

Dissociative identity disorder and legal ramifications



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Law and Psychology

Considering Dissociative Identity Disorder and Legal Ramifications

Dissociative identity disorder (DID) formerly known, as multiple personality disorder is a controversial psychopathology involving complex disturbances of the self and memory wherein multiple identities are said to coexist within the same person. The first known case of DID was recorded in the 1600s and experienced a steady spike in prevalence during the 19th century (Farrell, 2011, pp. 402-406). The separate identities and periods of profound memory disturbance seen in DID lead to important questions when determining criminal responsibility in court proceedings. Defendants have claimed to commit serious crimes while in a dissociated state and under the guise of an alternate identities (Farrell, 2011, pp. 402-406). DID is typically associated with severe childhood trauma and abuse but its origins are hotly debated bringing into question issues of malingering and false memories (Piper and Merskey, 2004, pp. 592-600). The National Institute of Mental Health (Nimh. nih. gov, 2014) reports that although occurring in only 1. 5% of the general population, DID is about as common as bipolar (2. 6%) and schizophrenia (1. 1%). In popular culture, DID has been depicted in horror films such as “ Identity”, comedy movies like “ Me, Myself & Irene” and even the recent children’s film “ The Lego Movie”. It is these factors of low but significant rate of occurrence of DID, amnesiac elements of the pathology, high comorbidity with other disorders and the myths created and portrayed by popular media, that form many challenges to having a critical understanding

of DID. In this paper, I will discuss the scientific literature surrounding DID to dispel the myths surrounding the disorder and to provide an accurate account of the disorder. I will look at how DID is handled in court proceedings as a legal defense. Finally, I will argue that the topic of DID although involving a number of non-trivial problems should have a trajectory of further understanding and a drive to create new policy when dealing with DID in the courtroom setting. In this argument, I call upon the importance of the false memory debate involving the children of abuse and posit that DID has similarly challenging issues and is just as worthy of serious discussion.

The Diagnostic and Statistical Manual of Mental Disorders (DSM-5) describes DID as having the defining characteristic of the individual having two or more distinct personality states or an experience of possession (American Psychiatric Association, 2013, pp. 292-298). The average number of personality states reported is 10 but cases have been observed of as few as 2 to as many as 100 distinct personality states (Nami. org, 2014). The degree to which these personality states are evident or hidden varies with the psychological state of the person and the environment in which they operate. Prolonged periods of identity disruption or amnesia may occur when under extreme stress. Individuals that experience non-possession like symptoms on average do not have overtly evident identity disruption. However, individuals that do experience possession like symptoms do typically display overt identities and personality changes. It is important to note that whether the disorder presents with observable identity disruption or not, the disorder is still diagnosable through reported discontinuities in the sense of self and sense of agency and recurrent dissociative amnesias.

People with DID report experiences of depersonalization where they feel as if they are observing themselves. They also report feelings of being powerless to stop their actions. Similar to Hollywood scripts, some sufferer's experience changes in the voices of their inner dialogue or multiple bewildering independent conversations taking place in their mind involving these foreign voices. Individuals have also reported changes in preferences, attitudes and the somatic changes as if their body was suddenly a different shape.

Observers of these individuals report outward changes to affect and behavior along with sudden breaks in speech as if cut off mid-sentence.

Episodes of amnesia and memory disruption are very prevalent in cases of DID and present themselves in three ways according to the DSM. The first is through amnesia of important life events such as periods of childhood or the death of a relative. The second is through difficulties remembering what happened today or how to execute previously learned skills. Lastly, is the confusing discovery by the individual of evidence that points to periods of dissociation and amnesia that occurred at some unknown point in their recent past. This may come in the form of discovering injuries, written texts, or other bits of evidence that come as a surprise to the individual.

Dissociated fugues involving dissociated travel are common, resulting in the individuals finding themselves somewhere they do not remember traveling.

Awareness of these memory problems varies with the individual. These symptoms are commonly under reported or ignored by the individual from social pressure, lacking awareness or out of embarrassment at having a faulty memory.

