

# **The Detection of Malingered Amnesia in Accused Murderers**

S. D. Parwatikar, MD, FRCP(C); William R. Holcomb, PhD; and  
Karl A. Menninger II, JD

Malingering, as defined by DSM-III, involves "voluntary production and presentation of false or grossly exaggerated physical or psychological symptoms. The symptoms are produced in pursuit of a goal that is obviously recognizable with an understanding of the individual's circumstances rather than of his or her psychopathology." Whenever an individual is evaluated in forensic settings, psychiatrists have to look at malingering as a possible diagnosis because a patient may present psychotic symptomatology or amnesia to avoid being considered fit to stand trial or to escape responsibility for his/her actions. The object of this article is to discuss characteristics of true amnesia versus malingered amnesia in men charged with first-degree or capital murder.

A defendant who malingeres and convinces a psychiatrist that he has amnesia has won a Pyrrhic victory, because courts will not find a person incompetent to stand trial or not responsible for the crime because of amnesia alone. A primary reason for this policy is the concern that many defendants would escape punishment or being brought to trial by malingering amnesia, which is easy to do and hard to detect.<sup>1</sup> If a method to detect malingered amnesia was developed, the legal policy concerning it could be changed to benefit those with true amnesia.

In most studies of amnesia, memory loss is considered to be genuine only if it has an organic base. Possible psychogenic bases are rarely considered as sufficient evidence to accept the alleged amnesia as genuine. In several studies the alleged amnesia was judged to be malingered solely upon the absence of evidence for organic etiology or the presence of a history of lying.<sup>2-5</sup>

Review of the literature reveals that the relationship of amnesia to crime has been discussed for many years. The incidence of amnesia in accused murderers has been reported to be anywhere from 10 to 70 percent.<sup>6-8</sup> In

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Dr. Parwatikar is forensic consultant, Missouri Department of Mental Health. Dr. Holcomb is director of Treatment Services, Mid-Missouri Mental Health Center. Dr. Menninger II is director of Forensic Services, Missouri Department of Mental Health. Address reprint requests to Dr. Parwatikar, 7043 Lindenwood Pl., St. Louis, MO 63109.

light of the number of forensic cases where amnesia is a factor, more research needs to focus on developing reliable and valid tests for amnesia, including both psychologic and psychophysiologic methods. Objective tests which have been used to detect malingering include polygraphy, sodium amylal interviews, hypnosis, and personality tests.

There is some evidence to support the claim that polygraphy is a valid method for determination of feigned amnesia.<sup>6,9</sup> However, other researchers using hypnotically induced amnesia, question the validity of visceral and autonomic responsivity in detecting malingered amnesia.<sup>10</sup> Polygraphs may render false positives as well as false negatives in determining the truthfulness of a claim of amnesia.<sup>11</sup>

Results of sodium amylal interviews on patients claiming amnesia have not been uniformly successful in bringing to recall stressful events preceding alleged crimes.<sup>12</sup> Similarly, hypnosis is not totally reliable and may be distorted according to the gravity of the emotional trauma experienced by the subject.<sup>13</sup>

While no psychologic tests have been specifically designed to determine malingering, some psychologic tests do include measures of credibility. For example, the F and K scales of the MMPI have been used to detect whether a person is "faking bad" (feigning mental illness) or "faking good" (concealing his neurotic or psychotic symptoms). However, an ability to detect either an exaggeration or underestimation of psychopathology does not help in discrimination of true from malingered amnesia.<sup>14</sup>

A significant number of murderers referred for pretrial psychiatric examination claim amnesia and attribute it either to alcohol, drug abuse, or an emotional difficulty in recalling the alleged crime. Some people argue that amnesia related to alcohol and drug abuse may be organically caused. Wolf<sup>15</sup> reports that idiosyncratic alcohol blackouts similar to those experienced by murderers when the murder was committed can be experimentally reproduced in a situation where alcohol intake is controlled. However, the memory loss for the period of earlier drinking and violent feelings at the time of the murder cannot be cleared, thus suggesting that these memories are not purely dependent on an intoxicated state but in some way are tied to the emotions experienced at the time of the violence.

