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NARCOINTERROGATION OF A CRIMINAL SUSPECT

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On February 18, 1955, in the Criminal Court of Cook County, Illinois, Charles Townsend, a nineteen year-old Negro youth, was convicted by a jury of the murder of Jack Boone, and was later sentenced to death in the electric chair. Boone had been struck on the head, apparently from behind, as he entered his apartment dwelling at South Michigan Avenue and Thirty-fifth Place, Chicago, on December 18, 1953 at 6:30 P.M., and was robbed of his wallet, which contained four dollars. The judgment of the Criminal Court was affirmed on March 20, 1957 by the Supreme Court of Illinois. Mr. Justice Walter V. Schaefer dissented from the decision of the majority of the Supreme Court, and Mr. Chief Justice Ray I. Klingbiel concurred in the dissenting opinion of Mr. Justice Schaefer. As this is being written, October 1, 1958, Townsend is still alive, in the condemned cells of the Cook County Jail, while his attorney on appeal, Mr. George N. Leighton of Chicago, continues to apply the legal procedures that still remain available. Up to now a total of thirteen stays of execution have been granted in Townsend's case.

At the trial, the State relied principally on three matters of evidence to connect Townsend with the murder of Boone: 1) An oral confession made by Townsend in the police station on the night of his arrest, in the presence of an Assistant State's Attorney and police officers, and taken down in shorthand by a police stenographer. This confession was signed by Townsend in the Office of the State's Attorney on the day after it was made, and was then repeated orally by him at the Coroner's Inquest. 2) Testimony of a young friend of Townsend, Vincent Campbell, that on a day in December which he could not remember, he had twice seen Townsend carrying a house brick in his hand. (The killing of Boone had taken place on December 18, 1953.) 3) Testimony of a twelve year-old boy that on the day after the murder he had found Boone's wallet in the hall-way of the flat-building where he lived, adjacent to Boone's apartment. Townsend's statement of January 1, 1954 said he had taken four dollars out of Boone's wallet after striking him with a brick, and had then thrown the empty wallet into a hall-way.

It is very clear that, in the absence of Townsend's confession, neither the testimony of Vincent Campbell, nor that of the boy who found the wallet, nor any other matters would have been sufficient to have connected Townsend with Boone's killing, much less to have secured a verdict of guilty. Vincent Campbell himself was in police custody, under arrest, on New Year's Eve, 1953, the night when he gave to the police the information that led them to arrest Townsend. And under cross-examination at the trial Campbell admitted that he had hoped to help himself by informing on Townsend. Also, Justice Schaefer's dissenting opinion, by reason of certain circumstances which the Justice noted relating to the timing of events, cast doubt on the corroborative value of the testimony concerning the wallet. At any rate, it is a certainty that the confession clinched the case against Townsend.

At the time of his arrest, on January 1, 1954 at 2:30 A.M., Townsend was a heroin addict of four years' standing. He had received treatment under compulsion at the United States Government Hospital in Lexington, Kentucky, but the attempt at his rehabilitation had been unsuccessful. He had taken heroin during the hours preceding his arrest, that is, during New Year's Eve. Seventeen hours after his arrest, (i.e., at about 9:30 P.M., January 1), Townsend complained to the questioning police that he was "sick" and could not answer questions until he had seen a doctor. A

police surgeon was called to the station-house, diagnosed Townsend's condition as acute withdrawal distress, and injected into his upper arm sodium phenobarbital and hyoscine hydrobromide, or scopolamine. Also, before taking his own departure, he left with Townsend four phenobarbital capsules, of which Townsend said he took three immediately. One hour and a half after the injections, Townsend made the statement which was taken down by the stenographer.

Townsend was indicted for other robberies and murders beside the crime against Boone, and apparently he confessed committing some of these. The Chicago *Tribune* news item reporting the thirteenth stay said, "Police said he admitted killing three other persons in robberies to get money to buy narcotics." Thus the decision to go to trial in Boone's murder represented a selection by the state from among various possibilities. At times during the trial reference was made in testimony of various witnesses to "other matters," but these references were always objected to successfully by the public defender. Also during the trial, when Townsend himself testified, he was asked many questions about the cost to him of maintaining his drug habit during the Fall of 1953. Since Townsend was an unemployed drifter who called himself a "professional pool-player," the implication of this line of questioning was that Townsend paid for his drugs by assaulting and robbing people. And finally, in summing up the State's case for the jury, the Assistant State's Attorney made many references to "this four-dollar murder."

