

CHAPTER IX  
PHYSIOLOGICAL OR PSYCHOLOGICAL TRUTH AND  
DECEPTION TESTS

This chapter deals with the use of (i) lie detector test, (ii) truth serums, and (iii) hypnosis, as investigating tools to find out offenders.

The lie detector is an instrument which records certain physiological phenomena, such as changes in the pulse rate, blood pressure, respiration, heart beat, etc. under the theory that a person telling a lie or even listening without response to questions relating to a crime he has committed undergoes definitely ascertainable physiological reactions, which will not occur in a person telling the truth. The procedure consists of attaching instruments to the subject's body and interrogating him commencing with innocuous questions to establish his normal reactions and proceeding to questions regarding the crime of which he is suspected (or other matters upon which the interrogator seeks information).<sup>1</sup>

The name "truth serum" is given to certain drugs, principally scopolamine, sodium amytal and sodium pentothal, which put a person in a state of unconsciousness. It is said by some that a person under the influence of such drugs is deprived in large measure of his self-control and will power, and in such a state answers questions truthfully, having no power to fabricate. The hypnosis test is also based on the same principle as truth serum tests.

Besides the question of self-incrimination, evidence obtained through the methods mentioned above is held inadmissible by the American courts on the following grounds. In relation to truth serums, the authorities agree that the subject pours out both fact and fancy. Thus there is great danger that a confession induced by such a drug may be false. "It is subject to being mingled with fancy. It is subject to being moded by the suggestions of the interrogator. In the hands of incompetent or unethical interrogator, a suspect can make a wide variety of unreliable statements."<sup>2</sup>

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1. *Annotation, Physiological or Psychological Truth and Deception Tests*, 23 A. L. R. 2nd 1306, 1307 (1952).
  2. Leon M. Despres, *Legal Aspects of Drug-Induced Statements*, 14 Univ. of Chi. L. R. 601, 606 (1946-47).

Hypnosis is subject to the same criticism. So also the lie detector has not yet attained scientific acceptance as a reliable and accurate means of ascertaining the truth. With regard to this test it has been stated:

“Many innocent but highly sensitive persons would undoubtedly show unfavourable physical reactions, while many guilty persons, of hardened or less sensitive spirit, would register no physical indication of falsification. This the trained operators of course understand, and proceed upon the basis of a large percentage of error. But it seems quite too subtle a task of evaluation to impose upon an untrained jury.”<sup>3</sup>

In addition to these objections the use of drugs to obtain statements opens up tremendous possibilities for oppression and threat to individual privacy. Thus it is stated:

“Under the influence of drugs, their secrets, their wishes, their subconscious hostilities, would soon become police property, and many private details, better left hidden, could be used to embarrass or destroy the subject. Although the drug injection would lack the physical discomfort of torture, it would, nevertheless, be an effective method of torture whose results in ruined lives might far exceed the discomforts of the conventional third degree.”<sup>4</sup>

There can be no question of comparison of the psychological tests with other scientific physical tests, which are held admissible by the courts, because of great dangers involved in, and scientific unreliability of, the former. Invasion of individual privacy at least demands a certain degree of accuracy in scientific tests involving the human body.

The evidence obtained through involuntary submission to the measures discussed herein is inadmissible on the ground of self-incrimination also. The accused is required to testify in the full sense of that term with regard to the crime. The admissibility of such evidence would also discourage the police and the prosecutor

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3. *State v. Lowry*, (1947) 163 Kan. 622, 185 P. 2nd 147, quoted in 23 A. L. R. 2nd *supra* note 1 at 1308. A useful book on the subject is Inbau, *Lie Detection and Criminal Interrogation*, 2nd ed. (1948). It may be noted that though the evidence obtained through the lie-detector is inadmissible in the courts in the United States, yet it seems that the police are using it as an investigating tool, and a confession, otherwise voluntary, is not held inadmissible because it was obtained through the threat to use lie-detector or by pointing to unfavourable test results. It is, however, doubtful whether the police can legally use in lie-detector in the face of the suspect's objection.
  4. *Supra* note 2 at 607.

from thoroughly investigating the crime and searching for more dependable evidence—one of the policy considerations behind the privilege against self-incrimination. The following words of Mr. Despres against the admissibility of drug-induced statements are pertinent here.

“The distinction between verbal and physical compulsion has a valid historical basis, because the abuses in compelling self-incrimination and involuntary confessions were predominantly concerned with verbal utterances; but the distinction seems to be based also on accepting the dualism of body and mind, admitting the evidence of the body, but not of the mind. Under the impact of modern psychology, the ‘mind’ as generally conceived is fleeing to ever deeper recesses, leaving more and more functions to the ‘body’. One day, verbal utterances may be deemed mere ‘physical characteristics’, and the use of statements induced by drugs may be admissible in mixed courts of medicine and of law. So long, however, as the law holds a criminal responsible for his wilful crime and punishes him, it is unlikely that Anglo-American courts as we know them will hold forcibly obtained verbal statements equally admissible with footprints, fingerprints, and blood tests.”<sup>5</sup>

It is said of the lie detector that “It is not necessary for the person being examined to discuss the subject under investigation, except in so far as he responds to the examiner’s question by either ‘yes’ or ‘no’; and even these verbal answers are not absolutely necessary.”<sup>6</sup> Whether the accused is required to speak or not, evidence obtained through the lie-detector is testimonial in nature and comes within the coverage of privilege against self-incrimination. Even though the accused may remain silent, still the evidence obtained through the test amounts to testimony since the idea is to record his physiological reactions arising through his mental faculties.

It may be noted that the Supreme Court of India in *State of Bombay v. Kathi Kalu Oghad*<sup>7</sup> stated in one of its conclusions that “to be a witness’ [as the words appear in Art. 20 (3) of the Constitution] means imparting knowledge in respect of relevant facts by an oral statement or a statement in writing, made or given in Court or otherwise.”<sup>8</sup> This conclusion will certainly bring the truth serum

5. *Supra* note 2 at 609.

6. Inbau, *Self-Incrimination*, p. 67 (1950).

7. A. I. R. 1961 S. C. 1808.

8. *Ibid.*, p. 1817.

and hypnosis tests within the coverage of the privilege against self-incrimination as embodied in the Article. However, if the conclusion of the court is detached from its reasoning in the case, it could conceivably be taken to permit the use of the lie-detector test, in those cases where the accused is not required to speak. As has been stated earlier in this chapter, since the idea of the test is to record the subject's physiological reactions arising through his mental faculties even though he remains silent, it certainly involves volition of the subject. And the test would be covered by Art. 20 (3) of the Constitution on the basis of the reasoning of the court that self-incrimination means giving personal testimony by the accused which must depend upon his volition.<sup>9</sup>

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9. See *supra*, chapter II, pp. 14-15