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Drug Induced Statements

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THE PROBATIVE VALUE of drug-induced statements in relation to both the accuracy of the statement and the personality of the subject, constitutes one of the major unresolved problems of forensic psychiatry. More than half a century ago, Wager illustrated the use of ether in eliciting statements from criminal suspects.¹ Subsequently, House campaigned vigorously for the routine use of scopolamine in criminal interrogations.² The major appeal of this procedure, aside from its alleged scientific validity, was that the medical profession, committed to ethical standards, would eliminate third-degree methods in police stations.

Barbituric acid derivative replaced scopolamine as interrogation drugs after the work of Lorenz.³ World War II rapidly accelerated the use of these drugs as diagnostic aids for battle-connected mental disturbances,⁴ and inevitably the use of the drugs in forensic work received greater scope during the post-war period.⁵

The courts, conservative, bemused, and not a little bewildered, have viewed the ever-increasing number of appellate cases concerning drug-induced information with contradictory eyes. The first reaction was one of scorn, as Judge Robert Franklin, a 76-year-old Missouri jurist, known for the "liberality of his views and the frequency of his dissents,"⁶ delivered a blistering indictment of the drugs:

Testimony of this character . . . is, in the present state of human knowledge, unworthy of serious consideration. We

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¹ Wagner, *Feigned Insanity: Malingering Revealed by the Use of Ether*, 61 A. J. Insanity 193 (1902).

² These developments are detailed in Geis, *In Scopolamine Veritas: The Early History of Drug-Induced Statements*, 50 J. Crim. L., C. & P. S. 347 (1959).

³ Lorenz, *Criminal Confessions Under Narcosis*, 31 Wisc. Med. J. 245 (1932).

⁴ Grinker & Spiegel, *Men Under Stress* (1946).

⁵ Excellent bibliographies are Lipton, *The Amytal Interview: A Review*, 1 Am. Practitioner & Digest of Treatment 148 (1950), and Gomirato & Gamma, *Narcoanalisi: Psicofarmacologia E Clinica Della Subnarcosis Barbiturica* 213-256 (1958).

⁶ St. Louis Globe-Democrat, Nov. 20, 1930.

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 . . . The trial court . . . ruled correctly in excluding this clap-trap.⁷

No so-called "truth serum" cases came before the courts for the following eleven years, but since 1950 at least 25 appeals involving aspects of drug-induced statements have challenged higher tribunals, and resulted in a conglomerate pattern of ruling.⁸ The predominant lines running through the diverse state, federal, and military decisions appear to be these: 1) drug-induced statements concerning guilt or innocence may never be elicited without the consent of the individual; 2) drug-induced statements will not be accepted in the courts when they bear on the accuracy of information furnished by either defendants or witnesses; 3) drugs may be employed as diagnostic aids to determine the credibility and character of a suspect; and 4) drugs routinely used as diagnostic tools may be employed on a suspect without his permission to determine whether he is legally responsible for his act.

There is a basic principle that stands behind court efforts to find a more precise juridical niche for interrogation drugs. It was enunciated in *Frye v. United States*,⁹ a pioneer lie detector case, and it sets the state of professional opinion concerning the efficacy and reliability of the technique employed as the criterion for its acceptance. Wigmore solemnized this principle for interrogation drugs in his definitive treatise on legal evidence, advising judges and lawyers to "watch for the chronicles" of developments in drugs, and noting that "if medical or psychic science, represented by an accord among the experts of the science, establishes the trustworthiness of a confession induced by some artificial means known to such science, then a confession so induced should be admissible."¹⁰

The biggest breach in the *Frye* position occurred in a 1958 case involving Nalline, a drug employed to determine if a person is using narcotics.¹¹ Edwin Conrad, a leading authority on the law of evidence, has summarized both the court's position and the legal implications of this position:

⁷ *State v. Hudson*, 314 Mo. 599, 602, 289 S. W. 920, 921 (1926).

⁸ The decisions are reviewed and evaluated in Geis, *The Status of Interrogation Drugs in the United States*, J. Forensic Med. (forthcoming).

⁹ 54 App. D. C. 46, 293 Fed. 1013 (1923).

¹⁰ Wigmore, 3 Evidence, §§ 998, 841a (3rd ed. 1940).

¹¹ *People v. Williams*, 164 Cal. App. 2d 858, 331 P. 2d 251 (1958).

