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The legal status of the psychologist in the courtroom

BY MICHAEL L. PERLIN, ESQ.

In discussing the legal status of the psychologist in the courtroom, the more important but hidden issue of the social status of the psychologist must also be explored. Thus, although psychologists now routinely testify as expert witnesses on a whole range of issues in criminal and civil matters, a perception lingers in the minds of judges and jurors that the psychologist is a "second-rate" expert compared to the forensic psychiatrist. The roots of this assumption are examined, and it is suggested that psychologists themselves have helped perpetuate this myth. On the other hand, psychologists clearly do have special skills and techniques uniquely preparing them for certain courtroom work; in addition, participation in the judicial process enables psychologists to serve as advocates for social change. Psychologists must thus confront the background of the anticourtroom bias and educate all participants in the litigation process as to the need for appropriate psychological testimony.

In the practice of law, just as in the practice of any other profession, trade, vocation or avocation, it is often the folkways, mores and customs that deserve the attention usually paid to the written rules of substance and procedure. Although thousands of words are written, for instance, about the subtle points of a significant court decision or statutory revision, usually limited analysis is given to what can be termed—somewhat inartfully, I am afraid—the socialization of the law.

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Thus, any discussion of "The Legal Status of the Psychologist in the Courtroom" must begin with the premise that the phrase "legal status" is really shorthand for at least three bundles of definitions: the legal status of the psychologist as defined by case law (*i.e.*, when can he/she give expert testimony); the legal roles which a psychologist can fill (*i.e.*, in what kinds of cases can he/she testify); and the social status of the psychologist in the courtroom (*i.e.*, how he/she is viewed by the judge, the jury, the parties, other experts and other psychologists themselves). Although the case law is now becoming relatively uniform and the scope of witness roles is forever widening, it is the social status of psychologists in the courtroom—a question normally paid little attention to—which is probably the most important of these topics for this conference to consider. This status—the end product of a mixture of self-fears, denial, resistance, and the usual gamut of ego defenses we all employ on a daily basis—is the hidden issue that is really worthy of further exploration.¹

Although a smattering of early cases had held that a properly qualified psychologist could testify in a criminal trial on questions involving mental condition or competency to stand trial² or in accident disability cases on questions of extent of neurological impairment,³ it was not until the 1962 decision of the prestigious District of Columbia Court of Appeals in *Jenkins v. United States*⁴ that the psychologist's legal status was given firm grounding.

In *Jenkins*, a criminal case in which the defendant on trial for housebreaking with intent to assault raised the insanity defense, the trial judge had ordered the jury to disregard testimony of defense psychologists that the defendant "had a mental disease" when he committed the crimes in question because—according to the judge—"a psychologist is not competent to give a medical opinion as to a mental disease or defect."⁵ Following the jury's conviction, however, the court of appeals reversed and remanded the

matter for a new trial on a series of grounds, including, *inter alia*, that that ruling by the trial judge was in error, as “some psychologists are qualified to render expert testimony in the field of mental disorder.”⁶

Judge Bazelon, speaking for a sharply divided court noted that the appropriate test was “whether the opinion offered will be likely to aid the trier in the search for truth.”⁷ The answer to this test will not “depend upon [the witness] claim to the title ‘psychologist,’”⁸ the court warned. Rather, the determination must depend “upon the nature and extent of his knowledge.”⁹ While psychologists otherwise employed in areas such as personnel administration or industrial relations might not qualify to testify as to “mental disease or defect,” a Ph.D. in clinical psychology with a psychiatric hospital internship and/or completion of an APA-approved graduate training program and/or Board certification might properly so testify.¹⁰

As indicated, the opinion was far from unanimous. In a special concurring opinion, Judge (now Chief Justice) Warren Burger criticized Judge Bazelon’s opinion for its alleged “[failure] to give adequate guidance as to the scope and nature of the inquiry” on remand,¹¹ and listed seven major areas of questioning—involving such areas as scope of the specific psychologist’s clinical education in “physiological and medical subjects,” his ability to “[prescribe] or [supervise] treatment of mental patients,” and the meaning of “clinical experience”¹²—which should be covered on the remand.¹³ Finally, two other judges dissented, urging the court to accept the position of amicus curiae American Psychiatric Association, which had argued that psychologists should not be allowed to qualify as experts.¹⁴ According to the dissenters, the majority should have listened to the “wise counsel from the only undisputed experts now at work in the area of medical illness of the mind.”¹⁵ That this point of view has not entirely disappeared will be pointed out later.

