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Constitutional Law--Illegal Search and Seizure Not a Violation of Due Process

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Recent Decisions

CONSTITUTIONAL LAW — ILLEGAL SEARCH AND SEIZURE NOT A VIOLATION OF DUE PROCESS

California police strongly suspected the petitioner of bookmaking, but had no evidence with which to convict him. In his absence they arranged to have a key to his door made and subsequently entered his home in order to install a microphone. The police bored a hole in petitioner's roof, through which they extended the wires to a neighboring garage. On two later occasions the officers reentered to adjust the microphone, moving it first from the hall to the bedroom and then from the bedroom to the closet. The petitioner was convicted in a California state court on information obtained by use of the microphone. On certiorari, the United States Supreme Court affirmed the conviction.[1]

The petitioner's contention that the use of this evidence was a violation of the Federal Communications Act was summarily rejected, since it was eavesdropping at most, and the apparatus was not connected in any way to the telephone facilities.[2] The court held also that it is well settled that the Fourth Amendment[3] to the Federal Constitution does not apply to state prosecutions.[4] The petitioner's strongest contention was that the case of *Rochin v. People of California*[5] was applicable. In the Rochin case the police, having information that the petitioner was peddling cocaine, forced their way into his room. When they entered, the petitioner put a capsule in his mouth and swallowed it. The police took him to the hospital, where the capsule was extracted by use of a stomach pump. The United States Supreme Court held that such evidence was inadmissible as a violation of due process of law, basing their decision on the broad doctrine that, "Regard for the requirements of the Due Process Clause inescapably imposes upon this Court an exercise of judgment upon the whole course of proceedings (resulting in conviction) in order to ascertain whether they offend those canons of decency and fairness which express the notion of justice of English-speaking peoples even toward those charged with heinous offenses."[6] The court in the principal case held that the *Rochin* case was inapplicable

[1] Irvine v. People, 347 U.S. 128, 74 Sup. Ct. 381 (1954).

[2] *Id.* at 131, 74 Sup. Ct. at 382.

[3] "The right of the people to be secure in their persons, houses, papers, and effects against unreasonable search and seizure, shall not be violated, and, no warrant shall issue but upon probable cause supported by oath and affirmation, and particularly describing the place to be searched, and the person or things to be seized."

[4] See Wolf v. Colorado, 338 U.S. 25, 69 Sup. Ct. 1359 (1949).

[5] 342 U.S. 165, 72 Sup. Ct. 205 (1951).

[6] *Id.* at 169, 72 Sup. Ct. at 208.

[7] 347 U.S. 128, 142, 74 Sup. Ct. 381, 389.

since the element of coercion and physical assault was lacking, although, as pointed out by the dissent of Justice Frankfurter, the case presents a fact situation which goes far beyond normal search and seizure and is flagrantly repugnant to our concepts of justice and fairness.

The *Rochin* case was the first decision holding that illegally obtained evidence could be inadmissible under the Due Process Clause of the Fourteenth Amendment, although there was a strong dictum to this effect in an earlier case.[8] There was concern among many writers as to how widely the "vague contours" of Due Process were going to be applied to prevent the admission of such evidence.[9] The writers point out, by way of analogy, that the rule against permitting coerced confessions in state prosecutions under the Due Process Clause also originated in a case[10] where physical coercion was used. This early case was decided on the basis that brutal coercion resulted in unreliable confessions. However, less "force" is now required to reject a confession as "coerced,"[11] and unreliability is no longer the rationale for rejection of such confessions; rather, it is held that confessions so obtained corrupt the trial and are therefore inadmissible.[12] This present rule regarding confessions is very liberal compared to the rule as it was first formulated, and the writers speculated as to whether the *Rochin* doctrine would also be rapidly liberalized.

The principal case is the first case in which the *Rochin* doctrine has been seriously argued and its broadness construed.[13] When the *Rochin* case was decided, the court stated with accurate foresight that, "We are not unmindful that hypothetical situations can be conjured up, shading imperceptibly from the circumstances of this case and by gradations producing practical differences despite seemingly logical extensions."[14] In the principal case the court wisely limited the application of the *Rochin* case to situations involving physical coercion and assaults upon the person, thus

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[8] Wolf v. Colorado, 338 U.S. 25, 69 Sup. Ct. 1359 (1949).

[9] See 37 CONN. L. REV. 483 (1952); 36 MINN. L. REV. (1952); 24 ROCKY MOUNT. L. REV. 386 (1952); 25 SO. CALIF. L. REV. 357 (1952); 5 VAND. L. REV. 648 (1952).

[10] Brown v. Mississippi, 297 U.S. 278, 56 Sup. Ct. 461 (1936).

[11] See Watts v. Indiana, 338 U.S. 49, 69 Sup. Ct. 1347 (1949) (persistent questioning several hours per day for five days); Haley v. Ohio, 332 U.S. 596, 68 Sup. Ct. 302 (1948) (15-year-old not told of his rights, kept incommunicado, five hours of questioning); Malinski v. New York, 324 U.S. 401, 65 Sup. Ct. 781 (1945) (kept undressed for several hours, incommunicado).

[12] Malinski v. New York, 324 U.S. 401, 65 Sup. Ct. 781 (1945).

[13] In *People v. Haeussler,* 260 P.2d 8 (Cal. 1953), the court held that the *Rochin* case did not apply where blood was taken from the defendant by force when he was unconscious. This decision was a rehearing of *People v. Haeussler,* 248 P.2d 434 (Cal. 1952), wherein it was held that the *Rochin* case did apply.

[14] Rochin v. California, 342 U.S. 165, 174, 72 Sup. Ct. 205, 210 (1951).