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POLICE SCIENCE LEGAL ABSTRACTS AND NOTES

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Admissibility in Evidence of Scientific Tests for Alcoholic Intoxication—In the case of *Novak v. District of Columbia*, 49 Atl. (2d) 88 (District of Columbia, 1946), the defendant was involved in an accident and arrested for drunken driving. While he was being detained at the police station, a policeman requested a sample of his urine and the defendant agreed to give it. The officer did not inform the defendant that he had a right to refuse to give the sample, nor was the defendant advised that the sample might be used as evidence against him. The officer did state, however, that "if the sample was right it would be to the defendant's benefit."

The defendant was prosecuted for driving an automobile while under the influence of intoxicating liquor. The trial judge, over objection, admitted in evidence the laboratory records of the urinalysis which showed "an alcoholic content of .24 of 1%," and a physician testified, as an expert, that in his opinion a chemical analysis of a sample of urine showing that amount of alcohol indicated that the defendant was under the influence of an intoxicating beverage at the time of his arrest. Several witnesses testified that immediately after the accident the defendant appeared to be under the influence of intoxicants. Other witnesses, both prosecution and defense, testified that he did not appear to be under the influence of intoxicants. The defendant was found guilty. Perhaps the evidence regarding the urinalysis was decisive in the minds of the jury.

The history of the bottle containing the specimen of urine was recited in some detail by the state's witnesses. Before taking the sample, the officer washed the bottle; after taking the sample he replaced the cork stopper, labeled the bottle with defendant's name, time and place and his own initials, but the bottle was never sealed. The officer took the bottle home that night and kept it in his refrigerator. The next morning he delivered the same to the chemist at the District Health laboratories. The sample was stored in an unlocked refrigerator at the laboratory with about twenty other samples of urine. The refrigerator was accessible to about eleven persons employed in the laboratory. Two different chemists made separate analyses and both checked exactly.

The defendant appealed upon three grounds: first, that testimony regarding the urinalysis was improperly admitted because it was insufficiently identified and proved to be in the same condition when taken and when analyzed; second, that the specimen was obtained by inducement or compulsion and thus constituted an illegal search and seizure in violation of the Fourth Amendment; and third, that the taking and use of the specimen constituted a compulsory self-incrimination in violation of the Fifth Amendment.

The Municipal Court of Appeals of the District of Columbia affirmed the conviction and held: first, that the laboratory records of the urinalysis were properly admitted in evidence as they were kept in conformity with the formal tests prescribed by the Federal Shop Book Statute, and that there was sufficient evidence that the specimen taken from the defendant and the one analyzed by the

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chemists, and reported on in court, were the same and were in substantially the same condition when tested as when taken, and that there was no evidence of deliberate tampering with the bottle to the disadvantage of the defendant; second, that evidence obtained from a person under legal arrest and a chemical analysis of such evidence is not an illegal search and seizure; third, even if the giving of such a specimen is classed with making a confession, the admission of the results of the analyses in evidence was proper, as it is not essential to the admissibility of a confession that it should appear that the person was warned that what he said would be used against him. If the confession was voluntary it is sufficient. The giving of the specimen by the defendant was voluntary and the officer's statement was not an inducement to the defendant. A person of ordinary intelligence would draw from the officer's statement the inference that if the specimen was "not right," it would not be to the defendant's benefit. The weight to be given to the results of the urinalyses and the medical testimony on the meaning thereof was for the jury to determine. The Court then pointed out that it was unnecessary for it to decide that taking such a specimen is like taking a prisoner's fingerprints, making him submit to be photographed, making him display his body, or trying on a coat to see if it fits, since in this case the specimen was given voluntarily while the defendant was under legal arrest.

