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Amendment to the Penal Law Relating to the Possession of Wire Tapping Instruments

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CURRENT LEGISLATION

AMENDMENT TO THE PENAL LAW RELATING TO THE POSSESSION OF WIRE TAPPING INSTRUMENTS.—With the recent enactment of Section 552-a of the Penal Law,[1] the New York Legislature has reasserted the public policy of the state by declaring the possession of wire tapping instruments to be a crime. New York has long proclaimed wire tapping itself to be a criminal offense,[2] just as it has prohibited the wrongful divulgence of the contents of telegraphic and telephonic communications.[3] However, the gathering of evidence by means of surreptitiously tapping public and private telephone lines continues without regard to the legislative mandates. The inability of past legislative measures to eliminate or to drastically curtail this invasion of the privacy of one's conversations and thoughts is prominently spotlighted by the apparent disrespect in which these statutes were held,[4] and was instrumental in the enactment of Section 552-a.

Historically, the New York Legislature assumed an attitude akin to passive acquiescence in regard to the obtaining of evidence by means of the wire tap, for remedial legislation not only was slow in arriving but moreover proved to be of little or no value.[5] A more apt example of such legislative frailty than Section 1423(6) of the Penal Law [6] could not be desired.

Section 639(7) of the Penal Code of 1881 forbade displacement, removal, injury or destruction of telegraph lines or apparatus. By

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[1] Laws of N. Y. 1949, c. 519.

[2] N. Y. PENAL LAW § 1423(6). See note 5 *infra.*

[3] N. Y. PENAL LAW § 552. See note 10 *infra.*

[4] A timely example of this unwholesome attitude is the tapping of the telephone lines of the mayor of New York City. On March 11, 1949, Mayor William O'Dwyer discovered a plot to tap his telephone, together with the telephones of other city officials (N. Y. Times, Mar. 31, 1949, p. 20, col. 4). He immediately sponsored a bill to place wire tapping instruments in the same category as burglary tools, patterning his bill along the same general lines as Section 408 of the Penal Law, which deals with burglary tools (N. Y. Times, Mar. 23, 1949, p. 1, col. 1). Although the O'Dwyer sponsored bill, known as the Quinn-Steingut amendment, was severely criticized by the Federal Bar Association of New York, New Jersey, and Connecticut (N. Y. Times, Mar. 26, 1949, p. 10, col. 1), it was enacted into law as Section 552-a of the Penal Law when Governor Thomas E. Dewey signed the measure on April 12, 1949 (N. Y. Times, Apr. 13, 1949, p. 32, col. 3).

[5] See Rosenzweig, *The Law of Wire Tapping,* 32 CORN. L. Q. 514 (1947) and 33 CORN. L. Q. 73 (1947), for a most valuable and complete study of this subject.

[6] The salient portion of the statute is as follows: "A person who wilfully or maliciously displaces, removes, injures, or destroys: . . . 6. A line of telegraph or telephone wire or cable, pier or abutment, or the material or property

New York Laws of 1892, Chapter 372, Section 639(7) was amended so as to be the same, in substance, as the present Section 1423(6), which declares unlawful wire tapping to be a crime. Since the present statute is included in Article 134 of the Penal Law, which concerns malicious mischief, it was not altogether strange for the courts to set the requisite intent at ". . . something more than a voluntary act, and more also than an intentional act which in fact is wrongful." [7] This high standard requiring proof of a malicious intent has not been successfully challenged,[8] and Section 1423(6) has thereby been rendered ineffective in the battle against wire tapping because of strict

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belonging thereto, without lawful authority, or who shall unlawfully and wilfully cut, break, tap, or make connection with any telegraph or telephone line, wire, cable or instrument, or read or copy in any unauthorized manner any message, communication, or report passing over it, in this state; . . . ; or who shall aid, agree with, employ or conspire with any person or persons to unlawfully do, or permit or cause to be done, any of the acts hereinbefore mentioned, . . . Is punishable by imprisonment for not more than two years."

[7] Wass v. Stephens, 128 N. Y. 123, 128, 28 N. E. 21, 23 (1891). This dictum is quoted approvingly in Hewitt v. Newburger, 141 N. Y. 538, 36 N. E. 593 (1894), *reversing* 66 Hun 230, 20 N. Y. Supp. 913 (Sup. Ct. 1892); People v. Raeder, 161 Misc. 557, 292 N. Y. Supp. 447 (Co. Ct. 1937); People v. Gillies, 57 Misc. 568, 109 N. Y. Supp. 945 (Sup. Ct. 1907); People v. Bates, 79 Hun 584, 29 N. Y. Supp. 894 (Sup. Ct. 1894).

