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Evaluation of Amnesia in Criminal-Legal Situations

Quite frequently in the examination of a defendant in a criminal matter the defendant will say, "I don't remember what happened," or the examining psychiatrist may find that there is a period of fuzziness or hazy memory at the time of the commission of the crime. It is precisely this time period that is essential for the examining psychiatrist to explore with respect to mental state and criminal responsibility. Usually the crimes for which a psychiatrist is called are major ones such as homicide, robbery, and rape. This paper will briefly explore the problem of amnesia in the examination of a defendant in a criminal matter.

Definitions

We define the word *amnesia* as forgetting at some later date events that occurred at a prior time that would have been remembered under ordinary circumstances. The cause of this loss of memory may be multiple or may be one of a number of factors. Suffice it to say that the individual does not remember what happened at a certain time when he normally would remember.

By far the most common cause of amnesia in criminal matters is a defensive posture by the defendant, that is, he does not want to tell what happened. This may be called lying, malingering, manipulating, or whatever appellation it seems to deserve at the time. This type of forgetfulness is not to be confused with hysterical repression or other forms of repression which are beyond the conscious control of the defendant. This latter type of functional amnesia, however, is relatively uncommon. The shock of committing the crime (that is, the actually pulling of the trigger or the plunging of the knife) may precipitate a response of repression because of the ego-alien nature of the act. By the time the psychiatrist is called, several months may have elapsed and the defendant may have been able to resolve some of his conflict about the crime by repressing the memory of it. This dynamic is not uncommon.

A more common cause of forgetting at a later time is the effect of drugs or alcohol upon the individual at the time of the commission of the crime. A differentiation must be made between amnesia, blackout, and blankout. As indicated, amnesia is forgetting at a later time for events which occurred at a prior time. A *blackout* is a period of unconsciousness at a certain time which will not be remembered subsequently. Therefore, all blackouts

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lead to periods of amnesia at some later time, but all periods of amnesia are not necessarily related to blackouts.

It is quite difficult to commit a crime while one is unconscious; therefore blackouts usually are not associated with criminal behavior. However, blankouts may be so related. *Blankouts* are defined as altered states of consciousness at particular times, leading to a repression or forgetting of events for that time. Blankouts may be caused by alcohol intake, drug abuse, or an organic condition such as epileptic seizure (particularly of the temporal lobe variety), head trauma, cerebral vascular accident, chronic brain syndrome, or hormonal or chemical alteration to the body (such as hypoglycemia or hypothyroidism).

Procedures for Evaluation of Amnesia

In approaching the evaluation of such conditions to determine the exact etiology of the amnesia, especially in criminal cases, I recommend the following procedures: First, take a comprehensive psychiatric history. Next, obtain all the notes available from the attorneys involved. The statement the accused may have made to the police, any statements from witnesses who may have been present at the time, consultations with police officers who interviewed the defendant at the time of the crime or shortly thereafter, are all valuable to the evaluation. Third, conduct a complete psychiatric examination of the individual including mental status and request whatever psychological testing may be necessary. Psychological testing is obtained whenever a case of amnesia occurs because of the possibility of organicity which may be perceived by psychological testing and may be too subtle to appear as an abnormality on an electroencephalogram. If there is amnesia and a suggestion of organic illness, an EEG and appropriate blood tests are also obtained. These tests would detect a hypoglycemic reaction or a chemical imbalance which could be significant. Certainly in cases of alcoholism or drug addiction or drug abuse, a careful history of how much and what type of drug was used will be important in the evaluation of amnesia.

One might request the defendant to subject himself to a polygraph test to help determine whether he is lying about his loss of memory. If he passes this test, then proceed to do a sodium amytal interview which can, in many cases, uncover the period of time that has been lost to the individual. Sodium amytal interviews may be conducted using video tape recordings for subsequent evaluation and possible introduction into evidence. Examples will illustrate this approach to the evaluation of amnesia.

Reports of Cases

Case 1

A young man from outside of Philadelphia indicated, upon examination, that he did not remember being involved with two other boys in the robbery and homicide of an elderly man across town. He said he was given a capsule by a "white dude in the park." The capsule was LSD. He recalled the LSD phenomenon quite clearly and accurately. He described seeing the "bridge floating across the river" and the "lights on the cars piling up on each other and the street lights turning different colors." He then had a gap in his memory and recalled only that he awoke the following morning in a city about ten miles away.

