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KNOWLEDGE PSYCHOLOGISTS SHOULD POSSESS WHEN SERVING AS EXPERT WITNESSES IN COURT

Khushboo Kumari
M.Phil., Roll No.: 150570 Session-2015-16
Department of Psychology, B.R.A. Bihar University, Muzaffarpur, India
E-mail: khushbookumari30630@gmail.com

ABSTRACT

Legal systems have developed a variety of procedural mechanisms (such as expert codes of conduct, concurrent evidence, and court-appointed experts) as a response to the threat posed by partisan expert witnesses. These mechanisms aim to help keep experts under control and maintain public trust in the judicial system. These approaches have generated a significant amount of controversy in academic and professional circles, and their adoption by courts has been inconsistent. Despite this, nearly none of the points brought forth in this conversation have been supported by actual study.

Keyword: Codes of Conduct, Concurrent Evidence, Court-Appointed Experts.

INTRODUCTION

In contrast to this kind of experience in the legal field, a number of other scientific fields are actively adopting procedural improvements. These reforms are being rigorously examined, and they depend on a substantial amount of research from the field of psychology.

This emerging field of meta scientific and psychological research offers a fresh viewpoint on the need for procedural change and hints that it may be able to significantly contribute to the oversight of expert witnesses. In addition to this, it offers suggestions as to how processes

should be planned and carried out. In this paper, we investigate that link, and in doing so, we investigate the potential and constraints of the expert witness technique.

In the field of law, procedural reform that is focused towards expert partisanship has proven contentious. While it has garnered support from professionals and academics, more skeptical and critical voices have also been heard commentary.

In particular, the critics have pointed out that the emphasis placed on the partisanship of individual experts promotes a limited understanding of the issues that currently exist with expert evidence. Furthermore, they have pointed out that the procedures used by experts were developed without the benefit of empirical testing and may have unintended consequences.

In addition, when it comes to forensic science in particular, partisanship may be a worry that is less serious than the reality that many procedures have not been proved to truly function.

Our goal is to further this conversation by drawing attention to a developing area of meta scientific research (that is, the scientific study of science itself) that investigates similar procedural change in the scientific community. These new approaches, which have their roots in the psychology study of ethical behavior, are a response to a rising concern from a variety of areas over the inability of independent researchers to duplicate a significant portion of the studies that have been published. 10 Modifications to the processes that scientists normally use to get their results examined by others and published are one kind of change that falls under this category. Importantly, these changes have been subjected to empirical testing, which demonstrates that they frequently work, and they have been approved by renowned scientific organizations, which may boost the ethical and psychological power they possess.

As we will go through in the next section, these takeaways from metascience

Contribute to the development of a road map for procedural change in the courts. The most recent findings in metascience may be of particular use to professional standards of behaviour, in particular.

Because we place such an emphasis on codes of conduct – a procedural change that applies to both civil and criminal proceedings in New South Wales – we are required to perform an extremely comprehensive study. Having said that, we are aware that the policy issues and realities involved in criminal and civil litigation are distinct from one another (for example, the current focus placed on efficiency in civil litigation).

Khusboo Kumari*, *Department of Psychology, B.R.A. Bihar University, Muzaffarpur, India.*
E-mail: khushbookumari30630@gmail.com

In regard to the latter, criminally accused parties usually lack the financial resources necessary to get their own expert witnesses, and as a result, they are forced to depend on the expert that is provided by the Crown. Therefore, it is possible that rigorous expert process is particularly relevant in the context of criminal proceedings. In point of fact, we are going to center our legal study on criminal instances. 13 Any implementation of our ideas need to keep in mind the substantial policy divide that exists between civil and criminal proceedings.

In the following section (II), we will provide a brief overview of some of the most significant procedural reforms that have been implemented to manage the presentation, form, and content of expert evidence and expert reports. These reforms have been put in place in order to better manage the presentation of expert evidence and expert reports. In Part III, new research in metascience and behavioural ethics is presented. Behavioural ethics is the psychology study of the environmental elements that impact ethical behavior. This research establishes a procedural reform movement in the scientific community. Several scientific subfields are now in the process of enthusiastically embracing these changes, which we are currently discussing. After that, the debate moves on to how the discoveries from metascience and behavioral ethics may be used to enhance the expert evidence method, placing it on a more solid (meta)scientific footing. Part IV starts this topic. In Part V, we come to a conclusion by discussing certain limits that are to be anticipated even from the expert procedural changes that are scientifically founded the most.

