Journal of Criminal Law and Criminology

Volume 41 | Issue 6 Article 16

1951

Police Science Book Reviews

POLICE SCIENCE BOOK REVIEWS

Edited by

Ralph F. Turner*

SELF-INCRIMINATION, WHAT CAN AN ACCUSED PERSON BE COMPELLED TO DO? By *Fred E. Inbau.* American Lecture Series, Publication Number 93. Charles C Thomas, Springfield, Ill. 1950. 91 pp.—$2.50.

Short books can often accomplish more than long law review articles, although the coverage and length may be the same. The book "Self-Incrimination," by Professor Fred E. Inbau of Northwestern University, is both. It was published originally in the Journal of Criminal Law and Criminology of 1937. The book is an enlargement of that article, including what has gone over the dam since that time. I have always regarded the article in the Journal as one of the best discussions of the subject. Revised, enlarged, and published in book form, it is one of the best discussions of the subject of self-incrimination as it relates to what an accused person can be compelled to do. I like little books discussing intensively a particular subject. Such books are usually read when the same material might have only reference value if carried in the volumes of a long treatise. This book is good reading. It is written in such a style that a lawyer, a professor, a policeman, or any person interested in civic affairs and the public welfare would find it understandable, interesting, and informative.

It should be particularly helpful to the prosecuting attorney, the defense attorney, and the judge, because it discusses both sides of the problems presented, includes exhaustively the conflicting authorities, although it takes a strong position favorable to interpretations which would be helpful to the prosecution. His discussion of the subject matter, however, is objective and scholarly.

The subject of the book is very important and every prosecuting attorney or law enforcement officer should have it for quick reference on the regularly recurring problem of determining what the accused person may be legally compelled to do. Can the accused be compelled to place his foot or shoe into a print? Can he be required to expose his body for identification of scars, marks, or wounds? Can he be compelled to remove disguising effects so that he may be identified? Can he be ordered to stand up, wear certain clothing, and assume various positions for identification? Are the accused's rights invaded when he is placed in a line-up with other persons so that witnesses will have the opportunity to identify him as the one who committed a crime? What is the legal justification of compulsory fingerprints and photographs? Can the accused be compelled to write so as to provide standards for experts to compare with questioned documents? May the accused be compelled to talk and walk so that his voice may be identified or the peculiarities of his walk observed? The question of mental examination of an accused person is important. Must he submit to such tests and be required to answer the many questions put to him by a psychiatrist? What can a person suspected of being a sexual psychopath be compelled to do when not charged with a crime but is regarded as potentially dangerous if left in unrestricted circulation? Can an accused person be required to submit to the lie-detector or truth-serum tests? A question

* Assoc. Prof., Dept. of Police Administration, Michigan State College, East Lansing.

which has arisen recently and has commanded national attention because of the danger to the public in operating a motor vehicle while intoxicated is whether a person accused of driving a motor vehicle while intoxicated can be compelled to submit to the taking of body fluid or breath samples for chemical testing as to his condition of intoxication. The taking of blood against the will of a person for blood grouping tests by scientists to determine paternity or for the purpose of identification is also a problem of growing importance with the acceptance and certainty of science in discovering the truth. The answer to each of the foregoing question involves the analysis and application of the privilege against self-incrimination. Other matters have also been drawn into the problem. Professor Inbau has discussed each of these questions with keen insight to the heart of the problem. He has included, either in text or footnotes the many supreme court decisions upon the subject and has referred to the leading law review and text writers dealing with these matters. For reference purposes the book is a great time-saver because of the collected results of his careful research.

The views of Professor Wigmore have been adopted by the author that the protection against self-incrimination is limited to testimonial communications and has no application to other disclosures required of an accused person. This view is sustained by the history of the privilege, which is a development of giving testimony in court, dating from the trial of John Lilburn in 1637 before the Star Chamber in England. This principle was carried into the Fifth Amendment of the Federal Constitution and into the Constitutions of all but two States. The earliest applications were definitely associated with the privilege not to give incriminating testimony in courts. Various reasons have been given for it, and the privilege is a basic safeguard under our American system of law. Professor Wigmore regarded it as essential to stimulate independent investigations by law enforcing officers rather than to permit the easy way of compelling accused persons to admit their guilt through questions which they would be compelled to answer. Some courts have erroneously expanded the privilege to include almost anything derived from the accused which would constitute evidence of guilt, but this is definitely contrary to the history and theory back of the privilege. The privilege fundamentally prevents the accused from being required to state facts implicating him in a crime. If the accused were required to answer such questions, from the very nature of things they might lead to falsehood. However, no such danger exists in the forced submission to finger-printing, photographing, or other physical disclosures.

