

THE INSIDE OF PROHIBITION

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In this article Mrs. Willebrandt discusses the "Whispering Wires" case in Seattle, which stirred wide comment and went up to the Supreme Court, which decided that the "wire-tapping" was justifiable.

Mrs. Willebrandt relates the story behind the litigation.

CHAPTER 15—AN UNUSUAL PROHIBITION VICTORY.

In one case of widespread interest a prohibition victory was achieved in which I not only had no part but which I actually opposed. I refer to the so-called "whispering wires" case at Seattle, Washington. It involved the prosecution of a bootlegger named Olmstead. I certainly approved of apprehending Olmstead—he was head of a big ring of liquor runners from Canada—but didn't approve the way the prohibition agents obtained their evidence. Practically all their testimony consisted of things they overheard on tapped telephone wires.

Now, I thoroughly disapprove of the practice of tapping telephone wires. Irrespective of its legality, I believe it a dangerous and unwarrantable policy to follow in enforcing law. Many of the States of the Union have State laws against it. The point involved in the Olmstead case was whether, in the absence of a State law, the Federal Constitution alone prevented obtaining evidence by tapping wires.

When the point was sustained in the lower Federal courts, and reached the Supreme Court of the United States, I indicated to the Solicitor General my unwillingness to argue the case and try to justify the prohibition agents' wire-tapping tactics when I so thoroughly disapproved of them. Consequently, Mr. Mitchell employed distinguished counsel, a man formerly associated with his firm in Minnesota.

The facts and points of law involved are so interesting to the average citizen that I shall outline them briefly.

The "Whispering Wires" Case.

Roy Olmstead was formerly a lieutenant of police in Seattle, Wash. He embarked in the liquor business, and his trial became nationally famous. In one of the cases in which he was involved ninety-one persons were indicted, charged with conspiracy to violate the national prohibition act by importing, transporting and selling intoxicating liquor. Of these, many lived in Canada, and fifty-eight were not apprehended, but of the remaining thirty-three, four pleaded guilty and twenty-one were convicted by the jury. Only eight were acquitted.

It will be seen from this how extensive were Olmstead's operations and how important it was to obtain convictions in order to end the operations of a gang which was flooding the Pacific Northwest with liquor.

The gathering of evidence in the case continued for many months. Most of it was obtained by intercept-

ing messages on telephones of the conspirators. The wires of the main violators were tapped just outside of their homes. The organization had an office, and the telephone line from the office was tapped also. The "tapping" was done without trespassing on any of the property of the defendants.

For many months Federal prohibition agents listened on these lines. Stenographic notes were made of conversations heard, and knowledge was thus obtained of enormous transactions in liquor.

What the Tappers Heard.

In this manner prohibition agents heard orders given for liquor by customers, conversations between the members of the bootlegging gang, instructions as to delivery of liquor, and also many highly interesting if not edifying bits of conversation about government officers in general and in particular. The agents also heard through this tapping operation much "news" that was no news to them, such as word passed between members of the gang as to capture of the organization's vessels, the arrest of their men and the seizure of their liquor in garages and other places. Over the whispering wire came to the prohibition agents messages showing how arrested members of the gang had been released, and details of attempted bribery of officers.

The operations of Olmstead were as unique in character as they were extensive in volume. He made connections with a man having some radio knowledge and talent, and together they purchased and operated a radio broadcasting station. This station was used for the purpose of getting news to incoming boats employed by Olmstead to bring in cargoes of liquor. Mrs. Olmstead frequently broadcast on this station, and her programs consisted largely of bedtime stories. It was the belief of the agents and investigators that the stories constituted code signals to the boats at sea, advising them when the coast was clear, and where the Coast Guard boats were likely to be.