Following *Jenkins*—a case which, by the way, met with nearly unanimous critical endorsement in the scholarly legal journals¹⁶—virtually every major criminal decision has echoed its language,¹⁷ thus giving stronger footing to the psychologist's "legal status." More important, however, the acceptance of this approach literally opened the doors to the admission of psychological testimony in a multitude of legal areas.

Thus, psychologists now commonly testify as expert witnesses in civil commitment matters (in cases involving questions of retardation, acceptability of treatment involving behavior therapy, and appropriateness of placements),¹⁸ and, more increasingly, on questions involving such questions as employment discrimination,¹⁹ juvenile placements,²⁰ accuracy in evaluation of eyewitness testimony,²¹ special education assignments,²² effects of bilingualism on children,²³ postsentencing disposition,²⁴ extent of neurological injury,²⁵ and even more important, perhaps, they are beginning to testify in class actions involving such fundamental issues as right to education,²⁶ right to habilitation,²⁷ and right to vote.²⁸ By becoming involved in cases such as these, psychologists are continually—and properly—expanding their legal roles. If as has been suggested by Cameron Fincher, the psychological community does, indeed, evince a "consistent concern with the social, cultural and humanistic issues as well as the professional and technical problems,"²⁹ then it must critically involve itself in these roles.

However, at the same time, the pertinency of the simple truism suggested by Bernard Diamond (an attorney) and David Louisell (a psychiatrist) in their article on courtroom psychiatry—that "the psychological sciences differ from the biological sciences in that the subject matter of the former is not visible"³⁰—is even more applicable to a discussion of forensic psychology and the role of the courtroom psychologist. What are often viewed as the "excesses" of flamboyant expert witnesses in public spectacles

such as the Hearst or Ruby trials³¹ become quickly transformed into sins visited upon *all* expert witnesses: regularly, papers are published denying the need for involvement of “adversarial” experts in the legal adversary process,³² direly forecasting the inevitable prostitution of the profession,³³ questioning the compatibility of psychology, psychiatry and the courts,³⁴ and recommending that experts only become involved on an amicus (friend of the court) or so-called impartial witness level.³⁵ Although these positions have been more than adequately responded to by lawyers³⁶ and psychiatrists,³⁷ a backlash phenomenon is clearly present.³⁸

Beyond this, however, lurks an even more disturbing problem for the forensic psychologist: not only must he/she contend with the same basic antipathy in the courtroom facing the psychiatrist,³⁹ but he/she must also contend with what is—sadly—perceived as “second-class expert” status, when compared by judge and/or jury to the medical expert. Thus, a basic legal text points out that “a favorite trick of cross-examination is to bring out the lack of medical education of the clinical psychologist . . . in a voice oozing incredulity or sarcasm”;⁴⁰ elsewhere, it has been pointed out that psychologists may be—sometimes effectively—baited by attorneys “indirect[ly] attempt[ing] to question [their] qualifications and competence . . . by addressing [them] always as ‘Mister,’ in marked contrast to the consistent and appropriate use of the title ‘Doctor.’ ”⁴¹ One of the post-*Jenkins* decisions, alluded to above, notes, for example, that the trial court had asked the psychologist-witness, “You have never dissected a cadaver, have you?”⁴² In another more recent case, in an attempt to discredit a clinical psychologist who had testified as a defense witness, the prosecutor appealed to the jury to disregard the witness’ interpretation of a projective test:

Ladies and gentlemen, then we come to that ink blot. . . . Fourteen responses and four of them turned out to be anatomical things—hearts or whatever it happened to be. Is there something unusual about that? Is a man crazy when he sees a heart or

something else four times? . . . After all, they are just blots of ink. Is a man crazy when he sees them? And how about that last one, that rocket one. He says he sees a rocket going off. I asked him, doctor, was there any rocket fired during that period of time that might stick in a man's brain and might suggest it to him? The doctor doesn't know. But there is something explosive about a personality if he sees a rocket on a little ink blot.