[8] "The district attorney attempts to make a distinction between the provisions of section 1423. He contends that the portion of the statute which provides: That 'A person who wilfully or maliciously displaces, removes, injures or destroys. . . . A line of telegraph or telephone, wire or cable, . . . ,' is distinguishable from the language of the same section which provides: 'or who shall unlawfully and wilfully cut, break, tap, or make connection with any telegraph or telephone line.' He calls our attention to the fact that the first provision is disjunctive and reads 'wilfully or maliciously,' while the second part of the section above quoted is in the conjunctive and reads 'or who shall unlawfully and wilfully cut,' etc. However, the courts have interpreted the word 'wilfully' to include *unlawfully* and the same is true as to the word 'maliciously.' So that it does not make much difference whether the words are used conjunctively or disjunctively.

" 'The word "wilfully" in the statute means something more than a voluntary act, and more also than an intentional act which in fact is wrongful. It includes the idea of an act intentionally done with a wrongful purpose, or with a design to injure another, or one committed out of mere wantonness or lawlessness.' (*Wass v. Stephens*, 128 N. Y. 123.)

" 'The act is malicious when the thing done is with the knowledge of plaintiff's rights and with the intent to interfere therewith. In a legal sense it means a wrongful act, done intentionally, without just cause or excuse.' (*Lamb v. Cheney & Son*, 227 N. Y. 418.)

" 'It consists in the intentional doing of a wrongful act without justification.' (*People v. Knapp*, 152 Misc. 368.)

"This is a penal statute and must be strictly construed. The act of the defendant was intentional, headstrong and voluntary. In order to find him guilty of the crime charged the court must find that his act was wantonly malicious and done with desire and intention to injure the complainant and destroy its property." People v. Raeder, 161 Misc. 557, 561, 292 N. Y. Supp. 447, 452 (Co. Ct. 1937).

construction by the courts,[9] and the unanswered need for more effective phraseology by the legislature.[10]

Section 552 of the Penal Law [11] presents a similarly stunted development. It has been judicially stated that its purpose ". . . was intended to preserve telephone and telegraph messages from wrongful use by employees." [12] Strict construction by the courts once more produced a statute as ineffective as Section 1423(6),[13] and the paucity of cases interpreting Section 552 left its past, as its future, clouded with uncertainty.[14]

With the advent of 1938, the constitution of the State of New York was amended so as to sanction the issuance of *ex parte* orders permitting legal wire tapping.[15] Then, in 1942, Section 813-a of the Code of Criminal Procedure [16] was enacted, and New York became the first state to provide a procedure for supervised wire tapping.[17] In substance, the statute authorizes the issuance of an *ex parte* order for the interception of telegraphic or telephonic communications by a justice of the supreme court, a judge of a county court, or a judge of New York County General Sessions Court. Said order must be applied for by the district attorney, the attorney-general, or any officer of a police department above the rank of sergeant, the applicant stating under oath that there is reasonable ground to believe that evidence of a crime may be obtained in such manner. The justice or judge may examine under oath the applicant or any witnesses in order

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[9] Rosenzweig, *The Law of Wire Tapping*, 33 CORN. L. Q. 73, 86 (1947).

[10] It is noteworthy to observe that, aside from the numerical rearrangement of Section 1423(6) by Laws of N. Y. 1911, c. 316, this section has not been amended since 1892.

[11] The salient portion of the statute is as follows: "A person who: 1. Wrongfully obtains or attempts to obtain any knowledge of a telegraphic or telephonic message by connivance with a clerk operator messenger or other employee of a telegraph or telephone company; or 2. Being such clerk operator messenger or other employee wilfully divulges to anyone but the person for whom it was intended the contents or the nature thereof of a telegraphic or telephonic message or dispatch intrusted to him for the transmission or delivery or of which contents he may in any way become possessed . . . : and any violation of this section . . . , is punishable by a fine of not more than one thousand dollars or by imprisonment for not more than two years, or by both such fine and imprisonment."

[12] People v. McDonald, 177 App. Div. 806, 810, 165 N. Y. Supp. 41, 45 (2d Dep't 1917).

[13] Rosenzweig, *The Law of Wire Tapping*, 33 CORN. L. Q. 73, 86 (1947).