Olmstead's radio partner, a man named Hubbard, was arrested and joined as a conspirator in one of the cases. He was not tried, however, but assisted the prohibition officials at Seattle as a confidential informer. Later an effort was made to indict Hubbard on evidence gathered by the intelligence unit of the Treasury Department intended to show that Hubbard had "worked both sides of the street," using his knowledge as

a prohibition agent to help Olmstead in his operations and using his knowledge of Olmstead's plans to hold his position with the government as an informer. There was evidence that Hubbard had entered the prohibition service as a poor man, and yet, allegedly, had lived "like a king" on a salary of \$175 a month.

Bitterness at the Treasury.

The effort to indict Hubbard failed, however, and there were charges that the intelligence unit was trying to discredit the prohibition unit. Many of the people of the State of Washington who were strong advocates of prohibition enforcement felt that Hubbard's indictment was sought in order to prevent honest prohibition agents from pursuing their work.

An intense bitterness developed between the two branches of the Treasury Department, and it was not an uncommon thing for agents of the intelligence unit and for the special assistants to the Attorney General who had been sent to Seattle to handle the Hubbard case to be "shadowed" by agents of the prohibition unit and their friends.

The evidence obtained over the "whispering wires" and otherwise disclosed an illegal liquor business of amazing magnitude. It involved the employment of not less than fifty persons, of two seagoing vessels for carrying liquor from Scotland to British Columbia, the employment of smaller vessels for coastwise transportation, the purchase and use of a ranch for an underground cache for storage of liquor, the operation of a central office in the heart of Seattle, the employment of executives, salesmen, delivery men, dispatchers, scouts, bookkeepers, clerks, and even an attorney.

Monthly transactions reached a total as high as \$176,000 and the aggregate for the year's operation probably exceeded \$2,000,000. Olmstead was the leading conspirator. He acted as general manager. His contribution to the capital of the business was \$10,000. Eleven others were his partners by virtue of contributions of \$1,000 apiece. Profits were divided, one-half to Olmstead and the remaining half to eleven others.

One of the chief men was always on duty at the main office to receive orders by telephone and to direct the filling of these orders by a corps of men stationed in another room, called "the bull pen." At times the sales amounted to 200 cases of liquor a day.

In this statement of the case I have largely used the language of the

Supreme Court and the Court of Appeals.

Appeal Sustained.

The convictions were appealed to the Circuit Court of Appeals, which upheld them, and then the Supreme Court of the United States was asked to review the case. After first denying a review it granted one, and its decision upheld the legality of obtaining evidence by the tapping of telephone wires.

The contention of the conspirators was that the method of obtaining evidence violated the Fourth and Fifth Amendments of the United States Constitution.

On the question of constitutionality, the remarks of United States District Judge Neterer, are interesting and worth repetition:

The Fourth and Fifth Amendments cannot be emasculated so as to give criminals carte blanche in the use of the public telephone utility, whether the conspiracy is to violate the Eighteenth Amendment and Volstead act or for the destruction of life or property or, perchance, the overthrow of the government. A man's house is his castle, the four walls of his habitation, the invasion of which was the evil prohibited without a search warrant based on probable cause. These amendments do not make the walls of this house, or castle, co-extensive with the limits of the city, State or nation, and give immunity to criminals in carrying forward their unlawful schemes by telephonic activities. "Such a situation would be deplorable and intolerable, to say the least," in the language of the dissenting opinion; and in the light of the evil to be guarded against, which must be taken into consideration, such license cannot be given, and the law-abiding people of the community, the State or the nation placed at the mercy of criminals seated in their homes, giving command and direction to co-conspirators throughout the city, State or nation, and carry forward the criminal activities. The people have some rights under these amendments, as well as the criminals.

Although personally I would still use my influence to prevent the policy of wire tapping being adopted as a prohibition enforcement measure, I nevertheless recognize that the interpretation of the United States Constitution against the lawbreaker and in favor of the government's right to catch him is a prohibition victory of no small proportions.

In her next article to be published tomorrow Mrs. Willebrandt will tell how the law has been put to work and how statutes applying to prohibition were clarified and interpreted.