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POLICE SCIENCE LEGAL ABSTRACTS AND NOTES

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Police Officer Who Makes False Arrest Pursuant to Reasonable Information Not Liable for Damages in Action for False Arrest and Imprisonment—Pennsylvania State Police sent a teletype message to Cleveland, Ohio, police department requesting a confidential check on the person named and described. After an answer was made to this request a second message arrived requesting the Cleveland Police to take the subject into custody, stating that a warrant had been issued for the arrest of the person and that the Pennsylvania authorities would extradite if necessary. Defendant officers were ordered to arrest the suspect, which they did over his protest. Approximately eleven days later it was determined that the suspect was not the man wanted and his case was dismissed. He thereupon brought an action for false arrest and imprisonment. The trial court held for the plaintiff, but a subsequent appeal reversed the trial court and the Supreme Court of Ohio affirmed the reversal. *Johnson v. Reddy*, 126 N.E.2d 911 (1955). Balancing the right of an individual to be free from unlawful arrest and seizure against the public interest in safeguarding the community from felons who have sought refuge there, the court said: "We believe that in making an arrest without a warrant at the request of another police agency all reasonable doubts concerning the reasonableness of the information on which the arresting officer acts should be resolved in his favor." On the facts of this case, the court felt that the defendants were entitled to an instruction that they had acted upon reasonable information and thus were not liable in damages to the plaintiff. However, the case was remanded for a retrial on the issue of whether or not the defendants had acted with "all practicable speed" in filing a complaint and warrant against the plaintiff. This is a question for the jury and the burden of proving the justification for any delay in filing the complaint and warrant is on the police officer.

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Requirements for Admissibility of Tape Recorded Confession Examined by Alabama Court of Appeals—Defendant's conviction of murder in the second degree was reversed on the ground that the state had failed to explain satisfactorily why the jury had been separated during the course of the trial. However, in the course of its opinion the court had occasion to discuss at length the requirements of admissibility of a tape recorded confession. *Wright v. State*, 79 S.2d 66 (1955). Although a partially inaudible recorded confession had been admitted over objection in the instant case, the court did not decide whether or not this constituted error in view of the fact that it had reversed on another point. Since the case was being remanded for a new trial, the court made a number of general observations on the requirements for the admissibility of such evidence. The primary requirements are that the accuracy of the recording device, the recording and the voluntary nature of the confession must first be established. The specific question to which the court directed its attention was the admissibility of a tape recorded confession, portions of which were inaudible for one reason or another, and upon this point the court outlined some general rules. Since the sound of the accused's voice will have a great impact on the jury it is apparent that all material statements must be accurately recorded and an instruction by the court cannot

cure a material defect if it exists in the recording. However, since the audible portions of the recording may be of material value, the court should first listen to a play-back out of the presence of the jury, giving defense counsel opportunity to interpose appropriate objections at that time. During this proceeding a transcript of the audible portions should be kept. If the record is inaudible in any material portion, it should be rejected in its entirety unless other competent evidence is supplied to remedy the defect. In this regard testimony of witnesses present at the time the recording was made may be admitted and the entire recording, even though partially inaudible, should be admitted as corroborative of such testimony. If the recording contains illegal evidence, the entire recording should be rejected, unless the illegal portions can be erased therefrom, or kept from the jury in some other manner, since an instruction to disregard will not cure the prejudicial effect on the jury.

Chemical Tests for Intoxication: What Constitutes a Refusal to Submit?—Defendant was arrested and charged with drunken driving. When requested to submit to a urinalysis and blood test for intoxication he refused to do so unless his own physician were present or would administer the test. At the trial of the case testimony of the police chemist as to what such a test would disclose if properly conducted was admitted over objection of the defense counsel. The theory of the prosecution was that the refusal to submit to the test was a proper foundation for an inference of an admission of guilt. On appeal, the Supreme Court of Ohio held that the admission of this testimony constituted prejudicial error. *City of Columbus v. Mullins*, 123 N.E.2d 422 (1954). Conceding that under the amended Ohio Constitution it is proper for the prosecuting attorney to comment on the defendant's failure to testify in his own behalf, the court concluded that the analogy did not follow under the circumstances in this case. Since the defendant had not refused to take the tests, but had merely requested that his physician be present, the burden was upon the prosecution to show that this request was tantamount to a refusal. "In our opinion . . . defendant's request . . . did not . . . amount to such a refusal as would give counsel for the prosecution the right to assert that the refusal amounted to an admission of guilt, nor would it give the jury or the court the right to so consider it."

