SOME THOUGHTS ON PROVIDING PSYCHOLOGICAL REPORTS FOR THE COURTS AND OTHER AGENCIES[1]

Psychologists are frequently asked to perform assessments on clients and patients and to write reports of these assessments. As a clinical and, since 2001, a forensic psychologist, I have been writing such reports for about 44 years. Over the past 24 years I have written not far short of 1,000 independent psychologist's reports, mostly for the civil and criminal courts. I would like to engage in a little self-indulgence and describe some personal reflections and concerns about this area of work, having in mind the reader likewise engaged.

Most of the time I am basing my comments and opinions on my experience of preparing reports for the criminal courts, that is reports on defendants prior to their entering their plea or being tried, and on convicted persons due for sentencing. There are also some comments about reports on prisoners who are serving or, in one case has served, their sentence. Typically one is asked a question or series of questions by the instructors, but many reports also require a holistic assessment of the person, notably his or her personality and cognitive abilities.

The following are questions that we are commonly asked by the defence: Are our client's admissions or confession at his police interview sound? Should she have had an appropriate adult with her when interviewed by the police? Is he fit to plead and stand trial? Will he require special measures at his trial? Was she capable of knowing that she was breaking the law? Was he unable to resist coercion to commit the offence? Is her defence plausible (my terminology)? Is he 'dangerous' to the public?[2] 'What will be the effect of a prison sentence on her mental state?' 'Does he require treatment and, if so, what should be the nature of this and could it be safely undertaken in the community?' Other matters to address are more general, such as possible reasons for committing the offence, advice on sentencing, and management of future risk.

Putting to one side the matter of whether we are any more competent to answer these questions than any reasonably intelligent lay person, it seems that people do feel that it is important to have our opinions about the clients and patients they are working with, and in every case we owe it to all parties to do our best to provide an honest and valid assessment. There are right ways and wrong ways of going about this and it is important that these are given our careful consideration. I am aware that there is already a literature on how to

[1] This paper will occasionally be amended and updated. Changes will be highlighted.
[2] Now no longer required in the formal sense since the demise of indeterminate sentences for public protection.

perform psychological assessments and write reports, but I want this to be an account of my personal reflections, warts and all, so I shall not be referring to these publications.

Where we go Wrong

I shall first summarise the main ways in which I believe we are often at fault when we provide formal assessments of patients and clients. I shall then provide actual illustrations of some of these problems from reports I have read and prepared myself.

Perhaps the first issue we should raise is whether psychologists are able to achieve the goal of providing answers to the kinds of questions listed earlier (and other questions) with an acceptable degree of accuracy, one better than an intelligent non-specialist would be able to achieve. My opinion is that *I myself* might achieve this but only *in general terms*. And my experience does not lead me to believe that I am comparing myself too unfavourably with others in my profession. By the expression *in general terms* I mean by reference to 'likelihood or probability within the normative population' and I will expand on this in due course.

If this is all we are capable of doing then it is indeed limited and in many cases likely to be somewhat inconsequential. In fact I would be the first to say that many of the assessments I have done, though I believe them to be valid enough, have turned out not to be of any great import for the individuals concerned. This, I maintain, is inevitable because we are in the business of attempting to make predictions about human beings - retrospectively in the case of such matters as whether the defendant understood the illegality of the offence or whether he or she was liable to make a false admission. It is a conceit of psychologists that, with our assessment tools and our psychometric tests, we are uniquely enabled to predict with confidence the feelings, thoughts, and behaviour of an individual person in a given situation. Most of the time we can't. Some people may say that with further scientific research and refinement of our techniques, and with more rigorous training, we will be able to achieve this goal. I am doubtful. I believe there is ultimately a limit to what anybody can achieve in this respect within the terms of reference of our professional roles. So here is the first way in which most or many of us seem to go wrong:

> ***We overestimate what we can achieve and give insufficient attention to the limitations of our capabilities and the procedures we use when assessing clients.***

More generally:

> ***We fail to give sufficient acknowledgement to the wider context in which much of the evidence we use is elicited.***

And more specifically:

> ***We are susceptible to a number of cognitive and socio-cognitive biases when interpreting the evidence collected.***

For example:

- We fail to give due allowance to *a priori* base rates when providing opinions as to the likelihood of what are in reality often quite unusual circumstances or occurrences in the population from which the people we are examining are drawn. I am speaking here about matters such as whether a defendant: should have had an appropriate adult at their police interview; may have made a false confession or false admissions; is fit to plead and stand trial; requires a registered intermediary or other special measures during their trial; may not have been aware that they were committing an offence at the time; or may have been unable to resist pressure from their co-accused to commit the offence. It is only for a minority of defendants that it can be said that any of these possibilities apply, if only because, if there were many more, the Criminal Justice System (CJS) could not cope with the consequences.
- Related to the above, our judgements are too biased in favour of the client's position. Perhaps, in the case of defendants, this is a natural consequence of how we approach other areas of our work. We are trained to be sympathetic and empathic and to see things from our client's or patient's point of view. Perhaps we are also unduly influenced by what we believe our instructors are hoping will be our conclusions. In fact I would say that we are. (We call expert witnesses who are especially prone to the latter 'hired guns'.)
- Again related to the above, we are overly inclined to seek out psychological disability in the clients whom we assess, to undervalue their capabilities and to be overprotective of them in our recommendations. (It may be said that we practise 'negative psychology', although this term has other connotations.) In the 1970s, the sociologist and philosopher Ivan Illich and his colleagues wrote about 'disabling professions' – in education,

medicine, the legal system, welfare, and so on[3]. Surely psychologists now belong to their ranks. In our concern to help and protect someone who suffers and struggles in the face of life's challenges, perhaps we are all too ready to identify them as 'a disabled person', and this is how they come to identify themselves. At least this seems to me to comprise much of the work that we do.

- One of the consequences of the above tendencies is that we are unduly prone to *confirmation bias* when studying the evidence. As we scrutinise all the information at our disposal we seek out that which is more likely to confirm our implicit and explicit hypotheses about the client (favourable if we are hired by the defence, unfavourable if otherwise), and overlook or discount that which does not; likewise we are overly inclined to interpret evidence as being in favour of our own hypotheses.

Notwithstanding the above, we sometimes pay insufficient attention to the client's account, particularly in the case of defendants in criminal trials

Too often we fail to understand that to address the questions posed by our instructors we must be careful to adhere to the account given by the client and not our own assumptions about what happened.

We misuse, overuse, misinterpret and over-interpret psychometric tests

It is my belief that the tendency for harbouring the above biases is potentiated in significant measure by the use of psychometric tests and the interpretation of the data that they provide. Below are my observations of the traps that we fall into in our use of such tests. I shall provide illustrations of this in due course.

(i) Too often we do not explain (even to ourselves) why we are using psychometric tests, why we have chosen the particular tests used, and what in particular we are looking for that will affect our conclusions and opinions one way or another.

(ii) We are inclined to over-interpret the client's psychometric scores and overestimate their ability to predict the behaviour and reactions of a given individual in a specified situation.

[3] *Disabling Professions* by Ivan Illich and others (London: Marion Bowers, 1977). Accessible online at http://tinyurl.com/ycskssm9.

And

> *(iii) We place too much reliance on the results of psychometric tests at the expense of the evidence from the person's behaviour and experience in his or her everyday life, which we have gathered from the interview, other people's accounts, previous reports and documentation, and so on.*

Allow me to repeat what I said earlier: 'It is a conceit of psychologists that, with our assessment tools and our psychometric tests, we are uniquely able to predict with confidence the feelings, thoughts, and behaviour of an individual person in a given situation'.

Perhaps some of our cognitive tests help us come closest to fulfilling this ideal (with respect to performance and accomplishments), but only in general terms. The criticisms apply particularly in the case of scales designed to measure personality traits and emotional dispositions and states. All too often the interpretation - e.g. 'This score reveals that X is a very submissive individual who finds it difficult to resist social pressures….etc.' - is provided without any indication of how the measured traits are evident in the person's day-to-day life, if at all. Yet personality traits are supposed to describe how an individual habitually feels, thinks and behaves in everyday circumstances.

> *(iv) We do not give sufficient thought to what psychometric tests actually measure and to the often limited or even complete absence of empirical evidence to support the interpretations we make.*
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> *(v) We incorrectly assume that the more psychometric tests that are administered, and the more scores that are thus generated, the more accurate and reliable will be the conclusions of the report. I suggest that beyond a certain level (which is reached quite quickly) the opposite is the case.*

One reason for this is that all psychometric test scores have a range of error; it is not like weighing an object or measuring its length, both of which can be done precisely enough to cause no problems. Hence, the more you measure the more scores you are likely to have that contain errors, and the more likely that some of them are wide of the mark. Also the qualities that they measure (extraversion, neuroticism, self-consciousness, intelligence, etc.) represent very general and often, for a given individual, context-dependent and highly variable ways of thinking, acting and feeling. Couple all of this with the above–mentioned confirmation bias, and the over-zealous psychometrician finds himself or herself in the privileged position of being able to scan a multitude of scores (often dozens) and to select a sample of them that, on

the face of it, seem to corroborate the story he or she wants to tell about the client (a process popularly known as 'cherry-picking'). In fact sometimes this is a real struggle: one is left with a plethora of inconsistent and sometimes contradictory information that, taken *en masse* defies any attempt at a sensible and coherent interpretation. [4]

> *(vi) Too often we do not even comment on the implications of tests scores for the matters our report is intended to address.*

What I am getting at here is exemplified by a tendency to interpret a test score if it is unusually high or low but to make no comment if it is in the average range, as if this fact has no implications for the question being addressed, which it obviously *must* do.

In summary: I have read many psychological reports (and have probably written enough of them myself) in which the writer goes into lengthy detail about the nature of the examinee's personality traits, their anxieties and difficulties, strengths and weaknesses, likes and dislikes, ways of coping with problems and conflicts, and so on, where these details consist entirely of interpretations of tests scores (sometimes presented in the form of copy-and-paste descriptions provided by test manuals or software analyses) with hardly a mention of any biographical evidence. Is the finished product any better than an astrological reading? Compare these efforts to the works of great writers, biographers, obituarists - journalists even – who provide us with highly-researched, profound, penetrative and insightful accounts of the character of their subjects based on their conduct, experiences and accomplishments during the course of their lives.

Psychometric tests are tools that may assist us in addressing questions that our assessment is intended to answer. But a profile of scores on personality scales can offer us at best only very general indications and is a limited proxy for the person who completed the tests. The real evidence can only be provided by what is known about how that person commonly responds behaviourally cognitively and emotionally, most notably in those situations and circumstances that are related to the matters to be addressed in the report. The enthusiasm with which psychologists use these scores to make future and retrospective predictions about how the respondents behave in this or that situation (confirmation bias being much in evidence) belies the rich and complex nature of human personality and how the many

[4] From all the psychologist's reports that I have read in the legal context, the record number of tests administered was around 26, yielding hundreds of scores. The psychologist's conclusion was in favour of the client's case, but only on the basis of a limited number of 'cherry-picked' scores.

interacting facets of a person's character ebb and flow according to the circumstances in which they find themselves.[5]

Examples of Where we go Wrong

I shall now provide some illustrations of what I believe to be bad practice; these after all are what are motivating me to undertake this exercise.[6]

Confirmation bias

In the first case I shall discuss, the defendant (D) was one of several people charged with an offence of fraud, to which he had pleaded not guilty. D's defence was that his understanding of the events in question did not lead him to suspect that a fraud was being perpetrated. However, the prosecution considered that D knew or suspected all along that he was participating in a criminal offence.

