

# The Multiple Personality Syndrome and Criminal Defense

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After years of disrepute, Multiple Personality Syndrome (MPS) has become the focus of considerable attention.<sup>1-5</sup> Grouped in the third edition of the American Psychiatric Association's *Diagnostic and Statistical Manual* (p. 259) with the dissociative disorders, the diagnostic criteria are: "(A) Existence within the individual of two or more distinct personalities, each of which is dominant at a particular time. (B) The personality that is dominant at any particular time determines the individual's behavior. (C) Each individual personality is complex and integrated with its own unique behavior pattern and social relationships."

One of us (AF) had the opportunity to work in a forensic capacity with two individuals suffering from MPS who previously had come to legal attention. In this article we discuss some of the unique problems that arose in our work with the individuals and that are likely to arise when others suffering from MPS enter the criminal justice system.

There can be no clinical entity more open to skepticism in both clinical and legal context; the very notion of multiple *individuals* inhabiting one *body* violates our sense of person and smacks of the crudest sort of demonology. Therefore, the psychiatrist presenting such material in the courtroom must be unusually well prepared to defend his or her position. Yet, the validity of MPS as a clinical entity, whatever its relevance may be, is beyond question<sup>6</sup> bringing to the fore a host of issues. The prevalence of MPS is unknown and may be higher than is commonly assumed;<sup>7</sup> malingering is obviously of major concern and must be rigorously excluded.

The diagnostic manual states, "Usually, transitions occur in a dramatic manner." MPS may burst spontaneously on the startled forensic psychiatrist or, as in one case of which we are aware, the shift may occur in a manner that creates the greatest kind of embarrassment in the courtroom; alternatively, a second personality may be actively pursued in the case of criminal behavior that appears to be absolutely contrary to a suspect's otherwise exemplary life. While Ludwig, *et al.*<sup>8</sup> have pointed out that differing personalities within MPS may suffer from a panoply of psychiatric conditions, we consider here only true MPS, malingering, and personality disorder of schizoid or paranoid type.

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The essential DSM-III criterion, "The existence within the individual of two or more distinct personalities," leaves to the psychiatrist the judgment of how much difference is enough to make The Difference. In a legal context, we require two totally disparate personalities with totally divergent characteristics in terms of major personality traits — and particularly in terms of aggressiveness that these personalities be internally consistent throughout all interviewing and testing, and that there must be as much evidence as possible for true amnesia on the part of one personality for the existence of the other. Various physiological studies may assist the diagnosis.<sup>8</sup>

Total discontinuity in behavior might occur in a superficially pleasant and well-adjusted individual suffering from personality disorder of paranoid or schizoid types. In such a case, perceived provocation will be obvious, true amnesia will be absent, and characteristic findings of that personality disorder will be apparent on interview and testing.

Thus, we are concerned here only with those cases of true MPS presenting as an apparent total discontinuity of behavior in an apparently healthy individual who seems to have mastered most age-appropriate developmental tasks.

## **Two Case Reports**

While we realize that our clinical material should be subjected to unusually rigorous scrutiny both in and out of the courtroom, in this article we focus primarily on the unique legal aspects of MPS, and we will, therefore, accept the nosological validity of MPS and assume the two cases presented here meet DSM-III criteria. Space would not permit further presentation of MPS claims found to be invalid.

**The Thief** Tom Johnson, a twenty-two-year-old man, came to legal attention following an extortion attempt for which he claimed total amnesia. At intervals for years Johnson had awakened to find unexpected, expensive objects in his room. While surprised at these periodic discoveries, he had made the convenient assumption they were simply unexpected anonymous gifts from well-meaning friends or other unlikely sources. No legal problems had arisen in action with these "unexpected gifts." Johnson presented as a likable, pleasant young man with no prior criminal history.

In this case, the second personality presented himself spontaneously, and the forensic psychiatrist was startled when Johnson abruptly nodded off, apparently in a petit mal seizure. Johnson reopened his eyes altogether different character who presented himself as "Ed," a sullen, hostile, verbally aggressive and sarcastic individual who held Tom in the greatest contempt, wished to live as a pimp, and readily described a lengthy series of successful thefts. Other findings were similarly consistent with the initial impression of a hostile young man versed in the mannerisms and language of a "street tough" who expressed boundless scorn for those who tried to "make it" by ordinary means. When interviewed later by one of us

## MULTIPLE PERSONALITY & CRIMINAL DEFENSE

(AF), the second personality again emerged spontaneously and cooperated with the interview and testing.

