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# POLICE SCIENCE

## NEW PROCEDURES OF SCIENTIFIC INVESTIGATION AND THE PROTECTION OF THE ACCUSED'S RIGHTS

OLIVER SCHROEDER, JR.

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The administration of criminal justice in the common law system is bottomed on shielding the innocent, not convicting the guilty. To effect this purpose truthful facts concerning the crime are vital.

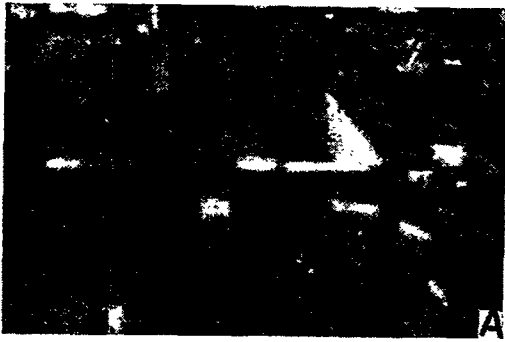
Scientific investigation can be a major source of truthful facts. Herein lies the greatest protection which science can give to a person accused of crime. Recent developments in the United States in the area of scientific investigation have been dramatic. The areas of criminal identification, pathology of homicide, blood, and lawful search provide significant case material.

### CRIMINAL IDENTIFICATION

To identify without error the person accused of a crime eliminates suspicion of those who are innocent. A major advance was achieved in this area last year. For the first time a hidden, automatic motion picture camera filmed an actual bank robbery without the criminals' knowledge. Installed in a thrice-robbed bank at Cleveland, Ohio, through the efforts of the Cleveland Police Department and a commercial camera company, the camera recorded with satisfactory accuracy the armed robbery of \$2376.00 from the bank. A young man and two girl accomplices were the culprits. The half-masked man, accompanied by one girl, entered the bank about 12:20 P.M. April 12, 1957. With a revolver he held seven employees and customers at bay. Under his direction the girl went behind the teller's cages, opened a small shopping bag, scooped in the money. Both criminals fled from the bank, entered the escape automobile driven by the second girl accomplice. All this action occurred within one minute and twenty seconds—while the movie camera silently rolled. Seven persons were eye witnesses. Following nor-

mal procedures they were shown police photographs of known robbers. One male's photograph was partially identified by one witness; others disagreed. Several confusing descriptions were given by the witnesses as they sought to portray from memory what their vision and hearing perceived during a swift emotional crisis. The movie film proved to be a far more accurate witness. By 3:20 P.M., only three hours after the robbery, the film was projected in the Cleveland Police Department detective headquarters. As Chief Frank Story pointed out pertinent, accurate points of identification detectives and scientific identification men observed.

Immediate points of identification accurately proved were: clothing, gait, mannerisms, height (compared to witnesses who stood by the man and girl robbers), age, nationality (of the girl). When witnesses were shown the movies a short time later their recollections of the entire incident were refreshed. Excellent composite descriptions of the robbers were obtained. The male individual previously identified by one of the witnesses as a suspect was proved thereby not to be the robber. Other interesting facts concerning identification revealed by the movie were: the girl by her walk and carriage indicated she might be a professional dancer (actually she was a theatre usherette), she was left-handed, she opened the shopping bag in a professional manner indicating she had worked in a super-market or restaurant where food was taken out (the latter proved correct), she also appeared to be of Italian extraction (also correct), she was a "bobby soxer" in dress. The man was extremely nervous and jumpy indicating a possible dope addict (actually he was an epileptic). Individual photographs of the robbery scene proved to be somewhat blurred (Fig. 1) because the camera



*Figure 1a.* Male robber half masked at left herds customers toward teller's cage. In the rear in front of the swinging gate is his girl accomplice while the male bank manager at right reaches over to turn in bank alarm.



