

Does Someone with Dissociative Identity Disorder have Agency when their Alter Commits a Crime?

## **Introduction**

I was asked to conduct a forensic psychological evaluation of a teenage boy who claimed that one of his alternate personalities committed a sexual crime against his girlfriend. Naturally, the police, the prosecutor, and even his own attorney, were skeptical of this claim. Among other objectives, I needed to determine whether or not my client would meet the criteria for Dissociative Identity Disorder (DID). I will describe the protracted process by which I ultimately concluded that he, in fact, does suffer from DID. What sources of information contributed most to my arriving at this conclusion? What historical factors needed to be considered? In what manner would this discovery be utilized by counsel in his preparation of a defense for his client? Given the DID diagnosis, could it be shown that the boy did not have agency over the alter that committed the offense?

*The learner will be able discuss:*

The extent to which the DID diagnosis is controversial

The process by which a DID diagnosis can be made including:

- The problems associated with psychological testing

- Where to look for determinative data

- The extent to which a DID diagnosis may inform the issue of culpability

*Curriculum content:*

My program content focuses on a psychological assessment methodology that is empirically supported by contemporary peer reviewed scientific literature and that goes beyond those publications. It also focuses on the interface between the forensic psychological and criminal justice domains.

## **What is DID?**

Dissociative Identity Disorder (DID; formerly termed multiple-personality disorder) is characterized by the presence of at least two distinct identities that, in turn, take control of the person's behavior. Memory dysfunction is a key diagnostic criterion of DID and usually presents in three primary ways: gaps in remote memory of personal life events (e.g., periods of childhood or adolescence); lapses in dependable memory (e.g., of what happened today); or discovery of evidence of daily actions and tasks that they do not recollect doing (e.g., finding unexplained purchases or discovering injuries). This amnesia is not restricted to traumatic and stressful events; it can extend to regular everyday events as well, which can cause great distress in the individual and functional impairment.

The posttraumatic model of DID proposes that the disorder arises from a natural defensive reaction to extreme sexual, physical, or psychological trauma in childhood that results in dissociative states (viewed as separate alternate identities, or “alters”) in which memories of traumatic events are stored. The child does not develop a unified sense of self and instead develops multiple identities containing different memories. In stressful situations, dissociation becomes a coping mechanism. Dissociated memories of experiences may be partially or totally inaccessible for voluntary retrieval by some dissociative identities (inter-identity amnesia).

## **Forensic Issues**

Dissociation is not an uncommon feature in crimes of violence, although the relative contribution of dissociation to overall violence is limited. Dissociation signals a disruption in the normally integrated functions of memory and consciousness. 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) or that they weren't capable of forming the requisite intent to commit the crime. 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 regarding this evidence, and whether it should exculpate defendants for their criminal acts. DID and affirmative (e.g., insanity) defenses are controversial, with both 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 malingering. 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. Since 2013, more and more forensic scientific studies have shown that real dissociative identity disorder manifests in unique ways within social, personal, psychological and professional environments.

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 malingering. Also, there should be validity testing and an understanding of what is admissible in court. The ultimate issue of DID as exculpatory for a criminal act remains a decision for the trier of fact.

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.

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).

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, the same should be the case for DID.

### **Public Interest / Critics**

Books and movies, such as *Sybil* and *The Three Faces of Eve* increased popular interest in the phenomenon. In the Diagnostic and Statistical Manual of Mental Disorders, Third Edition (DSM-III), dissociative disorders were labeled as Axis I. Controversy, however, spiked with media attention. The reliability of the DID diagnosis, malingering, and evidence of iatrogenesis in the practice of DID proponents have called the diagnosis into question. Critics of the DID diagnosis have argued that the phenomena associated with DID develop in patients who are suggestible, fantasy-prone and willing to play a role, and who are treated by therapists who are convinced about the high prevalence of this diagnosis. Thus, some critics argue, the clinical picture that emerges depends on a folie à deux between therapist and patient. Some patients are highly vulnerable to suggestion from therapists and DID is most likely an artifact of specific techniques, they claim. Thus, some therapists may insist that patients must have been abused during childhood.

### **Court Rulings**

A defense of not guilty by reason of insanity due to dissociative identity disorder rarely has been successful. Courts generally have found that, although an individual may have distinct personalities that control his or her behavior, the condition does not preclude criminal responsibility. Since the 1980s, dissociative identity disorder in an insanity plea has rarely been successful as more jurors have asserted that, unless an alter was obviously psychotic or delusional, she or he is still responsible for what happened.

