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## Police Science Legal Abstracts and Notes

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## POLICE SCIENCE LEGAL ABSTRACTS AND NOTES

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**Admissibility of Statements Made by Defendant While Under the Influence of Sodium Pentathol**—In the case of *People v. McNichol*, 224 P. (2d) 21 (Cal., 1950), the defendant was convicted of the crime of passing a check drawn by himself upon a non-existing bank account. His defense consisted of a denial of mental capacity at the time of the transaction, such mental deficiency being caused by complete intoxication. During the trial the defendant attempted to introduce statements made by himself while under the influence of sodium pentathol, or truth serum, as to events which he could not consciously recall at the time of the criminal acts. This drug was administered to him by a clinical psychologist during the defendant's incarceration prior to trial.

In rejecting this offer of evidence, the actual contents of which was not shown by the record, the court rejected the theory that such evidence should be admitted as a "past recollection recorded," pointing out that the serum test could not have refreshed his memory if in fact he had none. Rather, said the court, this was highly objectionable on the grounds of hearsay and also upon the further ground that the statements were purely self serving and without any probative value. To admit this would be to "open the door to the admission of hearsay and manufactured evidence without limit."

**Right of a Policeman to Use His Gun**—Another instance in which a court was faced with the perplexing problem of under what circumstances a policeman may use his gun while in the line of his duty was presented in the recent case of *Commonwealth v. Young*, 96 N.E. (2d) 133 (Mass., 1950). In this case the defendant policeman shot and killed an innocent person under the mistaken belief that he was apprehending a dangerous armed criminal.

In reviewing the lower court's conviction on a charge of manslaughter, the Supreme Court of Massachusetts specifically rejected the defendant's theory that the rule of law in such a case should be "that . . . (the officer) was the sole judge of the propriety and necessity of the force to be used in making the arrest, and that, if he exercised his best judgment and acted in good faith and without malice, he was not liable for the use of such force as he deemed necessary." The correct test of the liability of a police officer, said the court, is whether he used such force as was reasonably necessary to overcome resistance by the person sought to be arrested. Further, that the reasonableness of the force used was always a question for jury determination.

The difficulty presented in these types of cases was recognized by the court. When confronted with defendant's argument that "it is common knowledge that criminals are quick to shoot when in danger of apprehension, [and] the courts ought not to render the police officer's career more hazardous by requiring a standard of caution in the use of his weapons which, if followed, would tend to jeopardize his life, and, if not followed, tend to jeopardize his liberty," the court intimated that because of the defendant's duty as a police officer he would be justified in using more force than was necessary for his defense. However, that this concession which the court makes is not an answer to the basic problem is well illustrated by the fact that the Supreme Court of Massachusetts affirmed the conviction of this police officer. (For a complete analysis and discussion of this general problem of "when can a policeman use his gun?" see Vol. 40 of this *Journal* at pages 113, 211, and 225.)

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