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Andre A. Moenssens

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## NARCOANALYSIS IN LAW ENFORCEMENT

ANDRE A. MOENSSENS

The author is head instructor at the Institute of Applied Science, Chicago, and edits its *Finger Print and Identification Magazine*. Mr. Moenssens is a student of law and before assuming his present position was secretary to a foreign consul in Los Angeles in charge of the chancery. Mr. Moenssens is a member of the International Association for Identification, the American Association for the Advancement of Science and the State Microscopical Society of Illinois.—EDITOR.

So much has been said and published on the subject of narcoanalysis, that it seems appropriate to review briefly at this time the progress, if any, made since its formal introduction in the American courts, some thirty-five years ago, and to summarize on its merits, demerits, uses and abuses.

Narcoanalysis, better known by its popular name of "truth serum test," consists of a test during which a subject is given an injection with a barbiturate drug, usually scopolamine, sodium amytal, or sodium pentothal. When the drug takes effect, the subject is questioned and feels a compulsion to answer these questions truthfully, or so it is claimed. The popular term "truth serum" is a misnomer, since neither of the barbiturates are serums, and the test certainly does not invariably lead to the truth.

For many centuries it was recognized that one way to make a reluctant witness talk and loosen his tongue was by giving him wine. It was from that period that the ancient saying goes *in vino veritas*, the truth is in the wine! When German doctors started using scopolamine and solutions of morphine blended together synergistically in order to ease delivery pains of young mothers, in the beginning of this century, it was noted that one of the after effects of the anesthetics was that patients made candid and uninhibited remarks about their personal life or about others which they normally would not have revealed.<sup>1</sup>

One of the first papers to be published on the use of such methods to obtain truthful information from criminals, was from the hand of a Texas physician, Dr. Robert Ernest House, called the "father of the truth serum," and was published in 1922 in the *Texas State Journal of Medicine*.<sup>2</sup>

<sup>1</sup> GILBERT GEIS, "In Scopolamine Veritas," *JOUR. OF CRIM. LAW, CRIMINOL. AND POL. SC.*, 50 (4), 347-357 (1959).

<sup>2</sup> ROBERT E. HOUSE, "The Use of Scopolamine in Criminology," (1922), reprinted in *AMERICAN JOURNAL OF POLICE SCIENCE*, 2 (4), 328-38, July-Aug. 1931.

Dr. House suggested administration of a first dose of  $\frac{1}{4}$  grain of morphine sulphate with  $\frac{1}{100}$  grain of scopolamine hydrobromide, followed at 30 minute intervals with lesser doses of scopolamine and periods of light chloroform applications. When awaking from the chloroform treatment, subjects freely and openly answered questions which were put to them. Dr. House reports several such cases which resulted in convicts being released from custody, and observed that, after returning from their "twilight sleep," the subjects did not recall the facts they had revealed during the tests. After numerous experiments, Dr. House considered his tests practically infallible when applied properly.

Before an assembly of law enforcement officers in Houston, Texas, he declared in September, 1924:

"With apparent success, I have devised a process by which memory can be extracted against the will from an individual's subconscious mind, by injecting into the blood a certain quantity of the drug scopolamine, the so-called truth serum. This drug produces either profound sleep or wakefulness without reason, and while in that condition of artificial unconsciousness, the individual will reply to questions with child-like simplicity and with child-like honesty, without evasiveness, guile, deceit, or fraud, not truthfully, but as the answer to a query that is stored in his mind as memory."<sup>3</sup> His experiences and many tests lead Dr. House to believe firmly that there is no human mind capable of resisting the effect of scopolamine, and that, if given time and favorable environments for an analysis, he could prove that scopolamine is

<sup>3</sup> Address by Dr. R. E. House, delivered at the International Association for Identification's Tenth Annual Convention in Houston, Texas, in September, 1924. (Proceedings of the 10th Annual Convention of the IAI, pp. 49; also reprinted in *FINGER PRINT AND IDENTIFICATION MAGAZINE*, 6 (7), 3-7, Jan., 1925.)