[14] It may safely be said that Section 552 accomplishes little more than the manifestation of New York's public policy on the divulgence of the contents of telegraphic and telephonic communications. Only People v. McDonald, *supra* note 11, and an opinion written by the attorney-general officially appeared to shed any light upon the usefulness and application of the statute.

[15] N. Y. CONST. Art. I, § 12.

[16] Laws of N. Y. 1942, c. 924.

[17] The procedure provided by Section 813-a seems to have been designed "to insure secrecy in the issuance of the order and thus preserve the value of the wire tapping operation." Rosenzweig, *The Law of Wire Tapping*, 33 CORN. L. Q. 73, 88 (1947).

to determine whether or not reasonable grounds exist for the issuance of the order. If the order is issued, it is only effective for the period of time specified therein, but not for a period of more than six months unless extended by the justice or judge who issued the original order; and the justice or judge must retain a true copy of the order at all times.

In such manner the framework was laid for a supervised wire tapping system. Although there has been severe criticism for a more stringent supervision of official tapping,[18] together with penalties for violations of the constitutional and statutory mandates, the legislature has seemingly deemed it more expedient to permit Section 813-a to function as it was originally enacted.[19]

Such was the statutory law of New York in regard to wire tapping until April 11, 1949, when Section 552-a of the Penal Law[20] became effective. The situation created by the inability of former legislation to suppress the illegal wire tap, for which the courts were partly responsible, was hoped to be remedied by the new measure. Therefore, the malicious intent required by Section 1423(6)[21] was omitted, since a requisite intent of ". . . something more than a voluntary act, and more also than an intentional act which in fact is wrongful"[22] would render a new legislative decree as impotent as past ones. Instead, the essential elements of the new statute were defined as being: (1) possession of instruments, (2) the instruments must be designed or commonly used for wire tapping or the interception of telephonic communication, (3) the possession must be *under circumstances evincing an intent* to use the instruments unlawfully.[23]

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[18] See note 3 *supra* in regard to the position taken by the Federal Bar Association of New York, New Jersey, and Connecticut.

[19] The constitutionality of Article I, Section 12, of the New York Constitution and of Section 813-a of the Code of Criminal Procedure are currently being questioned in a proceeding pending in the United States Court of Appeals for the Second Circuit, the hearing of which is scheduled for October 26, 1949. Said proceeding, civil action file number 50-393, arose on a motion made by Herman Hoffman and the New York County Criminal Courts Bar Association, directed against William O'Brien, Frank Hogan, and Nathaniel Goldstein, to adjudge the aforementioned provisions unconstitutional and in violation of Section 605, Title 47 of the United States Code, and to enjoin the further issuance of *ex parte* orders. This proceeding warrants close scrutiny.

[20] Laws of N. Y. 1949, c. 519. The full text of the amendment is as follows: "A person who has in his possession any device, contrivance, machine or apparatus designed or commonly used for wire tapping or the interception of telephone communications under circumstances evincing an intent to unlawfully use or employ or allow the same to be so used or employed for wire tapping or interception of telephone communications, or knowing the same are intended to be so used, shall be guilty of a misdemeanor, and if he has been previously convicted of any crime, he shall be guilty of a felony."

[21] See note 5 *supra*.

[22] See note 6 *supra* and text. Also see note 7 *supra*.

[23] See note 19 *supra*.

Because of the close similarity between Section 408 of the Penal Law,[24] after which Section 552-a was patterned,[25] and the new statute, both in the requisite elements of the respective crimes and in the purposes of the statutes, it is not inconceivable that the courts will rely heavily upon their past interpretations of Section 408 in order to enlighten their future construction of Section 552-a. Since Section 408 only required "circumstances evincing an intent" to unlawfully use burglary instruments, an intent likewise required by Section 552-a, the courts have found Section 408 an able instrumentality for the suppression of crime. "The statute [Section 408] indicates three elements as necessary to constitute a crime, that is, (1) possession of tools, . . . , (2) the tools must be adapted, designed, or commonly used for the commission of burglary, . . . , (3) the possession must be under circumstances evincing an intent to use or employ the tools or allow the same to be used or employed in the commission of a crime. . . ." [26] One may be convicted under Section 408 if there was an intent to commit *any* crime, whether or not the crime be morally wrong.[27] If the prosecution establishes the carrying of the tools by the defendant and his intention to use them, the conviction is sustainable whether or not the defendant's intention was to use the tools within or without the confines of New York State.[28] The implements or tools found on the person or in the possession of the individual apprehended do not necessarily have to be adapted solely to the crime of burglary. As was stated in *People v. Morgan*,[29] "if the implements found on the person were adapted to the commission of crime, and the circumstances justified a finding of an intent to use them to commit crime, the statute [now Section 408] covers the case even if the implements or tools could be used innocently in legitimate business." [30]

