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## Police Science Legal Abstracts and Notes

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## POLICE SCIENCE LEGAL ABSTRACTS AND NOTES

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**Search and Seizure on Probable Cause in Automobile Cases—** Although the recent trend of the Supreme Court cases has tended to narrow the area in which a search may be conducted without a warrant, *Brinegar v. U. S.*, 69 S. Ct. 1302 (1949), occasioned a reaffirmance of the liberal doctrine in *Carroll v. U. S.*, 267 U. S. 132 (1924), regarding the searching of automobiles. An officer of the Federal Alcohol Tax Unit had arrested the defendant about five months before the instant offense for illegally transporting liquor, had seen him loading liquor into a truck in Joplin, Missouri on at least two occasions and knew his reputation for illegally hauling liquor into Oklahoma from Missouri. On the day of the offense this officer was parked in a car about five miles from the Oklahoma-Missouri line when he observed Brinegar driving past in his car which appeared to be heavily loaded. After some chase Brinegar was curbed and when the agents asked how much liquor he had in the car replied, "Not too much." Further questioning and search produced twelve cases. The agent then arrested Brinegar and seized the liquor.

In reviewing the conviction resulting from this arrest, the Supreme Court held that the privilege against searches and seizures contained in the Fourth Amendment was not violated since the officer knew that Brinegar did haul liquor into Oklahoma and had seen him obtaining the liquor in Joplin. Thus there was a strong showing of the source of supply, the probable destination and the illegal market in this case from general knowledge and reasonable grounds for suspicion that the petitioner was engaged in this business.

Counsel for Brinegar, however, argued that since the evidence of the officer's previous arrest of the defendant could not be introduced in evidence at the trial, it could not be introduced at the hearing on the motion to suppress the evidence. Had this argument prevailed it would have had the effect of barring a showing of probable cause. Speaking for the majority of the court, however, Mr. Justice Rutledge pointed out that there is a difference between a hearing on a motion to suppress and the actual trial. In the actual trial the issue is guilt or innocence while at the hearing on the motion it is only probable cause; thus, he continued, there is a difference in the standards of evidence admissibility. While guilt must be proved beyond a reasonable doubt, probable cause requires merely a showing of probability or reasonable ground for a belief of guilt. The line which is drawn is one between probable cause and mere suspicion. Justice Rutledge also pointed out that there is a difference between the search of a house with its accompanying invasion of privacy and the search of a swiftly moving vehicle on a public highway. In the latter case, knowledge on the part of the officer that a suspect has repeatedly given substantial ground for believing that he is engaged in using such transportation illegally is sufficient to support a search. For a general discussion of the law relating to the search of automobiles see Note (1947) 38 J. Crim. L. & Criminology 190.

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**Necessity for Precision in Use of Harger Breath Test**—In *State v. Hunter*, 68 A. (2d) 274 (1949), a conviction for drunken driving was reversed because of the use of an improper scale in conducting the Harger Breath Test. The critical factor in the test is the weighing of the ascerite tube which contains a carbon dioxide absorbent element. Given the amount of carbon dioxide absorbed by this tube, the concentration of alcohol in the breath can be determined by simple arithmetic since both the quantity of alcohol and the ratio of carbon dioxide in the breath are known. The measurements are so small that an analytical balance, sensitive to a tenth of one milligram, is required for accuracy. In the instant case, however, the physician conducting the test used a pharmacist's scale at a local drug store; subsequent investigation disclosed that the scale used was a torsion balance which type of scale is usually only sensitive down to two milligrams.

After the case was concluded, the defendant realized the importance of the type of balance used to weigh the ascerite tube. He then filed a petition for a new trial, the New Jersey procedure to reopen the case. Normally, a case can only be reopened where there is newly discovered evidence, material to the issue, whose absence at the original trial was not due to the negligence of the defendant. In passing on this question, the New Jersey court specifically ruled that the defendant could not be charged with knowledge of the procedures of the Harger test, about which a qualified physician had been confused, and the failure to raise the point at the original trial was not negligence.

Although this case does not alter the status of the results of the Harger test in New Jersey, the court specifically stating that such results were admissible, it does point up the importance of minute observance of all technical procedures in a scientific test whose results are to be introduced in evidence. Not only may the test results be invalidated by the omission, but their invalidation offers a fertile field for opening up a supposedly closed case. Moreover, it is to be noted, particularly in connection with the Harger test, that the opportunity to repeat it no longer exists when the error is discovered. On the admissibility of these test results see Note (1947) 38 *J. Crim. L. & Criminology* 441. See also Note (1946) 37 *J. Crim. L. & Criminology* 188 (admissibility of evidence of refusal to submit to tests).