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## Police Science Book Reviews

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## POLICE SCIENCE LEGAL ABSTRACTS AND NOTES

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**Evidence Obtained by Local Police Through Illegal Wiretap Admissible in Federal Court**—New York city police suspected the defendant and his brother of dealing in narcotics. Based on the suspicion, the police obtained a warrant, in accordance with New York law, from the Supreme Court of that state, to tap the phone at a bar that the brothers frequented. While listening to a conversation between the defendant and another person, the police learned that “eleven pieces” were to be moved. Acting on this information, the police stopped a car driven by the defendant’s brother, but instead of finding narcotics, the police found eleven cans of alcohol without the required federal stamps. The evidence was turned over to federal authorities, who did not know of the method by which the evidence was obtained. However, at the defendant’s trial for illegal possession and transportation of distilled spirits without tax stamps attached, the fact was brought out that the evidence was obtained through the use of a wiretap in violation of Section 605 of the Federal Communications Act, 47 U.S.C.A. (1939). The defendant’s motion to suppress the evidence was denied and he was convicted. The United States Supreme Court, in reversing the conviction, held that wiretap evidence obtained by state officers was inadmissible in a federal prosecution. *United States v. Benanti*, 23 U.S.L. Week 4045 (U.S. Dec. 9, 1957).

Section 605 of the F.C.A. provides that: “. . . no person not being authorized by the sender shall intercept any communication and *divulge or publish the existence*, contents, substance, purport, effect, or meaning of such intercepted communication to *any person . . .*” (Italics added) In construing the meaning of this section, the Court relied on the cases of *Nardone v. United States*, 302 U.S. 379 (1937) and 308 U.S. 338 (1939). The Court said that the *Nardone* cases set forth the underlying premises upon which all subsequent consideration of Section 605 is based, and creates a prohibition against the use of evidence obtained

through a violation of that section in a federal prosecution. The Court stated that Section 605 was violated, *in the federal court*, if not earlier, “upon the disclosure to the jury of the *existence* of the intercepted communication,” which is forbidden by that section. Thus, the fact that the evidence was initially obtained by state police officers was of little consequence and the policy that allows evidence obtained through an illegal search and seizure by state police officers to be admissible in a federal court is not applicable, according to the Court. The Court also pointed out that any state regulation of wiretapping that conflicts with Section 605 is ineffectual.

**Warrant for Search of “Premises” as Basis for Lawful Search of Outlying Shed**—Federal officers secured a warrant to search the “premises” at two adjoining street addresses. After the officers had searched the houses at both addresses, and found nothing, they proceeded to search the sheds located on the same property. The defendant was ordered to produce the key to a shed that was some distance from the houses, and upon doing so, the officers entered it and discovered a quantity of alcohol, that did not have the required tax stamps affixed, and some of the components of a still. At the defendant’s trial for unlawfully engaging in the distillery business without providing the required bond, and possession of untaxed alcohol, he unsuccessfully moved to have the evidence the officers found in the shed suppressed. The United States Court of Appeals affirmed the defendant’s conviction and held that a warrant to search the premises at specific addresses was broad enough to allow the officers to search anything on the lot or parcel of ground where the houses at those addresses were located. *Ramsey v. United States*, 245 F.2d 295 (9th Cir. 1957).

The court rejected the defendant’s contention that since the warrant had been issued for the search of the premises at specific addresses, only the houses denoted by those addresses could be legally searched. The court construed the word “premises” in the warrant very broadly and said

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that its use in the warrant allowed the officers to search anywhere on the lot or parcel of ground upon which the houses bearing the street addresses were located.

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**Informer's Tip Reasonable Grounds for Arrest Under the Federal Narcotic Control Act**—A known informer supplied to federal narcotic agents certain information concerning the defendant. After checking their own files and finding nothing, the agents called the narcotic detail of the Chicago police department and were told that they had a file on the defendant. The agents, using the description of the defendant supplied by the informer, located the defendant and arrested him without the use of a warrant. The defendant was searched and a quantity of narcotics was found. After being charged with the unlawful purchase and receipt of a narcotic drug, the defendant, at a pre-trial hearing, made a motion to suppress the evidence found on his person. The United States Courts of Appeals affirmed the denial of the motion and held that the informer's tip constituted reasonable grounds for arrest and thus the evidence was admissible because it was secured incidental to a lawful arrest. *United States v. Walker*, 246 F.2d 519 (7th Cir. 1957).

The Court recognized the well-established rule that evidence secured incidental to a lawful arrest is admissible. In ascertaining the legality of the defendant's arrest, the court looked to Section 104 (a) of the Narcotic Control Act of 1956. This section confers upon agents of the Bureau of Narcotics the power to "make arrests without warrant for violations of any law of the United States relating to narcotic drugs . . . or marihuana . . . where the violation is committed in the presence of the person making the arrest or where such person has *reasonable grounds* to believe that the person to be arrested has committed or is committing such violation." (Emphasis added.) The defendant contended that the informer's tip was hearsay and consequently inadmissible to show reasonable grounds for arrest. In rejecting this contention, the court stated that the issue at the pre-trial hearing was not the guilt of the defendant, but the state of mind of the arresting agent. Although the tip was hearsay as to the defendant, it

was not hearsay as to the agent, and constituted reasonable grounds upon which to base an arrest without a warrant.

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**Coin Operated Crane and Claw Machines Are Gambling Devices**—A sheriff seized three machines on the grounds that their operation constituted a violation of the state's gambling statutes. Each machine consisted of a glass cabinet with a crane to pick up certain objects from the floor of the cabinet. The crane moved along a prearranged path, and the owner of the machine could place the objects to be picked up, which he would redeem for \$1, in any position. A player of the machine would first set the position of the claw by manipulating the boom of the crane, and then insert into the machine a coin that activated a mechanism that would drop the claw and close it. The player could then remove anything caught by the claw by depositing it in a chute. The owner of the machines sued the sheriff in an action for replevin to recover the machines, and succeeded in the lower court. The Supreme Court of Arizona, however, reversed and held that the machines were gambling devices and thus subject to confiscation by the sheriff. *Boies v. Bartell*, 310 P.2d 834, 82 Ariz 217 (1957)

The statutory provisions upon which the court relied were Sections 13-431 to 33 of A.R.S. These sections stated that ". . . every slot machine, punchboard, or machine of like character . . ." is a gambling device. The court based its decision on the test of whether or not a player's skill was more determinative in the results achieved than the elements of chance. The skill that the court considered was not that of an experienced player, but that of the average person or the general public, because the purpose of the statutes is to protect the general public. In making its determination, the court considered the limited control that the player had over the operation of the crane and claw, as compared to such obstacles as the predetermined path of the crane, the size and shape of the item to be caught, and the arrangement of these items.

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(For other recent case abstracts see pp. 541-543, *supra*.)