*Figure 1b.* With babushka on head girl robber starts to leave teller's cage



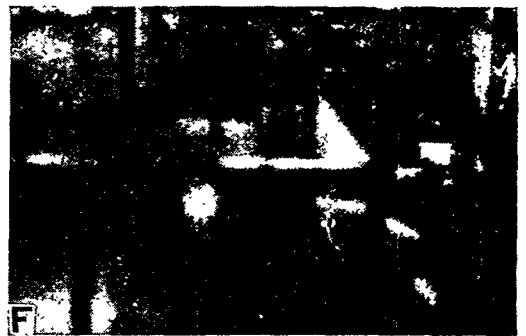
*Figure 1c.* Male robber calls to girl accomplice to return to get money left on teller's counter



*Figure 1d.* Girl robber returns and takes money



*Figure 1e.* Bank customer enters front door as girl robber leaves teller's cage and male robber faces door



*Figure 1f.* Male robber covers new bank customer with gun as female robber comes out the swinging gate. Bank manager at right turns in another robbery alarm.

had only been installed the day before the robbery. Final lens adjustments were not complete although film had been inserted and the camera triggered for action. One fact by chance proved outstanding. A two-man detective team recognized the girl bandit filmed in the robbery scene. She had been

seen in a restaurant near the bank several hours before the robbery in the company of a man and another girl.

Widespread publicity through newspapers (Fig. 2) and television broadcasts now alerted the citizenry, not only of Cleveland and Ohio, but also in



# HAVE YOU SEEN THESE ROBBERS?

**100 Flee Fire at College**

**Miss Escape on Home Run**

**Like Ice Storm**

**By W.H. HULL**  
 A 175-foot fire broke out at the Cleveland College of Business and Administration at 10:30 p.m. today, forcing 100 students to flee the building.

**You Can Win**



**\$300**

**Prizes**

**Eden Undergoes Major Surgery**

## Hidden Camera Identifies 2



Man in a black/white hat led to the arrest of the man and woman who robbed the Cleveland College of Business and Administration. The man was identified as...



Woman in a black/white hat led to the arrest of the man and woman who robbed the Cleveland College of Business and Administration. The woman was identified as...

Figure 2. One of the many daily newspapers' accounts of the filmed bank robbery with accurate identification of two robbers.

several nearby states. The male robber fled to Indianapolis, Indiana, where he viewed himself on a television screen in a public place, heard people discussing the movies, and acquired the sharp feeling of the guilty that all eyes were on him. He voluntarily surrendered himself to the police, stating "I just knew I didn't have a chance. I got as far as Indianapolis and those pictures were there ahead of me". The girl who drove the escape automobile gave up in Cleveland when she saw the pictures of her two accomplices, even though she escaped being photographed, as she had waited outside in the get-away car. The girl who actually entered the bank did not hear or read of the motion pictures. An anonymous telephone call to the Cleveland Police, however, stated that the girl being sought could be found at a certain address. Detectives arrested her there. Within 36 hours all the robbers were in police custody (Fig. 3).

Certain indirect values undergirding accurate criminal identification of an accused are introduced by this experience:

1. Accuracy of the eye-witness is very limited—confusion, emotion, swift action overwhelm man's senses. The motion pictures aid greatly in sharpening the accuracy of witness's statements. The actual sequence of events during the robbery is literally impossible to determine from one or several witnesses. The movie completely removes these sequence inaccuracies and presents a truthful flow of events. Experienced investigators, even after viewing the movie film several times, still failed to detect important incidents which occurred during the robbery.

2. Location of silent evidence like fingerprints or palm prints is readily determined by watching the films to determine where the robbers' hands are placed on furniture, shelves, counters or walls. Scientific identification men can concentrate on these locations, eliminating a need for the time and labor of a mass search (Fig. 4).

3. Citizen aid in rapidly locating the criminals through use of mass media publication is probable.

4. The Grand Jury at the hearing to determine whether to indict the accused for armed robbery can render a swift, sure decision as could the trial jury when called upon to determine guilt or innocence. The motion pictures are the best evidence of accurate identification.

5. Pleas of guilty in open court given by all three defendants in this bank robbery case were inevitable with the motion pictures as evidence, thus eliminating the necessity of a criminal trial. Time and effort were saved. Acceleration of the administration of criminal justice was accomplished.

6. If a trial be necessary, use of the movies as evidence of guilt of the defendants charged as well as use to refresh the recollection of a confused witness assures the marshalling of accurate facts for the jury's decision.

7. Prevention of crime is the true goal of the administration of criminal justice. The hidden motion picture camera with satisfactory publicity of this fact in places where money or valuables are concentrated will add a major deterrent force to robberies.

