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## Multiple Personality Disorder and the Legal System

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## MULTIPLE PERSONALITY DISORDER AND THE LEGAL SYSTEM

*“ . . . With liberty and justice for all.”<sup>1</sup>  
E pluribus unum.<sup>2</sup>  
Equal Justice Under Law.<sup>3</sup>*

Themes of unity and equality such as these echo throughout early American writings, as supporters of the newly formed federal government molded thirteen rebellious, independent colonies into a cohesive whole. The problem of fragmentation plagued the founders of the American legal system as they struggled toward wholeness, and these words assured everyone that justice would be dispensed evenly. Although the founders focused on the unification and equal treatment of several states and many individuals, similar concerns surface when many people are housed within one, as is the case of those who suffer from multiple personality disorder.<sup>4</sup>

Those afflicted with multiple personality disorder (Multiples) become entangled with the criminal justice system as victims

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1. This comes from the Pledge of Allegiance to the Flag of the United States of America. See 36 U.S.C. § 172 (1988).

2. The motto on the national seal translates from Latin as “Out of Many, One.” See 140 CONG. REC. S635 (daily ed. Feb. 2, 1994) (statement of Sen. Kennedy).

3. These words appear on the facade of the Supreme Court of the United States in Washington, D.C.

4. One psychiatrist defined multiple personality disorder as follows: What is MPD [multiple personality disorder]? MPD is a little girl imagining that the abuse is happening to someone else. This is the core of the disorder, to which all other features are secondary. The imagining is so intense, subjectively compelling, and adaptive, that the abused child experiences dissociated aspects of herself as other people. It is this core characteristic of MPD that makes it a treatable disorder, because the imagining can be unlearned, and the past confronted and mastered.

COLIN A. ROSS, MULTIPLE PERSONALITY DISORDER: DIAGNOSIS, CLINICAL FEATURES, & TREATMENT 55-56 (1989).

and perpetrators of felonies.<sup>5</sup> Although on different sides of the criminal justice system, Multiple victims and Multiple felons share similar problems. This Note evaluates the legal system's treatment of Multiple victims and felons and highlights the differences and similarities between their treatment and that of non-Multiple<sup>6</sup> victims and felons. Part I discusses the psychological and legal background of multiple personality disorder and the insanity defense. Part II considers the philosophical and legal issues that the presence of a Multiple victim in the legal system raises. Part III discusses the ramifications and dilemmas the legal system faces with respect to Multiple defendants. Part IV argues that despite the sometimes unique problems Multiples suffer, they should not receive special treatment per se because of their condition.

## I. HISTORY

### A. *Psychological Details of Multiple Personality Disorder*

Multiple personality disorder (MPD)<sup>7</sup> is a dissociative disorder<sup>8</sup> in which the normally integrated identity and consciousness

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5. Multiples are involved in many crimes and legal problems that are not felonies, and thus beyond the scope of this Note. *See, e.g.,* Gooden v. Howard County, 954 F.2d 960 (4th Cir. 1992) (dismissing a civil rights action in which police apprehended a woman for an emergency psychiatric evaluation because they concluded she was Multiple); Wheeler v. Sullivan, 888 F.2d 1233 (8th Cir. 1989) (concerning the denial of Social Security benefits to a woman who alleged she was Multiple); State v. Summers, 614 P.2d 925 (Haw. 1980) (concerning the defense of a person with multiple personality disorder for carrying a firearm without a permit); Louisiana State Bar Ass'n v. Stevenson, 356 So.2d 408 (La. 1978) (suspending an attorney with multiple personality disorder who was convicted of credit card fraud); *In re Michel*, 549 N.E.2d 440 (Mass. App. Ct. 1990) (terminating father's custody of his children because he had MPD and had exhibited some violent conduct); Lovelace v. Keohane, 831 P.2d 624 (Okla. 1992) (determining that MPD is not a legal disability for tolling the statute of limitations in a personal injury case when the victim had been sexually abused but did not recall the abuse until 20 years later in therapy); Rutherford v. Rutherford, 414 S.E.2d 157 (S.C. 1992) (evaluating whether a Multiple who has intercourse with a man who is not her husband while under control of an alter personality is actually committing adultery); Heinecke v. Department of Commerce, 810 P.2d 459 (Utah App. 1991) (revoking the license of a nurse who had consensual sex with a Multiple patient).

6. The term "non-Multiples" refers to individuals who are not diagnosed as having MPD.

7. The leading psychiatric diagnostic manual contains the basic definition of multiple personality disorder:

The essential feature is the existence within the individual of two or more distinct personalities, each of which is dominant at

functions are suddenly and temporarily altered.<sup>9</sup> In essence, separate and distinct alternative personalities<sup>10</sup> inhabit one body, usually without the knowledge<sup>11</sup> of the "host personality."<sup>12</sup> The disorder is dramatic because personalities are often opposites.<sup>13</sup>

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a particular time. Each personality is a fully integrated and complex unit with unique memories, behavior patterns, and social relationships that determine the nature of the individual's acts when that personality is dominant. Transition from one personality to another is sudden and often associated with psychosocial stress.

Usually the original personality has no knowledge or awareness of the existence of any of the other personalities (subpersonalities). When there are more than two personalities in one individual, each is aware of the others to varying degrees. The subpersonalities may not know each other or be constant companions. At any given moment one personality will interact verbally with the external environment, but none or any number of other personalities may actively perceive . . . all that is going on.

The original personality and all of the subpersonalities are aware of lost periods of time. . . . [They] frequently seem to be opposites. . . . Usually one of the personalities over the course of the disorder is dominant.

AMERICAN PSYCHIATRIC ASSOCIATION, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 257 (3d ed. 1980) [hereinafter DSM-III].

There are two diagnostic criteria for MPD:

A. The existence within the person of two or more distinct personalities or personality states (each with its own relatively enduring pattern of perceiving, relating to, and thinking about the environment and self).

B. At least two of these personalities or personality states recurrently take full control of the person's behavior.

AMERICAN PSYCHIATRIC ASSOCIATION, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 272 (rev. 3d ed. 1987) [hereinafter DSM-III-R]. "Personality states" are "not exhibited in as wide a range of contexts" as personality traits. *Id.* at 269. See *infra* note 10 and accompanying text for a definition of "personality traits."

8. Dissociative disorders involve "a sudden alteration in consciousness affecting memory and identity." GERALD C. DAVISON & JOHN M. NEALE, ABNORMAL PSYCHOLOGY: AN EXPERIMENTAL CLINICAL APPROACH 60 (4th ed. 1986).

9. *Id.* at 156. See generally THOMAS F. OLTMANNS ET AL., CASE STUDIES IN ABNORMAL PSYCHOLOGY 57-76 (2d ed. 1986) (discussing the etiology and evolution of the disorder).

10. "Personality traits are enduring patterns of perceiving, relating to, and thinking about the environment and oneself, and are exhibited in a wide range of important social and personal contexts." DSM-III-R, *supra* note 7, at 305 (emphasis omitted).

11. A patient's complaints of amnesia and of lost time are particularly useful cues in diagnosing MPD as the appropriate disorder. Ross, *supra* note 4, at 102.

12. The host personality is the personality that controls the body most of the time. RAY ALDRIDGE-MORRIS, MULTIPLE PERSONALITY: AN EXERCISE IN DECEPTION 9 (1989).

13. Some believe that the role of the separate personalities is to fill any

For example, if one personality is reclusive and shy, another may be boisterous and rowdy.<sup>14</sup> Although the vast majority of multiples are female,<sup>15</sup> the personalities need not be the same gender: they may not even be the same age or race, nor will they necessarily wear the same eyeglasses prescription or have the same handwriting.<sup>16</sup> The average number of personalities is eight,<sup>17</sup> but there may be anywhere from two to hundreds.<sup>18</sup> The transformation from one personality to another can occur upon request or without warning. Indeed, the manifestations of MPD are so unusual that claims of MPD frequently encourage disbelief.<sup>19</sup>

The historical origins of diagnosis of MPD are unclear:<sup>20</sup> The disorder was first noted clinically in 1646 when a woman claimed that another personality had stolen her money and that she could recall nothing of the incident.<sup>21</sup> Medical literature infrequently documented the disorder during the late eighteenth and early nineteenth centuries, though some scholars argue that earlier cases were mistaken for demonic possession.<sup>22</sup> After an initial series of MPD diagnoses, however, the numbers declined

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gaps or weaknesses in the individual's character. EUGENE L. BLISS, *MULTIPLE PERSONALITY, ALLIED DISORDER, AND HYPNOSIS* 129-33 (1986).

14. Martin T. Orne et al., *On the Differential Diagnosis of Multiple Personality in the Forensic Context*, 32 INT'L J. CLINICAL & EXPERIMENTAL HYPNOSIS 118, 120 (1984).

15. One author estimated that 85% of Multiples are female. Robert M. Greenberg, *Traumatic Origins of Multiple Personality Disorder*, 32 TRAUMA 17, 18 (1991). *Contra* Ross, *supra* note 4, at 68 (estimating that in the public setting the ratio of women to men with the syndrome is closer to 1:1). According to the literature on the subject, though, nearly all criminal defendants who maintain that they are Multiples are male. Ralph B. Allison, *The Multiple Personality Defendant in Court*, 3 AM. J. FORENSIC PSYCHIATRY 181, 183 (1982/83).

16. Greenberg, *supra* note 15, at 18.

17. *Id.*

18. BLISS, *supra* note 13, at 129.

19. See *infra* notes 154-66 and accompanying text for a discussion of malingering, one oft-proposed alternative diagnosis to MPD.

20. See generally Ross, *supra* note 4, at 9-44 (describing the history of dissociation and fragmentation of the self beginning with ancient Egypt and continuing through the twentieth century). This Note assumes that MPD exists as a psychiatric condition. There is, however, an ongoing debate in the psychological community about whether the condition actually exists. See Elyn R. Saks, *Multiple Personality Disorder and Criminal Responsibility*, 25 U.C. DAVIS L. REV. 383, 400-03 (1992) (noting the conflict over the existence of MPD and evaluating each viewpoint).