Johnson's developmental history had been quite traumatic: as the oldest child in a large family, he had struggled to help support his mother and younger siblings following their alcoholic and violent father's abrupt and welcome departure from the home when Tom was eleven years old. He described how he and his siblings had hidden beneath their beds in terror as their drunken father raced about the house with a butcher knife threatening to kill them all. Since his father's departure, he had always held at least one job and often more, had attended school, and had established a reputation in the community of an exemplary and hard-working young man.

**The Killer** Mrs. Samuels was found brutally beaten and strangled to death in the bedroom of her home. The household was otherwise in perfect order. Mr. and Mrs. Samuels had spent the day prior to the killing in their usual quiet and well-ordered manner. Mr. Samuels, her husband of twenty years, was soon arrested and charged with the murder.

Samuels's attorney, an acquaintance of long-standing, was astounded at this turn of events.<sup>5</sup> He knew Samuels to be a respected member of the community, a devoted family man, churchgoer, and Sunday school teacher who was active in a variety of community affairs and whose reputation in the community was impeccable. Samuels fully recalled the events in question but was entirely unable to explain his murderous behavior except to say that he could not control himself. He was so overcome with grief and remorse in recounting the killing as to be barely interviewable.

Samuels requested the assistance of a forensic psychiatrist to whom he presented as an alert, pleasant, cooperative, middle-aged man who appeared to be normal in every way aside from the uncontrollable sobbing that immediately overwhelmed him as he was questioned about the murder itself. Samuels' developmental history was unremarkable.

The court-appointed psychiatrist, with no knowledge of prior evaluations or history, suspected fugue state or MPS since the murder apparently occurred without motive in the context of a lengthy and happy marriage. He, therefore, hypnotized Samuels, who recalled a perfectly normal evening. He described awakening in the middle of the night, which was not his custom, and walking for no apparent reason into the kitchen, then toward the breezeway where firewood was kept. He quite abruptly and to his apparent amazement discovered himself to be totally under the control of "Mike," who directed him to take a piece of firewood and, upon return to his room, further directed that he beat his wife to death. Samuels found himself utterly unable to resist Mike's demands. Mrs. Samuels did not, in fact, die under this assault, and Mike further directed Samuels to strangle her to death with a stocking, which he did. The psychiatrist found that Mike had no telephone number or address and "lived with" Samuels.

Mr. Samuels's attorney reported two prior occasions when Mike had made an appearance. The first, some twelve years before, resulted in a

gambling trip of three or four days, while the second, a similar gambling escapade some years later, lasted nearly two weeks. Both were confirmed by newspaper clippings. Samuels's behavior had been attributed to prior head trauma, and the matter had been dropped after neuropsychiatric work-up including amytal interview proved non-revealing.<sup>5</sup>

### Defense of Individuals Suffering MPS

The criminal law protects incompetent, mentally incapacitated, and insane persons from trial, conviction, and punishment. Does an accused suffering from MPS qualify for any of these protections?

**Competence** To determine whether someone is competent to stand trial, the forensic psychiatrist must establish that (1) the defendant is capable of understanding the nature and purpose of proceedings taken against him; (2) he comprehends his own status and condition in reference to the proceedings; (3) he is able to assist his attorney in conducting his defense in a rational manner (California Penal Code, Section 1368).

Applying this test to the case of the thief, there is some question whether he can assist his attorney in conducting a defense in a rational manner because the defendant is amnesic with respect to the offense charged. He is unable to recount the events leading up to the theft, the facts and circumstances of the crime itself, and the state of mind of the perpetrator. This lack of memory would appear to impair the defendant's ability to assist his counsel in directing an investigation, determining what witnesses to call, preparing for a cross-examination, and preparing to take the stand himself. It has been held, however, that amnesia does not constitute incompetence (*People vs. McBroom*-1968, 264 Cal. App.3d 242).

