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## THE JUDICIAL USE OF PSYCHO-NARCOSIS IN FRANCE

J. P. Gagnieur

A most interesting legal controversy has recently arisen in France out of the use of "truth serum" in a criminal investigation. The account of this case and its subsequent developments are told by the Honorable J. P. Gagnieur, Magistrate of the Paris Courts. His full appreciation of the problem both from the legal and investigative viewpoint is certainly influenced by his legal and law enforcement experience. Magistrate Gagnieur is a doctor of laws and a graduate of the Institute of Criminology at Paris and has been both a Public Prosecutor and a criminal investigator. He is at present Commissaire du Gouvernement in the Financial Section of the Judicial Court of Paris.—EDITOR.

In the course of the judicial year 1947-48, the Council of the Bar Association of the Court of Appeal of Paris carried a resolution strictly condemning the use of psycho-narcosis in the course of a judicial investigation.

This resolution determines the position which the members of the Bar have adopted, but it has no regular, legislative, or judicial implication; it is to be noticed that the Keeper of the Seals, as well as the qualified authorities of the French Ministry of Justice have not adopted a definite position regarding this matter. Legally, therefore, this problem is still unsolved in France.

The circumstances under which this question originated are the following: An indicted individual was suffering from a palsy condition (hemiplegia), which was supposed to have caused a loss of the use and understanding of verbal expressions (aphasia). The judge in charge of this case appointed three medical experts to examine the man. These doctors, who, as it seems, had suspicions about the reality of the aphasia which affected the accused, examined and questioned him in the course of a narcosis induced by sodium pentothal. The test proved to be conclusive: They obtained very distinct answers to their questions, and when the accused woke up, he admitted that he was malingering, and gave the doctors the reasons to justify it, which, of course, could only substantiate the proof of his guilt.

The Council of the Bar Association, in order to criticize the action taken by the experts, takes as a basis three judicial arguments, and a moral motive:

1. The experts had violated Article 378 of the French Penal Code, which binds doctors to professional secret, except in the cases of distinct derogations of law.

2. The experts violated Article 311 of the French Penal Code, in giving the accused a shot of pentothal, as this article forbids assault and battery.
3. The experts violated the law of December 8, 1897, in questioning an accused outside the presence of his advisers.

At last, on a more general stand, the Bar was of the opinion that the experts violated a fundamental right of the accused by depriving him of his free will. This fourth point, which is the most interesting, is very briefly stated in the resolution of the Bar:

“Furthermore, considering that the findings obtained from an accused artificially deprived of his free will, as well as the acknowledgments or statements which would have been obtained from this accused under the influence of a pharmaco-dynamic product, would judicially be deprived of any convincing value.”

The position adopted by the Council of the Bar seems to meet with the approval of the majority of Paris lawyers, although it is very often criticized by the Magistrates. Sooner or later, however, the French Court will have to reach a decision on this matter. Upon the initiative of the “victim,” the medical expert who administered the drug apparently will be prosecuted on a charge of assault and battery, as well as a breach of professional secrecy.

In this particular case, and without considering the problem in all its details, it would seem rather logical to admit that medical experts, in order to track down a simulation, have to use all the processes of their skill, in order to appropriately fulfill their mission. Narco-analysis is currently used in psychiatry. It is only a process, to be compared with other scientific means of investigation, such as palpitation, auscultation, X-rays, electro-encephalography, etc.

What motive would society have for disarming itself voluntarily? Does not it seem paradoxical to claim that it is in protecting lies, rather than in the search of truth, that the respect of human dignity stands?

In any case, it is certain that psycho-narcosis, which is already very much discussed in France at the present time, will soon come to the forefront of the judicial events, and that useful lessons will be derived from it.

### Deliberation

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In view of the influence of this controversy on the methods and ethics of criminal investigation, the Editorial Staff of the Journal is presenting a translation of the entire resolution of the Council of the Bar Association of Paris on the subject of judicial use of Narco-Analysis. This is the resolution referred to by Magistrate Gagnieur in the preceding article.—EDITOR.

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*The Council.* Considering that it has come to the attention of the council that the method, for which the term "Narco-Analysis" has been coined, had been employed recently in the course of a judicial information.

Considering that this method consists of the intravenous administration of a narcotic for the purpose and with the consequence of causing in a person inhibition of his or her powers of defense with regard to a psychic exploration.

Considering that the practitioner who employs such a method for therapeutic purposes and as an aid to diagnosis, is bound—as any physician who applies treatment—by his professional duty to keep secrets; that in acting in the exclusive interest of his patient, he could not reveal to a third person and, particularly, to an examining magistrate, the observations which he had made and the things confided to him, without committing treason to his patient and—according to the law—committing the crime listed in the article 378 of the Criminal Code and punishable according to the same article.

Considering, moreover, that the specialist in forensic medicine who as an expert has been ordered to examine a prisoner, could not be allowed to submit the prisoner to a corporal intervention, which, under circumstances, would constitute, an unbearable blow to the principle of inviolability of the human person; that such an intervention, by its own purpose, would not only constitute the crime listed in article 311 of the Criminal Code and would be punishable according to the same article, but would constitute also a flagrant violation of the rights of defense, which have been granted by the Law, and specifically by the Law dated December 8, 1897.

Considering, besides, that the observations made on a defendant who has been deprived artificially of his free judgment, as well as the statements and admissions of this person which had been obtained under the influence of a pharmacodynamic product, would be deprived of any probatory value in the legal sense.

That the Barristers' Corporation has the right and the duty to protest against the employment of any pharmacodynamic measures in a medicolegal survey and particularly of the "narco-analysis" and, in a general way, of any means of com-

pulsion of such a type which may threaten the legal rights of the prisoner.

*Resolution.* Article I—proclaims that the employment of “narco-analysis” in forensic medicine and, in general, the utilization of all pharmacodynamic substances for the purpose of depriving the prisoner of his faculties of free determination in order to get a forensic information, is contrary to the Law and to the elementary guarantees of defense.

Article II—it is left to the President of the Corporation of Barristers to bring eventually the present “deliberation” to the attention of the Authorities and to intervene with all appropriate means, that methods of such a type should be suspended for medicolegal surveys.