Now, for reasons that I shall later explain more fully, I suggest that we call the prosecution's case 'the prior opinion' (in experimental research this is similar to 'the null hypothesis'). Let us refer to the defence case, namely that D was unaware that a fraud was being perpetrated, as 'the alternative opinion' ('the experimental hypothesis'). It is reasonable to assert that at the outset the latter was possible but unlikely – i.e. most people in the same situation would have been aware that what they were asked to do suggested the possibility that a crime was being committed, if indeed they were not actively involved in the fraud themselves.

D's lawyers felt that a psychological assessment of their client might be helpful in supporting his defence. So what the psychologist must initially decide on is what psychological evidence would affect the probability that the prior opinion is incorrect and that the alternative opinion – D was unaware of the illegality of his actions – is true.

One of the tests administered by P, the psychologist instructed by the defence, was the Wechsler Adult Intelligence Scale (WAIS-III). Although there is probably no research that can directly support this, it is reasonable to assume that if D's IQ were particularly low it is more likely that he would not have realised that a fraud was being perpetrated. (As with most psychologists, P did not state this *at the outset* in her report; I shall later suggest that maybe it would be a good idea if we all got into the habit of doing this.)

[5] Accordingly, I for one am not impressed when told by those researchers who spend much of their time administering personality tests and pouring over the results, that most of what makes us the person we are is bestowed upon us by our genes.

[6] In all examples, for the sake of confidentiality, I have only provided the minimum details necessary to illustrate the points I am making. For the same reason, the sex of the individuals involved has *sometimes* been altered.

In fact D's IQ turned out to be at the top end of the low average range (89). Available evidence on the IQs of offenders, which I shall summarise later, suggests this is likely to be at least average, if not higher, for someone up before the courts. Altogether, it seems reasonable to say that this piece of evidence does not significantly affect our confidence that the prior opinion is correct.

However, P seemed determined to prove the contrary. She noted that D's working memory index (WMI) and processing speed index (PSI) on the WAIS-III were at the lower half of the low average range, the other two indices – verbal comprehension (VCI) and perceptual organisation (POI) being in the average range. *After* giving these results in her report, P opined that the WMI and PSI were particularly relevant to the question of whether D understood that he was involved in fraudulent activity and she constructed a rather elaborate explanation of why this was so. (Since she did not comment on his VCI and POI being average, we must assume that she considered that these findings had no bearing on the matter.)

I can think of a host of questions concerning P's interpretation of these results. Did she consider *prior* to assessing D that his performances on tests contributing to the WMI and PSI were particularly relevant to the question of whether his participation in the fraud was knowingly or unknowingly undertaken? I very much doubt it, but if she did, would it not have been helpful if she had stated this at the outset? Would she have been able to cite research evidence to support her claims about these test results? Again I very much doubt it. If, instead of these two indices, D had obtained a lower VCI and PSI would P have considered *these* as supporting the defence? If so, why did she not comment on the fact that they were in the average range and hence did *not* support the defence?

I suggest that the way P set about interpreting these results smacks strongly of **confirmation bias** (see earlier) – the tendency we all have to seek out and highlight evidence that provides support for our existing beliefs or valued ideas, and to overlook or play down evidence that might indicate the opposite. And there is more.

Amongst the other tests that P administered was the Gudjonsson Compliance Scale. Presumably the reason for this was that she considered that a high score would support D's defence that he went along with what was asked of him without wondering about the legality his actions. No empirical evidence was cited by P to demonstrate that defendants who score

high on this scale are more likely than others to behave in this way. But is this not a reasonable assumption? I shall take up this point later.

As it happened, D's compliance score was only a little above the average score, not sufficiently high to affect the likelihood of the prior opinion if we consider the test to be relevant at all. Undeterred, P then performed her own *post hoc* qualitative analysis of D's responses to the 20 items and concluded that he was in fact highly compliant but not when he was being asked to do something he knew to be wrong. Again I suggest this is a clear example of confirmation bias.

P reported the results of more tests, including a self-report personality questionnaire. Although there was nothing unusual about the scores, once again, P was able to discern in them confirmation of D's vulnerability to be unwittingly duped into assisting with the fraud scheme.

I want to stress that in my experience P's report was quite typical– i.e. in no way was it *a bad report* when measured against the standard of other forensic psychological reports I have seen. I say this, even though further common shortcomings were evident in the report, which I address in the next section. Before I do so, I cannot resist telling you of my favourite example of confirmation bias in a report, this time for the civil courts.

The report was actually prepared by a psychiatrist and concerned a woman ('N') who had been involved in a traumatic incident and was complaining of anxiety problems and low mood ever since. I assessed her and my opinion was that her psychological problems were the result of the trauma of the incident and the ongoing effects of the physical injuries she had sustained. The opposing solicitor then asked for an expert opinion from a psychiatrist. It was clear on reading this gentleman's report that it hadn't taken him long to come to the opinion that even before the accident N was of an anxious disposition and that her post-incident anxiety was no more than a continued manifestation of this. As evidence he cited an entry in her GP records stating 'Worried about BSE'. The psychiatrist interpreted this as confirming his belief that N was prone to irrational fears, BSE being the abbreviation of bovine spongiform encephalopathy or, more popularly, 'mad cow disease' that was of public concern at the time.

In the light of the psychiatrist's report, N's solicitors asked me to prepare a second report. I saw N again and asked her about her worrying about mad cow disease. She then explained that someone in her family had been diagnosed with breast cancer and not unnaturally this

evoked fears in her that she herself might one day be found to have the disease. Accordingly she had consulted her doctor about 'BSE' as she was worried that she might not be doing this correctly. 'BSE', you see, was the doctor's notation for breast self-examination. Wouldn't you have thought that the psychiatrist would have had the gumption to ask N what the particular consultation was about, rather than immediately jump to his own prejudiced conclusion?

Needing to demonstrate disability

I shall now return to the cases of D, whom I was discussing before distracting the reader with the above anecdote. As I said, further common shortcomings were evident in the psychologist P's report and I introduce the first of these by asking the question 'How low would D's IQ have to have been before we could say that it does make a difference to the likelihood of the prior opinion?' Here we must address a key factor that psychologists need to keep in mind when writing these kinds of reports. The main role of the expert is to advise the Court on matters of which non-experts, especially the members of the jury, have insufficient knowledge and expertise. Consequently much of the evidence provided by a psychologist, at least for defendants who have yet to plead or who are pleading not guilty and hence are up for trial, ought to concern matters such as the consequences of their having some medical or psychological disorder (including cognitive disability).[7] It is otherwise *usually* insufficient for the psychologist merely to advise the court on the defendant's personality and intellectual capacity if these come 'within the normal spectrum' of human variability. This is because it is considered that the members of the jury, being men and women of the world, are quite capable of judging the character and intellect of the defendant and other witnesses who give evidence in court and to take these into account when arriving at their verdict. This means that a psychologist is on safe ground when advising the court on someone with 'learning difficulties' ('general' if their IQ is 69 or below and their level of everyday functioning is clearly impaired; 'specific', say in the case of dyslexia). There may also be cases when the court would benefit from advice on someone with a borderline IQ (70-79), when, say, in order to commit the crime, a higher level of cognitive ability would clearly be required – e.g. when IT skills are involved that would probably outstrip the capabilities of someone with an IQ within or below this range. Higher than this, the psychologist is usually best advised to adhere, at least for the moment, with the prior opinion.

[7] We have more freedom when it comes to writing pre-sentence reports, which for me personally makes them more satisfying to undertake.

All-in-all, prior to his ever meeting P, D had seemed to have been a pretty ordinary sort of chap. On completion of P's report he seemingly had acquired all manner of problems in his personality and cognitive abilities, including (surprisingly in view of the test results) being unusually compliant and having some kind of 'learning difficulties'. Yet despite P's best efforts, D's supposed problems came nothing close to a diagnosable 'mental condition'.

In such a case it may be justifiable to say that the 12 men and women of the jury would be just as capable as a qualified psychologist in judging from D's evidence and appearance in court whether there was reasonable doubt that he was aware of the criminal nature of what was going on. Yet psychologists, myself included, who write these reports seem very reluctant to accept this way of thinking. I believe this is because we are placed in a situation where we feel it is our job to root out and highlight any apparent disability from which the client may suffer. We believe that we are thereby helping the person; most of us probably took up careers in psychology expressly for this purpose. But are we really helping? Did it help D to be informed that he had all these impairments when, before he met P, he seemingly had no more trouble than his peers getting on with his life?

I'd now like to illustrate this 'need to demonstrate disability' with another case example. The client, 'V', was claiming to have falsely confessed to the serious crime of which he had been convicted. So far as it was possible to ascertain from the exceedingly lengthy report of the psychologist instructed by V's solicitors, V fell into the category of 'ordinary bloke' at the time of his police interview – he certainly had no mental disorder or 'abnormality of the mind'. In the circumstances this was somewhat of a handicap for him but his barrister and the psychologist his team had hired came up with 'a mental condition' that might have fitted the bill: V was **abnormally compliant**. That is, he had a very high score on the GCS (see earlier).

And so it came to pass that during the hearing, V's barrister was at pains to repeat several times in grave tones that her client was **abnormally compliant**. My thought at that time was that I had never previously heard of anyone being described in these terms in all my years working in the psychiatric services. Indeed I cannot even now recall 'compliance' ever being formally measured and highlighted in the latter context. But in forensic psychology it seems to have acquired extraordinary salience in a number of areas. Did it help V to hear that he was 'abnormal' in some way? Well, in these unusual circumstances it might have been music to ears; but had he ever thought he was 'abnormal' before having this assessment?

Let me provide a third illustration of this undue urgency to diagnose disability. In this instance I can reveal the identity of the psychologist who prepared the report.

I once undertook, under instructions from some defence solicitors, a psychological assessment of a 15-year-old defendant (Beckie) who was up for trial in the Crown Court (and not the Youth Court, as Beckie's co-accused was an adult). The solicitors were concerned that Beckie would have great difficulty coping with a Crown Court trial.

In recent years 'special measures' have been introduced by the courts to assist witnesses who have significant psychological problems and intellectual limitations and who would struggle to keep up with the court proceedings, to present their evidence, and to be cross-examined. For example, when in the witness box, barristers may be asked to phrase their questions in simple language, use short sentences, and so on. The witness may have permission to take a break if they become unduly stressed and some may be allowed to communicate to the court by video-link. Another provision is that of having an appropriately qualified person – a 'registered intermediary' - in the witness box to help the witness understand and communicate. In Beckie's case her lawyers asked if such an arrangement would be required for her.

Beckie attended mainstream school but was clearly struggling and required remedial help. However I was impressed by Beckie's very confident and competent presentation during the interview with me. Hence, the evidence I had at that stage would not be sufficient to indicate that she was significantly different from any comparable defendant to such a degree as to require the services of an intermediary.

Note that so far I have not drawn upon any knowledge or expertise that would be beyond the competence of 'the reasonable person'. However, I assessed Beckie's IQ as being well within the 'learning difficulties' range. On account of this I advised that Beckie would indeed require the assistance of an intermediary if tried in the Crown Court.