Applying the test of competence to the killer, we find no grounds for considering him to be incompetent. Unlike the thief, the killer is fully aware of the events leading up to the killing and is fully aware of the killing itself. It might, of course, be argued that he is amnesic to the state of mind of the perpetrator in the same sense in which the thief is amnesic with respect to the entire event itself. If the obstacle created by the holding of the court in *McBroom* is to be overcome, however, it would appear, at least initially, that one would have a better chance of success in the case of the thief than in the case of the killer.

**Sanity** In determining whether a person is sane at the time of the commission of the offense for which he is charged, the forensic psychiatrist must consider whether as a result of mental disease or defect the defendant lacks substantial capacity needed to appreciate the criminality of his conduct and/or to conform his conduct to the requirements of the law (*People vs. Drew* (1978) 22 Cal.3d 333).\*

Applying this test to the case of the thief, it appears that he is insane in both legs of the *Drew* test. As the accused was unconscious at the time of the commission of thefts, he was unable to appreciate the criminality of his

## MULTIPLE PERSONALITY & CRIMINAL DEFENSE

conduct and was unable to conform his conduct to the requirements of the law.

Applying the same test to the case of the killer gives a different result. Unlike the thief, the killer, who was aware of the killing, does not appear to be insane under the first leg of *Drew*. As he was aware of the act and is otherwise mentally healthy, there is no reason to believe he lacked substantial capacity to appreciate the criminality of his act. On the other hand, if the forensic psychiatrist takes the position that the killer was, in fact, under control of the second personality, it follows that the killer would not have had the capacity to conform his conduct to the requirements of the law. Therefore, it may be said that the killer was insane under the second leg of *Drew*.

**Diminished Capacity** When determining whether an accused suffers from diminished capacity, the trier of fact must determine whether at the time of the commission of the offense he was "suffering from some abnormal mental or physical condition, however caused, which prevented him from forming the special intent or mental state essential to constitute the crime or degree of crime with which he is charged" (CALJIC 3.35).

As applied to the thief, MPS isolated the primary personality from an awareness of the intent to steal, the mental state essential to the crime of theft. (MPS would not be a defense to the charge of say, trespassing, a general-intent offense.)

The issue of diminished capacity with respect to the killer presents more complex questions. The special mental state essential to the crime of murder is "malice aforethought." To determine whether accused had the capacity to harbor this particular mental state, two questions must be answered: (1) was the accused, because of mental disease, defect, or intoxication, unaware of his duty to act within the law? or (2) was the accused, because of mental disease, defect, or intoxication, unable to act in accordance with the duty of which he was aware (*People v. Poddar* (1974) 10 Cal.3d 750). Applying this specialized version of the test of diminished capacity with

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\*The *Drew* (ALI) test of insanity was discarded by California voters in June 1982 when they adopted the "Victims' Bill of Rights," which provided in pertinent part as follows:

"In any proceeding . . . in which a plea of not guilty by reason of insanity is entered, this defense shall be found . . . only when the accused proves . . . that he . . . was incapable of knowing or understanding the nature and quality of his . . . act and of distinguishing right from wrong at the time of the commission of the offense" (Penal Code Section 25(b), emphasis added).

Under this new standard, which appears to be a return not to M'Naughton, but to a different and apparently more stringent test of insanity, the thief would be *insane* and the killer would be *sane*. By virtue of MPS the thief's primary personality was incapable of knowing or understanding the nature and quality of his act because he was unconscious and, for the same reason, he was incapable of distinguishing between right and wrong at the time of the commission of the offense. The killer's primary personality, on the other hand, was capable of knowing or understanding the nature and quality of his act because he was aware of it and, concomitantly he was capable of distinguishing between right and wrong at the time of the commission of the offense.

(The meaning and constitutionality of this specific provision of the "Victims' Bill of Rights" has yet to be determined and tested by Appellate Court. Whether it is a return to M'Naughton or is a different test of insanity altogether and, if the latter, whether it is constitutional, are questions that remain to be answered.)

respect to malice aforethought to the case of the killer, it appears that while aware of his duty to act within the law, he was not able to conform his conduct to law at the time of the commission of the offense and, seemingly, could not be said to have harbored malice aforethought.\*\*

**The Defense of Unconsciousness** The defense of unconsciousness is set forth in Penal Code Section 26, which provides in pertinent part: "All persons are capable of committing crimes except those belonging in the following classes: . . . persons who committed the act charged without being conscious thereof. . . ."