21. Greenberg, *supra* note 15, at 17.

22. Saks, *supra* note 20, at 389-90. See also Ross, *supra* note 4, at 17-27 (describing the history of demonic possession and comparing it to MPD).

until the 1970s.<sup>23</sup> Current levels of diagnoses no longer reflect that decline; at least two to three times as many cases of MPD have been documented<sup>24</sup> in the last twenty years<sup>25</sup> than in the time prior to 1970.<sup>26</sup> The reasons why so many more cases of MPD have appeared recently is not clear; it could simply be that the psychiatric community knows more about the disorder, or it could involve other cultural phenomena.<sup>27</sup>

The etiology of MPD is believed to be rooted in childhood when a child suffers severe and often repeated physical, sexual,

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23. Saks, *supra* note 20, at 390. This decline corresponded with the advent of the term "schizophrenic," and the two disorders are frequently confused. DAVISON & NEALE, *supra* note 8, at 158 n.5. *But see* ALDRIDGE-MORRIS, *supra* note 12, at 32-33 (arguing that MPD is rarely confused with schizophrenia). Schizophrenia is defined broadly as a split between cognition and affect with a variety of symptoms, including but not limited to thought disorders and delusional perceptions. DAVISON & NEALE, *supra* note 8, at 158. Unlike schizophrenia, MPD is characterized by distinct personality traits that have no dissociation of thoughts and emotions. Ralph Slovenko, *The Multiple Personality: A Challenge to Legal Concepts*, 17 J. PSYCHIATRY & L. 681, 684-85 (1989). *See generally* DAVISON & NEALE, *supra* note 8, at 333-66 (providing a basic background on schizophrenia).

24. One expert noted that he saw more than 100 cases in a 5-year span. BLISS, *supra* note 13, at 118.

25. The vast majority of MPD cases have been diagnosed in the United States. ALDRIDGE-MORRIS, *supra* note 12, at 15-16.

26. Orne, *supra* note 14, at 119. Some observers question the therapist's role in conjunction with the current numbers of diagnosed Multiples. *Id.* Therapy for the disorder usually involves hypnosis, and some argue that psychologists and other hypnotists may be intentionally or unintentionally planting the hypnotic suggestion that the subject is Multiple. *Id.*

27. Since 1980, the number of diagnosed MPD cases in the United States has risen from 200 to 6000. Slovenko, *supra* note 23, at 686. In the United Kingdom, however, an informal survey found only six tentative diagnoses prior to 1987. ALDRIDGE-MORRIS, *supra* note 12, at 15. Aldridge-Morris went so far as to imply that the plethora of Multiples in America, compared with their absence in the United Kingdom, Czechoslovakia, New Zealand, and Australia is actually a cultural phenomenon. *Id.* at 109. He commented that Americans are particularly prone to role-playing and modeling themselves after psychotherapists and movie stars. *Id.* He further noted that public awareness about the syndrome in the United States is very high because of films such as *Sybil* (NBC television broadcast, 1976) (portraying the life of a woman with multiple personalities) and *THE THREE FACES OF EVE* (Twentieth-Century Fox 1957) (documenting the diagnosis of a multiple). ALDRIDGE-MORRIS, *supra* note 12, at 109. Indeed, an American newsletter called *Speaking for Ourselves* purports to be by, for, and about people with multiple personalities. *Id.* at 3. Aldridge-Morris concluded that such awareness both on the part of the public and the professionals in such a climate has led to a romanticization of the disorder and a propensity for its frequent diagnosis. *Id.* at 109. Ross, on the other hand, contended that the fragmented and dualistic nature of western culture contributes to the appearance of MPD. Ross, *supra* note 4, at 177-83.

or psychological abuse.<sup>28</sup> A child as young as two can manifest symptoms of the syndrome.<sup>29</sup> Theoretically, the abuse and trauma cause the child to seek people within herself to protect and rescue her.<sup>30</sup> The child enters a fantasy world to separate herself from the pain of the real world.<sup>31</sup> Not all abused children develop the syndrome. Other factors come into play at times, but, as yet, psychologists have not identified those factors with any certainty.<sup>32</sup> Some maintain that every person has a continuum of personalities and that some days one is not quite oneself.<sup>33</sup> Children are especially subject to sudden shifts in affect and attitude. For example, it is normal for children to have imaginary companions who provide support and friendship for the children.<sup>34</sup> Only the continuation of an imaginary companion and protector into adolescence and adulthood is cause for concern.<sup>35</sup> MPD is, therefore, a maladaptation of a normal continuum.<sup>36</sup>

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28. Greenberg, *supra* note 15, at 18.

29. *Id.* Very few children have been diagnosed with MPD. Ross, *supra* note 4, at 200. The rarity of diagnosis, however, does not indicate that few children have multiple personalities; on the contrary, the problem seems to be the difficulty clinicians have in identifying the features in young children. *Id.* at 201. In the few cases on record, short-term treatment has been successful in creating long-term stable remission — so long as the child has been removed from the abusive situation. *Id.* See generally Deni Elliot, *State Intervention and Childhood Multiple Personality Disorder*, 10 J. PSYCHIATRY & L. 441 (1982) (arguing that because at least 80% of all children suffering from the disorder have been physically abused, and at least 79% of all children suffering from the disorder have been sexually abused, a diagnosis of MPD in a child should automatically trigger intervention and removal of the child pending a full investigation of the home).

30. As a result, the host personality is most often timid and reclusive, while the secondary personalities are more aggressive and hostile. Felicia G. Rubenstein, Note, *Committing Crimes While Experiencing a True Dissociative State: The Multiple Personality Defense and Appropriate Criminal Responsibility*, 38 WAYNE L. REV. 361-62 (1991).

31. Greenberg, *supra* note 15, at 18-19.

32. *Id.* at 18.

33. DAVISON & NEALE, *supra* note 8, at 157. One could argue that because everyone has extreme personality swings and can enter mental states in which their actions are not typical, every person is Multiple. The law recognizes that sometimes a perpetrator is “not himself.” Murder can be reduced, in some jurisdictions, to voluntary manslaughter upon a showing that the perpetrator acted in the heat of passion or in intense emotional excitement. See *State v. Guebara*, 696 P.2d 381, 385-86 (Kan. 1985) (describing the necessary factors for a finding of voluntary manslaughter based on emotional distress).

34. Ross, *supra* note 4, at 107.

35. *Id.*

36. Greenberg, *supra* note 15, at 18-19. See also Slovenko, *supra* note 23, at 703-06 (discussing the various ways in which most people split personalities and how such instances appear in literature and history).

Psychotherapists treat the disorder primarily through extensive psychoanalysis and hypnosis.<sup>37</sup> A close therapist-patient relationship is required, precluding group therapy.<sup>38</sup> Nothing currently known suggests that MPD is chemically related; therefore, pharmacological treatment is useless.<sup>39</sup> Hypnosis, however, is helpful to a certain degree.<sup>40</sup> Under hypnosis, the therapist is likely to discover additional personalities who are more willing to appear and to speak to the therapist while the Multiple is in a suggestive state.<sup>41</sup> Hypnosis, therefore, is a useful means of diagnosing as well as treating the syndrome.<sup>42</sup> Because of amnesia,<sup>43</sup> the primary personality may be unaware of the other personalities within, and hypnosis or sodium amytal<sup>44</sup> can be useful in removing the block.<sup>45</sup> The goal of therapy is successful reintegration of several personalities into one.<sup>46</sup> Despite an average therapy length of six years,<sup>47</sup> the prognosis for those with MPD is not promising. With the proper combination of psychotherapy,<sup>48</sup>

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37. Greenberg, *supra* note 15, at 20.

38. *Id.* Of course, given the number of individuals involved in the therapy of a Multiple, group therapy of a sort is exactly what happens. *Id.*

39. *Id.* Drugs can be useful in treating symptoms in some of the alter personalities. *Id.* For example, if one personality is depressed, antidepressants might alter that condition, but not all of the personalities will necessarily react the same way to the drug. *Id.* A cyclical pattern of over and underdosing the Multiple could be the result of any drug regime. *Id.*

40. *Id.*

41. *Id.*

42. Greenberg, *supra* note 15, at 20.

43. See Daniel L. Schacter, *Amnesia and Crime: How Much Do We Really Know?*, 41 AM. PSYCHOL. 286 (1986) (discussing the recurrent appearance of amnesia in criminal cases and how to evaluate amnesia).

44. Sodium amytal and sodium pentothal administered intravenously are commonly known as truth serum. Although many people believe that lying is impossible while under the influence of a drug or hypnosis induced trance, that is not true. See Martin T. Orne, *The Use and Misuse of Hypnosis in Court*, 27 INT'L J. CLINICAL & EXPERIMENTAL HYPNOSIS 311, 313 (1979). These techniques, however, are useful in enhancing the witness' memory or determining the state of mind at the time of the event in question. *Id.*

45. Greenberg, *supra* note 15, at 20. Use of hypnosis and truth serum of any kind raises legal questions about the admissibility of evidence. See generally Orne, *supra* note 44, at 311 (discussing the role of hypnosis in treatment of amnesia and the evidentiary problems of admitting hypnotically or chemically induced or enhanced evidence).

46. Greenberg, *supra* note 15, at 20. But see CHRIS C. SIZEMORE & ELEN S. PITILLO, I'M EVE 411-61 (1977) (noting that in the case of at least one Multiple, "success" meant integrating many personalities into relatively few and trying to live with those few).

47. Greenberg, *supra* note 15, at 20.

48. Psychotherapy is defined as "[a] primarily verbal means of helping troubled individuals change their thoughts, feelings, and behavior to reduce distress. . . ." DAVISON & NEALE, *supra* note 8, at G15.



psychoanalysis,<sup>49</sup> and hypnotherapy, only one-third to one-half of Multiple patients' conditions significantly improve.<sup>50</sup>

### B. *A Brief History of the Insanity Defense*

Defendants in the criminal justice system who suffer from MPD are likely to rely on the insanity<sup>51</sup> defense.<sup>52</sup> The concept of acquittal by reason of insanity lies in the fundamental belief that a civilized society does not punish those who are incapable of controlling their behavior.<sup>53</sup>

Historically, courts have applied several different forms of the insanity test. In the eighteenth century, the standard for insanity was whether the defendant could distinguish between good and evil and whether he knew the difference between right and wrong.<sup>54</sup> In 1843, Daniel M'Naghten was found not guilty by reason of insanity after shooting and killing the private secretary of the Prime Minister of England.<sup>55</sup> This case established a rule that created a presumption of sanity unless the defendant could clearly prove that when the crime occurred, "[T]he accused was laboring under such a defect of reason, from disease of the mind, as not to know the nature and quality

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49. Psychoanalysis is defined as "[a] term applied primarily to the therapy procedures pioneered by [Sigmund] Freud, entailing free association, dream interpretation, and working through the transference neurosis. More recently the term has come to encompass the numerous variations on basic Freudian therapy." *Id.* (emphasis omitted).

