

## THE MEDICO-LEGAL SOCIETY

March 14, 1968

A MEETING of the Medico-Legal Society was held at the Royal Society of Medicine, 1, Wimpole Street, London, W.1, on Thursday, March 14, 1968 at 8.15 p.m., when Professor Keith Simpson, MD, FRCP, FCPATH, Professor of Forensic Medicine, University of London, gave an address on "The Stephen Truscott Case in Ontario."

The President, Master B. A. Harwood, MA, was in the Chair.

The PRESIDENT announced that an invitation had been received from the French Medico-Legal Society to attend their centenary celebrations in Paris on May 24 and 25, when an interesting programme of discussions had been arranged and a dinner would be held. Details were available for members from the Hon. Secretary, Mr. Barnes.

In introducing the Lecturer, the President said that the Society had with them tonight an unknown stranger, about whom he had made a few inquiries. He was told that he knew a bit about forensic medicine, he had written a book of two on the subjects, had done a bit of teaching and occasionally appeared even as an expert witness. The subject of his address tonight was "The Stephen Truscott Case in Ontario."

Professor Simpson then presented his address.

The PRESIDENT said that it was extremely good of Professor Simpson not only to have taken the trouble to prepare his fascinating paper, but also, pressed as he had been, as one had read in the newspapers, with a sensational case during the last day or two, to have voluntarily promised to come and deliver his paper tonight.

## THE CASE AGAINST STEVEN TRUSCOTT IN CANADA

by Keith Simpson, MD, FRCP, FCPATH, DMJ

*(Professor of Forensic Medicine in the University of London)*

THE reasons why cases make criminal history are worth a few moments study. Calculated murder has always had a particular fascination for both the lay public, content to read the more sensational press, and also for the more serious student of criminology. Bizarre sadistic crimes like those of Landru, Heath, Christie or the recent Moors case have little more than animal degradation to distinguish them, and the more systematic planning of Joseph Smith with his "Brides in the Bath," or Haigh, the acid-bath murderer, really add little but new facts to the records. It needs originality like "Dr." Crippen with his hyoscine (and Ethel le Neve), brilliant or painstaking detection like that of Greeno in Sangret, scientific reconstruction like Dobkin or vital analysis as in the Portsmouth Armstrongs. Doctors like Lamson, Palmer, Ruxton or Clements, and lawyers like Greenwood or Armstrong lend an air of distinction to their crimes, as do politicians like

Drummond, statesmen—or kings, as at Sarajevo. Novelty of legal argument as in Podola or a decision of the magnitude of that in the Bourne case inscribe them in the annals. Medico-legal luminaries like Spilsbury (Seddon, Smith, Fox, Antiquis) or Sydney Smith (the Sirdar of Egypt), counsel like Patrick Hastings (Mrs. Barney), Serjeant O'Sullivan (Dashwood and Silverosa), or Norman Birkett (Rouse)—and rarely a powerful criminal judge like Avery (Vaquier), or Travers Humphreys (Haigh) provide the colour necessary to give a case longer life or a place in history. Of course the stream of criminal detective memoirs like those of Spilsbury, Churchill, Cherrill, Fabian or our recent Commissioner for Crime, Jackson, must refresh criminal memories. Alas, the older charm of Hodge's "Famous Trials" series is defunct.

### Power of the Press

In recent years a disturbing new power has made itself felt: it is the pressure capable of being brought by the Press, radio or television, and by publishers of books to ventilate criticisms and raise doubt in the public mind as to the justice of a conviction. The case of Evans, and the A6 murder, for which Hanratty was executed, are examples of this: and this case of Steven Truscott is yet another. Truscott went a good deal further, for it made legal history in Canada. A Supreme Court of eleven judges experienced in criminal work and headed by the Lord Chief Justice was appointed by the Governor General to hear a submission on behalf of the accused. Mr. Arthur Martin, QC, Canada's "Birkett" was selected to represent the defence submission, and Mr. William Bowman, QC, Director of Public Prosecutions and Mr. Don Scott, QC put the case for the Crown.

Nothing would have been heard of this 1959 murder in a country district of Ontario had it not been for the publication by Gollancz of a book by a Canadian woman, a Miss Isobel Lebourdais, questioning the justice of the conviction of a boy of 14, Steven Truscott, for the murder of a teenage girl, Lynne Harper: Miss Lebourdais questioned the accuracy and honesty of the medical and scientific evidence, accused the police of bullying tactics, the Crown prosecution of selecting its facts—and the Judge of frank bias. The book was highly tendentious, medically uninformed, and itself committed the very faults of prejudgment and bias of which its author complained: it was too disturbed by emotional involvement to be a good review of the case. It must have given ample grounds for a civil action for it certainly imputed dishonesty and partisanship in the administration of justice. The pathologist, Dr. John Penistan, an old Oxford graduate (DM, MRCP) of considerable local repute, was restrained from taking legal action, but the Judge was described to me as being just "so hoppin' mad he was still six feet off the ground." But more important than defending names was to refute, if it was right and well-founded to do so, the allegations of bias and injustice. The boy, Steven Truscott, had received a life sentence and was in jail: Miss Lebourdais clamoured—aided by Gollancz and the Canadian Press—for a retrial on the grounds of a gross miscarriage of justice. One English medico-legal expert, given (as I also was) a copy of the book for comment, said he "did not think that the medical evidence . . . could possibly stand up to scrutiny." A letter saying so was read to him later in Court at Ottawa . . . it added he "would have no objection" to any expression of his views on the case being published and this comment on not standing up to scrutiny was widely quoted. I contented myself with a review of the book in our own "Medico-Legal Journal." It was *not* complimentary, and