Well, ladies and gentlemen, there is not much I can say about that; I am not an expert. . . . But I can say one thing; that it is a jury decision. It is your province. It is your function to take that evidence and weigh that evidence and decide whether what that doctor said as far as you are concerned made any sense at all.⁴³

In *Jenkins*, itself, in fact, a courtroom observer pointed out that during the course of a psychologist's testimony, the presiding trial judge "literally threw a deck of projective cards onto the floor."⁴⁴ Finally, a *Jenkins* analysis concluded by asking rhetorically:

[W]hat significance will the jury attach to the defense *psychologist's* testimony when confronted with the conflicting testimony of the state's *psychiatrist*? Will recitation to the jury of the *psychiatrist's* qualifications, which will include a medical degree, have any prejudicial effect on the defendant who produces a *psychologist*? [Emphasis added.]⁴⁵

The treatment of the problem and answers to these questions must be dealt with openly and completely by forensic psychologists.

In addition, of course, the forensic psychologist must also be looking over his/her other flank at the forensic psychiatrists who are still uncomfortable about the newcomer's involvement (spelled "usurpation" in some quarters). Thus, in the 1972 case I spoke of a moment earlier (where the prosecution said "After all, they are just blots of ink"), the American Psychiatric Association filed an amicus brief, clearly labeling such forensic

psychologists as “laymen” in relation to the diagnosis of “mental illnesses or defects.”⁴⁶ According to the eminent professor of law and psychiatry Richard Allen, the Psychiatric Association’s ultimate objective is “quite clear: reversal of Judge Bazelon’s decision in *Jenkins*”⁴⁷—this spectre must be a serious subject of consideration for the forensic psychologist.

The progenesis of this attitude, of course, cannot be laid solely, or even, perhaps, predominantly, at the feet of the legal or psychiatric profession. At base, this social status must be seen as a reflection on the self-perceptions held by many psychologists of their potential courtroom role. Although it was a lawyer who noted that the traditional limitation in courtroom participation “comes not only from the law, but also from the inhibitions of psychologists,”⁴⁸ it is clearly very often the “fault” of the psychologists themselves that their forensic role has been so truncated. Indeed, Louisell’s observation some 20 years ago that “psychologists . . . often seem to display an undue hesitancy, *amounting almost to fear*, to taking the witness stand,”⁴⁹ is still all too valid in too many instances.⁵⁰

Thus, Douglas Sargent—a psychiatrist—has noted that a forensic psychiatrist is “annoyed by the limitations which legal procedures place on his testimony, impatient with the stilted rituals of courtroom etiquette, intrigued by the law’s archaic language” and that this response creates an “unfortunate polarization of attitudes . . . [leading to] a hostile parody of the truth.”⁵¹ The substitution of “psychologist” for “psychiatrist” in that sentence would ring similarly true, to many. In addition, forensic psychologists must confront the fact that they cannot “behave in the courtroom as though the issues were settled”;⁵² transcripts such as those reproduced by Jeffery as part of an NIMH project reveal forensic psychological witnesses whose demeanor—in important, otherwise well-prepared, serious criminal cases—ranges from obstinate to condescending to

patronizing to omniscient.⁵³ In the vernacular, some forensic psychologists must “clean up their act.”