50. Greenberg, *supra* note 15, at 20. For a more thorough discussion of possible methods of treatment, see generally Ross, *supra* note 4, at 191-309.

51. Insanity is a legal concept, not a psychological concept. LAWRENCE S. WRIGHTSMAN, *PSYCHOLOGY AND THE LEGAL SYSTEM* 264 (1987).

52. See generally Joseph Goldstein & Jay Katz, *Abolish the "Insanity Defense" — Why Not?*, in *CRIME, LAW, AND SOCIETY* 407, 411-19 (Abraham S. Goldstein & Joseph Goldstein eds., 1971) (analyzing the strengths and weaknesses of the insanity defense and the role it plays in the criminal justice system); RALPH REISNER & CHRISTOPHER SLOBOGIN, *LAW AND THE MENTAL HEALTH SYSTEM: CIVIL AND CRIMINAL ASPECTS* (2d ed. 1990) (documenting the history of the insanity plea).

53. WRIGHTSMAN, *supra* note 51, at 263-64. Insanity is an important question at several stages of a criminal defense: (1) at the time of the crime, the defendant must have the required *mens rea*; (2) at arraignment, the defendant must be able to understand the charges and plead intelligently; (3) at and during trial, the defendant must be able to assist with his defense; (4) at allocution, the defendant should be able to respond if possible to stay the execution of the sentence; and (5) at the time of execution, the defendant must understand why execution is occurring. RONALD N. BOYCE & ROLLIN M. PERKINS, *CRIMINAL LAW AND PROCEDURE* 617-18 (7th ed. 1989).

54. WRIGHTSMAN, *supra* note 51, at 264. Unlike today, the courts at that time assumed that juries could decide conclusively if the defendant was sane. *Id.*

55. *Id.* at 264-65.

of the act he was doing, or, if he did know it, that he did not know what he was doing was wrong."<sup>56</sup> This test is essentially knowing right from wrong.

In 1954, the District of Columbia Circuit Court of Appeals established a new standard in *Durham v. United States*.<sup>57</sup> The new standard did not hold the accused criminally responsible if the unlawful act was the product of mental disease or defect.<sup>58</sup> After criticism that the *Durham* rule was too broad and placed too much emphasis on the psychiatric experts, the American Law Institute (ALI) in 1962 promulgated a standard of insanity combining the *M'Naghten* rule with an "irresistible impulse" test.<sup>59</sup> Under this test, the accused was not responsible for criminal conduct if, because of mental disease or defect, the defendant lacked the "substantial capacity" to either appreciate the criminality of the conduct or to conform the conduct to the requirements of the law.<sup>60</sup> The ALI rule thus combines the *M'Naghten* test of knowing right from wrong with an inability to control one's acts.

After John Hinckley, Jr. successfully pled not guilty by reason of insanity to the attempted assassination of President Ronald Reagan,<sup>61</sup> Congress enacted the Insanity Defense Reform Act of 1984,<sup>62</sup> which states that if, when the crime was perpetrated, a defendant was "unable to appreciate the nature and quality or the wrongfulness of his acts," they can be judged insane.<sup>63</sup> This

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56. *Id.* at 265. As recently as 1987, 21 states still employed the *M'Naghten* standard. *Id.* at 267. See generally Abraham S. Goldstein, *M'Naghten: The Stereotype Challenged*, in CRIME, LAW, AND SOCIETY, *supra* note 52, at 387 (analyzing the strengths and weaknesses of the *M'Naghten* rule as it is used in modern times).

57. 214 F.2d 862 (D.C. Cir. 1954), *overruled by* United States v. Brawner, 471 F.2d 969 (D.C. Cir. 1972).

58. WRIGHTSMAN, *supra* note 51, at 266. The *Durham* rule, however, had several loopholes: alcoholics, drug addicts, and compulsive gamblers used the defense. *Id.* at 267.

59. *Id.* at 267-68. An irresistible impulse is when the perpetrator's mental condition inhibits his reasoning ability to such a degree that he cannot resist committing the deed, even if he knows it to be wrong. *Id.* at 265 (citing Smith v. United States, 36 F.2d 548 (D.C. Cir. 1929)). See also Rubenstein, *supra* note 30, at 356-59 (recounting the history of the insanity defense).

60. WRIGHTSMAN, *supra* note 51, at 267. See MODEL PENAL CODE § 4.01(1) (Prop. Official Draft 1962 & Rev. Cmts. 1985). The Model Code excludes "abnormalit[ies] manifested only by repeated criminal or otherwise antisocial conduct." *Id.* § 4.01(2).

61. See PETER LOW ET AL., THE TRIAL OF JOHN W. HINCKLEY, JR.: A CASE STUDY IN THE INSANITY DEFENSE (1986) (excerpting sections of the Hinckley trial and analyzing the use of the insanity defense).

62. 18 U.S.C. § 17 (1988). The Act in part responded to the public outrage regarding the verdict. Low, *supra* note 61, at 126-27.

63. 18 U.S.C. § 17(a) (1988). In the House of Representatives Report on

test drops the irresistible impulse component and returns essentially to the *M'Naghten* rule.

Each of the traditional standards for insanity concur that an inability to distinguish right from wrong constitutes insanity. Each further requires this inability to stem from a mental defect or disease. The changes in the standard reflect an ongoing debate as to whether the additional prong of irresistible impulse should be necessary for a verdict of not guilty by reason of insanity.

## II. MULTIPLES IN THE LEGAL SYSTEM

### A. Case Studies of Multiple as Victims

Presumably, people who suffer from multiple personality disorder are victims of crime in the same proportion as everyone else.<sup>64</sup> Given, however, the relative rarity of the disorder, few cases involve Multiples as victims of crime.

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the Act, the Committee stated:

Although abuses of the insanity defense are few and have an insignificant direct impact upon the criminal justice system, the Committee nevertheless concluded that the present defense and the procedures surrounding its use are in need of reform. . . . The insanity defense has an impact on the criminal justice system that goes beyond the actual cases involved. The use of the defense in highly publicized cases, and the myths surrounding its use, have undermined public faith in the criminal justice system.

H.R. REP. No. 577, 98th Cong., 1st Sess. 9-10 (1983) (footnote omitted), reprinted in Michael L. Perlin, *Unpacking the Myths: The Symbolism Mythology of Insanity Defense Jurisprudence*, 40 CASE W. RES. L. REV. 599, 647 (1989-90) (emphasis omitted). See also Low, *supra* note 61, at 126-37 (analyzing the legislation); Jill O. Radwin, Note, *The Multiple Personality Disorder: Has This Trendy Alibi Lost Its Way?*, 15 L. & PSYCHOL. REV. 331, 358-61 (1991) (analyzing the history of the insanity defense and noting various state statutes concerning insanity). Several states have eliminated the insanity defense and others have created the verdict of guilty but mentally ill (GBMI). Low, *supra* note 61, at 130-35. GBMI procedures vary from state to state. *Id.*; see also *Commonwealth v. Comitz*, 530 A.2d 473 (Pa. Super. Ct. 1987) (reviewing a GBMI plea). For a discussion of the burden of proof and presumption of sanity, see *Tanner v. State*, 265 A.2d 573, 577-78 (Md. Ct. Spec. App. 1970).

For a thorough discussion of GBMI, see generally Ira Mickenberg, *A Pleasant Surprise: The Guilty But Mentally Ill Verdict Has Both Succeeded in Its Own Right and Successfully Preserved the Traditional Role of the Insanity Defense*, 55 U. CIN. L. REV. 943 (1987).

64. In a different twist, one criminal defendant argued on appeal that his conviction should be overturned because his defense attorney allegedly suffered from MPD and therefore failed to represent him adequately at his robbery trial. *State v. Evans*, No. 02c01-9205-CR-00109, 1993 WL 460555 (Tenn. Crim. App. Nov. 10, 1993). The court found no evidence that the attorney was Multiple or that she was incompetent. *Id.* at \*4.

In one case, Mark Peterson was convicted of second-degree sexual assault for having intercourse with a woman, Sarah, who had MPD.<sup>65</sup> Wisconsin law makes it illegal to have sex with a mentally ill person who is unable to appreciate the consequences of the conduct.<sup>66</sup> This case may have been the first time MPD was used as a grounds for prosecution.<sup>67</sup> The victim alleged that one of her personalities, twenty-year-old Jennifer, had intercourse with the defendant.<sup>68</sup> She further alleged that neither Sarah nor most of the other personalities knew of the act at the time.<sup>69</sup> According to Jennifer, the other personalities learned after the fact from six-year-old Emily, who had been present,<sup>70</sup> that Peterson had deliberately called forth the naive Jennifer who enjoyed having fun but had "no understanding of sex."<sup>71</sup> Although this case was tried under a specific statute prohibiting intercourse with a mentally ill person when the defendant knows of the condition,<sup>72</sup> it raises the question of how the law should approach cases in which one personality invites or provokes an action and the other personalities do not consent.

For example, in *State ex rel. Romley v. Superior Court*,<sup>73</sup> the defendant was charged with stabbing her husband whom she alleged had MPD.<sup>74</sup> She asserted that at the time of the assault,

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65. Charles-Edward Anderson, *Uninformed Consent: Jury Convicts Man for Sex with Mentally Ill Woman*, 77 A.B.A. J., Jan. 1991, at 28 (citing *State v. Peterson*, No. 90-CF-280 (Winnebago County Ct., Wis. Nov. 8, 1990)). The conviction was reversed on the grounds that the defense did not properly pursue a request for a psychiatric examination of the victim. *Multiple-Personalities Case: Retrial Ordered*, WASH. POST, Dec. 18, 1990, at B1. The case was dropped, allegedly in the best interest of the victim, because after the case became public her personalities increased from 21 to 46. Desda Moss, *Personalities Case Is Closed*, USA TODAY, Dec. 20, 1990, at 2A. Subsequent allegations have been made that the prosecutor brought the case to trial for publicity reasons and that he knew the key witness also had sex with the victim. ArLynn Leiber Presser, *Publicity and Justice: Rape Conviction Overturned Amid Allegations of Prosecutorial Impropriety*, A.B.A. J., Apr. 1991, at 20.