"one of the most reliable discoveries for the detection of crime since the discovery of the finger print."

Dr. House lived at a time when more often than not it was the custom to "beat the truth out of a witness or suspect." Revolted by such inhuman treatments, he saw his truth serum as a protection of human rights. He declared to the police officers in Houston:

"I offer my theory only as a humane third degree. If a suspect tells without coercion the truth, and his statement is verified, there would be no use for any type of third degree, but when a suspect will not tell the truth and what he tells cannot be verified, then it should be permissible and a State should permit any humane measure to prove his guilt or innocence. I may be wrong, but I believe the rights of society are paramount to the right of the criminal."

The doctor from Ferris was of course no lawyer, and could not foresee the legal battles that would be waged in the future over the acceptance of his truth serum tests in court.

Another researcher, Dr. Lindemann, experimenting along the same lines, found that a 3 to 4 grain intravenous injection of sodium amytal produces a psychological release in a patient which will induce him to speak truthfully and freely, candidly revealing facts about his behaviour and experiences.<sup>4</sup> Dr. W. F. Lorenz, director of the Wisconsin Psychiatric Institute, was another of the early scientists in this field, and published a paper in 1932 in the *Archives of Neurology and Psychiatry* on "Criminal Confessions under Narcosis." The mass of informative literature on the subject, published since then, more enthusiastically in favor of its application in criminal cases in earlier than present day authors, has resulted in a gradual but steady "cooling off" in the application of "truth serums" as a first line method of investigation or prosecution.

The many experiments conducted have evidenced the fact that drugs are not entirely reliable in detecting deception and that it is possible to maintain false statements under narcoanalysis. Voluntary and involuntary interrogation tests conducted by qualified psychiatrists have led to the conclusion that only a person who wilfully consents to admit or deny guilt, will do so under narcoanalysis. An often quoted report of such tests, conducted by two faculty members of the

<sup>4</sup> E. LINDEMANN, "The Psychopathological Effect of Sodium Amytal," *AMERICAN JOURNAL OF PSYCHIATRY*, 13, 853 (1934).

Yale Medical School and two of the Yale Law School states:

"... experimental and clinical findings indicate that only individuals who have conscious and unconscious reasons for doing so are inclined to confess and yield to interrogation under drug influence. On the other hand, some are able to withhold information and some, especially character neurotics, are able to lie. Others are so suggestible they will describe, in response to suggestive questioning, behavior which never in fact occurred."<sup>5</sup>

While a significant reduction of the will to resist is noted when a person is injected with a barbiturate, it is pointed out that if he has firmly decided not to give in, or not to reveal anything he does not wish to be known, he will not do so, just as it has been established by specialists that often a person under hypnosis will remain adamant if he so firmly decides.<sup>6</sup> To quote Professor A. Ley:

"In actual fact, it is certain that a normal person, who has carefully built for himself a system of defence and who wants neither to talk nor admit, will not talk, even under the influence of narco-analysis. It is impossible to break into the human mind, and the hope which some people may have nourished that narco-analysis would serve as a 'skeleton-key' to pry into it, must be completely given up."<sup>7</sup>

Most writers agree with this statement and refuse to endorse narcoanalysis as a reliable way to obtain the truth. One author, who based his opinion on extensive experience gained as a psychiatrist employed by the State of Colorado, and as a consulting psychiatrist to the District Courts of Colorado, emphatically states:<sup>8</sup>

<sup>5</sup> DESSON, FREEDMAN, DONELLY, AND REDLICH, "Drug Induced Revelation and Criminal Investigation," *YALE LAW JOURNAL*, 62, 315-319 (1953). Quoted in J. R. Richardson, *MODERN SCIENTIFIC EVIDENCE*, The W. H. Anderson Co., Cincinnati (1961), p. 311.

