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Police Science Legal Abstracts and Notes

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POLICE SCIENCE LEGAL ABSTRACTS AND NOTES

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Wire Taps Allowed in Evidence Over Defendant's Objection that the Recording Had Been Tampered With—Defendant was convicted of perjury. During the trial wire taps that had been made pursuant to an order of the County Court were admitted for the prosecution. These recordings were held admissible to rebut an attack on the credibility of the government's witnesses in spite of the defendant's objections of illegality and lack of authenticity. On appeal the court held that all objections had been properly overruled and that the recordings were correctly received in evidence. *People v. Feld*, 113 N.E.2d 440 (N.Y. 1953). The defendant had particularly challenged the authenticity of the recordings because of frequent pauses in the conversations, especially a pause of about forty-five seconds during which the name of the defendant was spoken. A wire-tap expert testified that he could not tell whether words had been inserted or if the record was the original. Thereafter, on objection by the prosecution, the witness was not allowed to state why he could not tell nor give his opinion as to what accounted for these pauses. The appellate court found both of these rulings unquestionably correct as the pauses had been accounted for by the circumstance that the recordings were of a three-way conversation. The court also held that, although the chief inspector had heard the recordings played prior to the prosecution, the court did not err in denying to the defendant the chance to elicit information from the inspector as to whether at that time he had heard the defendant's name mentioned in the recordings. It should be noted that three judges dissented. They felt that it was impossible to justify the rulings that prevented the defendant from attempting to prove that the record had been tampered with as the authenticity of this evidence was a critical issue.

Handwritten Motions Made By Defendant While Acting As Own Attorney Are Admissible as Standards of Comparison—In the case of *Shelton v. United States*, 205 F.2d 806 (5th Cir. 1953), the defendant conducted his own defense to a charge of transporting a stolen motor vehicle in interstate commerce. In the course of the trial certain handwritten motions which the defendant had presented to the court were used as standards of comparison. These papers were properly identified by the clerk of the court as papers filed by the defendant personally in the instant case. The Court of Appeals held that these papers were proper standards and the use of them did not violate the defendant's privilege against self-incrimination.

Court Review of Civil Service Commission Discharge of Police Captain—The Supreme Court of Illinois, in a 4 to 3 decision, recently reversed the Illinois Appellate Court and the Civil Service Commission of Chicago in proceedings under the Illinois Administrative Review Act wherein the plaintiff, Thomas Harrison, had been discharged from his position as a police captain in Chicago. The court held that the finding of the commission that Harrison had violated police department regulations by accepting a gift for services rendered as a member of the department and that such conduct was cause for discharge was without evidentiary support and, thus, the previous action of the Superior Court in setting aside the order of the Commission had been

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proper. *Thomas Harrison v. Civil Service Commission of the City of Chicago*, (Ill. 1953).

The Civil Service Commission had found the plaintiff guilty of accepting and receiving \$30,000 in 1937 for services rendered or pretended to be rendered to one John J. Lynch while a member of the police department without the consent of the commissioner of police. Harrison was suspended the day the charges were filed and he thereafter instituted proceedings under the Administrative Review Act. The evidence relevant to the infraction showed that Harrison and Lynch had met in 1931 and had been close friends until Lynch's death in 1945. Prior to their meeting Lynch, who was involved in gambling operations, had been kidnapped and apparently Harrison acted as a bodyguard for him during times when they were together. After some six years of association, Lynch endeavored to persuade Harrison to enter some business other than police work and offered to finance such a venture, but Harrison said he preferred to remain with the police force. Lynch repeated his offer in 1937 and gave Harrison an envelope containing \$30,000, telling him to buy some securities for his wife and daughter and himself. Harrison said that he had never expected to be paid for anything he had done for Lynch but Lynch replied that he had plenty more and not to worry about it.

The charge against the plaintiff was that he had violated section 29 of rule 389 of the department, which subjects to disciplinary action any police officer for "receiving or accepting a reward or gift from a person for service rendered or pretended to be rendered, as a member of the department, without the consent of the Commissioner of Police." The Civil Service Commission's theory was that the plaintiff's association with Lynch was carried on as a member of the department, even though it was conducted during his off-duty hours and that the gift he received was for these services. The Supreme Court, however, felt that the police regulation clearly does not prohibit a policeman from accepting all gifts nor does it refer to all gifts accepted while a person is on the force. According to Harrison's testimony, the relation between Harrison and Lynch had been completely unscheduled and sporadic and had taken place when Harrison was not performing his official work. Furthermore, the association continued with undefined duties until long after the date of the gift. The court felt that these circumstances, combined with the tremendous amount of the gift, negated any inference that the \$30,000 had been given in connection with a contract of employment.

The city also contended that it was not within the power of the court to review the evidence with reference to the findings of fact of the Civil Service Commission. Therefore, this case involved a determination of the scope of judicial review of an order of the Civil Service Commission. The case was brought under the Administrative Review Act which applies to proceedings for the judicial review of a decision of an administrative agency where the act creating such an agency adopts the provisions of the Act. The Act provides that no new evidence shall be heard by the court and that the conclusions of the agency on questions of fact shall be held to be prima facie correct. However, these provisions have been construed to mean that courts do have the power and also the duty to consider the record to determine if the findings are against the manifest weight of the evidence. The court felt that this scope of review does not offend the constitutional doctrines of separation of powers and that the court is obliged by this act to examine the record and determine if the findings of the commission are supported by evidence. Three members of the court dissented on the ground that the majority of the court had not correctly interpreted the facts but agreed with the majority as to the scope of judicial review.