66. Presser, *supra* note 65, at 20.

67. Carol J. Castaneda, *Multiple-Personality Case: Guilty*, USA TODAY, Nov. 9, 1990, at 3A.

68. Anderson, *supra* note 65, at 28.

69. Cynthia Gorney, *Man Guilty in Multiple Personality Rape Case; Oshkosh Jury: He Knew Victim Was Ill*, WASH. POST, Nov. 9, 1990, at C1 [hereinafter *Man Guilty*].

70. Charles Bremner, *'Three Sarahs' Rape Case Verdict*, THE TIMES (London), Nov. 9, 1990, at 13.

71. *Man Guilty*, *supra* note 69, at C1.

72. Cynthia Gorney, *Sarah's Story: Voices from a Fractured Past — Wisconsin Woman Describes the Origin of Her Selves*, WASH. POST, Nov. 10, 1990, at D1 [hereinafter *Sarah's Story*].

73. 836 P.2d 445 (Ariz. Ct. App. 1992).

74. *Id.* at 447.

her husband was manifesting a violent alter personality, and that she acted in self-defense.<sup>75</sup> This case raises the questions of what protections to afford a victim with multiple personalities.<sup>76</sup>

The legal system does not deliberately treat victims who have MPD differently from other victims: no provisions specifically state that if the victim is a Multiple, the court should follow certain procedures. When, however, as in the Wisconsin rape case, the victim's disorder is the basis for the criminal prosecution or, as in *Romley*, the victim's disorder is the basis of the defendant's affirmative defense, special questions are raised.

### B. *Legal Problems Involving the Multiple Victim*

Although relatively few crime victims are Multiples, they too can be victimized, and when they are, it creates different problems for the justice system than when non-Multiples are victimized.

First is the problem of testimony. Often the victim is called to testify about the crime, but when the victim is a Multiple, complications arise. Because the host personality often has amnesia regarding the other personalities and their actions, the host personality will not be able to testify first-hand about the crime. If able to testify at all, the host personality will be relaying what the other personalities have told them, which is essentially hearsay.<sup>77</sup> Logistical complications also can occur if the personalities change while on the stand.<sup>78</sup> Aside from the confusion this may cause for the jurors, it also raises the problem of what happens if the transformations occur without warning and the

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75. *Id.*

76. *Id.* at 450-54.

77. Rule 801(c) of the Federal Rules of Evidence defines hearsay as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." FED. R. EVID. 801(c). Although the rules discuss the definition of "statement" extensively, Rule 801(a) and the Advisory Committee's Note fail to address the definition of "declarant" as thoroughly. The definition of "personhood," then, remains open for debate. See *infra* notes 114-17 and accompanying text for further discussion of the concept of personhood. See generally James Allan, *The Working and Rationale of the Hearsay Rule and the Implications of Modern Psychological Knowledge*, 44 CURRENT LEGAL PROBS. 217 (1991) (analyzing the hearsay rule and its conflict with psychology, and rethinking the rule in general).

78. The court in *State v. Johnson*, No. 90-CF-280 (Winnebago County Ct., Wis. Nov. 8, 1990), dealt with that problem by summoning six different personalities to testify and swearing in each personality as they appeared. See Castaneda, *supra* note 67, at 3A; *Sarah's Story*, *supra* note 72, at D1. For further discussion of *Johnson*, see *supra* notes 65-72 and accompanying text.

now-evident personality does not know what just happened.<sup>79</sup> Further complicating the situation, each personality on the stand needs to establish that he or she can testify truthfully.<sup>80</sup>

Second, the very essence of some crimes depends on the victim's state of mind.<sup>81</sup> In *State v. Johnson*,<sup>82</sup> a jury convicted the defendant because the jury believed that the defendant knew Sarah suffered from MPD<sup>83</sup> and that he deliberately manipulated her personalities to convince her to have intercourse.<sup>84</sup> This defendant violated a law prohibiting sexual contact with a known mentally ill person.<sup>85</sup> But what if a man had consensual sex with a woman whom he did not know had MPD, and the other personalities considered it rape?<sup>86</sup> Would it be rape if several

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79. See *infra* notes 131-33 and accompanying text for further analysis of this situation.

80. "[B]efore testifying, every witness shall be required to declare that the witness will testify truthfully, by oath or affirmation administered in a form calculated to awaken the witness' conscience and impress the witness' mind with the duty to do so." FED. R. EVID. 603. Again, resolution of this problem depends in part upon the definition of personhood. See *infra* notes 114-17 and accompanying text. If one accepts that each personality can testify as an independent entity — and thus avoid the hearsay problems — each personality must meet the criteria for competence as described in the Federal Rules of Evidence. See FED. R. EVID. 601-604.

81. Felonies are usually less dependent upon the victim's state of mind than are nonfelonies like false imprisonment — with the major exception of the varying degrees of sexual assault. *But cf.* *Hurley v. State*, 483 A.2d 1298 (Md. Ct. Spec. App. 1984) (analyzing the defendant's argument that the state must produce his wife's body to prove he murdered her because, given that she was Multiple and hence capable of disappearing without warning or even of committing suicide, she may not even have been murdered).

82. No. 90-CF-280 (Winnebago County Ct., Wis., Nov. 8, 1990). See *supra* notes 65-72 & 78 and accompanying text for more on this case.

83. Actually, some of the jurors were not completely certain that Sarah was Multiple, but they *were* convinced that she was mentally ill. *Man Guilty*, *supra* note 69, at C1.

84. See *supra* text accompanying note 71.

85. See *supra* text accompanying note 66 for the substance of the Wisconsin law.

86. Such a situation would be unlikely to result in a conviction because most statutes and the common law maintain that consent is an affirmative defense to rape. BOYCE & PERKINS, *supra* note 53, at 144. If the man had no idea that the woman had MPD, he would have no way of knowing from whom to obtain the consent. See *People v. Davis*, 301 N.W.2d 871 (Mich. Ct. App. 1980). In *Davis*, the court evaluated language in a Michigan statute stating that third degree sexual conduct with a mentally defective person required that the defendant "knows or has reason to know" that his partner is mentally defective. *Id.* at 873 n.1. The court concluded that the legislature included this language to protect individuals who have sex with apparently competent partners only to find out later that the partner was mentally ill. *Id.* at 873. In reaching this conclusion, the court posited a hypothetical in which "a woman who suffers from multiple personality defect might seem

personalities refused repeatedly, but another personality appeared suddenly, consented to sex, then departed as the act began?<sup>87</sup> In all of these situations, the man would have a good argument that the consent of one personality should apply to all — that the body with many personalities should be responsible for the actions and commitments of all the personalities. Otherwise the burden on the defendant of determining the psychological condition of his partner would be too great.<sup>88</sup>

Third, the rights of the victim who has MPD can conflict with the right of the accused to a fair trial. In *Johnson*,<sup>89</sup> the judge stopped, on the grounds of the rape shield laws,<sup>90</sup> the defense attorney's attempt to question Sarah and her other personalities about their prior sexual experiences and about allegations that one of the personalities had in the past gone to bars to drink and pick up men.<sup>91</sup> Such information, while irrelevant as to whether or not the defendant knew of Sarah's condition, could be relevant if the defendant did not know of the victim's disorder. For example, if a defendant charged with rape were to raise the issue of consent or prior sexual contact with the victim, the sexual experiences of the victim's alter personalities might be excluded by relevant rape shield laws.

In *State ex rel. Romley v. Superior Court*,<sup>92</sup> a woman<sup>93</sup> filed a motion requesting that her husband/victim be compelled to make available to the defense "all of his past and present medical records from any institution in any jurisdiction."<sup>94</sup> The court held that under the Victim's Bill of Rights,<sup>95</sup> the victim

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'normal' in each of her personality manifestations, yet, from a psychological perspective, be unable to appraise the nature of her conduct." *Id.* at 874. The court noted that this situation would be unfair to the defendant. *Id.*

87. A discussion of the statutory applications of rape, which would depend on the jurisdiction, is beyond the scope of this Note.

88. See *infra* notes 118-21 and accompanying text for further discussion of the concept of collective responsibility.

89. No. 90-CF-280 (Winnebago County Ct., Wis. Nov. 8, 1990). See *supra* notes 65-72 and accompanying text for further discussion of this case.

90. FED. R. EVID. 412 (concerning the relevance of victim's past behavior and prohibiting certain lines of inquiry about the victim's sexual past).

91. *Sarah's Story*, *supra* note 72, at D1.

92. 836 P.2d 445 (Ariz. Ct. App. 1992).

93. The wife, accused of stabbing her husband, maintained that for 12 years the husband had suffered from MPD and that she had been the victim of physical and mental abuse. *Id.* at 450. On the night of the assault, the wife had contacted the police alleging that her husband was beating her. *Id.* She further alleged that at the time she stabbed him, the victim was manifesting a violent personality that had long resisted integration in therapy. *Id.*

94. *Id.* at 447.

95. The Victim's Bill of Rights is an amendment to the Arizona Constitution providing that "[to] preserve and protect victims' rights to justice and

may refuse to release medical records to the defense.<sup>96</sup> The court, however, modified the trial judge's order to an *in camera* evaluation to determine which portions of the medical records were essential to the self-defense and what the victim could accurately remember and relate about the incident.<sup>97</sup> The court held that restrictions under the Victim's Bill of Rights on the defendant's access to information necessary for her defense must be "proportionate to the interest of protecting the victim as balanced against the defendant's fair trial."<sup>98</sup>

When dealing with victims who have MPD, the interest in protecting the victim must be balanced with the interest in providing the defendant with a fair trial. The interest of a victim with MPD in protection and privacy, however, is essentially the same as any other victim's interest. Although the ramifications for others may be different from those involving multiples,<sup>99</sup> any victim may suffer emotional and physical stress during a trial, compounded by its accompanying publicity.<sup>100</sup> In essence, the law treats the victim with multiple personalities no differently than it does the victim who does not have multiple personalities, in spite of the many potential problems with such an approach.

### III. MULTIPLES AS DEFENDANTS

#### A. Purpose of Punishment

One of the basic premises of justice is that every individual is responsible for their actions. In the case of a criminal defen-

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due process, a victim of crime has a right . . . To refuse an interview, deposition or other discovery request by the defendant." ARIZ. CONST. art. II, §§ 2.1(A), 2.1(A)(5).