I was hardly surprised that Gollancz did *not* use it in their advertisements; but it appeared to give some reassurance to the Attorney General in Canada when it later came into his hands. He decided to seek medical advice on the case—its soundness and the possibility of a miscarriage of justice. Counsel for Truscott later endeavoured to show, when I was under cross-examination, that I had pre-judged the facts in this review, but appeared to accept the answer that this was an expression of my *view of the book*—not the *facts*: the difference was vital, as Mr. Martin of counsel saw. The basic facts were never in dispute and I will do no more than repeat the account of the case given by Det. Insp. Graham—now Commissioner of Police of Ontario—at a discussion on it at last year's convention of North American coroners in Toronto at which I recounted the medical facts.

### Circumstances Known to D.I. Graham (Ontario)

Lynne Harper lived with her family in the permanent married quarters of the R.C.A.F. Station at Clinton near Goderich, Ontario, her father being a Flying Officer in the R.C.A.F. Steven Truscott also lived with his family at the Station, for his father was a Warrant Officer in the Air Force. Lynne Harper was 12 years of age and Steven Truscott was 14. Both children were in the same grade at school and knew each other well.

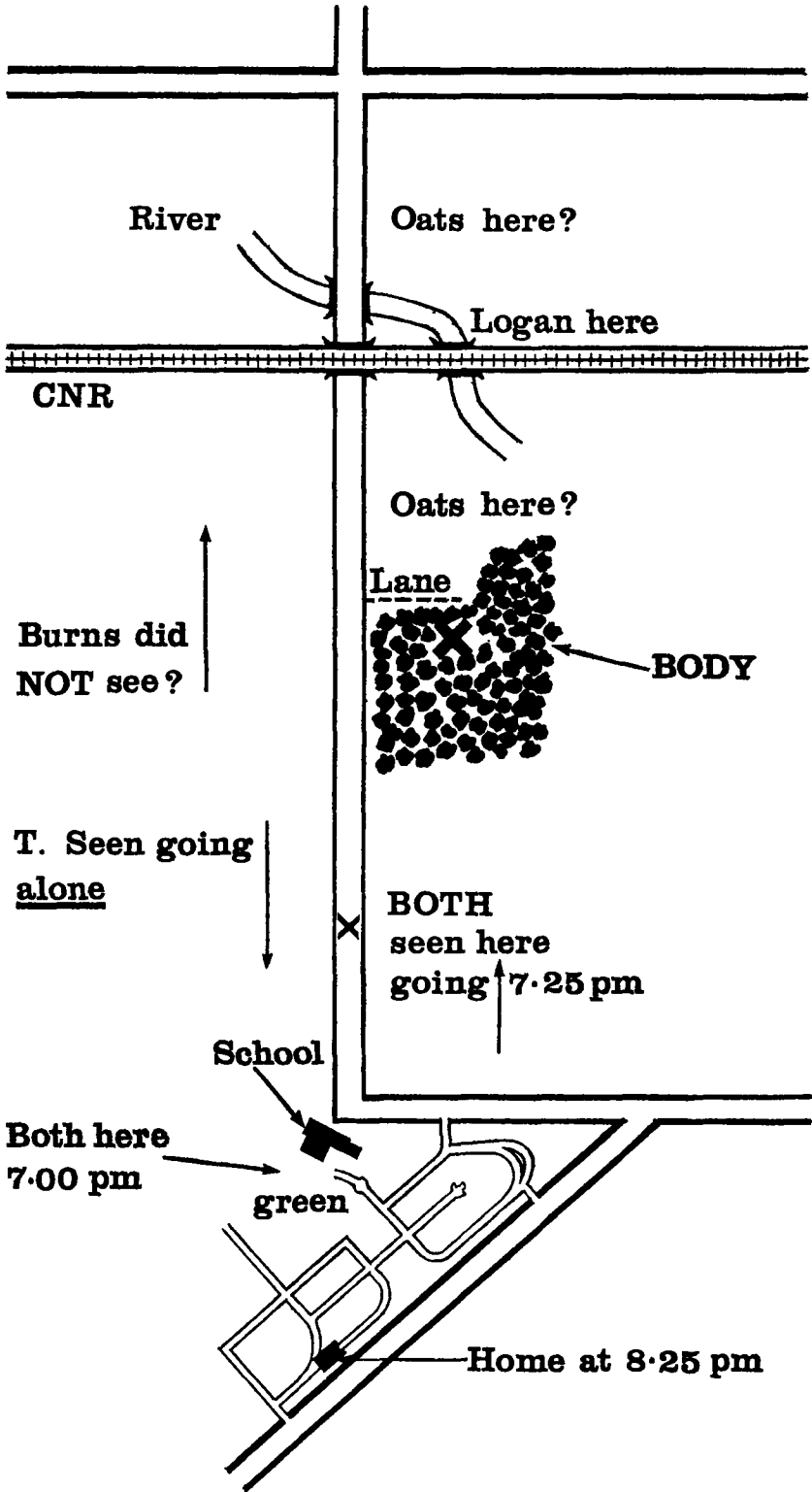
Tuesday, June 9, 1959, was a very warm, sunny day. On account of the heat, there was heavy traffic between the Air School and a swimming hole in the Bayfield River about a mile north of the school on the County Road towards No. 8 highway. Steven Truscott was seen by a Mrs. Geiger and by two fellow schoolboys idling about this road on his bicycle between 6.10 and 6.30 p.m.