Above all, the opportunity to acquire by scien-



Figure 3. Three-robbers, all in police custody, within 36 hours after the robbery



Figure 4. Swinging gate touched by girl robber as she entered teller's cage provided good fingerprints

tific methods an accurate identification of a criminal is the real value of this new procedure. Innocent men or women need not be falsely accused. The human eye—often the paragon of inaccuracy—is being replaced by the eye of science, a responsible source for the accurate reporting of human events.

#### THE PATHOLOGY OF HOMICIDE

From the scientific laboratory often comes evidence useful to the accused in a criminal trial. A modern coroner's or medical examiner's office assures the maximum collection of scientific evidence to determine the cause and manner of death. The person accused of homicide benefits. Scientific facts determined may lend credence to the accused's defense. The trial jury has opportunity to weigh all facts before rendering a verdict. The case of *Pruitt v. State*, 270 Pac 2d 351, (Oklahoma Criminal Court of Appeals, 1954) is a case in point.

Defendant Pruitt was accused of murdering his wife at home. No witnesses to the incident were present; a nine-year-old daughter was asleep in another room. Sharp controversy developed when Pruitt claimed his wife committed suicide. The medical condition of the victim's head became a crucial point in the case. Before considering the scientific facts acquired concerning the pathology of the death, other prosecution evidence emphasizes the difficulty confronting the jury on the issue of guilt or innocence.

Pruitt and his wife were not happily married. She was in the state of menopause, very emotionally disturbed, was under a doctor's care, and had recently threatened suicide several times. Mrs. Pruitt displayed jealousy toward her husband especially concerning waitresses in the restaurant which Mr. Pruitt operated with his wife's help.

Mrs. Pruitt's body was observed by the police in the early morning after defendant had summoned them. She was lying in a pool of blood in her bed. A .22 calibre rifle beside her was pointing toward her head. Pruitt admitted delaying a call to the police after first finding his wife in her bedroom when he arose that morning. He said he first fed the rabbits they kept and let the dog out. He appeared calm to the police, denied killing his wife and stated that she killed herself. Pruitt admitted having much trouble with his wife, ever since their marriage. He recognized her mental illness and told their daughter that mother was sick and to humor her. No fingerprints were found on the rifle; a bloody man's sock was found in the bed



Figure 5. Mrs. Pruitt's head with bullet wound to right and laceration to left.

sheet beside Mrs. Pruitt's body. Defendant Pruitt had a reputation for good character.

With only these confusing bits of circumstantial evidence present, the silent evidence acquired from the forensic pathologist as to the cause and manner of death loomed large.

At the trial the prosecutor offered testimony which included crucial medical facts and medical opinions. The facts were these: a bullet hole existed in the skin of Mrs. Pruitt's forehead and to its right a semicircular laceration was present (Fig. 5). After removing the scalp there appeared a stellate fracture of the right frontal bone underneath the laceration and a bullet hole in the bone to the left of it (Fig. 6). The prosecution contended defendant Pruitt struck his wife on the forehead with a blunt instrument causing the skin laceration and radiating skull fracture beneath, then shot his wife with the rifle. Two separate traumas were alleged to have occurred.

The defendant was his only witness. He denied the crime emphatically.

The jury convicted Pruitt of murder.

After the trial the pathologist who had testified for the prosecution began to question his medical opinion of two traumas. Being a scientist he was dedicated to the pursuit of truth. He prepared a report of the case and forwarded this to eminent forensic pathologists in Harvard Medical School in Boston, Western Reserve Medical School and the Cuyahoga County Coroner's Office in Cleve-



Figure 6. Bullet hole through Mrs. Pruitt's skull with fracture lines emanating from point to left of the hole. Wide, straight horizontal line was made by pathologist during autopsy.

land, and the Medical Examiner's Office in New York. Scientific opinion was requested from each of these medical institutions. The reasons for the medical argument given for the prosecution were set forth in the report as follows:

1. The bullet hole does not constitute the center of the radiating fracture and is therefore not believed to be the cause of it. The center of the fracture is located underneath the semicircular skin laceration.

2. It is unusual for bullet perforations of the skull to cause at the point of entrance long fracture lines radiating extensively towards and through the base of the skull as in this case.