Louisell's quotation from *Julius Caesar* (“the fault, dear Brutus, is not in our stars,/But in ourselves, that we are underlings”),⁵⁴ again, serves as an effective epigram: forensic psychologists must confront the reasons why they have both been treated as second-class citizens in the court and why they see themselves in that role. Thus, the heralded Competency Screening Index, prepared by the Laboratory of Community Psychiatry in conjunction with NIMH, establishes a sentence-completion test for the purpose of “quickly screening defendants” to make recommendations as to their competency to stand trial.⁵⁵ It is geared to determine whether an individual defendant meets the three-pronged common-law test for competency (ability to cooperate with counsel, understand nature of proceedings, understand consequences of proceedings), and, in fact, may effectively do so.⁵⁶ However, a witness who administers and then testifies to the results of a test such as this must be aware of—and must be able to deal with—the pitfalls of probing cross-examination, a skeptical judge, and, on occasion, an incredulous jury. To paraphrase Shakespeare again, the forensic psychologist must be as well-prepared and comprehending as Caesar's wife needed to be pure.

Although this picture has been, admittedly, somewhat gloomy, it should also be encouraging to the forensic psychologist. The cases which I have referred to—especially the noncriminal ones—can serve as a meaningful opportunity through which psychologists can—and should—push for further involvement in the judicial process, on at least three separate levels.

First, the special assessment, testing and intellectual/personality evaluation skills and techniques possessed by clinical psychologists uniquely prepare them for much courtroom work,⁵⁷ in areas referred to above, as well as

such newly emerging areas as ferreting out cultural test biases,⁵⁸ a role they will better be able to play if they become—in the phrase of Stanley Brodsky and Ames Robey—“courtroom-oriented” and discard their usual “courtroom-unfamiliar” pose.⁵⁹ Second, it is clear that testimony in civil rights/class actions gives the forensic psychologist a tremendous opportunity “to contribute to social change,”⁶⁰ as an “advocate and facilitator,”⁶¹ while fulfilling his/her role as part of a “socially concerned system.”⁶² As a corollary to both these reasons, it should also be pointed out that forensic psychologists are remarkably *successful* when they go to court—in 70 percent of a group of cases studied, the verdict was in favor of the side on which the psychologists testified.⁶³

Finally, it is clear that the courts are more ready for the forensic psychologist. As indicated above, legal barriers to testimony have virtually disappeared.⁶⁴ One commentator calls the clinical psychologist “worthy of our consideration in the seeking of new and improved trial techniques;⁶⁵ another questions how long the law can “lag behind scientific fact and common knowledge”;⁶⁶ a third argues that the psychologist “can contribute in the courtroom toward a better understanding of emotional illness.”⁶⁷ Interestingly, this final commentator points out how psychology’s struggle for acceptance as a scientific and objective discipline familiarizes the psychologist with ways to overcome the shortcomings of such tools as projective tests and uniquely prepares him/her for the rigors of cross-examination.⁶⁸ It thus remains only for the psychological community to openly confront the reasons which have perpetuated the anticourtroom bias and to educate all participants in the litigation process to the need for (and uniqueness of) appropriate psychological testimony.

In a 1961 article, Norma Schefflen—a research psychologist at Temple University—quoted the famous law dean John Wigmore as stating “whenever the psychologist is really ready for the courts, the courts are ready for him.”⁶⁹

Although Dr. Schefflen prophesied that “the time is now” 15 years ago, it is unfortunate that history has not yet truly borne her out. Perhaps now, finally, it will.

Notes

1. For a similar analysis, see Perlin, “Psychiatric Testimony in a Criminal Setting,” 3 *Bull. Am. Acad. Psych. & L.* (1976).
2. See, *e.g.*, *People v. Hawthorne*, 293 Mich. 15, 291 N.W. 205 (Sup. Ct. 1974); *State v. Padilla*, 66 N.M. 289, 347 P. 2d 312 (Sup. Ct. 1959); Annotation, “Qualification of Non-Medical Psychologist to Testify as to Mental Condition or Competency,” 78 A.L.R. 2d 919, 920-921 (1961). Contra, see, *e.g.*, *Dobbs v. State*, 191 Ark. 236, 85 S.W. 2d 694 (Sup. Ct. 1935); *People v. Spigno*, 156 Cal. App. 2d 279, 319 P. 2d 458 (D. Ct. App. 1957).
3. See, *e.g.*, *Hidden v. Mutual Life Ins. Co.*, 217 F. 2d 818 (4th Cir. 1957).
4. 307 F. 2d 637 (D.C. Cir. 1962).
5. *Id.* at 643.
6. *Id.*
7. *Id.*
8. *Id.* at 645.
9. *Id.*
10. *Id.* at 644-645.
11. *Id.* at 647, 648.
12. *Id.* at 649-650.
13. Burger’s views on psychiatry and psychology have been well recorded since. In an article in *Federal Probation*, he stated: “At best psychiatry is now an infant among the family of sciences. Just as the law can lay no valid claim to being truly scientific, neither perhaps can psychiatry and psychology; they may be claiming too much in relation to what they really understand about the human personality and human behavior.” Burger, “Psychiatrists, Lawyers and the Courts,” 28 *Fed. Prob.* 3, 7 (1967).

