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which should embrace the names of such persons as were known to the electors in their district.[39]

In fact, the thirty-day residence requirement would probably be interpreted as directory only, for where a statute does not declare the performance of certain duties by public officials in connection with the election to be essential to the validity of the election, it will be regarded as mandatory if such matters affect the real merits, but will be considered directory only, and not vital to the election, unless they are such, in themselves, as to change or render doubtful the result.[40]

As a result of the aforementioned, it can be deduced that the altering of ward boundaries will have little affect upon the legality of an election so long as the precincts are not part of more than one ward.

The most important thing about redistricting wards *is to redistrict the wards,* and secure as practicably as possible, equal population in each ward so as to secure equal representation, as well as an equal vote, in the affairs of the municipal government.[41]

[39] Donovan v. Comerford, 332 Ill. 230, 233, 163 N.E. 657, 658 (1928).

[40] People ex rel. Agnew v. Graham, 267 Ill. 426, 108 N.E. 699 (1915).

[41] Hammond v. Young, 117 N.E. 2d 227 (1953).

## WIRE-TAP EVIDENCE: AN AREA OF ADMISSIBILITY?

The admissibility or inadmissibility of wire-tap evidence is a much discussed topic. Inasmuch as the United States Supreme Court has favored the exclusion of this type of evidence, that is the rule followed in the federal courts today.[1] Those who favor the inadmissibility of wire-tap evidence contend that federal legislation such as Section 605 of Title 47,[2] and the interpretation given it by the United States Supreme Court[3] were necessary to protect the individual's right of privacy. It is well established that privacy is the thing which is being protected and that the divulgence of wire-tapping data is an invasion of privacy.[4] On the other hand, though such protection of privacy is necessary it should not, and Congress did not intend it to, hamper or obstruct the exercise of the governmental police powers.

The *Nardone* case sets forth what is the basic problem:

It is urged that a construction be given the section (605) which would exclude federal agents since it is improbable Congress intended to hamper and impede the activities of the government in the detection and punishment of

[1] Nardone v. United States, 302 U.S. 379 (1937).

[2] 48 Stat. 1103 (1934), 47 U.S.C.A. § 605 (Supp., 1956).

[3] Nardone v. United States, 302 U.S. 379 (1937).

[4] Goldman v. United States, 316 U.S. 129 (1942); Diamond v. United States, 108 F.2d 859 (C.A. 6th, 1938); Accord: 41 Am. Jur., Privacy § 29 (1942).

crime. The answer is that the question is one of policy. Congress may have thought it less important that some offenders should go unwhipped of justice than that officers should resort to methods deemed inconsistent with ethical standards and destructive of personal liberty.[5]

In other words, what must be achieved in the area is a balance between the exercise of the governmental police powers and the protection of the right of privacy. It is the purpose of this comment to show that there is an area, though limited, in which wire-tap evidence should be allowed as it would not result in an infringement upon privacy or an over-exercise of police powers.

The *Olmstead* case[6] would be a proper starting point in laying a historical foundation. The United States Supreme Court there held that the admission of wire-tap evidence was not a violation of the Fourth and Fifth Amendments of the United States Constitution which protect one from illegal search and seizure and self-incrimination, respectively. The Court observed:

> If, in any circumstance, obtaining evidence by tapping wires is deemed an objectional governmental practice it may be regulated or forbidden by statute or avoided by officers of the law, but clearly the Constitution does not forbid it unless it involves actual unlawful entry into a house.[7]

The Court went on to say that the admissibility of evidence at common law is not affected by the illegality of the means by which it is obtained and the rule applies where there is no constitutional violation.

As a result of the *Olmstead* decision, Congress passed the "Wire-Tap Statute"[8] which made it a crime to "intercept and divulge" interstate communications. Later by court decision the statute was held to apply to intrastate communications also.[9] The statute, itself, is penal; as a rule of evidence it is an interpretation by the courts.[10]

Then, in 1950, *United States v. Coplon*[11] asserted that possibly the mantle of protection afforded by this statute was too broad:

> The fact that Congress has repeatedly refused to ban wire-tapping may justify the reasonable inference that the enactment of Section 605, Title 47, was for the purpose of preserving the integrity, inviolate, of legitimate commercial transactions and that it was never intended to impair the police power of the government, so essential to its preservation, by opening wide channels and avenues of our diversified communication system to violators of the law.[12]

[5] Nardone v. United States, 302 U.S. 379, 383 (1937).

[6] Olmstead v. United States, 277 U.S. 438 (1928).

[7] Ibid., at 452.

[8] Authority cited note 2 supra.

[9] Weiss v. United States, 308 U.S. 321 (1939).

[10] Nardone v. United States, 302 U.S. 379 (1937).

[11] 91 F.Supp. 867, 185 F. 2d 629 (C.A. 2d, 1950).

