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plaintiffs indeed had the right of privacy, but also realized that modern law enforcement is greatly aided by extensive identification records and that the public has the right to protect itself. Judicial notice was taken of the fact that the identification records of the Chicago Police Department are not available to the general public. Thus, the conjectural harm that is caused by the retention of the records by the police is outweighted by the potential benefit the records may bring to the public. The court said that in this case, "the rights of the individual must be subordinated to the safety of the public", and only a specific mandate from the state legislature would compel the return of the records of identification.

Refusal to Take Intoxication Test Not Admissible as Evidence in Chief—The defendant was charged with the offense of driving while intoxicated. At the trial, the complaining witness testified that in his opinion the defendant was drunk because he was red-faced and had refused to take a test, the test not being identified. A police officer testified that the defendant was unsteady on his feet, spoke brokenly, thick of tongue, red-faced and smelled of whiskey. Then, over the objection of the defendant, the trial court allowed the prosecution in its case in chief to ask the officer if the defendant had refused to take an intoximeter test. The question and its answer, that the defendant had refused, was repeated several times over continued objection. In addition, the officer was allowed to testify over the defendant's objection, as to what the results would have shown if the defendant had submitted. A majority of the Criminal Court of Appeals of Oklahoma first acknowledged that the defendant had the right to refuse to take the intoximeter test and then held that the State could not bring forth comment as to the defendant's refusal to take the test in its case in chief. *Duckworth v. State*, 309 P. 2d 1103 (Okl. 1957).

The majority pointed out that previous cases state that the defendant had a right under the law to refuse to take the intoximeter test, and that the defendant's exercise of this right was used by the State for purely prejudicial purposes. The majority said that it could conceive of no greater inconsistency than to allow a right, protected by law, indirectly destroyed by innuendo. The rule against self-incrimination was not applicable to the present case, according to the majority, because no evidence of probative value was in issue. "The refusal to take the intoximeter test constitutes what might be termed a negative predicate which was productive of nothing more than sheer speculation, surmise, and innuendo." In addition, the majority stated that allowing the state to raise the presumption that the defendant was intoxicated from his justified refusal to take an intoximeter test would violate a state statute. This statute provided that the failure of a defendant to testify shall raise no presumption against him, and if commented upon by counsel, it is grounds for a new trial.

In a concurring opinion, one judge said that the statute relied upon by the majority was inapplicable because oral evidence was not in question. The statute, according to the opinion, merely reiterates the self-incriminatory provision of the state constitution, and thus concerns only oral evidence. In addition, the opinion stated that the writer did "not agree that the State in making out its case could not show whether or not an officer offered to give the accused an intoximeter test, and whether the test was given, and if not, why not". However, the judge thought a new trial should be given the defendant because the question as to whether or not the defendant refused to take the intoxication test was repeated many times, and because the defendant was not arrested when first observed by the police, but permitted to report to the police on his own. From the cases cited in the concurring opinion, it would seem that if the State had forced the defendant to submit to an intoxication test, the results of the test would have been admissible unless the methods used "were shocking to the judicial conscience and held violative of the due process clause of the Federal Constitution".

The petition for rehearing was denied and the judge who had previously concurred with the majority dissented. The sole question raised

by the petition was whether or not the defendant had a right to refuse to take the intoxication test. The dissent pointed out the distinction between applying the rule against self-incrimination to oral evidence and physical or real evidence, indicating that it is inapplicable to the latter. In pointing out that blood can be taken from an unconscious person without consent, *Breithaupt v. Abram*, 352 U.S. 432 (1957), the dissent stated that the majority view is contrary to the law of the land.

Evidence Illegally Seized by City Police Admissible in Federal Prosecution Where Federal Officer's Presence at Raid was Inadvertent—City police, armed with a search warrant which later proved to be invalid, raided a rooming house where the defendant lived and found a quantity of illegal whiskey. While the raid was in progress, a federal officer came to the rooming house in connection with a different case and was informed as to what was happening. The federal officer had no advance knowledge of the raid and took no part in it. However, after observing a quantity of illegal whiskey exposed by the city police, he called other federal authorities and the city police agreed to allow the federal government to prosecute the defendant under Internal Revenue Code provisions. The evidence ob tained by the city police was introduced over he objection of the defendant, who was found guilty of concealing and having whiskey in his possession with intent to evade the payment of the federal tax. The court held that the inadvertent presence of a federal officer at the scene of a raid by city police was not sufficient to make the raid a federal undertaking and that evidence illegally obtained by the city police was thus admissible in a federal court. *United States v. Brown*, 151 F. Supp. 441 (E.D. Va. 1957).

The court recognized the well established rule of the inadmissibility, in a federal prosecution, of evidence illegally seized by federal officers. Thus, the court was faced with the question of whether or not the presence of the federal officer at the raid by the city police, in effect, made the raid a federal undertaking so as to invoke the exclusionary rule. The court, after reviewing the subject of search and seizure under the fourth amendment, stated that the evidence was admissible because a "bilateral clear common understanding or agreement" was not found to exist between the city police and federal officers. However, after adjudging the defendant guilty, the court said that the defendant was entitled to bail pending appeal "by reason of the ambiguity existing in the decisions of all courts touching upon the questions involving searches and seizures under the fourth amendment".

(For other recent case abstracts see pp. 430–432, *supra*.)