Lynne Harper sat down to her dinner on this Tuesday, June 9, 1959, about 5.30 p.m. Her parents had almost finished. She was served turkey, cranberry sauce, peas, potatoes and "upside-down" pineapple cake. Ham, bologna, celery and pickles were also on the table. When she had finished (it was around 5.45 p.m.), she washed the dishes and then walked over to a meeting of Brownies which was being held in the shade of trees near the schoolhouse. Lynne was a girl guide and she was talking and joking with the two Brownie leaders in charge of the pack, whom she knew well.

About 7 o'clock, Steven Truscott, wearing his red pants and riding his green racing bicycle, arrived in the area of the Brownie meeting place. Lynne left the Brownies and walked over to Steven where she was observed chatting amiably with him for a few minutes.

A short time later, at a time estimated by two witnesses, a Mrs. Nickerson and a Mrs. Bohonus, as about 7.05 p.m., Steven and Lynne walked across the grass with the bicycle to the paved County Road. On reaching the road, Lynne sat on the cross-bar and Steven pedalled her north on the County Road. This road passes first a hardwood bush, known as "Lawson's Bush," then a swimming hole, and intersects No. 8 highway one and a quarter miles north of the school.

Subsequent investigation revealed that two boys had left the swimming hole together, one walking and one on a bicycle. The boy on the bicycle (Richard Gellatly) met Steven and Lynne riding north alongside the bush at around 7.25 p.m. However, the youth who was on foot, Philip Burns, *did not* meet them. He also was home by 7.30 p.m. The only logical inference to be drawn from this was that Lynne and Steven had left the road when the boy who was walking arrived at the point where he should have met them had they continued on to



No. 8 highway. There was no reliable evidence that anyone had seen Steven Truscott north of this point.

The credibility of the evidence of the boy who did not see him was strengthened by two other playmates, who were looking for Steven, and had asked the boy while he was walking home if he had seen Steven, and he stated that he had not. Lynne Harper was not seen alive again.

About 8 p.m. Steven arrived back at the school area alone. He appeared outwardly calm. One boy asked him, "What did you do with Harper, throw her to the fishes?" to which he replied he had taken her down to No. 8 highway.

After talking with his brother and some of his chums for a few minutes, Steven went to his home to "baby-sit." His evidence as to where he had been and whom he had seen never agreed with any of the other witnesses who said when and where they had seen him: at the final Supreme Court hearing he said he could not remember seeing any of them: it was by then six years later.

When Lynne had not returned to her home about 9.15 p.m., inquiries were instituted by her mother as to where she might be. Subsequent inquiries, both by the mother and father, were fruitless, and they became alarmed. Flying Officer Harper reported his daughter missing to the Air Force Police who notified the Ontario Provincial Police at Goderich at 11.30 p.m. At 11.40 p.m., a missing person message was broadcast not only on the police radio network but on the area commercial radio stations.

The search was continued early Wednesday morning by the Ontario Police and Air Force personnel, and this included searching barns and vacant houses in the area. At this time anxiety for her safety was mounting. An inquiry of relatives to whom she may have gone was also made, but to no avail. On Wednesday, June 10, about 7.45 a.m., Flying Officer Harper went to the Truscott residence to inquire about Lynne. He did so because some of the children had seen Lynne with Steven the night before. Steven, in reply to questions, said he had taken her on his bicycle to the intersection of the County Road and No. 8 highway and she hitch-hiked a ride. Flying Officer Harper asked him, "Are you sure?" and Truscott replied "Yes."

Later in the morning, Steven was again questioned, this time by the police. He gave the same story, enlarging it by describing the vehicle Lynne was alleged to have got into as "a grey 1959 Chevrolet with lots of chrome and bearing yellow licence plates." This information was broadcast across the police radio network, special attention being given to the American border points and the Windsor, Fort Erie areas. The colour of the licence plates indicated a Michigan car. Checks were made of cars of similar description in Ontario and Michigan without useful information coming to light.

During all this time, the search in the area of the Air Force Station was continued by volunteers and Air Force personnel under the direction of the Ontario Provincial Police.

A shoulder-to-shoulder search through the Lawson Bush area resulted in the finding of the body by Air Force personnel at 2 p.m. Thursday, June 11. This would be 43 hours after she had last been seen alive—with Steven Truscott, and 44 hours after her last meal. She lay on her back in a copse, a few branches drawn over the body giving an air of deliberate concealment. The body lay 282 feet east of the fence line which runs along the County Road, and 80 feet south of the barb wire fence which runs along a laneway at the north edge of the bush. It was nude with the exception of blouse and vest. It was quite clear that



The body as found, lightly covered with branches

the girl had been strangled. Her own blouse had been torn and was tied tightly around her neck. The scene was carefully preserved. A coroner and the consulting medico-legal pathologist to the Province, Dr. John Penistan, were summoned to examine the body in the bush. Dr. Penistan arrived at 4.45 that afternoon and made an examination of the body exactly as it had been found, of the brush, and of the ground both under and around it.