3. Bullet holes of entrance involving the skull are sharply outlined. The bullet hole in this case has ragged edges with the outer table chipped off, as if there would have been a preceding trauma (fracture) weakening the bone.

4. One part of the fracture line bordering upon the bullet hole from below appears to be missing as if 'shot away'. It continues not from the left outer rim of the bullet hole but from that part of the outer table which has been chipped off.

5. No communication was found between the bullet wound of the skin and the semicircular laceration.

The prosecution's medical witness closed with these questions and appeal:

"The defense on the other hand claimed that

this was a contact wound and that the force of the explosion caused the fracture, as well as the skin laceration.

"The jury found the defendant guilty, and he was sentenced to life imprisonment.

"Despite my testimony, I have developed doubts about its validity and do not want the fate of perhaps an innocent man on my conscience. It is for that reason that I would like to elicit your expert opinion in this matter.

"Is it after all possible that this was a contact wound, and that the bullet caused the fracture itself? Would it perhaps be possible that contact was made between skin of the forehead and muzzle of the gun at the right edge of the bullet hole but not on its left edge? This would explain the blackening of the skin left of the bullet hole, which was absent to the right of it. It would also cause expansion of gases to the right side underneath the skin, which may have caused the semicircular laceration of the skin, despite the fact that neither I nor the two physicians who first conducted the autopsy found any direct connection between the two wounds. I was, of course, greatly handicapped by the fact that the body was completely embalmed and that the embalmer had done his best to restore the skin around the wounds.

"Your interpretation in this seemingly complicated matter will be very greatly appreciated."

Each reply from the four independent scientific centers of forensic pathology contained similar medical opinion on this perplexity.

One such opinion submitted from Cleveland, Ohio, by Dr. Lester Adelson, pathologist and chief deputy coroner of Cuyahoga County, after consultation with Dr. Samuel R. Gerber, Cuyahoga County Coroner, represented the general conclusions of all the forensic pathologists consulted:

"The suspicions of the police were aroused apparently by the victim's forehead which presented what appeared to be two separate injuries, although the husband stated that she had shot herself and that he had not in any way molested her. This immediately raises the vital issue of the nature of the two injuries, and whether or not they could both have resulted from a single *near type gunshot*. . . .

"The muzzle blast could have traveled (or diffused, if you wish) between the soft tissues and the pericranium, elevating the soft tissues, and then burst forth through the skin, producing an exit type injury; not only muzzle blast (gas, fragments of powder, etc.) but also a fragment

of the bullet shaved off in its passage through the bone, spicules of bone and/or debris could have issued *from* the opening. The most important aspect of this crescentic injury is whether it represents the site of exit of something from below. Our study of the pictures and of your description lead us to believe that it represents the site of exit. The irregular lacerations which you describe, and which are visible in the picture, suggest to us an explosive type of injury rather than a contused laceration resulting from mechanical violence applied to the outside. Your description of the skin injury does not mention any abrasions of the margins, whereas in your autopsy description you delineate in detail the ragged tears extending peripherally. From all this we conclude that the crescentic laceration did *not* result from mechanical violence applied *directly* to this area from the outside.

"Thus the two separate injuries of the forehead could be produced by a single trauma, namely a *near type* gunshot wound. Two separate applications of force are in no way necessary to produce this combination of injuries. Although it may not be possible to rule out a second trauma, the entire picture is readily explained on the basis of a single *near* gunshot wound.

"The linear stellate fractures which are described and depicted are seen frequently with gunshot wounds of the skull. In our experience they are quite common. Again, a single trauma to the head, namely a gunshot wound, explains both the perforation of the skull and the linear fractures. A blunt impact to the head which would produce such extensive linear fractures as are found in this case should be accompanied by some depression of the fragments immediately below the point of impact. However, there is no evidence whatsoever of depression either by description or in the photo. Moreover, had the skull fracture been sustained prior to the infliction of the gunshot injury, one might reasonably expect to find that large fragments of bone had been driven into the brain by the force of a bullet striking an already damaged and weakened skull. Thus we conclude that the irregular linear fractures of the skull are not of such a nature to have been caused by a blunt impact. We are forced to the conclusion that they were produced by a mechanism which also explains the two separate skin injuries, namely a gunshot wound. Thus the statement of the defense counsel that this type of gunshot wound could cause the

radiating fractures as well as the perforation of the frontal bone and the skin lacerations is *not* at variance with our experience in other instances of this variety of injury."

