

1932

## Editorial: Skeletons in the Legal Closet

Wilbur A. Schmidt

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### Repository Citation

Wilbur A. Schmidt, *Editorial: Skeletons in the Legal Closet*, 16 Marq. L. Rev. 120 (1932).

Available at: <https://scholarship.law.marquette.edu/mulr/vol16/iss2/4>

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# MARQUETTE LAW REVIEW

February, 1932

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VOLUME XVI

MILWAUKEE, WISCONSIN

NO. TWO

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Published December, February, April, and June by the students of Marquette University School of Law. \$2.00 per annum. 60 cents per current number.

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## EDITORIAL

### SKELETONS IN THE LEGAL CLOSET

Again the mouldy traditions of the legal profession have been invaded. On this occasion the tranquil routine of the barristers has been rudely disturbed by a scientific nightmare—"truth serum" and the "lie detector."

This latest bit of scientific ingenuity tends to reverse the theory of modern justice to read "guilty until proved innocent." It would brand all men potential liars. It takes one back to the days of witchcraft when the proof of innocence or guilt rested upon such absurd guarantees of justice as the burning of one's hand with a red hot iron and the subsequent plunging it into oil. The acquittal or conviction depending upon the length of time required for healing. It recalls

the torturing of victims to wring forth confessions—glorified third degree methods. All of these things are repulsive to human understanding and repugnant to modern justice and have been relegated to the darker pages of history. Yet science is determined to drag forth the legal skeletons from their closets and glorify the effectiveness of its latest ingenious devices by flinging over them a disguise—the cloak of immature experimentation.

The administration of justice is a serious matter and should remain unhampered instead of being forced to submit to well meaning experiments in the realm of science.

The adoption and approval of such "truth telling" devices is a vicious act designed inevitably to lead the judicial machinery of this nation toward a cleverly disguised superstition.

It may be well to review the history of the mechanical contrivance known as the "lie detector." The ingenuity of August Vollmer, member of the famous Hoover Crime commission contributed this stumbling block to modern civilization. Its scientific name is "Pneumo-Cardio-Sphygmometer which literally means — "Lung-Heart-Blood Pressure Indicator." It consists of two leather plates which go under the arms on either side of the breast and a chain which holds them in place from the back. A rubber tube is wound around the arm to register blood pressure.

The first martyr to Mr. Vollmer's brain-child was Earl Mayor who was convicted and sentenced to life imprisonment as an habitual criminal. The "lie detector" was used to obtain the confession of the killer of James E. Bassett by subjecting him to the detector for six or eight hours a day for many days until the confession was made, according to prosecuting attorney E. D. Colvin of Seattle.

Has it ever occurred to Mr. Vollmer that the habitual criminal can lie so convincingly as to escape detection by his device and that the novice becomes so confused at such an inquisition that an excitable state is a natural result? Has it ever occurred to Mr. Vollmer that his invention will be a great aid in releasing the perfect liar and convicting the scrupulous conscientious defendant? Has Mr. Vollmer ever given any thought to the fact that every human is constituted differently and that his instrument deals with all of them in the same manner? Nor could the inventor have been greatly disturbed by that fact that mechanical contrivances have a vicious reputation of being far from infallible. The very first qualification of any device employed to seek truth must of necessity be its infallibility. Another prerequisite would be practicability which would obviously entail an adjustment to the person and individuality of each subject to whom it is applied.

The truth serum which is designed to act upon the suspect's mental powers in such a manner as to break down his will and force a confession while the individual is in a sub-conscious coma is the greatest fraud of the two. Its accuracy is mere scientific theory and vague speculation. It is akin to the mysterious powders of Indian fakirs, ancient medicine men, and the love potions advertised in cheap magazines to collect the shekels of unsuspecting sheiks.

The very inception of a "will-breaking" preparation is repugnant to the law of man. It violates the most sacred code of humanity by destroying the discretionary powers of man. Taking away a man's free will by any artificial or temporary process is a dastardly crime against the elementary code of morality. The preparation acts as a drug and brings forth a confession which is claimed to be valid! The fallacy of the doctrine in its fundamental moral defects is too obvious to discuss further.

The legal side of the question is even more convincing. It has long been held as a general rule of law that involuntary confessions were rendered inadmissible as evidence against the accused. Obtaining the confession of a man by rendering him unconscious and then recording the incoherent babblings of his sub-conscious mind is a far stronger case of involuntary confession than the tortures of a gruelling third degree. When courts are inclined to glance favorably toward such undesirable unethical practices of "progressive justice" it is high time to investigate the soundness of such notions.

