

## **Criminal barristers' opinions and perceptions of mental health expert witnesses**

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### **Abstract**

The purpose of this study was to evaluate criminal barristers' opinions and perceptions of clinical psychologists and psychiatrists as expert witnesses. A questionnaire was developed and posted to 148 criminal barristers; 62 (42%) were returned. As predicted, the respondents reported significantly more contact with psychiatrists than clinical psychologists, and had more faith in the expert evidence of the former. However, content analysis revealed they were sometimes unaware of when dual mental health expertise was beneficial in court. Most respondents were in favour of accredited training for expert witnesses. Clarity of language, firm conclusions, impartiality, and consistency were considered important factors for good practice. The findings emphasise the importance of accredited (quality assured) training for expert witnesses as well as training and/or guidelines for legal professionals regarding the instruction of expert witnesses. There is also a need for those in the psychological community to market their skills and expertise more effectively.

**Keywords:** *Criminal barristers, mental health, expert witnesses, testimony, court reports*

### **Introduction**

Since the 18th century, law has played an increasing role in the development of modern psychiatry. Growing public awareness of problems associated with mental disorder and their management has resulted in reforms in the legal system, the police, psychiatry, and the penal system (Forshaw & Rollin, 1990). Nowadays, within the legal framework, expertise

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may be called upon to assist judicial decisions through the commission of reports, conferences, and testimony (Bluglass, 1990; Gudjonsson & Haward, 1998). Mental health expertise informs many issues, including children's placement, risk assessment, eyewitness reliability, disputed confessions, fitness to plead and stand trial, sentencing, and mitigation (Gudjonsson, 1996a; Gudjonsson & Haward, 1998; O' Conner, Sales, & Shuman, 1996; Sigurdsson & Gudjonsson, 2004).

However, while forensic psychiatry has a long history, psychologists have been working in the courts in the UK only since comparatively recently (Haward, 1981). Historically, psychological evidence was admitted in court under the umbrella of medical evidence where the emphasis was on the presence of mental disorder (Fitzgerald, 1987). However, this changed in 1991 with the landmark ruling in the Court of Appeal case of *Engin Raphip* (R v. Silcott, Braithwaite, Raghup, 1991), when the criteria for the admissibility of psychological evidence in criminal cases involving disputed confessions were broadened to include abnormal personality traits, such as suggestibility and compliance (Gudjonsson, 2003a). This relaxation of admissibility rules for expert psychological evidence also seems to be happening in the evaluation of the reliability of witness testimony (Ormerod & Roberts, 2006). In either type of case, what is often essential is a clinical evaluation of the defendant or witness in order to identify relevant psychological vulnerabilities that can assist the trier of facts in determining the reliability of the individual's account (Gudjonsson & Gunn, 1982; Gudjonsson & Haward, 1998).

During the past 20 years there have been major changes for psychologists involved in the preparation of court reports.<sup>1</sup> Gudjonsson and Haward (1998) discuss these changes in detail. They include greatly increased demands for psychological court reports in a variety of areas, including post-traumatic stress disorder, the psychological effects of head injury, fitness to plead issues, and disputed confessions; more direct referrals from defence lawyers, police, and prosecution; greater independence of psychologists from their medical colleagues; and greater acceptance of psychological evidence by the courts. Indeed, psychological research and testimony have profoundly influenced the practice and ruling of the Court of Appeal for England and Wales and Northern Ireland (e.g., Gudjonsson, 2003a, 2003b, 2006; Heaton-Armstrong, 2005).

Take, for example, the case of Donald Pendleton: his appeal failed in 2000, but in 2001 the House of Lords quashed his conviction on the basis of Mr Pendleton's psychological vulnerabilities and uncertainties over his conviction (R v. Pendleton, 2001). In 1986 Donald Pendleton had been convicted of murder. The Criminal Cases Review Commission (CCRC) referred the case to the Court of Appeal on the basis of fresh psychological evidence from Professor Gudjonsson, indicating that at the time of his police interviews in 1985 Pendleton had been psychologically vulnerable to

the pressure placed on him by police (for details of the psychological evaluation and legal judgment see Gudjonsson, 2003a, 2006). Mr Michael Mansfield QC successfully argued in the House of Lords on behalf of Mr Pendleton that the Court of Appeal judges had taken upon themselves 'the task of assessing the fresh psychological evidence and so trespassing on the exclusive domain of the jury. The Court of Appeal was in effect undertaking the retrial of a case' (p. 18).