In the event, the trial did go ahead in the Crown Court as planned. Beckie performed well under cross-examination without assistance and was acquitted. Egg on my face indeed.

Did my intervention really help Beckie? No. Did it harm Beckie? Well, I think we need to be mindful that by declaring a person to be disabled and incapable of undertaking duties and responsibilities that are expected of most members of the public we are not always doing her or him a favour. Perhaps sometimes they need to prove to themselves and others that they *are* capable. And certainly Beckie proved this in court. Good for Beckie!

Did my intervention help the court? No. As with similar cases I was clearly implying that those involved in the court process were not competent to recognise and give due allowance for the problems of the child concerned and needed 'an expert' to advise them. (I was once told this by an indignant judge when I was arguing in court that a particular defendant required 'special measures' in the days before these became more accepted.) In a way I was implying that those involved in Beckie's trial also 'had a disability'.

Still on this theme I recall assessing a teenager on a serious charge who, following his arrest, was referred to the child and adolescent mental health services (CAMHS). His parents were clearly upset and indignant at being told by CAMHS that their son was 'not suffering from any mental disorder'. Someone from social services then wrote to the family's doctor demanding that the boy be referred to a paediatrician to ascertain whether he 'suffered from a mental disorder such as ADHD or autism'. The referral was not forthcoming. I agreed with CAMHS; I did feel that in the future this person might experience mental health problems but I thought that the urgency to have him diagnosed with some mental disability at that point in his life was not helping his psychological development. I felt strongly about this and, rightly or wrongly, I included this opinion in my report. As would be expected of any lad like him faced with the same charge, he was sent to a YOI.

Being in thrall to psychometric test results

This part of the discussion is particular concerned with the use of personality tests, usually in the form of self-report questionnaires.

Let me expand on some points I made earlier. Since personality traits describe habitual ways of behaving, thinking and feeling and are assumed to be relatively fixed, one would suppose that in order to establish whether a person were indeed endowed with certain traits, the first place to look would be in his or her day-to-day behaviour. It would surely be difficult to sustain any assertion that the individual in question is accurately described by characteristics identified by psychometric scores if there was no evidence for this in their everyday lives. This would apply especially with traits that have been identified as being particularly troublesome for the individual.

In the fraud case discussed earlier, the personality characteristics supposedly exhibited by D, along with the difficulties these would impose on him in everyday situations, were confidently presented in detail by P, but this account was almost entirely based on his test scores. If D had been so handicapped by all of these difficulties, surely there would have

been evidence of this in his behaviour, attitudes and feelings in his daily life? If they were, then P did not consider them worth reporting.

Similarly, in the case of the 'abnormally compliant' V, it would be reasonable – and indeed crucial - to find out in what ways this characteristic revealed itself on an everyday basis. Presumably, being 'an abnormality' it would have seriously adverse implications for how he coped with social situations. In fact the psychologist's report made no reference to this at all; the diagnosis of an abnormality was made purely on the GCS. When I myself examined the documentary evidence of his everyday behaviour, mostly confined to his time in prison, there were no indications of this 'abnormality', or indeed any other.

Not seeing the broader picture

We are all familiar with picture puzzles in which an enlarged photograph of a small detail of an object or scene is presented on its own and we have to guess what the whole picture is. A similar puzzle may arise naturally when we see someone behaving in what appears to be a very strange manner ('What the hell is she doing?'). It is only when we are aware of the context in which the behaviour is occurring that it makes any sense. Sometimes, however, the reverse applies; the behaviour seems entirely appropriate until we become aware of the broader context; only then do we realise how absurd it is.

We are all prone to make mistakes like this in everyday life, one reason being that we fail to make a full and accurate appraisal of the context in which we make our decisions. We adopt an unduly narrow focus and on this basis unthinkingly opt for what appears to be the correct course of action. A more careful appraisal of all the information provided by the context can help us realise that the immediate choice suggested by our narrow focus may not be at all appropriate. In other words, we need to 'zoom out' and see the wider picture. The above examples of what I believe to be the unthinking application and interpretation of psychological tests to some extent illustrate this point and I shall now give some more obvious examples.

Let me first ask you to imagine you are a man in your 30s and I have written a psychological report on you, a major focus of which concerns your being very controlling and seriously violent in your relationship with your former, and only, girlfriend. I have recommended that you should undertake a 'Healthy Relationships' programme, consisting of a series of classes over an 18-month period taught by two female therapists experienced in working with violent men. The classes would be attended by men with a similar history to yours and, being largely

based on the methods of cognitive behaviour therapy (CBT), would aim to teach you skills for managing close relationships without recourse to controlling, manipulative or violent behaviour.

I think you would immediately see the sense in this, though you may have some questions about whether attending classes like this could really make such a profound difference as to how you feel in your emotional relationships, and you may want to know if there is good evidence for the success of the programme. After all, it is rather unusual for any of us to learn all about having close relationships by attending classes. But so far I have only presented you with a detail of the whole picture.

So let's 'zoom out' a little. I now tell you that in order to attend these classes you will have to spend 18 months as an inmate in a closed prison where the course is taking place. I think your reaction now would be to resist any attempt to make you do this course. I might try to persuade you by telling you that once you have completed the course there would be a good chance that for the first time in your life you could enjoy close, fulfilling relationships, including a permanent attachment, free from the emotional turmoil that characterised your previous relationship. And, importantly, anyone to whom you became attached would no longer be at risk from physical violence. Would this not be well worth the period of incarceration? I think your answer would still be no, and one very cogent reason you would give is that a prison would be the last place in which you could learn all about having healthy relationships, even if you were attending instructional classes on how to succeed in that quarter. Surely it would put on hold any chance of your achieving this goal, if not actually make it less attainable?

Let us 'zoom out' further. What I am describing is in effect what a prison psychologist (PP) recommended in a report on an inmate whom I shall call Tom. Some years previously Tom had been given a life sentence for an extremely violent offence against his girlfriend. He was now due for a Parole Board hearing to decide if he was ready to move from his current prison to open conditions. While serving his sentence he had undertaken numerous CBT courses with various titles, to the point where he was complaining that he had long been able to put into practice what useful things he had learned and the subsequent courses were mainly repetitions of things he had already been taught. Indeed I rather feared that he knew more about CBT than I did. Nevertheless, PP felt that Tom needed to undertake the Healthy Relationships course; coincidentally or otherwise, she and her colleague had recently been trained to, as we now say, 'deliver' this programme.

I am pleased to report that I was not the only one whose contribution to the deliberations of the Parole Board was to question whether, notwithstanding the efforts of the teachers on this course, it made any sense to keep Tom in a closed prison for another 18 months if the sole purpose was for him to learn how to enjoy close friendships and intimate relationships with women. It seemed rather like teaching someone how to swim without their being immersed in water. Surely it would be more sensible for Tom to experience making acquaintances and friends in the natural way, something that being in an open prison would afford him the opportunity to do.

For better or worse the Parole Board decided that Tom should remain in the prison and undertake the Healthy Relationships programme.

Now consider this scenario. A psychologist conducted an assessment on a male person whom I shall call Steve. Amongst the procedures undertaken was the International Personality Disorder Examination (IPDE), which is in the form of a semi-structured interview for assessing whether a person has, or is likely to have, one or more of the personality disorders provided by DSM-IV (now DSM-V) or ICD-10 (now ICD-11). The psychologist reported that Steve *did* have a personality disorder as well as significant traits of several other personality disorders, and concluded that he should undergo a course of individual therapeutic work with the aim of exploring and correcting these.

This sounds reasonable; but 'zoom out' and what do we find? Steve has spent a considerable number of years in prison for a serious offence and is now hoping that the decision of his upcoming Parole Board hearing will be in favour of his moving to an open prison. The prison psychologist however has now detected the presence of a personality disorder and other serious personality difficulties and considers that these need to be addressed by individual psychotherapy before Steve goes anywhere.

Does this sound reasonable now? To me it seems quite absurd. After years of daily observation, offender treatment programmes, and countless assessments by psychiatrists, psychologists, probation officers, social workers, prison officers, workshop supervisors, educational staff, etc., surely by now people would have got the measure of this man? What an earth can the IPDE tell them that they do not already know? I can't help bringing to mind the witch-hunter of old, armed with his *Malleus Maleficarum,* travelling the country and

uncovering signs of witchery in places and in people that had escaped detection by everybody else.[8]

Now it may be argued that in the case of the two examples given above, the Healthy Relationships course and the IPDE are products of recent advances in our understanding of human psychology in general and the management of offenders in particular, and in both cases the psychologists were bringing these to bear in their assessment of the two prisoners' appropriateness to move to open conditions. Speaking for myself I believe there are better ways of explaining what is happening in both instances; this requires more 'zooming out' in order to understand the much broader context in which decisions like this are made. But let us save this for another day.

Now let's return to the case of D, the man charged with participating in a fraud, discussed earlier. Recall that the psychologist P found that D's processing speed index (PSI) was in the lower region of 'low average' and in her report she gave some predictions about how this would affect D in his everyday life (with no evidence that it actually did so) and some rather elaborate reasons as to how it would render him unlikely to realise that he was assisting in a criminal activity. Let us therefore 'zoom out' and see exactly what is this 'processing speed index' that is of such crucial significance to this case.

The PSI is the combined scores of two simple pencil-and-paper tests in which speed is of the essence; so to give of their best, the examinee has to be fully alert and keen to do well. Each test takes just two minutes to complete. Can we really draw such far-reaching conclusions, as P did, about the thinking and motives behind D's offence-related behaviour in what was in reality a complex and long drawn-out series of social interactions? I suggest it is ludicrous even to contemplate that this might be the case.

Before we offer any interpretation of a test result in the manner exemplified in the above case, I again suggest we should 'zoom out' – i.e. stand well back - and ask, 'Exactly what is the evidence I am basing this opinion on?'

The same goes for the compliance score on the GCS in the case of V. The psychologist and V's barrister considered that this indicated that V was 'abnormal' in a manner of such significance that he would be at high risk of confessing to a major crime under interrogative pressures knowing that he was innocent. The GCS is a series of 20 statements relating to

[8] After doing a series of independent assessments for Parole Board hearings, it became apparent to me that prison psychologists had a particular knack of identifying a reason why, at that particular juncture, the prisoner was not quite ready to move on, even despite the recommendations of support from most or all other staff.

how the respondent reacts to social pressures and it takes a couple of minutes to complete. Is it not possible that someone claiming that their confession extracted by police officers was false would wittingly or unwittingly reply to these statements in a manner that suited their best interests? And surely the fact that V completed the compliance questionnaire *17 years* after having made his alleged false confession ought to make one extra cautious about attaching any great significance to his score?

Finally consider this example. A psychologist prepared a report on a defendant F addressing the question of whether, because of his level of anxiety and *supposed* intellectual limitations, he would require special measures when giving his evidence and being cross-examined at his trial. One of the tests the psychologist administered was the Gudjonsson Suggestibility Scale (GSS) which supposedly indicates how susceptible a person is to making false admissions under interrogative pressures. The examiner reads a short story to the examinee and then asks them to repeat as much of it as they can remember. Later they are asked a series of questions about the story, some of them leading. They are then forcefully informed that they have made errors and the questions have to be presented again. Various scores are derived from this, the most important being a suggestibility score based on their responses to leading questions and changes in their answers when tested again. This test is commonly used when psychologists are asked whether a confession elicited during a police interview may be unsound or whether an appropriate adult should have been in attendance. I shall say more about this test later.