The California court established a new principle of scientific proof, that acceptance of a scientific instrumentality of proof by a few who specialized in the field and who are expected to be familiar with it, is sufficient authentication in this day of specialization. We shall continue to hear more about this new principle of proof in the years to come.¹²

No serious attempt appears to have been made to check the opinions of scientific authorities in regard to drug-induced statements, beyond a cursory survey¹³ in 1941, and the courts have gone their way without much information, often, as has been charged in other areas involving forensic psychiatry,¹⁴ substituting the claims of the more articulate and aggressive members of the profession for the consensus of knowledgeable opinion within the entire group. This paper, therefore, is an attempt to learn from a sample of psychiatrists the present state of professional belief about the legal value and reliability of barbiturate drugs in forensic matters.

Procedure and Results

Questionnaires were sent to 350 members of the American Psychiatric Association, chosen at random from the latest edition of the Association's directory. Eight questionnaires were returned as undeliverable; 142 were completed, representing 41 percent of the sample. We would expect that the doctors returning questionnaires were those with the greatest familiarity with the use of interrogation drugs.

The following was the distribution of responses to direct questions: ¹⁵

1. What is your opinion of narcoanalysis as an instrument in criminal interrogation to determine the truthfulness of a person's statements?

¹² Conrad, *The Admissibility of the Nalline Test as Evidence of the Presence of Narcotics*, 50 J. Crim. L., C. & P. S. 187 (1959).

¹³ Cureton, *A Consensus as to the Validity of Polygraph Procedures*, 22 Tenn. L. Rev. 728, 729 (1953). The survey was done for the National Research Council, and consisted of a handful of interviews and a review of the literature.

¹⁴ Hakeem, *A Critique of the Psychiatric Approach to Crime and Correction*, 23 Law & Contemp. Prob. 650 (1958).

¹⁵ The percentages in parentheses indicate totals when the "no opinion" and "no answer" responses are eliminated.

- a. Highly valid and useful—5% (7%).
- b. Moderately valid and useful—46% (61%).
- c. Invalid and useless—25% (32%).
- d. No opinion—14%.
- e. Did not answer—10%.

2. What is your opinion of the medical profession's acceptance of narcoanalysis in relation to the veracity of information received?

- a. Unquestionably accepted—1% (2%).
- b. Accepted with reservations—55% (71%).
- c. Generally not accepted—21% (27%).
- d. No opinion—13%.
- e. Did not answer—10%.

3. What is your opinion as to the use of narcoanalysis in the determination of malingering, i.e., feigned amnesia, in criminal cases?

- a. Highly valid and useful—7% (9%).
- b. Moderately valid and useful—47% (60%).
- c. Invalid and useless—25% (31%).
- d. No opinion—11%.
- e. No answer—10%.

4. What is your opinion as to the possibility of a subject resisting and successfully controlling an examination where he is being questioned under narcosis?

- a. Impossible—0.
- b. Improbable but not impossible—20% (26%).
- c. Quite possible—56% (70%).
- d. Highly possible—11% (14%).
- e. No answer—13%.

5. What is your opinion as to the validity of using narcoanalysis in the determination of legal insanity?

- a. Highly valid—1% (2%).
- b. Moderately valid—19% (23%).
- c. Not valid—59% (75%).
- d. No opinion—9%.
- e. No answer—12%.

6. Do you feel that a psychiatrist after conducting an examination in which narcoanalysis is used should be allowed to report his conclusions in a court of law without being required to give the exact details of the examination and examination procedure?

- a. Yes—21% (26%).
- b. No—67% (74%).
- c. No answer—12%.

Perhaps the most striking aspect of the response to the six questions is their diversity. It should be remembered that several of the questions refer to a procedure that has its roots in science, and that a major characteristic of science is the identity of result when the same procedure is employed by different investigators. The lack of agreement on factual matters relating to the use of drugs to gather information or to appraise mental states appears to illustrate the rather embryonic scientific stage at which such procedures are now operating.

In terms of the legal process, it is obvious that drug-induced statements should not be admitted into court to determine the truthfulness of an assertion, at least not while almost one-third of the respondents find the procedure "invalid and useless." The same might be said in regard to the use of drugs to determine malingering. Here again a significant minority of the profession finds the procedure "invalid and useless." Seventy percent of the respondents find it "quite possible" that a subject could both resist and control (self-serve) a drug-induced interview, while 76 percent (the highest percentage in agreement on any point in the questionnaire) find that the drugs are not valid in the determination of legal insanity. It is somewhat ironical that it is in this area that the courts have sometimes shown their greatest willingness to go along with the use of drugs.¹⁶

Additional Questionnaire Comments

Several other questions touched upon the amount of courtroom experience of the respondent, but because of the rather small numbers involved in the sub-groups we did not attempt to relate experience to the doctors' attitudes toward interrogation drugs.¹⁷

At the end of the questionnaire we asked for statements on "what you feel should be the role of narcoanalysis in forensic

¹⁶ *People v. Esposition*, 287 N. Y. 389, 39 N. E. 2d 925 (1942); *contra*, *people v. Ford*, 314 N. Y. 679, 107 N. E. 2d 595 (1952) (two judges dissenting).