96. *Romley*, 836 P.2d. at 451.

97. *Id.* at 452.

98. *Id.* at 453. The court concluded:

[T]he Victim's Bill of Rights was appropriately amended to the Arizona Constitution as a shield for victims of crimes. . . . However, the amendment should not be a sword in the hands of victims to thwart a defendant's ability to effectively present a legitimate defense. Nor should the amendment be a fortress behind which prosecutors may isolate themselves from their constitutional duty to afford a criminal defendant a fair trial.

*Id.* at 454 (citation omitted).

99. The stress of a trial can harm victims with multiple personality syndrome. Sarah, the victim in *State v. Johnson*, apparently fragmented further. The number of her personalities increased from 18 to 46 after the case was publicized. Moss, *supra* note 65, at 2A.

100. Victims with MPD are just as likely to attempt to profit from the surrounding publicity as non-Multiple victims. Sarah had a contract, later rescinded, to sell her life experience to the media. Presser, *supra* note 65, at 20. Countless television movies have been based on the lives of victims. See, e.g., *I Can Make You Love Me: The Stalking of Laura Black* (CBS television broadcast, Feb. 9, 1993).



dant, the law punishes<sup>101</sup> when the government, representing the people, proves that the defendant broke society's laws. The American legal system emphasizes that the prosecution must prove beyond a reasonable doubt that the defendant is guilty. The axiom that it is better to free a guilty person than to punish an innocent one pervades our entire criminal justice system.

This premise, however, inherently conflicts with punishing a Multiple who commits a crime.<sup>102</sup> Consider, for example, this hypothetical situation. Elizabeth, age twenty-five, has multiple personalities: Beth is a demure, shy fourteen-year-old, and Liz is a conniving, violent twenty-one-year-old. One night when Liz is in control, she brutally murders a young man. Elizabeth, who had nothing to do with the crime and did not even know that it occurred, is placed on trial.<sup>103</sup> If Elizabeth is treated as a unified individual,<sup>104</sup> she should be punished for the crimes her body committed. Elizabeth and Beth, however, are innocent of Liz's crime, and punishing them for Liz's actions seems to violate the premise that our society punishes only the guilty. But the three personalities cannot be separated, and therefore either the innocent will be punished or the guilty will be set free.<sup>105</sup>

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101. In considering punishment, the term must be defined. For the purpose of this section, punishment means imprisonment unless otherwise specified. The Supreme Court, however, has held that incarceration, even in prison, is not necessarily punishment. Saks, *supra* note 20, at 416; *see also* United States v. Salerno, 481 U.S. 739, 746-47 (1987) (concerning the constitutionality of pre-trial detention). But, the Court has noted that there are circumstances in which detention can constitute punishment. *Id.*

Burdening one person through the incarceration of another is not punishment. Saks, *supra* note 20, at 416-17. Imprisonment of an individual, for instance, frequently burdens his or her family both financially and emotionally, but this does not constitute punishment of the family in the eyes of the law. *Id.* Saks argued that punishment occurs when society and the individual believe that the individual is being punished. *Id.*

102. *See generally* Pamela Hediger, Note, *Mens Rea: The Impasse of Law and Psychiatry*, 26 GONZ. L. REV. 613, 621-23 (1991) (arguing that Freudian psychologists' reliance on determinism conflicts with the theory that crime stems from a choice to do wrong); Perlin, *supra* note 63, at 673-706 (contrasting the free will-driven legal system with the determinative psychiatric view).

103. This is essentially the same question as whether both Siamese twins should be imprisoned if one commits a murder despite the fact that they are distinct individuals and one of them is innocent. Saks, *supra* note 20, at 414-15.

104. For the purpose of this hypothetical, the reader should ignore all issues of sanity and competency for all three personalities.

105. *See generally* Robert J. Lipkin, *Free Will, Responsibility and the Promise of Forensic Psychiatry*, 13 INT'L. J. L. & PSYCHIATRY 331 (1990) (arguing that if an individual is autonomous, then the individual is responsible for his or her actions).

One reason for incarcerating or detaining the perpetrator is to protect society. Although the innocent personalities would also be burdened, one could argue that the duty to protect society — and hence free it from the burden of potential danger to an innocent victim — from the dangerous personality is greater than the duty to keep the innocent personalities from being burdened by incarceration or detention.<sup>106</sup> When comparing the rights of the many in society who are at risk from the dangerous aspect with the injustice of imprisoning an innocent aspect, the danger to the group at large is apparently greater than the unfairness to the few personalities.

The purpose of punishment must be considered before attempting to resolve this conflict. Traditionally, the purposes of punishment have been defined as: deterrence,<sup>107</sup> rehabilitation,<sup>108</sup> reprobation,<sup>109</sup> and retribution.<sup>110</sup> Punishing Elizabeth and Beth for the actions of Liz seems to have limited deterrent value. Given that Liz may simply remove herself after sentencing and leave Elizabeth and Beth to suffer,<sup>111</sup> the deterrent value to Liz is limited as well: because she is not there, she is not being punished. Therefore, deterrence from future violent behavior is an unlikely result of punishing the Multiple in this case. Rehabilitation also is unlikely to be successful because if Liz, who needs rehabilitation, removes herself, she leaves Elizabeth and

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106. Saks, *supra* note 20, at 415.

107. Deterrence would discourage both the defendant and others from violating the law in the future. See Oliver W. Holmes, Jr., *Theories of Punishment and the External Standard*, in CRIME, LAW, AND SOCIETY, *supra* note 52, at 27, 32 (suggesting that the real purpose of criminal law and punishment is simply to coerce individuals to conform their behavior to the social conventions).

108. See generally KATHERINE W. ELLISON & ROBERT BUCKHOUT, PSYCHOLOGY AND CRIMINAL JUSTICE 240-62 (1981) (evaluating the success of the prison system in rehabilitation); Henry M. Hart, Jr., *The Aims of the Criminal Law*, in CRIME, LAW, AND SOCIETY, *supra* note 52, at 61 (arguing against a primarily rehabilitative theory of punishment in criminal law).

109. Reprobation is society's need to "give vent to its feeling of horror, revulsion or disapproval." It is the motivation behind laws such as those prohibiting suicide, which have no real reformatory effects or deterrent value. Morris R. Cohen, *Moral Aspects of the Criminal Law*, in CRIME, LAW, AND SOCIETY, *supra* note 52, at 35, 54-56.

110. *Id.* at 47-49 (noting that vengeance is traditionally a powerful reason for punishment).

111. One psychologist described a patient on trial for conspiring to kill her husband. The personality who was the actual culprit alleged that the whole conspiracy was a joke. Bliss, *supra* note 13, at 134. The guilty personality became frightened at the idea of jail and protested: "If she [the host personality] goes to prison, do I have to go, too? . . . I'm not going to prison . . . she can go, but I won't. . . . I'm leaving." *Id.*

Beth to unnecessary rehabilitation, unnecessary because they committed no crime.

Reprobation, when applied to the defendant with multiple personalities, needs to be considered in light of its purpose. If society punishes the perpetrator to express its displeasure with her actions, the question is to whom that displeasure is meant to be expressed. If it is to the world at large as a method of showing the country's level of civility, then the perpetrator, Multiple or not, should be punished to fulfill that purpose. Under that theory, the crime must be punished regardless of whether the subject of punishment is the guilty body or the guilty personality. If the displeasure is directed at the perpetrator, then multiple or not, Liz should be punished — even if she is able to vanish from it all. Reprobation expresses displeasure at the commission of a crime, so society should punish the only tangible alternative to the criminal personality, the body housing the personality, to achieve that purpose.<sup>112</sup>

Retribution is profoundly disturbing when applied to the multiple defendant. Retribution is society's way of balancing a wrong.<sup>113</sup> Does the punishment balance the crime if it includes, in essence, innocent bystanders as well as the criminal? Or does that push the state too far the other way and into the realm of tyranny? The problem with punishing Multiples is upon whom vengeance should be exacted.

In answering these questions, one should consider the concept of personhood.<sup>114</sup> If person is defined by *physical* being — one body, one person<sup>115</sup> — then a Multiple is one person, indivisible. Therefore, retribution is perfectly just.<sup>116</sup> If, however, person is

112. *Contra Saks*, *supra* note 20, at 418, 427.

113. *See* Cohen, *supra* note 109, at 47-49. Cohen argues that while this concept of a cosmic balance sheet has inherent flaws — does taking the life of a killer really balance the loss of the victim's life? — revenge is also an innate element in humanity. *Id.* Without a criminal system that responded to this need, people would dispense justice on their own. *Id.* at 49.

114. *See* Slovenko, *supra* note 23, at 681 (“Multiple personalities in one human body seems bizarre, if not silly. . . . yet the psychological reality of multiple or subpersonalities in one person is undeniable.”). *But see* Ross, *supra* note 4, at 61 (“MPD is not a fantastic curiosity in which there is more than one person in the same body. There is only one person, an abuse victim who has imagined that there are other people inside her in order to survive.”).

115. The Bodily Criterion of Personal Identity proposes that the continued existence of one's brain defines identity — if the body and brain are the same as the body and brain 10 years later, then it is the same person, regardless of what kinds of extreme physical and psychological changes there have been. *Saks*, *supra* note 20, at 404.

116. One commentator justified retribution as the objective in punishing Multiples:

The law is based on the idea of a person as a unity. Whatever

defined as a *psychological* being,<sup>117</sup> based on memory, experiences, perceptions, attitudes, and affect, then a Multiple is many people housed within the same body. Intuitively, retribution seems less just if we adopt the definition of a person as a psychological being.

The punishment of many for the sins of a few is at least as old as the Bible,<sup>118</sup> and the concept continues into the twentieth century in theories like collective responsibility.<sup>119</sup> When Cain inquired whether he was his brother's keeper,<sup>120</sup> he might well have been Elizabeth asking if she is responsible for the actions of Liz. Under the theory of collective responsibility, the answer is yes. Because Elizabeth and Beth are so closely entangled with Liz, and because what effects one, effects all, they are responsible for each other's actions and retribution would be just.<sup>121</sup>

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the psychological validity, legal theory requires that we regard ourselves as unitary; otherwise the world would be unmanageable. Ultimately a person must take responsibility for his or her sub-personalities, if for no other reason than that in all cases of multiple personality, the host personality is dominant.

Slovenko, *supra* note 23, at 707 (footnote omitted).