<sup>6</sup> F. F. LOUWAGE, "Use of Barbiturics in Medical-Legal Expert Examinations," *INTERN. CRIM. POL. REV.*, 4, 2-7 (1949).

<sup>7</sup> DR. A. LEY, "Narco-Analysis," *REVIEW OF CRIMINAL LAW AND CRIMINOLOGY*, p. 549, cited in *INTERN. CRIM. POL. REV.*, 4, 2 (1949). Inbau writes: "Based upon author's own experience in observing or participating in 'truth-serum' tests, he is of the opinion that such tests are occasionally effective on persons who would have previously disclosed the truth anyway if they had been properly interrogated; while on the other hand, a person who is capable of resisting an effective common sense interrogation could probably resist a 'truth-serum' test with equal success. FRED E. INBAU, *SELF-INCRIMINATION*, Charles C Thomas, Publisher, Springfield, Ill., p. 69 (1950).

<sup>8</sup> JOHN M. MACDONALD, "Truth Serum," *JOUR. OF CRIM. LAW, CRIMINOL. AND POL. SC.*, 46 (2), 259-263 (1955).

"It is well known that a person under the influence of alcohol may reveal information which he would not disclose when sober. Barbiturates are preferable to alcohol because results are obtained in a shorter time, under more uniform conditions which are easier to control and which are more conducive to satisfactory interrogation. The intravenous injection of a drug by a physician in a hospital may appear more scientific than the drinking of large amounts of bourbon in a tavern, but the end results displayed in the subject's speech may be no more reliable. The drugged person may be just as boastful and untruthful as the alcoholic."

The first case in the United States in which the introduction of testimony obtained under narcoanalysis was brought to issue, was in the state of Missouri, in 1926. The defense attorney in this prosecution for rape attempted to introduce in evidence the expert testimony of a doctor who declared that he had questioned the defendant while the latter was under the influence of a "truth telling serum" that the doctor had injected, and that defendant had denied all guilt to the crime while under the influence of the "serum." The court rejected such testimony as completely unreliable, and, from the scientific viewpoint, wholly unwarranted, since no proper foundation was laid, and no extensive tests conducted which could lead to conclusive result in examinations of that nature. The opinion was expressed as follows:<sup>9</sup>

"Testimony of this character—barring the sufficient fact that it cannot be classified otherwise than a self-serving declaration—is, in the present state of human knowledge, unworthy of serious consideration. We are not told from what well this serum is drawn or in what alembic its alleged truth compelling powers are distilled. Its origin is as nebulous as its effect is uncertain. A belief in its potency, if it has any existence, is confined to the modern Cagliostro who still, as Balsamo did of old, cozen the credulous for a *quid pro quo*, by inducing them to believe in the magic powers of philters, potions and cures by faith. The trial court, therefore, whether it assigned a reason for its action or not, ruled correctly in excluding this claptrap from the consideration of the jury."

In another case on record, the court admitted as evidence opinion testimony from a psychiatrist based upon the results of a clinical examination

which included psychological tests and an interview under narcosis with sodium pentothal. In the case at bar, a fifteen-year old girl who had been sexually assaulted, testified as a witness for the prosecution for statutory rape against defendant. Under cross-examination, the honesty of the witness was seriously challenged and in an effort to rehabilitate its witness, the prosecution called to the stand the psychiatrist who told the court that it was his professional opinion that the girl had been telling the truth when she repeated the charges—previously made to the police—under direct examination. He added that, considering her personality and way of life as a normal young girl, she did not lie and that she could not have known the facts with regard to defendant's sexual relations with her, without having been in fact the victim of such experience.

The court admitted the testimony, not as substantive evidence, but as a prior consistent statement to rehabilitate the witness. Over the objection of defendant's counsel, a tape recording of the doctor's interview with the girl, while she was under narcosis, was introduced into the court record and played back to the jury. On appeal, the judgment was reversed on the ground that defendant was denied due process of law.

