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POLICE SCIENCE LEGAL ABSTRACTS AND NOTES

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Some Precautions in Taking Photographs for Future Use in Court—Two recent cases highlight some dangers which the police should consider in taking photographs which may later be used in court. In *East Wisconsin Trustee Co. v. O'Neil,* 39 N.W. (2d) 369 (Wisc. 1949), police photographs were used to show that defendant's automobile was in the wrong lane when it hit plaintiff's car. The skid marks were outlined in chalk, and one policeman was pictured indicating where the impact occurred. The court held that the part showing place of impact was improper, for that was the very thing the jury was supposed to decide. Fortunately, however, the court did not exclude the photo, but only directed the jury to disregard the improper part. If the photo had been excluded, the police might not have had an acceptable substitute. In some jurisdictions even the chalk marks might have been challenged as giving a false picture of the scene rather than one as it really looked.

To avoid ruining good evidence, it might be safer to photograph the scene exactly as it looked before adding anything which is felt to be necessary to bring out the desired points in the picture, so that if the better photograph is excluded there will be something available for use.

The danger of relying on photographs which do not include everything is shown in *Ross v. Stricker,* 88 N.E. (2d) 80 (Ohio App. 1949), another automobile accident case, where a traffic expert was asked to testify about the probable routes of the vehicles as deduced by him from a picture of their position after the crash. His testimony was excluded because the police photograph had failed to show that a third automobile had struck the others after their crash, thus changing their position, and so the expert's conclusions were inadmissible because they were not at all related to the facts before that court. It is possible that the nature of this accident was such that a true picture of the cars would not have been capable of being used by the expert, but at least it would have revealed this fact to him, thus saving expense and embarrassment to all concerned. If it could have been used for anything, this failure to show everything having a bearing on the position of the cars destroyed its value completely.

(Extensive discussions of use of photographic evidence will be found in Scott, Photographic Evidence (1942), and 3 Wigmore, Evidence (1940) §§790, 798. With regard to automobile cases particularly, see the Accident Investigation Manual of Northwestern University Traffic Institute (1946).)

Danger of Ruining Good Case with Unnecessary Confession—Some recent cases have emphasized the danger when police, eager to gather as much evidence as possible against an accused, extort a confession from him, with the result that the whole case is endangered because this confession should not have been presented to the jury, whereas without it they would have had a convincing case anyhow. In *Watts v. Indiana,* 338 U.S. 49 (1949), and in *State v. Dietz,* 68 A. (2d)

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777 (N.J. App. 1949), the prosecution's very strong case against the defendant was reversed, with a new trial required, because in each the state had unnecessarily presented an involuntary confession in evidence. At one time it might have been held that the conviction would not be reversed if there was sufficient valid evidence before the jury to leave no reasonable doubt of guilt, but today some courts will order a new trial because it is felt that such confessions are too prejudicial to expect the jury to have weighed the other evidence fairly. Moreover, there is a growing desire to prevent the extraction of such confessions, and some courts feel that the best way to do this is to upset every case where a coerced confession is used. This means that the police must always be conscious that a confession obtained by force may be more than useless to them; it may result in an otherwise guilty man escaping conviction or at the least delaying a final judicial determination of his guilt.

Expanding Use of Chemical Tests for Intoxication—Although at least seven states have statutes providing for use of chemical tests of intoxication (Indiana, Maine, New York, North Dakota, Oregon, South Dakota, and Washington—see Vol. 40, p. 253 of this *Journal*), there is increasing use of these same tests in states where the legislature has not acted. One city, Peoria, Illinois, has adopted the use of the drunkometer by city ordinance. (Peoria City Ordinance No. 5589.) This Peoria ordinance contains the unique provision, however that the person on whom the test is used must sign an affidavit that he is submitting to it voluntarily.

There is a growing tendency of courts to accept the results of alcoholic tests in evidence, even in the absence of legislative authorization. Recently, trial courts in Columbus, Ohio, and Chicago, Illinois, have permitted such evidence in convicting defendants of drunken driving. The Ohio court admitted the results of a urinalysis as collaborative evidence to support other testimony. The Chicago court heard Drs. Harger and Muehlberger testify from the results of the drunkometer. In New Hampshire, the highest court of the state ruled that an analysis of blood taken without the defendant's consent was admissible in evidence. *State v. Sturtivant,* 18 L.W. 2324 (N.H. 1950). The New Hampshire court said this was not within the privilege of self-incrimination because the privilege protects only against testimonial compulsion, citing Wigmore, Evidence (1940) §§2263-2266, and that it did not accept the federal rule as to exclusion of evidence obtained by illegal searches or seizures, so defendant's argument on that score was also refused. (See Vol. 35, p. 202 of this Journal. The value of these tests is attacked and defended in Vol. 39, pp. 225, 402, and 411.)