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Magazine, 38 (12): 16-7 (June 1957). The preliminary testing of this new film indicates a useable exposure index of 1600. Enlargement up to 5 or 6 times can be made. The film is sensitive to aging. (JDN)

The Restoration of Filed Off Inscriptions on Plastic—E. Kirchinke, *Arch. für Kriminologie,* 117: 93 (1956). By moistening the area with a swab dipped in benzene, CCl_4, or pyridine and then illuminating with UV, the inscription can be restored. Recorded by photography. (JDN)

A Qualitative Test for Nitroglycerine—J. Lammond, *The Analyst, 82:* 768-9 (Nov. 1957). Nitroglycerine in ethanol produces a black precipitate with Nesslin's reagents if the nitroglycerine is present above 1%. Interfering substances in in propellants can be removed by extraction with 80% v/v ethanol. (JDN)

POLICE SCIENCE LEGAL ABSTRACTS AND NOTES

Arthur Rollin*

Eavesdropping Not Illegal Under New Jersey Anti-Wire Tap Statute—The furtive telephone conversations of a company employee with persons outside the plant aroused the suspicions of the plant switchboard operator. The operator, in handling the employee's calls, kept the switchboard open and listened to the conversations without the knowledge or consent of the participants. Through this means, it was learned that the employee and several other parties were stealing from the company. They were charged with conspiracy to steal, and at the trial the switchboard operator testified as to the conversation she had overheard, in support of one of the conspirators who testified on behalf of the state. On appeal from their convictions, the defendants asserted that the operator's testimony was improperly admitted. The Superior Court of New Jersey affirmed the conviction and held that "the covert listening to a telephone conversation through an extension telephone or switchboard without the knowledge of the participants, while a generally reprehensible invasion of the right of privacy, is not within the compass of" the present wire tapping statute. *State v. Vanderhave,* 136 A.2d 296 (N.J. 1957).

The New Jersey wire tap statute (N.J.S. 2A: 146-1,N.J.S.A.) states that "Any person who willfully and maliciously: a. Cuts, breaks, taps or makes any connection with a telegraph or telephone line, wire, cable or instrument belonging to any other person; or b. Reads, takes, copies, makes use of, discloses, publishes or testifies concerning a message, communication or report intended for any other person and passing over any such telegraph or telephone line, wire or cable in this state, . . . is guilty of a misdemeanor." The court interpreted section (a) to encompass only mechanical devices, and noted that no such device was used by the operator. The court concluded that the defendants' assertion that the divulgence of the intercepted conversations in open court violated section (b) was without basis. Section (b) relates back, said the court, to section (a) and only pertains to conversations intercepted through mechanical devices. The court also stated that it was not faced with the question of the admissibility of evidence obtained in violation of the wire tap statute, but noted that the court has a long standing rule permitting evidence of that nature.

* Senior Law Student, Northwestern University School of Law.

Handwriting Expert Can be Tested During Cross-examination With Samples Not Introduced During Direct Examination—The defendant was charged with forging his wife's name to a certificate of ownership of an automobile owned by her. Since the wife had disappeared, the only evidence the prosecution introduced was the testimony of a handwriting expert. This expert testified that he had analyzed the voluntary samples of the defendant's handwriting and the authenticated samples of his wife's handwriting that were introduced into evidence, and had compared both with the signature on the certificate. The expert testified that,

in his opinion, the signature on the certificate was that of the defendant and not his wife. Upon cross-examination of the handwriting expert, defendant's counsel twice sought to confront the expert with genuine samples of the wife's handwriting that had not previously been introduced during direct examination. Defense counsel's purpose was to test the expert's opinion by seeing if he could identify the writer of one sample, and then to test his opinion as to whether two such samples were written by the same person. The court sustained objections to both efforts on the sole ground that the testing documents were not "within the realm of the expert's direct examination." The Appellate Division of the Superior Court of New Jersey, in reversing the defendant's conviction, held that the refusal to allow defense counsel to test the opinion of the handwriting expert with samples of handwriting that had not been introduced into evidence during direct examination was prejudicial error. *State v. Bulna*, 134 A.2d 738 (N.J. 1957).

The court conceded that the extent of cross-examination is within the discretion of the trial judge, but such discretion was not adequately exercised. Since the evidence presented by the prosecution consisted solely of the handwriting expert's testimony, it was essential that the defense be given an unhampered opportunity to cross-examine the expert. The court stated that the tests desired by the defense counsel were potentially very illuminating, and indicated that their denial would be proper only if they could not be concluded expeditiously and without undue confusion. In commenting on the reason given for for the denial of the tests, the court said that limiting tests to samples already introduced into evidence would be "useless" because the expert already knew their origin. The court said that "the very efficacy of such a test derives from the fact that the (expert) witness has not already identified the writer of the testing specimens from extrinsic information and can be tested on the basis of the inherent characteristics of the writing itself."

