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NOTES

Wire-tapping—America's Notorious Three-party Line

> This is our hair-splitting machine . . . Some of us are able to split the splinter of a split hair again into 999,999 parts. The champion receives as a special prize a wreath fashioned out of the hairs he has split.[1]

INSTEAD OF a satire on legal conceptualism, Von Jhering might well have been writing a suitable prologue to the present struggle in the federal courts concerning the admissibility of evidence obtained as a result of wire-tapping.[2] In this struggle which has spanned a quarter of a century, the central figure is section 605 of the Communications Act of 1934,[3] and its interpretation.

1. Von Jhering, *In the Heaven of Legal Concepts*, in COHEN & COHEN, READINGS IN JURISPRUDENCE AND LEGAL PHILOSOPHY 678, 682 (1953).

2. On December 9, 1957, two wire-tapping decisions were made by the Supreme Court: Benanti v. United States, 355 U.S. 96, and Rathbun v. United States, 355 U.S. 107. The former was a unanimous decision, the latter contained the dissent of two Justices, in which many of the distinctions in the interpretation of the terms of § 605 are pointed out.

3. 48 Stat. 1103 (1934), 47 U.S.C. § 605 (1952).