The shoes lay close to the body but the panties were found 35 feet north of the body (between the body and the laneway).

The feet were spread apart and two mounds of earth opposite the girl's feet were subsequently identified as having been made by crepe soled shoes. The pattern of the sole of these was similar to shoes which were worn by Truscott on the evening of Lynne's disappearance. No fluid, seminal or bloody was found in the crotch region or on the leaves or soil beneath but vaginal swabs were positive for seminal fluid. The body was removed to the mortuary where it was examined at 7.15 p.m. that day.

#### CRIMINAL INVESTIGATION

A full scale homicide investigation started immediately. Statements were taken from all witnesses who had already been interviewed, as well as others and Truscott's story was taken down in shorthand and re-examined.

Under close scrutiny, it was evident that many details of Truscott's story did not agree with the statements of some witnesses, but did to some extent agree with the general facts. The discrepancies in his story were sufficient to warrant further questioning, as a result of which about 7 p.m. Friday, June 12, 1959, Steven was taken to the Goderich office of the Ontario Provincial Police and at 9.45 p.m. to the R.C.A.F. Station where, with the consent of his father, a medical examination was made by the Truscott family doctor. This resulted in the discovery of certain sores on the penis. In the officer's opinion, this was incriminating evidence, circumstantial perhaps, but still, in his view, very important.

While this medical examination was being made, other officers executed a search warrant at the Truscott home. Here they made some important discoveries.

On the clothes-line in the cellar was a pair of freshly laundered red trousers. No other laundry was on the line. Chlorophyll stains could still be detected on the knees. There was a tear in the back of the trousers, and this corresponded with an injury on Truscott's leg which was consistent with being made about the time Lynne died two days before. The wound on the suspect's leg was consistent with it having been cut by a barb on the wire fence around the area where the body was found.

It seemed to Inspector Graham and his police officers that the pieces had begun to fit together. Common sense, which plays such an important part in any investigation, seemed to point to Steven Truscott, and to suggest that the mysterious motorist was nothing but a desperate alibi. Steven Truscott was not a strong suspect originally because of the conflicting stories that had been obtained in the early stages of the inquiry, and also because it was not the type of crime an investigator would normally attribute to a 14-year-old boy. But adolescents do commit such crimes, and the investigator has not only the right, but in fact the responsibility, to question anyone whom he feels may be able to assist him in determining the truth. Many children were questioned, but only Steven Truscott's replies reflected suspicion on him.

Dr. Penistan's autopsy, for reasons I will go into later, suggested that death had occurred around two hours after Lynne's last meal—which would place it at around 7.30-45 p.m.—precisely when, it seemed, Steven Truscott was with her, and during the following afternoon laboratory tests of the last meal by the Attorney General's Laboratory (now the Centre of Forensic Sciences), confirmed this. The contents of the stomach were identified as similar in detail to the meal which had been served to her Tuesday evening: she had not been elsewhere and had another meal. Timing death was becoming a matter of vital importance. On that evening, June 12, 1959, the Crown Attorney decided upon a charge of murder against Truscott. Permission was received from the Juvenile and Family Court Judge to lodge Truscott in the County Jail. It was by then 3 a.m. Saturday, June 13. Commissioner Graham later commented: "Some of the critics point to the length of time Steven was in our custody before the charge was laid, but major crimes are not always solved within time limits. We had to be absolutely sure we were on the right track . . . the investigator must be satisfied beyond doubt."

### Dr Penistan's Autopsy Findings

I will not detail everything that Dr. Penistan—an experienced pathologist with much medico-legal experience—noted in his examination at the scene or in the mortuary. Suffice it that he performed an examination (under mortuary conditions that were far from ideal) that withstood as critical an examination from experts from Canada, England and the United States as any of us might ever anticipate. This was, on the face of it, just another murder. Dr. Penistan gave it the most patient, thorough and skilled attention which was most apparent from his long and detailed report—which I have here for those who might like to peruse it. I see many such reports on behalf of both Crown and defence solicitors, and I do not remember in 30 years seeing a more thorough or painstaking report, and any more impartial deductions. The more rash—as it turned out on ultimate hearing at Ottawa—that Miss L. in her book criticized him so emotionally and irrationally. She relied upon textbooks long since out of date—a Glaister of 1929, a "Recent Advances in Forensic Medicine"—unfortunately "recent" 30 years previously only. She had not done what a more sober critic would have done—consult the modern literature or current experts in the field in which she laid about herself so disturbingly.

### PROOF OF GUILT—AND COMPLAINT

What were the principal findings—and of what did Miss L. complain? Let us look at some of her major causes for complaint.