The question may have crossed the reader's mind as to whether there is any empirical evidence that this test can identify witnesses who may struggle when being examined in court to the extent that they require special measures. I do not believe there is. Whatever the case, the psychologist in her report explained that she used the GSS as 'it is a simulation of a police interview' and thus reveals how the person may cope with interrogative pressures.

Now let's 'zoom out' so that all of the documentation that was available to the psychologist comes into view and what do we see? Full transcripts of the police interviews of the defendant! From these it was apparent that F was quite capable of holding his own under prolonged and intensive questioning and he maintained his innocence throughout. So what was the point of seeing how this chap coped with a *simulated* police interview when we already had a full account of how he coped with a *real* police interview?

Failing to adhere to the client's account

As I stated earlier, when we provide an opinion about a client at whatever stage of the court process, except in unusual circumstances our opinion must be guided by the client's account. (The 'unusual circumstances' may be if the client has some mental condition, such as a psychotic illness or serious learning disability, that prevents them from providing a coherent account of their defence or their reasons for acting in the way they did.) In other words we must not make up a story on the client's behalf, especially one that is inconsistent with what the client is actually saying.

For example: a young man, 'W', has pleaded guilty to threatening to stab an acquaintance 'S' at work with a knife. W has a history of learning difficulties and was regularly bullied at school. (He also has a medical condition of possible relevance, which I shall not mention here.) He has been very violent and destructive in his parental home, though not assaultive. His solicitor requests a psychological report that addresses the question of how W would react under the pressure of being bullied, given his previous experience of this at school, his medical condition, and his learning difficulties. The implication is that because of these problems, W's offending behaviour resulted from his limited ability to cope with S's bullying. No doubt the solicitor is concerned that, when passing sentence, the judge should be mindful of such difficulties. (Perhaps also a report that addresses the reasons for his offending will prove useful to those professionals who will be involved with W once he is sentenced.[9])

It's easy to just go ahead and write a report along the above lines and it may prove helpful for W's defence to do so. But it is first important to listen carefully to W's account of the offence and when you do so he gives no indication that S was bullying him at all! Moreover it seems from witness accounts that W himself can be quite intimidating and this was not contradicted by his physical presentation and his demeanour when I interviewed him.

So what was W's account? According to him there had been a history of conflict between him and his friends, on the one hand, and S and S's friends on the other, resulting in an altercation in town the day before the offence. Does W have 'a mental condition' which predisposed him to act in the above violent, premeditated manner the following day? Maybe, but coping strategies in response to bullying do not seem particularly relevant here.

[9] This depends on their having access to the report; unfortunately all too frequently this is not the case.

Let's return yet again to the fraud case involving D and the psychologist's (P's) administration of the Gudjonsson Compliance Scale (GCS). Compliance as measured by this scale refers to the degree to which a person tends to openly agree to information, suggestions and instructions from others, despite their private beliefs or wishes to the contrary. They appear motivated to do so through an eagerness to please and to avoid conflict with other people, particularly those in authority. Now recall that D insisted that *he had been completely unaware that his actions were part of an elaborate fraud*. Hence he was not compliant in the sense that he did what was asked of him against his private wishes. In fact the latter scenario could not form the basis of a not-guilty plea.[10] So the GCS would appear to have been inappropriate in his case.

As it happened, D was persuaded to plead guilty just before his trial was due. (There were some significant anomalies in the account of his activities that he gave to the police and these did not help him.) Perhaps, despite his guilty plea, he *was* genuinely unaware that he was participating in an illegal activity. But, despite P's best efforts and despite her insistencies to the contrary, no psychological evidence was presented that could reasonably suggest that D was any more likely to make this mistake than most young men in the same situation.

Assuming the presence of deficits on the basis of an existing diagnosis

Commonly, knowing that a person has been diagnosed with a particular medical or psychological disorder it is safe for us to predict that they will have certain deficits and problems simply by virtue of having that diagnosis conferred upon them. But this is not always the case. I shall illustrate this later with reference to a psychologist's report on an adolescent diagnosed with Asperger syndrome concerning his fitness to plead and stand trial. The example given below relates to the opinion expressed by a mental health worker employed by a patient's charity concerning a defendant on whom I prepared a report.

The case is that of Q who had been charged with failing to provide a sample when police attempted to breathalyse him both at the roadside and in the Intoxilyser room at the police station. The reason he subsequently gave was that he was panicking and could not breathe properly. In a preliminary report requested by his solicitor I stated that I had seen no evidence from documents at the time of Q's arrest and his police interview that suggested was having a panic attack at the material times, likewise from CCTV footage of the attempts to breathalyse him on custody.

[10] With a *compliant* defence *mens rea* still holds, unless there is a plea of duress (which would be very unlikely to be accepted in such a case). D was denying *mens rea*.

Now, Q had been previously diagnosed with a personality disorder and adult ADHD. I stated in my report that I did not consider Q's diagnosis of ADHD to be a significant factor in this case and that the extraordinary behaviour he exhibited in the police car on the way to custody and in the Intoxilyser room, evidenced by CCTV recordings, had a long, well-documented history and was associated with his personality disorder.

Q took my report to a patients' advocacy service and the person who saw him wrote to his solicitor, stating that Q could not provide a sample because the police officer was giving him lots of instructions; Q had ADHD and people with ADHD have difficulty following instructions, particularly when they are stressed. I should therefore amend my report accordingly.

I did not amend my report. Firstly, recall what I said earlier about the importance of adhering to the defendant's account of what happened. In his police interview Q made no mention of being unable to concentrate on the officers' instructions and he did not refer to this when I interviewed him. (In fact, at his police interview he provided no explanation for failing to provide any samples.) Some weeks after being charged, Q reported to his doctor what had happened and again did not refer to being confused by the instructions. (There was also no evidence of this on the CCTV recording of the Intoxilyser test.) Secondly, note the mere assumption that because Q had been diagnosed with ADHD he must therefore have had difficulty following the officer's instructions. Did I have any evidence from Q's everyday life that he had difficulty following instructions? I had none. Maybe, having been diagnosed with ADHD, he did have this difficulty, but to what extent? How ADHD is expressed in daily life differs from person to person and someone so diagnosed will have their own individual profile of difficulties. (As it is there was nothing in Q's psychiatric records to explain how his psychiatrist had arrived at a diagnosis of ADHD or what it had to do with his major presenting problems, which involved interpersonal relationships.)

One should therefore be very wary in reports of using the argument 'X has been diagnosed with condition Y; people with condition Y have problem Z; therefore X has problem Z'. It does not always follow that any X so diagnosed will have problem Z and even if X does, one would need to know the extent of the problem.

Some Ideas on the Right Way to Prepare a Psychological Report

In the film 'The Caine Mutiny' Humphrey Bogart plays a ship's captain during World War II. When he addresses the officers for the first time he says something like this: 'There are four

ways to run a ship: the right way, the wrong way, the Navy way, and my way. This ship will be run my way'. Similarly, I might say that there are four ways to write a psychological report: the right way, the wrong way, the British Psychological Society way, and my way. I am now going to describe my way. I believe that my way is near enough the right way but in my opinion a lot of psychologists seem to do it the wrong way. Incidentally, the captain in the film eventually becomes paranoid.

Accordingly, I shall now offer some suggestions as to what may be 'the right way' to approach this task. (I shall continue to confine the discussion to the assessment of accused or convicted persons but much of what I have to say is applicable to other contexts.)

The approach I am advocating in this paper may loosely be called 'a Bayesian perspective'. At the very beginning we assume no more than this: that the person we have been instructed to assess is taken at random from a certain population of people characterised (i) by their sex – male or female - and (ii) either their being accused of a criminal offence or their being convicted of one (by trial or by pleading guilty). From these facts alone *in theory* we can make certain broad *probability* statements about important characteristics possessed or exhibited by that person. Many of these will be hardly different from those we would make about someone drawn at random from the general population. But some of these will be so – the person's age, background, education, and so on. Many of these will not be relevant to our purposes but some will be so. For example, just from the information 'this person has committed a previous offence' we can say that the probability that they will commit an offence sometime in the future is higher than if we do not have this information or the person has no prior convictions. We may express these probabilities in terms of how likely it is that the person belongs to the relevant population group – in this case 'people who will offend in the future'.

More specifically, think of the question of how likely it is that any individual ('J'), about whom we know absolutely nothing (except we'll say that this person is from the UK), will be convicted of a sexual offence in the next 5 years. Maybe the exact probability of this (the base rate) is available somewhere but we can safely assume it will be very low. Hence our prior opinion will be that J will *not* be convicted of a sexual event within this period; this opinion has a high baseline probability of being correct. We will not consider moving from this position unless there is evidence that reduces the prior probability in favour of the alternative opinion 'J will be convicted of a sexual offence in the next 5 years'. (As illustrated above, a more technical way of expressing this is to refer to the alternative opinion

as ‘J belongs to the population of people who will be convicted of a sexual offence in the next 5 years’ but this may be a little too cumbersome for our purposes.)

We now learn that J is male. The probability that our prior opinion is correct now decreases and, perforce, that of the alternative opinion increases, since more males are convicted of sexual offences than females. Next we learn that he has already been convicted once of a sexual offence. This has a substantial effect on the two probabilities in favour of the alternative opinion. A further piece of information is that he is more than 50 years old. If anything, this is going to bring down the probability of the alternative opinion somewhat. We could take this process further, but for no useful purpose here.

The above line of argument is based on statistical information that has been collected on thousands of convicted sex offenders and is the empirical basis for a formal risk assessment procedure known as the Risk Matrix 2000[11] (Thornton, 2007). For most purposes for which reports are prepared we do not have the luxury of having at our disposal the results of such extensive research and statistical data to arrive at our decisions. However this procedural structure can still be a guide for us as we consider each piece of available evidence.

When all the evidence is gathered in we can then make a judgement as to how confident we can be that the alternative opinion is correct and we are justified in rejecting the prior opinion.

Adhering to the spirit of this approach can militate against the cognitive biases and risky practices that I outlined earlier. For example:

- Being mindful of the high initial base-rate probability of the prior opinion can guard against any undue enthusiasm on our part to find in favour of the instructing party or any inclination to be over-protective of the client – e.g. insisting that they are at risk of making a false confession or that they need a registered intermediary with them in court.
- The approach encourages us to think more carefully *in advance* about what evidence we should obtain that has a bearing on the likelihood of the prior opinion and its alternative. This is in contrast to the unfortunate tendency to unthinkingly give the client lots of tests and *then* decide what results are relevant to the alternative opinion, confirmation bias being one of the driving forces behind our search.

[11] http://tinyurl.com/yasdkxft

- Deciding *beforehand* what evidence is relevant encourages us to consider *why* we believe that that evidence is relevant: is there empirical support or, at least, are there reasonable grounds for considering it to be relevant? Indeed we could make all of this explicit in our reports.

- Once we have presented a piece of evidence such as a test score, we are less likely to omit providing an interpretation when the evidence is *inconsistent* with the alternative opinion. For example, suppose the alternative opinion is that the client is unfit to plead and that a low score on a particular test would support this (i.e. it is thus more likely than before that the client belongs to the population of defendants who are unfit to plead). Suppose however that the score turns out to be in the average range. We must now state that this evidence on its own shows that the client is no more likely to be unfit to plead than anyone else.[12] Too often this interpretation is never made clear; instead the writer of the report hurriedly moves on to consider the next test result.