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[24] The full text of the statute is as follows: "A person who makes or mends, or causes to be made or mended, or has in his possession in the day or night time, any engine, machine, tool, false key, picklock, bit, nippers or implements adapted, designed or commonly used for the commission of burglary, larceny or other crime, under circumstances evincing an intent to use or employ, or allow the same to be used or employed, in the commission of a crime, or knowing that the same are intended to be so used, shall be guilty of a misdemeanor, and if he has been previously convicted of any crime, he is guilty of a felony."

[25] See note 3 *supra*.

[26] Parenthetical material added. People v. Birnbaum, 208 App. Div. 476, 479, 203 N. Y. Supp. 697, 699 (1st Dep't 1924). It is apparent that the respective elements required by Section 552-a and by Section 408 are identical.

[27] United States *ex rel.* Guarino v. Uhl, 107 F. 2d 399 (C. C. A. 2d 1939), *reversing* 27 F. Supp. 135 (S. D. N. Y. 1939).

[28] People v. Reilly, 47 App. Div. 218, 63 N. Y. Supp. 18 (1st Dep't 1900), *aff'd*, 164 N. Y. 600, 59 N. E. 1128 (1900).

[29] 59 Hun 619, 13 N. Y. Supp. 448 (Sup. Ct. 1891).

[30] Parenthetical material added. People v. Morgan, 59 Hun 619, 13 N. Y. Supp. 448, 449 (Sup. Ct. 1891).

Thus the wide latitude permitted by Section 408 is readily apparent. Will this same broad application be given to Section 552-a? Because of the ineffectiveness of Sections 1423(6) and 552, it is submitted that the question must be answered in the affirmative. Only by such a construction will New York find itself in a position to effectively combat illegal wire tapping and to reinforce Governor Thomas E. Dewey's remark that Section 552-a "should serve to wipe out the nasty business of private wire tapping." [31]

However, a serious problem remains—one with which neither Section 552-a nor any previously enacted legislation are concerned. This aspect of the law of wire tapping is a segment of the law of evidence, resting almost entirely upon decisional law, and dealing with the question of admissibility of illegally obtained evidence. Two views prevail as to whether or not illegally seized evidence should be admissible—the federal view, with which the minority are in accord,[32] and the English-majority view, to which thirty states, including New York,[33] adhere.[34]

In *Weeks v. United States*,[35] the federal courts held that the use of illegally obtained evidence was unconstitutional [36] and therefore such evidence was inadmissible.[37] Later, the United States Supreme Court, in *Olmstead v. United States*,[38] held that wire tapping was not a search or seizure within the prohibition of the Fourth Amendment,[39] and therefore evidence obtained in such a manner was admissible.[40] However, the *Olmstead* doctrine was destined for little

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[31] N. Y. Times, Apr. 13, 1949, p. 32, col. 3.

[32] See Rosenzweig, *The Law of Wire Tapping*, 33 CORN. L. Q. 73, 74, 75 (1947).

[33] People v. Adams, 176 N. Y. 351, 68 N. E. 636 (1903), *aff'd*, Adams v. New York, 192 U. S. 585 (1904); People v. Defore, 242 N. Y. 13, 150 N. E. 585 (1926).

[34] See note 31 *supra*.

[35] 232 U. S. 383 (1914).

[36] Although the court based its decision upon violation of the Fourth Amendment, which guarantees against unreasonable searches and seizures, matters of policy played no small part in influencing the court.

[37] The leading case of Boyd v. United States, 116 U. S. 616 (1886), was the first United States Supreme Court decision to set forth a view directly opposed to the common law doctrine of admissibility of illegally obtained evidence. The view expressed in the *Boyd* case, which was based upon violation of the Fourth and Fifth Amendments, prevailed until 1904, when the Supreme Court of the United States upheld the New York Court of Appeals, which sanctioned the English and majority view of admissibility, in Adams v. New York, 192 U. S. 585 (1904). The dictum in the *Adams* case conflicted with the *Boyd* doctrine and it was not until the decision in the *Weeks* case that the federal position became firmly established.

[38] 277 U. S. 438 (1928).