### PROOF OF GUILT—AND COMPLAINT

*The Strangling.* Lynne H. had been strangled with her own blouse—Miss L. said it could not be done: also a part of the blouse was missing and Miss L. argued that this was fatal to the case for the Crown. In fact it would have been wiser for Miss L. to have said that *she* couldn't see how it could have been done, not to say it was impossible. It was, as I show you in this succession of photographs, and curiously enough, when it was done—and the ligature was cut as Dr. Penistan indicated—the very piece that had been mislaid fell away. In the Supreme Court at Ottawa it was even more dramatic, for a charming police girl demonstration "victim" secured the attentions of the whole court, and when the

ligature was cut, the loose piece fluttered *out of sight* under a bench. In the ill-lit crowded undertaker's mortuary that Dr. Penistan had to work in at Stratford, crowded with doctors, police personnel, photographers, and their stands, it was, perhaps, no surprise that such a piece "got lost." It did not affect the issue, but Miss L. was avid for any cause for complaint and made much of it in her book.

*The Clothing.* The murder had been preceded by stripping the child, and clothing lay scattered nearby as you have seen in the photographs and plan. Miss L. pursuing Steven Truscott's story of seeing the girl accept a lift in a car on Highway No. 10, and her counsel also, to my surprise, for he was a splendid lawyer of great experience, suggested she had not met her death there but had been brought there after being hi-jacked out of the district. "What?" said Dr. Milton Helpert, the Chief Medical Examiner of New York . . . "murdered and then brought back near to her home and put there with her shoes and things scattered round? It don't make sense!" It was as plain a "Come now to reason" remark as I have heard in court. Counsel did not pursue the matter, and on the reference judgment it was accepted.

*The Position of the Body.* Lynne had, there could be no real doubt, been murdered exactly where she lay. The ground bore footmarks (with the same pattern as Truscott's shoes—shoes he could or would not produce, and that were never found after the murder) and the body bore twig and undergrowth impressions suggesting it had not merely lain but had been pressed on its back. Miss Lebourdais wrote much of perplexing tears in the skin and bleeding—when in fact the marks were quite simple, common to many similar sex killings. There was seminal fluid in the vagina but no damaging defloration.

An American pathologist, Dr. Petty, of Baltimore, tried to show the Court for the defence how when twigs lie on the ground they are like—and he produced—numerous ball-pointed pens scattered on a table. The demonstration fell as flat as the pens, and was, as you might expect, hardly a success. Most judges have, themselves, walked over rough, untended brushwood.

The same pathologist also attempted to persuade the eleven Supreme Court judges—there was no ordinary jury—that areas of pallor on the dead girl's cheek and left shoulder front showed she had lain (at some time after death) in a different position from that in which she was found. He unfortunately encouraged defence Counsel to infer that this could be in being carried dumped in the boot of a car—the car she was supposed to have met on Highway No. 8. Unfortunately, Dr. Petty had either not examined the photographs properly or had overlooked the significance of one of them. This gave a splendid indication of the thoroughness of the police investigation: the body, after being examined as it lay, *had been turned on to its left side* to photograph the ground beneath. This simple explanation of the pressure marks on the face and shoulder was accepted by the Court of judges in their published judgment.

*Laboratory Assistance.* Miss Lebourdais also made much of the seminal fluid. Why hadn't more been made of it? Why hadn't vaginal swabs been grouped? Why wasn't seminal fluid found, on the ground under the body? Dr. Penistan had quite properly searched for it—she could not complain of that. But why hadn't the semen been grouped? Steven Truscott's blood group was known, and if he were a secretor, as 75% are, the semen would be similarly grouped. Miss L. had not, in fact, troubled to ascertain that all these tests had been made. It so happened that Truscott and Lynne Harper had the same blood group, and

this item of potential evidence had to be discarded. But to the thousands who read her book and the press campaign that clamoured for a re-trial, these scientific facts—evidence of forensic scientific thoroughness—were not known. Miss Lebourdais batted first laying about her very freely and the Crown suffered in silence for a long time. It is worth noting here that when, six years after the crime, I was asked to comment on the case for the Crown and the objections raised by Miss Lebourdais, I asked, rather hesitantly, if any pathological material or specimens had been preserved or filed. I found that every single laboratory specimen except for the food matter, every smear, every microscope slide—and there were many—still lay in the files in the Ontario State Crime Laboratory. Practising pathologists can but admire the thoroughness with which every detail of forensic medical and scientific evidence had been recorded and retained—six years later. How many of us could emulate this? Had Miss Lebourdais, before embarking on her criticisms, asked for experts to examine the scientific exhibits or medical findings—of which she could have little personal knowledge? If she had, she did not say so: she relied upon very outdated text books of 1928 and 1929 which she quoted at length: this might persuade a layman but, you would think, no serious-minded inquirer, certainly no scientific mind.

*The Time of Death.* The exact time of death was as vital a piece of evidence in this case as in any I have known in 30 years' practice. Steven Truscott had been seen taking Lynne Harper on the crossbar of his bicycle towards the very wood where she was later found dead: it was about 7.15 p.m. No one saw him north of that wood, but he returned home around 8 p.m. Lynne Harper was not seen alive again. If Steven Truscott had killed her, as the Crown alleged, it was between 7.15 p.m. and 7.45 p.m. that evening. What was the evidence?

Remember, the body had not been found until nearly two days had elapsed and the most helpful of all guides to the lapse of time since death—the fall in body temperature—was no longer available: the body loses all its natural heat in 18 to 24 hours. Three other factors were available: —

- (a) post-mortem lividity (skin stains due to blood settling)
- (b) post-mortem rigidity (rigor mortis)
- (c) the growth of fly larvae—maggots

... and if one knew the details of the last meal of the victim, a fourth: —

- (d) The state and position of that food in the stomach and bowel.

