tapping.[385] Thus, in *Nardone v. United States*,[386] the Court held that wiretapping by federal officers could violate § 605 if the officers both intercepted and divulged the contents of the conversation they overheard, and that testimony in court would constitute a form of prohibited divulgence. Such evidence was therefore excluded, although wiretapping was not illegal under the Court's interpretation if the information was not used outside the governmental agency. Because § 605 applied to intrastate as well as interstate transmissions,[387] there was no question about the applicability of the ban to state police officers, but the Court declined to apply either the statute or the due process clause to require the exclusion of such evidence from state criminal trials.[388] State efforts to legalize wiretapping pursuant to court orders were held by the Court to be precluded by the fact that Congress in § 605 had intended to occupy the field completely to the exclusion of the states.[389]

Nontelephonic Electronic Surveillance.—The trespass rationale of *Olmstead* was used in cases dealing with "bugging" of premises rather than with tapping of telephones. Thus, in *Goldman v. United States*,[390] the Court found no Fourth Amendment violation when a listening device was placed against a party wall so that conversations were overheard on the other side. But when officers drove a "spike mike" into a party wall until it came into contact with a heating duct and thus broadcast defendant's conversations, the Court determined that the trespass brought the case within the Amend-

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[385] Ch. 652, 48 Stat. 1103 (1934), providing, inter alia, that ". . . no person not being authorized by the sender shall intercept any communication and divulge or publish the existence, contents, purport, effect, or meaning of such intercepted communication to any person." Nothing in the legislative history indicated what Congress had in mind in including this language. The section, which appeared at 47 U.S.C. § 605, was rewritten by Title III of the Omnibus Crime Act of 1968, 82 Stat. 22, § 803, so that the "regulation of the interception of wire or oral communications in the future is to be governed by" the provisions of Title III. S. REP. NO. 1097, 90th Cong., 2d Sess. 107–08 (1968).

[386] 302 U.S. 379 (1937). Derivative evidence, that is, evidence discovered as a result of information obtained through a wiretap, was similarly inadmissible, Nardone v. United States, 308 U.S. 338 (1939), although the testimony of witnesses might be obtained through the exploitation of wiretap information. Goldstein v. United States, 316 U.S. 114 (1942). Eavesdropping on a conversation on an extension telephone with the consent of one of the parties did not violate the statute. Rathbun v. United States, 355 U.S. 107 (1957).

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

[388] Schwartz v. Texas, 344 U.S. 199 (1952). At this time, evidence obtained in violation of the Fourth Amendment could be admitted in state courts. Wolf v. Colorado, 338 U.S. 25 (1949). Although *Wolf* was overruled by Mapp v. Ohio, 367 U.S. 643 (1961), it was some seven years later and after wiretapping itself had been made subject to the Fourth Amendment that *Schwartz* was overruled in Lee v. Florida, 392 U.S. 378 (1968).

[389] Bananti v. United States, 355 U.S. 96 (1957).

[390] 316 U.S. 129 (1942).