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## Police Science Legal Abstracts and Notes

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## POLICE SCIENCE LEGAL ABSTRACTS AND NOTES

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**Evidence of Fingerprints Taken During an Illegal Detention is Inadmissible**—The defendant was charged with the crime of robbery. At his trial, the government sought to introduce his fingerprints into evidence. The defendant objected on the ground that the fingerprints had been taken during a period of detention pursuant to an illegal arrest. The United States Court of Appeals for the District of Columbia excluded the evidence, holding that anything of evidentiary value, which the public authorities have caused an arrested person to yield to them during an illegal detention, is inadmissible. *Bynum v. United States*, U.S. 27 LAW WEEK 2293 (1958).

The Government conceded that the arrest and detention were illegal; however, it sought to distinguish fingerprints from statements given during detention and articles taken from a prisoner's possession. *Mallory v. United States*, 354 U.S. 449 (1957); *Upshaw v. United States*, 335 U.S. 410 (1948). The court rejected this distinction, saying, "In these situations, it is deemed a matter of overriding concern that effective sanctions be imposed against illegal arrest and detention and the risks of overreaching inherent in such action."

Thus, even though highly probative and seemingly trustworthy evidence is excluded, the loss is thought to be more than counterbalanced by the salutary effect of a comprehensive rule that illegal detention shall yield the prosecution no evidentiary advantage in building a case against the accused. This is based on the fourth amendment to the Constitution which makes protection of the individual against illegal seizure or arrest a constitutional imperative. Therefore, judicial authority must be exercised to implement this constitutional guarantee.

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**Traffic Violator's Car May Only be Searched at Time of Arrest**—The defendant was arrested for operating his automobile at an excessive rate of speed. Following his arrest, he was taken to the police station where he was charged with the traffic

offense. While he was being booked, a policeman went outside to the car, searched it, and found a black-jack on the floor of the car. At his trial for possession of the black-jack, the defendant moved to suppress the weapon on the ground that it was obtained through an illegal search and seizure. The Municipal Court of Appeals for the District of Columbia suppressed this evidence, holding that a search of the automobile at the police station was not necessary, and any evidence seized in the course of such a search must be suppressed. *Travers v. United States*, 144 A. 2d 889 (1958).

The government defended the search without warrant on the ground that it was merely a search incident to a valid arrest. The court conceded that a search incident to an arrest may be made in order to search out means of escape, or to enable the police to protect themselves from hidden weapons or to discover the "fruits and evidences" by which the crime had been committed. The court held, however, that the first two reasons did not apply to the facts of the case and that the third was inapplicable because there could be no "fruits and evidences" of the crime, which was, in this case, a traffic offense. The search, therefore, was illegal and the evidence was suppressed.

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**Evidence Supposedly Deposited During a Chase While Out of Policeman's Sight Is Admissible**—After a chase of several miles, the police curbed the defendant's car and arrested him on suspicion of smuggling narcotics. However, a search of the car produced nothing but marijuana sweepings. Pressing their search further, the police retraced the path of the chase to a point where the defendant's car had been out of sight for a few moments. Here the police found a sack of marijuana alongside the road.

At the defendant's trial for illegal possession and transportation of marijuana, the sack was introduced into evidence, over the defendant's motion to suppress it. On appeal, the defendant urged this as error. The Court of Appeals rejected this contention and affirmed the conviction, holding that the relationship between the defendant and the sack found along the road was a question of

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fact for the jury. *Ketchum v. United States*, 259 F. 2d 434 (5th Cir. 1958).

Counsel for the defendant objected to the introduction of evidence relating to the sack of marijuana on the ground that the sack was not "connected up with the defendant." However, the court noted that this argument should be pointed at the weight of the evidence, not at its admissibility. Evidence tending to show that the defendant had possession of the marijuana and that he sought to conceal or destroy that evidence, was clearly relevant and material. The question of how closely connected the sack of marijuana was with the defendant, and how much weight to attach to the evidence, was for the jury to decide.

The court went on to say that because of the variety of facts that may have circumstantial probative value, the courts should be liberal in admitting evidence of facts which bear some relevancy to the matter in issue.

**Law Enforcement Officer's Liability for Actions Taken Outside Own State**—Plaintiff operated an illegal gambling establishment on the state line between Indiana and Michigan. The defendant, a Michigan county sheriff, raided the establishment in conjunction with the Indiana authorities. The raid was a success, as the raiders found gambling equipment and confiscated it. However, during the course of the raid, great physical damage was done to the house.

After the raid, it was learned that this building and the gaming room were in the state of Indiana, and the plaintiff sued the Michigan sheriff for the damage done. The United States District Court allowed recovery, holding that the acts of the Michigan sheriff in Indiana were without jurisdiction, and that he was without authority to participate in the raid in Indiana. Thus, the Michigan sheriff was held liable for the damages caused in the raid. *Kapson v. Kurpath*, 165 F. Supp. 542 (1958).

The court pointed out that the authority of a Michigan county sheriff is clearly limited by Michigan statutes to the boundary lines of the county. Furthermore, where these boundaries are not clearly known, the extent of the jurisdiction will depend upon a subsequent survey demarcating the boundary. The defendant argued that even though he was outside of his own authority, his actions were justified because he was working with the Indiana authorities on this raid. The court summarily rejected this contention on the basis of Indiana law, because a non-resident cannot be a deputy of an Indiana sheriff. Thus the defendant's

actions were judged by the court against a standard of reasonableness as applied to an ordinary citizen. On this theory, the court found the defendant guilty of a tort, and liable for the damages to the house.

**Killing Policeman Was Self-Defense Where Defendant Resisted "Beating Up" Rather Than Arrest**—The defendant was driving his truck when it brushed against the car of a policeman traveling in the same direction. When the defendant got out of his truck to investigate, the policeman started beating him about the head until he fell to his knees. The policeman was carrying a holstered gun and a blackjack but did not use the weapons. A large crowd gathered and the defendant and some members of the crowd urged the policeman to exercise his power of arrest rather than continue with his beating up tactics. The policeman refused to do so and continued to beat the defendant. The defendant told the policeman that he wouldn't be beating him if he didn't have the gun. The policeman then walked to his car and took the gun and holster belt off. On his way back to where the defendant stood, he became involved in an argument with some members of the crowd. Seeing this, the defendant went to the policeman's car, took the gun, and pointed it at the officer. Warned by the crowd, the officer advanced toward the defendant, whereupon the defendant held the gun at arm's length, shut his eyes, and shot six times. The policeman was killed instantly. The defendant was convicted of murder, but the Illinois Supreme Court reversed the conviction on the ground that the defendant had acted in self-defense. *People v. McGraw*, 13 Ill. 2d 249, 149 N.E. 2d 100 (1958).

The defendant and the state were agreed that the rule of self-defense in Illinois is that a person who is in a place where he has a lawful right to be and who is unlawfully assaulted and put in apparent danger of death or great bodily harm may stand his ground, meet force with force, to the extent of taking life, if necessary, to save himself from death or great bodily harm.

The court found that the attack on the defendant was entirely unjustified and that the defendant had offered no resistance to arrest if such an arrest was contemplated. Viewing the situation through the defendant's eyes the court concluded that his action, under the circumstances of the case, was within the bounds of the privilege of self-defense.

(For other recent case abstracts see pp. 568-569, *supra*)