

Psychiatric Testimony—Who Can Give it and When?

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In November 1980, two men, Mackenny and Pinfold, were convicted at the Old Bailey on several counts of murder which were of a particularly callous and brutal nature. They were sentenced to life imprisonment. In the preceding December (1979) another man, Childs, had pleaded guilty to all the murders with which Mackenny and Pinfold had been charged, and which he alleged had been carried out with them together. He turned Queen's evidence, and it was his testimony that was crucial and central to the Prosecution's case against Mackenny and Pinfold.

None of the three men in fact pleaded diminished responsibility; however, in accordance with usual practice, in case there should be some issue involving responsibility, medical reports were drawn up on Childs for his appearance at the Old Bailey. Understandably, later on when Mackenny and Pinfold came up for trial they were anxious to attack so far as possible, Childs' credibility and reliability, and sought to see the medical reports in the hope that there might be some helpful material contained in them. Further, with the hope of discrediting Childs' evidence, their defence wished him to be examined by a defence psychiatrist. May J. ordered that facilities should be available if Childs consented, but Childs refused further examination.

Later, during Mackenny's case, defence counsel sought to call a psychologist, Mr B. Irving, on the basis that he was an expert whose evidence was admissible and beyond ordinary human experience. Mr Irving had prepared a report for the defence after watching Childs give evidence and after studying the trial papers. The judge refused this application, and it was his refusal that was the main ground of appeal. The Court of Appeal dismissed the appeal, and laid down useful guidelines in relation to the admissibility of psychiatric evidence.

Availability of medical reports

The judge had ruled that the defence should not have the reports because they contained no express material that Childs was suffering from any mental disorder, defect or abnormality of the mind. This was found to be wholly correct by the Court of Appeal. Childs was not mentally abnormal within the 1959 Mental Health Act, or indeed at all. The reports stated that Childs' character was that of a dangerous, ruthless and callous professional criminal and provided absolutely no material to support the defence case that Childs was suffering from a mental illness, one of whose characteristics was a tendency to fabrication.

Rules governing psychiatric evidence

The Court of Appeal held that the trial judge had been right to refuse the application to call Mr Irving. It was estab-

lished law that *medical* evidence was admissible to show that a witness suffered from some disease or abnormality of the mind that affected the reliability of his evidence. But Mr Irving was not a doctor and had no medical qualifications. He had, *inter alia*, a degree in social psychology from the University of California (a two-year course), and in 1969 he had been appointed to the permanent research staff at the Tavistock Institute of Human Relations, and for the past five years had been a Director of Legal Studies and Projects. He had provided evidence to the Devlin Committee on Identification Evidence, the ability of the man in the street to give reliable identification evidence. That had nothing to do with mental disease or abnormality of the mind.

At the trial his report had been referred to as 'this medical evidence' and counsel for the Crown referred to Mr Irving as 'the doctor'. The evidence was submitted on his behalf that he was qualified to diagnose mental illness, and that his training as a psychologist enabled him to do so. The Court of Appeal did not agree: 'No doubt his training as a psychologist gave him some insight into the medical science of psychiatry. However, not being a medical man, he had of course no experience of direct personal diagnosis. He was thus not qualified to act as a psychiatrist.' Mr Irving's evidence was not medical and was not admissible. In fact, his evidence was based essentially on 'an extensive examination of the literature of psychopathy', which he related to Childs' behaviour as observed by him when giving evidence. In any case, the mere use of the label 'psychopath' in the context in which it was used in Mr Irving's report did not appear to be asserting any specific disease or defect or abnormality of the mind, and certainly not anything of the kind referred to in *Toohy v. The Metropolitan Police Commissioner* (1965) Cr App. R.148, in which the general principles were stated by Lord Pearce. Lord Pearce said (p. 162): 'But when a witness through physical (in which I include mental) disease or abnormality is not capable of giving a true or reliable account to the jury, it must surely be allowable for medical science to reveal this hidden fact to them . . . So, too, must it be allowable to call medical evidence of mental illness which makes a witness incapable of giving reliable evidence, whether through the existence of delusions or otherwise.'