The recognition of DID/MPD as a mental illness that would excuse criminal responsibility did not occur until Billy Milligan was declared insane in 1978 (*State v. Milligan*). Public outrage was extraordinary, given that this serial rapist was not held culpable, and afterward, most DID defenses did not hold up. This backlash can be seen in the table below:

**Table 1** Using Dissociative Identity Disorder\* as a Basis for Not Guilty by Reason of Insanity (Farrell, 2011)

| <b>Case</b>              | <b>Year</b> | <b>Charge</b>  | <b>Defense</b>                                                | <b>Court Ruling</b>                                                                                           |
|--------------------------|-------------|----------------|---------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------|
| <i>State v. Milligan</i> | 1978        | Rape           | NGRI-MPD                                                      | Lack of an integrated personality meant the defendant was not culpable                                        |
| <i>State v. Darnall</i>  | 1980        | Murder         | NGRI-MPD                                                      | Multiple personalities do not preclude criminal responsibility                                                |
| <i>State v. Grimsley</i> | 1982        | Drunk 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> | 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>    | 1988        | Murder         | NGRI-MPD                                                      | Alter personalities will not be an excuse for inability to distinguish right from wrong                       |
| <i>State v. Greene</i>   | 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> | 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.

## **Examples from these Rulings**

### *State v. Milligan (1978) - The “Successful” MPD:*

23-year-old Billy Milligan was arrested and charged with kidnapping, robbing, and raping three women close to Ohio State University. Mr. Milligan successfully pled not guilty by reason of insanity after two of his 10 alters, including a Yugoslavian con artist and a 19-year-old lesbian, came forward to take the blame. He was the first person to successfully use what was then called multiple personality disorder as an insanity defense. The insanity defense argument was that the defendant did not have an integrated personality. Rather, coexisting within the same individual were both criminally responsible and non-responsible personalities. His case was also unique in that the verdict, rendered by a judge after the defendant waived the right to a jury trial, was uncontested by the prosecution. Mr. Milligan ultimately spent 11 years in a forensic psychiatric institution and was paroled after he was believed to be integrated.

### *State v. Greene (1998):*

A Washington case where the defendant had a six year-old alter-personality who assaulted his victim (his therapist) so he could suck her breasts (then bound her and stole her car). The DID defense didn't work here, but the Washington Supreme Court agreed with the Court of Appeals that DID was generally accepted in the scientific community. In *State v. Green*, a test was suggested which stated that if any part of the person's mind knew that the act was wrong, he should not be allowed to take the defense of insanity. The question of whether the person could reasonably prevent the act or not also needs to be taken into account.

Over the years, however, a few American courts have expressed certain views with regards to considering DID as insanity. One view is that, at the time of the commission of the crime, if the host personality was subdued by the alter, the person would be considered not guilty on account of insanity. The second view was made in a Tenth Circuit case, *United States v. Denny-Shaffer*. It was found that, if the host personality was aware of and in control of the commission of the offense, he shall not be allowed to take the defense of insanity.

## **The Forensic Expert and DID**

Admission of expert testimony regarding DID is an ongoing debate. While some courts have allowed testimony on dissociative disorders, others have questioned the validity of dissociation or acknowledged the lack of scientific information available on the diagnosis.

Experts must use a multidisciplinary and multi-technique 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 Symptomatology can be used to evaluate the tendency to exaggerate memory complaints (indicative of malingering). The Dissociative Experiences Scale can be employed as a screening instrument for dissociative symptoms, and structured

interviews such as the Dissociative Disorders Interview Schedule can be used to assess whether the individual has a dissociative disorder.

Clinicians must develop a collaborative relationship with patients who have DID before beginning the assessment to make the experience therapeutic rather than retraumatizing. A collaborative relationship will also help yield meaningful, rather than defended, test results.

