Cryptomnesia

Cryptomnesia — literally "hidden memory" — occurs when a forgotten memory returns to mind without being recognized as a memory, so that the person experiences it as a new and original thought. It is the cognitive basis of unintentional plagiarism: a writer, musician, or speaker reproduces an idea, phrase, or melody they encountered before, sincerely believing it to be their own invention. Cryptomnesia is not deliberate copying; it is a failure to recognize the source of one's own thoughts. The phenomenon has two homes in the law. The more direct is copyright, where courts have long held that copying can be unconscious and still infringe — the doctrine of "subconscious copying." The second is the evaluation of testimony, where the same source-monitoring failure can lead a witness to report as their own observation something they actually learned from another person. This paper explains what cryptomnesia is, the research that documents it, why it happens, and how it bears on both bodies of law. It assumes no background in psychology, and the science here favors no party.

What Cryptomnesia Is

The term was coined by the psychologist Théodore Flournoy to describe experiences a person believes original but that are in fact based on forgotten memories. Cryptomnesia is best understood as a failure of source monitoring — the ordinary mental process by which we keep track of where our knowledge came from (Johnson, Hashtroudi, & Lindsay, 1993). When that tracking fails, an idea that was read, heard, or previously thought can resurface stripped of any tag identifying its origin, and the mind, finding no such tag, treats the idea as freshly generated. Even one's own earlier work can be re-experienced as new; the psychologist B. F. Skinner described the "disheartening" discovery in old age that a point he thought he had just devised had in fact been made by him in something published long before (Skinner, 1983).

Because the misattribution is sincere, cryptomnesia is sharply distinct from intentional plagiarism. The classic illustrations are drawn from creative life: George Harrison was found by a court to have unconsciously reproduced the melody of an earlier song; Helen Keller's early story "The Frost King" closely tracked a tale she had encountered as a child; and Carl Jung documented a passage in Nietzsche that reproduced, almost detail for detail, a story Nietzsche had read decades earlier and forgotten. In none of these instances is conscious dishonesty the explanation; each reflects a memory returning without its source.

Two Kinds: Forgetting the Thought, or Forgetting the Thinker

Researchers distinguish two forms of cryptomnesia according to which piece of information has been lost. In the first, the person regenerates an idea encountered earlier while believing it to be original — the occurrence of the earlier idea is forgotten, producing a familiarity-based error. In the second, the person correctly recognizes the idea as coming from an earlier time but misremembers themselves as its author — the source, the "thinker," is forgotten, producing an authorship error. These have been labeled occurrence forgetting versus source forgetting, or generation versus recognition errors. Tellingly, the two appear to be independent: error rates on one are unrelated to the other, and the two are produced by different conditions, indicating that cryptomnesia is not a single glitch but a family of related source-monitoring failures (Brown & Halliday, 1991).

The Experimental Evidence

Cryptomnesia can be produced reliably in the laboratory. In the foundational study, Brown and Murphy (1989) had small groups take turns generating examples from categories (kinds of birds, items of furniture), then asked each person to recall the items they themselves had produced and to generate further new ones. Despite instructions to avoid repeating others, participants inadvertently plagiarized — claiming another's contribution as their own, or reproducing it as a

supposedly new item — at rates of roughly three to nine percent. The single most common source of a plagiarized item was the person who had spoken immediately before, consistent with the idea that one is too occupied preparing one's own response to register where a just-heard idea came from.

The effect generalizes well beyond category lists. Using a word-search puzzle in which participants alternated with a "computer partner," Marsh and Bower (1993) elicited substantially higher rates of unconscious plagiarism, and showed that the rate rose or fell with the retention interval and the depth of original encoding. The errors are not bare guesses, either: when people are asked how vividly they remember producing a plagiarized idea, a considerable share of plagiarized responses carry confident, detailed recollective experience — they feel like genuine memories of one's own creation — even though, on average, truly self-generated ideas are recalled with somewhat more detail (Bredart, Lampinen, & Defeldre, 2003). This phenomenological reality is what makes cryptomnesia so difficult for the person experiencing it to detect.

Why It Happens: A Failure of Source Monitoring

The unifying explanation is that cryptomnesia is a breakdown in attributing ideas to their correct origin (Johnson et al., 1993; Marsh, Landau, & Hicks, 1997). Anything that degrades source monitoring increases it. Plagiarism rises when a person was under heavy cognitive load when they first encountered the idea, when more time and distance separate them from the original source, and when their turn to respond follows immediately on another's contribution. It is also more likely when the original idea came from a person similar to oneself — for instance, of the same sex — apparently because the perceptual overlap between self and a similar other blurs the line between "my idea" and "their idea." Conversely, plagiarism falls when people are specifically instructed to attend to the origin of their ideas, when they respond in a one-on-one rather than an anonymous group setting, and when the task itself forces a deliberate source check, as a recognition test does (Marsh et al., 1997). In short, cryptomnesia is the predictable cost of the fact that the mind stores ideas far more reliably than it stores their sources.

