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Police Science Legal Abstracts and Notes

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POLICE SCIENCE LEGAL ABSTRACTS AND NOTES

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Computation of Policemen's Pension Rights—The recent clarification of the pension rights of members of the Los Angeles police force by the California court should be of interest to all law enforcement officers operating under the same or similar pension systems. The case arose when the widow of a deceased patrolman sought to be paid her deceased husband's pension. The law in question (Los Angeles City Charter, sec. 181, Stats. 1927, pp. 2008, 2023) provides that after twenty years' service a policeman is entitled to the benefits. The deceased patrolman had at the time of his death twenty years and one hundred and thirty-two days' service. However, during that period he had been absent from duty for one hundred and fifty-one days. Upon this basis the city contended that the aggregate service was under twenty years and therefore claimed that the widow was not entitled to the pension. The fact was brought out that he had put in seventy and one-half days overtime during his service. In deciding the issue the court allowed such overtime to be added to the time of service, thus giving him credit for a total service of over twenty years. Upon this basis the widow was given the pension. *Stamper v. City of Los Angeles*, 181 P. (2d) 687 (Calif., 1947).

In its opinion the court laid down rules that should set a commendable precedent in the administration of police pension systems in general. The court said that such a system is to be construed broadly in favor of those intended to be benefited. To be eligible for a pension the officer must perform an aggregate of at least twenty years service. He cannot add overtime to his regular service so as to get his pension in less than twenty years, but he may add any overtime he has worked to make up such a deficiency as in this case.

A Grand Jury Inquiry Is a Criminal Proceeding—A federal court has held that a proceeding before a one-man grand jury culminating in a warrant which charges a felony is a "criminal proceeding," and therefore the federal statute, which prohibits traveling in interstate commerce to avoid testifying in a "criminal proceeding," is violated by a witness who leaves the state to avoid giving testimony before such a body. *Hemans v. United States*, 163 F. (2d) 228 (1947).

The defendant, who was involved in an attempt to unlawfully influence the Michigan Legislature, was under a continuing subpoena as a witness in the one-man grand jury investigation. He left the state and went to Washington, D. C., ostensibly to resign his Army commission; however, the jury found that the purpose in leaving Michigan was to avoid testifying. On appeal the reviewing court affirmed the conviction holding that the use of the grand jury to initiate the prosecution of felonies makes it no less a part of the judicial process than the actual trial, and Congress in passing the statute could not have meant to exclude such an important part of the judicial process from the ambit of the statute.

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The instant decision, by accepting the view that such hearings are criminal in nature, should be of considerable aid to state law enforcement agencies, because the federal statute, by acting as a deterrent in the uncontrolled movement of witnesses, will enable grand juries to conduct inquiries in a more expeditious and thorough manner without being hindered by the exodus of witnesses beyond the state's boundaries.

Admission of Photographs Taken by Unknown Persons—The necessity of identifying the photographer who took a picture before the latter may be used as evidence was dispensed with in a recent Pennsylvania case involving the trial of a labor organizer who had been accused of assaulting a police officer in a labor disturbance. The defense was based primarily on a photograph, which the trial court refused to admit as evidence because the party who snapped the picture was not identified. Upon appeal the picture was held admissible. The court recognized the great discretion given trial courts in determining the admissibility of photographs, but stated that where, as here, the picture is of vital importance in proving the defendant's case, it was an abuse of discretion to refuse to admit it. *Commonwealth v. White*, 52 A. (2d) 360 (Pa., 1947).

The decision seems sound for if the party seeking to use the photograph can lay the proper groundwork for its admission by proving its authenticity, the fact that the photographer is not identified is immaterial and should not be a bar to the admission of such important evidence.

Forgery of an Instrument Void on Its Face—A forger can practice his nefarious art with almost total immunity from prosecution in Alabama providing that the forged checks are Sunday-dated. This surprising announcement was made by an Alabama court in a case involving a spurious check written by the defendant with obvious intent to defraud. The Alabama Code (Sec. 21, Title 9, Code 1940) makes any contract executed on Sunday, with certain exceptions not pertinent here, void upon its face. Since the check had a date falling on a Sunday it was void, and the court concluded that it could not be the subject of forgery. *Gooch v. State*, 31 S. (2d) 779 (Ala., 1947).

The decision completely disregards the malicious intent of the defendant and allows a technicality to stand in the way of a justifiable conviction. The court could have avoided such an undesirable result by merely ascertaining the purpose of the statute, for, surely, the legislature in enacting the Sunday law did not intend for it to exonerate a forger who happened to operate on the Sabbath day.

Silence as an Admission of Guilt—The close question of when silence on the part of the accused may be used as an admission of guilt was clearly answered in a recent larceny case. The defendant and an accomplice stole a large sum of money from the victim's automobile. When the crime was detected the accomplice was arrested and confessed to the crime. In the company of several police officers the accomplice, in the presence of the defendant, accused the latter of participat-

ing in the crime. The defendant remained silent. On the trial testimony was introduced to the effect that the defendant remained silent when accused of the crime by his accomplice, thus tending to show that such silence was an admission of guilt. The admission of such testimony was cited as error by the defendant when he appealed his conviction. The upper court recognized that testimony of admission by silence is admissible evidence, but went on to caution that this was true only if certain requirements were met. To be admissible the accused must have heard and understood the accusation; he must have had the opportunity to deny it; and the circumstances must have been such as would bring forth a denial. The court then held that such requirements were met in this case when the defendant was accused in the presence of the police, and therefore the failure to deny was admissible as evidence. The conviction was reversed upon other grounds, however. *Owens v. Commonwealth*, 43 S. E. (2d) 895 (Va., 1947).

Admissibility of Statements Made in the Defendant's Presence—There is a widespread misconception on the part of many police officers, and even some courts and lawyers, that merely because a statement has been made "in the defendant's presence," it is for that reason alone admissible in evidence. For a full discussion of this problem see the comment on page 514 of this JOURNAL.

The Drinking Driver—An interesting and instructive article dealing with the subject of "The Drinking Driver: Problems of Enforcement," which discusses in particular the legal aspects of the problem, was recently published by David G. Monroe, in the December, 1947 number of the *Quarterly Journal of Studies on Alcohol* (Vol. 8, No. 3).