117. The Psychological Criterion of Personal Identity defines a person as an entity with a continuity of memories and other psychological connectedness. Saks, *supra* note 20, at 404.

118. See *Genesis* 3:1-24 (recounting the original sin that all descendants of Adam and Eve must suffer because Adam and Eve ate the forbidden fruit); *Genesis* 4:8-16 (banishing Cain for killing Abel and marking Cain and his descendants).

119. Cohen, *supra* note 109, at 46. One example of successful application of collective responsibility occurred after World War I, when Germany was forced to pay reparations to nations it conquered while the Nazis were in power. Their children carried that debt, despite the fact that they did not participate in the invasions. *Id.* See also Andrew E. Lelling, Comment, *Eliminative Materialism, Neuroscience and the Criminal Law*, 141 U. PENN. L. REV. 1471, 1552-60 (1993) (discussing how Multiples should be held to the standard of collective responsibility based in part on a neurobiological analysis of their condition).

120. *Genesis* 4:9.

121. Multiples themselves have commented on their situation. A Multiple charged with bank robbery in Florida said she was "willing to take responsibility and emphasize[d] that she [did] not want to go back into society" for fear that she would commit more crimes. Radwin, *supra* note 63, at 351-52, 373.

In another case, the Multiple, Mr. A., was charged with murdering his girlfriend. Irwin N. Perr, *Crime and Multiple Personality Disorder: A Case History and Discussion*, 19 BULL. AM. ACAD. PSYCHIATRY & L. 203 (1991). Mr. A. saw the only options for removing the violent alter, Billy Ray, as "the death penalty, life in prison, life in a prison hospital, or suicide. He added, 'From what I've been told, Billy Ray has done the killing. Someone has to pay the penalty. . . . The lesser of the three [alternatives] would be the death penalty.'" *Id.* at 207.

### B. *The Role of Multiple Personalities in a Criminal Defense*

When a criminal defendant has multiple personality disorder,<sup>122</sup> her condition can play many roles in the defense strategy.<sup>123</sup> The defendant's sanity is at issue from the time the crime is committed to the time the sentence is served. The disorder<sup>124</sup> also may be relevant in other ways.<sup>125</sup>

One question is whether the very condition of MPD renders the defendant incompetent to stand trial.<sup>126</sup> Generally, to be competent, the defendant must be (1) capable of understanding that he is in a court of law and the purpose of the proceeding against him;<sup>127</sup> (2) able to understand his own status as a defendant with reference to the trial;<sup>128</sup> and (3) able to assist in conducting his defense.<sup>129</sup>

122. See generally Allison, *supra* note 15, at 188-89 (suggesting methods for the forensic psychologist to use in evaluating the condition of a defendant who may be a Multiple).

123. Some experts question whether different personalities should have separate legal counsel and make separate pleas and arguments. Slovenko, *supra* note 23, at 699. See also generally Allison, *supra* note 15, at 188 (defining guidelines for handling one who is believed to have multiple personalities as a defendant in court).

124. Simply diagnosing the Multiple defendant can be difficult if the various personalities refuse to speak to the forensic psychologist or refuse to take psychological tests. Allison, *supra* note 15, at 185-86.

125. See *State v. Moore*, 550 A.2d 117, 141 (N.J. 1988) (concluding that the trial court's failure to explain the diminished capacity defense to the jury was reversible error when the defendant was a Multiple); Slovenko, *supra* note 23, at 700-01 (noting various legal problems Multiples have including issues surrounding the death penalty and making contracts).

126. See generally Ronald Roesch, *Determining Competency to Stand Trial: An Examination of Evaluation Procedures in an Institutional Setting*, 47 J. CONSULTING & CLINICAL PSYCHOL. 542 (1979) (examining the methods mental health officials use to determine competency).

127. Alfred P. French & Bryan R. Shechmeister, *The Multiple Personality Syndrome and Criminal Defense*, 11 BULL. AM. ACAD. PSYCHIATRY & L. 17, 20 (1983) (describing the California rule).

128. *Id.* at 20. See also *Lowery v. United States*, 956 F.2d 227 (11th Cir. 1992) (evaluating the proprieties of a habeas remedy for a defendant with MPD who was sentenced based on a prior conviction that the defendant claimed should be overturned because he was unable to make a reasoned and intelligent plea); *de Kaplany v. Enomoto*, 540 F.2d 975 (9th Cir. 1976), *cert. denied*, 429 U.S. 1075 (1977) (affirming the jury's finding that the defendant's MPD did not substantially impair his ability to make a reasoned plea).

129. French & Shechmeister, *supra* note 127, at 20. The New Jersey rule is similar: the defendant must comprehend (1) that he is in a court of law and charged with a crime; (2) that a judge is on the bench; (3) that the prosecutor will try to convict him; (4) that the defense attorney will help defend him; (5) that he must tell the truth if he takes the stand; (6) that the jury will weigh the evidence and determine whether he should be convicted or acquitted; (7) the substance of the plea negotiations; and (8) the defendant must have the

The primary problem with Multiples as defendants is that if an alter personality committed the crime, the host personality may not remember the crime. This amnesia could hinder the defendant's ability to assist in his or her defense because of the inability to supply details about the crime and the events leading up to the crime. Courts have generally held that amnesia is not a bar to competency.<sup>130</sup> Therefore, a Multiple is not incompetent to stand trial merely because the host personality does not recall anything about the crime.

Having Multiple defendants take the stand during the trial presents the danger of other personalities appearing.<sup>131</sup> The alter personality may be unaware of what is going on and what has been said previously. In *State v. Badger*,<sup>132</sup> however, the New Jersey court, in response to that very concern, concluded that defense counsel could explain to the defendant what had occurred prior to the personality change.<sup>133</sup>

Defendants with MPD have attempted to convince the courts that the syndrome causes them to act involuntarily and that, therefore, they cannot be held responsible for the acts of their alter personalities.<sup>134</sup> In *State v. Grimsley*,<sup>135</sup> the defendant, who had been convicted of drunk driving,<sup>136</sup> argued that she could not be held liable for any offense because she was disassociated from her host personality (Robin) and under control of an alter

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ability to participate adequately in the preparation of his defense. N.J. STAT. ANN. § 2C:4-4b(2) (West 1982), cited in *State v. Badger*, 551 A.2d 207, 208 (N.J. Super. Ct. Law Div. 1988).

130. See, e.g., *People v. McBroom*, 70 Cal. Rptr. 326, 329 (Cal. Ct. App. 1968), cited in French & Shechmeister, *supra* note 127, at 20. See also *Badger*, 551 A.2d at 209-10.

131. Because personalities can change in a dramatic manner, the shift can be embarrassing in the courtroom. French & Shechmeister, *supra* note 127, at 17. In one civil trial, however, the Multiple plaintiff took the stand and shifted personalities throughout the testimony. Dan Turner, *Multiple Ending to Trial of Unusual Suit*, S.F. CHRON., Dec. 15, 1993, at A22. The trial raised the ethical issues regarding what weight a jury should place on testimony from a person with MPD. The plaintiff, who had more than 40 personalities, sued a former counselor and pastor for civil damages stemming from allegedly coerced sexual relations. *Id.* In another case, three of a defendant's personalities were sworn in separately before testifying. Ben Macintyre, *Schizophrenic Puts Other Selves On Trial*, THE TIMES (London), Jan. 6, 1994, at 11. For more on the confusion over the use of the terms "schizophrenic" and "multiple personality," see *supra* note 23.

132. 551 A.2d 207 (N.J. Super. Ct. Law Div. 1988).

133. *Id.* at 209.

134. See *Kirby v. State*, 410 S.E.2d 333 (Ga. Ct. App. 1991) (rejecting the Multiple defendant's argument that an alter ego committed the crime and that he could not be held responsible for the acts of the alter personality).

135. 444 N.E.2d 1071 (Ohio Ct. App. 1982).

136. *Id.* at 1073.

personality (Jennifer) at the time of her offense.<sup>137</sup> She contended that Robin was unaware of and unable to control or recall Jennifer's actions.<sup>138</sup> The defendant maintained that Robin was not conscious of what was happening at the time of the crime, so she could not be held responsible for involuntary acts.<sup>139</sup> The court disagreed, holding that the personality that committed the act maintained responsibility for her actions.<sup>140</sup>

Defendants with MPD, if found competent to stand trial, often try to establish their legal insanity.<sup>141</sup> Multiple personality defendants differ from other defendants trying to establish insanity because of the issue of which personality needs to be found insane to establish legal insanity — the host personality, each alter personality,<sup>142</sup> or only the personality who committed the crime.<sup>143</sup> In *Kirkland v. State*,<sup>144</sup> the defendant was convicted

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137. *Id.* at 1075.

138. *Id.*

139. *Id.*

140. The court stated:

[T]here was only one person driving the car and only one person accused of drunken driving. It is immaterial whether she was in one state of consciousness or another, so long as in the personality then controlling her behavior, she was conscious and her actions were a product of her own volition.

*Id.* at 1075-76. Grimsley's conviction was reversed, however, because the trial court erred in denying her request for a jury trial. *Id.* at 1076.

141. For a full discussion of the history of the insanity defense and the various tests, see *supra* notes 51-63 and accompanying text. Some multiple personality defendants do plead not guilty by reason of insanity. A man charged with rape and theft pled not guilty by reason of insanity because he claimed to have MPD. *Rape Excuse: 15 Persons in One Man*, CHI. TRIB., Jan. 5, 1994, at 12N.

142. See *State v. Rodrigues*, 679 P.2d 615, 618 (Haw.), *cert. denied*, 469 U.S. 1078 (1984) (noting the trend of examining the sanity of each alter personality, or at least the alter personality who committed the crime).

In another case, at a hearing regarding an insanity plea by a Multiple defendant, an expert psychiatrist testified that there were two approaches to evaluating the sanity of a multiple: the "global" approach, which looks to the sanity of the host personality, and the "specific alter" approach, which evaluates the sanity of the alter personality in charge at the time of the offense. *State v. Wheaton*, 850 P.2d 507, 509 (Wash. 1993). The court refused to decide which approach should be used. *Id.* at 512. The Tenth Circuit, however, has held that the global approach is acceptable when the evidence indicates that the host, but not the alter personality, was insane. *United States v. Denny-Shaffer*, 2 F.3d 999 (10th Cir. 1993).