Now lividity is always more helpful in indicating the position of the body after death than how long it has lain dead. And post-mortem rigidity is one of the least certain of all factors—though its chemistry is better understood than in the past. In this case, Dr. Penistan found it had "almost passed off." The growth of maggots is dependent (as we knew in the case of Brittle in Gloucester) on when the blowfly cares to lay its eggs. So the details of the last meal became vital—as also was current knowledge of its digestion and rate of passage from stomach into bowel. I would like before dealing with this to say something of the defence attitude, as illustrated by their use of the evidence of rigor mortis.

They were, of course, anxious to show that death had taken place later than 7.15 p.m. to 7.45 p.m.—preferably after Steven Truscott had got home at 8 p.m. Mr. Martin was persuaded to ask Dr. Petty, a Maryland pathologist, well known in America, whether arching of the small of the back seen in a photograph was not indicative of a more pronounced degree of rigor than Dr. Penistan (who

examined the body and tested it for rigor mortis) had noted—as if arching of the back were not normal in those who keep their shape. I said in examination in chief that I was “very surprised indeed to hear any pathologist make such a suggestion.” Dr. Petty also suggested that the “goose-skin” change in the skin indicated a greater degree of rigor than Dr. Penistan had measured: no one gave him any support. Neither effort was worthy of the kind of case Mr. Martin put up. He was indeed a doughty counsel whose service in Court any one in real trouble would be privileged to have.

The last ditch was Lynne’s last meal—and what Dr. Penistan had found (and described) at autopsy: it was vital. Fortunately, Dr. Penistan again emerged well from his initial post-mortem. I will quote:

“I find it difficult to believe that this food could have been in the stomach for as long as two hours, unless some complicating factor was present, of which I have no information. If the last meal was finished at 5.45 p.m. I would therefore conclude that death occurred prior to 7.45 p.m.” (Dr. Penistan’s autopsy report.)

Now everyone knows that the emptying of the stomach—digestion can be left aside—is a physiological, not a mathematical problem. The rate of emptying depends on the amount and type of food in the meal—this was known: on the fat in particular—little was present: on the emotions—fear slows gastric emptying, but anger hastens it, so this might operate either way: on injury—severe injury can paralyse all movement—but Lynne had not received any injury until she died, for she died of strangulation—of this there was never any doubt.

We knew what kind of food Lynne had had to eat, and exactly when—and Dr. Penistan had preserved what still lay in the stomach: the residue was measured (300 c.c.) and examined in the laboratory. Dr. Penistan’s estimate, made without reference to anything outside his post-mortem, pinpointed Steven Truscott’s dangerous area of time.

Miss Lebourdais quoted extensively—again from her very outdated textbooks—against accepting such evidence. So much depended on this that the Director of Public Prosecutions and Senior Counsel, Don Scott, QC came from Canada to London to talk to Professor Hunt of Guy’s Hospital Medical School, a world authority on stomach emptying. It so happened that Dr. Milton Helpern and I were in Copenhagen when the Canadian Attorney General’s office rang from Toronto to discuss this meeting and as it seemed desirable to have Dr. Helpern’s backing I asked him to attend this consultation in London. Imagine a D.P.P., Senior Counsel, an English and an American medico-legal expert converging on a London teaching hospital to meet an expert in stomach emptying! But so much public anxiety as to the justice of Steven Truscott’s conviction had been aroused by Miss Lebourdais, Gollancz and the Canadian press that no stone could by now be left unturned.

Professor Hunt, assuming the accepted experimental rate of a 60-minute half-life for an average mixed gastric meal of 550 to 750 ml. (the approximate quantity taken), estimated that some 300–400 should remain in one hour; some 140–190 in two hours, and a residue of 70 to 90 in three hours—perhaps a little less. This tallied with death not more than about 1½ to 2 hours after the last meal—around 7.15 7.45 p.m. Professor Hunt expressed the view that the “conclusions drawn by Dr. Penistan tally with those which I have reached after a close study of the literature and more than fifteen years’ personal research in

this particular field" . . . and ended "I am satisfied that Dr. Penistan was entirely correct to conclude as he did under the circumstances."

Prof. Hunt was not called to give evidence, but Mr. Martin spared no effort to undermine the effect such an opinion had. It squarely pinned his client at the very time he was missing, last seen with Lynne Harper going up the road towards Lawson's Bush. All we had to say in Court was that, in the absence of any evidence to the contrary, we must assume Lynne to be an average subject when the emptying of the stomach was in question. Another pathologist, called by the defence, said that the study of gastric contents and emptying was "so variable that it has generally been discarded" . . . that to rely on it "could be dangerously misleading to the investigating officers" . . . that the girl "could have died within one hour—or up to nine or ten." Imagine how different counsel's attitude would have been if Dr. Penistan had *not* troubled to note the condition and volume of the stomach content, to record that a very little was passing for a short distance into the small bowel, and to retain it for laboratory examination. This thoroughness, far from being "dangerously misleading to the investigating officers" was of the greatest importance as a guide.