The Pendleton case has important implications for how expert psychological evidence should be treated by the Court of Appeal (Heaton-Armstrong, 2005), although one of the five lords, Lord Hobhouse, offered a dissenting opinion suggesting that the courts may have gone too far in allowing psychological evidence, because it has the potential of usurping the role of the jury as decision makers.

Previous research has investigated civil lawyers' perceptions of the contribution of expert witnesses (Bach & Gudjonsson, 1999; Krafska, Dunn, Johnson, & Miletich, 2002) and the perspectives of mental health psychology experts (Gudjonsson, 1996a, 1996b). The opinions of criminal barristers have not been reported. Criminal barristers in the UK frequently select and work with expert witnesses, yet no study to date has attempted to evaluate their views of expert evidence, in spite of the relatively high proportion of cases (20%) where experts are required to testify in criminal cases (Gudjonsson, 1996a). Research in this domain could provide feedback about the strengths and weaknesses of such evidence, enabling its quality and credibility to be maximised. This study aimed to investigate criminal barristers' opinions and perceptions of mental health expert witnesses via a questionnaire based on the aforementioned research and consultations with a variety of highly experienced relevant professionals. The focus in this paper is on psychiatrists and clinical psychologists, because these two professions most typically testify in relation to mental health issues and psychological vulnerabilities (Gudjonsson & Haward, 1998). However, it is important to note that academic, educational, and forensic psychologists do give evidence in court and their roles may on occasion overlap with that of clinical psychologists.

Since psychiatrists most commonly testify about an abnormality of mind (e.g., relating to fitness to plead, diminished responsibility in homicide cases, sentencing, and Mental Health Act disposal), it was hypothesised that criminal barristers would report greater contact with psychiatrists than clinical psychologists. It was also hypothesised that participants would hold more faith in the expert evidence of psychiatrists than that of clinical psychologists because psychiatrists are long-established as a source of forensic expertise in the courtroom. Anecdotal reports suggest that expert evidence is sometimes of poor quality (Bach & Gudjonsson, 1999; Gudjonsson, 1993), which suggests that criminal barristers would favour accredited training for expert witnesses.

## **Method**

### *Participants*

Participants were 148 criminal barristers randomly selected from the Holborn Law Society's Bar List (Hazel, 1999); 123 were male and 25 were female. In all, 62 questionnaires were returned (41.6%).

### *Measure*

The questionnaire, which was designed for this study, included five open-ended questions appropriate for qualitative analysis and 13 questions appropriate for quantitative analysis (a copy of the questionnaire can be obtained from the authors). The questionnaire was divided into four sections, each related to a different area of the expert witness process:

- report writing skills
- testifying in court
- training
- presentation and demeanour

The measure was based in part on Gudjonsson's (1996b) survey among British psychologists, on Bach and Gudjonsson's (1999) research among civil lawyers, and issues raised by Gudjonsson and Haward (1998) as being important in the preparation and presentation of expert testimony.

The first version of the questionnaire was piloted on five barristers, following which two questions were removed. The questionnaire was then posted to the barristers.

*Report writing skills.* This section investigated respondents' experience of expert witness reports. Respondents were additionally asked to describe factors that made expert witness reports either good or bad.

*Testifying in court.* This section investigated respondents' experience of expert witnesses testifying in court. They were asked to provide a qualitative account of the difference between clinical psychological and psychiatric expert evidence; to describe factors that made good and bad expert testimony; to describe their worst experience with an expert witness; and to describe the best technique they had found to discredit an expert witness.

This section also provided participants with five vignettes (see Appendix) that dealt with legal issues, relating to:

- diminished responsibility
- fitness to plead
- witness reliability

- confession reliability
- mitigation

In the first two scenarios, respondents were asked if they would instruct a clinical psychologist in addition to a psychiatrist. In the remaining three scenarios, respondents were required to select either a clinical psychologist or a psychiatrist as the most appropriate expert witness.

A further question was a categorical measure regarding the frequency with which expert witness evidence was overemphasised in court (0 = never, 1 = rarely, 2 = sometimes, and 3 = often). An 8cm line scale (0 = not at all, 8 = a great deal) was used to measure the amount of faith that respondents held in the expert evidence of clinical psychologists and psychiatrists.

