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## Police Science Legal Abstracts and Notes

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## POLICE SCIENCE LEGAL ABSTRACTS AND NOTES

Nat P. Ozman\*

**A Motorist, Arrested for Drunken Driving, Is Incapable of Entering a Plea of Guilty While Still Intoxicated**—A motorist was convicted of drunken driving. The Supreme Court of Indiana held that the evidence sustained the conviction. *McClanahan v. State*, 112 N.E.2d 575 (Ind. 1953). However, the case asserts that the defendant motorist cannot make a valid plea of guilty while he is intoxicated since his mental condition is such that he cannot freely and understandingly realize the nature of his action.

It is also interesting to note two further points in this case. First, a motorist, who is arrested for drunken driving should not be released from custody while intoxicated, since his release would permit him to commit another misdemeanor by being found in a public place while intoxicated. Secondly, it is not necessary that the drunken person be taken immediately before a magistrate as required by statute, and therefore testimony as to what occurred while he was held in the police station is admissible.

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**Blood Test Admissible in Manslaughter Case To Prove Intoxication**—In *People v. Haeussler*, 260 P.2d 8 (Calif. 1953), the defendant was convicted of manslaughter and of driving a motor vehicle under the influence of intoxicating liquor. While the defendant was unconscious after an automobile collision an attendant at the hospital withdrew five cubic centimeters of blood; four of which were used to type her blood for a transfusion and one of which was tested for alcoholic content. The defendant contended that the admission into evidence of the results of the blood test deprived her of due process of law. The majority of the court held that the privilege against self incrimination was not involved since the privilege is directed against testimonial compulsion and evidence from a blood test is not such a communication from the accused. Therefore the evidence was admissible, and the conviction affirmed. Two justices dissented on the ground that the admission of this testimony did constitute a denial of due process. They reasoned that the force used in obtaining the blood specimen, although not as shocking as that present in the case of *People v. Rochin*, 342 U.S. 165 (1952) (use of the stomach pump to obtain evidence), was still force upon the body of a person while in an unconscious state and therefore within the ruling of the *Rochin* case.

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**No Violation of Self-Incrimination Privilege Where Defense Witness Is Cross Examined About Defendant's Refusal To Submit To Truth-Serum Test**—The petitioner sought a writ of habeas corpus after conviction of first degree murder in the state trial court. During the trial the defense introduced into evidence certain hospital records which contained a statement by an examining psychiatrist that the defendant had refused to submit to sodium amytol treatment. The prosecution cross-examined the psychiatrist and brought out this statement. The federal district court denied the petition for the writ. *Draper v. Denno*, 113 F. Supp. 290 (1953). The court reasoned that there could not be a claim of denial of due process predicated upon the failure of the defendant to object to the cross-examination and summation. The court seemed to give considerable weight to the fact that the defense initially

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\*Senior Law Student, Northwestern University School of Law.

introduced the evidence and hinted that a different result might follow in a case where the records were introduced by the prosecution. Also see *Smith v. Baldi*, 344 U.S. 561 (1953).

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**Results of Drunkometer Test Taken By Force Is Admissible In Evidence—**Police officers arrested the defendant since they believed that he was operating his automobile while intoxicated. The defendant refused to permit a specimen of his breath to be taken for drunkometer test, but he was compelled to submit. The constitutionality of such police action was certified to the Arizona Supreme Court for an advisory opinion. The stipulated facts showed that certain police officers would testify that in order to procure the breath specimen it was necessary to place the defendant in restraining straps. The Supreme Court advised that the results of the drunkometer test were admissible in evidence even though the specimen was forcibly taken if the force was used in capturing only exhaled breath. The police officers had a lawful right to capture the accused's breath after it left his body if they made no invasion of his person and if they used means which only "slightly" and "temporarily" interfered with his freedom of action. The defendant under these circumstances had no right to obstruct the efforts of the police, and if he did so, they had a right to use such force as was reasonably necessary to overcome his interference. Thus the court held that the forcible taking was not a violation of the constitutional privilege against self incrimination as this privilege is directed primarily against testimonial compulsion. *State v. Berg*, 259 P.2d 261 (Ariz. 1953). Further, the court states that this case is distinguishable from *Rochin v. California*, 342 U.S. 165 (1952) (invading the body by a stomach pump), and therefore there is no violation of due process under the Fourteenth Amendment.

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**Admission of Policeman's Notes Not Read or Signed by the Murder Defendant Is Reversible Error—**The defendant was convicted of murder. On appeal one of his allegations was that the court had erred in admitting into evidence unsigned, unacknowledged notes taken by a police officer from a conversation with him. The court held that this was reversible error. *State v. Cooper*, 10 N.J. 532 (1952). The defendant had been taken into police headquarters and interrogated by a patrolman who took notes on some of the things that the defendant said. The defendant, however, did not see the memorandum or acknowledge or sign it. In fact he was not even conscious of its existence. This memorandum was admitted into evidence although the trial court stated it was only for the limited purpose of ascertaining whether the officer or the defendant first mentioned the names contained in it. The New Jersey Supreme Court stated that when such a statement is not acknowledged by the defendant the oral testimony of the witnesses, and not the transcript, is the only admissible evidence. If this were not so, the oral testimony would not be given the weight it should properly have. The court held that the admission of this memorandum into evidence was prejudicial to the rights of the defendant and, therefore, reversible error.