The design and implementation of procedural rules and mechanisms for expert witnesses need to be situated within the larger context of the admissibility rules and more conventional trial safeguards that also seek to regulate expert evidence. This is because both sets of rules and safeguards are attempting to regulate expert evidence. In most cases, admissibility regimes—regardless of whether they are stringent or permissive—have neither been developed nor are they intended to clearly address the issue of expert prejudice. In addition, the majority of the time, the courts in Australia do not insist that the reliability of expert testimony be shown, and adversarial protections like cross-examination are not able to fully fill the void that this absence creates. This hints that there is a definite function for expert process – if rigorously introduced and enforced – in regulating expert partisanship, and further, in helping to address larger problems pertaining to trustworthiness and factual rectitude. If this is the case, then there is a clear purpose for expert procedure.

Khusboo Kumari*, *Department of Psychology, B.R.A. Bihar University, Muzaffarpur, India.*
E-mail: khushbookumari30630@gmail.com

At this time, the rules of admissibility have a very little impact on the process of determining whether or not to admit opinion evidence from witnesses who have been labeled as "experts."

14 The exception to the rule that opinions cannot be used as evidence is found in the Uniform Evidence Law (also known as the "UEL"). This exception stipulates that the expert must have "specialized knowledge" that has been acquired through "training, study, or experience," and that the opinion must be founded on this knowledge. 15 Nevertheless, although some decisions have disregarded the testimony of an expert on the grounds that the expert had not shown a connection between their opinion and their "specialized knowledge," these decisions have not addressed, on a deeper level, the question of whether or not an expert should be allowed to testify in the first place.

concerns about the dependability of professional advice. 16 Instead, the courts in Australia have avoided reading into section 79 a need that it be demonstrated that expert opinion is credible, and they have specifically rejected this approach in various instances.

The light hand that was used in the execution of section 79 is mirrored by the reduction in protection provided by sections 135–137 of the UEL. These clauses claim to provide the trial judge the authority to exclude evidence in situations in which the potential for unjust bias against the accused outweighs the probative value of the evidence in question. However, in a recent case called IMM v. The Queen, the High Court seemed to make it more difficult for trial judges to exclude expert opinion evidence on the grounds that there was insufficient information regarding the evidence's credibility. 18 In a nutshell, the contradictory appellate case law in New South Wales and Victoria was addressed by the High Court's decision to rule that the probative value of evidence (including its dependability) should be regarded 'at its highest' for the purposes of the ss 135 – 137 calculation. 19 In spite of the fact that it has not been shown beyond a reasonable doubt that IMM is applicable to scientific evidence, at least one appellate judgment has tentatively applied it to material that it would have permitted otherwise.

It is common practice for decisions that take a limited interpretation of sections 135–137 to rely back on the reliance on (or the mere presence of) conventional trial protections in order to point out gaps in the evidence

Khusboo Kumari*, *Department of Psychology, B.R.A. Bihar University, Muzaffarpur, India.*
E-mail: khushbookumari30630@gmail.com

In other words, the courts often make reference to the prospect of comprehensive cross-examination, judicial warnings, and rebuttal specialists as measures to reduce the danger of undue bias that may be present.

Professor Alfred Allan FAPS of Edith Cowan University's School of Psychology and Social Science and Dr. Michael Davis MAPS of Monash University's Centre for Forensic Behavioural Science and Forensicare

Michael Davis serves as the National Secretary of the APS College of Forensic Psychologists, while Alfred Allan served as the immediate previous National Chair of the organization.

Psychologists are routinely called upon to testify in front of various judicial and administrative bodies, a responsibility that calls for specialized knowledge, abilities, and judgment but is generally underappreciated. Any anyone who is in a position to provide factual information that may help a court or tribunal in reaching a decision about a matter of law may be required to appear as a witness of fact. Strictly speaking, no witness has the right to voice ideas since it is the job of the court to come to conclusions about the evidence presented. However, there are times when the courts do not have enough information to develop an opinion, and in such cases, they will seek the counsel of expert witnesses. The courts consider all of the information and perspectives that are available to them when making their decision about how much weight to give the views of these expert witnesses. This decision is made on a case-by-case basis.