*Training.* The questionnaire investigated whether respondents believed accreditation would be an important factor in selecting expert witnesses, and whether respondents would prefer court-appointed expert witnesses to those appointed by each side.

*Presentation and demeanour.* Five questions were posed regarding the importance of expert witness presentation and demeanour (each using an 8cm line scale ranging from 0 = not at all important to 8 = extremely important).

## Results

### *Demographics*

Of the respondents, 58 (93.5%) were male and four were female (mean age 51, range 29–69). Respondents had been practicing law for an average of 28 years (range 7–42 years), with 35% ( $n=22$ ) specialising in defence, 11% ( $n=7$ ) specialising in prosecution, and 53% ( $n=33$ ) practicing both. Most of the respondents worked in the South-Eastern circuit ( $n=42$ ; 68%); 11% ( $n=7$ ) were in the North-Eastern circuit; 8% ( $n=5$ ) in the Northern circuit; 10% ( $n=6$ ) in the Western circuit; and 3% ( $n=2$ ) in the Midlands circuit. Respondents had worked with an average of three or four clinical psychologist expert witnesses in the preceding three years range (0–25) and seven psychiatrists (range 0–30). Three respondents reported a combined estimate for working with clinical psychologists and psychiatrists because they could not remember the number of each.

As hypothesised, criminal barristers indicated that in the preceding three years they had had twice as much contact with psychiatrists (6.9 psychiatrists vs 3.5 clinical psychologists; Wilcoxon signed-ranks test,  $z = 3.38$ ;  $p < .05$ , one-tailed).

*Report writing skills*

Table I shows the barristers' ratings of factors considered important to the quality of expert witness reports. Almost half (42%) of the respondents believed that the inclusion of firm justified conclusions was the most important factor. For example: 'Reports should possess helpful conclusions with a reliable basis for the findings.'

The second most important factor was the highlighting of relevant issues (27%) and the third was clarity of language (11%). One participant commented: 'Sometimes a report can be so full of mumbo-jumbo that you need to ask for a supplementary report to explain the first one.'

*Testifying in court*

*Differences between clinical psychology and psychiatry.* Table II presents the barristers' opinions regarding the primary difference between clinical psychological and psychiatric expert witness evidence.

Table I. Important factors that make a good expert witness report ( $n = 62$ ).

Important factors	Frequency and percentage of barristers' opinions	
	<i>n</i>	%
Firm conclusions	26	42
Highlighting relevant issues	17	27
Clarity of language	7	11
Good structure	5	8
Experience/credibility	4	7
Impartiality	3	5

Table II. Primary difference perceived between clinical psychological and psychiatric testimony ( $n = 58$ ).

Primary differences	Frequency and percentage of barristers' opinions	
	<i>n</i>	%
Mental illness vs personality	29	46
Psychiatrists are more useful	14	22
Medical qualifications	5	8
Clinical psychologists are more useful	5	8
Unsure	4	6
No difference	1	2

It was stated by 46% of the sample ( $n = 29$ ) that the primary distinction between clinical psychological and psychiatric evidence is that the former deals with personality factors, and the latter with mental illness. For example, one respondent stated: 'Psychiatrists are for mental illness/fitness to plead/diminished responsibility etc. Psychologists for testing mental faculties/I.Q./personality disorders/and social skills.'

A greater proportion perceived psychiatric expertise to be more useful than clinical psychological (22%) than vice versa (8%). This was attributed to factors such as medical qualifications, authority, and poor estimation of tools utilised by clinical psychologists (e.g., psychometric tests). One respondent commented: 'Judges and juries tend to give more weight to the opinions of a medical doctor. Psychological evidence appears to be vaguer even though they use psychometric tests.'

Four respondents were unsure of the difference between psychiatric and clinical psychological expert witness evidence, which may reflect limited experience of working with expert witnesses.

*What makes an expert good at giving evidence?* Table III shows the barristers' assessments of the factors considered necessary for good expert witness testimony.

One third (32%) reported that clarity of language was the most important aspect of giving evidence in court: 'The ability to express things in a way that the jury and judge can understand'; 'Lack of mumbo-jumbo, jury friendly'; 'They don't always consider the jury's understanding of technical terms and thus lose their attention.'

Just under one third (27%) ranked the ability to provide justified firm conclusions as the most important factor: 'A clear prognosis with justified recommendations for the future'; 'Proper conclusions, not just padding.'