Cryptomnesia and Copyright: Subconscious Copying

Copyright law confronted cryptomnesia long before psychology gave it a laboratory. Copyright infringement does not require intent to copy; it requires that the defendant had access to the protected work and produced something substantially similar to it. That framework leaves room for copying that the copier never consciously intended — and courts have squarely recognized it. In an early case, Judge Learned Hand found that a composer had infringed an earlier song even though the copying was most likely unconscious, observing that "everything registers somewhere in our memories, and no one can tell what may evoke it" (Fred Fisher, Inc. v. Dillingham, 1924).

The best-known modern example is the litigation over George Harrison's "My Sweet Lord." The court found that Harrison, who had been familiar with an earlier hit, had subconsciously reproduced its musical pattern — his "subconscious knew" a melody that had already succeeded, even though his conscious mind did not recall it — and held that this unintentional copying nonetheless infringed (Bright Tunes Music Corp. v. Harrisongs Music, Ltd., 1976; affirmed in relevant part, ABKCO Music, Inc. v. Harrisongs Music, Ltd., 1983). A federal appeals court applied the same reasoning in upholding a verdict that a songwriter had subconsciously copied a rhythm-and-blues song he had absorbed years earlier (Three Boys Music Corp. v. Bolton, 2000). For copyright, then, cryptomnesia is not a defense to liability — sincerity does not excuse infringement — but the psychology explains how an honest creator can infringe without any awareness of doing so, and it bears on questions of access, willfulness, and credibility.

Cryptomnesia and Witness Memory

The same source-monitoring failure that produces unconscious plagiarism can affect testimony. A witness who learns a detail from a co-witness, an investigator, or news coverage may, after the source is forgotten, come to report that detail as something they personally observed — sincerely, and sometimes with confidence. This is the cryptomnesia of the witness box: not a fabricated memory in the sense of an event that never occurred, but a genuine item of information misattributed to the wrong source — one's own perception rather than another's report. It is closely related to the misinformation effect and to co-witness contamination, and it is governed by the same source-monitoring principles. The practical consequence is that the apparent first-hand quality of a witness's account does not guarantee that its contents were in fact first-hand. Where this issue is contested, expert explanation of source-monitoring failure may assist the trier of fact, subject to the general standards for expert evidence — Daubert v. Merrell Dow Pharmaceuticals (1993), as extended by Kumho Tire Co. v. Carmichael (1999), or the Frye general-acceptance test still followed in some jurisdictions (Frye v. United States, 1923) — and to the requirement that a witness testify only from personal knowledge (Fed. R. Evid. 602).

Special Issues in Legal Practice

The principles described above apply with equal force to every party in a legal proceeding. Memory operates the same way regardless of who is asking the questions, and the science summarized here favors no side. What differs between the parties is not the science but the vantage point — the particular places where memory issues tend to surface, and the particular errors each party is best positioned to guard against. The two summaries below identify those recurring issues. They are offered for orientation, not as litigation strategy; in every case the controlling question is what the evidence in that case will, and will not, support, and the expert's role is to inform the trier of fact rather than to advocate for either side.

Special Issues for Prosecutors

For the State, cryptomnesia is most relevant as a form of source confusion in a witness's account. The issue most likely to surface is whether a detail a witness reports as personally observed was in fact absorbed from another source — a co-witness, an officer's question, or media coverage — and later misattributed to the witness's own perception. The error best guarded against is treating the first-hand feel of an account as proof that its contents were first-hand, when honest source-monitoring failures can lend borrowed information the same vividness and confidence as genuine memory. Interviewing witnesses separately, recording what each was told and when, and documenting the original source of key details all help the State present testimony whose first-hand character can actually be established rather than assumed. Because source errors are sincere, they are best prevented by procedure rather than detected by demeanor.

Understood this way, attention to source monitoring strengthens the State's evidence. An account whose details are traceable to the witness's own observation, gathered before exposure to other accounts, is far more robust than one assembled after the witness has heard others, and careful documentation forestalls challenges that the testimony merely echoes information acquired elsewhere.

Special Issues for Defense

For the defense, the recurring task is to test whether a witness's seemingly first-hand details originated with the witness or were acquired from another source and unknowingly adopted. The issue most likely to surface is a witness who reports, with sincere confidence, information that in fact entered the case through a co-witness, an investigator, or publicity, the true source having been forgotten. The error best guarded against is overclaiming — treating every confident detail as borrowed, when cryptomnesia describes a mechanism and a risk rather than a finding about a

particular witness, and many confident recollections are genuinely first-hand. Examining what the witness was exposed to, in what order, and whether witnesses were interviewed together is the sounder course.

The corresponding safeguard is to ensure the trier of fact understands the science: that the mind stores ideas more reliably than their sources; that information learned from others can later be sincerely reported as one's own observation; and that the confidence and detail of such a report are not reliable signs that its contents were first-hand. Where admissible, expert explanation of source-monitoring failure can help the factfinder weigh an account in light of what the witness may have learned from sources other than direct perception.

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