Courts allow psychologists to testify as witnesses of fact about clients they have treated and even permit them to express opinions; however, these opinions are limited to the diagnosis and treatment of their clients. In addition, courts allow psychologists to testify as witnesses of fact about clients they have treated. The evidence of these therapy specialists is often accorded a limited amount of weight by the court. The courts are aware that treatment experts do not automatically have to be experts in mental health or the particular subject on which they give an opinion. The courts are likewise of the opinion that it is difficult or perhaps impossible for those who have had a previous connection with a party, such as a therapeutic relationship, to be impartial witnesses in a legal proceeding.

When psychologists operate in the court system, they face a wide array of legal and ethical challenges due to the complexity of the situation. This article provides a brief overview of the

Khusboo Kumari*, *Department of Psychology, B.R.A. Bihar University, Muzaffarpur, India.*
E-mail: khushbookumari30630@gmail.com

history of psychologists testifying in court, investigates the ethical challenges and potential sources of bias in the practice of forensic psychology, and identifies guiding principles for psychologists who provide services in this specialized area of psychology.

Since the dawn of modern psychology in Europe, the legal system has always allowed experimental psychologists to provide their views in court as expert witnesses (Davis, 2008a). When Schrenk-Notzing, a student of Wundt's, testified regarding the reliability of witness testimony in a murder trial in Munich in the year 1896, he is credited as being the first psychologist who is known to have testified in court. Another student of Wundt's, Marbe, is credited with becoming the first psychologist to testify in a civil case in 1911. The case included allegations that an engine driver was responsible for a railway accident because he failed to bring his train to a complete stop in a timely manner (Weijers, 2004). The court relied on his presentation of the phenomena of response time in reaching its conclusion that it was physically impossible for the engine driver to have stopped in time to avoid the collision (Haward, 1981).

The courts have been reluctant to allow psychologists to express opinions as expert witnesses on issues such as whether or not a person is suffering from posttraumatic stress disorder. This is in addition to the practice of allowing treatment experts to express opinions regarding the mental health of their clients. When the United States Supreme Court decided, by a narrow margin, in Jenkins v. US (1962), that a clinical psychologist who was an expert in mental health could give an opinion in court regarding the presence or absence of mental disorders, this was a significant step forward for the field of psychology. Since that time, licensed psychologists who are considered to be experts in their area have been given a greater amount of leeway to voice their views on matters pertaining to mental health, and there has been a discernible rise in the use of psychologists in legal proceedings. The courts deliberate on the issue of whether or not a person has sufficient knowledge to provide an opinion in relation to the particular question that needs to be addressed.

REVIEW LITERATURE

It is common knowledge that attorneys, trial judges, and police officers know relatively little about the factors that affect the accuracy of eyewitness memory reports. These findings come from surveys conducted in a number of countries around the world, including the United States of America, China, Estonia, Italy, Norway, and Sweden.

Khusboo Kumari*, *Department of Psychology, B.R.A. Bihar University, Muzaffarpur, India.*
E-mail: khushbookumari30630@gmail.com

(Benton, Ross, Bradshaw, Thomas, & Bradshaw, 2006; Kask, 2011; Magnussen et al., 2008; Melinder, Goodman, Eilertsen, & Magnussen, 2004; Wise, Gong, Safer, & Lee, 2010; Wise & Safer, 2004; Wise, Safer, & Maro, 2011). According to research conducted by Benton et al. (2006) and Magnussen, Melinder, Raja, and Stridbeck (2010), the majority of legal professionals have knowledge that is only slightly superior to that of jury members and potential jury members. In court cases when there is a question about the accuracy of eyewitness recollections, the judge pays close attention to the expert witness testimony presented by psychiatrists and psychologists (implicit)

presumption made here that these individuals are knowledgeable memory specialists. The findings of a recent survey with a large sample size of psychologists indicate, in some disagreement with this (implicit) assumption, that the average practitioner of psychology did not perform better than the other samples tested on items that were common to the surveys. This finding comes from a recent survey. On questions aimed specifically at psychologists and investigating topics such as child memory, traumatic memory, and false memory, the majority or a big minority of the sample of psychologists held ideas that are not supported by the most up-to-date research in the field of memory science (Magnussen & Melinder, 2012a).

