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Police Science Legal Abstracts and Notes

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POLICE SCIENCE LEGAL ABSTRACTS AND NOTES

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Obtaining Evidence by Concealed Radio Transmitter—In *Lee v. United States*, 72 Sup. Ct. 967 (1952), a Chinese laundryman was convicted of conspiring to sell and selling narcotics. At the trial the petitioner objected to admission of evidence of conversations he had with Chin Poy, an old acquaintance and friend, which took place while Chin Poy was visiting Lee's laundry shop. During the conversations Lee made incriminating statements which unbeknown to him were being picked up by a radio transmitter concealed on the person of Chin Poy and which were being transmitted to a government agent who was stationed outside the laundry with a receiving set.

In the Supreme Court the petitioner contended that this evidence should have been excluded because the manner in which it was obtained violated both the search-and-seizure provisions of the Fourth Amendment, and section 605 of the Federal Communications Act, 47 U.S.C. 605 (1934). The petitioner further contended that if the conversations were not rejected on either of those grounds, the court should pronounce it inadmissible anyway under the judicial power to require fair play in federal law enforcement.

Mr. Justice Jackson, speaking for the majority in affirming the conviction, pointed out that the conduct of Chin Poy and the government agent in using the radio set did not amount to an unlawful search and seizure anymore than the use of bifocals, field glasses, or the telescope; that it presented no more than the most attenuated analogy to wire tapping. Jackson went on to reiterate the words of Mr. Justice Stone in *McGuire v. United States*, 273 U.S. 95, 99 (1927): "A criminal prosecution is more than a game in which the government may be checkmated and the game lost because its officers have not played according to rule."

Mr. Justice Frankfurter dissented, pointing out that criminal prosecutions may be more than a game. But that it should not be deemed to be a dirty game in which "the dirty business of criminals is outwitted by the dirty business of law officers . . . That it makes for lazy and not alert law enforcement."

Mr. Justice Black dissented, pointing out that the court should exercise its supervisory authority over criminal justice by reflecting this evidence.

Mr. Justice Douglas dissented on the ground that the radio set constituted an invasion of privacy against the command of the Fourth and Fifth Amendments. Douglas relied heavily on Mr. Justice Brandies dissent in *Olmstead v. United States*, 277 U.S. 438, 471 (1928).

Mr. Justice Burton dissented on the theory that the Fourth Amendment protection against unreasonable searches and seizures is not limited to the seizure of tangible things but extends to intangibles, such as the spoken word. Burton stressed the idea that in this case the words were picked up without consent, *within* the "house" of the accused.

Confession After Prolonged Questioning Not Involuntary—In *Hulen v. State of Texas*, 250 S. W. 2d 211 (Texas 1952), the problem of confession obtained by undue pressure was raised. The appellant, convicted of murder in the trial court, claimed that both the length of time of the questioning and a "trip" in the custody of the police officers were factors which resulted in breaking down his resistance and led to the confession.

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Hulen was questioned most of Wednesday night, but was released the next day. Thereafter, he agreed to accompany police officers on a several hundred mile trip from Amarillo to Austin for a lie detector test. The group left Friday and remained in that city Saturday, Sunday and Monday morning. Monday, Hulen asked to see a former employer in Plainview and stated that if the police would take him to Plainview, he would make a statement. From Plainview, the appellant was taken to Amarillo where the confession was made before a Justice of the Peace.

The living conditions provided for Hulen during his stay in Austin were similar to those shared by other members of the accompanying party. The officer who questioned Hulen testified that interrogation was stopped before the appellant became weary. According to the evidence submitted, the court found that the lie detector machine had apparently been used properly. The instrument of murder, a bloody pipe, was placed in the presence of the appellant but there was testimony that the appellant paid no attention to it, and that it did not induce an immediate confession.

The finding by the jury in the trial court, that the confession was not forced through undue influence, was sustained in the appellate court. See also *Gasway v. State*, 248 S.W.2d 942 (Texas 1952).

Ineffectiveness of Local Police and Prosecutors Stressed by American Bar Association—The American Bar Association's Commission on Organized Crime made five recommendations in its 318 page report to the Association. The Commission recommends: 1) a model gambling code with rigid prohibitions on the use of communication facilities for the dissemination of gambling information; 2) a greater measure of state supervision over local law enforcement agencies, including criminal prosecutions and police recruiting; 3) a campaign to eliminate lawyer-criminal cooperation; 4) an official crime commission for every state similar to that in California and New York; and 5) the continuation of the Commission for another year. The Commission also favored a number of bills recommended by the Kefauver Committee.