

PSYCHOLOGY AND THE LAW

CASE STUDIES OF
EXPERT WITNESSES

Edited by

LEAM A. CRAIG

HUGH C.H. KOCH

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WILEY Blackwell

Psychology and the Law

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Case Studies of Expert Witnesses

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Magistrates, Crown and Family Courts, Court of Appeal, Military Courts Martial, Mental Health Review Tribunals and Parole Boards. He has previously received instruction from the Salvation Army, Catholic and Church of England Dioceses, South African Police Service, the UK Government Legal Department (GLD), the Criminal Case Review Commission (CCRC) and the United States Air Force European Area Defence Counsel. In 2015, he co-authored a Ministry of Justice research report into the use of expert witnesses in family law, and in 2016 he was appointed as Chair of the British Psychological Society, Expert Witness Advisory Group. He has chaired and contributed to six practice guidance documents for expert witnesses published by the British Psychological Society (see About the Editors section for more detail).

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Gisli H. Gudjonsson, CBE, Ph.D., C.Psychol, is an Emeritus Professor of Forensic Psychology at the Institute of Psychiatry, Psychology & Neuroscience, King's College London, and an honorary Professor of Psychology at Reykjavík University. Prior to his retirement from King's College on 1st January 2012, he was the Head of Forensic Psychology Services for the Lambeth Forensic Services and Medium Secure Unit at the South London and Maudsley NHS Trust (SLaM). He is a Fellow of the British Psychological Society and a registered practitioner (clinical and forensic) with the United Kingdom Health Care Professions Council (HCPC). Gisli pioneered the empirical measurement of interrogative suggestibility and has published extensively in the areas of psychological vulnerabilities, false confessions and police interviewing. He has provided expert testimony in many high-profile criminal cases internationally. He was awarded an Honorary Doctorate in Medicine in 2001 by the University of Iceland for services to forensic psychiatry and psychology. He has been awarded three lifetime awards for his work. In April 2009, the British Psychological Society presented him with a Lifetime Achievement Award. He was awarded The European Association of Psychology and Law (EAPL) Lifetime Achievement Award for 2012 and received the 2017 Tom Williamson (illRG) Lifetime Achievement Award 'In recognition for his outstanding lifetime

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Sue Whitcombe, C.Psychol, AFBPsS, is a Counselling Psychologist who is passionate about improving the lives of children and young people. Her work focuses on the impact of family breakdown on psychological functioning,

mental health and child development. She works therapeutically with adults, children and families integrating sound psychological theory and evidence with a compassionate and creative approach. Sue conducts expert assessments in family law proceedings and provides training, consultancy and supervision to statutory services, third-sector organisations and practitioners working with children and families. She offers her expertise as a family consultant and promotes collaboration and conflict reduction as offering the best outcomes for children. Sue's professional and research interests include family relationships, intimate partner violence and parenting. She has disseminated her work and research widely, contributed to the Cafcass Child Impact Assessment Framework and presented evidence to the Senedd and Scottish Parliament. She takes an active role in the British Psychological Society and sits on the Expert Witness Advisory Group, the Training Committee for Counselling Psychology, and is former Chair of the Division of Counselling Psychology (Wales). She has recently joined the Board of Trustees at the shared parenting charity, Both Parents Matter Cymru.

HHJ Stephen Wildblood KC, was called to the bar at the age of 21, having graduated in law at Sheffield University. He practised in Family Law for 27 years from Albion Chambers in Bristol, the last 8 ½ years being as King's Counsel. He wrote his first legal textbook at the age of 34 and has contributed to over 20 legal textbooks since. He began sitting as a part-time judge at the age of 37 and was appointed as a Deputy High Court Judge in 2004. In 2009, he became a Circuit Judge and, for the first seven years after his appointment, he sat in Devon and Cornwall, hearing Family, Criminal and Civil cases. In 2013, he was appointed as the Designated Family Judge for the five counties in and around Bristol; that appointment has meant that he has sat only in Family cases since then. Stephen has announced that, in November 2023, he will be retiring from the judiciary and, thereafter, he and Dr Freda Gardner will be working together, offering non-court-based dispute resolution for people who might otherwise find themselves involved in litigation in the Family Court. Stephen believes firmly that all types of Family litigations should be a last resort and that people, and organisations such as Local Authorities, should be assisted to find solutions through mediation and, if mediation does not resolve matters, arbitration. Stephen is keen on continuing writing and directing plays and on publishing novels that he has written that relate to Family Law issues.