Despite this, the vast majority of the psychologists who responded to the poll had never worked as expert witnesses in a legal setting. It is a distinct possibility that the role of expert witness in court, in the many trials where memory issues are at stake, may alert psychologists and psychiatrists to the research literature on the vulnerability of episodic memory and the well-documented factors that may undermine the reliability of human memory reports. This is a distinct possibility, but it is not a certainty (Schacter, 2001).

It is not necessary to have a Ph.D. together with significant experience in forensic research in order to testify in court as an expert witness in the nations of the Nordic region and in numerous other European countries.

However, in order to successfully complete their professional duties, the majority of licensed psychologists and psychiatrists who accept these types of cases first complete specialized training in forensic psychology and psychiatry. It's possible that these classes will expand their knowledge base. Because of this, in the current study, we have reanalyzed the findings of the survey of psychologists (Magnussen & Melinder, 2012a), added the findings of a sample of psychiatrists, and compared the knowledge of psychologists and psychiatrists who frequently testify in court as expert witnesses to the findings of general practitioners who

Khusboo Kumari*, *Department of Psychology, B.R.A. Bihar University, Muzaffarpur, India.*
E-mail: khushbookumari30630@gmail.com

have never testified in court as an expert witness. In general, we hypothesized that the former would do better than the latter, especially on memory concerns that are very relevant to clinical psychological and psychiatric treatment.

RESEARCH METHODOLOGY

INTRODUCTION

The goal of court psychology was to ensure that all evidence was taken into account during criminal trials. Today, this goal is used to support efforts to improve decision-making, sentencing results, and correctional treatment.

improving therapeutic results for victims and mentally ill offenders, recidivism reduction, and victim services Although there are many research on the ways that psycholegal applications help with criminal proceedings, there is less information on the ways that these applications help in promoting therapeutic values for legal parties and how involved professionals view these values. In addition, there is no evidence that the use of psychology in court (just in criminal cases) affects the relationships between professionals and their clients, the working environment, client happiness, or social change. The current study has evaluated the literature on courtroom psychology and examined the history of the field as well as the potential of the judicial system to support therapeutic and rehabilitative outcomes. I researched and analyzed the practice's effectiveness in assisting court choices, assisting trial tasks, and improving therapeutic outcomes for participants using an interpretative phenomenological analysis to this qualitative research study.

I suggest that courtroom psychology techniques can have either therapeutic or anti-therapeutic effects on victims and criminal defendants in this study. Based on the body of literature that already exists on criminal trial proceedings, prior research into the field of court psychology is 58 insufficient. As a result, research into this particular subject is necessary, as is the collecting of data, in order to determine the existence and specifics of the therapeutic usefulness of this specialization.

The topic of this study will be investigated using a phenomenological approach, and it will be determined whether court psychology techniques have any therapeutic benefit at all. Quantitative study on forensic psychology is overly prevalent, particularly when it comes to victims and perpetrators. The goal of this study, which is to help close that gap, is supported by the paucity of qualitative research in the field. This qualitative study also aimed to delve

Khusboo Kumari*, *Department of Psychology, B.R.A. Bihar University, Muzaffarpur, India.*
E-mail: khushbookumari30630@gmail.com

into unexplored territory in courtroom psychology research. Because of this, this chapter will first cover the design, processes, and tools that will be applied to the proposed topic's examination before introducing the methodology of this research study.

Along with explaining the researcher's role, ethical considerations, and participant selection, this study will also discuss the research questions that are driving it. The study's validity and data collection, analysis, and review will be done last.