Sources of evidence

Now let us list the main sources of evidence that are normally at our disposal when writing reports for the criminal courts.

- A detailed interview of the client, which will include a full life history
- The client's presentation at interview (see below)
- Psychometric tests (see earlier and below)
- An interview with another informant – usually, in my work, a parent and nearly always the mother. Other staff or professionals who work with, or have worked with, the person are particularly informative.[13]
- In the case of a defendant, the documents on the case (charges, case summary, police interview, witness statements, PNC record of antecedent offences, etc.)
- Existing documents such as medical records and reports, and reports from the social, educational and probation services

[12] It is understood here that the purpose of some reports is to provide a general assessment of the client's personality and mental state, and no specific questions have been asked. However, even in such cases there are often questions to address that are implied by the client's circumstances and the context in which the report is being prepared. Also, specific questions or hypotheses may occur to the psychologist as he or she is conducting the assessment.

[13] In the hierarchical structure of the systems and institutions in which we work, the more lowly the member of staff, and therefore the smaller their salary, the more time they spend with the client or patient and consequently the better they know that person compared with those further up the hierarchy.

- Implicitly or explicitly (i.e. when we directly refer to it in our reports) 'the learned literature', i.e. the existing shared knowledge that is of relevance to any particular case and which informs our assessment and the conclusions we draw

I shall discuss one more source shortly.

One advantage of having multiple sources of evidence is that we can look for consistency of information provided to us by the client at interview (and, of course, contradictions). But we can only base our assessment on the evidence available to us. Therefore our reports may contain statements such as 'From the evidence available to me … '; 'I have insufficient evidence to express an opinion on this matter with due confidence … '; and 'To address this question requires further exploration in a counselling context'.

The client's presentation

I have referred above to the client's presentation during the interview. This is something that may not be given enough attention to by some psychologists, perhaps because of concerns about needing to be seen to be 'objective' and not relying on 'subjective' impressions, which of course can be wide of the mark. In fact there can be little doubt that a person's physical appearance, body language, spoken language, emotional expression and so on, in any normal interaction (and at an interview) contribute important evidence concerning his or her personality, mental state, social skills and cognitive abilities. We ought not to pretend that we are unaffected by any of this in our assessments and therefore we should develop the requisite skills of observation and making inferences - which we can acknowledge in our reports are only our impressions - from the person's presentation.

Presentation does not simply provide information about the person's character, mental state, and so on. Our observations, impressions and *feelings* (are we still permitted to speak of 'counter-transference'?) are likely to be similar to those of people in the person's everyday life and will determine in significant measure how these people interact with him or her. For example, we cannot deny that whether a defendant is judged – in this case by you - to be physically attractive or the converse will have important implications for that person in their life, likewise their being articulate, assertive, relaxed, intimidating, etc., etc.

I will give an example here; I have deliberately chosen a striking case to best convey my point. The defendant H was on remand, charged with murder. Prior to seeing him I was aware that he had fathered several children by different women and was known to boast about his reputation as a lothario. As I read the evidence, somewhere in the back of my mind

a vague impression of H's visual appearance and demeanour took shape, only for it to be shattered when he walked in the interview room and started talking. He was a person of slight build but the first thing I noticed was his prominent ears. He answered my first question in a rather high-pitched voice and the word 'effeminate' immediately popped into my mind, followed by the thought 'This lad must be getting hell from the other inmates'. Sure enough this is what he told me; he was being bullied because of his ears and sounding 'gay'. And this is something he had had to put up with all the time he was growing up. This was only part of his presentation and my reaction to him, but it cannot *not* be of significance in acquiring an understanding of this person and I duly referred to it in my report.

Actually, the appearance of most of the defendants that I have personally seen is unremarkable, likewise the way they conduct themselves throughout the interview and any tests I may administer, being in the main naturally polite and considerate, co-operative, attentive, even (considering the circumstances) good-humoured and, except perhaps in the initial stages of the session, relaxed. In other words 'normal'. Isn't this in itself significant? Does it not mean that these people are as equipped as anyone else with the relevant social skills demanded by this interaction (and many others in their everyday life)? It is when they are placed in a context in which the expectations on their conduct are different – e.g. out and about with their peers - that such competences are no longer in demand.

Here is another example. I saw a young man, Y, on bail on a charge of affray and criminal damage. His parents arrived first and I interviewed them before seeing their son. At the end of the interview they informed me, 'You'll get nothing out of *(Y)* – in fact he'll probably get up and leave after a few minutes'. 'You won't get a smile out of him either', his father remarked; 'He doesn't do jokes'. In fact I found Y to be relaxed, co-operative and forthcoming and he stayed for the duration of the interview and the full IQ test that I administered. He responded appropriately to humour, smiling and laughing, and he engaged in spontaneous banter of his own. He showed no urgency to leave when I announced that the session was over.

Though their accounts are invariably very useful, parents do not know the full story about their offspring and probably, like me, readers who undertake this kind of work will not be too surprised at the discrepancy between Y's presentation and his parents' expectations, which I have no reason to doubt were genuinely expressed.[14] But for the purposes of providing a

[14] I have often noticed that young people visibly relax when their parent or parents leave the room.

comprehensive assessment of Y as a person, all of this must constitute relevant and useful *evidence* which we should endeavour to interpret in conjunction with all the other evidence at our disposal.

Evidence from psychometric tests

I have discussed these earlier. I would like to offer a rule of thumb here. So long as it is reliable, you cannot have too much factual information about the individual whom you are assessing – directly from that person and from others who know them, existing documents, etc. But you can have too many measurements (see my earlier discussion).[15] Psychometric tests are tools that may assist us in addressing questions that our assessment is intended to answer but they should be used sparingly and augmentatively. And the assessor ought not to feel obliged to use them at all if he or she deems them unnecessary. Unfortunately, as I once found out to my cost (the judge more or less disallowed my evidence as I hadn't done any tests, IQ results being already documented) the expectations of the court may be that the psychologist's opinions should be informed by 'science' in the form of psychometric tests, in which case it might be advisable to include them for appearance's sake if nothing else.

One more source of evidence

There is one source of evidence I have yet to mention, namely the internet. Entering the defendant's name in a search engine is, in my opinion, legitimate practice. Of course if your client's name is John Smith or Tracey Jones you are at a disadvantage, but there may be terms that one can add to narrow the search (e.g. his or her home town). Material that comes to light includes newspaper reports, usually of previous crimes (specific details of which are not usually provided by the instructors beyond the PNC record) and appearances in the social media, particularly on Facebook. The majority of the younger defendants I have seen have one or more Facebook accounts and they are worth studying. If I haven't established that they are on Facebook I ask them and I tell them I'll try to have a look at their site.

I usually discuss with defendants how they use their site. Many of the people I see technically have learning difficulties and report that someone set their site up for them; sometimes they also have help uploading material. But they seem able to do a lot of it for

[15] I am actually quoting a physician here. She was speaking about the folly of people who have no obvious symptoms of disease undergoing lots of medical tests 'just in case'. Over the years I have become increasingly perturbed by the enthusiasm of clinical neuropsychologists for bombarding patients with a huge number of tests, ('torturing the patient until they finally confess to having a disability'). See Della Sala, S. & McIntosh, R.D. (2018) Cognitive impairments that everybody has, *Journal of Neurology*. At http://tinyurl.com/y98r9hyc.

themselves and, if nothing else, this requires some comment with reference to their cognitive abilities.

I rarely feel the need to refer in my report to my having looked at a defendant's Facebook site, and then only to comment on whether it is 'busy' or not (and what it says, if anything, about the person's cognitive abilities).

I am aware that in clinical psychology and psychotherapy it is normally not considered acceptable to view social media information relating to a patient. But if you are required to give a comprehensive psychological report on someone charged with a criminal offence you cannot afford to be the only person on the planet (except, in a case to be tried, members of the jury) not to be allowed to look at internet information on the person.[16]

Is the information derived not at least as useful as scores on a personality inventory or - good heavens! – the client's descriptions of inkblots? One useful visit to a defendant's website concerned the defendant F referred to earlier. Recall that the main question was whether F required 'special measures' at his trial. The first psychologist's conclusion was that because of his learning difficulties and high level of dependency he would benefit from the assistance of an advocate in court. I imagine that his solicitor was of the opinion that he already had one; for whatever reason she instructed a second psychologist to prepare a report for the same reasons as the first. This psychologist's recommendation was that F should give his evidence by video link. When I saw F, unlike the previous two psychologists, I insisted on seeing him in the absence of his mother and he coped perfectly well with this. (There is no point in having someone present to support the client if your task is to ascertain if this person can cope with an interrogation unassisted.) Also unlike the previous psychologists, we discussed the business that F had set up when he had left school and the company that he was now running. I knew about these enterprises, which he had not mentioned to the other psychologists, because my instructing solicitor had alerted me to his website. A further search came up with an old local newspaper story about his, admittedly modest, entrepreneurial activities. Surely this information was not irrelevant to the matter of this man's character and competence in general and his ability to cope with his trial?

In my report I expressed the opinion that F did not need to be examined by video link but I made the usual common-sense suggestions about understanding F's limitations, how questions should be framed, the pacing of the interrogation etc. I was the *third* psychologist

[16] If you are instructed (as in most cases you will be) by the Defence, you can be sure that the Prosecution will be aware of any information of significance about the defendant in the social media.

to prepare a report on F, being instructed, unusually, by his co-accused's solicitor (instructions for the two previous reports having come from his own legal advisors). F eventually pleaded guilty to the charge and was spared having to give his evidence in court. So the whole business of having him assessed three times was a scandalous waste of time and money. He received a community sentence.

In another case, a significant factor that informed my conclusions and opinions was the offender's isolation from his peer group which both he and his mother described. He informed me that he was on Facebook but nobody ever communicated with him. In my view it is essential to check information such as this. It would have presented a serious challenge to my conclusions if his Facebook page was full of photos of him mixing with friends, along with the usual exchanges of banter. As it was, his account to me was verified. Also verified on social media was the statement to me by a defendant that he was organising a football team for local youngsters. Did I have any reason to doubt what he had told me? You bet! He also gave me a dramatic but, as it later turned out, wholly fictitious account of his exploits in the army.

Further Illustrations

I shall now illustrate in further depth the application of the approach outlined earlier to two specific questions that psychologists are commonly instructed to address in the forensic context.

Some thoughts on assessing fitness to plead and stand trial

The first of these concerns the assessment of a defendant's fitness to plead and stand trial, particularly where his or her intellectual ability is in question. My discussion also has implications for assessing whether a defendant requires special measures in court, such as the assistance of a registered intermediary.

What follows is not a detailed prescription of how to perform such assessments; its purpose is to illustrate some of the implications of the approach I am advocating. I am assuming that the reader will be familiar with what an expert opinion on fitness to plead[17] involves and why the courts occasionally ask for this; I shall therefore not go into these details in any depth.

According to my earlier guidelines, when accepting instructions concerning a defendant's fitness to plead the first question to address is 'What is the prior opinion'. The answer is 'the

[17] For the sake of brevity I shall omit 'and to stand trial'.

defendant is fit to plead' and you will obstinately adhere to that opinion unless and until the evidence available to you is sufficient to persuade you otherwise[18].