¹⁷ It is of interest to note the following distribution of responses to the question: "What is your opinion as to the legal conditions under which psychiatrists are required to testify in court?" (Very good—2%, good—13%; adequate—39%; Poor—35%; Very poor—11%).

medicine." The interest of the respondents in the subject is shown by the 84 persons who accepted the invitation to comment further. Among these were several who wrote very long letters, and two who sent along cases histories of drug interviews they had conducted.

The comments seem to come largely from the group opposing, sometimes vitriolically, the use of narco-interrogation procedures. This may indicate a greater interest, or a wider experience leading to an interest and ability to provide additional information, or it may simply indicate a normal tendency of the opposition to feel compelled to defend its position. There was also a considerable number of respondents who replied briefly stating that they thought that narcoanalytical techniques should be used as an adjunct to other techniques.

Some of the responses have an inherent interest, both as factual statements and because they display the emotional feeling of the writer more vividly. A selection follows:

Narcoanalysis has some limited values in diagnosis and treatment—I estimate that only a very small percentage of psychiatrists utilize it even occasionally—I personally have not seen fit to utilize this procedure since 1945. The limitations forensically are even more formidable, for we have no way of determining at what levels of consciousness (or unconsciousness) various ego defenses (such as malingering or fantasy) may be operative. Furthermore, in various types of schizophrenia, particularly catatonic, a full-blown psychosis may be dissolved temporarily under amytal or pentothal—only to return when the drug effects have worn off. Lastly, from a moral and ethical point of view, narcoanalysis, *even with a patient's consent*, is, in my opinion, in the nature of an assault. I construe it to be a violation of the individual's constitutional rights—crudely analogous to violating the 5th Amendment.

"Narcoanalysis" has been so distorted and misunderstood by both public and legal officials that whatever limited validity it might possess in competent hands has become lost. It is no better than the integrity, honesty and competence of the examiner and an examiner of honesty, integrity and competence doesn't need it.

Should be admissible in selected cases (capital cases). Sometimes narcoanalysis brings out material not obtainable by other means. However, I don't know how to reconcile narcoanalysis with the Fifth Amendment.

I have used sodium amytal interviewing techniques for over twenty-five years. I believe they are of only limited help. My own experience both with criminals and non-

criminals is that if they wish to talk, they will do so with or without drugs.

Of some value as a probing technique. I have had a patient who accused her grandfather of incestuous relations with her. The only trouble was the fact that both her grandfathers died before she was born.

When the psychiatrist uses any of these tools for purposes other than diagnosis or treatment (such as "sleuthing") he is out of his realm of knowledge. He ceases to be an expert and becomes a self-styled amateur detective.

I would go so far as to say that, if valid, it has no place.

From 27 months experience at the Medical Center for Federal prisoners, I have used barbiturates several times. I have found that (1) anything learned from it can be learned from usual type interviews; (2) it has no guarantee for validity; I have several cases which lied consistently under deep narcosis; (3) indeed regular interview technique is more reliable as it approximates the usual state.

The improbability of standardizing technique and the varied personality types—each reacting to the procedure differently and with different degrees of and motivations for resistance, make the results and productions subject to question.

I have used or seen used, narcoanalysis 10 or 12 times, four times in significant criminal cases * * * and from this and limited reading I am struck chiefly by the difficulty of assessing the material obtained on the basis of conscious or unconscious motivation.

Undoubtedly the most positive reaction to expanded use of drug interrogation came in the following response which was unique in the position it took.

Narcoanalysis is valuable particularly in examination of individuals who are charged with a capital crime. I believe it should be advantageous for the court to have legal power to order narcoanalysis when in the opinion of the examining psychiatrists it should be used. I do not believe that the accused individual should have the right to decline to take narcoanalysis.

Without reference to the accuracy of the opinions expressed in the quoted statements or in the foregoing responses to the direct questions, it remains obvious that the disagreement within the relevant profession, and the disagreement among persons with considerable experience in the use of interrogation drugs, over the merits of such interrogation is deep and strong. This being so, it seems that courts should be most hesitant in permitting information so derived to enter into legal processes.