

Multiple Personality Disorder in Criminal Law

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The authors review the recent literature on multiple personality disorder (MPD), the most severe and chronic of the dissociative disorders, in relation to court cases of competence to stand trial, the insanity defense, and research on malingerers feigning MPD. Issues relevant in the assessment of competency and insanity are described. Features characteristic of MPD, including amnesia and alterations in consciousness and personality, have varying degrees of influence over the criminal behavior of an individual with MPD. As in other psychiatric disorders, the influence of MPD on an individual's competence to stand trial, and sanity, can be evaluated systematically. This article discusses a specific diagnostic tool, the Structured Clinical Interview for DSM-IV Dissociative Disorders (SCID-D), an extensively field tested instrument that is potentially quite useful in forensic assessment of suspects manifesting dissociative symptoms and disorders. The particular advantages of the SCID-D will be reviewed in the context of some well known criminal cases involving MPD. Further research using diagnostic interviews for the systematic assessment of dissociative symptoms and MPD in criminal cases will continue to clarify the influence of these symptoms in a forensic context.

Multiple personality disorder (MPD) (dissociative identity disorder, proposed name change) is a dissociative disorder whose essential feature, according to DSM-IV, is "the presence of two or more distinct identities or personality states" where "at least two of these identities or personality states recurrently take control of the person's behavior" (American Psychiatric Association Task Force on DSM-IV, 1993). The identities have distinctive, stable, and enduring patterns of perceiving and relating to the world; in personality states, the patterns are less pervasive, appearing in a less extensive

range of situations. The individual suffering from MPD may or may not be aware of the existence of other identities, but is usually aware that he or she experiences amnesic episodes or distortions in his or her sense of time, or both.^{1a} When a patient meets the criteria for MPD, diagnoses of dissociative fugue (psychogenic fugue) or dissociative amnesia (psychogenic amnesia) are subsumed under the MPD diagnosis.

When an individual suffering from multiple personality disorder stands accused of a criminal action, issues of competence to stand trial, legal responsibility, and malingering must be addressed, just as in other psychiatric conditions (Fig. 1). Diagnostic interviews such as

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the Structured Clinical Interview for DSM-III-R (SCID)² and the Schedule for Affective Disorders and Schizophrenia (SADS)³ have improved the reliability of diagnoses of a variety of Axis I and Axis II disorders. The recent development of tools for the assessment of dissociative symptoms and/or disorders has allowed clinicians and researchers to evaluate dissociation in a variety of outpatient and inpatient settings.⁴⁻⁸ The most comprehensive diagnostic tool for the assessment of dissociative symptoms and disorders is the Structured Clinical Interview for DSM-IV Dissociative Disorders (SCID-D).^{4, 9, 10} The SCID-D allows a trained interviewer to assess the severity of five dissociative symptoms (amnesia, depersonalization, derealization, iden-

tity confusion, and identity alteration) and to make diagnoses in the five dissociative disorders (dissociative amnesia, dissociative fugue, depersonalization disorder, multiple personality disorder (proposed name change: dissociative identity disorder), and dissociative disorder not otherwise specified, using DSM-IV criteria. Field trials of the SCID-D have indicated good-to-excellent reliability and discriminant validity for the five dissociative symptoms areas and the dissociative disorders.^{10-12, 47} These results have been replicated by Drs. Goff *et al.*¹³ at Harvard and by Drs. Boon and Draijer¹⁴ in a cross-national study in Amsterdam. To date, the authors are not aware of published reports analyzing the utility of a specific diag-