A professional's presentation and demeanour was thought to be the third most important factor when giving evidence in court, and the ability to remain impartial was fourth. For example: 'The evidence must strike the

Table III. Important factors in giving good expert witness evidence ( $n = 62$ ).

Important factors	Frequency and percentage of barristers' opinions	
	<i>n</i>	%
Clarity of language	20	32
Firm conclusions	17	27
Professional demeanour/presentation	10	16
Impartiality	7	11
Highlighting/understanding relevant issues	4	7
Experience/credibility	4	7

necessary level of balance, taking into account the prosecution's stance where possible.' Another respondent wrote: 'Clearly being independent, not for one side or the other.'

*What was their worst experience with an expert witness?* Almost half of the respondents (45%) reported that their worst experience involved an expert witness unexpectedly reneging on their opinion. One respondent commented on an occasion when:

A forensic expert explained that having read the papers he was confident that my client could not have been the perpetrator of the crime. When it came to his report his views were the opposite of those he had assured me. He explained his change of mind by saying he had a young daughter, and when he saw these young girls (daughters of the alleged rapist) giving evidence in court, he thought of his own daughter.

A high percentage of respondents (27%) stated that their worst experience with an expert witness involved expert biases or errors in judgement. One respondent recalled: 'A consultant psychiatrist misdiagnosed that someone was fit to plead when they were not and never would be due to organic mental illness.'

Ten (16%) respondents' worst experiences related to experts having inadequate qualifications (e.g., lack of expertise, limited experience in court). One respondent recalled: 'I called a supposed expert in false memory who turned out to be unqualified in any sense.'

Only two respondents stated that they had never had a bad experience with an expert witness.

*Who to instruct?* Table IV shows the barrister responses regarding whether or not they would instruct a clinical psychologist in addition to a psychiatrist for the first two scenarios (fitness to plead and diminished

Table IV. Frequency of instruction of clinical psychologists and psychiatrists for specific cases.

Case scenario	Yes		No	
	<i>n</i>	%	<i>n</i>	%
Would you instruct a clinical psychologist in addition to a psychiatrist?				
Fitness to plead ( <i>n</i> = 60)	53	85	7	11
Diminished responsibility ( <i>n</i> = 61)	14	22	47	75
Would you instruct a clinical psychologist rather than a psychiatrist?				
Witness reliability ( <i>n</i> = 57)	19	30	38	61
Confession reliability ( <i>n</i> = 59)	45	72	14	22
Mitigation ( <i>n</i> = 60)	15	24	45	72



responsibility), and whether they would instruct a clinical psychologist or a psychiatrist for the remaining three (witness reliability, confession reliability, and mitigation).

The majority of respondents (85%) reported that they would instruct a clinical psychologist in addition to a psychiatrist in the scenario concerning a client's fitness to plead (binomial test:  $p < .05$ ). By contrast, considerably fewer respondents (22%) stated that they would instruct a clinical psychologist in addition to a psychiatrist in the diminished responsibility scenario (binomial test:  $p < .05$ ).

More respondents stated that they would instruct a psychiatrist than a psychologist for a scenario about witness reliability (only 30% were in favour of a psychologist; binomial test:  $p < .05$ ) and mitigation (only 24% were in favour of a psychologist; binomial test:  $p < .05$ ). It was only a case regarding confession reliability that attracted a greater frequency of instruction of psychologists, suggesting that this was considered to be strongly the domain of clinical psychology experience (72%; binomial test:  $p < .05$ ).

*Techniques for discrediting an expert witness.* Respondents were asked to describe the most useful techniques they have adopted to discredit an expert witness. Responses revealed that 42% of participants believed that the best technique was pointing out weaknesses and omissions in their line of argument. For example: 'Highlighting the errors in the factual basis upon which the expert is working.'

Eight barristers (13%) said that highlighting contradictions between the expert's opinion and other sources (e.g., textbooks, an opposing expert) was effective, and 10% favoured inferences of bias, such as: 'Putting a respected publication to him which amounts to different conclusions or bringing in an opposing expert who contradicts his point of view.'

Nine respondents (14.5%) stated that the most effective discrediting technique was to undermine the witness's expertise, while six (10%) favoured inferences of bias.

### *Training*

*Accredited training.* As hypothesised, the majority of respondents (73%) stated that accredited training in giving evidence in court would be a factor in their decision to instruct (one-tailed binomial test:  $p < .05$ ).