Professor Inbau takes the view that the taking of blood, urine, or breath tests without the consent of the accused does not violate the privilege against self-incrimination. This view is very sound although the courts have hesitated to reach that conclusion and have in many instances found means to avoid such a decision by finding that consent was given or through employing some other device. All of these cases are reviewed by Professor Inbau. A courageous decision is needed today to square the decisions on fluid tests with the many other disclosures which the courts almost universally require the accused to make. There may be some temerity because of fancied dangers from injecting a hypodermic needle to withdraw blood. When we think of compulsory vaccinations and all of the blood samples taken by sergeants in the army and the many other places where such action is taken, it seems highly imaginary to exclude these tests on this ground, particularly when we consider the daily loss of life in America

because of the drunken drivers on the highways. It is difficult to see how much sympathy can be expended for one under arrest for conditions indicating drunken driving when such considerations are blanced against the interests of public safety. The breath and other fluid tests to determine intoxication are now commonly employed in most of the states and there would seem to be little reason why the accused cannot be told that under the law he must submit to such a test. It lacks all the objections to verbal communications. It would be much better than trying to circumvent an imaginary interpretation of the Constitutional privilege against self-incrimination by implying a consent from silence or by tricking the accused into the use of what turns out to be a test tube urinal.

Professor Inbau has written extensively in the field of scientific evidence. This book gives the benefit of his research on the problem of what an accused person may be compelled to do. It is an excellent job.

Dean, College of Law,
University of Iowa. MASON LADD

POLICE ADMINISTRATION. By *O. W. Wilson.* First Edition. McGraw-Hill, New York, 1950. Pp. 540. $6.00.

The rapidity of the development of the field of police service has necessitated the compilation of basic essentials of police administration, in understandable terms, into an easily available well organized publication. *Police Administration* very adequately satisfies this need.

The author of *Police Administration,* O. W. Wilson, is presently Dean of the School of Criminology and Professor of Police Administration at the University of California. He has written many articles on the various phases of police administration and organization and has lectured extensively on these subjects. His books, *Police Records, Their Installation and Use,* and *Municipal Police Administration,* have been widely accepted as standards in their respective fields. He has conducted reorganization surveys for numerous police departments and agencies. He has been a police executive in municipal departments. He was one of the outstanding administrators of public safety for the United States' Army during World War II. He now participates actively as a consultant and authority on police service throughout the United States.

The student of police service will find in this book an orderly treatment of the administrative problems that confront the police executive with suggestions for their solution. The organization and administration of a modern police agency is discussed precisely and technically with special emphasis on recent trends and superior practices. The police executive will find a practical scientific approach to the analysis and solution of police problems, and the student will discover methods, theories, practices and suggestions that will stimulate and encourage further study and progress in the field of police administration. These assertions are based upon a careful review of the qualifications of the author and the publication.

The book divides and discusses police administration under twenty-six chapter headings: *The Police Department, The Police Organization, Organization for Command, Organization for Planning and Control, Patrol: Analysis Methods and Administrative Problems, Crime Investigation, Traffic Administration, Traffic Enforcement, Vice Control, the Prevention of Criminality, the Juvenile Offender, Police Records, Organization for Records and Communications, Other Auxiliary Services, the Police Building, Police Equipment, District*

Stations, Personnel Administration: Recruitment, Personnel Evaluation and Promotion, Discipline, Welfare, and Training, Public Relations, Informing the Public, Community Organization, Planning, Leadership.

The first four chapters deal with the detailed organization of a modern police department. The author discusses this important subject very delicately in order to make the principles adaptable to the small as well as the large department.