One highly significant reason for this sceptical stance is that it is quite rare for defendants to be deemed unfit to plead. I have come across no data on the actual proportion of defendants up for trial who are thus identified. However, a 2008 survey in Scotland[19] (where matters are only slightly different from those in England) found that of 139 pre-trial psychiatric court reports from learning disability services, only 8% assessed the defendant as unfit to plead. A survey[20] by Grubin (1991) found an average rate of 24 instances per year from 1976 to 1988 in England and Wales.

Now, if we are adhering to what I have described in a loose sense as a Bayesian approach, you might consider that there is an immediate and obvious piece of evidence that drastically increases the probability that the person you have been instructed to assess does indeed belong to the population of defendants who are unfit to plead: his legal advisers have reason to consider that this might be the case! Isn't that something that will be highly influential in your arriving at you opinion? Ideally you would want to deny this and you are not in error in doing so. The reason is that when it comes to gathering and weighing up the evidence, this will include all the evidence that the defendant's solicitors had when they made their judgement prior to instructing you and you will take this into account accordingly. What it does mean, however, is that of all the defendants that you assess for fitness to plead, the proportion who *are* unfit to plead will be much higher than the proportion of the population of defendants generally.

There is another consideration that should be mentioned before proceeding. Strictly speaking, in the case of adult defendants, at the time of writing[21] the decision on whether an accused person is unfit to plead is ultimately made by the trial judge based on the opinion of two registered medical practitioners, at least one of whom should be approved under the Mental Health Act. This excludes psychologists, but the latter may be called upon to assist,

[18] Of relevance to this is that if the question of fitness to plead is raised by the prosecution, the prosecution must prove beyond reasonable doubt that the defendant is unfit to plead; if the issue is raised by the defence, it need only be proved on the balance of probabilities.

[19] Brewster, E., Willox, E.G. & Haut F. (2008) Assessing fitness to plead in Scotland's learning disabled. *Journal of Forensic Psychiatry and Psychology*, **19**, 597-602. At: http://tinyurl.com/ybef4ofc.

[20] Grubin D.H. (1991) Unfit to plead in England and Wales, 1976-1988: A survey. *British Journal of Psychiatry*, **158**, 540-548.

[21] In January 2016 the Law Commission presented the Ministry of Justice with a consultation document that made numerous recommendations for reforming the unfitness to plead framework (see http://www.lawcom.gov.uk/project/unfitness-to-plead/). At the time of writing this paper the Government's response has yet to be issued.

very often by assessing the person's IQ and specific cognitive abilities. Hence one could say that if the psychologist does express an opinion on fitness to plead in his or her report, the test of whether it is correct or not is whether the medical experts agree with this, taking into account the psychologist's report.

We now ask the question what evidence in particular should one examine that might make it more likely that the defendant does belong in that small minority of people who are deemed to be unfit to plead? Invariably when assessed by medical practitioners, knowledge of the court process as tested by the Pritchard criteria[22] is an important consideration. The criteria (England and Wales) include the ability to comprehend the evidence and to give proper instructions to their legal representatives. How are the latter to be assessed?

Unfitness to plead is almost always the result of the defendant's having some serious mental disorder or disability that affects their capacity to engage in the trial process. Hence when a psychologist participates in the decision process, usually he or she administers an IQ test and, if the defendant is diagnosed with a condition such as autistic spectrum disorder or brain injury, other appropriate cognitive tests. (Several psychometric instruments have been devised specifically for assessing fitness to plead but so far as I can ascertain these have not had much impact in the UK.)

For present purposes let us just consider IQ alone - say we are assessing a defendant previously deemed to have learning difficulties but no other psychological disorder or disability. Obviously the lower the person's IQ, the more likely he or she belongs in the population of defendants who are unfit to plead. But how low?

I was once asked to assess a defendant's (R) fitness to plead and stand trial for a fairly minor offence. R had already been assessed for such purposes by K, a clinical psychologist. K's report ran to over 30 pages and included extensive details of R's medical history but no indication of its role in influencing K's opinion. K's conclusion was that R was unfit to plead because of an 'extremely low' IQ (67) and his/ her scores on the Personality Assessment Inventory, no explanation being offered as to how these had a bearing on the likelihood of R's being unfit to plead and no diagnosis being indicated. In a report one quarter the length of K's, a forensic psychiatrist managed to present a reasoned explanation of why K was wrong. It was never explained to me why R's solicitor felt that the public expense of having

[22] http://www.cps.gov.uk/legal/l_to_o/mentally_disordered_offenders/

another psychologist's opinion was justified. As it happened R defaulted on two appointments arranged for him/ her and I have no idea what the outcome was.

As I have already stated, defendants are rarely declared unfit to plead and stand trial by judges (and previously juries). I believe that one reason for this is that it is normally better for all concerned, including the defendant, for a trial to go ahead as planned. Now an IQ of 67 is at the 1st centile; that is, 1 in 100 people have an IQ at or below this level. Hence it might be argued (though probably incorrectly) that just on its own this is low enough to seriously raise the question of any such defendant's fitness to plead without overburdening the CJS with too many such cases. However, the flaw in this reasoning is easy to spot. We are not dealing with the *general* population here but the population of people who are coming before the criminal courts, whose average IQ is considerably less than that of the general population (100). How much lower is it?

One source of evidence comes from data on the IQs of serving prisoners. This is obviously not the same population as defendants in general since only a minority of these receive a prison sentence, but it is a rough guide. For many years I have referred in my reports to P.G. Mottram (2007) *HMP Liverpool, Styal and Hindley Study Report*, University of Liverpool.[23] In summary the results were:

> The mean IQ of HMP Liverpool (males) was 87.11 (standard deviation 12.52)
> The mean IQ of HMP Styal (females) was 83.48 (standard deviation 10.71)
> The mean IQ of HMP Hindley (YOI) was 87.11 (standard deviation 12.52)

(Please note that, strangely, the results for Liverpool and Hindley are identical to two decimal places; I have been unable to obtain any reassurance that this is a pure coincidence.)

In addition:

> 'The overall rate of LD *('learning difficulties' according to IQ only)* in this population of 260 was 6.7%. This would indicate that over 5,000 people with LD would be in prison at any one time (based on a prison population of 80,000). Additionally a further 25.4% have borderline LD. This would account for a further 19,500 prisoners (this would include the 6,800 (7.6%) with an IQ between 70 and 74 who would be considered by LD services).'

[23] https://www.choiceforum.org/docs/hmpliverpool.pdf

More recently I became aware of a study[24] reported by the Youth Justice Board for England and Wales (2005) on young offenders in custody and in the community that puts the IQ range much lower than this:

> 'Almost a quarter of young offenders were identified with learning difficulties (IQ<70), while a further third had borderline learning difficulties (IQ 70–80).'

Whatever the case, it is clear that simply adopting an IQ cut-off point at the 1st centile as the main reason for declaring someone unfit to plead would lead to a catastrophic number of such cases that would overwhelm the CJS. Is there a cut-off point at all?

Just from my experience of performing IQ tests on defendants I would say this: the lower the defendant's IQ, the more likely it is that he or she belongs in the population of defendants who are unfit to plead, but *all other things being favourable* it is only when their IQ is in the low 50s that their fitness to plead is brought seriously in question, the final opinion being in the hands of the medical profession. This appears to be consistent with the Scottish survey referred to earlier.

Of course, in many cases 'other things' are far from favourable and these may increase the likelihood that the defendant is unfit to plead. This may require further cognitive tests. Defendants who have been diagnosed with a psychiatric disorder or other condition that adversely affects their ability to understand what is going on and to express themselves are clearly more likely than otherwise to be in the 'unfit to plead' population. However their potential deficits still need assessing. For example as part of his assessment in a case of fitness to plead, a psychologist, U, noted that E, the adolescent defendant, had been diagnosed with Asperger syndrome. U then listed the deficits and problems commonly associated with Asperger syndrome and concluded that these would compromise E's ability to understand the court process and stand trial. Recall now what was stated earlier about being wary of the argument 'X has been diagnosed with condition Y; people with condition Y have problem Z; therefore X has problem Z'. People diagnosed with Asperger syndrome still vary widely in their presentation and abilities and U should have determined whether E indeed had these difficulties and to what degree.[25]

Incidentally (I digress somewhat here), U measured E's IQ as being in the low average range on an age-inappropriate test and declared that E had learning difficulties (see earlier on 'Needing to demonstrate disability'). So far as I could make out, U's reasoning for this was

[24] http://tinyurl.com/guujcfp
[25] Bizarrely, U employed the Eysenck Personality Questionnaire ostensibly to assess E's fitness to plead.

that for one of the WAIS indices, the lower limit of the 95% confidence interval was just in the 'extremely low' range at 69[26]. What this actually means is that it is *unlikely* that the index score is in the 'extremely low' range (69 or below) – 2½% in fact.[27]

Finally, there are two piece of information that I would certainly consider relevant to the question of whether a defendant is able to engage effectively in the trial process. The first is familiarity with the courts based on past experience. If the defendant has been tried in court on a previous occasion with no more difficulty than most defendants, then this is an indication that he or she may be able to repeat the process on this latest occasion (unless there has been some deterioration in mental state, etc.) The second consideration is the complexity of the case. For example, the charge may be one of assault and the basis of the defendant's plea may be that they merely observed what was happening but did not participate in the attack. Or the charge may be one of fraud and the defendant may insist that they were unaware that what others had persuaded them to do was a criminal offence. It is likely that the defendant in the second case will find it more difficult to handle their defence than in the first case.

Neither of these factors can be measured and if they are to be taken into account it is a matter of the professional's knowledge, experience and judgement as to how much they count towards forming the final opinion. So much like most decisions in life.

In the end, the reason for assessing a defendant's fitness to plead and stand trial is part of the process of ensuring they are treated fairly by the courts and are not significantly disadvantaged by physical and psychological problems and deficits they may have. However, because the court process is a stressful and often bewildering experience for any defendant, when called upon to undertake these assessments there is, I fear, a danger that we almost feel obliged to declare the person incompetent to face trial. Thus we run the risk of underestimating the ability of people to draw upon undiscovered strengths when confronted by challenges they have never engaged with before (see for example the case of the defendant Beckie whom I discussed earlier). We are not necessarily doing them any favours by

[26] Of course, as an age-inappropriate version of the WAIS was used, confidence limits would be invalid anyway. It seems also that psychologists need to remember that confidence limits are invalid when the IQ or indices are calculated *pro rata* – i.e. based on an incomplete number of subtests. They are really only valid if all requirements for the testing conditions have been met.

[27] Confidence limits do not, as one qualified educational psychologist stated in her report, indicate how confident we can be that the person's IQ or index score did not occur by chance. They are supposed to give the hypothetical likelihood that the 'true' IQ or index score lies within the two limits. But it should be remembered that confidence limits are the extremes of a probability distribution and it is unlikely that the person's 'true' IQ is at the upper or lower limits of this distribution.

announcing that, unlike most people, they are incapable of meeting those challenges. Might this not be reinforcing once again a message that many of them have been repeatedly given throughout their lives? Is there not a place for a 'go ahead – you can do it' attitude? Perhaps, aside from special measures, the court procedures could be refined so as to encourage this by routinely recognising and taking into account a defendant's difficulties.

