

Dissociative Identity Disorder: Medicolegal Challenges

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Persons with dissociative identity disorder (DID) often present in the criminal justice system rather than the mental health system and perplex experts in both professions. DID is a controversial diagnosis with important medicolegal implications. Defendants have claimed that they committed serious crimes, including rape or murder, while they were in a dissociated state. Asserting that their alter personality committed the bad act, defendants have pleaded not guilty by reason of insanity (NGRI). In such instances, forensic experts are asked to assess the defendant for DID and provide testimony in court. Debate continues over whether DID truly exists, whether expert testimony should be allowed into evidence, and whether it should exculpate defendants for their criminal acts. This article reviews historical and theoretical perspectives on DID, presents cases that illustrate the legal implications and controversies of raising an insanity defense based on multiple personalities, and examines the role of forensic experts asked to comment on DID with the goal of assisting clinicians in the medicolegal assessment of DID in relation to crimes.

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Dissociation is a general term that refers to the separation of any normally integrated psychological processes, encompassing both dissociative amnesia and the dissociative state. The first case of multiple personality disorder, now known as dissociative identity disorder (DID), was described by Paracelsus in 1646.¹ After a steady rise in DID symptom reports during the 19th century, interest in DID waned in the early 20th Century because of a variety of factors, including the death of Jean-Martin Charcot, reports of patients faking DID, and affairs between patients and therapists. According to *Index Medicus*, between 1903 and 1978 there was a decline in dissociative reports and a rise in Eugene Bleuler's newly identified disorder, schizophrenia.²

Media attention and popular culture later resurrected interest in dissociative symptoms. For example, Mary Shelley's *Frankenstein* and Robert Louis Stevenson's *Strange Case of Dr. Jekyll and Mr. Hyde*, intriguingly illustrated individuals with multiple personalities. Movies such as *Sybil* and *The Three Faces of Eve* also resurrected popular interest in the phenomenon.³ In the Diagnostic and Statistical Manual of Mental Disorders, Third Edition (DSM-III),⁴ disso-

ciative disorders were labeled as Axis I. Controversy, however, spiked with media attention.⁵ The reliability of the DID diagnosis, the lack of childhood cases, and consistent evidence of blatant iatrogenesis in the practice of DID proponents have called the diagnosis into question.⁶

Causes and Pathology

Today, it is generally agreed that a required antecedent of dissociation is a traumatic event.⁷ Theoretically, harm by a trusted caregiver forces one to split off awareness and memory of the trauma to survive the relationship. These memories and feelings recede into the subconscious and emerge later in the form of a separate personality. This process happens repeatedly at different times, so that different personalities develop, containing different memories and performing different functions that are helpful or destructive. Later, dissociation becomes a coping mechanism for individuals when faced with further stressful situations.⁸

Constitutional predisposition for development of a dissociative disorder includes personality traits, such as being easily hypnotized, mental absorption, suggestibility, and a tendency to fantasize.⁹ Co-morbidities with dissociation include posttraumatic stress, borderline personality, somatoform, and eating and substance-abuse disorders.¹⁰

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Table 1 DSM-IV-TR DID Criteria¹¹

The presence of two or more distinct identities or personality states, each with its own relatively enduring pattern of perceiving, relating to, and thinking about the environment and self.

At least two of these identities or personality states must recurrently take control of the person's behavior.

Patients have an inability to recall important personal information that is too extensive to be explained by ordinary forgetfulness.

The disturbance must not be due to the direct physiological effects of a substance . . . or a general medical condition.

DID may also result from co-morbid mental illness or other medical conditions, including complex partial seizures. While it is beyond the scope of this article to provide an in-depth review of neuropsychological and neuroanatomical studies of personality and memory, advances in neuroimaging techniques serve to remind us that much remains to be learned in the area of neurobiology.⁹

Dissociative pathology, despite the renaming of multiple personality disorder (MPD) to DID, remains an Axis I disorder in the DSM-IV-TR.¹¹ Although the American Psychiatric Association Work Group has proposed new diagnostic criteria for DSM-5, scheduled to be published in May 2013,¹² its current criteria are listed in Table 1. The purpose of the DSM-IV-TR is to provide clear descriptions of diagnostic categories to enable clinicians and investigators to diagnose, communicate about, study, and treat people with various mental disorders.¹³

NGRI and DID

Utilization of the DSM, however, becomes challenging in legal situations. The DSM influences, but does not control, the definition of mental disorder in the test of criminal responsibility.¹⁴ Ultimately, the judge or jury decides whether the accused has proven that he suffered from a mental disorder that meets the statutory requirement(s), often including inability to appreciate the nature and quality of the action in question.¹⁵

In cases of NGRI with multiple personalities, the astute defense attorney will utilize one of three legal approaches.¹⁶ The alter-in-control approach, which is the prevailing defense, considers the key question to be what alter (personality) was in control at the time of the offense and whether the alter meets the insanity standard. The each-alter approach considers whether each personality meets the insanity standard. Finally, the host-alter approach considers the key issue to be whether the dominant or primary personality meets the insanity standard.