*Court-appointed experts.* Forty-five respondents (73%) did not favour court-appointed expert witnesses for criminal cases, compared to 15 participants (24%) who did (binomial test:  $p < .05$ ), suggesting that barristers were generally satisfied with the existing procedures for appointing expert witnesses in criminal proceedings.

*Presentation and demeanour*

Table V shows that the most important aspect of an expert's presentation and demeanour was considered to be their ability to communicate in simple language. How an expert witness presented themselves in the witness box, in terms of how they dressed and their posture, was considered to be of moderate importance. Their compliance with the party mistrusting them and gender were comparatively less important. The mean scores and standard deviations on an 8cm line scale (1 = not at all important, 8 = very important) are presented.

**Discussion**

The current study investigated criminal barristers' opinions and perceptions of mental health expertise. The sample was slightly biased in that it contained a lower proportion of female barristers than there are in practice (17% in the current sample vs 30% in practice; The General Council of the Bar, 2005). However, the results were in line with the hypotheses: respondents had significantly more contact with psychiatrists than clinical psychologists, significantly more faith in the expert evidence of the former than the latter, and were in favour of accredited training for expert witnesses who testify.

The finding of greater contact with psychiatrists than clinical psychologists probably reflects the legal requirement for psychiatrists to testify on diminished responsibility and fitness to plead, and that psychologists are usually only called in these circumstances to corroborate psychiatric opinion (Gudjonsson & Haward, 1998). In relation to adverse inferences being drawn from the failure of defendants to give evidence in court (The Criminal Justice and Public Order Act 1994), which often requires a psychological (functional) assessment (Gudjonsson, 2003a), this role seems confounded by the failure of the courts to differentiate it from the fitness to

Table V. Descriptive statistics for opinions of expert witness presentation and demeanour ( $n = 61$ ).

Presentation/demeanour type	Importance of presentation and demeanour	
	Mean	<i>SD</i>
Simple communication	7.65	0.52
Dress code	4.53	2.00
Standing in witness box	3.14	2.71
Compliance	1.58	2.36
Gender	0.56	0.77

plead criteria (Gray, O'Connor, Williams, Short, & MacCulloch, 2001; Gudjonsson & Young, 2006).

The majority of respondents stated that the primary difference between clinical psychologists and psychiatrists is that the former are concerned with personality factors (e.g., I.Q and personality disorders) and the latter exclusively with mental illness (e.g., schizophrenia). While this observation is partially accurate, clinical psychology and psychiatry are not mutually exclusive and in some cases should be called together to offer a multi-disciplinary approach (Gudjonsson & Haward, 1998) – yet participants' responses to a series of vignettes suggested that they were sometimes unaware when dual expertise may be beneficial. In the scenario regarding diminished responsibility, the majority of respondents stated that they would only instruct a psychiatrist. However, the scenario describes a man with a history of personality disorder, suggesting that the court may have also benefited from a psychological perspective. It is recommended that guidelines should be produced for members of the legal profession, outlining instances when dual mental health expertise is beneficial.

Respondents' qualitative accounts of their worst experiences with expert witnesses suggested that mental health expert evidence is sometimes poor in quality, regardless of the profession of the expert (Bach & Gudjonsson, 1999). In the present study, the most common complaints about expert evidence involved expert witnesses unexpectedly renege on their opinions. It is essential that an expert witness remains consistent in his/her approach, since there is potential to confuse the judge and jury. In order to address this problem, it is necessary to consider factors that may lead expert witnesses to renege on their opinions. However, a cautionary note is exercised here, as experts need to take account of new evidence that emerges during the course of the trial. Continuing to defend an unreasonable position would prove ineffective and unethical.

It has been asserted that intimidation from the opposing side may cause an expert to alter the content of testimony (Brodsky, 1991). Intrinsic to the adversarial system is that each side puts a case to the court and challenges the other (Burrows & Posner, 1994). Thus, expert witnesses may become overwhelmed by the pressure of cross-examination and, as a result, conform to the opposition's stance, especially if they have limited experience and feel very anxious. One respondent stated: 'A defence psychiatrist was so badly affected by anxiety at the prospect of giving evidence that he broke down in the witness box and had to be helped from the court (yes really!).'