Justice: In Law and in Morals

Townsend's case brings up many questions relating to the moral implications of the use of drugs in criminal investigation and procedure, and also of the situation of a suspect who is also an addict. The approach to these questions in this article is moral, not legal—the approach of a Catholic moralist not of a jurisprudent—but of course the factual materials at inquiry are the same. Both law and morals are concerned with justice, but from different points of view. The jurisprudents, lawyers and judges, are not so much interested in justice as a virtue, an interior disposition, as in the objective of this virtue in society: order and exterior peace. Order and peace are the ends of society; these ends impose themselves upon individuals and command their attitudes even if it be by force and social constraint. And these ends are accomplished to the extent that law inspires in each citizen the proper social attitude.

But the moralist has other concerns. He is interested in the human person and his acts, because the person is the subject of all morality. Respect for the law is for the moralist an attitude of the will, a moral act, and it is in the conscience of the moral agent that he considers it. Moralists talk and write about such things as decent and indecent literature and about the morality of political and social institutions. In doing this they do not mean to say that books or social institutions can be morally good or bad in themselves, but only that books can affect conscience, and that certain institutions in their operation may or may not have within them such principles and procedures as will safeguard the conscience of those who operate them.

It would be a false oversimplification to say that morality concerns man's interior life, while law looks only at his external acts. In fact, a constant preoccupation of law is the factor of internal intent, so far as this can be determined through legal procedure. And the moralist looks at the external act because it contains within itself the most dependable evidence of the state of mind of the actor. However, the professional concern of the moralist is conscience, while that of the jurisprudent is peace in the social order.

Further, moralists and jurisprudents will often occupy themselves with identically the same materials, the same facts, and the same procedures, both aiming at justice from their respective viewpoints. In our present connection, the American criminal procedure will satisfy the requirements of justice both legally and morally, because this procedure properly applied both guarantees order and peace and safeguards conscience. And—granting his concern for conscience—if the moralist finds something lacking, questionable, some doubt of justice, he is not thereby attributing bad faith or ill will to the participants. For in complex and delicate matters, where even such things as basic factual material are not completely clear, it must be recognized that consciences equally in good faith may reach opposite judgments.

The aspect of justice which concerns us here is that which Catholic moralists call "distributive justice": the obligation of society towards the individual member, to give him his due in the apportionment of the benefits and burdens of his

life in the society. In American criminal law, the right to due process in all of its implications belongs to the accused person by virtue of distributive justice; and it is further guaranteed by the Constitution and laws of the United States and of the states. Where distributive justice is concerned, "society" in the discharge of its obligation does not act as an impersonal monolith. Always involved are the deeds and words and procedures of many individual persons making their ordered contribution to the desired result. This division of responsibility in distributive justice is clearly apparent in a criminal procedure, where the complex whole is the product of the actions of many persons: police, lawyers, witnesses, jurors, judges, and others. Every fact, deed, word, procedure, is important within the total complexity.

For this reason, the reader should not be surprised or offended to see the moralist dwelling upon and analyzing the *minutiae* of deeds and words, not adhering to universal principles and broad generalizations. For the moralist, the area of study is human behavior, and this takes place always in the particular, *in individuo*, never universally or in general. Principles of general value are applicable only to the deed as actually done and to its outcome. And finally, if deed and outcome are unclear and in dispute, there is even room for some conjecture, though of course with nothing like the authority accorded to the established fact.

Scopolamine

"Scopolamine" is a key word in the moral inquiry into Townsend's case. Yet the word appears only twice in the trial abstract, both times in the testimony on cross-examination of a medical witness called in rebuttal by the state, and the word does not seem to have attracted any attention. It does not appear at all in the appeal record. Throughout trial and appeal, "hyoscine," a less well known synonym for scopolamine, was used to designate the drug which the police surgeon administered to Townsend in the police station before he made his statement.