Knowledge of Violation Not Prerequisite For Conviction of Wire Tapping—A husband, desiring to obtain evidence for use in an action for divorce, hired the defendant, a private detective. The wife was living in a separate apartment with a private phone listed in her name. As part of his investigation, the defendant hired a self-described expert in electronics, eavesdropping and wiretapping, who had been so engaged for many years. The apartment next to that of the wife was rented and a hole was drilled in an adjoining wall. An elaborate wiretapping device was then set up and one of the defendant's employees, on twenty-four hour duty, was alerted by a buzzer or lamp everytime the wife's phone was used. The device not only allowed an employee to hear all phone conversations, but it also recorded them on tape. The expert testified that the device worked perfectly. The defendant was convicted of conspiracy to violate, and for violation of the federal statute prohibiting an unauthorized interception of telephone communications. The United States Court of Appeals, in affirming the conviction, held that a violation of the Federal Communications Act can occur even though a person does not know he is violating the act. *United States v. Gris*, 247 F.2d 860 (2nd Cir. 1957).

The defendant contended that since he had no idea that he was violating federal law when he installed the wiretapping device to a telephone line of a client's wife, his acts did not constitute a punishable violation of the F.C.A. In rejecting this contention, the court said that the act does not require that a defendant realize his conduct was unlawful. A violation occurs, the court stated, if a defendant knew what he was doing, what he was doing violated the act, and he intended to do what he did. The statute imposes a penalty on any person who willfully and knowingly does any act that the F.C.A. has declared unlawful.

Contents of Telephone Conversation Overheard on Extention Admissible in Federal Court When One Party Consents—The defendant telephoned one of his creditors and threatened his life unless the creditor returned the collateral securing the defendant's loan. The creditor refused to comply and called the local police. The creditor, anticipating another call, requested the police to station officers at his home and listen in on telephone calls. When the defendant called again, his threats on the life of the creditor were overheard by two officers using an extension telephone. The extension had not been connected for the use of the officers and was a regular installation of long standing in the creditor's home. Over timely objection, the officers testified as to what they had overheard, and the defendant was convicted for transmitting an interstate communication that threatened a life. The United States Supreme Court, with two

judges dissenting affirmed the defendant's conviction and held the divulgence of a conversation overheard through the use of a regular telephone extension, with the consent of one of the conversing parties, did not violate the Federal Communications Act, and consequently the information so obtained was admissible in a federal court. *Rathbaun v. U.S.*, U.S. (1957).

The defendant's contention that the testimony of the police officers was inadmissible rested on Section 605 of the F.C.A. That section states that "... no person not being authorized by the sender shall *intercept* any communication and divulge the existence, contents, substance, purport, effect, or meaning of such *intercepted* communication to any person..." (Italics added) The Court, in looking to the intention of Congress, determined that there had been no "interception" within the meaning of the act. Congress, according to the Court, did not want to limit the normal use of the telephone, which embraces the use of an extension by third parties in both the home and office. In addition, the Court said that another portion of Section of 605 clearly infers that one of the parties can use the communication for his own benefit or have some other party use it for him. "The communication itself is not privileged, and one party may not force the other to secrecy merely by using a telephone," according to the Court. Thus, since the officers had the consent of one of the parties, Section 605 was not violated.

The dissent advocated a strict construction of Section 605, as was done in prior decisions concerning that section, and said the language," no person not being authorized *by the sender*", should not be twisted into meaning no person not being authorized by either party to a telephone conversation, the sender or receiver. (Italics added) The dissent also drew a distinction between the usual third party that listens to a conversation through an extension, such as a secretary, and a police officer.

New York Speed Law Unconstitutionally Vague and Indefinite—The defendant was proceeding down a two-lane rural highway and attempted to pass another car moving in the same direction. He swung into the lefthand lane and struck a cyclist riding in the opposite direction. The defendant was not charged with violating an express speed limit or reckless driving, but he was charged and convicted for what is termed a "traffic infraction". The provision under which the defendant was convicted stated that "no person shall operate a motor vehicle ... upon a public highway at such a speed as to endanger the life, limb or property of any person, nor at a rate of speed greater than will permit such person to bring the vehicle to a stop without injury to another or his property." New York Vehicle and Traffic Laws, 556, subd. 1. The Court of Appeals of New York reversed the defendant's conviction and held the statute upon which his conviction rested was unconstitutional because it was too vague and indefinite to constitute an adequate definition of criminal conduct and did not provide a sufficient standard by which a driver's conduct could be tested. *People v. Firth*, 3 N.Y.2d 472, 146 N.E.2d 682 (1957).