Armed with this scientific evidence in support of defendant's theory of suicide, the prosecution's medical witness presented the matter to the prosecution and defense. A motion for a new trial based on newly discovered evidence was ordered by the Criminal Court of Appeals of Oklahoma. The court stated:

"The circumstances herein are close; there is proof of good character of the defendant; and a positive denial by him. Our situation is most acute in this case, the line between guilt and innocence herein is so thin that we cannot in good conscience permit this conviction to stand. It has been said it is better that a hundred guilty men go free than one innocent man suffer an unjust conviction. It is more than likely that the new evidence by these pre-eminent pathologists would change the result of the case."

At a new trial, defendant had ample opportunity to utilize these scientific facts and opinions to support his defense. The jury determined, after considering all the circumstantial evidence including the new scientific matter, that Pruitt was still guilty of murder for he—not his wife—had shot the rifle. The appeals court affirmed this finding of fact. *Pruitt v. State*, 290 Pac 2d, 424 (Oklahoma Criminal Court of Appeals, 1955). The verdict carried with it automatically a sentence of life imprisonment. The jury appended to the verdict a recommendation of parole for Pruitt when he became eligible.

Forensic science aided defendant Pruitt only to the extent of providing reasonable support for his defense based on suicide. Forensic science could not reveal who pulled the trigger of the rifle. The jury, trial judge, and reviewing court were aided by removing the doubt and confusion over the scientific possibility of suicide. There remained the question of the physical fact whether Mrs. Pruitt, with her body size and arm's length, could have possibly shot herself. The jury, trial judge, and reviewing court determined that this was a physical impossibility with the long-barreled rifle involved.

Scientific procedures in the pathology of homicide can aid the accused in several ways. Reasonable clarification of the cause and manner of death is available for the accused to carry the jury closer to the truth in a case of confused circumstances. Scientific facts and opinions can be marshalled from several laboratories in different po-



litical jurisdictions, thus permitting the jury to act upon all available scientific evidence—not merely that which is available in its own jurisdiction. Defense counsel in other homicide cases throughout the United States can become acquainted with the availability of such scientific help. Defendant Pruitt in the last analysis appears not to have benefitted from forensic science in the instant case. He did acquire a second trial to present his version of the elusive element of truth. A second jury, weighing all the imponderables, still held against him, however. The administration of criminal justice did profit from Pruitt's case. A scientific procedure to aid an accused in alleged homicide cases was demonstrated. The rights of future defendants will be better protected as the result of the experience of defendant Pruitt.

#### BLOOD

Science is utilizing body fluids more and more in the investigation of crimes. Urine provides a determination of alcoholic influence on the human body especially in traffic crimes. The presence of seminal fluid on clothing is an important element for consideration in sex assaults. But by far the most important body fluid is blood. Through the process of typing blood, a person accused of a crime may be scientifically excluded from guilt.

In the quasi-criminal proceedings to determine the paternity of an infant the accused father may be greatly aided by blood typing of the mother, infant, and himself. The trial to determine paternity in the State of Ohio is held in the Juvenile Court. A jury of twelve citizens must render the verdict for or against the accused male. Scientific evidence which excludes the male from possible parenthood was rendered in 33 cases of a recent series of 200, or in over 15% of the cases investigated, where the issue of parenthood was presented. In 30 of these 33 cases the mother who charged the accused with fathering her child cancelled the charges voluntarily when confronted with the medical expert's opinion of exclusion based on scientific blood typing. In the three cases which went to trial all three decisions were eventually rendered in the accused male's favor thereby upholding the truth of the scientific determination which excluded this male from fatherhood. (Roger W. Marsters, "Determination of Nonpaternity by Blood Groups", *JOURNAL OF FORENSIC SCIENCES* 2: 15 (1957)).

