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Police Science Legal Abstracts and Notes

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POLICE SCIENCE LEGAL ABSTRACTS AND NOTES

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Driver's License Revoked for Conviction of Reckless Driving in Another State—A New Jersey superior court is reported to have recently upheld the revocation of the driver's license of a New Jersey resident convicted in Maryland of drunken and reckless driving in that state. This action of the New Jersey Motor Vehicle Division makes that state the fourth to try that means of reducing the number of unsafe drivers on the highways. The others are New York, Pennsylvania, and Wyoming. It is the belief in these states that a man is not qualified to drive if he has misbehaved in this manner, no matter where he committed his misdeed. These states do not wait for him to commit the same offense within their jurisdiction, for then it may be too late to prevent injury to other people. This revocation of a license can be done in these states because they follow the theory which is general throughout the United States that a person does not have a right to operate a motor vehicle on the highways, but is extended the privilege by the state and may be denied such a favor (within constitutional bounds as to personal discrimination). It is generally agreed, even where driving is not just a privilege, that commission of a crime in connection with driving will be grounds for revocation of a license, the only difference being that most states follow this rule as to crimes committed within their jurisdiction. As it is, those states like New Jersey which have looked to foreign crimes all ascertain that the defendant received a proper trial in the other state and was convicted of actions which were related to a finding of his unfitness to drive in this state. (See Vol. 39, page 52 of this *Journal*.)

Recent United States Supreme Court Decisions on Search and Seizure—The United States Supreme Court has recently come out with two new decisions on illegal searches and seizures. The more publicized one is *United States v. Rabinowitz*, 70 S.Ct. 430 (1950), wherein a search of the defendant's premises in connection with his arrest thereon was upheld even though the arresting officers had plenty of opportunity to obtain a search warrant. This overruled part of the rule established by that Court in *Trupiano v. United States*, 334 U.S. 699 (1948), insofar as that case held that the officers must obtain a search warrant if they have time to even though they may have made a quite lawful arrest and a search would seem to be reasonable in connection with that arrest. Now the question in each case is whether the search is reasonable—whether there is sufficient reason to permit it—apart from any question of the opportunity of the officers to go back and obtain a search warrant. (See Vol. 39, page 208 of this *Journal*.)

In *District of Columbia v. Little*, 70 S.Ct. 468 (1950), the Supreme Court avoided making a decision which would have caused much confusion as to the extent of the protection of the Fourth Amendment. There a health inspector had been called in by neighbors complaining of the filth in defendant's house. She refused to permit the inspector to enter (placed herself in front of the door), and was convicted of a misdemeanor for interfering with the inspector in his work. The Court of

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Appeals of the District of Columbia reversed her conviction because it was felt that she had a right to demand that the inspector have a search warrant before he could look into her house. The Appellate Court felt that the Constitutional prohibition against unreasonable searches and seizures was not at all confined to criminal cases, but applied to all attempts to invade the citizen's privacy. The Supreme Court agreed that the woman was wrongly convicted, but on the ground that what she did was not an illegal interference with the inspector within the meaning of the laws of the District. The Supreme Court left open for later determination just how far into non-criminal matters the Fourth Amendment extends its protection. (See 44 Ill. L. Rev. 845 (1950).)

Presumption that Police Officer Acts Only in Performance of Duty—Officers Barr and McKinnon, using a key, entered the defendant's apartment in his absence and conducted a search during the course of which heroin was found on the premises. They then left, watching the apartment until the defendant returned and making certain that no one else entered the apartment. Upon his return the defendant was arrested for possession of heroin in a paper bundle found in his apartment. The defendant claimed no knowledge of this bundle. On appeal the defendant argued that since the officers had entered his apartment, "someone else had access to it" and hence the possession of the heroin could not be imputed to him. The court very summarily dismissed this contention on the grounds that it could not be assumed that the officer utilized the access to the apartment in any other way than in the performance of his official duty. Thus a rebuttable presumption of propriety is established in favor of police officers in the performance of their duty, and, apparently, the burden of proving otherwise is placed on the defendant. *People v. Brown*, 203 P. (2d) 1095 (Calif., 1949). For a general discussion of standards of police conduct see Kookon, *Ethics in Police Service* (1947) 38 J. Crim. L. & Criminology 61, 172.

