
Federal Jurisdiction Under the Commerce Clause and Intrastate Extortion

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a very absurd and disastrous public policy. . . ."¹⁸ The second view would be acceptable if the only question propounded was whether or not the confession was trustworthy. Hence, the best way to secure fair treatment for the accused and to deter the zeal of the police in extorting confessions, is to deny to the latter the fruits of their illegal acts. The court in *Wilson v. State* declared:

While the character of the confession is ordinarily shown by answers to appropriate questions, the court should look beyond these to the condition, situation, and character of the accused and the circumstances surrounding him.¹⁹

Therefore, it would seem the third view is the most just.

On the other hand, it may be doubted that the rules of evidence ought to be used as a potential threat to the police to force them to go about their job properly. One may share the conviction of Wigmore, that the fewer obstacles there are in the way of admitting the confession, the greater is the justice attained in the end.

CONCLUSION

In the last analysis, whether or not involuntary confessions, which the police illegally obtain, ought to be admitted depends upon the community involved. A very important factor is the respect for the law that is found in the law-enforcement agencies of the community, and the relating rarity of their deliberate departure from ordinary standards of justice. The existence of a large criminal class and a high crime rate also may be other important factors in determining the social need of the community that should determine its laws.

It is doubtful if any part of the confession ought to be admissible, even though confirmed by the discovery of evidence made in consequence of the confession because the reasons for excluding improper confessions are complex and not based solely on a presumed untrustworthiness.

¹⁸ *Rusher v. State*, 94 Ga. 363, 21 S.E. 593, 594 (1894).

¹⁹ 84 Ala. 426, 428; 4 So. 383, 384 (1888).

FEDERAL JURISDICTION UNDER THE COMMERCE CLAUSE AND INTRASTATE EXTORTION

What is the status of the law as to federal jurisdiction over cases wherein an intrastate telephone message was used for the purpose of extortion or the perpetration of fraud? The bases upon which federal jurisdiction is sought are the extortion by interstate communications¹ and the fraud by wire² sections of the Federal Criminal Code.

The abovementioned code provisions will be referred to as the extor-

¹ 18 U.S.C.A. 875.

² 18 U.S.C.A. 1343.

tion statute and the fraud by wire statute. A third statutory provision involved in this discussion, Section 605 of the Communications Act, will be termed the wire-tapping statute.³

All of this codification came into being by virtue of the power given to Congress, by the constitution, to regulate commerce.⁴ For example, the wire-tapping statute was incorporated into the Communications Act of 1934, and the fraud by wire provision was part of an amendment to the same Act;⁵ and "the declared purpose of the Communications Act was to regulate interstate and foreign commerce. . . ."⁶

The protection of commerce from illegal outside forces is the ultimate objective of Congress in this area, or, as was stated in *National Labor Relations Board v. Jones & Laughlin Steel Corp.*, ". . . to insure its safety; to foster, protect, control, and restrain."⁷ The Congressional objective in regard to the wire-tapping statute, for example, may be illustrated by citing a case wherein the court declared that the protection was intended to extend to the means of communication and not the secrecy of the conversation.⁸

It has been held that the privacy sought to be protected by the statute is the privacy of the conduit or instrumentality used in interstate commerce, regardless of the fact that the same physical equipment is used for intrastate communication.⁹

It may therefore be seen that, according to judicial interpretation, wire-tapping legislation was passed as a means of protecting the telephone system. Further, it can probably be assumed, though the assumption is unsupported by judicial authority, that the extortion and fraud by wire statutes were passed in order to protect the communications system from use for the illegal purposes enumerated in the statutes.

In *Weiss v. United States*,¹⁰ the Supreme Court of the United States heard a controversy involving the extension of federal jurisdiction under the wire-tapping statute. It was there concluded that the provision would apply to intrastate as well as interstate communications. The court here reaffirmed the theory:

Although activities may be intrastate in character when separately considered, if they have such close and substantial relation to interstate commerce

³ 47 U.S.C.A. 605.

⁴ U.S. Constitution Art. 1, Section 8.

⁵ *Rose v. United States*, 227 F. 2d 448 (C.A. 10th, 1955).

⁶ *Diamond v. United States*, 108 F. 2d 859, 860 (C.A. 6th, 1938).