A second problem with the adversarial system is that it lends itself to bias (Loftus, 1986). If England and Wales were to revert to court appointing procedures, then expert witnesses would be perceived as less partisan, allowing many of the problems associated with biased evidence to dissipate

(Burrows & Posner, 1994). To elaborate: 10% of the respondents in the study reported that the best technique for discrediting an expert witness was to infer bias. If court-appointed expert witnesses were to be used, inferences of partiality would occur less frequently, thus increasing the perceived integrity of expert witnesses and lessening their subjective stress (Gudjonsson, 1996a). In order to test this proposition, the present study should be replicated in countries that adhere to court appointing frameworks (e.g., France and Germany; Burrows & Posner, 1994) and in civil trials in England. Despite the aforementioned advantages of court appointing procedures, the present study indicated that the majority of criminal barristers were generally satisfied with the current appointing framework. This may be because barristers would inevitably relinquish a degree of control in the event of courts appointing experts.

While it is apparent that barristers often utilise opposition bias to their advantage, they appear to be less keen on instructing biased expert witnesses. Respondents' qualitative accounts of good expert reports and testimony indicated that it is important that experts remain impartial. However, in spite of this finding, lawyers do sometimes place experts under a great deal of pressure to alter their reports to make them more favourable to the side that instructs them, and on occasions psychologists unwisely go along with this request (Gudjonsson, 1996b).

The overriding responsibility of the expert is to the court and he or she must not give a biased opinion (House of Commons and Technology Committee, 2005). However, an anonymous survey of 133 expert witnesses conducted in November 2002 by the firm Bond Solon showed that 58% did not think that the lawyers instructing them wanted them to be 'truly independent' (House of Commons and Technology Committee, 2005).

All relevant findings from the psychological assessment should be included in the report, regardless of whether or not they are favourable to the side instructing the expert (Gudjonsson, 1994). Failure to do this may mislead the court and result in a miscarriage of justice, and undermine the integrity of the expert and his or her profession as a whole (Gudjonsson & Haward, 1998). Thus it is important that expert witnesses are informed of the importance of remaining balanced and impartial in their approach. Such information would serve to improve the quality and perceived credibility of mental health expert evidence in the courtroom. In addition, it is important that expert witnesses, whether psychiatrists or psychologists, do not give an opinion that goes outside or beyond their role.

Qualitative accounts of factors that contribute to good and bad expert testimony and reports revealed that clarity of language and the inclusion of firm and justified conclusions are considered essential qualities. Many of the accounts stated that this was a necessity because the judge and jury need to

understand the content in order to reach informed decisions. Participants' accounts of their worst experiences with expert witnesses indicated that all too often expert witnesses fail to provide proper diagnoses, treatment plans, and recommendations. This leads to ambiguity and thus hinders the jury and judge in their attempts to reach informed decisions. This emphasises the conclusions of Gudjonsson (1993) that the defining features of poor evidence are failure to inform and potential for misleading the court.

Why should the respondents have more faith in the expert evidence of psychiatrists than in that of clinical psychologists? There are a number of possibilities. First, psychiatry is principally concerned with the diagnosis and treatment of mental disorders, whereas psychology focuses more on normal behaviour and functional deficits (British Psychological Society, 1998). Second, until recently the 1980s clinical psychologists generally did not work independently of medical colleagues and were used to support medical conclusions without having to testify (Gudjonsson & Haward, 1998). Third, clinical psychologists are still fighting hard to gain acceptance by the courts as independent experts (Gudjonsson, 2003b). Fourth, psychiatrists have greater experience of the courtroom than psychologists, and this may have an impact on their confidence in giving evidence. Fifth, there is great diversity and complexity concerning psychological evidence (O'Donohue, Beitz, & Levensky, 2004). Sixth, lawyers often have little understanding of psychometric tests and this can result in test findings being ridiculed (Tunstall, Gudjonsson, Eysenck, & Haward, 1982).

Indeed, it is likely that many members of the legal profession do not fully recognise the expertise of clinical psychology as a profession, or recognise that psychologists' long and rigorous training involves the application of scientific principles, procedures, and methodology that would be helpful in a variety of legal issues in both civil and criminal proceedings. However, since the landmark judgment in the case of *Engin Raghip* in 1991, psychometric testing has had a major impact on the rulings in a number of high profile murder cases where convictions have been overturned, including in the House of Lords (Gudjonsson, 2003c). These judgments should serve to debunk the view that medical qualifications are a prerequisite for fulfilling the role of a mental health expert witness (e.g., Hill & Griffiths, 1982). However, Heaton-Armstrong (2005) reminds us that, in spite of these unique achievements and the increased credibility of expert psychological evidence: 'There is, nonetheless, a long way to go – certainly in foreign jurisdictions and, arguably, in the formulation of the content of judicial and legal practitioners' training courses at home' (p. 672).

