nant patients suspected of cocaine use was invalidated because its purpose was to collect evidence for law enforcement.[381] In the previous three cases in which random testing had been upheld, the Court pointed out, the "special needs" asserted as justification were "divorced from the general interest in law enforcement."[382] By contrast, the screening program's focus on law enforcement brought it squarely within the Fourth Amendment's restrictions.

Electronic Surveillance and the Fourth Amendment

The Olmstead Case.—With the invention of the microphone, the telephone, and the dictagraph recorder, it became possible to "eavesdrop" with much greater secrecy and expediency. Inevitably, the use of electronic devices in law enforcement was challenged, and in 1928 the Court reviewed convictions obtained on the basis of evidence gained through taps on telephone wires in violation of state law. On a five-to-four vote, the Court held that wiretapping was not within the confines of the Fourth Amendment.[383] Chief Justice Taft, writing the opinion of the Court, relied on two lines of argument for the conclusion. First, because the Amendment was designed to protect one's property interest in his premises, there was no search so long as there was no physical trespass on premises owned or controlled by a defendant. Second, all the evidence obtained had been secured by hearing, and the interception of a conversation could not qualify as a seizure, for the Amendment referred only to the seizure of tangible items. Furthermore, the violation of state law did not render the evidence excludable, since the exclusionary rule operated only on evidence seized in violation of the Constitution.[384]

Federal Communications Act.—Six years after the decision in *Olmstead*, Congress enacted the Federal Communications Act and included in § 605 of the Act a broadly worded proscription on which the Court seized to place some limitation upon governmental wire-

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[381] Ferguson v. City of Charleston, 532 U.S. 67 (2001).

[382] 532 U.S. at 79.

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

[384] Among the dissenters were Justice Holmes, who characterized "illegal" wiretapping as "dirty business," 277 U.S. at 470, and Justice Brandeis, who contributed to his opinion the famous peroration about government as "the potent, the omnipresent, teacher" which "breeds contempt for law" among the people by its example. Id. at 485. More relevant here was his lengthy argument rejecting the premises of the majority, an argument which later became the law of the land. (1) "To protect [the right to be left alone], every unjustifiable intrusion by the Government upon the privacy of the individual, whatever the means employed, must be deemed a violation of the Fourth Amendment." Id. at 478. (2) "There is, in essence, no difference between the sealed letter and the private telephone message. . . . The evil incident to invasion of the privacy of the telephone is far greater than that involved in tampering with the mails. Whenever a telephone line is tapped, the privacy of the persons at both ends of the line is invaded and all conversations between them upon any subject . . . may be overheard." Id. at 475–76.