RESEARCH DESIGN

I used a qualitative methodology for this study on courtroom psychology so that the data would be descriptive rather than numerical. I choose this methodology because the study's direction was founded in exploratory research, which prevented quantification of the data obtained (Flick, 2014; Merriam & Tisdell, 2016). Therefore, as was already mentioned, this study would not be appropriately suited or aided by quantitative or mixed approaches as compared to qualitative ones. Additionally, the goal of this research study is to analyze the diverse perspectives of professionals' real-life courtroom experiences; this kind of interpretation calls for qualitative techniques.

I must employ an inductive scientific technique to derive meaning and knowledge from the gathered data in order to comprehend the views, attitudes, and experiences of psychologists and attorneys better. According to Burkholder and Spillett (2013), this inductive method will aid in the generation of new hypotheses that emerge from the data based on the details provided by participants regarding their personal experiences and distinctive viewpoints. Inductive investigations aim to investigate the phenomena stated from the participant's perspective (Silverman, 2016; Burkholder et al., 2016). The researcher will be able to provide a postmodernism/constructivism philosophical foundation for the study by looking into participants who have experienced the phenomenon and examining those occurrences through the lens of concepts and themes that appear in the data (Burkholder & Spillett, 2013; Holmes, 2016; Merriam and Tisdell, 2016; Silverman, 2016).

DATA ANALYSIS

INTRODUCTION

This qualitative and phenomenological research study's objective was to investigate and gain an understanding of the impact that courtroom psychology practices have on criminal

Khusboo Kumari*, *Department of Psychology, B.R.A. Bihar University, Muzaffarpur, India.*
E-mail: khushbookumari30630@gmail.com

defendants and their victims during the course of criminal trials. More specifically, the study sought to evaluate courtroom psychology practices by examining the perspectives and experiences of psychologists and attorneys who work in the field of criminal defense. Following is a list of research questions and sub-topics that served as the basis for the study:

RQ1: What kind of impact has the psychology of the courtroom had on the process of criminal trials?

When it comes to presenting evidence related to mental health, criminal defense lawyers encounter a number of problems.

When they are called to testify in legal proceedings, clinical forensic psychologists encounter a number of unique problems.

RQ2: What sort of an impact has the psychology of the courtroom had on the various legal parties?

How has the use of psychology in the courtroom influenced the administration of justice for victims?

SQ2: How has the application of courtroom psychology affected judgements about the offender's ability to participate in rehabilitation?

In this chapter, I will describe material pertinent to the location in which the data collection took place, participant demographics, data collecting processes, analysis of the data, proof of the trustworthiness of the data, and the outcomes of the research. In the end, I will wrap up this chapter by providing a synopsis of the results before moving on to Chapter 5, in which I will talk about the implications of this research study in a broader sense.

SETTING

Every single one of the semi-structured interviews was conducted in a confidential setting and included a one-on-one format. There did not appear to be any personal or organizational conditions (changes in personnel, trauma, or other related factors) that harmed or influenced participants or their experience at the time of the study that could have predisposed or jeopardized the interpretation of the study results while the data was being collected. This was the case during the process of collecting the data.

Khusboo Kumari*, *Department of Psychology, B.R.A. Bihar University, Muzaffarpur, India.*
E-mail: khushbookumari30630@gmail.com

DEMOGRAPHICS

Participant demographics and characteristics are relevant to an investigation based on saturation factors and ensuring that well-established criteria factors are met prior to beginning the process of data collection. Both of these considerations are necessary before beginning the data collection process. In addition, the data analysis that I carried out assisted me in determining whether or not saturation had been achieved, and as a result, I was able to arrive at the conclusion that it had. As a result, this assessment proved that there was no need to gather any further data, and it also demonstrated that the data obtained from the eight people who participated in the research was enough to meet the needs of the study.For the purpose of this research, eight volunteers were chosen at random with the aid of a treatment facility for mental health conditions.

The organization went ahead and signed a community research partner agreement document as well as a data set agreement, both of which authorized the use of their respective professional contact lists for the purpose of initiating the process of recruiting prospective participants. Everyone who is taking part in this activity calls the state of California home. Among all of the participants, the mean number of years spent working in their respective fields was 23. (see Table 1). There were a total of eight participants, including four male and four female individuals. In this study, there were a total of eight participants; four of them were licensed psychologists who were actively practicing, and the other four were licensed lawyers who were actively practicing.