The Honourable Mr Justice David Williams KC, worked for the Legal Aid Board for three years before training as a barrister. He was called to the Bar in 1990 and went on to specialise in family law, particularly in children cases with an international dimension. He has also acted in private law disputes where there are psychological issues, such as personality disorders and parental alienation. He took Silk in 2013. He was appointed as a Recorder in 2016 and authorised to sit as a Justice of the High Court Family Division in 2017.

Harry Wood, D.Clin.Psy, C.Psychol., is a Consultant Clinical and Forensic Psychologist and Practitioner in Cognitive Analytic Therapy (CAT). Having qualified as a Clinical Psychologist in 2002, Harry Wood worked for the NHS in low-, medium-, and high-secure hospital services. His experience included two years in a high-secure Dangerous and Severe Personality Disorder (DSPD) service and seven years at the Yorkshire Centre for Forensic Psychiatry. After two years as Lead Psychologist in an independent hospital, Harry Wood launched his own company, Grange Psychological Services. He has worked on a full-time basis in independent practice since 2015. While the primary focus of his work is in providing expert witness reports to the courts (criminal, family and civil), he also provides psychological therapy (CAT) and has regular involvement in teaching, supervision and mentoring. He is a member of the Expert Witness Institute and of the Grange group of medico-legal experts.

Foreword

As I have reflected periodically over the 32 years that I have spent working in ‘the law’, it has become increasingly apparent to me how ill-equipped I was to deal with many aspects of my practice. I was a guineapig for the Bar Vocational Course, a newly designed course for would-be barristers which was intended to and achieved a fundamental shift away from teaching law and practice to teaching the practical or vocational skills required within the core domains of a barrister’s work: interviewing clients, conference and negotiation skills, written advocacy and oral advocacy. And, when I began to work as a second six-month pupil, then as a junior barrister, then as Queens (now Kings) Counsel and latterly as a High Judge assigned to the Family Division, I appreciated the vocational skills that I had learned and put my manuals to good use.

But the longer I worked in the law, the more I realised that all my formal studies had not addressed a subject that was fundamental to my work and more importantly to doing that work well: human behaviour in all its different forms and potential relevance. As a junior barrister doing drunken-driving cases, licensing applications, whiplash claims and defective good claims, my shortcomings in understanding human behaviour were easily masked. However, as I tip-toed into the territory of more serious crime, in particular sexual offences and into child abuse and parental conflict, the need to understand human behaviour became ever more apparent.

Much of what we do in the law is about determining what happened and who did it. We immerse ourselves in the ever-increasing paper and electronic detail (digital footprints are now of ‘Bigfoot’ proportions) to prove facts about times, dates, what was said, by whom, to whom, in what language, who did what and in what sequence. In family law, we very often ‘Fact Find’, and the whole of our justice system is rooted (even in inquisitorial family proceedings) in a binary process in which most cases are resolved by one side proving

(beyond reasonable doubt or on balance of probability) that some ‘event’ occurred. If it is not proved, then the law treats it as having not happened. In that sensory overload of detail directed at proving a fact occurred or that it did not occur, what may be the most illuminating issue of ‘why?’ is very often overlooked. How often I have listened to questioning of witnesses that only addresses the facts of whether he was the abuser or she was making it up. And, yet only a moment’s reflection shows how limited a perspective that brings to the questioning, to the evaluation of the answers, to the process of fitting various pieces of the forensic jigsaw together and to the judges’ ultimate decisions about what happened. How do you evaluate facts without some understanding of the human beings who undertook those actions, without some understanding of what has shaped that person into the individual they were at that moment, without some insight into what may have been spurring their behaviours or impacting on their ‘recollection’ or on their ability to give evidence or reliable evidence. And, the more complex, unusual, bizarre, inexplicable or serious the behaviours, so some insight into the person’s functioning can become more critical and more illuminating. In my field whether it is understanding which of two parents may be more likely to have come to fatally injure a child or to understanding whether an abused mother may be able to successfully separate from her abuser, whether a perpetrator of abuse has the capacity to change, whether a child can be rehabilitated to her parents care or the impact on an individual’s ability to give evidence or reliable evidence or a multitude of other issues, the benefits of an understanding of human behaviour and psychological functioning are incalculable.