Although the defendant's conviction was not for a "crime," the court stated that rules of criminal law were applicable to traffic infraction prosecutions. The court had to determine, as in construing a criminal statute, whether the statute was "clear and positive" so that it gave "'unequivocal warning' to citizens of the rule which is to be obeyed." The court concluded that the statutory verbiage was practically meaningless because it was impossible to drive a car at any rate of speed without the danger of injury to person or property. However, the court expressly refused to comment on the constitutionality if the statute had read "that a rate of speed is dangerous and constitutes a violation when it is unreasonable or imprudent under the surrounding conditions." Statutes with the above wording, the court noted, have been upheld in other jurisdictions.

No Entrapment When Idea For Crime Not Implanted By Police—Federal agents placed a recording device on an informer, who was present when the defendants discussed their plans to smuggle psittacine birds into the United States from Mexico. The agents, even though they had a recording disclosing an intention to commit a crime, waited until after the defendants had smuggled the birds into the country to arrest them. The defendants were tried and found guilty of conspiring to smuggle psittacine birds into the United States, of smuggling such birds into the United States, and of receiving, concealing, and transporting such birds. On appeal, the defendants claimed that a request for an instruction on entrapment was improperly denied in the trial court. In affirming the defendants' conviction, the United States Court of Appeals held that an instruction on entrapment was not required where no idea was

planted in defendants' minds by the governments agents. *Murray v. United States*, 250 F.2d 489 (9th Cir. 1957).

The court reasoned, that, since the agents merely permitted a violation to occur in order to obtain facts sufficient to insure a conviction, they could not be considered guilty of entrapment. Entrapment was defined by the court as requiring the enforcement agency to "plant the idea of the commission of the crime in the minds of the defendants." Since there was no evidence presented to the jury to show that the agents planted any ideas in the defendants' minds, the court concluded that an instruction on entrapment by the trial court would be improper. The court made no comment on the propriety of using a secret recording machine by the police.

All Evidence Obtained During An Unreasonable Delay In Arraignment Inadmissible—The defendant was arrested at 6:40 p.m. as he returned home from work. During the evening and following morning he was questioned about a murder that had been committed in the perpetration of a rape. The defendant made his first oral admission that he was guilty at about 3:15 a.m., and then repeated his statements to various police officers that morning. Although there were many judges available to arraign the defendant around 9:00 a.m., he was not arraigned but taken to the scene of the rape and there he re-enacted the crime. Next, the police, without a search warrant but with the defendant's consent, went with the defendant to his apartment where the police obtained certain clothing belonging to him. Sometime later, the defendant was finally arraigned. At the trial, the defendant moved to supress his admissions and the evidence found at his apartment. The motion was denied, and he was convicted. The United States Court of Appeals reversed the conviction and held that the *"Mallory rule"* rendered all evidence obtained during an unreasonable, and thus illegal, delay in arraignment inadmissible in a federal court. *Watson v. United States*, 249 F.2d 106 (D.C. Cir. 1957).

The court based its decision on the recent Supreme Court decision of *Mallory v. United States*, 354 U.S. 449 (1957). The court determined that the facts and circumstances of the instant case so closely paralleled the *Mallory* case that it could find no basis for distinction. The Court of Appeals opinion stated that in the *Mallory* case the Supreme Court has analyzed the Federal Rules of Criminal Procedure §§ 4(a), 4(b), 5(a), 5(b), and 5(c) which require "that an arrested person must be arraigned 'before a judicial officer as quickly as possible so that he may be advised of his rights and so that the issue of probable cause may be promptly determined.' Supplementing the *affirmative* command of the Rules, the (Supreme)Court tells us that the accused 'is not to be taken to police headquarters *in order to carry out a process of inquiry* that lends itself, even if not so designed, to *eliciting* damaging statements to support the arrest and ultimately his guilt'." (Emphasis supplied by the Court of Appeals). However, the court did comment that a brief delay in arraignment was permissible for the "booking" of an accused, and also to allow the police to check voluntary statements of the accused, *if* they are susceptible of *quick verification*. But, an accused cannot be taken to police headquarters, according to the court, for the *purpose* of subjecting him to interrogation in order to determine whether he shall be charged, or even subjecting him to an inquiry or course of conduct which unintentionally lends itself to eliciting inculpatory statements upon which his arrest or conviction may be predicated. Thus, the court points out, if the circumstances do justify a delay in arraignment, it cannot be of such a nature so as to give the police an opportunity for the *"extraction"* of a confession. From the above reasoning, the court concluded that since the defendant's admissions and his consent to search and seize his property has been given prior to any judicial caution, all were inadmissible.

(For other recent case abstracts see pp. 69–72 *supra*)