In its opinion, the United States Court of Appeals (9th Circuit) reversed defendant's conviction, holding that a tape recording of an interview between a psychiatrist and a witness who is under narcoanalysis is inadmissible even as a prior consistent statement for the only purpose of rehabilitating an impeached witness.

On appeal, the court adopted the view that a prior consistent statement is only admissible when it was made at a time when the witness had no motive to fabricate. The court furthermore stated that the interview was had for the express purpose of showing the truth of the previous allegations of the witness. For this reason, the court said, a motive to fabricate might exist, except if the drug would remove the possibility to fabricate. Before such a prior consistent statement made while under the influence of a sodium pentothal injection could be admitted, it should be scientifically established that the test is absolutely accurate and reliable in all cases. Although the value of the test in psychiatric examinations was conceded, the court pointed out that the reliability of sodium pentothal tests had not been sufficiently established to warrant admission of its results in evidence. "Scientific tests," the court said, "re-

<sup>9</sup> *State v. Hudson*, 314 Mo 599, 602, 289 SW 920, 921 (1926).

veal that people thus prompted to speak freely do not always tell the truth."<sup>9</sup>

Furthermore, the court severely criticized the use of the term "truth serum" in reference to the sodium pentothal test, since a jury wrongly might be led to believe that anything said under influence of the drug must be true.<sup>10</sup>

The only exception to the rule established in *State v. Hudson* in 1926 was a California decision in 1954 where the court overruled the state's objection to the introduction of psychiatric testimony for the defendant because it was obtained as a result of a sodium pentothal test.<sup>11</sup> In its decision, the court conceded that the truth of statements revealed under narcoanalysis remains uncertain, and that it therefore is doubtful that such evidence, establishing the truth of asserted facts, would be admissible. However, the court distinguished sharply between the above occurrence and the psychiatrist's conclusions as an expert, based upon the ensemble of the tests and examinations he subjected defendant to.

In another case, the testimony of a psychiatrist was refused when he wanted to show that questions asked of defendant and answers made by him while under influence of sodium pentothal indicating that defendant's testimony given on the witness stand that he did not kill deceased was true. On appeal, it was held that the refusal of the trial court was not error, and the court emphasized:<sup>12</sup>

"Until the use of the drug as a means of procuring the truth from people under its influence is accorded general scientific recognition, we are unwilling to enlarge the already immense field where medical experts, apparently equally qualified, express such diametrically opposed

<sup>9</sup> *Lindsey v. United States*, 237 F.2d 893 (9 Circuit 1956). See also *Knight v. State* (Florida), 97 So 2d 115. The results of truth serum tests are not admissible for the purpose of rehabilitating a witness.

<sup>10</sup> *People v. Jones*, 42 Cal. 2d 219, 266 P.2d 38 (1954). The New York courts refuted the California decision in *People v. Ford*, 304 N.Y. 679, 107 N.E.2d 595 (1952).

<sup>11</sup> *State v. Lindemulh*, 56 N.M. 237, 243 P. 2d 325 (1952). In *Dugan v. Comm.*, Ky., 333 S.W.2d 755 (1960), defendant was given a truth serum test before the trial by a psychiatrist employed by him. The court refused to admit testimony of the psychiatrist to the effect that the test revealed that when the defendant said the shooting was an "accident," he was telling the truth. Upon appeal, the judgment of the trial court was affirmed. Again, the argument of the court was that, as yet, no court of last resort has recognized the admissibility of the results of truth serum tests, the principal ground having been that such tests have not attained sufficient recognition of dependability and reliability.

views on the same facts and conditions, to the despair of the court reporter and the bewilderment of the fact finder."

From the few decisions cited, it will be noted that in each case the use of narcoanalysis was argued as a defense, rehabilitation, or denial of guilt. It seems safe to assume that no American court will accept or hear testimony of confessions obtained under narcoanalysis.