[39] U. S. CONST. AMEND. IV.

[40] The court distinguished Gouled v. United States, 255 U. S. 298 (1921), which had affirmed the *Weeks* doctrine against admissibility, stating there ". . . there was an actual entrance into the private quarters of defendant and the taking away of something tangible. Here we have testimony only of vol-

more than embryonic development, for in 1934, Section 605 of the Federal Communications Act[41] was enacted. Section 605 prohibits any person not authorized by the sender from intercepting, divulging, or publishing to another any *interstate or foreign* communications sent by wire or radio, and also prohibits federal agents from testifying as to evidence procured by tapping, whether the intercepted conversations were *interstate or intrastate* calls, unless said agents had been authorized to procure such information by the sender. In *Nardone v. United States,*[42] the United States Supreme Court, since it was interpreting a statute and not the Constitution, held that Section 605 forbids the admission of intercepted messages into evidence in all proceedings of any nature, whether obtained by a federal agent, the local police authorities, or a private citizen.[43] It was decided, in *Weiss v. United States,*[44] that Section 605 prohibits the introduction of evidence secured through interception of *intrastate* messages, but this holding is limited to the federal jurisdiction and is not controlling in state courts.[45] Thus, the federal doctrine became firmly established that evidence secured by means of illegal and unauthorized wire tapping is inadmissible.

The majority of the states uphold the English view that the illegal manner by which evidence is obtained is not a valid objection to its admissibility if it is relevant to the issue.[46] "The reason usually assigned for ignoring the method by which the evidence was obtained was that the court would not halt the progress of the trial to determine a 'collateral' issue, having no bearing on the outcome of the litigation at hand."[47] Except for a brief period in the 1920s, the case law of New York has been most uniform. The New York position was settled by the leading case of *People v. Adams,*[48] which

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untary conversations secretly overheard." Olmstead v. United States, 277 U. S. 438, 464 (1928).

[41] 48 STAT. 1103 (1934), 47 U. S. C. § 605 (1946).

[42] 302 U. S. 379 (1937).

[43] *Compare with* Weeks v. United States, *supra* note 34 and text, which limits its holding to the Federal Government and its agents, expressly excluding state and municipal agents. Although the *Nardone* doctrine has been subsequently modified slightly, such is of passing import to this summary of the subject at hand.

[44] 308 U. S. 321 (1939), *reversing* United States v. Weiss, 103 F. 2d 348 (C. C. A. 2d 1939).

[45] See note 54 *infra* for a terse expression as to the effect of the *Weiss* case in New York.

[46] 8 WIGMORE, EVIDENCE § 2183 (3d ed. 1940); 1 GREENLEAF, EVIDENCE § 254a (15th ed. 1892).

[47] Rosenzweig, *The Law of Wire Tapping,* 32 CORN. L. Q. 514, 517 (1947). "The only question before the trial court is the relevancy and materiality as evidence of such papers, documents, or conversations, and no collateral inquiry as to whether they were legally or illegally secured will be permitted to interrupt and disorganize the trial." People v. McDonald, 177 App. Div. 806, 810, 165 N. Y. Supp. 41, 45 (2d Dep't 1917).

[48] 176 N. Y. 351, 68 N. E. 636 (1903), *aff'd,* Adams v. New York, 192 U. S. 585 (1904).

held that papers seized in violation of the federal constitutional provision protecting one against unreasonable searches and seizures [49] does not prevent their introduction into evidence if the owner is placed on trial upon a criminal charge. The *Adams* case was given full support and extended to wire tapped evidence by *People v. McDonald*,[50] when the court stated that "the doctrine of *People v. Adams*, . . . , is applicable to such a case [referring to wire tapped evidence] as well as to the use of papers and documents." [51] But because of the influence of the Supreme Court of the United States in *Weeks v. United States*,[52] some lower New York courts held that evidence obtained by unlawful means must be returned to the party from whom it was taken on his motion made before trial.[53] Thus confusion reigned in the New York courts until 1926, when *People v. Defore* [54] resolved all doubts as to New York's position. It held, in accord with the *Adams* case, that evidence procured by an unlawful act is admissible, and once more New York lined up solidly with the majority by assuming a position from which it has not since wavered.[55]

With New York clearly accepting evidence secured pursuant to Section 813-a of the Code of Criminal Procedure, and moreover, by virtue of *People v. McDonald* [56] and the chain of cases supporting the *Adams* case, even admitting information procured by violation of Section 813-a,[57] it can readily be seen that such a position is self-

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[49] U. S. CONST. AMEND. IV.