Furthermore, serial interviews, individual discussions and monitoring the patient are part of the process that will take a longer period of time to conclude. It takes time to learn about the patient's personal history and the trauma that triggered the disorder. Keep in mind that the offender alter might not emerge during any sessions, which will make the process even harder. (Thus the importance, in my case, of having the alter's texts & collateral accounts of those who witnessed the alter(s) over the years)

Broadband measures of psychopathology, such as the MMPI and the Millon Clinical Multiaxial Inventory (MCMI), can provide information about the personality context in which dissociation occurs. New research indicates that many individuals who have DID give technically invalid profiles on various personality tests and may be labeled as feigning by clinical and forensic interviews. These findings suggest that, in order to provide valid and ethical assessment, assessors must be well-informed about the impact of dissociation and severe trauma on testing. The MMPI-2 has 567 true/false questions, often making it a challenging test for patients who have DID to complete. Many patients who have DID report strong internal conflict about how to answer the questions because different aspects of their personalities can feel, think, and behave differently. If the assessor allows them to answer what is mostly true most of the time and not deliberate for too long about any one item, most of these patients can tolerate the MMPI-2. Individuals who are dissociative tend to be elevated on subscales, indicating family discord (Pd1), social alienation (Pd4), and a lack of self-awareness (Pd5). Like other psychological tests, the MMPI-2 cannot yield a diagnosis of DID. Three attempts have been made to create a dissociative index based on its items [21], but none of these scales have sufficient sensitivity or specificity to justify their use.

Patients who have DID can be differentiated from other patients who have other trauma-based disorders and depression, particularly in their greater use of imagination, cognitive complexity, ideational coping style, avoidance of emotion, greater capacity for self-reflection, and mixed interpersonal functioning. As such, working with these individuals can be a unique and challenging experience.

## References

American Psychiatric Association. (2013). *Diagnostic and Statistical Manual of Mental Disorders 5*. American Psychiatric Publishing, Inc.

- Bourget, Dominique & Gagné, Pierre & Wood, Stephen Floyd. (2017). Dissociation: Defining the Concept in Criminal Forensic Psychiatry. *Journal of the American Academy of Psychiatry and the Law Online*. June 2017, 45 (2) 147-160  
<http://jaapl.org/content/45/2/147#:~:text=Abstract.most%20relevant%20to%20forensic%20psychiatry>
- Brand, Bethany & Armstrong, Judith & Loewenstein, Richard. (2006). Psychological Assessment of Patients with Dissociative Identity Disorder. *The Psychiatric clinics of North America*. 29. 145-68, x. 10.1016/j.psc.2005.10.014.  
[https://www.researchgate.net/publication/7247089\\_Psychological\\_Assessment\\_of\\_Patients\\_with\\_Dissociative\\_Identity\\_Disorder](https://www.researchgate.net/publication/7247089_Psychological_Assessment_of_Patients_with_Dissociative_Identity_Disorder)
- Farrell, Helen. (2011). Dissociative Identity Disorder: Medicolegal Challenges. *Journal of the American Academy of Psychiatry and the Law Online*. September 2011, 39 (3) 402-406  
[https://web.archive.org/web/20170813135623id\\_/http://jaapl.org/content/jaapl/39/3/402.full.pdf](https://web.archive.org/web/20170813135623id_/http://jaapl.org/content/jaapl/39/3/402.full.pdf)
- Greene v. Lambert, 288 F. 3d 1081 - Court of Appeals, 9th Circuit 2002  
[https://scholar.google.com/scholar\\_case?case=9743983700919697015&q=dissociative+identity+disorder+culpability&hl=en&as\\_sdt=3,31](https://scholar.google.com/scholar_case?case=9743983700919697015&q=dissociative+identity+disorder+culpability&hl=en&as_sdt=3,31)
- Heghes, Nicoleta-Elena & Şchiopu, Cristina-Gabriela. (2021). Psychiatric Expertise and Forensic Management in Cases of Dissociative Identity Disorders. *RAIS Journal for Social Sciences*. Vol. 5, No. 2  
<http://journal.rais.education/index.php/raiss/article/view/148/117>
- Johnston, Joni E. (2017). Split Decisions in the Courtroom: The three legal faces of Dissociative Identity Disorder. *Psychology today*. Posted March 2, 2017  
<https://www.psychologytoday.com/us/blog/the-human-equation/201703/split-decisions-in-the-courtroom>
- Paris, Joel. (2019). Dissociative Identity Disorder: Validity and Use in the Criminal Justice System. *BJPsych Advances*. April 3, 2019, Vol. 25 Issue 5  
<https://www.cambridge.org/core/journals/bjpsych-advances/article/dissociative-identity-disorder-validity-and-use-in-the-criminal-justice-system/C1C27EE9731782570E1376A3EDA48CE4>
- Saxena, Vedant. (2021). Dissociative Identity Disorder and Criminal Liability. *Ipleaders Blog*. March 17, 2021 <https://blog.ipleaders.in/dissociative-identity-disorder-criminal-liability/>