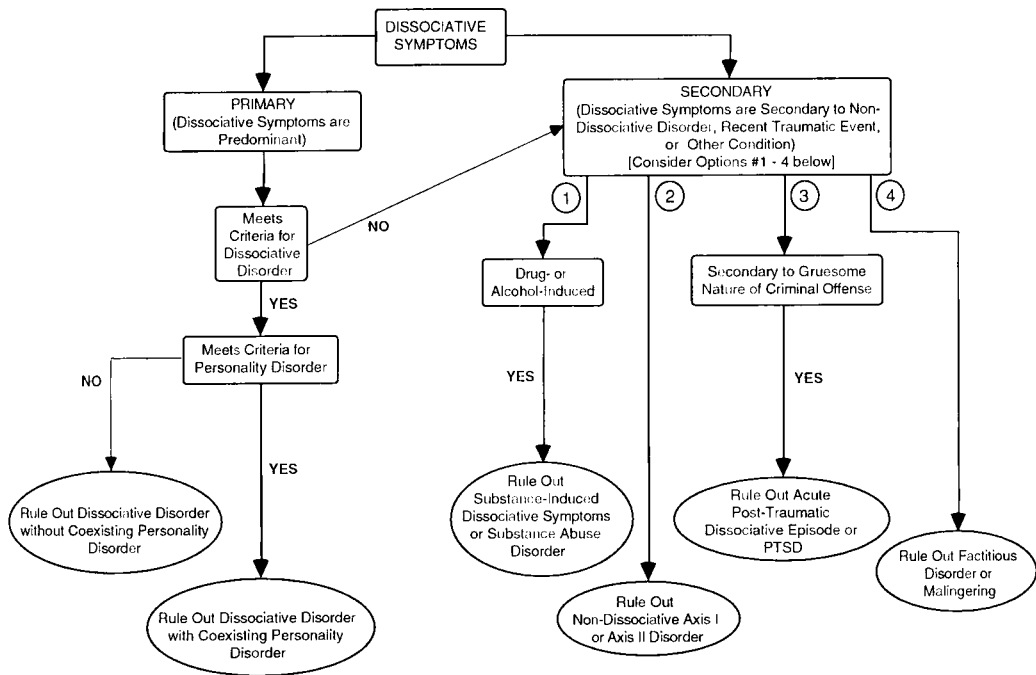


Figure 1. Differential diagnosis of dissociative symptoms in forensic evaluations.

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nostic instrument in criminal cases involving multiple personality disorder.

There are an increasing number of case reports of MPD in forensic settings.¹⁵⁻²⁶ In this article the authors review cases and issues relevant to MPD within a forensic context.

I. Multiple Personality Disorder and Competence to Stand Trial

Competence is defined as a defendant's rational as well as factual understanding of one's legal status²⁷—that he or she is a defendant in a criminal proceeding; the nature of the charges against him or her, which a prosecutor will attempt to prove; that he or she has an attorney and can assist in his or her defense against the charges; that he or she will be expected to tell the truth during the proceedings but may choose not to testify and understands that right, and that there will be a judge and possibly a jury present whose role or roles the defendant understands. Finally, the defendant must comprehend plea negotiations and their ramifications or possible consequences.²⁸ With regard to MPD, persons on trial for crimes committed by alter personalities rely on one or more of four major defenses.

- 1) "the defendant has no control over the actions of his or her secondary personalities and therefore cannot be held responsible for them; 2) the defendant does not remember the acts of secondary personalities and therefore cannot participate in his or her own defense . . . ; 3) by virtue of suffering for MPD it is impossible for the defendant to conform his or her behaviors to the law or to know right from wrong; and 4) like a sleepwalker the defendant was unconscious of alternates' be-

haviors and hence cannot be held accountable for them" (p. 743).²⁹

Case Study: *State v. Badger*

In *State v. Badger*²⁸ the court found itself facing the "novel issue . . . of whether a person who suffers from multiple personality disorder is mentally competent to stand trial for a crime committed by a personality other than the dominant one." Mr. Badger was arrested for attempted burglary following his release from a correctional facility where he had been serving a seven-year sentence for a similar offense. Since age 17, he had been diagnosed as having MPD, with a history of at least eight different personalities. Mr. Badger reported that when one of his alter personalities would take control, he would have amnesia for the activities of that personality and would report a history of "lost time." On the night of the attempted burglary, "Philip" was in control of Mr. Badger, whose dominant personality was "Christopher." Christopher had no recollection of any of the events on the evening in question, although Philip could recall them. Mr. Badger reported having no control over the switching and behaviors of different personalities.

While in a forensic unit following his arrest, Mr. Badger was evaluated during a five-month period. The forensic report²⁸ found that "Mr. Badger genuinely suffered from Multiple Personality Disorder which was not brought on as an attempt to escape punishment for his crimes" (p. 208). The evaluation indicated that Christopher and Philip were "two distinct, competent personalities,"

each of whom knew right from wrong. Six months later, Mr. Badger was found incompetent to stand trial and committed to a psychiatric hospital. Three months later, he was reevaluated and found to be coherent and nondelusional, though "Christopher continued to complain of 'losing time.'" Mr. Badger used the second defense listed by Lewis and Bard²⁹ in claiming that, as a result of his MPD he had amnesia for the incident itself, as well as for the events that occurred during the trial. Pursuant to New Jersey Statute, the court ordered Mr. Badger to be reevaluated, at which time he was found competent to stand trial.