The psychologists who took part in the study had backgrounds in clinical psychology, neuropsychology, and/or forensic psychology (which may have included general forensic psychology, criminal psychology, correctional psychology, legal psychology, court psychology, and/or victimology). Additionally, they had training in marriage and family therapy. The other two attorneys who participated had specializations in either criminal prosecution or victim aid services, whereas the first two attorneys' areas of expertise were in the area of criminal defense.

Everyone who participated in the psychology discussion has prior experience testifying as a psychiatric expert witness in criminal proceedings and conducting court-ordered pre-trial psychological exams. Everyone who participated in the legal discussion has prior experience

Khusboo Kumari*, *Department of Psychology, B.R.A. Bihar University, Muzaffarpur, India.*
E-mail: khushbookumari30630@gmail.com

arguing criminal law matters in front of juries and/or judges in a courtroom setting. Everyone who took part in the discussion had more than three years of professional experience working in either the legal or psychiatric fields and delivering their services to superior courts during criminal cases. In addition, each of the participants was either already delivering services at the county level or had previous experience providing services at the state or federal level. All of the participants were provided with a permission form, and they were briefed on the rights that are accorded to them as participants in this research.

before beginning the process of data collecting. The consent form included information about the procedures of the study, the nature of the study, the risks and benefits of being a part of the study, information about privacy, as well as additional data such as contact information that can be used in the event that participants have concerns or questions either before or after participating in the study.

Participant Demographics Chart

Participant	Sex	Education	Title	Specialization	Exp.
P1	M	PhD	Licensed psychologist	Clinical & Forensic psychology	41
P2	M	PhD, MFT	Licensed psychologist / LMFT	Clinical & forensic neuropsychology	32
P3	F	PsyD, QME, ABPP	Licensed psychologist / medical evaluator	Neuropsychology	13
P4	F	PhD, CADC-I	Licensed psychologist / senior counselor	Victimology and addictions	18
A1	M	JD	Licensed attorney /Legal director	Criminal law and Family law	15
A2	M	JD	Public defender	Criminal defense	21
A3	F	JD	Public defender	Criminal defense	18
A4	F	JD	Federal Prosecutor (AUSA), Deputy District Attorney	Criminal Prosecution	24

Note: Education: PhD for Doctor of Philosophy, PsyD for Doctor of Psychology, and MBA for Master of Business Administration. MFT is for marriage and family therapist, while JD stands for Juris Doctor. American Board of Professional Psychology, abbreviated as ABPP

Khusboo Kumari*, *Department of Psychology, B.R.A. Bihar University, Muzaffarpur, India.*
E-mail: khushbookumari30630@gmail.com

CADC is for Certified Alcohol Drug Counselor, while QME stands for Qualified Medical Evaluator.

The title of this position is Assistant United States Attorney (AUSA). Exp. — Number of Years Spent Working/Training in the Field

Italicized words – the name of the prior employment

CONCLUSION

If the purposes of the court psychological operations are going to be put to use, then those purposes have to be carried out to the best of their abilities. The participants in this research study all agreed that one of the most significant problems with the field of courtroom psychology is that it is not always used in an ethical manner or to the best of its capabilities. The conclusion that was drawn from their statements led to the notion that the methods of courtroom psychology can be therapeutic for both victims and offenders provided that they are carried out in a more productive manner. Proposals for recommendations on tactics and services that may be better used and/or begun were offered by the participants in this study, and substantial research was also conducted. These ideas include the following: creating needed criteria for mental health expert witnesses, modifying and/or evaluating rules and tactics related the presentation of psychological evidence, bringing in-house psychologists into the organization, and so on and so forth.

courtrooms, establishing new channels for more productive working alliances between psycholegal professionals, making certain that legal professionals are more knowledgeable about psychological research and concepts, and carrying out additional research studies pertinent to these subjects in the foreseeable future are all things that need to be done.

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Khusboo Kumari*, *Department of Psychology, B.R.A. Bihar University, Muzaffarpur, India.*
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Khusboo Kumari*, *Department of Psychology, B.R.A. Bihar University, Muzaffarpur, India.*
E-mail: khushbookumari30630@gmail.com