More recently, in a special concurring opinion in the landmark case of *O’Connor v. Donaldson*, 422 U.S. 573, 578, 584 (1975), he noted: “There can be little responsible debate regarding the ‘uncertainty of diagnosis in this field and the tentativeness of professional judgment.’ *Greenwood v. United States*, 310 U.S. at 375. See also, *Ennis & Litwack, Psychiatry and the Presumption of Expertise: Flipping Coins in the Courtroom*, 62 *Calif. L. Rev.* 693, 697-719.”

The Chief Justice's reference to the Ennis article is fascinating: simultaneously, by citing it, he hoists Ennis (Donaldson's counsel) on his own petard and dryly returns a compliment to Ennis who had concluded his *California Law Review* article by citing Burger's article in *Federal Probation*, referred to above. 62 *Calif. L. Rev.* at 751-752, n. 204. Such Byzantine cross-citations should not go unnoticed.

14. Jenkins v. United States, 307 F. 2d 637, 651, 652 (D.C. Cir. 1961) (Bastian, J., dissenting).
15. *Id.*
16. See, e.g., Note, "Evidence—Criminal Insanity—Psychologist's Diagnosis Regarding Mental Disease or Defect Admissible on Issue of Insanity," 8 *Vill. L. Rev.* 119 (1962); Levitt, "The Psychologist: A Neglected Legal Resource," 45 *Ind. L. Rev.* 82 (1969); Lassen, "The Psychologist as an Expert Witness in Assessing Mental Disease or Defect," 50 *A.B.A.J.* 239 (1964). *Cf.*, however, Morse, "Psychologist as Witness on Mental Incompetence," 198 *J.A.M.A.* 313 (1966).
17. See, e.g., United States v. Green, 373 F. Supp. 149, 158 (E.D. Pa. 1974) ("The critical factor is the psychologist's actual experience and the probable probative value of his testimony"); Blunt v. United States, 389 F. 2d 545, 547 (D.C. Cir. 1967) (repeating "requisite training or experience" language); People v. Lyles, 526 P. 2d 1332, 1334-1335 (Colo. Sup. Ct. 1974); United States v. Riggleman, 411 F. 2d 1190, 1191 (4th Cir. 1969) (determination depends on "the nature and extent of [psychologist's] knowledge"). *Contra*, see, e.g., People v. Gillian, 16 Ill. App. 3d 659, 306 N.E. 2d 352 (App. Ct. 1974). Most relevant cases are discussed at Pacht *et al.*, "The Current Status of the Psychologist as an Expert Witness," 4 *Prof. Psychol.* 409 (1973).
18. See, generally, Martin, *Legal Challenges to Behavior Modification* (1975).
19. See Fincher, "Personnel Testing and Public Policy," 28 *Am. Psychologist* 489 (1973).
20. See, for a forceful critique, Sussman, "Psychological Testing and Juvenile Justice: An Invalid Judicial Function," 10 *Crim. L. Bull.* 117 (1974).
21. See Lezak, "Some Psychological Limitations on Witness Reliability," 20 *Wayne L. Rev.* 117, 119 (1973).
22. See, e.g., Kirp and Kirp, "The Legalization of the School Psychologist's World," 14 *J. School Psychol.* 83 (1976); Katz and Bonfield, "The Right to Education: Due Process and the Inner City Child," 3 *Bull. Am. Acad. Psych. & L.* 70 (1976); Kirp, Buss and Kuriloff, "Legal Reform of Special Education: Empirical Studies and Procedural Proposals," 62 *Calif. L. Rev.* 40 (1974);