No one pretended that Dr. Penistan had been mathematically exact. He found it "difficult to believe that more than two hours had passed since the meal had been taken" and this was a most valuable guide to the police—given I may repeat, when Dr. Penistan had no knowledge of the circumstances, *i.e.*, when Lynne had had the meal, or how vital the evidence might prove to be. The pathologist who had written to Gollancz that he thought the medical evidence would not stand up to scrutiny said later to his own Counsel "Dr. Penistan's conclusions were very fair"—but it was not clear whether he was referring to this particular matter.

#### TRUSCOTT ON TRIAL

At the Ottawa Supreme Court, Steven, who did not go into the box at his initial trial, made a bad impression: he was now 21, cold and rather too confident; he displayed no emotion whatsoever. He denied seeing, first, the woman and his three fellow schoolboys who had seen him on the road between the station and the swimming hole; second, he denied seeing the 12-year-old Gellatly who said he'd passed them (Lynne on Steven's cross bar) at around 7.25 p.m. going towards Lawson's Bush—and also denied seeing 11-year-old Burns who was just behind, on foot: this, of course, was a double-edged denial for Burns had not seen him. These meetings at a time so vital to Truscott's fate told heavily against him. Why flatly deny all six accostings—when none did more than place him at a dangerous place at a dangerous time? Steven had, in fact, arranged a tryst with another girl in Lawson's Bush that evening, but failed to keep it: when taxed about this next day he just shrugged his shoulders.

A boy of 11, Douglas Oats, called by the defence at the initial trial said he had seen Steven with Lynne on the crossbar of his bicycle as far up the road as the bridge—and going towards the highway, and two other boys, called by the defence, said they also had seen him in the same area—but this, they said, was between 7.30 and 8.0 p.m.; Steven was home by 8.0 p.m. A boy, Arnold George, said that next day he'd agreed to tell the police that Steven Truscott was on the bridge—though he'd heard that he was "in the bush with Lynne." Steven denied this.

The Supreme Court judges pointed out that though these boys "had evidence highly favourable to Truscott on Tuesday, June 9 . . . no one else knew about it,

until June 16" when Truscott's father was trying to collect evidence in his defence. The judge at trial had said plainly enough to the jury—"If you believe the Defence theory of the matter and believe Steven's statement to the police and to other people, that the girl was driven to No. 8 Highway and entered an automobile which went east . . . it is my view you must acquit the boy if you believe that story." The jury did not.

Steven Truscott had perhaps gone a little too far with his description of the car that had picked up Lynne. He was 1,300 ft. away, on the bridge, yet he described the car as a 1959 Grey Chevrolet with a yellow licence plate—this from a bridge over 400 yards away.

Another matter that was raised at trial was some chafing on each side of the accused boy's penis . . . "a brush burn of two or three days duration the size of a 24 cent piece" on each side, according to Dr. Addison the family doctor and an R.C.A.F. doctor (Brooks) who saw the boy on the evening of June 12—three days after Lynne's death. Both doctors thought the sores to be a result of a rape. After much argument about these unusual lesions, including a description by a dermatologist of allergic rashes on Truscott during his detention, it was accepted that they were strange lesions—but could have indicated chafing—perhaps, but not certainly, by attempted rape two or three days before—either *ab initio* or after a rash had started. Steven Truscott said at Ottawa that he'd had them for six weeks before his arrest: if so, he had not consulted anyone about them. More, when it was found, after arrest, he did not then say it had been like that for six weeks. Why not? The Ottawa judgment accepted that there had been some pre-existing condition, but that it had been aggravated by "a sexual assault upon Lynne Harper."

Truscott had written a most damning letter whilst in prison and this was produced in Court and read to him. He had written to the Parole Board asking that he should be given "a chance to prove that one dreadful mistake" would ensure that he "won't make another." Steven Truscott said, when asked why he wrote this, that he thought if he "continued to argue his innocence" he'd "stand less chance of getting out." It may not have had much effect on the judges, but it certainly worried the press who had been so solidly behind him until that day.

The judges at the Ottawa Supreme Court of reference rejected Steven Truscott's story. They set out, in a written judgment of great length, two pertinent paragraphs:—

"We are faced with the same problem. No new issues were raised before us, but there was a great volume of new evidence (under section 597A of the criminal code).

THE WEIGHT OF THE NEW EVIDENCE SUPPORTS DR. PENISTAN'S OPINION.

They added that the decisive point was still the one put at trial—and decided against the accused. They agreed with the verdict and saw no reason to disturb the conviction. They added that in their view the judgment at trial "*could not have been set aside on the grounds of any wrong decision on a question of law or that there was a miscarriage of justice.*" The judgement of the Court of Appeal was also right.

One judge alone out of the eleven, Mr. Justice Hall, differed in that he would have allowed a new trial upon application at Appeal: it was comment only upon procedure.

## DISCUSSION

Mr. YAHUDA said that Professor Simpson's address had confirmed one's impression of his integrity, skill and thoroughness in whatever work he did. It had to be said with humility that whenever he finished a case, it was not only done with authority, as with Spilsbury, but his authority was well founded and supported by examination long after the incident in question. Nevertheless, in accepting everything that the lecturer had said, two points demanded criticism.

First, no Court of Appeal in England would have dismissed an appeal when the judges had said, "If you believe the story of the accused, you must acquit him." It might be the law of Canada, but it was not the law of England. The law of England was that unless the story of the accused was disbelieved—*i.e.*, there was a doubt about it—he must be acquitted.

