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## Article

# Role of psychologists as expert witnesses in family court proceedings

Rainer Hermann Kurz

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### Introduction

**A**S A TEENAGER I wanted to contribute to a better world considering clinical psychology studies. Instead I embarked on an occupational psychology career spanning over 25 years at leading assessment consultancies. At age 30 I vowed to make a difference in the mental health field in my fifties, and shortly afterwards embraced Buddhism. Since stumbling across an 'unbelievable' case in May 2012 I learned a lot about psychology, psychiatry and society leading me to write this article that attracted a poignant comment from a fellow psychologist: 'I believe that Rainer's article is a highly topical reminder of some of the disturbing history associated with child abuse and of the existence of indifference/biases in current practice. It is also pertinent for inclusion at this time considering recent court cases.'

'Only the death penalty is more drastic than removing a child from its parents forever'. This phrase, partly reported by Green (2014), was presented in a *Panorama* program 'I want my baby back' on 13 January 2014, to paraphrase what the President of the Family Court Sir James Munby said in a November 2013 speech. In the UK each month more than 1000 children are separated forever from their birth parents against their will in a Family Court process that veteran campaigner Ian Joseph calls 'Forced Adoption' (see [www.forcedadoption.com](http://www.forcedadoption.com)). Most of these parents are loving and law abiding.

Psychological assessment reports routinely inform such ultra-high stakes court decisions that are for biological parents more traumatic and life changing than losing a child to an accident or illness as they grieve the loss of their child who is 'bundled off' into the unknown never to be seen again (unless they search out birth parents when reaching adolescence or adulthood).

Forensic psychology Professor Jane Ireland (2012) found that two-thirds of psychological assessment reports sampled from Family Court cases were 'poor' or 'very poor' in a ground-breaking research study commissioned by the government-funded Family Justice Council in the light of her 2008 publication on the topic.

Rather than producing heated discussion and a plethora of follow-up research an

eerie silence followed and a joint report that this organisation issued in conjunction with the BPS in January 2016: [www.judiciary.gov.uk/wp-content/uploads/2016/05/psychologists-as-expert-witnesses.pdf](http://www.judiciary.gov.uk/wp-content/uploads/2016/05/psychologists-as-expert-witnesses.pdf)

The guidelines clearly build on the recommendations of Ireland and her co-researchers but fail to acknowledge that contribution, omit the critical findings and do not feature a single academic reference. The guidelines reinforce that psychologists in this setting have to be prepared to write reports that can have negative consequences for the birth parents but do not at all tackle the issues of potential bias and ‘compromise’. A review of Ireland & Beaumont (2015) indicated a range of difficulties with ‘expert’ evidence admissibility, including inconsistency, an over-focus on narrow elements of evidence, difficulties in interpretation, and the potential to unfairly restrict evidence.

Neal & Grisso (2014) skilfully discuss the issue of ‘bias’ in forensic report writing: ‘Evaluators perceived themselves as less vulnerable to bias than their colleagues, consistent with the phenomenon called the “bias blind spot”. Recurring situations that posed challenges for forensic clinicians included disliking or feeling sympathy for the defendant, disgust or anger toward the offense, limited cultural competency, pre-existing values, colleagues’ influences, and protecting referral streams.’

To what extent then is there a risk of bias in family courts given that authority representatives control who gets commissioned to conduct such work and are unlikely to continue instructing private sector professionals who disagree with ‘concerns’ raised?

‘Dubious “experts” are paid to tear families apart’ was one of the media responses (Booker, 2012) to Ireland’s report which quoted a case that appears to be ‘typical’: ‘Another woman was found by a psychologist to be ‘a competent mother’ – so the social workers went to a second witness, who found the same. They then commissioned a third, who at last came up with what they wanted: that the mother had, again, ‘a borderline personality disorder’. On that basis, her three children were sent for adoption’ (Booker, 2012).

It transpired in June 2016 that a ‘Fitness to practice’ concern raised about Professor Ireland met the ‘Standards of Acceptance’ of the HCPC but was, after four years(!), dismissed following a lengthy hearing: <http://directories.lawgazette.co.uk/news/case-dismissed-against-author-of-damning-expert-witness-report/5055691.fullarticle>

How appropriate was it that the HCPC as a regulator permitted this persecutory case to be ‘accepted’? What has the BPS done to address the research findings?