But scopolamine, or hyoscine, is the original so-called "truth drug." It is an alkaloid derived from certain plants of the order of the *solanaceae*, deadly nightshade, henbane, and mandrake.[1] It is a sedative of the nervous system. In 1897–1899, in Texas, Robert House first reported on the use of scopolamine in the treatment of morphine and cocaine addiction. After the first reports on scopolamine by House the drug came into use as an analgesic in obstetrics. It first appeared in connection with criminology in Dallas, Texas, about 1930. This marks the beginning of the use of scopolamine as an instrument of psychological analysis (narcoanalysis); previous use of the drug had been as a sedative and analgesic. In 1932 Calvin Goddard, of Dallas, Texas, coined the term "truth serum," and made the claim that under its influence "it is impossible to lie."[2] The "truth serum," along with the "lie detector," were widely publicized in American journalism.

During World War II, narcoanalysis was used extensively, first by Americans in North Africa and then by the British, in order to expose hidden fears of battle-shocked airmen and soldiers, and thus to relieve them and make possible their return to duty. At about this time the barbiturates, sodium pentothal and sodium amytal, began to replace scopolamine as the drugs most used in narcoanalysis.

In small doses, administered intravenously, scopolamine and the barbiturates are sedatives and hypnotics, quieting anxiety, and restoring sleep in cases of excitement and depression. They produce first a feeling of serenity, of well-being, of friendliness. The patient loses his inhibitions and becomes talkative; he will freely discuss his intimate thoughts and experiences. When the patient is "going under" or "coming out" of the deep phase of anaesthesia, he will lose the upper level of control, but he will still be able to talk, and he may give out some materials which he would normally repress. In short, the effect of scopolamine narcosis or of the barbiturates is similar to that of alcohol, but the release that comes about through the drugs relates principally to words, while that from alcohol relates to deeds as well as words. Drugs are easier to handle in narcoanalysis than alcohol, because the effects are more standardized and predictable.[3]

At no time in Townsend's trial or appeal was any special point made in his defense about the peculiar character of scopolamine as a speech-inducing drug. This element seems to have entered the case only much later, in proceedings for

[1] J. Rolin, Police Drugs, translated, with a Foreword, by L. Bendit, New York (Philosophical Library) 1956, pp. 12 ff.

[2] *Ibid.*

[3] E. L. Kropa, Psychochemistry, Lecture presented at the University of Notre Dame, October 31, 1956, p. 32.

stays of execution. For example, a Chicago *Sun-Times* news item of March 22, 1958, (two years after the trial and one year after conviction and sentence were affirmed), says that Townsend's counsel on appeal said he had "just learned" that Townsend was under the influence of hyoscine, a "so-called 'truth serum,'" when he made his confession to the police. Also that counsel said he "had information" that a police surgeon had given Townsend an injection of hyoscine and a barbiturate—along with four phenobarbital pills to be taken orally—to ease narcotic-withdrawal distress which Townsend was suffering while in custody. The news item goes on to quote two doctors of the police medical staff saying that of the ten physicians on the staff "none has administered any drug in the nature of a 'truth serum,'" and that the police staff "never used anything like that."

Yet there was nothing in the slightest degree new about this "information" and there can be no factual doubt whatever about it. The reported case on appeal simply puts it as matter of fact that "the surgeon gave him an injection of sodium phenobarbital and hyoscine hydrobromide"; and summarizes the testimony given at the trial by the surgeon as to his opinion of the effects of the injection which he had himself administered.[4] Therefore, there is no doubt at all that hyoscine was administered, and that this was known at the trial and throughout the appeal.

The difficulty might be resolved in this fashion. Counsel's point may be that his position as of March 22, 1958 was that the Supreme Court one year before had not ruled sufficiently on the specific quality of hyoscine or scopolamine as a speech-inducing drug. It is undoubtedly true that the Supreme Court did make a ruling on the narcotic aspect of Townsend's confession. The ruling was: that the evidence did not show that Townsend was out of control of body or mind when he confessed; that there was no proof that Townsend was placed under drugs for the purpose of securing a confession; and that the evidence did show that Townsend was capable of making a narration of events and of stating his own participation in the crime. But the point may still remain that these rulings add up to what might be described as a rule of law on confession under narcotics "in general," without specific reference to the peculiar character of the drug in question, scopolamine, the famous "truth drug," used in narcoanalysis. This supposition is strengthened by the fact that the majority of the court relied on precedent relating to alcohol intoxication, never pinpointing scopolamine in any distinct way.

On the other hand, the statements of the police physician in the news item that they "never used anything like that" would amount to a denial that the drug was injected precisely as speech-inducing, in view of the purposes of interrogation. They would not deny that hyoscine was injected into Townsend, for that would be clearly contrary to fact. In short, the medical staff says that narcointerrogation is not used in police medical procedure in Chicago.