Already, we can see that DID is much more nuanced than popular media would lead us to believe. DID sufferers do not always present with obvious and flashy symptoms found in the movies. They also are likely to not know they are suffering from DID or to hide their symptoms in a bid to “not look crazy” (Tartakovsky, 2011). They are likely to be in the mental health system for several years before reaching a proper diagnosis. However, there is some overlap between our cultural understanding of DID and science’s understanding of DID. Memory gaps, voices and depersonalization do seem to occur frequently. We clearly have a powerful psychopathology but an insidious one that is hard to develop a treatment history for with memory gaps and variable awareness. This disorder is therefore hard to prove in court. This is only the beginning of the controversy surrounding DID though.

The central controversy surrounding DID is how the disorder is caused. One side of the debate believes that DID comes about as a reaction to trauma (Farrell, 2011, pp. 402-406). The other claims that DID is produced by improper psychotherapy (Piper and Merskey, 2004, pp. 592-600) and a heightened hypnotic suggestibility found among DID sufferers. Both sides of the debate suffer from a lack of research with the National Institute of Health funding not a single treatment study (Tartakovsky, 2011).

Individuals with DID commonly report having experienced extreme abuse in early childhood. When abuse is not reported, other extreme traumas are cited (Simeon, D. 2008). However, these claims of abuse are disputed in much of the same ways that are involved in the false memory debate

(Frances, 2000). The hypothesis for a trauma creation model of DID is that

the mind of the child experiencing severe trauma may try to shield itself
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from experiencing said trauma. In this defense mechanism, separate identities with different memories and experiences may result. It is further hypothesized that DID may be a form of post-traumatic stress disorder as it presents itself in children, mixing with a more frequent use of imagination and fantasy as a coping mechanism (Gillig, 2009, p. 24). The suggestibility involved in imagination and fantasy often debated when children are involved is at the heart of the competing cause for DID.

As a part of the recovered memories movement, it is hypothesized that DID may be created through improper use of recovered memory techniques. In favor of the argument are claims that dissociative symptoms and memory gaps are seldom reported before in-depth therapy. The theory proposes that malingering and heightened suggestibility (found to be highest in DID followed by PTSD) can combine with attempts at hypnosis to form the role of a DID sufferer. The questions raised are important to consider in a legal context but it should also be noted that the DSM-5 contains information on the nature of malingering most often seen in DID diagnosis. In this respect, popular culture helps to differentiate malingering from actual pathology. Malingering individuals will rarely report subtle symptoms of the disorder and will over report well-known symptoms. This can be seen in an under reporting of comorbid symptoms and sometimes an enjoyment of having the disorder rather than being ashamed as genuine sufferers often are. Unfortunately, there are reports of stereotyped alternative identities that are "all-good" or "all-bad" in a bid to escape punishment for crimes (American Psychiatric Association, 2013, pp. 297).

Lastly, the validity of DID diagnosis and its use in the courtroom is challenged on the basis that it is very rarely diagnosed in children (Piper and Merskey, 2004, pp. 678-683 & Boysen, 2011, pp. 329-334). Proponents of the therapy-induced DID theory claim that this lack of DID diagnosis in an age range where DID alternate identities are known to occur may point to the diagnosis being a role played result of therapy and not a genuine pathology. The counter to the traumatic model of DID also points out that most research studies on DID rely on self-report of abuses and not on independently verified abuse by outside parties. In addition, outside of case studies, the same four researchers have published the majority of research involving groups. It is these several methodological shortcomings along with the potential for malingering and the dubious nature of proving amnesia beyond the shadow of a doubt that presents significant hurdles to genuine sufferers of DID and as a defense in the court of law.

Today, among the field of psychology there is a consensus that DID is closely related to PTSD and Borderline Personality Disorder and is probably the result of an employed survival strategy with maladaptive results.

However, this is a completely different story in the courts. When DID is used as a defense in court it is typically brought up as an affirmative defense of not guilty by reason of insanity (NGRI). The defense is responsible for proving mental illness and meeting the requirements of insanity in that state.

