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STATE CAPITOL  
PHOENIX, ARIZONA

July 9, 1970

DEPARTMENT OF LAW LETTER OPINION NO. 70-5-L (R-67)

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REQUESTED BY: ALLEN COOK, Director  
Department of Corrections

QUESTION: Does the Department of Corrections have the authority, under the Constitution and present law, to require persons, while committed to this Department, in an institution, to provide urine or blood samples for laboratory testing?

ANSWER: Yes, as to persons confined in an institution under the jurisdiction of the Department of Corrections, as outlined in this opinion.

Regarding inmates, two principles must first be discussed. The first is the status of a convict in a state institution; and the second concerns the general power of prison officials over said inmates in the general regulation and administration of the prison.

It is now generally recognized throughout all jurisdictions in the United States that prisoners do not lose all of their constitutional rights and especially not the privilege against self-incrimination, right to counsel, right to due process and equal protection of the laws. This principle was aptly stated in the case of Smith v. Schneckloth, 414 F.2d 680 (9th Cir. 1969):

"Of course, 'it is well established that prisoners do not lose all their constitutional rights and that the Due Process and Equal Protection Clauses of the Fourteenth Amendment follow them into prison and protect them there\* \* \*.'"

The same principle was recognized by our Court in the case of Holman v. State, 5 Ariz.App. 311, 426 P.2d 411 (1967):

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". . . A convicted felon such as appellant, although his civil rights are suspended (A.R.S. § 13-1653, subsec. A) is nevertheless a 'person' entitled to the protection of the Fourteenth Amendment as to equal protection, *Dowd v. United States ex rel. Cook*, 340 U.S. 206, 71 S.Ct. 262, 95 L.Ed. 215 (1950), and due process. . . ."

Thus, it is clear that, concerning the personal constitutional privileges which constitute a shield against oppressive state action on prosecution, an inmate of a prison or penitentiary stands generally in the same position as any private citizen; however, as to an inmate, these privileges are not totally absolute.

"It is also settled, however, that correctional authorities have wide discretion in matters of internal prison administration and that reasonable action within the scope of this discretion does not violate a prisoner's constitutional rights." Smith v. Schneckloth, supra.

"Imprisoned felons and inmates of such institutions as Patuxent cannot enjoy many of the liberties, the rights and the privileges of free men. They cannot go abroad or mount the housetops to speak. They are subjected to rigid physical limitations and to disciplinary controls which would find no shred of justification in any other context. Even the disciplinary powers of military authorities are not so absolute.

"Because prison officials must be responsible for the security of the prison and the safety of its population, they must have a wide discretion in promulgating rules to govern the prison population and in imposing disciplinary sanctions for their violation. If a tractable inmate is subjected to cruel and unusual punishment or if his

exercise of a constitutional right is denied without semblance of justification arising out of the necessity to preserve order and discipline within the prison, he may have a right of judicial review. In the great mass of instances, however, the necessity for effective disciplinary controls is so impelling that judicial review of them is highly impractical and wholly unwarranted. . . ." McCloskey v. Maryland, 337 F.2d 72, 74 (4th Cir. 1964).

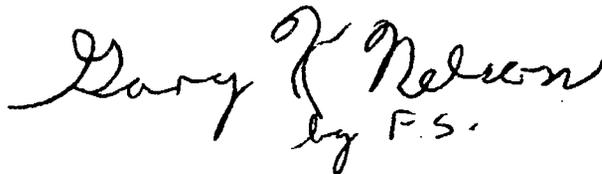
Applying these principles to the problem at hand, we must then look to the United States Supreme Court cases of Rochin v. California, 342 U.S. 165, 72 S.Ct. 205, 96 L.Ed. 183, 25 A.L.R.2d 1396 (1952), and Schmerber v. California, 384 U.S. 757, 86 S.Ct. 1826, 16 L.Ed.2d 908 (1966). Both of these cases involved forced testing. In the Rochin case, the defendant attempted to swallow narcotics. The officers forced his mouth open and, when this proved fruitless, forcibly injected an emetic into his stomach and forcibly extracted the contents thereof to secure the evidence. The Court, in that case, held that this type of conduct shocked its conscience as employing "methods too close to the rack and the screw to permit of constitutional differentiation." In the Schmerber case, the defendant, upon the advice of counsel, refused to give a sample of his blood for testing for blood alcohol. Nevertheless, the police officers forced him to submit to the taking of a blood sample by a physician at the hospital. In that case, the Court specifically held that the forced taking of the blood sample did not violate: (1) defendant's right to due process; (2) the privilege against self-incrimination; (3) the right to counsel; or (4) his right to be free of unreasonable searches and seizures. However, the rationale in Schmerber was twofold. First, Schmerber was under arrest and there was ample justification for the officer's conclusion that he was under the influence of alcohol. Secondly, the blood was withdrawn by a physician in a medically acceptable manner and in a hospital environment. It would be fair to say that these factors distinguish Schmerber from Rochin.

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The United States Supreme Court, therefore, has approved the taking of blood by a physician in a medical atmosphere as not being the type of force which would shock the conscience of the Court. Nevertheless, it is hard to imagine how a man could be forced to give a urine sample against his will, in a manner which would not offend the sensitivities of the Justices.

We would answer your question, therefore, as follows. Blood may always be taken from an inmate without violating his constitutional rights, even if by force, on a random basis, as long as the same is done in a medical atmosphere and by medical personnel. As to a urine sample, our conclusion is that you could not take the sample from an inmate by force, but, if he refused, he could be subjected to appropriate prison discipline, such as a reasonable restriction upon his activities or a denial of certain privileges, without being in derogation of any of his constitutional rights.

Respectfully submitted,

A handwritten signature in cursive script that reads "Gary K. Nelson" with "by F.S." written below it.

GARY K. NELSON  
The Attorney General

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