The Unconsciousness Defense as Applied to Post Traumatic Stress Disorder in a Vietnam Veteran

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This case describes the use of the unconsciousness defense regarding a Vietnam veteran who was charged with assault with a deadly weapon. This is the first time that such a defense has been used in conjunction with the post-traumatic syndrome which has been described by various authors including Figley,[1] Wilson,[2] Horowitz,[3] and is presently included in The Diagnostic and Statistical Manual-III of the American Psychiatric Association.[4]

The essential feature is the development of characteristic symptoms following a psychologically traumatic event that is generally outside the usual range of human experience. These experiences would include combat situations as well as natural disasters such as floods, earthquakes, and volcanoes. Four major diagnostic criteria delineate the syndrome (Table I): (a) a recognizable stressor that would evoke significant symptoms of distress in almost anyone; (b) experiencing the traumatic event by recurrent and instrusive recollections of the event, dreams, or sudden acting and feeling as if the traumatic event were occurring because of an association with a present environmental or emotional stimulus; (c) numbing of responsiveness to the external world as shown by markedly diminished interest in activities, detachment from others or marked constriction of affective responses; and (d) the presence of symptoms that were not present prior to the trauma including hyperalertness, exaggerated startle response, sleep disturbances, survival guilt, memory impairment, difficulty concentrating, avoidance of activities that arouse recollection of the traumatic event, and intensification of symptoms by exposure to events that symbolize or resemble the traumatic event.

In the present case, a 29-year-old Vietnam veteran was charged with assault with a deadly weapon after holding a security guard at bay in a congressman's office. He was incarcerated for five days and then released to the author's care for further diagnostic study and evaluation. The following history was obtained.

Childhood history indicates that the patient was the third of four sons and had no evidence of birth injury. Although he never failed any grades, he was passed along in spite of the fact that he had a severe

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TABLE I
DIAGNOSTIC CRITERIA FOR POST-TRAUMATIC STRESS DISORDER

A. A reasonable stressor that would be expected to evoke significant symptoms of distress in almost all individuals.
B. Reexperiencing the traumatic event by at least one of the following:
   1. Recurrent and intrusive recollections of the event; or
   2. Recurrent dreams of the event; or
   3. Suddenly acting or feeling as if the traumatic event were occurring because of an association with an environmental or ideational stimulus.
C. Numbing of responsiveness to, or involvement with, the external world, beginning some time after the traumatic event(s) as shown by at least one of the following:
   1. Markedly diminished interest in one or more significant activities; or
   2. Feelings of detachment or estrangement from others; or
   3. Marked constriction of affective responses.
D. At least two of the following (not present prior to the traumatic event):
   1. Hyperalertness or exaggerated startle response;
   2. Initial, middle, or terminal sleep disturbances;
   3. Guilt about surviving when others have not, or about behavior required to achieve survival;
   4. Memory impairment or trouble concentrating;
   5. Avoidance of activities that arouse recollections of the traumatic event;
   6. Intensification of symptoms by exposure to events that symbolize or resemble the traumatic event.

reading problem throughout school and is now considered to be dyslexic. The reading problem elicited authority conflicts when he was a youngster and he left school in the eleventh grade to join the Marines. His father was very proud of him because he was going to serve his country. He spent eleven months in the demilitarized zone from November, 1967, until October, 1968, as an infantryman, and endured considerable combat. He claims to have been exposed extensively to Agent Orange, which was sprayed before his arrival as well as during his stay in Vietnam. He began to note severe pulmonary problems consisting of cough, sputum production, and hemoptysis, which were thought to be due to chronic bronchitis and did not respond to antibiotics and conservative treatment. Near the end of his tour, he was medically evacuated from Vietnam prior to the monsoon season. He describes his duties in Vietnam as those of a "grunt" in that he was a specialist in infantry, demolitions, and rockets. He describes seeing many of his friends being killed and witnessing a number of atrocities, which he described as indiscriminate killing of civilians and burning of villages by "Zippo Squads." He recalls that some men in this company became quite irrational at times and he feared that he was in danger of being killed. He became increasingly fearful and states that he had to protect himself. After one such episode of helplessness and rage, he threatened "to blow them all away." He was subdued with an injection and was soon evacuated.

After his return from Vietnam, he spent some time in a Veterans Hospital for his continued pulmonary problems. He was given a 10% disability from the military and was noted by his family to have a change in his personality in that he was quite withdrawn and irritable. He did not maintain his social relationships with his family and dropped out of

contact with them for long periods of time. He tried to obtain a number of jobs, but because of his dyslexia had great difficulty with reading and writing. He could not sustain the effort of physical labor because of his recurring coughing and hymoptysis. He states that he was admitted to the Veterans Hospital on at least twenty occasions in the past ten years and felt a great sense of frustration, rage, and that the doctors could not help him. He was able to have his disability rating increased to 100% through his local congressman. He describes himself as being very frustrated and isolated after he left the military. He finally married and had two children. However, his irritability and depression caused difficulties with the marriage and his wife sought dissolution.