There was one thing about the facts which Professor Simpson had not mentioned, not that it was his fault. There were three pointers as to time. One was the fact that Truscott was seen with the girl at 7.15 p.m., and 7.25 was the last time they were seen together. He then came back home calm and collected. There was evidence to the effect that the girl's stomach stopped functioning about two hours after the last meal. The times were given only approximately, not exactly.

If the girl finished her meal at 5.45 and the stomach stopped functioning two hours later, that would take the time to 7.45. It meant that death took place between 7.25, when the boy and girl were seen together, and 7.45.

He had no knowledge of these things at first hand, or even at second hand, but was it possible, in common sense, that the boy had raped the girl and strangled her in such a short time and returned home calm and collected? He said this bearing in mind the boy's letter and the patch on the knee, because he followed these things very carefully. He was astounded at the amount of evidence which had been crammed into such a short time. Was it possible?

There was one other thing which should be said, because Professor Simpson said that it was omitted in court. His own view was that even though certain evidence was superfluous, it ought to be given. For instance, no time would have been taken up had the doctor said that as a matter of routine the grouping of the boy's semen had been taken, although, unfortunately, it might not have led very much further. It would have satisfied the jury, because a jurymen discussing the matter in the jury room at the time might have said what Miss Lebourdais said six years later. It would not have been said, however, had it been stated in court. Why should not something be said in court which might influence the verdict of the jury?

In concluding his criticism of the matter, but not of what the lecturer had said, he thanked Professor Simpson.

The PRESIDENT remarked that it was unfortunate that Mr. Yahuda was not a member of the Canadian Bar and entrusted with the defence.

Professor SIMPSON, in reply, said that Mr. Yahuda was quite right in saying that so much had happened within a remarkably short time.

He once had a case concerning a girl on Waterloo Station who was in an advanced state of pregnancy. To go to the toilet, she excused herself from her boy friend, who was positive she was away only seven minutes because he had been watching the station clock. By that time, she was no longer very pregnant. Most people would have said that it was utterly impossible for the girl to go to the toilet, give birth to a child, clean herself up and walk out. But curious things happened, and truth was stranger than fiction.

He believed that sufficient time was available although, curiously enough, the defence did not question that, neither did the court.

Mr. CAPLAN said he was bound to say that he thought Mr. Yahuda was correct in regard to what he said as to whether it would be regarded as a proper direction to the jury to say "You should find this man not guilty if you believe his story." The proper direction would be, "If you think that his story *may* be true, you must find him not guilty," and not "If you think it is true."

Did Professor Simpson know the ground on which the one dissenting judge dissented? Might it have been some such ground as that?

Professor SIMPSON replied that in a long statement of nearly 40 pages the dissenting judge set out his view of the circumstantial and scientific evidence, but at no point did he say why he dissented from the other judges in saying that, in the first instance, he would have asked for a new trial. Although there was obviously a good reason for saying it, the reason was not stated.

Mr. MINTY asked who Miss Lebourdais was. Was she a person with any professional qualifications, or was she a woman merely with a bee in her bonnet and seeking publicity? What was her object?

Professor SIMPSON replied that Miss Lebourdais was said to be the daughter of a prominent lawyer and had published many articles in Canadian and English periodicals. Her husband was a writer of books. They were a family of writers.

She had no scientific training or knowledge and did not trouble to make use of the scientific observations, knowledge and writings which were available. Therefore, her book failed to present what any well-informed expert giving advice to counsel would have seized upon.

The PRESIDENT asked whether the book had sold well.

Professor SIMPSON replied that it sold enormously well.

Dr. DONALD BLAIR said the point had been made of the 14-year-old boy returning home so soon and so calmly, and he agreed that it would appear to be astonishing. As a psychiatrist, however, he had himself examined the case of a 16-year-old boy who had taken a 12-year-old girl out to the back yard, interfered with her and strangled her, and left her body there. He had returned indoors, completely composed, within a very short time and played his gramophone, and his father could not believe that anything wrong could have taken place. He was a profound psychopath.

From the point of view of the legal aspect, one did not know the state of Steven Truscott's mind. Now that he had been in prison, he would presumably have been observed and the psychiatrist would know whether he was a psychopath. The fact that he was so calm did not rule out the fact that he could have committed the offence.

Dr. NEUSTATTER said that he would like to make an irrelevant observation about the lady. Some time ago he had examined a case—which had not yet been tried—concerning somebody who was said to believe in voodoo, which caused him to commit a killing. A well-known anthropologist who submitted a report had the impertinence to add that the ferocity of the stabbing showed clearly that it was a paranoid reaction.

Professor SIMPSON replied that anyone who practised medicine, in whatever branch, must have known of cases where the accused had behaved so astonishingly calmly as to make a cup of tea or to play gramophone records or to have a conversation. Such instances were not rare.

He often thought that if he were to set about his traditional mother-in-law, he would have decided upon a certain course and taken it.

The PRESIDENT regretted that as they were past the usual time for adjournment, he must bring the discussion to a close. He invited members to express their thanks to Professor Simpson in the usual way.

The vote of thanks was accorded with acclamation, and the meeting then ended.

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