Psychodynamically, when a subject experiences an unpleasant and stressful ego-alien situation, memory of that event may become inaccessible to conscious recall. Psychogenic amnesia and fugue are similar in that both are a psychologic escape from some intolerable situation and thus are alternatives to depression and possibly suicide.<sup>7,8,16</sup> In case of some murderers, their sense of being good persons is contradicted by the fact that they have done something socially unacceptable and alien to the superego. In order to cope with this internal conflict and resulting depression, the

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individual may repress from consciousness the memory of their violent actions.<sup>17</sup>

Based upon this psychodynamic explanation of amnesia, it was hypothesized that a person truly experiencing amnesia for violence would have symptoms of depression, hysteria, and hypochondriasis as measured by the neurotic triad on the MMPI at the time of a pretrial psychiatric evaluation. Often people who are not able to cope with stressful situations on a conscious level somatize their depressive symptomatology and therefore may have high scores on the hysteria and hypochondriasis scales of the MMPI as well as on the depression scale. It was also hypothesized that alcohol and/or drug intoxication may aid the dissociative process.

### **Method**

The sample for this study consists of 105 males charged with capital or first-degree murder who were admitted to the state maximum security unit for pretrial evaluation. The sample was divided into three groups: (1) those who confessed to the murder (n = 50); (2) those who denied committing murder (n = 31); and (3) those who did not deny committing murder but who stated that they could not remember doing so (n = 24).

Psychologic testing, including both intelligence and personality testing, is routinely administered as part of the evaluation process. Also, a detailed social history is completed including a history of alcohol and drug abuse. Police reports of the crime and medical records of the patient's stay in the maximum security hospital were also examined.

Groups one and three were compared with several select variables using multivariate analysis of variance. Group two was excluded from comparisons because the subjects had denied committing the crime, so a reasonable determination could not be made as to whether the subjects could not remember, were innocent, or perhaps remembered but were attempting to escape culpability through denial.

In addition to the depression, hysteria, and hypochondriasis scales of the MMPI, the psychopathic deviate and schizophrenia scales were also chosen for comparisons. The psychopathic deviate scale measures the presence of antisocial personality characteristics which could influence whether a person would feign amnesia. The schizophrenia scale measures mental confusion which could influence a person's ability to remember his/her actions. Prior research has suggested that the MMPI validity scales can possibly be used to detect faking, particularly F-K scores,<sup>14</sup> and therefore this score was computed for each subject and the two groups were compared on this variable.

In order to determine how well and which of these select variables could classify those who confess to murder from those who claim amnesia, a

stepwise discriminant function was used. This procedure combines group characteristics in a way that will allow one to identify the group which a case more clearly resembles. Stepwise discriminant function assigns priorities to those variables which provide the greatest discrimination in classifying subjects into groups. In this study, select variables were used to classify the subjects as either confessed or amnesiac. Those who claimed amnesia but were not so classified by the discriminant function (misclassified amnesiacs) were presumed to be malingering. Those subjects who could not be correctly classified were identified and were compared on a number of additional variables with those who could be correctly classified.

## Results

The two groups were similar demographically. Thirty-five of 50 (70 percent) who confessed to the crime and 18 of 24 (75 percent) who claimed amnesia were white. The average age of the subjects who confessed was 26.4 years and those who claimed amnesia was 27.6. On the average all subjects were functioning in the dull normal range of mental ability and had a 10th grade education. The entire group of subjects averaged three previous arrests with 1.8 years of total incarceration time.

Alcohol and drug abuse information from the subjects themselves, from police records, and from family interviews reported in social histories indicate that 21 (42 percent) of the individuals who had confessed to the murder were intoxicated at the time of the alleged offense with either drugs and/or alcohol as opposed to 21 (87 percent) of those who claimed amnesia for the alleged offense. Twenty-nine individuals (58 percent) of the confessed subjects had a history of alcohol abuse as opposed to 17 (71 percent) of the amnesiacs, and 25 (50 percent) of the individuals who confessed had a history of drug abuse as opposed to 16 (67 percent) of those who claimed amnesia.