Article I, Sec. 8 of the U. S. constitution granting the accused the right to refuse to testify against himself is regarded as an invulnerable guardian of the defendant's rights. Yet courts are inclined to construe liberally those things which may be classed as something for the common good.

True at the outset courts have been inclined to regard the new truth gleaning devices with a bit of skepticism. Nevertheless the legality of the confession obtained by the detector in the Seattle case was declared valid and a subsequent conviction sustained. Its usage in cases where the consent of the parties have been obtained has been approved. The "lie detector" was introduced in a case at Appleton (Wis.), and the "truth serum" was recently produced in a Dodge county case and then abandoned. It was given a test in the Dane county district attorney's office at Madison by Fred Risser, district attorney, in the early part of December and made its Milwaukee premier at a much earlier date. True, the courts have proceeded with caution up to the moment. Both parties have been asked to consent to the test and upon protest of either party the demonstration has been abandoned.

It would be interesting, however, to contemplate the effect produced upon a court or jury in a case where the serum or detector is proposed and one of the parties enters a vigorous protest. Could there be a more skillful manner of blackening the character of the remonstrator? Granted that the jury would be instructed to disregard the incident in arriving at its decision and the bench would be presumed to give it no serious thought—the *fact remains that the irreparable damage has been done!*

The time is near at hand when jurisdictions and barristers will unite in declaring these discoveries invaluable for the progression and efficient administration of real justice. Subsequently will follow the decisions that since the gleaning of the truth from witnesses is essential to the best interests of justice, and the principal business of the courts, then it is only fair to assume that a scientific contrivance or chemical which has for its purpose the promotion of truthful testimony can validly be applied to a witness and a conviction sustained upon confessions received (as in the Seattle case) or evidence given during its application.

Of course, the accused is privileged to refuse to testify at all. But the effect upon the court or jury is obvious.

It must be remembered that these instruments (regardless of the good intentions which prompted their invention) are mere mechanical contrivances or chemical concoctions far removed from any reasonable infallibility. As this editorial is being written there appears in a current daily the following paragraphs worthy of reproduction here:

“Use of the “lie detector” and “truth serum” in police work smacks of the charlatanism of the middle ages,” says Dr. Andrew I. Rosenberg, Milwaukee alienist.

“A hardened criminal could lie without being caught by the machine, while many an innocent person, from fear of being suspected, would become excited and be unjustly recorded as lying.

“As to the serum,” which he says hasn’t been proved accurate. “it is merely the substitution of finesse for the brutality of the third degree. And legally,” he holds, “a man cannot be compelled to be a witness against himself.”

Thus even persons outside of the legal profession are aware of the dangers which are certain to arise if these immature inventions are given legal sanction under a false conception of judicial progress. There remains but one logical course for far-seeing justices to take—the absolute refusal to sustain convictions upon evidence or confessions wrung from unsuspecting martyrs with the aid of noble but useless scientific experiments. Justice is too sacred to allow itself to be upset or persuaded by an ingenious bit of science or chemistry which

would tend to reverse the entire American theory of justice (branding all men potential liars) and violate the most fundamental of moral laws by breaking down the free will of man. The administration of justice is too delicate and serious a task to be tampered with by employing immature, frivolous, brain-children of well meaning but misdirected and impractical scientific minds. We may pledge co-operation in the discovery of some mysterious "truth telling" power or device. But to grasp at the first imperfect "legal-scientific" straw for a false salvation from an unfortunate existing evil—the trait of some people to utter untruths—is utterly illogical and fatal to the efficient administration of true justice and all that it implies!

And until a more tried and successful method is proved we will be forced to content ourselves with the moral force and obligation of the oath taken with the help of God!

WILBUR A. SCHMIDT, '32.

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### A TRIBUTE

Oliver Wendell Holmes has resigned from the United States supreme court on the eve of his ninety-first birthday which he will celebrate on March 8. The veteran justice sent his resignation to the president Tuesday, January 12. He wrote:

"The condition of my health makes it a duty to break off connections that I cannot leave without deep regret after the affectionate relations of many years and the absorbing interests that have filled my life.

"But the time has come when I must bow to the inevitable.

"I have nothing but kindness to remember from you and from my brethren.

"My last word should be one of grateful thanks."

Serving on the bench of Massachusetts and the United States supreme court, the son of the noted writer, has rounded out 50 years of meritorious judicial service. Appointed by President Roosevelt in 1902 the aged justice was entitled to retire on full salary 19 years ago but preferred to remain in active service completing 29 years of legal work on the supreme court bench last December.

He disliked being called a "dissenter" but was known to the public and profession alike for his emphatic dissenting opinions. During the present term his physical condition was such that he was able to follow the printed copy of opinions with difficulty. His voice was so weak as to carry but a few feet. His enunciation had long been indistinct.