At a later point in the proceedings, further evaluation of the defendant's competence was requested. Following this evaluation, examining physician Dr. Martindale "expressed some hesitancy about Mr. Badger's mental competency to stand trial." The examiner's concern was that only Philip had recall of events on the night in question and that consequently only Philip could assist in his own defense. Dr. Martindale also mentioned the possibility that Christopher might switch to Philip at any time during the judicial proceeding, and that Philip would have no idea what had occurred prior to the switch, and vice versa. Therefore, he found Mr. Badger incompetent to stand trial and did not think that Mr. Badger would be restored to competence at any time in the near future. Despite the examiner's opinion, the court found no reason to declare the defendant incompetent to stand trial. Mention was made in the decision that the defendant was in fact suffering from

a mental disease, but the court suggested that this issue more properly pertained to defense against the charges rather than to the question of competence to stand trial. The court acknowledged that the defendant had two distinct personalities; however, each of the personalities was well-oriented within the definition of competence. While reserving decision to again evaluate for competency, the court found that the defendant, as required by the appropriate statutes, "has the mental capacity to appreciate his presence in relation to time, place and things." In addition, the court suggested that the problem of switching from one personality to another could be overcome by "having the defendant's attorney explain to him what has occurred just prior to the personality change," so that at any given time whichever personality was dominant could be made aware of the proceedings (p. 209).²⁸

The court further found "that the condition of amnesia is sufficiently similar to . . . Multiple Personality Disorder, that the same principles apply" (p. 210). Citing findings in prior proceedings³⁰ that persons unable to remember criminal activities are not immune from prosecution for those events solely on the basis of their amnesia, the court concluded that ". . . amnesia is present to some degree in everyone and that its effects on the ability of an individual to assist in his own defense are often hard to distinguish from the disadvantages of many defendants to whom important facts are unavailable for reasons other than amnesia . . . [I]t should be apparent that it is neither necessary nor appropri-

ate to consider memory failure as a sufficient condition for the interruption of the adjudicatory process to minimize the danger of a miscarriage of justice” (p. 210).²⁸

The Issue of Badger’s Competence to Stand Trial Numerous precedents exist for the New Jersey court’s assertion that amnesia does not preclude capacity to stand trial.^{31–35} However, review of these cases suggests that the condition of amnesia is presented as an isolated, discrete symptom related specifically to failure to recall the criminal act(s) in question. No one involved in the proceedings disputed that Mr. Badger suffers from MPD. Badger’s amnesia for his criminal activity occurred within the context of a constellation of other dissociative symptoms. Had he been assessed by the SCID-D, his amnesia would appear to occur in conjunction with other dissociative symptoms defined by the SCID-D, particularly identity confusion and identity alteration, which are critical to a diagnosis of MPD.

In addition, Mr. Badger’s amnesia occurred throughout the course of many years of his illness and existed prior to the criminal activity in question.

SCID-D research indicates that amnesia as it occurs in MPD exists not only for periods of time and for specific events, but it also affects the relationships among the individual’s alternate personalities.^{4, 9–10, 12} These personalities may have lifestyles, attitudes, and behaviors at great variance with one another, including conflicting standards of morality, and may differ in age, gender, and sexual orientation. Along with a history

of recurrent episodes of amnesia, the individual suffering from MPD will experience recurrent or persistent episodes of other dissociative symptoms including depersonalization, derealization, identity confusion, and identity alteration.^{4, 9} One advantage of administering the SCID-D to a person with MPD accused of a crime is that the instrument can assess both the presence and severity of dissociative symptoms in the accused. In addition, the SCID-D allows an experienced clinician to evaluate the individual’s specific pattern of symptoms and dysfunction, over his or her lifetime history, not just with respect to the crime of which he or she stands accused.

In the context of *State vs. Badger*, the court maintained that Badger’s attorney could keep both Philip and Christopher current of proceedings of which either was unaware because of the other’s control during the trial. Whereas in some cases of MPD the personalities may be able to be reoriented by their attorney, this ability would be influenced by the severity of amnesia and degree of cooperation between the personalities. Orientation, then, would be totally dependent upon the attorney’s ability to recognize and address switches as they occurred, each time they occurred. Whereas this may be feasible with some patients with MPD, others may exhibit uncontrollable, rapid switching,³⁶ thus limiting their ability to remain current of any proceedings. One possible explanation is that during evaluations when Mr. Badger was found competent, a non-amnestic personality was in charge, and when found incompetent, an

amnesic personality was in charge, and that the inconsistent findings reflect fluctuations in the competence of Philip and Christopher and/or Mr. Badger's other six personalities. Had the SCID-D been administered to the accused at 6-month intervals, a more accurate assessment of his dissociative symptoms, including his amnesia and identity disturbance, might have been made. In fact since both Philip and Christopher were noted to be competent, it is possible that the findings of Mr. Badger's incompetence were due to the influence of the other six personalities, who were not evaluated by Dr. Martindale. The precedents used by the court to declare Mr. Badger competent should be tempered by the findings in *State v. McClendon*³² "that each case concerning amnesia must be considered on its own merits and that no absolutes may be justified without investigation"