As noted in *People vs. Newton* (1960) 8 Cal. App.3d 357, 377, "[W]here [diminished capacity] provides a 'partial defense' by negating a specific mental state essential to a particular crime, [unconsciousness] is a 'complete defense' because it negates capacity to commit any crime at all." The fact that the condition of unconsciousness resulted from unsoundness of mind (which unsoundness may or may not also constitute insanity) does not deprive the defendant of this line of defense. (*People vs. Kitt* (1968) 83 Cal. App.3d 834, 841; *People vs. Lisnow* (1978) 88 Cal. App.3d Supp. 21; and *People vs. Caldwell* (1980) 102 Cal. App.3d 461.)

In the case of the thief, MPS worked to make him unconscious at the time of the commission of the offense, and serious consideration should be given to raising such a defense. With respect to the killer, curiously, he was not unconscious and perhaps cannot avail himself of this defense. Whether seemingly accidental aspects of the manifold dynamics of MPS should operate to obviate liability in the case of the thief, but not the killer, is an issue worth raising in pressing for carefully tailored instructions on the defense of unconsciousness in the case of the killer.

In suggesting such a defense be given serious consideration, the authors

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\*\*The law of diminished capacity in California has been altered substantially in recent months beginning with enactment of Senate Bill 54, which took effect January 1 1982. This legislation sought, among other things, to abolish the aforementioned definition of diminished capacity as applied to murder cases. More specifically, it added to the Penal Code definition of malice aforethought (Penal Code Section 188) the following: "An awareness of the obligation to act within the general body of laws regulating society is *not* included in a definition of malice" (emphasis added). Assuming this legislation passes Constitutional muster, the *Poddar* test set forth above is no longer operative. More generally, under this new legislation, the *capacity* to form or harbor the requisite special mental state no longer is a legal issue. Pursuant to Penal Code Section 28, evidence of mental disease, defect, or disorder shall not be admissible to negate the capacity to form any mental state, albeit such evidence (of mental disease, defect, or disorder) is admissible on the issue of whether the accused, in fact, actually formed the requisite special mental state. The role of the psychiatrist and psychologist as an expert witness also has been changed by this new legislation, according to which "[i]n the guilt phase of a criminal action, any expert testifying about a defendant's mental illness, mental disorder or mental defect, shall not testify as to whether the defendant had or did not have the required mental states. . . ." (Penal Code Section 29). As applied to both the thief and the killer, this new legislation substantially changes the role of the psychiatric expert, whose testimony now will be limited to medical diagnosis, the basis and meaning thereof. Capacity to harbor or form essential mental states no longer is an issue. Whether the accused did or did not actually entertain the essential mental state is no longer within the domain of admissible expert testimony. The psychiatric expert witness no longer need be concerned with jurisprudential concepts, and the issue of diminished capacity, whatever form it may take, will not be a specific concern. Psychiatric testimony will be limited to medical expertise only.

## MULTIPLE PERSONALITY & CRIMINAL DEFENSE

are not unaware of the "metaphysical subtleties" entailed by MPS in the criminal law and the certain temptation to give this problem short shrift by holding the body responsible if any of its various minds are culpable. At the same time, it is important to remember that somnambulism for example, is a well-recognized example of the defense of unconsciousness, and it raises similar issues of mind and body.

Thus, it can be seen that MPS gives rise to a number of psychiatric defenses: unconsciousness, diminished capacity, and insanity. The applicability of any of these in a particular case will depend on the dynamics of the individual involved. The success of such a defense probably would be related to the quality and quantity of objective, independent evidence of MPS uncovered by the investigation.

### Special Problems

The fascinating and dramatic nature of these cases obviously create special problems for the defense team: excessive media attention, suspicion of malingering, the incredulity of one's colleagues. Here we focus on some interesting technical problems: the use of hypnosis to gain information critical to diagnosis, problems arising from the apparent conflict between primary and secondary personalities, and the final issue of the conditions under which a psychiatrist could state with reasonable medical certainty that adequate treatment had occurred and that the individual was no longer dangerous.