⁷ 301 U.S. 1, 36 (1937). Court's citations omitted.

⁸ *United States v. Sugden*, 226 F. 2d 281 (C.A. 9th, 1942).

⁹ Authority cited note 5 *supra*.

¹⁰ 308 U.S. 321 (1939).

that their control is essential or appropriate to protect that commerce from burdens or obstructions, Congress cannot be denied the power to exercise that control.¹¹

The rationale in the *Weiss* case was, essentially, that since the wires used to transmit the intrastate message in question were used to transmit interstate messages also, there was a relationship with interstate commerce, and Congress had the power to act in this situation. The court also noted, however, that the applicable clause of the wire-tapping statute contained the words "any communication," as opposed to "interstate and foreign communications," as found in other clauses of the same statute. It was observed that the substitution of the former for the latter phraseology was an illustration of the Congressional intent to regulate intrastate communications under this statute.

The language in the extortion statute is "in interstate commerce *any* communication";¹² and the fraud by wire statute reads, "communication in interstate or foreign commerce."¹³ The language of all three statutes is quite similar. Therefore, federal jurisdiction could be granted in the extortion and fraud by wire cases by giving the above-mentioned wording as broad a judicial interpretation as it was afforded in the *Weiss* case.¹⁴

Another basis for including intrastate activities under such legislation is indicated in *Mandeville Island Farms, Inc. v. American Crystal Sugar Co.*, where it was said:

The inquiry whether the restraint occurs in one place or another, interstate or intrastate, of the total economic process is now a preliminary step, except in those situations in which no aspect of or substantial effect upon interstate commerce can be found in the sum of the facts presented. For, given a restraint of the type forbidden by the act, though arising in the course of intrastate or local activities, and a showing of actual or threatened effect upon interstate commerce, the vital question becomes whether the effect is sufficiently substantial and adverse to Congress' paramount policy declared in the Acts' terms to constitute a forbidden consequence.¹⁵

The foregoing is applicable to the extortion and fraud by wire provisions if it can first be concluded that: (1) the intrastate phone calls affect the telephone system which Congress is attempting to protect, and (2) the effect is substantially adverse to the policy of the statutes.

Numerous reasons have been assigned for the probable extension of federal jurisdiction into the legislative area herein discussed. A qualification is now in order. In the *Weiss* case, which forms the foundation for the arguments for jurisdictional extension, there was no indictment for

¹¹ Nat'l Labor Relations Board v. Jones & Laughlin Steel Corp., 301 U.S. 1, 37 (1937).

¹² 18 U.S.C.A. 875.

¹³ 18 U.S.C.A. 1343.

¹⁴ 308 U.S. 321 (1939).

¹⁵ 334 U.S. 219, 234 (1948).

intrastate violation. In other words, the wire-tapping statute was used only as a rule for the admissibility of evidence (or the exclusion of it). Therefore, it is altogether possible that the same court, faced with a case in which there *is* an indictment, will hesitate to extend federal jurisdiction, not wishing to be quite so liberal where the penal aspect of the statute is sought to be extended.

A final question for consideration is that of whether a grant of federal jurisdiction in this area constitutes an interference with the exercise of state police powers. This situation is apparently covered by the Hobbs Act, which provides that the federal government has jurisdiction over such state crimes as extortion where interstate commerce is affected. This act has been held constitutional in a recent case,¹⁶ so the only difficulty to be encountered is that of qualifying to come under the Act by showing an effect on interstate commerce.

The only safe conclusion to be drawn in this area, is that whether there will be an extension of federal jurisdiction to the cases coming under the extortion and fraud by wire statutes, will probably depend upon the judicial interpretation of the existing case law and statutory language. At this time, the *Weiss* case must be looked to as the strongest basis for seeking federal jurisdiction in the extortion and fraud by wire cases. It may best be expressed by quoting the court in that case when they said:

As Congress has power, when necessary for the protection of interstate commerce, to regulate intrastate transactions, there is no constitutional requirement that the scope of the statute be limited so as to exclude intrastate transactions.¹⁷

¹⁶ *United States v. Green*, 350 U.S. 415 (1956).

¹⁷ *Weiss v. United States*, 308 U.S. 321, 327 (1939).