II. Multiple Personality Disorder and the Insanity Defense

Once a defendant suffering from MPD is found competent to stand trial, how should the issue of his or her mental condition at the time of the crime be addressed? Many jurisdictions define insanity as the lack of the "substantial capacity needed to appreciate the criminality of [one's] conduct and/or to conform one's conduct to the requirements of the law."³⁵ These jurisdictions draw from the American Law Institute (ALI) Standard, a two-part test providing that:

A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he lacks substantial capacity either to appreciate the criminality

[wrongfulness] of his conduct or to conform his conduct to the requirements of the law.³⁷

The earlier M'Naghten standard for legal insanity holds that:

. . . it must be clearly proved that, at the time of the committing of the act, the party accused was laboring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing; or, if he did know it, that he did not know he was doing what was wrong.³⁸

The ALI Standard, the M'Naghten Standard, or a variant of the two serve as our current models for the determination of sanity at the time of the commission of a criminal act.

Case Study 1: The Motiveless Wife Murderer

French and Shechmeister¹⁷ discuss a case of murder in which the defendant killed his wife of 20 years. There was no apparent motive. A forensic psychiatrist who was called in as a consultant suspected MPD and hypnotized the defendant to recall the evening of the murder. Prior to the hypnosis, the defendant had been unable to speak of the murder without being overwhelmed by uncontrollable weeping. Under hypnosis, the defendant recalled that he had found himself under the complete control of someone named "Mike" on the night of the murder, who instructed him to kill. On examination, the defendant stated that "Mike" had no address; he "lived with" the defendant. The defendant's attorney described the apparent fugue states that had occurred some years prior to the murder. During those fugues Mike had gone on gambling sprees.

In the opinion of French and Shech-

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meister the defendant was aware of the murder, and was "sane" as defined by understanding the criminal nature of his act. However, if one takes the position that Mike controlled the defendant's behavior, then the defendant lacked the capacity to conform his conduct to the law and was therefore "insane" at the time of the crime under the ALI standard.

Case Study 2: State vs. Milligan

A successful insanity defense was presented in *State v. William Milligan*.¹⁶ Mr. Milligan was arrested for a series of campus rapes. During the course of his pretrial incarceration, his attorneys became convinced that a psychiatric evaluation was appropriate due to Mr. Milligan's inconsistent presentation and demeanor. Over the course of the competency proceedings, numerous expert clinicians concurred that Mr. Milligan was suffering from MPD. Although he was initially found incompetent to stand trial, follow-up examination several months later considered him restored to competence.

Upon further evaluation, evidence was submitted that revealed that Mr. Milligan had committed rapes while under the control of one of his alternate personalities who was a lesbian. Mr. Milligan was unaware of this alternate personality and her actions; in fact Mr. Milligan's birth personality had been amnesic for the activities of Mr. Milligan since very early childhood, when other personalities had formed to insulate the young child from traumatic abuse inflicted by his stepfather. At the time of his arrest, Mr. Milligan was 26

years old; he reported that he had been amnesic for 15 of those years. On several occasions Mr. Milligan attempted suicide when he gained temporary control of the alternate personalities. The court found Mr. Milligan not guilty by reason of insanity and remanded him to the custody of a psychiatric facility.¹⁶

Case Study 3: Hawaii vs. Rodrigues

Mr. Rodrigues, a 23-year-old Marine, was indicted on three counts of sodomy and one count of rape. On March 12 of 1980, he filed a notice of intention to rely on an insanity defense based on his claimed MPD. Prior to the filing of this notice, Mr. Rodrigues had been examined by a psychiatrist and a psychologist, both of whom testified for the defense. On March 17 of 1980 further mental examination was ordered by the court, to be performed by three court-appointed psychiatrists.