The first time DID was recognized as a mental illness that could excuse criminal responsibility was in *State v. Milligan* in 1978 (Farrell, 2011, pp. 402-406). In this case, it was argued that the defendant was insane and not guilty <https://assignbuster.com/dissociative-identity-disorder-and-legal-ramifications/>

of several counts of rape because they did not possess an integrated personality. Instead, the defendant was said to have within himself both identities that were criminally responsible and non-responsible. The public was outraged at this successful defense and the multiple personality defense failed notably in the trials that followed (State v. Milligan, State v. Darnall, State v. Grimsley, State v. Kirkland, etc). During this period the conversation raised several important questions on what criminal responsibility entails in a person with multiple personalities and several instances of expert testimony being inadmissible but we now turn to the strategies utilized in DID defense (NGRI) cases.

The defense in DID cases usually utilizes one of three tactics in proving insanity with DID (Farrell, 2011, pp. 402-406). The first and most prominent tactic is the idea that one of the other identities was in control at the time that the crime was committed. A second tactic is to try to prove to the jury that a particular personality of the defendant may meet the standards for insanity. Lastly, the defense may attempt to prove that the main personality or dominant identity of the defendant meets the standards for insanity.

In other legal proceedings outside of DID, the dissociative state itself is hotly debated and it is not well established whether dissociation alone can provide reason for NGRI. Part of this debate concerns the question of whether personal control is removed during dissociation or if memories are simply not encoded for future retrieval (Kennett and Matthews, 2002, pp. 509-526). DID is unique in this sense in that it involves the idea of agency and personal identity. In the case of DID, an argument can be made for the level of

autonomy and self-control being altered during dissociative and amnesiac
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states. Critics of this position counter that acquittal should rest on whether the criminal behavior is involuntary, regardless of the state of consciousness. However, as evident from case reports and the DSM-5, some suffers of DID do experience a frightening loss of control or being unable to self-direct action while in a depersonalized state. In more recent times, DID evidence has been rejected in proceedings for failing to meet the requirements of reliability that expert testimony must possess. The controversies discussed earlier and difficulty in reliably diagnosing DID create a significant challenge to satisfying Daubert criteria.

In addition to the hurdles of meeting Daubert criteria the court must consider the low base rate of DID prevalence and the high possibility of false positive diagnosis in the face of a malingering defendant. A multidisciplinary and multitechnique approach is taken to carefully diagnose DID but is criticized for relying on self-reported data and being susceptible to malingering. Some of the tools for diagnosing dissociative identity disorder include the 'Structured Clinical Interview for Dissociative Disorders' (SCID-D), the 'Dissociative Disorder Interview Schedule', the 'Dissociative Experiences Scale' and the 'Childhood Trauma Questionnaire' (Farrell, 2011, p. 33). Although the SCID-D has been tested comprehensively and has been shown to have excellent reliability and validity, the fact still remains that dissociation alone does not necessarily denote lack of self-control.

Despite the cynicism and incredulity of DID NRG1 defenses, the experts in the field of psychology and law agree that there do exist genuine cases of dissociative amnesia and that the criminal culpability under these circumstances raises hard questions (Farrell, 2011, pp. 402-406). In cases in <https://assignbuster.com/dissociative-identity-disorder-and-legal-ramifications/>

which the defendant pleads not guilty by reason of mental illness, the legal policy makers and the attorneys of these cases face great challenges in undertaking this defense. However, I believe that these debates must be had in order to assure justice and humane treatment. Despite the obstacles involved in controversial clinical and legal issues, the field must press onward at all times in an effort to fully understand DID and bolster reliability in forensic expert testimony. There does exist a very real danger in the concept of false positives and malingering defendants but the practice of justice is not aimed at perfection and instead is aimed at the ethical and rational management of human factors.

One compelling argument to move in this direction instead of ruling all DID expert testimony inadmissible is that psychology is an evolving science and constructs such as DID may see major revision as more research is performed (Take the changes from DSM-IV to DSM-5). As this slow process matures the legal world will need to understand the full picture of DID, the most effective forensic tools for detecting malingering in DID suspected defendants and the degree to which criminal responsibility is thought to apply given challenges to self-control and autonomy present in some, but not all DID cases.

Similarly to the false or recovered memory debate involving children, DID is a nuanced condition involving vulnerable populations and disturbances of memory with a high susceptibility to malingering and influences of the culture, the professionals and the court process. The law must engage with these difficult problems and move the profession towards a deeper

understanding of all factors involved in dissociative identity disorder as a part of due diligence and to preserve justice.