In the case of *Kirschwing v. Farrar*, 114 Colo. 421, 166 P. (2d) 154 (1946), a police officer was found unconscious while on duty. He was taken to the hospital where a blood alcohol test was made. The result of this test disclosed "Alcohol 3.9 mg. per cc. of Blood," an amount considered sufficient in most humans to induce a high state of intoxication. The officer was subsequently dismissed from the police force because of such misconduct. Upon his trial before the City Manager of Safety, the result of the blood alcohol test was admitted in evidence. The defendant contended, however, that he had suffered an epileptic seizure and became unconscious, and other witnesses present testified that they did not believe he had an "alcoholic breath." Upon review the Civil Service Commission sustained the dismissal. The defendant then instituted action in the Denver District Court and, after a trial to the court, an order was entered reinstating the defendant on the ground that there was a failure in the proof to sustain the charges, as the proof was based on the blood alcohol test.

The Supreme Court of Colorado, on appeal by the Manager of Safety, reversed the lower court, and held that the Manager of Safety and the Civil Service Commission could properly consider the evidence of the blood alcohol test; that there was sufficient competent evidence to support the finding; and that they did not abuse their discretion in so finding.

The Court remarked that it had been unable to find any case where the blood test to determine intoxication was excluded because of its unreliable value as proof, and then noted that blood alcohol test evidence had been upheld in two recent cases. One of the cases was *State v. Cram*, 176 Or. 577, 160 P. (2d) 283 (1945), a criminal case in which the defendant unsuccessfully urged the constitutional objection against self-incrimination to the use of a blood alcohol test taken while he was unconscious and under arrest. The Court there held that the defendant was not deprived of any of his constitutional rights, and compared the taking of the blood

sample to that of fingerprints procured under compulsion. However, the Oregon Court pointed out that it was not deciding that an accused can be forced to undergo a physical examination or submit to a blood test as the question of unlawful search and seizure was not involved in the case and the defendant was under arrest at the time the blood sample was taken. The other case was *Hanlon v. Woodhouse,* 113 Colo. 504, 160 P. (2d) 998 (1945), where in a civil action for damages as a result of an automobile collision the injured party introduced into evidence the results of a test for alcohol in the blood of the defendant. The blood sample had been taken from him while he was still unconscious in the hospital after the accident upon the request of a public officer who had been summoned to the scene of the accident. Both the physician and the laboratory technician testified that the analysis showed sufficient blood alcohol to cause a state of intoxication in the average person, the objection being overruled that the confidential relation between physician and patient had been violated.

One judge dissented in the principal case, on the ground that from the time the blood sample was taken until it was examined, integrity of identity of the sample did not attend.

(For a complete discussion of the aspects of this problem see: Mamet, B.M., Constitutionality of Compulsory Chemical Tests to Determine Alcoholic Intoxication, 36 Jour. Crim. Law & Criminology 132-147 (1945). Also see another relatively recent case upon this subject: *State v. Nutt,*—— Ohio St. ——, 65 N.E. (2d) 675, (1946) holding admissible in evidence the testimony of a policeman and a doctor that the defendant *refused* to submit to a physical examination or furnish a sample of urine. The *Nutt* case was abstracted in the July-Aug., 1946 number of this *Journal.*)

Admissibility of Confessions — A recent issue of the Texas Law Review (Vol. XXIV, No. 3, April, 1946), contains an article of special interest and importance to law enforcement officers. Its author is Charles T. McCormick, Dean and Professor of Law at the University of Texas, and the article is entitled "Some Problems and Developments in the Admissibility of Confessions."

Dean McCormick first observes that there is no special danger of untrustworthiness of confessions from abnormal self-accusations or hallucinations as those cases are much more often encountered by the doctors than by the police, and where they do come before the police, they are usually, though not always, recognizable as abnormal by experienced officers. He adds that against the possibilities of mistake, falsehood and hallucination, common sense urges the insistent and ever-present force of self-interest or self-protection. However, "the gravest special danger of untrustworthiness in the use of confessions, is the danger of duress, of such pressure that the victim's reluctance to make a confession which in the long run will lose him life or liberty is converted to a willingness to accept this hazard whose consequence is deferred, in order to escape a more terrifying immediate evil." The various methods of subjecting suspected persons to direct and indirect pressures were referred to, and it was pointed out that prolonged and insistent questioning alone seems effective to shatter the resistance of at least the average casual suspect who is not a professional criminal. The digests for the twenty year period 1926-1945 reveal 94 appeals in which the appellant claimed force or threats in securing a con-