Devine (2016) charts the ever-rising numbers of children ‘taken into care’ and questions the wisdom and legality of the approach. The ‘false positive’ (child unnecessarily removed) rate may be as high as 85 per cent (arguably the remaining 15 per cent would be better dealt with through criminal courts).

Wrennal (2010) goes further identifying ‘dark forces’ at work – a view I have to agree with having experienced the pervasive ‘looking away’ attitude and ‘closing rank’ culture that continues to surround child abuse allegation (see Kurz, 2015). The public is still reeling from the revelations about the Jimmy Saville abuse regime and successful prosecutions against some former media stars. Few however have taken

in the successful prosecutions of chilling abuse by Lost Prophets singer Ian Watkins sentenced to 35 years based on video evidence of a sexual assault on a baby, self-styled Satanist High Priest Colin Batley convicted on the basis of CCTV footage and DNA proof of fathering a baby (read the 2004 book written by his victim 'Annabelle Forest') as well as Albert and Carole Hickman who in a re-trial were convicted – partly due to a historical (unsuccessful) police complaint filed at the time of the abuse – for child sexual and sadistic abuse including 'blood sucking'.

When any such allegations surface in the Family Court system the authority stakeholders are quick to dismiss these as lies, the result of 'coaching' or the product of a personality disorder. Child and adult victims are often simply too scared to tell the full truth in police interviews. Reluctance to speak out is then frequently turned against the victim. Disconcerting are also reports of 'fraud' and 'compromise' in proceedings as well as the not infrequent incidents of 'violent deaths' in the vicinity of cases which are ignored as 'Civil Law' proceedings are often conducted in complete isolation of 'Criminal Law'.

### **Key questions that the profession and society at large need to address**

In Criminal Law 'Innocent until proven guilty' is the rule so how appropriate is it to make life changing custody decisions on a 'balance of probabilities' basis where 'professionals' are always more believed than parents and an implicit 'inadequate at parenting assumption' applies as soon as a 'concern' is raised? How ethical is it to provide psychological assessment evidence when 'shared instruction' is akin to 'instruction by the prosecution' and income protection may bias professional views?

Criminal matters are handled in open court – justice must be seen to be done. The Children's Act (1989) enshrined that the identities of children need to remain confidential. However Family Court judges since have thrown a blanket of secrecy across proceedings with draconian 'Contempt of Court' rules that see 200 mothers at any given time in prison, for example, waving at the child they lost during a chance encounter at a petrol station. Court Appointed Experts enjoy an extremely privileged position and are virtually 'untouchable', for example, they cannot be sued privately and HCPC concerns require 'permission of the court' for release of court protected documents.

Personality disorders should only be diagnosed if they have a pervasive effect on work and home functioning. However references from individuals who are not 'party to the proceedings' are ignored and 'ordinary' behaviour gets 'pathologised', for example, in one instance repeated filing of appeals was cited as 'evidence' for a histrionic personality disorder. I applaud efforts in DSM-5 to move towards a dimensional view where Section 3 page 771 provides an alternative dimensional model for personality disorders where Histrionic, Paranoid, Schizoid and Dependent are no longer featured. For the remaining ones a de-medicalisation could be achieved by referring to 'personality difficulties'.

On [https://www.researchgate.net/profile/Rainer\\_Kurz2](https://www.researchgate.net/profile/Rainer_Kurz2) I put a dozen academic presentations concerning a particularly chilling case where several Court Appointed

Experts are 'in denial' about child abuse and its wider background. For example, in Kurz (2015) I outlined how a mother was seemingly 'set up' to lose custody of her toddler through a six-month stalking, defamation and harassment campaign that culminated in a sexual assault on the toddler in broad daylight. The mother had been intimidated by the perpetrator and manipulated by inadequate police officers into delaying the authority reporting for several weeks. Vested interests managed to 'pull wool over the eyes of mental health professionals' who adopted the 'easy option' considering the mother 'delusional'. I managed to get a letter into the December 2015 issue of *The Psychologist* where I allude to the background of this case which included personal disclosures of 'Satanist Ritual Abuse' (SRA) and the 'disappearance' of newborn babies that seemingly remained unregistered at birth. Other materials can be found on my blog: <https://psychassessmentblog.wordpress.com/>

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