One of these cases, however, presented an interesting development. After the scientific evidence excluding the accused male was presented, the

prosecuting mother contended that this was in error because the child in question bore a striking resemblance to the male defendant. Juvenile Court attaches verified this unusual resemblance when reporting on the case to this reporter. The jury preferred their own visual evidence of fatherhood over the scientific blood test which excluded the defendant. The verdict held the accused to be the father. Upon appeal of this decision to the Ohio Court of Appeals the verdict was reversed as "manifestly against the weight of the evidence". After retrial of this issue before another jury, a verdict in the male accused's favor was rendered. Science triumphed—a trifle late perhaps, but better late than never!

The issue of how to resolve a jury verdict which is contrary to the scientific fact of exclusion first confronted the Cuyahoga County Juvenile Court in *State ex rel Steiger v. Gray*, 76 Ohio Law Abstract 393 (1957). Judge Albert Woldman in a pioneering decision for the State of Ohio summarized the problem:

"The burden of proof was upon the complainant to make out her complaint and charge by a preponderance of the evidence.

"These are the facts preponderating in favor of the complainant: her own and her mother's un rebutted testimony; the child being exhibited to the court for the purpose of showing physical resemblance to defendant; refusal of defendant to submit to cross-examination on constitutional grounds; and his failure to testify on his own behalf.

"Giving full weight to all these factors, has the complainant succeeded in proving the guilt of the defendant by a preponderance of the evidence—notwithstanding the testimony of the expert serologist that the blood grouping tests establish the exclusion of the defendant as the father of the child?"

The Court then continued by emphasizing the need for law to follow science to obtain truth:

"It is apparent that in Ohio, legislative law has moved more slowly than scientific research in giving full weight to blood grouping tests which definitely exclude paternity.

"But the court cannot close its mind to the great advances in the science of blood grouping tests since 1939, and to the modern recognition by medico-legal resources of the high value of such blood tests as a wholesome aid in a quest for truth in the administration of justice in matters relating to contested paternity. This court further believes that the near unanimity

of medical and legal authorities on the question of the reliability of blood grouping tests as an indicator of the truth in questioned paternity cases, justifies the taking of judicial notice of the general recognition of the accuracy and value of the tests when properly performed by persons skilled in conducting them. The law does not hesitate to adopt scientific aids to the discovery of the truth which have achieved such recognition.

"This court has the duty to determine if the conditions exist which made the biological law operative. That is to say, were the tests properly made, and are the results as reported, free from error? If so, the exclusion of the defendant as the father must follow irresistibly.

"Enlightened judicial acceptance of the verdict of science must result in the conclusion that where blood grouping tests in a bastardy proceeding, prove non-paternity, this court is not warranted in closing its mind to the conclusion which science declares is established—unless there is proof that the tests were not properly made, or that conditions did not exist to make the biological law operative."

A final decision of not guilty was then rendered by the judge who tried the facts of the case upon waiver of a jury by the parties:

"In accordance with enlightened judicial acceptance of the high value of blood-grouping tests properly conducted, I hold that in the absence of any competent proof that blood-grouping tests establishing non-paternity were not properly made, the results of such tests, scientifically conducted and objectively made by doctors expert in such field should be given such great weight by the court that the exclusion of the defendant as the father of the child, follows irresistibly.

"I hold, further, that because this great weight must be accorded to the blood grouping test results as testified to by Dr. Marsters, complainant has failed to prove the guilt of the defendant by a preponderance of the evidence.

"Accordingly, I find the defendant not guilty as charged in the complaint."

As the science of blood typing progresses new investigative techniques will emerge. Perhaps the day is coming when an individual's identity could actually be established "on the basis of his own particular combination of blood factors". The fingerprint of blood may become a reality. False accusations of innocent persons should be reduced thereby as science continues relentlessly to un-

cover a maximum of truth in any criminal situation.

#### LEGAL SEIZURE OF SCIENTIFIC EVIDENCE

Scientific procedures in criminal investigations often must rely wholly on submission of materials for laboratory analysis. The acquisition of such materials may invade constitutional protections granted to the accused. Without acquisition of this real evidence no crime can be charged; with acquisition of it the accused may be subjected to unconstitutional indignities. To balance society's interest and the individual's right is a delicate judicial task.

Three recent court decisions illuminate the subject. Their facts are important.