143. See *Rodrigues*, 679 P.2d at 620-21 (noting that MPD does not *per se* call for an acquittal and that the question of sanity is a matter for the jury or trier of fact to decide). *But cf.* Saks, *supra* note 20, at 459 (concluding that courts should adopt a rebuttable presumption that defendants with MPD are not responsible for their crimes).

144. 304 S.E.2d 561 (Ga. Ct. App. 1983).

of bank robbery. She unsuccessfully pled not guilty by reason of insanity, and she appealed the verdict of guilty but mentally ill.<sup>145</sup> The trial judge accepted that the defendant had MPD, but ruled that whichever personality robbed the banks did so with "rational, purposeful criminal intent and with knowledge that it was wrong."<sup>146</sup> The court of appeals affirmed the conviction.<sup>147</sup>

Several difficulties arise when arguing that a multiple personality defendant is not guilty by reason of insanity. First, diagnosis of Multiples often stems from interviews in which the defendant is hypnotized or drugged with sodium amytal.<sup>148</sup> Some courts refuse to accept testimony resulting from either of these methods.<sup>149</sup> Furthermore, often the only way the core personality becomes aware of the other personalities and the facts of the crime is through these enhanced interviews. Courts have grappled with the issue of whether these witnesses and defendants should be allowed to testify about the contents of the interviews and conclusions based on those interviews.<sup>150</sup> Second, whenever a

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145. *Id.* at 563.

146. *Id.* at 565.

147. According to the *Kirkland* court, "[T]he law adjudges criminal liability of the person according to the person's state of mind at the time of the act; we will not begin to parcel criminal accountability out among the various inhabitants of the mind." *Id.* at 564.

148. Sodium amytal is a barbiturate with sedative and hypnotic capabilities. It is commonly used to treat insomnia and in preparation for surgery. *LAWYERS' MEDICAL CYCLOPEDIA OF PERSONAL INJURIES AND ALLIED SPECIALTIES* § 23.13 (Charles J. Frankel et al. eds., 3d ed. 1983). For more on the use of sodium amytal in procuring testimony, see *supra* note 44.

149. *See Parker v. State*, 606 S.W.2d 746 (Ark. 1980) (holding that the trial court erred in refusing to permit a psychiatric expert to testify on cross-examination about an interview with the Multiple defendant under sodium amytal because the American Psychiatric Association recognizes the drug as a useful tool in diagnosing and treating MPD); *State v. L.K.*, 582 A.2d 297 (N.J. Super. Ct. App. Div. 1990) (holding that interviews based on hypnosis are acceptable if the proponent can establish an acceptable level of reliability); *State v. Alley*, 776 S.W.2d 506 (Tenn. 1989), *cert. denied*, 493 U.S. 1036 (1990) (holding that videotape of sessions taken when the defendant was under hypnosis and injected with sodium pentothal, the so-called "truth serum," was properly excluded); *State v. Jones*, 743 P.2d 276 (Wash. Ct. App. 1987) (allowing testimony based on an amobarbital interview with the defendant); *see also Slovenko, supra* note 23, at 691-92 (noting that most states will admit the testimony of a hypnotized witness only with clear and convincing evidence that the testimony is offered based on facts recalled and related before hypnosis).

150. *See United States v. Manley*, 893 F.2d 1221 (11th Cir.), *cert. denied*, 498 U.S. 901 (1990) (concluding that the district court properly excluded psychologist's opinion testimony under Federal Rule of Evidence 704(b)); *United States v. Davis*, 835 F.2d 274 (11th Cir.), *cert. denied*, 487 U.S. 1219 (1988) (concluding that under Federal Rule of Evidence 704(b), psychiatrists can testify regarding their opinions on whether or not a Multiple can under-



defendant invokes the insanity defense, a battle of the experts<sup>151</sup> is inevitable, ending only when the money runs out.<sup>152</sup> Because the very existence of MPD is controversial in the psychological community, the debate over the use of experts is complicated further.<sup>153</sup>

When a defendant invokes the insanity defense, suspicion immediately arises that the defendant is malingering<sup>154</sup> in order to get an acquittal.<sup>155</sup> Because MPD<sup>156</sup> is so out of the ordinary

stand their own actions). See generally David Cohen, Note, *Punishing the Insane: Restriction of Expert Psychiatric Testimony By Federal Rule of Evidence 704(b)*, 40 U. FLA. L. REV. 541 (1988) (arguing that Rule 704(b) should be abolished).

151. Although the majority of witnesses who testify regarding the competency or sanity of the defendant are psychological experts (who qualify under rule 702 of the Federal Rules of Evidence as experts who can give opinion testimony), lay witnesses also can testify under Rule 701 regarding their opinion as to whether the defendant is a Multiple. FED. R. OF EVID. 701. In *People v. Wade*, 750 P.2d 794 (Cal.), cert. denied, 488 U.S. 900 (1988), a lay witness was permitted to testify that she believed the defendant, Melvin Wade, was Multiple because he had told her that his name was Othello Metheen (the personality who Wade maintained had committed the murder) and that Othello was an assassin. *Id.* at 798.

152. Some people have criticized the insanity plea because it seems to be the defense of the rich. WRIGHTSMAN, *supra* note 51, at 273. The parents of John Hinckley, Jr. spent between \$500,000 and \$1,000,000 on psychiatric evaluations and testimony. *Id.*

153. See *Wade*, 750 P.2d at 798-99 (describing the battle of experts in which the defense experts said the defendant clearly was Multiple and the prosecution experts said the defendant clearly was malingering). See also Ralph B. Allison, *The Possession Syndrome on Trial*, AM. J. FORENSIC PSYCHIATRY 46, 47-55 (1985) (evaluating Melvin Wade and concluding that Wade suffered from Possession Syndrome rather than MPD).

154. Malingering of MPD, according to one expert, is usually more a part of the defendant's legal strategy rather than the appearance of a separate undefined illness that manifests itself by presenting false personalities. Ross, *supra* note 4, at 73-76.

155. See *State v. Shickles*, 760 P.2d 291 (Utah 1988) (holding that when the defendant claimed he had MPD and pled insanity, the trial court should have explained to the jury the difference between not guilty by reason of insanity and guilty but mentally ill and the ramifications of each, because juries often equate not guilty by reason of insanity with release and freedom). See generally Nicholas Anthony, *Malingering as Role Taking*, 32 J. CLINICAL PSYCHOL. 32 (1976) (discussing the ability of nonmaladjusted individuals to simulate maladjustment on psychological tests); Richard Rogers & James L. Cavanaugh, "Nothing But the Truth". . . A Reexamination of Malingering, 11 J. PSYCHIATRY & L. 443 (1983) (evaluating the purposes of malingering and the possible reasons for it).

156. According to the DSM-III-R, malingering of multiple personality disorder "can present a difficult diagnostic dilemma, which often can be resolved only by obtaining additional data from ancillary sources, such as hospital and police records and family members, employers, and friends." DSM-III-R, *supra* note 7, at 272. There is speculation that such a caution was included

and bizarre,<sup>157</sup> when the defendant maintains that she is not guilty by reason of insanity because of MPD, that suspicion is further heightened. Although some defendants have successfully pled not guilty by reason of insanity because of MPD,<sup>158</sup> others have not.<sup>159</sup>

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in the DSM-III-R after the discussion of MPD but not with the other definitions because of the controversy surrounding the very diagnosis of MPD. Ross, *supra* note 4, at 157. According to Ross, the warning is partly to “send out a signal that specialists in dissociation are nobody’s fools,” and that as the diagnosis is more widely accepted, the warning will become less prominent in future editions of the Manual. *Id.*

157. See generally *State v. Woodard*, 404 S.E.2d 6, 10 (N.C. Ct. App. 1991) (noting that the defense counsel chose not to put the defendant’s alter personality on the stand because the attorney feared that the jury would perceive it as a “Hollywood ploy”).

158. Billy Milligan was the first person found not guilty by reason of insanity on the basis of MPD. Saks, *supra* note 20, at 387 n.11 (citing DANIEL KEYES, *THE MINDS OF BILLY MILLIGAN* xi (1981)). In 1978, the 23-year-old Ohio man was acquitted by reason of insanity on nine charges of rape, kidnapping, and aggravated assault. Slovenko, *supra* note 23, at 693. Ten personalities emerged; several of whom took part in the rapes. ALDRIDGE-MORRIS, *supra* note 12, at 8. Arthur, the facilitator who was aware of all of the personalities, planned the rapes; Ragen, the aggressive “keeper of hate,” initiated the assaults; and Adelen, a 19-year-old lesbian, committed the rapes. *Id.* at 8-9. At the trial for the rapes, the judge found that Milligan could not tell right from wrong nor control his behavior and called Milligan’s history “mind-boggling.” Slovenko, *supra* note 23, at 693. Milligan was subsequently confined to a maximum security prison hospital. ALDRIDGE-MORRIS, *supra* note 12, at 9. In 1988, he was discharged to outpatient status. Radwin, *supra* note 63, at 358 n.57. For a detailed look at Milligan’s case, see DANIEL KEYES, *THE MINDS OF BILLY MILLIGAN* (1981).

159. Kenneth Bianchi, the “Hillside Strangler,” was convicted of murder after the judge concluded that Bianchi was faking MPD and was therefore ineligible for the defense of not guilty by reason of insanity. Ross, *supra* note 4, at 49. In 1978, police found the naked bodies of eight young women who had been raped and strangled. ALDRIDGE-MORRIS, *supra* note 12, at 17. Some of them were found displayed on hillsides, earning the murderer his nickname. *Id.* Bianchi eventually was arrested in 1979 for the murder of two college women in Bellingham, Washington. John G. Watkins, *The Bianchi (L.A. Hillside Strangler) Case: Sociopath or Multiple Personality?*, 32 INT’L. J. CLINICAL & EXPERIMENTAL HYPNOSIS 67, 67 (1984). During police interrogation and psychiatric interviews, Bianchi confessed to being the Hillside Strangler. *Id.* At trial, six experts testified as to whether Bianchi was sane. Because the experts reached several different conclusions, the case casts doubt on the ability of forensic psychologists to offer opinions to the degree of reasonable or probable medical certainty that the courts require. Perr, *supra* note 121, at 213.

Three of the experts who examined Bianchi have presented major papers, each of which arrives at different conclusions. Watkins, the first, concluded that Bianchi really did have multiple personalities. Watkins, *supra*, at 94-95. The defense had Watkins interview Bianchi in an attempt to fill in the blackouts Bianchi had at the times he allegedly committed the murders. *Id.* at 67-68.