The dissociative state has emerged as an important consideration in numerous legal cases.¹⁷ Legal and mental health commentators are divided about whether dissociative disorder warrants an acquittal for insanity. Complexities arise when evidence of a dissociative state or dissociative amnesia is offered in court. One such complexity concerns how each phenomenon relates to personal control over behavior. Arguments have been made for excusing those with DID from responsibility. Some experts believe that a person with DID is a single person in the grip of a very serious mental disorder and that such a person is unable to fulfill the ordinary conditions of responsible agency (autonomy and self-control).¹⁸

In support of DID's being exculpatory, an argument can be made that since courts have acquitted defendants who show evidence of automatism, a dissociative state,^{19–21} the same should be the case for DID. The Canadian case *R v. Stone*,²² conversely, held that exculpation hinges on whether criminal behavior is involuntary, regardless of the state of consciousness.²³

The recognition of MPD as a mental illness that would excuse criminal responsibility did not occur until Billy Milligan was declared insane in 1978 (*State v. Milligan*).²⁴ In that case, the argument for application of the insanity defense to the case of DID was that the defendant did not have an integrated personality. Rather, coexisting within the same individual were both criminally responsible and nonresponsible personalities. Public outrage was extraordinary, given that this serial rapist was not held culpable, and afterward, most DID defenses did not hold up, as shown in Table 2. For example, when Nathan Darnall²⁵ was charged with murder, he pleaded insanity due to multiple personalities. The court found that he was most likely malingering his alters, and even if alters did exist, having alter personalities was not a mental disease that would preclude having responsibility for the murder.

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Table 2 Using Dissociative Identity Disorder* as a Basis for Not Guilty by Reason of Insanity

Case	Year	Charge	Defense	Court Ruling
<i>State v. Milligan</i> ²⁴	1978	Rape	NGRI-MPD	Lack of an integrated personality meant the defendant was not culpable
<i>State v. Darnall</i> ²⁵	1980	Murder	NGRI-MPD	Multiple personalities do not preclude criminal responsibility
<i>State v. Grimsley</i> ²⁶	1982	Drunken driving	NGRI-MPD; primary personality had no control over the "alter"	State of consciousness or personality of defendant is immaterial
<i>Kirkland v. State</i> ²⁷	1983	Bank robbery	NGRI-psychogenic fugue	Law does not inquire about other personalities, fugue states, or moods in cases of criminal liability
<i>State v. Jones</i> ²⁸	1988	Murder	NGRI-MPD	Alter personalities will not be an excuse for inability to distinguish right from wrong
<i>State v. Greene</i> ²⁹	1998	Murder	NGRI - DID; primary personality was "unconscious"	Evidence of DID, including expert testimony, was not admissible because it did not meet reliability standards
<i>State v. Lockhart</i> ³⁰	2000	Sexual assault	NGRI-DID	DID was not allowed into evidence by the West Virginia Court due to lack of scientific evidence

* Dissociative identity disorder formerly was referred to as multiple personality disorder.

The defense used in *State v. Grimsley*²⁶ was insanity due to multiple personalities. The court ruled that it was immaterial what state of consciousness or personality the defendant was in as long as the personality controlling the behavior was conscious and aware of his actions. The defense in *Kirkland v. State*²⁷ also asserted an insanity defense based on a psychogenic fugue. The court found that the law adjudges criminal liability of the person according to the person's state of mind at the time of the act, and the law will not inquire whether the individual possesses other personalities, fugues, or even moods in which he would not have performed the act. *State v. Jones*²⁸ found William Jones guilty of murdering a woman he met at a bar, despite expert testimony that his multiple personalities "paralyzed" him and hindered from knowing right from wrong.

More recently, courts have rejected the admissibility of DID evidence, including expert testimony, because the scientific evidence fails to meet reliability standards and therefore is not ultimately useful to the judge or jury. In *State v. Greene*,²⁹ the defendant claimed that 1 of his 24 alters was responsible for killing his therapist. The Supreme Court of Washington affirmed that evidence of Mr. Greene's DID, including expert testimony, was not reliable and not admissible.