The Supreme Court of Hawaii states that MPD can be regarded in similar fashion as other defenses of insanity, so that "If a [defendant] has lucid intervals of understanding he shall answer for what he does in those intervals as if he has no deficiency."³⁹ The court further states that where MPD is at issue, ". . . each personality may or may not be criminally responsible for its acts, each one must be examined under the ALI Model Penal Code competency test."³⁹ As Lewis and Bard²⁹ have observed, this Hawaii decision is typical of the current tendency "for courts to deny that a single person is on trial and to treat individuals with MPD as though they were several different people, each of whom might be

held responsible for his or her behaviors” (p. 746).

Five experts testified in the criminal case, which resulted in the acquittal of the defendant. Four out of the five endorsed the MPD diagnosis. Dr. Morgan, who treated the defendant, testified that Mr. Rodrigues exhibited three personalities: Personality A, or “Rod,” who was Mr. Rodrigues’ normal waking state; Personality B, “David,” who had emerged when the defendant was 16 and mediated between Rod and the third personality; and C, “Lucifer,” who had emerged at age three. It was Lucifer who had been in control at the times of the offenses. In Dr. Morgan’s opinion, the defendant as a whole lacked capacity to understand the wrongfulness of his actions and to conform his conduct to the requirements of the law. The psychiatrist stated that A and B knew the wrongful nature of the acts but that C didn’t care whether they were right or wrong. Similarly he stated, both A and B had the capacity to conform their conduct to the requirements of the law, but C cared about neither his conduct nor its consequences.

The trial judge granted the defendant’s motion for acquittal by reason of insanity. The district attorney’s office appealed the verdict and the appellate court reversed, noting that MPD does not *per se* mandate insanity and that sanity is an issue for jury decision.

The authors agree with the opinion by the state appellate court that “cases of MPD can be examined in a similar fashion [to] other defenses of insanity.”³⁹ However, MPD presents an unusual

spectrum of possibilities regarding the question of diminished responsibility. If we extrapolate from Dietz’s⁴⁰ five patterns of common relationships between mental disorder and criminal behavior, the behavior of accused persons with MPD could be located within four of his five patterns. The differential diagnosis of crime suspects who manifest dissociative symptoms offers five possibilities:

1. Prior to the criminal act the person did not meet the criteria for any of the dissociative disorders, yet has developed posttraumatic dissociative symptoms secondary to the commission of the offense (correlates with Dietz’s fifth pattern). Dietz cites the example of murderers who experienced depersonalization upon recognizing the gruesome results of their violence.⁴⁰
2. Prior to the criminal act, the person with or without a substance abuse disorder develops transient dissociative symptoms secondary to an episode of substance abuse (correlates with Dietz’s second pattern).
3. The person has preexisting dissociative symptoms coexisting with a personality disorder, such as borderline personality or paranoid personality disorder (correlates with Dietz’s third pattern).
4. The person has one of the five dissociative disorders, which coexists with antisocial personality disorder. In the case of an individual suffering from MPD, it should be noted that the antisocial personality disorder can be characteristic of one or more of the alternate personalities (correlates with Dietz’s third pattern).
5. The person has dissociative symptoms and/or dissociative disorder, however the relationship between the disorder and the commission of the crime is coincidental (correlates with Dietz’s fourth pattern).

As these five possibilities indicate, patients with MPD have alternate personalities which vary, not only in their degrees of influence over the person’s overall behavior, but also in the severity of

their psychopathology, which may include substance abuse disorders, antisocial personality disorder, or transient psychosis.

Assessment of Criminal Responsibility It will be obvious to the reader that the possible differential diagnoses outlined above complicate a clinician's assessment of criminal responsibility in a suspect with dissociative symptoms. Diagnostic instruments such as the SCID-D have the potential to reduce the complexities of differential diagnosis by providing clinicians with a reliable tool for the assessment of the presence, severity, and constellation of dissociative symptoms. However, with respect to MPD in particular, arriving at the diagnosis of MPD is only the first step toward evaluation of the person's responsibility. The assessment of criminal responsibility in a patient with MPD entails (a) identifying the personality or personalities involved in the criminal activity; (b) assessing each personality's ability to exert control over the patient's overall behavior; and (c) evaluating each personality's capacity to appreciate the wrongfulness of the conduct at issue. For a comprehensive review of issues related to multiple personality disorder and criminal responsibility, see Saks.⁴¹

III. Malingering, Hypnosis, and Systematic Assessment

In any criminal defense in which incompetence or insanity is pivotal, the suspicion of malingering arises. When MPD is at issue, there is also a suspicion that the condition may be simulated or iatrogenically induced through misuse of

hypnosis.^{19,33} Coons⁴² in particular, notes that the overuse of hypnosis in criminal defendants obscures accurate diagnosis of MPD. Because the SCID-D allows the interviewer to assess dissociative symptoms without the use of hypnosis or leading questions, it can be used by clinicians involved in forensic evaluations as well as for routine diagnostic work-ups.