Respondents were generally in favour of accredited training for mental health experts in report writing and giving evidence; however, only a preference for the latter was found to be significant. Perhaps report

writing, which is intrinsic to the work of both disciplines and should be completed at a level of clinical competence, is perceived to be executed proficiently. Providing evidence in court is a relatively uncommon practice for both professions and may be conducted less than efficiently due to anxiety and lack of experience (Gudjonsson, 1996b). These results reinforce Gudjonsson's (1984) assertion that training courses are needed for expert witnesses, with particular emphasis on testifying. Such courses are now readily available and the emphasis is on accredited (quality assured) courses.<sup>2</sup>

Presentation appears to be important, especially learning to communicate in a simple and coherent way, dressing appropriately for court, and standing in the witness box. Furthermore, expert witnesses need to learn strategies for coping with cross-examination. Accredited qualification may increase barristers' faith in mental health expertise (particularly clinical psychological), and improve experts' confidence and capabilities when testifying.

This study has addressed many important questions pertaining to mental health expertise and indicates a clear need for expert witnesses to participate in accredited training, and for training and/or guidelines for legal professionals regarding the instruction of expert witnesses. For psychologists, whatever their speciality (e.g., clinical, educational, forensic), there should be training in relation to improved courtroom skills. In addition, the psychological community needs to market its skills and expertise more effectively.

For legal professionals, training and/or guidelines should include information about the underlying scientific basis of psychology, its potential contribution to the criminal justice system, and when complementary dual mental health expertise may be beneficial. It is also clear that appropriate courtroom training may help to overcome many of the problems encountered by barristers instructing expert witnesses, and improve the quality of evidence and the confidence of the court in expert evidence. This may serve to increase the skills, confidence, and credibility of expert witnesses.

The emphasis in the present paper has been on criminal cases. However, there have been fundamental changes in the use of expert witnesses in civil cases following the Woolf reforms (British Psychological Society, 1999), and similar changes are taking place in criminal cases (House of Commons and Technology Committee, 2005). In addition, the Court of Appeal has recently laid down detailed guidance for expert witnesses in the cases of *R v. Harris* [2006] and *R v. Bowman* [2006]. These emphasise the necessity for expert reports to be prepared with the greatest care. Expert witnesses need to be fully familiar with these important legal reforms and guidelines.

## Notes

- 1 There are many different types of psychologist (e.g., clinical, educational, occupational, forensic, academic/researcher), but most psychologists who prepare court reports are clinically qualified and testify with regard to a specific evaluation of a client (Gudjonsson & Haward, 1998).
- 2 See <http://www.legalservices.gov.uk>

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## **Appendix**

### *Vignette 1: Diminished responsibility*

A solicitor has been to visit a client in prison and has had problems obtaining instructions; he suspects that the client has a low IQ. The client seems to have difficulty expressing himself and understanding the concepts put to him. Would you instruct a clinical psychologist in addition to a psychiatrist?

### *Vignette 2: Fitness to plead*

John is a young man who got into a fight in a pub and stabbed someone, resulting in their death. He has a history of depression and personality disorder and was high on drugs at the time of the incident. Would you instruct a clinical psychologist in addition to a psychiatrist?

### *Vignette 3: Witness reliability*

Mr Smith was a witness in an armed robbery. He was interviewed by police and gave a description of the assailant. He has a long history of mental illness, and as a result there are concerns about his account of the incident. Whom would you instruct (a clinical psychologist or a psychiatrist)?

### *Vignette 4: Confession reliability*

Mr Brown has been arrested on suspicion of murder because he was found in the vicinity of the crime. Initially he denied any involvement in the offence, but after two days of lengthy questioning by police he confessed to the crime. He was however unable to provide detailed special knowledge. There was no solicitor or appropriate adult present at the time of interview. Whom would you instruct (a clinical psychologist or a psychiatrist)?

### *Vignette 5: Mitigation*

Mr Thomas has been convicted on several counts of indecent assault. An expert report has been requested prior to sentencing because the court wishes to determine the most appropriate sentencing option. Whom would you instruct (a clinical psychologist or a psychiatrist)?