Two weeks prior to his appearance in court, he went back to the family home for the first time. He was noted to be quite irritable and very upset by television and noise. His father noted him to be preoccupied and distant. He seemed quite depressed about the divorce hearing and the possibility that he might lose his children. He expressed a feeling that everything was falling apart. He returned for the hearing and on the way to court, his truck broke down. He became quite angry and arrived at court somewhat late. He found out that the dissolution was granted and that visiting privileges with the children would be granted only if he had a suitable place to live. (He had been living marginally in the back of his truck.) He received this news with great rage and frustration because he felt that he would lose his children forever and could not possibly arrange for suitable visiting quarters. He considered his children to be the most positive aspect of his otherwise dismal and frustrating life. After his appearance in court, he went to seek information about a VA loan so that he could purchase land for a trailer, but was told that the paper work might take as much as six months. He then went to the local VA office to find out why he was not getting his 100% disability payments so that he could afford suitable housing. However, he was not given a satisfactory answer, being told that it would take some time to check out his problem. As a final effort, he decided that his only alternative was to visit the congressman who had helped him before with the disability upgrading. He went to the congressman's office, was told that the congressman was not in, and became more agitated and upset. Within minutes he attacked and held the security guard at knife point for two hours. At that time, witnesses described him as being highly agitated with a glazed look in his eye and alternating between states of bravado and tearfulness. He threatened on occasion "to blow everybody away" and threatened to kill himself as well. He remembers "bits and pieces" of this episode vaguely and remembers "waking up" in jail the next day.

After his five-day incarceration, he was hospitalized for approximately three-and-a-half weeks and then was followed as an outpatient. Throughout this time, a great deal of material and history was obtained about his war experiences as well as his experiences after release from

Vietnam. A sleep EEG was normal and psychological testing revealed no organic component. The testing did indicate a somewhat impulsive but not psychotic man who saw the environment as being extremely dangerous, and who had a need to alienate and protect himself. While in the hospital, he was noted to have extreme startle reactions to a mild knock on the door as well as having sleep disturbance. He had recurring nightmares about his experiences in Vietnam and his interpersonal relationships were noted to be rather superficial and detached. His major affect was one of suspiciousness and alienation. Our impression was that the diagnosis of post-traumatic stress disorder was most appropriate and that the behavior and feelings in the congressman's office following the loss of his children were similar to the feelings of helplessness and rage that he felt in Vietnam in that all of his alternatives were exhausted.

On this basis, the defense of unconsciousness was introduced. It was argued that the patient acted without awareness during the assault in the congressman's office. It was further stated that the situation in the congressman's office recreated the state of helplessness and rage which the patient felt in Vietnam. The jury did find the patient to be not guilty by reason of unconsciousness.

Unconsciousness defenses have been applied to persons who are not conscious of their actions at the time of a crime. For example, they may be performing their acts while asleep, while suffering from delirium of fever, because of an attack of psychomotor epilepsy, a blow on the head, the involuntary taking of drugs or the involuntary consumption of intoxicating liquor. The unconsciousness defense does not require that a person was incapable of movement, but that he was in a condition where he acted without awareness. Such a defense need not presume insanity.

The Vietnam veteran, because of his exposure and adaptation to combat stress, is particularly sensitive to such experiences. The Vietnam veteran exited the war alone and because of his own numbing and societal attitudes had little chance to ventilate or work through his emotions upon return.[5] He became the symbol of the war, leading to further alienation. Under conditions that simulate the experience or feelings that one had in Vietnam, stereotyped and repetitive behaviors and feelings can be observed. The re-creation can be remarkably concrete at times as if the veteran is reliving his experiences in acute detail without awareness. The concept of post-traumatic stress disorder has given clinicians a valuable tool in the treatment of Vietnam veterans and now has been used to implicate the unconsciousness defense in this particular case. I feel that this particular defense is most appropriate in those cases where brief (minutes or hours), repetitive, stereotyped behavior occurs, directly stimulated by either the emotions or environmental characteristics similar to those that the warrior had in Vietnam, with evidence of lack of awareness.

Such a defense should not be used casually or indiscriminately. This was an extraordinary case in that there was a great deal of experience in dealing with problems of Vietnam veterans, as well as community support. In this case the veteran was hospitalized until community support could be mobilized. For example, visiting privileges with his children were arranged through the local family service organization, and a local Vietnam veteran counseling group continued to have close contact with the veteran. The unconsciousness defense was raised as a possibility only after there was a sufficient degree of certainty that violent behavior would not reoccur and that this man would not be a future danger to the community. Where evaluation, treatment and community support are not present, longer hospitalization is recommended for further treatment and evaluation before utilizing an unconsciousness defense.

In summary, a Vietnam warrior is presented as having a post-traumatic stress disorder in which, under a situation of acute stress (the loss of his children), he reexperienced feelings and behavior similar to those he had experienced in Vietnam; during this time, he was not consciously aware of his actions. This argument was successfully upheld by jury. This is the first time that a warrior has been excused for an aggressive act resulting from his wartime experience. Such defense should not be used casually or indiscriminately, but should be considered only when there is appropriate treatment, support, and supervision present, as well as a strong conviction that the warrior is no longer dangerous to society.

References

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