California Supreme Court Adopts Federal Exclusionary Rule—Defendant was convicted of conspiring to engage in horse-race bookmaking and related offenses. The bulk of the evidence introduced at the trial, over objection of the defendant, was obtained by use of dictographic devices installed in private homes pursuant to an authorization issued by the Chief of Police of the City of Los Angeles. Apparently without ruling as to whether or not the evidence had been illegally obtained the trial judge admitted it, over objection of the defendant, following the established practice under the California non-exclusionary rule. On appeal the Supreme Court of California reversed the conviction, and changed its own prior rulings by holding that evidence illegally seized should be rejected by the courts of California. In other words, California has now joined the group of states following the Federal exclusionary rule. *People v. Cahan*, 282 P.2d 905 (1955) (4–3 decision).

In an exhaustive survey, the majority opinion proceeded to examine the ramifications of the Federal exclusionary rule. Observing that in a long line of decisions the Supreme Court of the United States has established the proposition that the Fourth Amendment is enforceable against the states through the due process clause of the Fourteenth, but that these provisions do not expressly exclude evidence obtained in controvention of their mandates, the court reexamined its non-exclusionary rule in light of the invitation extended to state courts to do so in *Wolf v. Colorado*, 338 U.S. 25 (1949). It concluded that the "minimal standards" of due process had not been met in the instant case. A survey of opinions both pro and con revealed that a majority of the state courts and most of the outstanding scholars of criminal jurisprudence were aligned in support of ad-

mitting illegally seized evidence. Summarizing the arguments in support of the majority position, the court found that such evidence is normally admitted because it is "ordinarily just as true and reliable as evidence lawfully obtained"; it does not protect a defendant from the illegal act which has already occurred; it benefits only the criminal who is allowed to escape by reason of a technical rule of evidence; it does not punish the officers who have violated the law; it allows known criminals to remain at large to plague society solely because of a "blunder" of the law enforcement officer; it is inconstant, inconsistent and easily circumvented in actual operation; and, finally, does not tend to prevent unreasonable searches and seizures. "Despite the persuasive force of the foregoing arguments, we have concluded that evidence obtained in violation of the constitutional guarantees is inadmissible.... We have been compelled to reach that conclusion because other remedies have completely failed to secure compliance with the constitutional provisions on the part of police officers...." Furthermore, to continue to admit such evidence merely serves as an impetus to police officers to continue such practices which are but one degree removed from unlawful conduct connected with the actual trial of a case. Since other remedies have failed to deter police officers from conducting illegal searches and seizures the adoption of the exclusionary rule will impel these officers to rely on legal means to secure their objective of bringing criminals to justice. The court frankly admits that the rule it adopts is no panacea and that illegal searches and seizures will continue to arise in the courts, but concludes that a rigid enforcement of exclusion will bring public opinion to bear on the lawless actions of police officers and will preclude the charge that the courts are, in effect, parties to such practices by condoning them in legal proceedings. To the argument that enforcement officers do not always have a choice between proceeding legally or illegally in apprehending criminals or in obtaining evidence the court demonstrates that this is merely an objection to the constitutional provisions themselves and one which cannot be entertained by the court, which is sworn to uphold the constitution. Concluding that its opinion establishes a judicially-created rule of evidence the court states: "[T]his court is not bound by the decisions that have applied the federal rule, and if it appears that those decisions have developed needless refinements and distinctions, this court need not follow them.... Under these circumstances the adoption of the exclusionary rule need not introduce confusion into the law of criminal procedure. Instead it opens the door to the development of workable rules governing searches and seizures and the issuance of warrants that will protect both the rights guaranteed by the constitutional provisions and the interest of society in the suppression of crime."