Multivariate analysis of variance indicates that there are significant differences between confessed and amnesiac subjects on the seven dependent variables with Wilks Criterion = .70,  $F(7, 67) = 4, 06$ , and  $p = .001$  (Table 1). Separate tests with analysis of variance for each dependent variable indicates that amnesiac subjects were more likely to be intoxicated at the time of the murder and have higher scores on MMPI scales of hysteria, hypochondriasis, and depression. The confessed and amnesiac subjects were not different on the schizophrenia or psychopathic deviancy scales of the MMPI nor the F-K deception score.

The discriminant function analysis successfully classified all subjects into groups of confessed and amnesiacs at the .0001 significance level and placed the highest weighting on alcohol and/or drug intoxication followed by scores on hysteria, hypochondriasis, and depression. The stepwise procedure

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Table 1. Comparisons of Confessed and Amnesic Murderers

Variables	Univariate Analysis		Discriminant Function
	F	P > f	R-square
Drug/alcohol intoxication	16.33	0.000	0.185
Hysteria	9.05	0.003	0.112
Hypochondriasis	4.88	0.030	0.064
Depression	4.50	0.037	0.059
Schizophrenia	2.10	0.151	0.028
Psychopathic deviancy	1.90	0.172	0.026
F-K	0.92	0.339	0.013

selected the two variables of alcohol and/or drug intoxication and hysteria as the optimal combination of dependent variables to be used in classifying subjects. Forty-five of 50 (90 percent) confessed murderers were correctly classified and 17 of 24 amnesiac subjects (71 percent) were successfully classified for a total correct classification of 84 percent.

Five of five misclassified confessed subjects and seven of seven misclassified amnesiac subjects were intoxicated at the time of the murder. This evidence supports the importance of the neurotic triad scales in determination of malingering or truthfulness in amnesiacs because it shows that intoxication alone cannot be used to determine those most likely to be experiencing genuine amnesia.

The main hypothesis of this study, that those who claim amnesia but do not deny committing murder would score higher on the neurotic triad scales of the MMPI, appeared to be confirmed. Apart from that hypothesis, comparisons of those who were correctly classified by the discriminant function with those who were not (the malingerers) on variables of age, IQ, and previous arrests suggest some areas that need further research. Those who were incorrectly classified as amnesiacs appear to be younger (23.4 years) than those correctly classified (32.1 years). Misclassified amnesiacs tended to have higher IQ scores on both performance (97.6) and verbal (92.3) intelligence measures than those who were correctly classified as amnesiacs (verbal = 86.7 and performance = 88.5). This suggests the possibility that a more intelligent person would tend to claim amnesia untruthfully. Also, the number of previous arrests for the misclassified amnesiacs appears to be higher (4.6) than for those who were correctly classified as amnesiacs (3.0) and those correctly classified as confessed (2.4). This suggests that malingering may increase with increased exposure to the criminal justice system.

## Discussion

Previous attempts to determine malingering have been concerned primarily with malingered psychotic symptomatology and not with malingered amnesia, which is often seen in forensic settings. In this study we have tried

to identify variables which correlate with true amnesia. This would be a first step in clinically distinguishing true amnesia from malingered amnesia. A select sample of individuals was chosen for study who claimed amnesia for the alleged crime but did not claim lack of responsibility for the murder. Thus, there appears to be some veracity to their claim of amnesia. These individuals were compared with a number of variables to those who confessed to the murder and were able to clearly recall events associated with the violence.

The number of accused murderers in this study claiming amnesia was only 22 percent of the total sample, which is below the reported 40 to 70 percent range found in the literature but above the 10 percent reported by Wille<sup>8</sup> among convicted murderers. People who claim amnesia but do not claim lack of responsibility tend to be intoxicated with alcohol and/or drugs at the time of the alleged offense and do show higher levels of hysteria, depression, and hypochondriasis as measured by the MMPI.

A claim of amnesia by someone who was intoxicated at the time of the offense without supporting evidence of neurotic features as measured by the MMPI could indicate possible malingering. Those who claimed amnesia without evidence of alcohol and/or drug abuse at the time of the crime clearly had higher scores on hysteria, hypochondriasis, and depression. These findings seem to support the hypothesis that alcohol and/or drug intoxication aides the dissociative process.