Admissibility of Evidence Obtained by Federal Officer Participating in an Illegal State Search and Seizure—The line at which a Federal officer participates in a search for evidence by state officers, for the purposes of the federal rule of admissibility, was more closely drawn in *Lustig v. United States*, 69 S. Ct. 1372 (1949). Acting upon information, a Secret Service agent investigated a hotel room in which it was reported that some evidence of counterfeiting had been observed. Upon looking through the keyhole, he saw no evidence of the counterfeiting of currency but some evidence of the counterfeiting of horse-race tickets. He then notified the Camden, New Jersey police who obtained warrants for the arrest of the occupants of the room on the charge that they had failed to register with the police, as required of known criminals in Camden. Arriving at the hotel while the petitioners were out, the police gained entry to the room with a key provided by the hotel manager. Upon searching the room and discovering evidence of counterfeiting currency, they notified the Secret Service agent who went to the hotel room, selected articles of evidence for use in the Federal prosecution and assisted in the evaluation of the evidence. As he was leaving, the petitioner returned and was arrested on the local warrant.

The United States Supreme Court, in a 5-4 decision, ruled that the evidence was inadmissible, holding that "a search is a search by a federal official if he had a hand in it; it is not a search by a federal official if evidence secured by state authorities is turned over to the federal authorities on a silver platter." Four dissenting justices held that the question of participation was one of fact on which the trial court's finding should be accepted since it was supported by the evidence.

The *Lustig* case indicates that the Supreme Court intends to draw the line of participation by a federal official very carefully and stringently. Thus, from the facts as stated by the dissent, even inspection of the evidence by a federal official before it has been removed from the place of search is sufficient to establish federal participation. Clearly, then, the only situation in which evidence gathered by an unreasonable search and seizure may be used in a federal prosecution is that comparable to *U. S. v. O'Brien*, 174 F. (2d) 341 (C.A. 7th 1949), in which evidence of butter stolen from an interstate shipment was gathered by the local police entirely and then turned over to the federal authorities.

Not All Courts Can Promise Immunity From Prosecution to Witnesses—
The power to promise a witness for the state that he will not be prosecuted for anything revealed in his testimony, and thus be able to force him to tell everything instead of taking refuge in his right against self-incrimination, is not inherent in any court, but must be conferred by act of the legislature. This was brought out in *Apodaca v. Viramontes*, 212 P. 2d 425 (New Mexico, 1949), where the court and the prosecutor promised the witnesses that they would not be prosecuted if they told about seeing the defendant, thus placing themselves in the neighborhood of the same crime. They refused to testify anyhow, and were held in contempt of court, but the upper court set them free because it said that the trial judge had no power to make or enforce such promises and so their testimony would have been self-incrimination. This is the general rule. A man cannot be forced to testify unless he is protected from prosecution for anything revealed in his testimony, and such protection must come by statute, not by court action.

An element in the *Apodaca* case was that these witnesses had given their testimony at the grand jury hearing, only claiming their privilege at the trial. They could do this. The rule is that their privilege is not waived because they testified at another proceeding. This view is rather strange, because a person will be held to have waived his privilege if he tells part of what he knows and then tries to get out of telling the rest, yet here, where he told everything once, he is thought to have preserved his privilege for all other proceedings. Nevertheless, this is an important point for police officers to remember: just because a complaining witness may appear before the grand jury or at some preliminary hearing does not mean that he may not refuse to testify at the trial, unless that particular state has a statute which permits the court or the prosecution to offer immunity to the witness. (See 8 Wigmore, Evidence, §§2284, 2276 (1940).)