But considering the timetable of events, the physical and mental condition of the accused person, and the actual outcome, this might very well constitute a distinction without a difference. The police surgeon administered the injections at 9:45 P.M. on January 1, 1954, and departed. Present then were the suspect, the Assistant State's Attorney, four policemen and the stenographer. The suspect was nineteen years old, of subnormal intelligence, and a drug addict who had just been treated for acute withdrawal distress. He confessed to the killing of Boone at 11:15 P.M., one hour and a half after he had received injections of phenobarbital and scopolamine.

What condition was Townsend in, after the injections and at 11:15?

As often is the case in forensic medicine, the expert testimony was partisan and conflicting. Townsend's witness, a professor of pharmacology and toxicology in the Loyola University Medical School, said that the effect of the administered dosage would have ranged from drowsiness and apathy on the one extreme to complete disorientation and excitation on the other, and that there would have taken place impairment of vision and loss of memory. These effects could have begun ten to fifteen minutes after the injection and would have lasted for a period of from five to eight hours. The police surgeon said there would have been no cause to go to sleep, no impairment of eyesight, no loss of memory or mental impairment—even if Townsend had taken all four phenobarbital pills on top of the injections. The police surgeon said that a larger dosage than what he gave, an "excessive dosage," would have produced different results. Townsend's witness, the Loyola pro-

[4] People v. Townsend, 141 N.E. 2d. 729, at 732, 735, March 20, 1957. See notes, 52 Northwestern L.R. 666-681 (1957), 24 Brooklyn L.R.96 (1957).

fessor, had had no experience with scopolamine, and had never used it on narcotic addict patients. The police surgeon had had fourteen years' experience with narcotic addicts, and had handled three thousand withdrawal cases.

Townsend himself said that:

> Within a few minutes after the injection... his vision became blurred, his memory failed him, he could hear people talk but could not understand or recognize them, he answered questions without knowing why, he couldn't hold his head up, and his only sensation was that he wanted to sleep.[5]

It is undoubtedly true that scopolamine could have been given as an analgesic, a pain-killer, just as the police surgeon said, to relieve the distress of narcotic abstinence symptoms. This was actually the first use of the drug reported by House, and it was later used to relieve the pains of childbirth. The setting in the police station in Townsend's case is altogether different from that of a directly purposeful narcointerrogation. In Townsend's case there was no psychiatrist present, no direct tie-in between the narcosis and the interrogation and the confession. There was no admittedly purposeful coercion, nor cajoled consent. Townsend actually asked for help, but of course he had no way of knowing what would happen after he got it.

Yet clearly narcosis and interrogation took place. The peculiar effect of verbal catharsis which scopolamine produces (plus the sodium phenobarbital injection, plus the three pills) could have taken place just as actually as if this effect, not merely that of pain-relief, had been directly intended. The suggestibility, the amiable friendliness, the trustful and confiding attitude, and the similarity to alcohol intoxication must be kept in mind. Almost certainly the questions of the experienced policemen were full of suggestion, and their attitude friendly so as to inspire confidence and trust. And that suspect might have become tipsy and talkative, like a person drinking bourbon in a bar—not falling down, not stupefied, not dead drunk, but making good sense, as the witnesses testified concerning Townsend's condition when he made the statement. Yet in the suspect's condition, at that time, the actual statement itself might have been totally untrue, or might have related to matters which he had a moral and legal right to suppress. And the timetable is exactly right for all this to have taken place before the events of the night came to a close and the suspect finally got the sleep which he said was all he wanted.

It is true that Townsend signed the statement the next day and repeated the confession two days after that, at the coroner's inquest. But this matter is tied up with another question altogether, with its own timetable: the question of Townsend's drug addiction.

The crucial characteristic of narcotic addition is not compulsive use, not "kicks" or "thrills," but the fact of physical dependence. The addict needs the drug chemically, and if he does not get it he will suffer physical torture to the extreme even of death.[6] The flat narration in the Townsend record does not describe his condition graphically, but the symptoms are clearly there, and the urgent truth is that these symptoms would recur regularly every seven or eight hours as long as Townsend abstained. The police surgeon testified that he gave Townsend more phenobarbital during the morning after the confession, before the suspect's trip to the State's Attorney's office. But there is no mention of other treatment between that time and the coroner's inquest of January 4. Yet during that interval the suspect must have been given drugs, or else the same symptoms which afflicted him on the night of his arrest would have set in inexorably. The possibility is at least very strong that at no time between January 1 and 4 was Townsend in complete control either of his words or his actions.

