WIRE TAPPING HELD LEGAL FOR EVIDENCE

Taft in 5-4 Decision Leaves It to Congress to Protect Privacy of Telephone.

DISSENTERS OUTSPOKEN

Brandeis Calls Method Used in Dry-Law Case Worse Than Tampering With Mail.

ASSAILS NEW "ESPIONAGE"

Holmes Holds It Better That Felons Escape Than That State "Play Ignoble Part."

Special to The New York Times.

WASHINGTON, June 4.—In a five to four decision the Supreme Court today held that evidence obtained by "wire tapping" is admissible in a criminal case arising under the Prohibition law and that a conviction obtained by such means is not in violation of the constitutional guarantees against "search and seizure."

Chief Justice Taft, who handed down the opinion, was supported by Associate Justices Sutherland, Vandevanter, McReynolds and Sanford. Dissent was expressed by Associate Justice Brandeis in one of the most sharply worded opinions from the bench in years, and by Associate Justices Holmes, Butler and Stone.

A large crowd was in attendance today as the court met for its final session this term. It will reassemble on Oct. 2.

Justice Brandeis, in his scathing rebuke to "wire tapping," described it as a resort to a crime "to detect a crime," and said:

"The evil incident to invasion of the privacy of the telephone is far greater than that involved in tampering with the mails."

Holds "Tapping" Is Not Searching.

The Taft opinion was rendered in two cases arising in the Western district of the State of Washington, where Roy Olmstead, Charles S. Green and others were convicted of conspiracy to violate the Federal dry law, largely by evidence obtained by wire tapping They had sold about $2.000,000 of liquor a year.

The accused urged that evidence by wire tapping was in violation of the constitutional provisions against "unreasonable search and seizure." The Circuit Court of Appeals affirmed the conviction of the trial court. These judgments were upheld in the Taft opinion today.

"We think that the wire tapping here disclosed," Chief Justice Taft ruled, "did not amount to a search and seizure within the meaning of the Fourth Amendment."

The Chief Justice held that while the Fourth Amendment might have a proper application to a sealed letter because of the constitutional provision for the Post Office Department and because such a paper is in the custody of the Government, it could not affect communications by wire. Then he added:

Says Congress May Ban Practice.

"The evidence was secured by the use of the sense of hearing and that only. There was no entry of the houses or offices of the defendants. The language of the amendment cannot be extended and expanded to include telephone wires reaching to the whole world from the defendant's house or office. The intervening wires are not part of his house or office any more than are the highways along which they are stretched."

At another point the Chief Justice said:

"Congress may of course protect the secrecy of telephone messages by making them, when intercepted, inadmissible in evidence in Federal criminal trials, by direct legislation, and thus depart from the common law of evidence. But the courts may not adopt such a policy by attributing an enlarged and unusual meaning to the Fourth Amendment."

Seeing Science Aiding Espionage.

Assailing the doctrine that such methods can properly be employed, Justice Brandeis said time works changes, and new conditions arise which did not obtain when the Constitution and the Fourth and Fifth Amendments were adopted. He went on:

"Subtler and more far-reaching means of invading privacy have become available to the Government. Discovery and invention have made it possible for the Government, by means more effective than stretching upon the rack, to obtain disclosure in court of what is whispered in the closed."

"The greatest dangers to liberty," he added, "lurk in insidious encroachment by men of zeal, well-meaning, but without understanding."

Holmes Calls Method "Ignoble."

Justice Holmes, after saying that Justice Brandeis had exhaustively covered the case, added:

"It is desirable that criminals should be detected, and to that end all available evidence should be used. It also is desirable that the Government should not itself foster and pay for other crimes, when they are the means by which the evidence is to be obtained.

"If it pays the officers for having got evidence by crime I do not see why it may not as well pay them for getting it in the same way, and I can attach no importance to protestations of disapproval if it knowingly accepts and pays and announces that in future it will pay for the fruits. We have to choose, and for my part I think it a less evil that some criminals should escape than that the Government should play an ignoble part."