There are several common misperceptions about not guilty by reason of insanity verdicts.<sup>160</sup> First, such pleas are in fact rela-

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Watkins questioned the hypnotized defendant about a "part of Ken" to which Watkins had not spoken. *Id.* at 70-71; see *supra* note 26 for a discussion of the possibility that multiple personalities can manifest themselves after a hypnotic suggestion. In response to Watkins' question, "Steve" appeared and admitted committing all of the murders with the help of Bianchi's cousin. Watkins, *supra*, at 71-72. Steve claimed that Ken had no idea that Steve existed. *Id.* Rorschach experts who did not know that Ken and Steve were ostensibly the same person concluded that different people took the Rorschach tests, and that Steve was violent and dangerous while Ken was perfectly normal. *Id.* at 76-77. By the end of 1979, Ken became convinced that he had committed the crimes and pled guilty to murder on seven counts. *Id.* at 83. In exchange for testimony against his cousin, he was sentenced to life imprisonment rather than death. *Id.*

The prosecution's expert, Dr. Martin T. Orne, concluded that Bianchi in fact suffered from anti-social personality and that he deliberately feigned multiple personalities. Orne, *supra* note 14, at 118. Orne noted that in the year before his arrest, Bianchi had styled himself a psychologist (which he was not) and even convinced his common-law wife that he was one. *Id.* at 127. Orne doubted that Bianchi was ever actually hypnotized, noting inconsistencies in Bianchi's "hypnotized" behavior compared with that of others. *Id.* at 131-41. Orne further cited the appearance of a third personality that revealed himself only after the clinician told Bianchi that true Multiples have at least three personalities. *Id.* at 142-43. Orne's Rorschach experts concluded that one sociopathic individual took the tests. *Id.* at 150. Orne concluded that Bianchi was feigning multiple personality and that he was sane when he committed the murders. *Id.* at 161.

The court-appointed expert, Dr. Ralph B. Allison, concluded that Bianchi had atypical dissociative disorder and mixed personality disorder. In layman's terms, although he was not Multiple, he was not deliberately simulating MPD. Ralph B. Allison, *Difficulties Diagnosing the Multiple Personality Syndrome in a Death Penalty Case*, 32 INT'L J. CLINICAL & EXPERIMENTAL HYPNOSIS 102, 116 (1984). Allison concluded that all of the personalities Bianchi manifested had been present in his mind, but had not crystallized until the hypnosis began. *Id.* at 111. He concluded that Bianchi was not Multiple, based on inconsistencies between Bianchi and Allison's Multiple patients. *Id.* at 112. For example, Ken and Steve had the same attitude toward school. If they were truly separate personalities, the attitudes should have been different. Furthermore, Bianchi reported numerous friends throughout his childhood; friends whom Steve would have driven away had he been present. *Id.* Allison noted that Bianchi's story supported an insanity plea but no evidence short of the hypnotized interviews suggested that he had multiple personalities. *Id.* at 115. Allison concluded that although Bianchi's urges to rape and kill came from repressed unconscious conflicts, that "concept does not justify an excuse from legal sanctions." *Id.*

The Hillside strangler case illustrates how difficult the diagnosis of MPD can be and how experts can confidently disagree with each other about its manifestations.

160. Public reaction to verdicts of not guilty by reason of insanity, especially in publicized cases such as the John Hinckley, Jr. trial tends towards outrage and shock. Low, *supra* note 61, at 117, 126.

tively rare, and verdicts of not guilty by reason of insanity are even rarer.<sup>161</sup> Even when found not guilty by reason of insanity, defendants usually spend as much time in mental hospitals<sup>162</sup> as a defendant would have spent in prison had the verdict been guilty.<sup>163</sup> A verdict of not guilty by reason of insanity is not necessarily better for the defendant than a conviction in terms of length of confinement.

As the battles of the experts demonstrates, mental health experts are divided on the subject of whether MPD can be faked successfully.<sup>164</sup> Such differences of opinion lead to conflicts in the courtroom between the experts, leaving the jury to determine whether the defendant is malingering.<sup>165</sup> More often than not, the trier of fact concludes that despite — or because of — the testimony of various experts, the defendant is malingering.<sup>166</sup>

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161. In 1979, defendants pled not guilty by reason of insanity in 102 of 22,102 felony cases in Wyoming. WRIGHTSMAN, *supra* note 51, at 271. Of those pleas, only one succeeded. *Id.*

162. Another issue regarding defendants with MPD is who pays for special therapy if the defendant is committed or convicted. *See* Kort v. Carlson, 723 P.2d 143 (Colo. 1986) (holding that the courts cannot hold the state liable for the costs of a private therapist for a Multiple who was found incompetent to stand trial, absent a finding that the state hospitals were unable to treat him); State Dep't of Health and Rehab. Servs. v. Stoutamire, 602 So.2d 564 (Fla. Dist. Ct. App. 1992) (holding that a patient found not guilty by reason of insanity could force the state to pay for a private hospital that was experienced with the disorder if no public hospital had such experience).

163. WRIGHTSMAN, *supra* note 51, at 270. A 1983 study found that periods of hospitalization for those acquitted by reason of insanity tended to increase depending upon the seriousness of the crime committed. *Id.* at 272. The possibility exists, however, that the individual will be "cured" and released. *See, e.g., id.* at 272-73. For this reason, one expert asserted that "the condition [is] a questionable basis for a finding of nonresponsibility." Perr, *supra* note 121, at 213.

164. *See* Orne, *supra* note 14, at 120 (discussing the possibility of faking MPD). Orne stated:

So striking are the behavioral differences between personalities that the assertion is often made that one would need to have the dramatic skills of Sarah Bernhardt or Sir Laurence Olivier, along with a detailed knowledge of psychiatry, to effectively simulate such radically different persons. . . . For these reasons, it has been argued that the successful malingering of a multiple personality disorder is unlikely, if not impossible.

*Id.* Yet Watkins, an expert on multiple personalities, believed that the Hillside Strangler was Multiple, and Orne disagreed. *See supra* note 158.

165. *See* State v. Darnall, 614 P.2d 120 (Or. Ct. App. 1980). The court noted that although it is possible for proof of mental disease to be so overwhelming that the trial court could find as a matter of law that the defendant was not responsible for his actions, usually the jury can choose whether or not to believe the experts and determine if the defendant has MPD. *Id.* at 123.

166. Although defendants plead not guilty by reason of insanity in roughly

The defendant who pleads not guilty by reason of insanity thus has even less incentive for malingering.

#### IV. PROPOSAL

Multiple personality disorder is a complex and confusing mental illness. Aside from raising a number of psychological problems and debates, the syndrome creates a philosophical quandary for the criminal justice system. To counter the problems raised by victims and defendants with MPD, this Note proposes the following model.

When a Multiple is the victim of a crime, for all legal purposes, the victim generally should not be treated differently from other victims. The victim with MPD is essentially in the same position as other victims. Although the stress of a trial and any surrounding publicity could aggravate the Multiple victim's condition, non-Multiple victims could also suffer severe emotional or physical difficulties resulting from the stress and publicity of trial. Victims with MPD, with the aid of those who advise them, must decide individually whether they are willing and able to endure the trauma of trial, just as any other victim must do.

The one special difficulty concerning victims with MPD occurs when the victim testifies. If the prosecution concludes that the victim should testify in court, then the Multiple victim must be treated somewhat differently than other victims. The judge must decide on an individual basis whether each of the testifying personalities is competent to testify. If the judge finds the personalities competent, each should be sworn in. The trier of fact then can weigh the credibility of evidence each personality gives. If alter personalities suddenly appear while the victim is testifying, the judge should allow the attorney, if necessary, to explain the situation to the alter personality.

With regard to other legal issues such as rape shield laws, the judge should decide on a case-by-case basis what appropriate protections should be afforded to the victim without jeopardizing the constitutional rights of the defendant. Again, Multiple victims should be treated exactly as other victims.

When a Multiple is the perpetrator of a crime, the law should treat the body as a whole, with each personality responsible for the actions of the other personalities.<sup>167</sup> Otherwise, the legal

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two percent of all cases, if a crime is particularly heinous, the jury is likely to find the defendant guilty despite the evidence of insanity. Caryl E. Boehnert, *Psychological and Demographic Factors Associated with Individuals Using the Insanity Defense*, 13 J. PSYCHIATRY & L. 9, 28 (1985).

<sup>167</sup> Using MPD as a tactic on this perverse playing field, which we

implications of recognizing each personality as a separate person and not recognizing collective responsibility would dictate that every Multiple defendant be acquitted.

To avoid such a scenario, when the defendant alleges that they suffer from MPD, the issue of sanity should not be raised until the conclusion of the trial. Indeed, for Multiple defendants, the plea of not guilty by reason of insanity should not be available if the basis of insanity is MPD. If the defendant is acquitted, then the illness is irrelevant. If, however, the defendant is convicted, a psychiatric evaluation is necessary to determine whether treatment would be helpful. If treatment has a chance of success, then the defendant should be detained in a prison hospital and receive treatment during the duration of the sentence. When the sentence expires, defendants can only be held against their will if that result is obtained during an involuntary civil commitment proceeding.<sup>168</sup>

The process described above would avoid battles of the experts and the problems such battles incur. It would bypass the current debate of whether to look to the sanity of the core personality or the alter personality in control at the time of the crime when a defendant pleads not guilty by reason of insanity. It would assure multiple defendants of treatment while simultaneously fulfilling society's interest in punishing the perpetrator of a crime. Finally, it would alleviate the courts duty to answer unanswerable philosophical questions about the heart of personhood that stem from the very condition of multiple personality disorder.

#### CONCLUSION

When society's rules are broken, society must punish the perpetrator to prevent anarchy. Collective responsibility means that the whole suffers for the sins of the parts, and that theoretically the group will, in the future, control the actions of the individual. In the case of multiple personality disorder, the many are treated as one.

*Sarah K. Fields\**

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call the legal system, may be good legal strategy, but it does not teach patients how to take ownership of their lives or responsibility for their actions. Therapists are misguided if they try to "help" their MPD patients by telling the judge that the patient wasn't responsible, on the grounds that an alter personality committed the crime.

Ross, *supra* note 4, at 74.

168. See Ross, *supra* note 4, at 73-76 (advocating elimination of the insanity defense).