The analysis and prediction that a Case Formulation or Risk Assessment may provide is capable of filling that gap in the understanding of legal professionals and judges. Insight into why an individual might be unable to recall matters one might expect them to recall or to have admitted to doing something they did not or even could not have done may make the difference between a life-altering decision going one way or another to a parent being labelled a child abuser and children being placed for adoption or not. An accurate psychological evaluation which considers response to crime, understanding of triggers and empathy with a victim may make the difference between an offender safely being released and rehabilitated and a potentially dangerous recidivist roaming the streets looking for his next victim. The currency of that concern in the light of the murder of Zara Aleena who worked here in the Royal Courts of Justice could not be greater. An understanding of the individuals and the research underpinning alienating behaviour may provide a family court judge with a perspective inaccessible otherwise.

The authors of the chapters in this book have deep knowledge and experience across a range of fields and provide a window for the uninitiated, inexperienced through to the highly experienced into a host of fascinating fields of

practice in human behaviour and which give a tantalising hint of the potential benefits of a deeper immersion into those waters.

It seems to me that the value in a book such as this is precisely that it enables to reader to dip a toe into many different psychological waters and thereby to acquire at least an insight into the possibilities that an expert in the field of psychology might bring to a wide range of different legal areas of practice. The chapters which consider issues such as ethnic and cultural considerations and assessments of learning-disabled individuals rightly draw attention to some of the very particular issues which may impinge both on behaviour itself and what we bring with us in terms of expectations of cultural norms but also on how one approaches assessment in such circumstances.

The test for granting permission to instruct an expert and for the admission of expert evidence in the courts in the Family Courts is that it is necessary to determine the proceedings justly, which represents quite a high bar. In *Re H-L*, the then President of the Family Division said that necessary lies ‘somewhere between indispensable’ on the one hand and ‘useful’, ‘reasonable’ or ‘desirable’ on the other hand, having ‘the connotation of the imperative, what is demanded rather than what is merely optional or reasonable or desirable’. It is rare in a case involving human actions (as opposed to contract or tax or construction) that the court will not find psychological insight useful and desirable, but we have decided that the test is necessary. Necessity to resolve justly involves an interactive value judgment – psychological evidence may promote a just outcome, but delay may inhibit it, and so although the evidence itself might be ‘necessary’ from an evidential perspective, other matters such as the need to reach a conclusion swiftly may outweigh that evidential necessity with a child welfare necessity.

That being so, books such as this provide us with some insight into an area we are unfamiliar with and which might sign-post us to more reading or which might equip us with some knowledge on which to advocate or evaluate the necessity of expert evidence in a case and thus enable us as judges to deliver better (because more informed) decisions and ultimately to deliver decisions which are more closely aligned with the true best interests of children or more congruent with the objective ‘truth’ underlying the human behaviours which underpin the case.

Expert evidence can be invaluable to the courts and parties. In the Family Justice System, we have experienced considerable problems in ensuring that the pool of experts willing to help us is sufficiently deep and wide and in my role as Chair of the Family Justice Council Committee on Experts, we have been doing a lot of work since the launch of the report of the President of the Family Division Working Group Report to implement solutions to the wide range of barriers which impede ‘experts’ offering their expertise to the Family Court. Whilst there can be no substitute for the evidence of an objective and conscientious

expert in an individual case, the authors of this book enable us all to gain some insight and understanding into a range of areas of psychological practice which will I think add real value to our collective understanding of the human behaviour which underpins so much of what we do.



The Honourable Mr Justice Williams
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Royal Courts of Justice
Strand
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