In *Rochin v. California*, 342 U. S. 165 (U. S. Supreme Court, 1952), police officers broke into defendant Rochin's home seeking illegal narcotics. Defendant grabbed two capsules lying on the table and swallowed them. The officers arrested Rochin, took him to the hospital and directed doctors to extract the capsules with the use of a stomach pump. Rochin violently objected, orally and physically. The capsules were recovered. Scientific tests substantiating the powder within the capsules as morphine were the primary evidence to convict defendant of illegal possession of narcotics.

The second case involved extraction of blood with a hypodermic needle by a physician from defendant Breithaupt, under a police officer's direction. Defendant was unconscious at the time so he registered no violent objection, but neither did he give consent. The incident arose out of a traffic accident in which Breithaupt's truck killed a person. A nearly empty whiskey bottle on the car seat beside Breithaupt and the smell of liquor on the unconscious man's breath created the suspicion he was driving under the influence of intoxicating liquor. The accurate, scientific blood analysis revealed a blood alcohol level of 0.17% which was .02% above the accepted medical standard of 0.15% designated as "under the influence". This scientific evidence taken from defendant's body without consent became important evidence. He was convicted of traffic manslaughter. *Breithaupt v. Abrams*, 77 S. Ct. 408 (U. S. Supreme Court, 1957).

A most recent case was concerned with illegal narcotics hidden by the accused in his rectum. Heroin within a rubber bag had been deposited there by defendant Blackford as he sought to import the drug illegally from Mexico into the

United States. At the customs station he was stopped. Asked to take off his coat by the officer, accused displayed hypodermic needle marks on his arm. Questioned as to his being an addict, he readily admitted that fact. On request he removed all clothes. A greasy foreign substance was observed around his anus. Blackford then admitted possession of heroin in a bag in his rectum. He tried to remove it unsuccessfully. The officers took defendant to the hospital where defendant refused to cooperate on the removal and in fact violently fought the procedure. Eventually the bag and its contents were retrieved; scientific tests revealed heroin and became evidence. Defendant was convicted. *Blackford v. United States*, 247 F 2d 745 (U. S. Court of Appeals, 9th Circuit, 1957).

In all these cases, scientific tests were crucial to the prosecution's case. Without such tests convictions would undoubtedly have been most difficult, if not impossible to obtain. The rights of the accused in all three situations involved the privilege against incriminating himself, the right to be free from unreasonable search and seizure, and the right to have his liberty protected unless deprived by criminal investigation which meets the standard identified as "due process of law".

The judiciary repudiated the police officer's actions in the *Rochin* case. Use of the stomach pump to acquire real evidence for scientific analysis was held illegal.

"This is conduct that shocks the conscience. Illegally breaking into the privacy of the petitioner, the struggle to open his mouth and remove what was there, the forcible extraction of his stomach's contents—this course of proceeding by agents of government to obtain evidence is bound to offend even hardened sensibilities. They are methods too close to the rack and the screw to permit of constitutional differentiation".

To obtain blood with a hypodermic syringe for an alcoholic determination test was held legal, however, in the *Breithaupt* case.

"The blood test procedure has become routine in our everyday life. It is a ritual for those going into the military service as well as those applying for marriage licenses. Many colleges require such tests before permitting entrance and literally millions of us have voluntarily gone through the same, though a longer routine, in becoming blood donors. Likewise, we note that a majority of our States have either enacted statutes in some form authorizing tests of this nature or permit findings so obtained to be ad-

mitted in evidence. We therefore conclude that a blood test taken by a skilled technician is not such 'conduct that shocks the conscience', nor such a method of obtaining evidence that it offends a 'sense of justice'. This is not to say that the indiscriminate taking of blood under different conditions, or by those not competent to do so may not amount to such 'brutality' as would come under the *Rochin* rule. The chief law-enforcement officer of New Mexico, while at the Bar of this Court, assured us that every proper medical precaution is afforded an accused from whom blood is taken."

"The test upheld here is not attacked on the ground of any basic deficiency or of injudicious application, but admittedly is a scientifically accurate method of detecting alcoholic content in the blood, thus furnishing an exact measure upon which to base a decision as to intoxication. Modern community living requires modern scientific methods of crime detection lest the public go unprotected. The increasing slaughter on our highways, most of which should be avoidable, now reaches the astounding figures only heard of on the battlefield. The States, through safety measures, modern scientific methods, and strict enforcement of traffic laws, are using all reasonable means to make automobile driving less dangerous.