[12] Ibid., at 871.

The view expressed in the *Coplon* case was given effect in the decision rendered in *United States v. Sugden.*[13] The defendants were there convicted of violating the immigration laws. Evidence obtained through the monitoring of the defendant's private radio system was held admissible because the party was in the unlawful use of the system, i.e. though the radio was licensed the operator was not. The court stated that "to throw a mantle of protection provided by Section 605 over an outlaw broadcast is to abandon reason."[14] It therefore concluded that to be protected under the "wire-tap statute," one must be in the legal use of the communication system and that in the absence of such legal use no right of privacy exists.

Having laid the historical foundation of the theory, the logical result when this theory is applied to two specific federal statutes should be noted. Extortion or an attempt to extort by interstate communication is made a crime by Section 875 of Title 18 just as the perpetration or attempt to perpetrate a fraud by wire is made a crime by Section 1343 of Title 18. These two statutes set out situations in which the use of a communication system for such a purpose is made unlawful, i.e. an illegal use just as it is to operate a radio without a license.

Therefore, anyone violating these two sections of Title 18, "fraud by wire" or "extortion by interstate communication," would not be entitled under the *Sugden* decision to the right of privacy protected by Section 605, and a full disclosure of such outlaw communications would therefore be admissible in court.

From this rationale it would follow that once a communication was proven to be unlawful or illegal, any information within the communication would be admissible even though it did not apply to the specific criminal acts but rather to other acts.

At first glance, this may appear to be too simple a syllogism to have a solid foundation. As pointed out initially, the problem reduces itself to achieving a balance between the exercise of the governmental police powers and the protection of the right of privacy, with the least detriment to society or the individual. In the situations previously discussed, a balance appears to have been achieved. Where no right of privacy exists, there can be no infringement upon this right. At the same time, there is no unnecessary impediment to the exercise of the police power.

Another theory favoring admissibility in these limited situations is based upon rules of statutory construction and interpretation. Since statutes are looked upon as parts of a whole system and will be construed together especially where they relate to the same subject,[15] as communication

[13] 226 F.2d 281 (C.A. 9th, 1955). [14] Ibid., at 285.

[15] United States v. Borden, 308 U.S. 188 (1939); 50 Am. Jur., Statutes, § 362 (1944); Crawford, Statutory Construction § 227 (1940).

systems, these three statutes, "wire-tap," "fraud by wire" and "extortion by interstate communication" must be looked upon in relation to each other. Also, there is the rule which keeps the judiciary from exceeding its powers and invading the province of the legislature that intended to enact an effective law and not to have done a "vain and meaningless" act.[16] Finally, there is the rule that related statutes must be construed together so as to give effect to both and not to render one meaningless.[17]

In applying these rules to the "fraud by wire" and "extortion by interstate communication" statutes and in the light of the wire-tap statute, it is to be observed that to hold Section 605 applicable to situations involving the other two statutes would render these acts of Congress "futile" or "nugatory," for, as a practical matter, without this means of proof, they are virtually unenforceable.

In conclusion then, since the general rule on this topic is a "matter of policy," the *Olmstead* case never having been overruled, the admissibility of wire-tap evidence where it can be had without a violation of this "policy" should be permitted.

[16] Armstrong v. Nu-Enamel Corp., 305 U.S. 315 (1938), rehearing denied 305 U.S. 675 (1939); 50 Am. Jur. Statutes, § 357 (1944); Crawford, Statutory Construction, § 177 (1940).

[17] United States v. Borden, 308 U.S. 188 (1939).

## THE ILLINOIS INNKEEPER AND THE GOODS OF HIS GUESTS

It is the duty of an innkeeper or hotel proprietor to keep safely the goods of his guests, so that no loss might occur by reason of the fault or negligence of the innkeeper or his servants. This is a well-recognized common law rule for breach of which he is liable to his guest for the loss sustained.[1]

This rule, originating centuries ago when travel was by horseback or stage and travelers were easy prey, has always been predicated upon the theory of public policy. In this day of modern travel and accommodations, argument in support of the ancient rule would seem specious, yet the rule has been preserved, nearly intact, for over 600 years. The majority of jurisdictions today, in the absence of some statutory modifications, still hold the innkeeper to be practically an insurer as to the goods of his guests, absolved from liability only when he affirmatively shows that the loss resulted from an act of God, or was caused by the public enemy, the inherent nature of the goods themselves, or by the contributory fault of the guest.[2]

In some jurisdictions, including Illinois, the rule is ameliorated in that

[1] Stoll v. Almon C. Judd Co., 106 Conn. 551, 138 Atl. 479 (1927).

[2] Ibid. Accord: Morgan v. Raney, 6 H. & N. 265, 158 Eng. Rep. 109 (1861); Richmond v. Smith, 8 B.E.C. 9, 108 Eng. Rep. 946 (1828).