Since 1926, extensive tests have been made in many universities, but one of the basic charges of the court argument in *State v. Hudson* still stands: Narcoanalysis does not permit absolute certainty, "beyond a shadow of a doubt," of the guilt or innocence of the suspect who was subjected to a test. Even if such certainty were obtained, it seems obvious that such uncorroborated testimony would be stricken as inadmissible because of the rule against involuntary confessions and self incrimination.

The use of a coerced confession in obtaining a conviction is a violation of due process, and if such confession is admitted in evidence, that is sufficient to void the conviction regardless of other evidence which might nevertheless demonstrate guilt.<sup>13</sup> In *People v. Leyra*, defendant was not informed that the physician who examined him had been called into the case by the district attorney and that district attorney and police officers were listening to the conversation between defendant and physician. The defendant was not told that he was under no duty to speak or that anything he might say could be used against him. His statements were inadmissible and judgments of conviction reversed and a new trial ordered.

Before a confession can be accepted, it must be shown that it was obtained without duress, intimidation, threats, coercion, or harsh and cruel treatment. A confession obtained while under psychological pressure of threats is considered involuntary and will therefore not stand up in court. But it is held that threats which do not produce fear will not preclude consideration of the confession.<sup>14</sup>

One of the most recent court decisions reversing the judgment of a lower court because the latter had failed to conform to the due process clause of the Fourteenth Amendment in determin-

<sup>13</sup> *People v. Leyra*, 302 N.Y. 353, 98 N.E.2d 553 (1951).

<sup>14</sup> *State v. Winters*, 39 Wash. 2d 545, 236 P.2d 1038 (1951).

ing the admissibility of the confession, reads as follows:<sup>15</sup>

"The rule was clear that convictions following the admission into evidence which are involuntary, *i.e.*, the product of coercion, either physical or *psychological* (emphasis supplied, author), cannot stand. This is not so because such confessions are unlikely to be true but because the methods used to extract them offend an underlying principle in the enforcement of our criminal law: that ours is an accusatorial and not an inquisitorial system—a system in which the State must establish guilt by evidence independently and freely secured and may not by coercion prove its charge against an accused out of his own mouth."

While this particular case did not involve a confession obtained under narcoanalysis, the principle appears to apply to this subject matter, just as it has been established in many other instances.

Maybe by now the reader has gathered the opinion that it is utterly hopeless to consider the use of narcoanalysis in law enforcement. This is not so. In the hands of a competent physician, narcoanalysis can be of valuable assistance in many instances.

It should be borne in mind that, in the present state of experience with narcoanalysis, no reliance should be given to the tests as a means of proving your case in court and obtaining a conviction that will not be reversed on appeal. However, narcoanalysis may aid law enforcement officers in discovering valuable clues and leads which may produce tangible and irrefutable evidence that will stand up in a court of law.

Narcoanalysis can be of help in restoring the memory of forgetful witnesses who consent to the test in order to facilitate the recalling of important details of facts which they witnessed. In pleas of insanity, it may give a fair idea of whether or not the contention is true or faked. It may help to clear innocent people who voluntarily submit to the test, just as well as it may morally convince the investigator that a person is guilty, thus encouraging him to concentrate his efforts on that person in order to secure admissible evidence. It may restore the memory of amnesia victims who cannot be otherwise identified.

The early researcher Dr. House, reported a case where he questioned a convict at San Quentin

who had lost all memory since the day a grenade exploded near him, in the Argonne battle, during the first world war. Under the influence of scopolamine, the "walking dead man," as he was called, was able to recall facts about his earlier life, including his name, where he was born, to whom he was married, in what hospitals he had been, etc.<sup>16</sup>

Within the limits previously outlined, narcoanalysis can be of great assistance, because even if no concrete facts are unearthed during an interview, the psychiatrist often is able to render an expert opinion to the police about his findings concerning the behavior and mental condition of the interviewee.