fession. "Upon such limited data, it seems probable," according to Dean McCormick, "that third degree practices are still prevalent in many parts of the country." He further states that such practices "constitute a betrayal and a mockery of those principles of respect for the worth of the individual citizen upon which our religious ideas, our constitution, and our philosophy of government rest." The author then said that it may well be doubted whether confessions of guilt, even where they are extorted by pressure of force or fear, are not reasonably trustworthy, because from a random selection of sixty-five criminal convictions where convincing proof later appeared of the innocence of the accused, in only seven of these cases was there evidence of a confession. The predominant motive of the courts in shaping special rules restricting the admissibility of confessions has been that of protecting the citizen against the violation of his *privileges* of immunity from bodily manhandling by the police and from other undue pressures of the third degree.

Dean McCormick then discussed in detail the existing safeguards attending the use of confessions: the requirement that where a confession is relied upon the prosecution must nevertheless produce other evidence independent of the confession in order to establish the *corpus delicti* and to corroborate the confession; the requirement that the confession must not have been induced by force, threats, or promise of leniency, but must have been voluntary; state statutory regulations attempting to safeguard the use of confessions; federal control of state administration of justice through the due process clause of the Federal Constitution; and the new federal doctrine of the inadmissibility in federal trials of confessions secured while the accused is unlawfully detained in violation of federal arraignment statutes.

The author briefly discusses the present English practice in respect to questioning prisoners—a practice which does not permit the questioning of a prisoner or a person in custody about any crime or offense with which he is or may be charged except for the purpose of removing "elementary and obvious ambiguities in voluntary statements." Dean McCormick points out that such a practice could only be maintained in a community where the crime rate is relatively low, where the police are highly efficient and trained to a strong sense of professional ethics, and where the community has a regard for civil rights so strong that it will insist upon the maintenance of these rights even in favor of the disreputable and the outcast.

The United States Supreme Court decisions which condemn convictions in state courts on involuntary confessions as denials of due process have declared doctrines which are binding on state courts and state legislatures as well. Already, states Dean McCormick, they have made their impress on state decisions, as the state courts are reversing convictions on the ground that the confession was secured by protracted questioning.

Under the federal and state statutes which require production of the prisoner "immediately" or "forthwith," any detention for interrogation, however brief, may be questioned. Dean McCormick suggests that probably the interests of civil liberty and of effective investigation of crimes can best be balanced by a relaxing of the requirement for "immediate" production, and the establishment of a specific limit of perhaps twenty-four hours for detention.

Another reform designed to remove the pressure felt by the police

obliging them to resort to the abuses of the third-degree was suggested for consideration. This was the inauguration of a procedure, necessitating legislation and constitutional amendment, to give a legal opportunity for extended examination before a magistrate of every person arrested and charged with a crime, wherein he would be given the right to have counsel and then interrogated by the magistrate. His recorded answers would then be admissible in evidence in subsequent proceedings; but, if he chose not to answer, either counsel or the court should be permitted to comment on his refusal.

In his article Dean McCormick concluded that there is no cure-all to the problem, as abstention from third-degree abuses will still depend on the ability of the police to protect society without resort to them; but he felt that science can be a substitute for cruelty, and added: "The lie-detector has proved its value, when professionally conducted and interpreted. If adequate safeguards could be provided, the questioning of suspects under narcosis might offer possibilities for protecting the innocent and discovering the guilty. Other methods of scientific proof, apart from examination of suspects, may likewise make extorted confessions unnecessary. Examples are fingerprint, handwriting, and typewriting identification; firearms identification, and blood-tests. Manifestly, the full use of these resources for the protection of society against crime can only be accomplished by a well-selected, professionally-trained body of law enforcement officers." (Copies of this issue of the Texas Law Review may be obtained for $1.00. University of Texas Publication of the School of Law, Austin, Texas.)