"As against the right of an individual that his person be held inviolable, even against so slight an intrusion as is involved in applying a blood test of the kind to which millions of Americans submit as a matter of course nearly every day, must be set the interests of society in the scientific determination of intoxication, one of the great causes of the mortal hazards of the road. *And the more so since the test likewise may establish innocence, thus affording protection against the treachery of judgment based on one or more of the senses.* (Emphasis added). Furthermore, since our criminal law is to no small extent justified by the assumption of deterrence, the individual's right to immunity from such invasion of the body as is involved in a properly safeguarded blood test is far outweighed by *the value of its deterrent effect due to public realization that the issue of driving while under the influence of alcohol can often by this method be taken out of the confusion of conflicting contentions.*" (Emphasis added).

The forcible removal of the bag containing

heroin was also defined as a legal procedure in the *Blackford* case.

"An ancient exception to the search and seizure prohibition is the right to search the person of an individual incident to a lawful arrest. . . . The underlying rationale for the exception is that if the culprit, in the vernacular, 'be caught with the goods', the officers should have the right to dispossess him of the instrumentalities or fruits of the criminal activity. . . .

"That doctrine is applicable to the instant facts. The arrest was lawful. An arrest without warrant is valid if the officer has probable cause for believing that the suspect has or is committing a felony. . . .

"The customs officer did not exceed his authority in detaining appellant nor by asking him to remove his coat. . . . The telltale needle marks and admission that he had been convicted of using narcotics furnished sufficient cause for requiring a further and more complete physical examination. That more detailed examination, revealing the greasy and alien substance around the rectal opening, and appellant's admission that he was carrying narcotics, leave no doubt as to the legality of the ensuing arrest. The customs officer would have been derelict in his duty had he not done as he did. Indeed, appellant does not question the validity of the arrest.

"Having arrested Blackford, the officers were entitled to search his person and to retain incriminating evidence uncovered by the search.

"As to the actual physical examinations, they were conducted by qualified physicians, under sanitary conditions, with the use of medically approved procedures. This kind of examination is a routine one which countless persons have undergone. It is an uncomplicated and non-hazardous procedure. It normally is not painful to a healthy person. Pain results only when the patient refuses to cooperate fully, as Blackford did here. Consequently, whatever pain Blackford endured was due to his actions in attempting to impede the examination. It was self-inflicted. The officers did not exert more than the least amount of force necessary to enable the doctors to examine the appellant. There is not the slightest suggestion in the evidence of threats or attempts to beat or strike him. . . .

"The Court will take judicial notice of the fact that the Mexico-California border is one of

the major centers for the importation of narcotic drugs into the United States. Moreover, we are told in the record that between 18 and 20% of the international traffic in narcotics in this area is conducted by smuggling the drugs in various body cavities. . . .

"There is nothing in the Bill of Rights which makes body cavities a legally protected sanctuary for carrying narcotics. It is not per se violative of the Constitution to remove foreign matter from body cavities any more than it is to force a person with narcotics in a clenched fist to open his hand."

General conclusions can be made after a close analysis of these cases.

1. The privilege against self-incrimination will apply only to the compulsion of oral testimony from an accused, not to the forceful taking of real evidence from the body for scientific identification.

2. A forceful taking by medical practitioners in sanitary surroundings is a primary requisite.

3. Extensive community experience in the type of taking will aid in validating the procedure.

4. The complexity of the law enforcement problem under the time and place concerned will be taken into account to determine the legality of the forceful taking.

5. The combination of a lawful procedure like arrest with the forceful taking will help to legitimize the taking.

6. Other evidence indicating the crime which the forceful taking corroborates will also aid to make such a taking constitutional.

Lawful seizure from the accused is of primary concern to protect the dignity of the human being in a civilized society. Judicial decisions, mindful of the truth and accuracy of scientific tests on real evidence, have allowed wider use of the forceful taking of such real evidence. After all, the scientific procedures may prove the accused innocent. The responsibility of the accused to accept the taking of real evidence for such tests under the conditions listed above is another obligation assumed in today's emerging scientific society. It rests with the courts to control the acceleration of these scientific procedures in their clash with the rights of the accused. The three recent cases considered above indicate the judiciary is accepting the challenge and responding wisely.