With respect to the issue of iatrogenesis in criminal cases involving MPD, Kluff⁴³ states that although isolated symptoms of identity changes, such as the use of a different name, can sometimes be induced in a normal subject, "there is no evidence that clinical multiple personality disorder can be produced de novo by iatrogenic manipulations" (p. 365). Dietz⁴⁰ adds that malingering, while it can occur in conjunction with any disorder, is most closely associated with antisocial personality disorder.

Kluff⁴⁴ notes that simulated MPD presents crude manifestations of the disorder, such as stereotypical good/bad personality states and a preoccupation with the circumstances the individual hopes to avoid by obtaining an MPD diagnosis. In addition, Kluff suggests that there are characteristics of authentic MPD that can be identified without the use of hypnosis, making the differential diagnosis of MPD and malingering less problematic. For example, he points out that it is difficult for the malingerer to be consistent in voice, style of movement, and memory of assumed alter personalities. Kluff⁴⁴ also emphasizes the value of prolonged interviews because spontaneous

dissociation often occurs as late as two and one-half to four hours after beginning an interview.

Use of the Structured Clinical Interview for DSM-IV Dissociative Disorders (SCID-D)^{4, 9, 10} allows the clinician to systematically evaluate the severity of five dissociative symptom areas and make DSM-IV diagnoses of the dissociative disorders. This interview allows for the assessment of severity and degree of impairment caused by these dissociative symptoms, and provides the opportunity for spontaneous dissociation to occur without the use of hypnosis. Additionally, the SCID-D utilizes a semi-structured format with open-ended questions that require the subject's elaboration on endorsed dissociative symptoms. Such a semistructured format can "enhance both the reliability and validity of a respondent's information... [providing] more accurate descriptions than might be possible with other modes of test administration."⁴⁵

To summarize, several of the SCID-D's specific advantages with regard to forensic evaluation include the following.

1. The SCID-D's good-to-excellent interrater reliability for the assessment of dissociative symptoms allows for reasonable confidence in findings regarding evaluation of a patient by more than one examiner.^{4, 10-14, 47} This is particularly important in cases in which an accused person is transferred from one jurisdiction to another. The SCID-D can be administered repeatedly without prejudice to the accused.

2. The SCID-D's utility in symptom documentation would facilitate its ad-

mission as evidence in courtroom proceedings as well as for documentation in psychological reports. Since Lewis and Bard¹⁹ have observed that MPD complicates evidentiary issues, the SCID-D offers an additional form of documentation that is less controversial than videotaping, Amytal interviews, or hypnosis, all of which have aroused considerable disagreement among both medical and legal professionals.

3. The instrument's format allows for the collection of data regarding MPD patients charged with criminal offenses, so that researchers will have a database to facilitate studies comparing criminals with MPD to criminals without dissociative disorders; or to compare criminals diagnosed with MPD to noncriminal MPD patients.

4. Because early diagnosis is essential to the implementation of appropriate treatment, the SCID-D's ability to detect previously undiagnosed cases of dissociative disorder allows for the prompt initiation of more effective therapy for individuals confined on a forensic basis.

5. Finally, the SCID-D allows the interviewer to situate a suspect's dissociative symptoms in the context of his or her life history, not just in the circumstances surrounding the crime. In addition, further research with the SCID-D in forensic populations may help clarify the distinguishing features of individuals with MPD from those of malingers.

Conclusion

We have reviewed here the impact of MPD on legal issues. Rogers⁴⁶ emphasizes that the best ally a clinician has is

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knowledge of the disorder being evaluated. A growing body of SCID-D investigations has shown striking consistency in the phenomenology of multiple personality disorder based on systematic assessment of dissociative symptoms. Numerous researchers have found the SCID-D to have excellent reliability and discriminant validity for the five dissociative symptom areas and the dissociative disorders.^{4, 10-14, 47} The Structured Clinical Interview for DSM-IV Dissociative Disorders (SCID-D)^{4, 10} can be used to systematically evaluate the severity of dissociative symptoms and diagnose the dissociative disorders in psychiatric, non-psychiatric, and forensic populations. Further research using recently developed diagnostic interviews is needed to clarify the spectrum and severity of dissociative symptomatology in the forensic population.

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