From the legal perspective, a method of detecting malingered amnesia would have only a limited impact on the determination of criminal responsibility of those who claim amnesia. Because it affects memory and not the state of the defendant's mind at the time of the offense, amnesia is not a mental disease or defect that could be the sole basis for a defense of lack of responsibility.<sup>18</sup> It can, however, be a symptom of a disease or defect that could excuse the person's actions. Unless the amnesia malingerer has (or successfully fabricates) the underlying disorder, he/she will be held responsible for his/her crime.

The standard of competency to stand trial is whether a person is able to assist his/her counsel or understand the nature of the proceedings against him/her. A person who cannot remember the events surrounding the alleged offense may be prevented from assisting his/her counsel in preparing his/her defense, but no court has found a defendant incompetent to stand trial solely because of amnesia. Courts now permit those persons to be tried; some courts have set out detailed criteria to determine the effect of the amnesia on the fairness of the trial.<sup>1</sup> If a valid and reliable method of distinguishing true from malingered amnesia is developed, a strong argument could be made to include amnesia as a basis for incompetency. However, that may also be a Pyrrhic victory for the true amnesiac, unless

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such matters as automatic commitment to a state hospital and the dismissal of charges against the "permanently incompetent" are resolved.

Because of the frequent claims of amnesia in forensic settings and because of the legal implications regarding competency to assist in one's own defense, it is important that clinicians be able to distinguish true amnesia from malingered amnesia. We propose that the presence of the neurotic characteristics discussed in this report should be considered in conjunction with other investigative methods such as polygraphy, sodium amytal interview, and hypnosis to help determine clinically the truthfulness of claimed amnesia for a violent act. Future research is needed which uses several of these investigative methods at the same time in conjunction with consideration of the psychodynamics of the personality.

### **References**

1. Cocklin K: Amnesia: The forgotten justification for finding an accused incompetent to stand trial. *Washburn Law J* 20:289, 303-304, 1981
2. Hopwood JS, Snell HK: Amnesia in relation to crime. *S Ment Sci* 79:21, 1933
3. Sargant W, Slater E: Amnesic syndromes in war. *Proc R Soc Med* 34:757, 1941
4. Stengel E, Vienna MD: On the etiology of fugue states. *J Ment Sci* 87:572-599, 1941
5. Berrington WP, Lindell DW, Foulds GA: Reevaluation of the fugue. *J Ment Sci* 102:281-286, 1956
6. Bradford J McD W, Smith SM: Amnesia and homicide: The Padola case and a study of thirty cases. *Bull Am Acad Psychiatry Law* 7:219-31, 1979
7. Tanay E: Psychiatric study of homicide. *Am J Psychiatry* 9:125, 1969
8. Wille W: *Citizens Who Commit Murder*. St. Louis, Warren H. Green, Inc., 1974.
9. Lynch BE, Bradford JW: Amnesia: Its detection by psychophysiological measures. *Bull Am Acad Psychiatry Law* 288-297, 1980
10. Wiggins SL, Lombard EA, Brennan MJ, Heckel RV: Awareness of events in case of amnesia. *Arch Gen Psychiatry* 11:67-70, 1964
11. Weinstein E, Abrams S, Gibbins D: Validity of the polygraph with hypnotically induced repression and guilt. *Am J Psychiatry* 126:143-146, 1970
12. Parwatikar S: Na amytal interview in forensic setting: A study of 45 interviews, unpublished data
13. Spanos NP, D'Eon JL: Hypnotic amnesia, disorganized recall and intention. *J Abnormal Psychol* 89:744-750, 1980
14. Grow R, McVaugh W, Eno TD: Faking the MMPI. *J Clin Psychol* 36:910-917, 1980
15. Wolf A: Homicide and blackout in Alaskan natives: A report and reproduction of five cases. *J Stud Alcohol* 41:456-462, 1980
16. Gudjonsson GH: Case report: Hysterical amnesia as an alternative to suicide. *Med Sci Law* 22:68-72, 1982
17. Green R: *The MMPI, An Interpretive Manual*. New York, Grune & Stratton, 1980
18. Amnesia: A case study in the limits of particular justice. *Yale Law J* 71:109, 111-112, 1961