Similarly, in *State v. Lockhart*,³⁰ Mr. Lockhart contested his conviction of first-degree sexual assault on the basis that he was not permitted to present evidence of DID to support his insanity defense. The

West Virginia Court held that the diagnosis of DID was speculative and therefore did not meet reliability standards of evidence.

DID and the Forensic Expert

Admission of expert testimony into court regarding DID is an ongoing debate that involves forensic psychiatrists.³¹ While some courts have allowed testimony on dissociative disorders, others have denied the validity of dissociations or acknowledged the lack of scientific information available on the diagnosis. Evidence of dissociation in accused persons during acts of severe violence is highly problematic because of the legal significance of dissociative symptoms.³²

When a report of dissociation emerges in a criminal case, the stakes are high. A major consideration is the possibility of malingering alter personalities to evade responsibility. If malingered symptoms were mistakenly viewed as valid evidence of a dissociative state (a false-positive error), the court could unjustly adjudicate the defendant NGRI.

The accurate determination of the credibility of symptoms in defendants is difficult because the primary source of information is self-report.³³ There are motivations for malingered alters in criminal offenders. Feigned symptoms may serve to support a legal defense of NGRI to elicit sympathy, to raise doubt about the person's involvement in the crime, or to avoid using the much more risky and cognitively taxing approach of explicit deception.³⁴ A motiva-

tion to malingering in psychopathic offenders may simply be pathological lying or even “duping delight.”³⁵

In a medicolegal context, forensic experts who are asked to evaluate such a claim, should conduct a thorough investigation using multiple hypotheses and techniques.³⁶ While DSM-IV-TR criteria are a useful tool, all relevant information, including clinical history and assessment, collateral information, and past and present behavior should be considered in a primary diagnosis. Experts must be suspicious of malingered alter personalities that manifest as exaggerated details of alter states.³⁷

Historically, specific techniques used to evaluate a report of DID have included polygraph and symptom suggestion. The polygraph depends on the assumption that a person will show an emotional or physiological response when being deceptive, reflecting a fear of detection or guilt about lying.³⁸ However, the polygraph is prone to false-positive errors and can also be fooled by means of countermeasures such as drugs or mental imagery.³⁹

Experts now must use a multidisciplinary and multitechnique approach. An evaluation of the individual’s verbal and nonverbal behaviors that could indicate malingering should be undertaken during interviews regarding the event in question. Self-report questionnaires such as the Structured Inventory of Malingered Symptomatology⁴⁰ can be used to evaluate the tendency to exaggerate memory complaints (indicative of malingering). The Dissociative Experiences Scale⁴¹ can be employed as a screening instrument for dissociative symptoms, and structured interviews such as the Dissociative Disorders Interview Schedule⁴² can be used to assess whether the individual has a dissociative disorder.

It is important to recognize that converging evidence indicates that dissociative amnesia in defendants is authentic in some cases, despite the general skepticism from legal decision makers. Further, it can be concluded that dissociation is malingered in some cases, causing a significant challenge in medicolegal contexts.

Conclusions

DID and the insanity defenses are controversial, with clinical and legal implications. Truly experiencing a dissociative state could decrease an individual’s capacity to control his actions and therefore diminish criminal responsibility. Defendants who claim DID, nevertheless, are usually regarded as having limited

credibility because of the inherent possibility of malingered. Undoubtedly, some feign alter personalities in an attempt to evade punishment. However, genuine dissociation is seen in clinical practice, and remains an Axis I disorder.

When a defendant claims that an alter personality committed the crime, the court can have considerable difficulty in formulating a decision. Wrongful decisions regarding the authenticity of an individual’s state at the time of the offense can be very costly, with the outcome that lighter or harsher sentences are given than is just.

In accepting evidence supporting the validity of claims of alter personalities, it seems clear that the important concern should be determining how to distinguish between genuine dissociation and malingered. Also, there should be validity testing and a better consensus on what is admissible in court testimony. The ultimate issue of DID as exculpatory for a criminal act remains a decision for the court.

As it stands, the forensic assessment of individuals who claim they should be acquitted by reason of insanity for crimes based on a dissociated state represents a most interesting challenge. A review of the literature and previous cases indicates that even when testimony is admissible and points to an individual’s having distinct personalities that control his behavior, an insanity defense rarely has been successful.

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