- Gorlow, "The School Psychologist as Expert Witness in Due Process Hearings," 13 *J. School Psychol.* 311 (1975).
23. See, e.g., Rose, "The Social Scientist as an Expert Witness," 40 *Minn. L. Rev.* 205 (1956); Kendler, "Contributions of the Psychiatrist to Constitutional Law," 5 *Am. Psychologist* 505 (1950).
 24. See, e.g., Brodsky, *Psychologists in the Criminal Justice System* 93-101 (1973).
 25. Gaines, "The Clinical Psychologist as an Expert Witness in a Personal Injury Case," 39 *Marquette L. Rev.* 239 (1956).
 26. See, e.g., *Mills v. Board of Education*, 348 F. Supp. 866 (D.D.C. 1972); *Pennsylvania Association for Retarded Citizens v. Pennsylvania*, 343 F. Supp. 279 (E.D. Pa. 1972).
 27. See, e.g., *Wyatt v. Stickney*, 344 F. Supp. 307 (M.D. Ala. 1972), *aff'd sub nom. Wyatt v. Aderholt*, 503 F.2d 1305 (5th Cir. 1974).
 28. See, e.g., *Carroll v. Cobb*, 139 N.J. Super. 439, — A. 2d — (App. Div. 1976).
 29. Fincher, *supra* note 19, at 493.
 30. Diamond and Louisell, "The Psychiatrist as an Expert Witness: Some Ruminations and Speculations," 63 *Mich. L. Rev.* 1335, 1340 (1965).
 31. For an analysis of the more lurid sort of "gamesmanship," see Willis, "Psychiatric Testimony, Trial Gamesmanship and the Defense of Insanity," 5 *San Diego L. Rev.* 32 (1968).
 32. See, e.g., Suarez, "A Critique of the Psychiatrist's Role as Expert Witness," 12 *J. Forensic Sci.* 172 (1967).
 33. See, e.g., MacDonald, *Psychiatry and the Criminal* (1969).
 34. See, e.g., Roberts, "Some Observations on the Problem of the Forensic Psychiatrist," [1965] *Wisc. L. Rev.* 240, 245.
 35. See, e.g., Van Dusen, "The Impartial Medical Expert System: The Judicial Point of View," 35 *Temple L.Q.* 386 (1961); Balcanoff and McGarry, "Amicus Curiae: The Role of the Psychiatrist in Pretrial Examinations," 126 *Am. J. Psychiat.* 90 (1969).
 36. See, e.g., Goldstein, "The Psychiatrist and the Legal Process: The Proposals for an Impartial Expert and for Preventive Detention," 33 *Am. J. Orthopsychiat.* 123 (1963).
 37. See, e.g., Diamond, "The Psychiatrist as Advocate," 1 *J. Psych. & L.* 5, 19 (1973); (characterizing the responsible expert role by the phrase "disciplined subjectivity"); Diamond, "The Fallacy of the Impartial Expert," 3 *Arch. Crim. Psychodynamics* 221 (1959); Pollack, "Observations on the Adversary System and the Role of