The limitations of the "truth serum" tests should never be forgotten. During the present state of development, it is proven that some people are able to lie while interrogated under narcoanalysis. It is also important to consider that those who do tell the truth, will relate only what they think to be the truth. The danger is eminent in the case of eyewitnesses, and narcoanalysis offers no advantage over regular interrogation procedures in such instances, other than maybe facilitating the memory process. Experience has taught us that the most honest eyewitness can involuntarily and innocently make the most damaging errors. This has been found to be true to such an extent that it led to the often heard axiom "as unreliable as an eyewitness."

While it is important to secure the authorization of the subject to be interrogated under narcosis, there seems to be an exception to the rule when a plea of insanity is set up as a defense.

Richardson declares that "it is generally held that the constitutional immunity from self-incrimination does not apply to a compulsory examination to determine the defendant's physical or mental condition for the purpose of testifying thereto, provided the defendant is not compelled to answer any questions, with the answers being used testimonially on trial. (*Commonwealth v. Musto*, 348 Pa 300, 35 A 2d 307 [1907])."<sup>17</sup>

If and when a psychiatrist uses narcoanalysis during his examination, it is held he does so not in order to elicit a confession, nor to determine whether or not the subject participated to any extent to a certain crime, but rather to form a

<sup>16</sup> *Op. cited*, note 3.

<sup>15</sup> *Rogers v. Richmond*, 365 U.S. 534, 47 AM. BAR ASSN. JOUR. 618-619 (1961).

<sup>17</sup> JAMES R. RICHARDSON, *MODERN SCIENTIFIC EVIDENCE*, The W. H. Anderson Co., Cincinnati (1961), pp. 316-317.

general expert opinion as to the mental condition of the subject at the time a crime was known to have been committed. If during this interview, the subject, in answer to certain questions, gave indications of guilt or innocence, while the psychiatrist could communicate those findings to the investigating authorities, he should refrain from mentioning these statements on the witness stand and confine his testimony to the issue of sanity or insanity.<sup>18</sup>

On this subject, the distinguished professor of law at the University of Kentucky writes:

" . . . properly speaking, the psychiatrist, who has conducted a truth serum interview does not testify as to what the subject told him while under the influence of the drug. Rather, the witness should give an expert opinion based on his findings and conclusions. So, if the answers to questions are not offered testimonially it may be argued that narcoanalysis is closely related to such procedures as blood tests to determine parentage, intoxication and lie detector tests, and even fingerprinting, assuming accuracy and reliability of course."<sup>19</sup>

Closely related to this issue is an interesting

<sup>18</sup> Conrad reports that in Oklahoma a psychiatrist for the state was permitted to show examination of the defendant under narcoanalysis where the doctor's personal observation was the chief basis of his opinion (in *Brown v. State*, 304 P.2d 361). EDWIN C. CONRAD, *MODERN TRIAL EVIDENCE*, West Publishing Co., St. Paul, Minn., (1956).

<sup>19</sup> Cf. footnote 13, at p. 314.

Illinois case. A youthful drug addict was given scopolamine to ease his withdrawal agony as a result of forced deprivation of heroin. Such procedure is customary in the treatment of drug addicts. During the treatment, the youth confessed to a murder. About fifteen hours later, he repeated his confession, which was later held admissible by the court because it was given freely and after the drug had ceased to be effective.<sup>20</sup> Much controversy has been voiced as to whether or not the effect of the scopolamine had actually worn off at the time the confession was repeated.

#### CONCLUSION

In conclusion, we find that there is a use for narcoanalysis tests in the investigative process, although its importance has been overrated too often. Because of its lack of conclusiveness and absolute accuracy, "truth serums" should be used only as a last resort, by psychiatrists who have had experience with the drugs. We are not in the days of Dr. House anymore, when it was a rule to "beat the truth out of a suspect."

We have advanced in many aspects, and today more than ever we are anxious to respect human and constitutional rights of the individual. Therefore, no coercion of any kind should be used during interrogation in an effort to obtain a confession, not even Dr. House's "humane third degree."

<sup>20</sup> *People v. Townsend*, 11 Ill. 2d 30, 141 N.E.2d 729 (1957). One judge dissenting.