Finally, I would like to mention the case of a defendant 'Q' whom I assessed for his fitness to plead. He had been similarly assessed by two psychologists the previous year in relation to an earlier offence. Both psychologists tested Q's intelligence using the WAIS-IV and obtained the same IQ (65). Now, the matter of fitness to plead in the Crown Court is covered by the Domestic Violence, Crime and Victims Act 2004. Q was actually to be tried in a Magistrate's Court and this is covered by section 11(1) of the Powers of Criminal Courts (Sentencing) Act 2000 and section 37(3) of the Mental Health Act 1983. However the psychologists assumed that the relevant legislation was the *Mental Capacity Act 2005* and both completed a Certificate as to Capacity form, concluding that he lacked capacity to instruct a solicitor. The psychologists may have been thrown by the wording of their instructions which were 'Is he fit to instruct his solicitor?' When, a year later, I received the same instructions and read the two psychologists' reports I telephoned the solicitor for clarification. She seemed only vaguely aware of the fitness-to-plead procedure but fitness to plead is what she wanted assessing. She then informed me that she had not used the previous psychologists' reports anyway. She probably did not use mine either; I did not consider it necessary to test Q's IQ a third time and I concluded that he *was* fit to plead, though I recommended the services of a registered intermediary.

Some thoughts on assessing the soundness of a confession

I would now like to make a few comments about my experiences and thoughts concerning expert witness reports that address the possibility that at their police interview the defendant falsely confessed to the crime of which they had been accused. Some of my comments also relate to the question of whether the defendant was especially vulnerable at interview and should have had an appropriate adult with them.

In those cases with which I have been acquainted, the question posed to the expert is not whether the confession is actually true or false but whether there is sufficient reason to doubt its veracity. Also, the issue may not simply be an either/ or one: for example, the suspected person may make some true admissions (e.g. 'Yes, I did take part in the affray') but also

wrongly admit to one or more more serious offences (e.g. 'Yes, I did kick the police officer'). The interviewee may also provide (or agree with) some *false* self-incriminating details, such being at the scene of the crime at the material time, while resisting any suggestion that they committed the offence.

I am not going to attempt to review the literature on false confessions; rather I shall consider how one would approach the matter along the broad lines that I have suggested for psychological reports in general.

Reasons for making a false confession

For simplicity's sake I shall discuss the 'either/ or' case, when a defendant has confessed to having committed a certain crime but the question is raised as to whether this confession is false. I am not, however, interested in those cases in which a person has voluntarily come forward and falsely confessed to a crime because of some psychological disorder that renders them liable to do this; nor am I concerned with cases where people confess to protect the guilty party, either willingly or because they have been coerced into doing so.

The typical case under discussion *here* is when the suspect, at the outset, denies committing the offence but at some stage during the police interview admits that he or she did so. In the learned literature a distinction is made between 'coerced-compliant' and 'coerced-internalized' false confessions.

In the case of 'coerced-compliant' false confessions, the interviewed person becomes so stressed and confused by the interview that in order to escape from the situation, they confess to the alleged offence or offences, knowing that they are innocent. Typically, they do not realise the difficulties that this has caused them afterwards when they retract their confession and plead their innocence[28]. Occasionally they also maintain that the interviewing officers informed them that they would be treated more leniently if they confessed there and then, perhaps persuading them that the evidence against them is so overwhelming.

In the case of 'coerced-internalized' false confessions, during the police interview the person actually comes to believe that they committed the offence. Their belief in their guilt may even persist once the interview is over and they may require the efforts of others to persuade them that they could not have committed the crime. (This phenomenon of false implanted

[28] Note that this is a different case from the (in my experience) occasional one where the accused person has pleaded guilty but insists that they have only done this under the advice of their solicitor and they are in fact innocent.

memories has been the subject of extensive investigation in psychological laboratories with student volunteers[29].)

In my own experience of being asked my opinion on reliability of confession, I can only now recall one instance of possible 'coerced-internalised' false confession (and I considered this unlikely). Accordingly I shall further restrict my discussion to the 'coerced-compliant' type as described above. The following are only my suggestions for approaching the assessment of such a claim; they are certainly not a comprehensive protocol.

Assessing alleged false or unsound confessions: generally approach

If we follow the guidelines listed earlier, then we first decide on our prior opinion. Do we assume that false confessions are the exception and therefore our prior opinion is that the confession is sound? I think we do. An alternative starting point is to think along the lines of 'is the confession reliable/ unreliable *(rather than true/ false)*[30] I think that the latter alternative is covered by the former stance (i.e. *likelihood* of false confession can be considered equivalent to *reliability* of confession); also the background research into these matters has concerned supposed true-versus-false confessions rather than reliable-versus-uncertain ones.

So, at the outset we assume that the likelihood that the accused person has made a false confession is low. The next step is to think about what additional evidence may change that probability. In the type of case being discussed here, the most immediate evidence is the fact that the defendant (and in appeal cases, the convicted person) is claiming to have falsely confessed and their legal advisor feels this possibility is worth pursuing, say owing to the lack of any strong incriminating evidence (cf. my initial discussion of assessing fitness to plead). It is reasonable to assume that this population of clients includes a higher proportion of actual false confessors than those not making the claim. What this actual base rate is I have been unable to ascertain, so the information is not very helpful.

The importance of the client's account of the interview and evidence to support this

As always, we have to rely in great measure on what the client is saying about the circumstances that led them to allegedly falsely confess. It is not appropriate to make up a

[29] See, for example, Shaw, J. & Porter, S. (2015) Constructing rich false memories of committing crime. *Psychological Science*, **26**, 291-301. At: http://pss.sagepub.com/content/26/3/291

[30] Bear in mind here that where the admissibility of confession evidence is challenged under section 76 of PACE, the prosecution must establish beyond reasonable doubt that the confession was *not* in fact made as a result of 'oppression', or in circumstances which were likely to have made it unreliable.

story in support of the client's claim if this is inconsistent with what the client is saying actually happened. For example, it would be wrong to hypothesise that the police officer's questioning was so leading and aggressive that the client temporarily came to believe that they committed the offence if the client does not actually state this in their account to you.

So, listen to the client's account; then carefully read the transcript of the police interview(s) (and if possible listen to the recording) for evidence that supports that account. In the type of case under discussion we are looking for evidence (a) that the interviewing style was particularly leading and coercive and (b) that the interviewee felt particularly pressured and stressed as the interview proceeded and there are possible indications they may have been agreeing with the accusations just to escape the ordeal of the interview.

With regard to (a), as well as one's own intuitions, one can rely on descriptions of interview styles that are known to increase the risk that the interviewee will make false admissions. Examples are provided in a paper by two American experts R.A. Leo and S.A. Drizin[31] and I leave the reader to study these. Regarding (b) one is looking for any evidence that the client became distressed. Sometimes this is noted in the interview transcripts but better evidence of the interviewee's emotional state is provided by the audio-recording of the interview. Sometimes custody records are available (with records of medical and mental-state examinations on the detained person) and these provide evidence of the person's physical and emotional state at the time. (An example from my experience is that of a young man who claimed he admitted to an offence under interrogation because he was 'rattling' at the time – i.e. suffering symptoms of drug withdrawal - and felt so bad. The custody records and a medical examination provided no evidence of this.)

Dispositional factors

So far, I have been considering the relevant evidence concerning the circumstance in which the interview took place and the interview style. What about evidence of 'dispositional factors' - attributes of the interviewee that would render them more likely to knowingly falsely confess under pressure? It would be reasonable to suppose that prior experience of the police investigative process (i.e. being a previous offender or suspect) may place someone less at risk of making false admissions. However, there is evidence to the contrary, at least

[31] Leo, Richard A. and Drizin, Steven A., The three errors: pathways to false confession and wrongful conviction (2010). G. Daniel Lassiter & Christian Meissner (eds.), *Police Interrogations and False Confessions: Current Research, Practice, and Policy Recommendations* (American Psychological Association, 2010); Univ. of San Francisco Law Research Paper No. 2012-04. Available at SSRN: http://ssrn.com/abstract=1542901.

for people with learning difficulties[32]. Nevertheless, if the suspected person has a known history of falsely confessing then this is reasonable evidence for a greater likelihood of this on the occasion in question. Also it may be that previously for this person there was always an appropriate adult in attendance, whereas on this occasion there was none (likewise, perhaps, a solicitor).

American studies[33] have shown that individuals who had their convictions quashed owing to new evidence, yet had originally confessed, were disproportionately young (below 25). The data were for more serious crimes (e.g. homicide and rape), and false confessions tended to be associated with the more serious of these (perhaps more serious crimes tend to attract more post-conviction investigation than lesser ones).

One very obvious characteristic that may render a person more likely to falsely confess is their level of trait anxiety (how anxious, worried and easily stressed they are in general) and in particular if they are suffering from a mental illness or personality disorder that would compromise their ability to handle a police interview (see previous references). In such cases it should not be taken for granted that the fact that the person has mental health problems means that their confession is unsound. It is still important to be able to link the person's symptoms and problems to their account of why they made a false confession when interviewed. Of relevance here is evidence concerning how the person copes with related situations (e.g. interpersonal conflict and bullying) in everyday life. There may also be a role here for selective psychometric testing.

Important evidence is whether the interviewee has any kind of cognitive impairment (see for example footnote 30). Cognitive impairment may be constitutional (the term 'learning difficulties' is generically applied here) or acquired through head injury or disease (e.g. Alzheimer's). Here, a formal cognitive assessment, especially an IQ test, is essential but again it is important to refer to additional evidence from the person's life (e.g. educational history, employment record, life skills, and capacity for independent living), their performance during the interview, and their account of why they made their alleged false admission, in order to assess the contribution of their cognitive impairment to the evidence *in toto* that their confession may have been unsound.

[32] See Pickersgill, G. (2012) What evidence is there for a link between mental impairment and an increased risk of false confessions? *Internet Journal of Criminology*. At: http://tinyurl.com/y7dw43bd.
[33] http://www.falseconfessions.org/fact-a-figures

Just as I stated earlier in my account of assessing fitness to plead, it is also important to acknowledge that so far as cognitive ability is concerned we are not sampling from 'the general population' but from the population of people who are interviewed by the police on suspicion of committing a crime. We have good reason to believe that the cognitive abilities of such people are on average well below those of the general population. Hence, for example, an IQ that is at the 1st centile for the general population will be at a much higher centile for this forensic population.

In addition to the above there are two psychometric instruments that, in my experience, psychologists almost invariably use when assessing a case where the soundness of the confession has been called into question. These are usually administered alongside the appropriate Wechsler IQ scale; they are the Gudjonsson Suggestibility Scale (GSS) and the Gudjonsson Compliance Scale (GCS). I have previously described the composition of the two scales and what they measure.

Based on my reading of a handful of reports that have relied on these instruments for testing soundness of confession (and other issues such as the need for special measures in court), my impression is that their administration is routinely undertaken in an unthinking manner and that the reports suffer from many of the shortcomings and deficiencies that I have enumerated in this paper. As a rule, all three tests are administered and if there is only one that supports the opinion that the defendant is vulnerable to making a false confession this is highlighted and the other two are ignored.

