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## Notes

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ROBERT L. ARONSON, a member of the St. Louis bar, is the winner in the Class of 1928 of both the alumni prize for highest average in scholarship during the law course and of the prize for the best thesis written by a member of his Class. His thesis is reproduced in the article, WOULD A STATUTE PROVIDING FOR THE WAIVER OF A JURY IN FELONY CASES BE CONSTITUTIONAL IN MISSOURI? Mr. Aronson was a member of the LAW REVIEW staff from 1926 to 1928.

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#### ILLEGAL SEARCH AND SEIZURE BY STATE OFFICERS AS AFFECTING ADMISSIBILITY OF THE EVIDENCE IN FEDERAL PROSECUTIONS

The growing policy among United States attorneys of basing their prohibition prosecutions on evidence secured by municipal officers gives the recent case of *Gambino v. United States*<sup>1</sup> an especial significance. In it the Supreme Court of the United States seems to have injected into the Federal rule barring evidence obtained in contravention to the fourth and fifth amendments of the Constitution a note as fully inharmonious with the trend of its recent decisions<sup>2</sup> as it did when it handed down the opinion in *Boyd v. United States*<sup>3</sup> which enunciated, subject to limitations laid down in succeeding cases,<sup>4</sup> what has been believed to be the present rule on the proposition.

Prior to the *Boyd* case practically all American courts had proceeded on the philosophy that the object of evidence is to elicit truth, concluding that the probative value of any evidentiary fact was not in any wise affected by the manner or the

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<sup>1</sup> (1927), 72 L. Ed., 139, 48 S. Ct. 139.

<sup>2</sup> *Silverthorne Lumber Co. v. United States* (1920), 251 U. S. 385, 392, 64 L. Ed. 319, 40 S. Ct. 182; *Rowan v. United States* (1923), 260 U. S. 721, 67 L. Ed. 481, 43 S. Ct. 12.

<sup>3</sup> (1885), 116 U. S. 616, 29 L. Ed. 746, 6 S. Ct. 524.

<sup>4</sup> If defendant would have the evidence excluded he must file a petition before trial for its suppression. *Weeks v. United States* (1914), 232 U. S. 383, 58 L. Ed. 652, 34 S. Ct. 341, L. R. A. 1915B 834, Ann. Cas. 1915C 1177. The exception to this rule is found where the defendant has only learned that the search was illegal at or immediately before the trial, and there has been no opportunity to file a petition for the return of the articles seized. *Gould v. United States* (1920), 255 U. S. 298, 65 L. Ed. 647, 41 S. Ct. 261.