The next eight chapters discuss the operational functions of a department. Each unit is thoroughly analyzed regarding its purpose, organization, administration, function and evaluation. Police executives should pay particular attention to the recommendations regarding the handling of the very important problems of vice and traffic. The author clarifies his approach to these problems in his preface wherein he states that each police practice is analyzed on the basis . . . "of the fundamental purpose of each practice and the principles to be followed in achieving it. On this basis specific practices have been arbitrarily recommended for their superiority."

Chapters thirteen through eighteen describe specific police services. Discussion of these subjects is fundamental and basic, and of interest and value to the reader.

Chapters nineteen through twenty-six explain the specific problems of administration, such as: Personnel Administration; Personnel Evaluation and Promotion; Discipline; Welfare and Training; Public Relations; Informing the Public; Community Organization; Planning and Leadership. Suggested recommendations and proven practices are explained under each heading.

We now have available for the first time a text which describes and explains adequately the fundamentals of police administration and organization in explicit and intelligible terms. The police executive, the student, the civil servant, the public administrator, the legislator, and the interested citizen will find an enlightening and stimulating review of a subject which pertains to the lives of all persons in *Police Administration.*

Oakland, Calif. BEN W. PAVONE

CHEMICAL TEST CASE LAW. By *Robert L. Donigan.* The Traffic Institute—Northwestern University, Evanston, Ill. 1950. Pp. XII, 83. $2.50.

In the horse and buggy days Old Dobbin often could be counted on to bring her owner back home safely, at least as far as the barn, even after he had passed out completely. But the combined genius of our scientists has so far failed to produce a machine capable of duplicating this feat. The machine must have a sober driver to move with any degree of safety upon the highway. Because of this fact statutes were passed making it illegal to operate a motor vehicle while "drunk" or "intoxicated." Courts and juries tended to apply such statutes only in cases of extreme intoxication, while it became increasingly apparent that much less than this might seriously impair one's driving ability. This induced the National Conference on Street and Highway Safety to make use of a different criterion in the Uniform Vehicle Code. Under this provision, adopted in forty-two states, it is unlawful and punishable to drive or be in actual physical control of a vehicle "while under the influence of intoxicating liquor." And the courts have tended to recognize that one who has imbibed to such an extent as to affect his faculties adversely, is "under the influence" even if he is not "drunk."

This promptly outmoded the old symptom tests. These tests were (1) by observing the suspect's appearance (particularly his countenance—was his face

flushed, were his eyes bloodshot or glassy?); (2) by smelling his breath; (3) by watching his conduct (particularly his balance—did he stagger when he walked or sway while standing? also his hands—did they tremble?); (4) by listening to him talk (was his speech thick or incoherent?). Refinements of these tests were attempted. It became common for officers to ask one arrested for driving "under the influence" to walk a straight painted line, planting each foot squarely on the line at each step; to pick up objects from the floor in a certain manner; to attempt to bring the forefingers together exactly, with arms extended; to extend the arm and then bring the forefinger exactly to the tip of the nose. Even other tests were added frequently.

These tests could not be passed by an extremely drunk person. Many departments added the device of taking a motion picture of the test and showing the picture to the arrestee after he was sober. This was usually sufficient to induce a plea of guilty in these cases. On the other hand there are various pathological conditions which will render a person incapable of passing such tests although he has had no liquor at all. The chief defect of such tests, however, is that they cannot be counted upon surely to pick out the driver whose judgment and coordination have been impaired by liquor, but who is not drunk. Hence increasing emphasis has been placed upon chemical tests.

The alcohol which impairs judgment and coordination is not that in the stomach but that in the blood stream. And the amount of alcohol in the blood stream is an accurate index to the amount which reaches the brain or other nerve centers. Hence in the effort to determine whether the person is "under the influence" the need is for a chemical test which will determine the alcoholic content of the blood. The most direct test for this purpose is a chemical analysis of the blood itself. But the amount of alcohol in the urine, or in the breath, has such a direct correlation to the amount in the blood that it is possible to make the determination by a chemical analysis of any of the three.