I need to mention here another attribute that I have seen used for the purpose under discussion (and which has been reported in the literature) namely 'acquiescence'[34]. This is 'the tendency for a person to give affirmative answers to questions regardless of their content'. There is some evidence that people who may have falsely incriminated themselves under interrogative pressure have elevated scores on this scale.

Let us now recall the case of the convicted person 'V' referred to earlier in this paper who was claiming to have falsely confessed to the crime of which he had been convicted. At his first police interview V protested his innocence, but confessed at the third interview (conducted on the same day). He then retracted his confession at the next interview, which was conducted on the following day but, after further interviews, reverted to his confession.

[34] Winkler, J. D., Kanouse, D. E, & Ware, J. E. (1982) Controlling for acquiescence response set in scale development. *Journal of Applied Psychology*, **67**, 555-561.

It is only the first of the two confessions that is of interest here, so we shall ignore the subsequent events.

V's stated reason for allegedly giving a false confession was that he was intimidated by his interviewers; he found the stress of the interrogation unbearable and was desperate to go home. (Actually, it was not clear from the psychologist's ('T') report if V's explanation applied to his first interview - the one in which he made his first confession - though V clearly intended it to apply to his subsequent interviews.)

T's assessment was almost entirely based on the evidence of an extraordinary number of psychometric tests of V's personality and current mood and affect, along with what are believed to be the personal attributes of people who are at risk of making a false confession. There was no explanation of whether and how the choice of psychometric tests was guided by V's account of the reasons he had falsely confessed (intimidation and stress). The report made little reference to any specific contents of the relevant interviews, transcripts of which were available.

T administered four scales that were presumed to have a direct bearing on V's predisposition to make a false confession. As with the other tests, there was no prior indication in the report of how the measurements yielded by these scales would support the reasons T gave for his falsely confessing (a common omission in psychological reports).

(i) In his/ her report T first presented the results of an IQ test on V; the IQ was in the average range. T did not explain the consequence of this finding for V's predisposition to make a false confession. Clearly the conclusion should have been that, based on this result V, was no more likely to be in the 'false confessors' population than police interviewees generally and possibly even a tad less likely.

(ii) T then presented the results of the GSS, concluding that the suggestibility scores were 'within normal limits'.[35] Once again, T did not explain the consequence of this finding for V's predisposition to make a false confession. Clearly the conclusion should again have been that on this result V was no more likely to be in the 'false confession' population than police interviewees generally. However, T's low recall score and higher-than-usual confabulation

[35] Actually the total suggestibility score was *higher* than average for the forensic population and normally this would have been interpreted as evidence of an elevated level of interrogative suggestibility. Unfortunately someone else had tested V on the GSS in a previous assessment and a *lower than average* score had been obtained.

score were interpreted as evidence of a heightened disposition to falsely confess. How these results related to the reasons V gave for his allegedly falsely confessing was not explained.

(iii) T then presented the results of the GCS. V's score was very high and the scores of two out of three other informants (Form E) were also high. T concluded that V was 'abnormally compliant' (see earlier discussion of this case). Recall that this was interpreted as indicating that V was at *very high risk* of falsely confessing and T and V's barrister made much of V's 'abnormality' in court. How this high compliance score related to V's reasons for his allegedly falsely confessing was not explained. (Recall that compliance here is 'the degree to which a person tends to openly agree to information, suggestions and instructions from others, despite their private beliefs or wishes to the contrary' and that 'they appear motivated to do so through an eagerness to please and to avoid conflict with other people, particularly those in authority'.) T provided little evidence from V's history of being 'abnormally' compliant (which almost by definition should have cause him problems at times) and no evidence of this could be gleaned from the documents provided.

(iv) T also administered an acquiescence scale (see above). V's score was average. Yet again, T did not explain the consequence of this finding for V's predisposition to make a false confession. Again the conclusion should have been that on this result V was no more likely to be in the 'false confession' population than police interviewees generally.

Regarding the tests of V's personality and current mental state, the results of these were selectively interpreted as indicating a heightened risk of falsely confessing under pressure. Once again, little, if any, evidence was provided from his history that V was possessed of the highlighted personality difficulties and little indication of these could be gleaned from the documentation.

It was emphasised in T's report and his/ her evidence at the hearing that having an 'abnormally high' GCS score meant that V was a person at particularly high risk of making a false confession. This sounds reasonable but the science is unsound for the following reason. The manual of the GCS presents data purporting to show that false confessors have higher scores than other forensic groups. So we can say that a score that is higher than that of non-false-confessors means that *it is more likely by a factor of X that the person is in the population of false confessors than would otherwise be the case* (or if we did not have this information). But we do not know 'X', i.e. *by how much* it is more likely; X could be a tiny amount or a great deal. Now, the higher the score is, the more *confident* we can be about

making the statement 'It is more likely by a factor of X that the person is in the population of false confessors than would otherwise be the case' but **X remains the same** - a tiny amount or a great deal.[36]

I have only provided the details of this case that I consider are necessary to illustrate the points I wish to make[37]. In doing so I do not believe I have omitted details that would cast anyone concerned in a more favourable light than may be implied in my discussion. It is clear that the manner of T's assessment, report and reasoning behind his/ her opinions is very different from what I am advocating, though not so different from other forensic psychology reports I have studied. The reader has a clear choice.

I have to confess - truly - to finding the Gudjonsson Scales problematic in cases of alleged false confessions of the kind I am discussing. Although the purpose of the tests is clearly not to determine whether the person's confession is true or false, there is no indication in the test manual of the sensitivity of the scales in deciding whether a confession should be considered either sound or doubtful and at what level of score one should be concerned that the person may be vulnerable to interrogative pressure. Sample data are provided for various populations including 'court referrals', prisoners and the general population, but it is unclear which one is supposed to be used as the comparison non-false-confessor group (but clearly, as I have stated, not the general population.) Rather worrying from the point of view of the Bayesian approach advocated here, the reference group for 'false confessors' is actually described as '*alleged* false confessors', presumably suspects or accused persons claiming to have falsely confessed. Hence it may be argued that since, in the type of case under consideration, the person whom we are assessing is by definition an alleged false confessor, there is no point in giving him or her the test. Moreover it is it unclear how much extra difference the GSS scores make to the likelihood of any individual's confession being unsound when all other information has been considered. For example, the normative data indicate that people with a low IQ, and therefore already known to be more at risk of making a false confession, also have elevated suggestibility scores. In fact, the use of the GSS with

[36] Recall also that we start by asking, 'What is the prior opinion in this case and what is its likelihood?' According to the present way of thinking the prior opinion will be that V's confession was true, but as far as I know there are no base-rate figures for what proportion of people claiming to have falsely confessed have indeed done so. Just from the details of the relevant interviews it is reasonable to start from the premise that the probability that *any* interviewee would have made a false confession (the base rate for the alternative opinion) is very low.

[37] It is relevant, I feel, to add that the appeal judges were not impressed by the psychological evidence presented on V's behalf; his claim to have falsely confessed was not upheld.

people with learning difficulties has been deprecated by some (e.g. Beail, 2002[38]) and the manual for the Gudjonsson scales advises against using the GCS on people whose IQ is below 70.

In summary I am, to say the least, unconvinced by the pick-and-mix approach that psychologists currently adopt when using psychometric scales to assess a person's disposition to knowingly falsely confess under the strain of a police interview. Perhaps the problem is simply one of insufficient evidence to support their application for these purposes, in which case the remedy is further, good-quality research. Further research may also address a criticism that has been made about the GCS, namely that its purpose is too obvious for its use in this context (see my earlier comment)[39]. In fairness this is speculation; the validity of any scale (in this case for the detection of vulnerability to falsely confess) should be empirically assessed.

Summary and Conclusions

A psychological assessment of the kind I am considering is a highly unusual interaction. Two strangers, usually with very different backgrounds and life experiences, are thrown together as a result of elaborate socio-economic and socio-political structures and circumstances that characterise a modern society. Each of them brings to this interaction his or her own interpretations of the demands, expectations, outcomes, consequences and so on. The report we write is just one story we could tell about the person we are seeing, one told by someone playing a particular role, the rules of which determine the content and style of the story. Therefore it is important that each time we undertake an assessment we stand well back and view 'the wider picture'.

Despite all I have said in this paper, I do not believe that psychologists like me who write these reports are simply incompetent and misguided. I do believe, as I have said, that we are limited in what we can achieve and we may not be sufficiently aware of this and fail to acknowledge it in our reports. Where much of the problem lies is in the absence of well-established rules for undertaking an assessment and interpreting the evidence, and well-grounded protocols for addressing the specific purposes of the report. Too often we find ourselves having to 'make it up as we go along' and fall prey to the errors and biases that I

[38] Beail, N. (2002) Interrogative suggestibility, memory and intellectual disability. Journal of Applied Research in Intellectual Disabilities, 15, 129-137.
[39] See http://tinyurl.com/ycrvynba

have outlined earlier. Consequently I for one have little confidence that two psychologists independently assessing the same client will often enough arrive at the same opinions.

So the first two guidelines are to be aware of our limitations and to keep in mind the wider context in which we construct our stories. As mentioned earlier, we can acknowledge the former in our reports by statements such as 'From the evidence available to me…'; 'I have insufficient evidence to express an opinion on this with due confidence…' and so on.

I have also suggested the following guidelines, which are by no means exhaustive.

- At the outset your prior opinion(s) concerning the question(s) raised by those instructing you will likely be the equivalent of 'the null hypothesis' – i.e. the client is no different from the normative population in whatever key aspects are raised.
- When considering these key aspects bear in mind the likelihood (the 'base rate') of these in the normative population.
- Remember that 'the normative population' is not necessarily the general population but more likely to be, say, 'the population that comes before the courts'.
- Carefully examine each piece of evidence and decide whether and how it affects the likelihood of the prior opinion and the alternative opinion. Adhere to your prior opinion unless and until, in your judgement, the accumulated evidence is sufficiently in favour of the alternative opinion.
- Take care to avoid being biased in favour of the client
- Take care to avoid being too keen to detect or overemphasise psychological disability.
- Guard against confirmation bias when examining the evidence.
- Unless there are good reasons not to do so, always adhere to the client's account of what happened rather than your own assumptions or hypotheses, especially when these contradict the former.
- Do not assume that the client will have certain attributes, difficulties or disabilities simply because of their diagnosis. You must provide evidence that the individual whom you are assessing does indeed manifest these characteristics and to what degree.
- You cannot have too much factual information about the person whom you are assessing but you can have too many measurements. Therefore, only use

psychometric tests when you are sure that they will add to the evidence that is relevant to the questions you are addressing.

- Where possible, decide at the outset which of the psychometric scores you are going to examine that will influence your conclusions and opinions; try to avoid *post hoc* interpretations. Try to make this explicit in your report.
- Relate psychometric scores, particularly those that are significantly high or low, to corroborative evidence - or otherwise – from the client's biographical details and his or her behaviour in everyday life.
- When the psychometric scales that you have identified as important to your assessment do not deviate from the norm, still provide your interpretations of these in terms of the prior and alternative opinions.
- Do not put in your report extensive copy-and-paste interpretations of psychometric scores provided by test manuals or software analyses.
- The client's presentation at interview is important evidence and should be described in your report.

And a final point not yet mentioned in this paper. When writing your report, think that the meaning of any communication is how it is understood by the receiver. On this basis, if the receiver cannot understand it your report is meaningless. I hope that that this paper is sufficiently meaningful to you to be worth your effort reading it.