In order to check the veracity of his tale I ordered a polygraph test to be sure that he was not prevaricating. The polygraph test proved that he was not lying about his period of memory loss, and I proceeded with a sodium amytal interview using video tape. Under the influence of sodium amytal he made a number of statements which had not been pre-

viously mentioned and which could only have come from his own memory. They were never mentioned when he was not under the influence of the medication. For example, he indicated that he had continued to drink and while his two cohorts went into the house to rob and beat the old man, he was sitting and drinking on the front stoop of the house. When the boys came out and told him to run he said, "what do we have to run for, let's stay and have another drink," indicating that he was completely unaware of what had transpired inside the house at the time. This was interpreted as an altered state of consciousness, a blankout. It was my opinion that he could not form the intent to rob the house because of his state of mind, and therefore should not have been considered to be involved in the first degree homicide of the old man.

Case 2

The second case involved a thirty-year-old man, also from a town not far from Philadelphia, who was accused of killing his wife. Although he had shot her in their house in a fit of jealous rage (and he remembered shooting her) the bullet wounds were not fatal. What had killed her was a blow to the head by his rifle, administered in the alley behind his home. He has no recollection of hitting his wife over the head with the rifle barrel, but does recall running out of the house to find help because he had shot his wife. Under the influence of sodium amytal he did remember leaving the house and being chased and called names by his wife. This precipitated a further violent reaction on his part, resulting in his striking her over the head with the gun barrel and then holding her close to him in a fit of desperate remorse. All of this acute traumatic behavior was not subsequently recalled. He had not blacked out but had experienced an altered state of consciousness due to his extreme reaction and the outpouring of his rage. This was a functional phenomenon not related to alcohol or drugs.

He had partial recall up to the point that he blanked out. The comments by his wife precipitated his rage reaction, which was ego-alien to him and had to be repressed. When he did recall it under sodium amytal there was an immediate sense of anxiety followed by relief, as though he had worked through a traumatic experience. Because the fatal blows to the head were struck in an altered state of consciousness in the heat of passion, with no conscious intent or premeditation to kill, he was found guilty of voluntary manslaughter rather than first degree murder.

Case 3

A third case, presented very briefly, illustrates the use of another type of test in addition to sodium amytal which can shed light on the evaluation of a period of time which has been forgotten by the defendant. This was a young lad who had a pathological reaction to alcohol which was described by a number of responsible people in his community. "When he drank he became crazy." He had killed a young man while on a drunken binge. He recalled some events and some aspects of the senseless and meaningless shooting but had many gaps in his memory. In addition to the sodium amytal interview which filled these gaps and indicated why he shot the man (that is, he feared a homosexual assault), an alcohol loading test determined that he did have a pathological reaction to alcohol. After 4 oz of alcohol he became psychotic, absolutely unruly, unmanageable, and had to be placed in an isolation cell, where he proceeded to smash his hands into the wall.

Discussion

What has all this to do with criminal responsibility and competency to stand trial in criminal cases? A recent case [*1*] held very clearly that a *bona fide* amnesia was a bar to

competency. This was determined after certification by a number of experts, including hypnotists, sodium amytal experts, psychiatrists, and psychologists. The examination was performed several years after the crime and the determination of the court was that because of this *bona fide* amnesia the defendant was not competent at his initial trial because he could not remember the events and could not be a party to the proceedings.[2] This is a significant case because previously, unless the "amnesia" was a certified *bona fide* amnesia, the individual was usually found to be competent to proceed legally under the assumption that the court would understand that a permanent amnesia leading to incompetency would keep a person from ever standing trial [*2*]. Later the court asserted that amnesia alone does not indicate a greater sense of mental illness at the time of a crime which would lead to a finding of insanity *per se*.

Summary

Amnesia is forgetting of some event that one should normally remember. There are many reasons and factors involved in the formation of this amnesia but one must distinguish amnesia from blackouts and blankouts and be able to make a differential diagnosis by utilizing all the available scientific tools, including medical and psychiatric examination, psychological testing, X-rays, blood and urine tests, polygraph examination, the electroencephalogram, and the sodium amytal test.

References

[1] *U.S. ex rel Norman B. Parsons v. Anderson*, 280 F.Supp 565, 1967.
[2] Koson, D. and Robey, A., "Amnesia and Competency to Stand Trial," *American Journal of Psychiatry*, Vol. 130, May 1973, p. 588.

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[2] This holding was later reversed on an appeal by the U.S. District Court in Delaware, 28 Nov. 1972 (*U.S. v. Anderson*, 354 F.Supp. 1060).