The layman's first objection to the chemical test usually is this: Alcohol affects different people differently; an amount which would seriously impair the driving ability of one might not at all affect such ability of another. But the interpretation of the tests, based upon exhaustive study and research, makes due allowance for this difference. The analysis itself determines the per cent of alcohol in the blood by weight. If this percentage does not exceed 0.05 the presumption is that the person was not under the influence of intoxicating liquor. If the percentage amounts to 0.15 the presumption is that he was under the influence. Between these limits the amount of alcohol in the blood gives rise to no presumption either way but is merely a fact to be considered with other available evidence. This is the recommendation of various national organizations interested in traffic safety and has been adopted by statute in twelve states. And it is the guide to the expert's opinion even where it has not been added to the code by enactment.

The validity of chemical tests to determine impairment of the faculties is now widely accepted, but there are many hurdles to be cleared in a particular case. In the first place the expert must be prepared to prove that the sample to be tested was properly taken,—and particularly that the technique used precluded the possibility of the addition of any alcohol to the sample. The skin of the area from which a blood sample is to be taken must not be sterilized with an alcohol-containing antiseptic. And no such antiseptic must be used on instruments or containers. Next the expert must be prepared to establish the "chain of possession" of the sample used. He must be able to prove that the test was made of the sample taken from the defendant on trial with no possibility of substitution or tampering. And needless to say he must be prepared

to establish his qualifications as an expert in this field and fully to explain the test made and its interpretation.

Quite different problems also may be encountered. If the sample tested was taken without the consent of the defendant he may object to any reference thereto in evidence for different reasons. He may claim it was obtained by unlawful search and seizure if the jurisdiction follows the federal rule that any evidence so obtained must be excluded if timely objection is made. A blood test or an examination solely to determine a person's physical condition is not within the range of the constitutional restraint upon unlawful search and seizure. Moreover, if the defendant was under lawful arrest at the time and sample was taken, it could be justified as a search and seizure incident to a lawful arrest, if such a taking is thought to be within the "search and seizure" category. But counsel must be prepared to meet this objection if the point has not been clarified in his jurisdiction.

Another objection to be expected if the defendant did not consent to the test (perhaps the point most frequently relied upon in these cases) is that the use of such evidence will violate the defendant's privilege against self-incrimination. The claim is unsound. This constitutional safeguard is intended to prevent testimonial compulsion and not to preclude an examination of defendant's body. It is not "self incrimination," within the constitutional use of the phrase, to require a man to uncover his face, permit his fingerprints to be taken, or give a sample of his blood, urine or breath. But some courts have reached the conclusion that to use evidence of a chemical test of a sample taken without consent does violate the constitutional privilege. And certain others obviously are in doubt about the matter (although several courts have held squarely that this privilege applies to testimonial compulsion only). Hence it is important for the officer to know what judicial stand upon this point, if any, has been taken in his state. It is no doubt wise for the officer to obtain consent to the taking of the sample, if possible, in any state. He should not take it without consent where this has been held to violate a constitutional privilege; and should do so only as a last resort where the point is unsettled. A special point for the officer to watch is this: Jurisdictions which do not permit the use of such evidence, where the sample was taken without consent, sometimes permit a close substitute. Some of them permit evidence of the *refusal* to be shown at the trial, and this may be very damaging to the defendant's case.

Still another objection may be urged in these cases. If the arrest resulted from a traffic accident the defendant may have been injured. And if a sample of defendant's blood was taken by a doctor who gave defendant medical treatment at that time, an effort may be made to exclude this evidence under the physician-patient privilege. This privilege, where it exists, usually bars the disclosure by a physician of any information acquired by him in attending a patient in a professional capacity, and necessary to enable him professionally to serve such patient. But where a doctor gives medical treatment to an injured driver, and takes a sample of the driver's blood at the request of an officer, he has done two very different things. The second was in no way concerned with the treatment of the injured patient and hence is not within the scope of such a privilege. Some statutes, however, are more sweeping in their provisions and would exclude the doctor's testimony under such circumstances. Hence it is important for the officer to know whether or not his state has a statute creating such a privilege,—and if so just how it reads. He should insist that the sample be taken by a doctor who had given no medical treatment to the person at the time, unless he knows that the fact such treatment was given will not bar the doctor's testimony as to the test.