The use of hypnosis in the diagnosis of fugue states in MPS is a well-recognized technique and in some cases may be essential. Yet, recent case law (*People v. Shirley* (1982) 31 Cal 3d 18) holds that a witness other than the defendant whose memory has been "hypnotically enhanced" cannot testify about the subject inquired into under hypnosis. This, then, raises the question of whether a criminal defendant's right to testify in his own behalf would be compromised by the diagnostic use of hypnosis. Clearly, reasonable safeguards must be established in employing hypnosis to ensure that all parties in the case receive a fair trial, and as legal standards regarding the admissibility of information gained through hypnosis change, forensic psychiatrists have a special responsibility to avoid impairing this right. At the very least, meticulous attention to correct, non-leading technique is essential. Orne<sup>9</sup> has provided specific guidelines.

The application of the law to the two cases set forth has an anomalous result: while the psychiatric diagnosis is identical in the two cases, the clinically trivial difference in the relationship between the two personalities within each of the individuals (that is, unconsciousness in the thief, consciousness in the case of the killer) works to deprive the killer of a complete defense of unconsciousness that is available to the thief. Issues of due process and equal protection under the law may thereby be raised.

Problems raised by the inherent conflict between the two personalities raise absolutely unique questions, the first that of separate representation as

demanded by the thief's secondary personality. While this demand initially seemed scoffable, it obviously raises fundamental questions regarding the definition of a representable entity: if one may represent estates and corporations, why should one not represent a personality whose internal coherence and competence has been established? As a practical matter, a secondary personality could readily gain representation by presenting his request as would anyone else, *before* discovery in the context of legal proceedings. Once the request for separate representation was made, the conflict was obvious: the thief's primary personality wished to pursue a defense of insanity that would result in commitment to a treatment setting where the primary personality would be seen as the real personality, while the secondary personality would be seen as pathological. Therefore, treatment would be directed toward strengthening the first with respect to the second personality with the ultimate goal of eliminating and/or subjugating the secondary personality to the first. Should treatment have proved successful, however, the period of institutionalization might have extended beyond the term of the original sentence, conceivably to the duration of the defendant's expected life span. On the other hand, sentencing to state prison would precisely turn the tables. The term would be limited to three years and, further, would require the strengthening of the second personality whose streetwise hostility and aggressiveness would be essential for survival in the hard setting of a prison. The thief's second personality clearly identified these issues and argued vigorously that sentence to prison was not only fair but also was essential to his own survival.\*\*\*

We find no legal basis for exclusion of the second personality as a representable entity, and casual conversation with defense attorneys makes it clear such representation could initially (at least) be readily obtained if the second personality presented himself in the proper manner. From a social policy point of view, however, such representation might be intolerable at best and ridiculous at worst, particularly in view of the fact that multiplication of personalities is a common part of the syndrome. One considers with amusement and distress the chaotic spectacle that would occur as a succession of attorneys, each presenting himself and his new client to the court demands recognition. In short, it appears that any personality presenting itself for representation before diagnosis of MPS may gain at least initial representation but once a diagnosis of MPS has been established, the socially identified primary personality will be represented and all others will be ignored as symptoms of his illness. Indeed, "He who hesitates is lost"!

The prediction of dangerousness, always problematic, is particularly challenging in the case of MPS. The standard criterion of treatment is "fusion" of the various personalities, but adequately objective criteria for

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\*\*\*This prediction turned out to be incorrect.

The thief was, indeed, sentenced to prison and placed in "isolation" with another male prisoner. True to the incredible adaptability of MPS, a third personality emerged: a seductive and sexually very active female who thoroughly enjoyed a honeymoon of some months' duration with her cellmate.



## MULTIPLE PERSONALITY & CRIMINAL DEFENSE

fusion have not been agreed on and are certain to be a matter of vigorous debate in such a setting. Indeed, if adequate data, including psychological testing and physiological measures, are not collected throughout the treatment process, retrospective proof of adequate fusion may be difficult to establish.

We urge those dealing with MPS in a legal context to safeguard the rights of the accused by respecting the clinical heterogeneity of MPS and the widely differing legal problems unique to each individual case, by using hypnosis only after possible legal jeopardy has been duly considered, by videotaping all hypnotic sessions, and by documenting by all possible means the existence of multiple personalities and their subsequent fusions.

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