If the witness (Childs) was capable of giving reliable evidence it was for the *jury*, with all the warnings from counsel and the Court which the law required, to decide whether or not that witness was giving reliable evidence. That situation was a very different one from that enunciated by Lord Pearce. The Court of Appeal would support the trial judge's view that if a witness was suffering from a mental disability it might, in a proper case, well be permissible to call psychiatric evidence. It was prepared to accept that the

mental illness need not be such as to make the witness totally incapable of giving accurate evidence, but it must substantially affect the witness's capacity to give reliable evidence.

Childs, on his own admission, was a vicious and ruthless murderer. He was in law an accomplice, and Mr Irving's opinion that his 'personality characteristics' were such as to 'cast some doubt on his reliability as a witness' and to make his demeanour in the witness box an unlikely yardstick for his truthfulness was but a statement of the obvious. The necessity for the jury to exercise extreme caution in their consideration of his evidence was emphasized not only by defence counsel, but also by the Prosecution.

The jury had had ample warnings to assist them to assess the position without Mr Irving's help. Had he been allowed to give evidence on the lines of his report, he would have been usurping the function of the court and of the jury. The Courts should guard against the unnecessary proliferation of expert witnesses, and the exploration of irrelevant and collateral issues. The appeals were dismissed.

In recent years, there is a tendency to bring in a whole constellation of expert witnesses where there is some whisper of abnormality. This adds greatly to the expense and length

of a trial and rarely adds to its clarity. We must be very careful to leave the trying of facts to the jury in criminal cases and to the judge in civil ones, or we will undermine one of our greatest liberties and traditions. I do not, however, approve of trial by jury in all criminal cases; where complex fraud is alleged, a trial by assessors (a solicitor and accountant who could sit with a judge alone) would be much more satisfactory in my view, and a great deal cheaper, since counsel would waste far less time trying to impress them with rhetoric and explaining the facts. In just such a case, R v. Bouzaglo and others, no less than six psychiatrists were called, because one of the defendants, Bouzaglo, said he had a low IQ and was incapable of forming the intention to defraud, and had not appreciated that he was involved or carrying on a fraud. The psychiatrists were to prove or disprove this claim and to say whether Bouzaglo could have faked the tests he was given to assess his intelligence.

In my opinion, such a trend, if it is a trend, is most undesirable. The jury are there, with the help of the judge, to make up their own minds as to the capability and intelligence of the witness, and a string of psychiatrists expressing conflicting views is unlikely to be of great assistance to them.

Teaching Dynamic Psychotherapy

Report of a conference organized by the AUPP and held at University College, Oxford 17-19 March 1982

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Until recently the teaching of dynamic psychotherapy received little constructive attention. Training was limited, like the therapy itself, to a select few whose motivation propelled them through arduous, expensive courses in the analytic institutes or the few provincial diploma programmes. Most psychiatrists and clinical psychologists qualified without exposure to or formal instruction in the dynamic psychotherapies.

The situation is changing. There are now more specialist psychotherapy training posts in the NHS, the number of consultant posts in psychotherapy has increased, and experience in dynamic psychotherapy has been recommended by the College for all trainees in psychiatry. Nevertheless, enormous problems remain. The organization by the Association of University Teachers of Psychiatry in conjunction with the Oxford University Department of Psychiatry of a conference on the teaching of dynamic psychotherapy was therefore timely. More than one hundred psychiatrists and psychologists attended, from all parts of the United Kingdom and other European countries.

The driving rain which hailed our arrival at University

College seemed to foretell the formidable tasks facing the conference. Could we, the committed, agree on realistic goals and effective methods for psychotherapy training which would convince even our more sceptical colleagues? Did we have the tools and resources with which to train both those eager to learn, and those whose psychotherapy experience could become merely a resisted requirement of a general training in psychiatry or clinical psychology? Fortunately another aspect of external reality, the traditions of learning and enlightenment imparted by our historical setting, permeated the conference. A tightly organized programme of plenary and small-group sessions stimulated an informed exchange of experience and ideas.

The proceedings were initiated by HEINZ WOLFF (London), whose succinct overview served both to set down themes which were repeated and developed throughout the following two days, and to illustrate *in vivo* how the essential theoretical principles of dynamic psychotherapy could be taught lucidly in didactic fashion. In recognizing the synonymy of overview and supervision, he emphasized the central importance of the supervisory experience. The role of