Ethical Argument

Scientific, legal, and ethical authority coincide against the *reliability* of testimony gained under narcosis. "There is no such thing as a 'truth serum': it is a journalistic fiction. Narcosis does not abolish the possibility of deceit and lying."[7] John M. McDonald, M.D., Assistant Medical Director of the Colorado Psychopathic Hospital, writes,[8] that narcoanalysis "can induce a confession from the innocent." Dr. J. A. M. Meerloo, distinguished Dutch psychiatrist, and Dr. Robert S. De Ropp, a University of London bio-chemist

[5] *Ibid.*, p. 735.

[6] See description in Robert S. De Ropp, Drugs and the Mind, New York, (St. Martin's Press), 1957, pp. 152–154.

[7] J. Rolin, Police Drugs, translated, with a Foreword, by L. Bendit, New York (Philosophical Library), 1956, p. 12.

[8] J. McDonald, Jour. of Crim. Law, Criminol., and Pol. Sci. *46* (1955) p. 259.

agree that "in fact narcoanalysis is no guarantee of getting at the truth,"[9] and that "there is no evidence to show that either scopolamine or any other drug can so relax an accused person's defenses that he unknowingly reveals truths he is trying to conceal."[10]

From the legal point of view, a note in *American Law Reports* says[11] that "a confession induced by a drug ought to be excluded. There is great danger that it may be false . . . mingled with fancy . . . and . . . moulded by suggestions." And a Federal case[12] says that "people thus prompted to speak freely do not always tell the truth."

Finally, on the point of unreliability, the late Pope Pius XII, in an address to the Sixth International Congress on Criminal Law, October 3, 1953,[13] said that narcoanalysis should be excluded from judicial investigation because too often this method "produces erroneous results." The Pope went on to point out that the resultant confessions often coincide exactly with the antecedent desires of the questioners, and mentioned "spectacular and well known processes" of this sort.

Thus the stigma of unreliability lies on a confession obtained through drugs. It might be argued in Townsend's case that the drug was not given purposely to elicit a confession, but this would make no difference if the effect actually followed: Townsend's confession was unreliable.

But there is a more profound moral argument against the legal use of information secured through drugs. It is the denial of due process of law, of the right of an accused, even a guilty, person not to be a witness against himself. Ethically, this right no doubt rests on a profound human conviction that, in the absence of force or fraud, or the implication of the innocent, the obligation of a guilty person is to repent and make good any individual damage he has caused through his crime. There is no obligation to volunteer for civil punishment.

Pope Pius XII[14] placed this reason as primary, above unreliability, in his statement against narcoanalysis: "(This method) violates a natural right even if the accused is really guilty." Similarly, De Ropp:[15] "In the United States such a practice would be contrary to the spirit of the Fifth Amendment, which was specifically designed to protect accused persons from procedures which would compel them to be witnesses against themselves." And J. Rolin refers to narcointerrogation by police as amounting to an assault on mind and will, a form of "spiritual rape," a violation of the "secrecy of the soul."[16]

Once more, in conclusion, it may be held that these heavy strictures should not be made to lie in Townsend's case because the injections were made professedly to heal and soothe, not to extort a confession. However, the result followed just as precisely as if purposeful narcointerrogation had been the express aim. Therefore, it is argued here that Townsend was morally compelled to act as a witness against himself, and was deprived of justice and due process of law.

[9] J. A. M. MEERLOO, THE RAPE OF THE MIND, Cleveland and New York (The World Publishing Co.) 1956, p. 66.

[10] ROBERT S. DE ROPP, DRUGSAND THE MIND, New York, (St. Martin's Press) 1957, p. 274.

[11] ALR 2d 1307, quoting 14 U. of Chi. L.R. 601.

[12] Lindsey v. U.S.A. 237 F. 2d 893 (U.S.C.A. 9th Circ Alaska, 1957).

[13] ACTA APOSTOLICAE SEDIS, 45 (30 Nov. 1953) 735.

[14] *Ibid.*

[15] *Op. cit.*, p. 274.

[16] *Op. cit.* p. 9.