A strong dissent deplored the rule declared by the majority opinion. Conceding for purposes of argument that "the illegality in obtaining the evidence was both clear and flagrant" the dissent noted that there was no doubt as to the guilt of the defendant. This, to the dissent, demonstrated the inherent anamoly in the rule adopted by the majority. While purporting to adopt this new rule for the protection of society against infringement of their constitutional guarantees, in reality "the main beneficiaries of the adoption of the exclusionary rule will be those members of the underworld who prey upon law-abiding citizens through their criminal activities. It further appears that the... rule will inevitably lead to unnecessary confusion, delay and inefficiency in the administration of justice... the price that society must pay for the adoption of... a rule of uncertain nature and doubtful value which is 'no more than a mild deterrent at best.'" Although the majority stated that the rule "opens the door to the development of workable rules" it nowhere suggests how these rules will be formulated or how confusion will be avoided. Manifestly, "the exclusionary rule, in the many ramifications of its application to innumerable factual situations, is fraught with such difficulty as to make the formation of satisfactory, certain and workable rules a practical impossibility." The majority opinion is based on a policy evaluation weighing advantages and disadvantages, is not compelled by any constitutional

mandate, adopts an "uncharted course" which the legislature has frequently declined to consider and " 'deprives society of its remedy against one lawbreaker because he has been pursued by another.' "

A brief filed in support of the state's petition for rehearing by the City Attorney and Chief of Police of Los Angeles sets out in detail the consternation with which the *Cahan* decision was received by law enforcement agencies of the state. The brief points out that on the basis of constructions being placed upon the decision by lower courts and prosecutors the issue is "whether man's basic freedoms, to devote himself to productive work, to live in peace and safety with his family and to have security against men of violence and cupidity, are to be nullified through academic determinations, . . . no matter what the cost to orderly society and to its useful citizens." The *Cahan* opinion is characterized as having "an extraordinary impact . . . upon the operations and effectiveness of the Los Angeles Police Department and of other law enforcement agencies and officers throughout this state." A substantial part of the brief seeks to establish that the true facts of the case were not before the court, with the result that both the majority and minority were under the impression that Los Angeles police officers have a "callous disregard" for constitutional rights of others. This alone should justify a rehearing for the purpose of clarification, if not for complete retraction of the decision itself. To allow the case to stand as it presently does will have a serious detrimental effect on efficient enforcement of law and order in Los Angeles, since its literal effect has been construed to impose greater limitations on law enforcement officers than those imposed on ordinary citizens. William H. Parker, the Chief of Police, demonstrates in a forceful and convincing manner that if the court truly means to enforce its words according to their literal meaning that an appreciable number of criminals will never be brought to justice and that the every day duties of police officers, even when entirely disconnected from uncovering crime, will be seriously hampered. By way of illustration a widely publicized suicide attempt by a Hollywood actress is cited. The attempt was foiled by quick action on the part of two police officers who, on the basis of a telephone call from the actress' mother, sped out to the actress' home, forced their way in without warrant, took the woman, some empty bottles, etc., to a hospital where her stomach was pumped, etc. After setting out the facts, Chief Parker notes that under the *Cahan* ruling the officers were guilty of trespass, burglary, disturbing the peace, forcible entry of a dwelling house and destruction of property, detention of a person against his will, dispossession of a person from his habitation, kidnapping, false imprisonment, assault, battery and several violations of the vehicle code, not to mention provisions of the Federal Civil Rights Act. Anticipating that this illustration will be attacked as being an absurd supposition, Chief Parker points out that the *Cahan* and other opinions of the federal courts have not limited their language in any respect and even if it be conceded that no prosecution would be brought or conviction obtained, the point is that officers are sworn to uphold the law. Since the law states, under petitioner's construction of the *Cahan* decision, that a police officer must look to a particular statute for definitive authority before doing any act in execution of his duties, even where it involves such humanitarian principles as the prevention of a suicide, there will be no possibility of action in cases similar to the one cited and in many others with even more serious consequences.

Chief Parker concludes: "If we, who are earnestly and sincerely trying to do our duty in a lawful and efficient manner, who have been repeatedly cited as the model large police force in this nation, who have enjoyed public support to a degree that, if equalled, is not surpassed by any comparable department in the country, if we, despite our efforts to conform, are nevertheless acting in a manner that impels the highest Court of the State to subject us to public censure, then I submit that it is a matter of greatest urgency that we be supplied at the earliest date and with the greatest detail consistent with judicial propriety, with standards sufficient to permit my men to guide their

conduct with a reasonable certainty that they are protected in their performance of their duty."

For the first judicial application of the *Cahan* ruling, see *People v. Berger*, 282 P.2d 509 (Calif. 1955) (abstracted in the Criminal Law Case Notes and Comments section of this issue). See, generally, Allen, *Due Process and State Criminal Procedures: Another Look*, 48 *NW. U.L. REV.* 16 (1953); Comment, *The Federal Search and Seizure Exclusionary Rule*, 45 *J. CRIM. L., C. & P.S.* 51 (1954).