[50] 177 App. Div. 806, 165 N. Y. Supp. 41 (2d Dep't 1917).

[51] Parenthetical material added. *Id.* at 810, 165 N. Y. Supp. at 45. See also note 46 *supra*.

[52] 232 U. S. 383 (1914).

[53] People v. Manko, 189 N. Y. Supp. 357 (Sup. Ct. 1921), *aff'd mem.*, 203 App. Div. 853, 196 N. Y. Supp. 944 (1st Dep't 1922); People v. Kinney, 185 N. Y. Supp. 645 (Sup. Ct. 1920); People v. Jakira, 118 Misc. 303, 193 N. Y. Supp. 306 (Sup. Ct. 1922).

[54] 242 N. Y. 13, 150 N. E. 585 (1926), *aff'g* 213 App. Div. 643, 211 N. Y. Supp. 134 (1st Dep't 1925), *cert. denied sub nom.*, Defore v. New York, 270 U. S. 657 (1926).

[55] While the doctrine of Weiss v. United States, *supra* note 43 and text, and Section 605 of the Federal Communications Act denounced the introduction of wire tapped evidence into federal courts, the New York Court of Appeals recently stated that "we are not persuaded that we are constrained by the decision in Weiss v. United States, . . . , to condemn as illegal the disclosure and divulgence, by use in evidence, of the intercepted messages which were recorded by tapping wires in accordance with the statutes of the State as expressly authorized by the Constitution of the State (N. Y. Const., art. I, § 12; Code Crim. Pro., § 813-a). . . . A Federal statute, it is recognized, must be presumed to be limited in effect to the Federal jurisdiction and not to supersede a State's exercise of its police power unless there be a clear manifestation to the contrary." Matter of Harlem Check Cashing Corp. v. Bell, 296 N. Y. 15, 17, 68 N. E. 2d 854, 855 (1946). But see note 18 *supra* as to the proceeding pending in the federal courts in regard to the constitutionality of New York's constitutional and statutory provisions, which authorize wire tapping if a court order is procured beforehand.

[56] See note 49 *supra*.

[57] See notes 45 and 46 *supra*.

contradictory. On one hand New York denounces wire tapping as a crime, and on the other hand, it accepts as evidence information obtained by means of this very same unlawful tapping. Such an attitude by the courts and by the legislature can only serve to encourage the violations which statutes like Section 552-a were designed to eliminate. The only effective method to stamp out unlawful wire tapping from the New York scene is to exclude wire tapped information from admissibility as evidence, unless such information was obtained pursuant to the procedure prescribed by Section 813-a. It is submitted that until New York favorably inclines toward the federal view of inadmissibility of unauthorized wire tapped evidence, the present view to which it adheres can only serve to hamper and make futile the legislative decrees which condemn and denounce unlawful wire tapping.

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AMENDMENT TO THE WORKMEN'S COMPENSATION LAW PERMITTING BENEFITS FOR INJURIES NOT ARISING OUT OF EMPLOYMENT—DISABILITY BENEFITS LAW.—"For some years, we have been engaged in modernizing our social welfare programs through various forms of social insurance, ... It is now time to take a complete forward step in this program." [1] The step referred to has been effectuated by the enactment of the Disability Benefits Law in Article 9 of the New York Workmen's Compensation Law,[2] which became effective on April 13, 1949. Benefit payments under the Act will commence on July 1, 1950.

Prior to the enactment of this Act a wage earner, if qualified, could look to two sources of aid in time of need, *i.e.,* workmen's compensation and unemployment insurance.[3] The workmen's compensation fund provides benefits for those employees disabled by occupational disease or by "disability or death from injury arising out of and in the course of employment." [4] The unemployment insurance fund provides benefits for those individuals who are unemployed but are "capable of and available for work." [5] It is to be observed that there existed a gap between these two forms of social insurance. Employees who became disabled from illness or injury incurred outside of and in no way connected with their employment

[1] Governor Dewey's annual message to the legislature, January 5, 1949.
[2] Laws of N. Y. 1949, c. 600.
[3] For an interesting survey of the progress of New York in relation to Workmen's Compensation, Unemployment Insurance and Disability Benefits see Note, 24 ST. JOHN'S L. REV. — (1949).
[4] N. Y. WORKMEN'S COMPENSATION LAW § 10.
[5] N. Y. LABOR LAW § 522.