Id.* § 700.50(1). While requests for progress reports are discretionary with the judge issuing the warrant, *id.*, other requirements, such as the immediate sealing of the tapes produced by interception, are mandatory, *see id* § 700.50(2); *see also* CPL § 700.50, commentary at 504 (McKinney 1985).

[38] *See, e.g.*, CPL § 700.35(2) (upon termination of warrant, eavesdropping must cease and all devices installed for that purpose removed or inactivated); *id.* § 700.40 (application for extension must be made prior to time of expiration of warrant); *id.* § 700.50(3) (within reasonable time, no later than ninety days after termination of warrant or extension, notice of recordings must be given to individual who is subject of warrant).

[39] *See id.* § 700.15. Before a justice may approve an application for an eavesdropping warrant, he must determine whether probable cause for such investigative measures exists *at the time* of the application. *Id.* (emphasis added). *See generally* People v. Gnozzo, 31 N.Y.2d 134, 140, 286 N.E.2d 706, 708, 335 N.Y.S.2d 257, 260 (1972) (issuance of eavesdropping warrant requires probable cause), *cert. denied*, 410 U.S. 943 (1973); People v. Frank, 85 App. Div. 2d 109, 112, 447 N.Y.S.2d 558, 561 (4th Dep't 1982) (eavesdropping warrant, like any other warrant, subject to fourth amendment requirement of probable cause).

[40] *See* J. ZETT, *supra* note 3, ¶ 26.3[1], at 26-62 to 26-63. New York's eavesdropping statute, enacted in conformity with the provisions of Title III, was intended "to provide a comprehensive scheme for the limited issuance of eavesdropping warrants based upon strict standards of probable cause and necessity." *Id.* "This law was designed to minimize the intrusion of electronic eavesdropping upon an individual's right to privacy, and to that end, its provisions have been strictly construed." *Id.* ¶ 26.3[1], at 26-63; *see also* S. REP. No. 1097, *supra* note 2, at 2268; Governor's Memorandum on Approval of L. 1968, ch. 546, N.Y. Laws (June 5, 1968), *reprinted in* [1968] N.Y. Laws 2376 (McKinney) (balance between rights of privacy and need for effective law enforcement).