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Obtaining Evidence by Use of Sound Apparatus—Neither Violation of Federal Wire-Tapping Prohibition, nor Unlawful Search and Seizure

In the recent case of *Goldman v. U.S.*, 62 Sup. Ct. 993, decided on April 27, 1942, the Supreme Court affirmed a conviction for conspiracy wherein the defendants (lawyers) evolved a scheme to compel Hoffman, as assignee in bankruptcy, to sell all the assets and return a dividend to the creditors but in fact retaining a secret profit to be divided between the defendants and Hoffman. Hoffman pretended to acquiesce but reported the plans to a Federal Investigator, who instructed him to continue the negotiations with the defendants.

Two Federal Agents obtained access to the defendants' office, installed there a dictaphone, and planned to overhear the conferences from an adjoining office. The dictaphone failed to operate, and in its place a detectaphone[1] with delicate receiver and high amplification was attached on the partition wall in the room adjoining. With this apparatus the Agents overheard and transcribed portions of conversations including what one of the defendants said when he spoke into his office telephone.

The defendants' first contention in their motion to suppress evidence was that the trespass committed while placing the dictaphone in the meeting room was a violation of the Fourth Amendment (unreasonable search and seizure), because as a result of that trespass some knowledge was gained that would later assist the proper locating of the detectaphone and, secondly, that when the defendant talked into a telephone receiver and was overheard by the Agents, Section 605 of the Federal Communications Act was violated.

The Court held that the trespass committed in placing the dictaphone in the defendants' office did not materially aid in the use of the detectaphone but the relationship between the two was that of "antecedent and consequent." The opinion also denies the second contention, saying: "Words spoken in a room in the presence of another into a telephone receiver do not constitute a 'communication' by wire within the Federal Communications Act. What is protected is the message itself throughout the course of its transmission by the instrumentality or agency of transmission."

Mr. Justice Murphy in his dissenting opinion states that science today provides more effective devices for the invasion of a person's privacy without an actual physical entry. Such an invasion of privacy as the use of a detectaphone, unless authorized by a warrant, is an unreasonable search and seizure under the Fourth Amendment.

Testimony of Witnesses Induced to Turn State's Evidence by Use of "Wire Tapping"

In *Goldstein, et al v. U. S.*, 62 Sup. Ct. 1000, (decided on the same day as the Goldman case) the petitioners were indicted for conspiracy on the testimony of two co-conspirators, who confessed and turned state's evidence when they were confronted with intercepted telephone messages. The two were parties to these messages, but the petitioners were not. The Supreme Court overruled the petitioners' objections and upheld their conviction, stating:

[1] Apparently detectaphone is a trade name and refers to a particular make of contact microphone including a high-gain amplifier and listening device.

"We are of the opinion that even though the use made of the communications by the prosecuting officers to induce the parties to them to testify were held a violation of the Statute (Sec. 605, Federal Communications Act), this would not render the testimony so procured inadmissible against a party not a party to the message. There was no use at the trial of the intercepted communications or of any information they contained as such. If such use as occurred here is a violation of the Act, the Statute itself imposes a sanction."

Legislation Empowering Courts of the State of Maryland and the City of New York to Order Blood-Grouping Tests

The General Assembly of the State of Maryland (effective June 1, 1941) appended Section 17 to the title "Bastardy and Fornication." This Section provides: "Whenever the defendant in bastardy proceedings denies that he is the father of the child, upon the petition of the defendant, the court shall order that the complainant, her child, and the defendant submit to such blood tests as may be deemed necessary to determine whether or not the defendant can be excluded as being the father of the child. The result of the tests shall be received in evidence but only in case definite exclusion is established. . . . Reports of such tests shall be made by said laboratories in writing and in the form required by the Courts. These reports shall be accepted as prima facie evidence of the results of such tests. . . . When the results of the test are admitted in evidence, the laboratory technicians who made them shall be subject to cross-examination by both parties. If the complainant or her child fail to submit to the blood tests ordered by the court to be taken, such fact, when properly adduced by evidence, shall be disclosed to the court and jury, and may be commented upon by the court or by counsel to the jury or to the court when sitting as a jury."

On May 11, 1942 a comparable amendment to the Domestic Relations Court Act of the City of New York became a law, and reads as follows: "Blood Grouping Tests. On motion of an actual or alleged parent, the family court may, in its discretion, order such actual or alleged parent and the child to submit to one or more blood grouping tests by a duly qualified physician to determine whether or not any person disclaiming parenthood may be excluded as the parent of the child; and the results of such tests may be received in evidence but only in cases where definite exclusion is established."