- the Forensic Scientist: 'Scientific Truth' v. 'Legal Truth,' " 18 *J. Forensic Sci.* 173 (1973).
38. For an explanation of why there is *dual* hostility between psychiatrists and attorneys, see Robey and Bogard, "The Compleat Forensic Psychiatrist," 126 *Am. J. Psychiat.* 101 (1969); Sargent, "Problems in Collaboration Between Lawyers and Psychiatrists," 11 *Wayne L. Rev.* 697 (1965). For a more penetrating examination, see Goldstein, "Psychoanalysis and Jurisprudence," 77 *Yale L.J.* 1053 (1968).
 39. Jonas Robitscher, for instance, quotes F. A. Whitlock's characterization of the relationship between law and medicine as the result of a "shotgun wedding" and not merely as a "marriage de convenance." Robitscher, *Pursuit of Agreement: Psychiatry and the Law* 12 (1966), citing Whitlock, *Criminal Responsibility and Mental Illness* (1963).
 40. Asch, *Mental Disability in Civil Practice*, Section 12.8 at 292-293 (1973).
 41. Schofield, "Psychology, Law and the Expert Witness," 11 *Am. Psychologist* 1, 2 (1956).
 42. *Blunt v. United States*, 389 F. 2d 545, 548, n. 11 (D.C. Cir. 1967).
 43. Record at 36, *United States v. Brawner*, 471 F. 2d 969 (D.C. Cir. 1972), as quoted in Allen, "The Brawner Rule—New Lyrics for an Old Tune," [1973] *Wash. U. L.Q.* 67, 73.
 44. Jeffrey, "The Psychologist as an Expert Witness on the Issue of Insanity," 19 *Am. Psychologist* 838, 843 (1964).
 45. Note, *supra* note 16, at 124, n. 31.
 46. Brief for American Psychiatric Association as Amicus Curiae at 20, in *United States v. Brawner*, 471 F. 2d 969 (D.C. Cir. 1972), as quoted in Allen, *supra* note 43, at 74.
 47. Allen, *supra* note 43.
 48. Asch, *supra* note 40, at 286.
 49. Louisell, "The Psychologist in Today's Legal World," 39 *Minn. L. Rev.* 235, 241 (1955). Louisell's thinking is reiterated in Pacht, *supra* note 17.
 50. See, e.g., Schofield, *supra* note 41, at 1 (referring to "sources of stress" residing in the general nature of court proceedings). See generally, McCary, "The Psychologist as an Expert Witness in Court," 11 *Am. Psychologist* 8 (1956); Rice, "The Psychologist as Expert Witness," 16 *Am. Psychologist* 691 (1961).
 51. Sargent, *supra* note 38, at 698. For what might charitably be termed bizarre advice to an expert witness faced with such a situation, see Kiger, "The Psychiatrist as an Expert Witness in Criminal Court," 24 *Hosp. & Commun. Psych.* 613 (1973).

52. Jeffrey, *supra* note 44, at 838.
53. *Id.* at 838-843.
54. Louisell, *supra* note 49, at 256, quoting from Shakespeare, *Julius Caesar*, act I, sc. ii.
55. National Institute of Mental Health, *Competency to Stand Trial and Mental Illness* 73 (1974).
56. See *id.* at 93. *Cf.* Group for the Advancement of Psychiatry, *Misuse of Psychiatry in the Criminal Courts: Competency to Stand Trial* (1974).
57. See, e.g., Lezak, "The Clinical Psychologist in the Litigation Process," in: George, ed., *The Effective Use of Psychiatric Evidence in Civil and Criminal Litigation* 137 (P.I.I. ed. 1974); Levitt, *supra* note 16, at 86.
58. See, e.g., Fincher, *supra* note 19, at 494.
59. Brodsky and Robey, "On Becoming an Expert Witness: Issues of Orientation and Effectiveness," 3 *Prof. Psychol.* 173 (1972).
60. *Cf.* Halleck, "A Troubled View of Current Trends in Forensic Psychiatry," 2 *J. Psych. & L.* 135, 137 (1974).
61. *Cf.* Rollins, "The Forensic Psychiatrist: Conspirator, Isolationist, or Advocate?" 24 *Hosp. & Commun. Psych.* 632, 633 (1973).
62. *Cf.* Pollack, "Forensic Psychiatry—A Specialty," 1 *Bull. Am. Acad. Psych. & L.* 1 (1974).
63. Bobbitt and Hoch, "Order—and Psychologist—in the Court," 16 *Am. Psychologist* 152, 153 (1961).
64. See text accompanying notes 16-17, *supra*.
65. Gaines, *supra* note 25.
66. Lezak, *supra* note 21.
67. Scheflen, "The Psychologist as a Witness," 32 *Pa. Bar Ass'n Q.* 329 (1961).
68. *Id.* at 333-334.
69. *Id.* at 334.