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## Police Science Legal Abstracts and Notes

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## POLICE SCIENCE LEGAL ABSTRACTS AND NOTES

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**Dissemination of Fingerprints Before Conviction as an Invasion of the Right of Privacy**—The usual practice of taking and disseminating fingerprints and photographs of persons under indictment, but not yet convicted, was the subject of a recent New Jersey decision, *McGovern v. Van Riper*, 54 A. (2d) 469 (1947). The dissemination of such matter was made in accordance with a state statute (R.S. 53:1-15 N.J.S.A.) and the prisoners objected to the police action as a violation of their right of privacy under the New Jersey Constitution.

The Court considered the problem by balancing the relative rights of both, the individuals whose fingerprints were involved and the rights of society. In upholding the dissemination of the information the Court pointed out that the right of privacy has certain limitations when considered with the rights of the public. The practice of dissemination before conviction was held to be a proper exercise of the police power for the purpose of "facilitating crime detection" and "that one who has been indicted must submit to such slight invasion" as is required to carry out the police function of the state.

The Court further pointed out that when a person is indicted, his life ceases to be private and becomes a "matter of public interest", and as such, the dissemination of such information is a question of police administration and the protection of the public. Another ground for upholding the practice is that it is necessary in order to determine whether the person under indictment is a second offender. (See the comment in this Journal, 37(6):519 (1947), entitled "Protection of Innocent Persons Against Misuse by Police Authorities of Photographs and Fingerprints.")

**Search and Seizure of Automobiles Without a Search Warrant**—Evidence procured by a search of an automobile without a proper warrant recently was held inadmissible where the car was in a garage and the defendant at the time of the search already was in jail. *Hart v. United States*, 162 F. (2d) 74 (C.C.A. 10th, 1947). The decision further illustrates the point that searches of automobiles without a warrant are permissible only in emergencies where it is reasonably certain that the vehicle will not be available for search if time is lost in procuring the proper warrant. (For a thorough discussion on this subject see the note in this Journal, 38(3):239 (1947) on the "Authority of Highway Patrol to Stop and Search Motor Vehicles Without Warrant.")

**Police Fraternity Contrary to Public Policy**—Plaintiff, Police Fraternity and others, brought an action against the City of Detroit, and others, to have an order of the police commissioner, prohibiting Detroit police officers from being members of the fraternity, declared void.

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Plaintiff also claimed that defendant's order discharging two police officers for insubordination in participating in the plaintiff lodge violated the officer's constitutional rights of assembly, guarantee of equal privileges and immunities, and of equal protection of the laws. The trial court's dismissal of the bill was affirmed by the Supreme Court of Michigan. *State Lodge of Michigan, Fraternal Order of Police, et al. v. City of Detroit et al.*, ... Mich. ... , 27 N. W. (2d) 612 (1947).

Quoting from a prior decision, in which a similar organization offered associate memberships to citizens for \$5.00 a year, supplying those members with "a membership card and car emblem," the court said, "one would be naive, indeed, to assume that such automobile emblem did not carry with it the intimation of special privileges to associate members."

The testimony in the instant case led the court to believe that the plaintiff offered similar "associate memberships," at the time the officers were discharged, although it was denied on the date of the trial. The court concluded that the police commissioner has vested in him a "large measure of discretion"; that the plaintiffs have failed to show any arbitrary action by him; that plaintiffs are not deprived of any constitutional right.

**Liability of Police Officers for the Negligent Escape of Federal Prisoners**  
—Of great interest to all police officers, both state and federal is Public Law No. 97, passed at the last session of Congress (35 Stat. 1113, 18 U.S.C.A. 244). The Act proscribes criminal penalties for law enforcement officers whose negligence results in the escape of federal prisoners. The need for such legislation was brought to the forefront by the famous Medley escape from the District of Columbia jail in 1946. The Medley escape was the result of the almost criminal negligence of the guards. However, under the then existing federal statute, guards could be punished only for willfully aiding in an escape. The government was thus left with no remedy against the Medley guards.

The debate in the Senate seemed to indicate that the statute is to apply to federal officers only; however, the House greatly expanded the scope of the Act, for the debate in the House indicates that the Act is to apply to all officers, both state and federal, who have federal prisoners in their custody. The words "or other persons" in the statute seem to be applicable in their most general sense to any and all law enforcement officers. The House referred to the *Zimmerman* case, (1 F. (2d) 712, C.C.A.—6th, 1924) and inferred that the situation present in that case was within the scope of the Act. The *Zimmerman* case concerned the escape of federal prisoners from an Ohio jail, the circumstances leading to the escape being similar to those in the Medley case. The Court there held that the escape must be made with the willful or intentional permission of the guards before the old statute (which Public Law No. 97 amends) was applicable. Thus it would seem that the new statute is to cover any situation where federal prisoner's escape due to the negligence of a guard, be he state or federal.

The penalty proscribed is either a fine of not more than \$500.00 or not more than a year in jail or both. What degree of negligence the statute requires is problematical, for the statute merely uses the word "negligently." However, in view of the purpose of the statute it would seem that a high degree of care is required of all police officers who are given custody of federal prisoners.

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