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### Assessments for the courts: A survey of Australian psychologists

Alfred Allan<sup>a</sup>, Mary-Anne Martin<sup>b</sup> & Maria M Allan<sup>b</sup>

<sup>a</sup> Forensic Psychology Program, School of Psychology, Edith Cowan University, 100 Joondalup Drive, Joondalup, WA, 6027, Australia

<sup>b</sup> Forensic Psychology Program, Edith Cowan University

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# Assessments for the Courts: A Survey of Australian Psychologists

Alfred Allan, Mary-Anne Martin and Maria M Allan  
Forensic Psychology Program, Edith Cowan University

Forensic psychology is established in Australia. However, unlike in some countries, no survey of forensic psychologists and their activities has been published locally. This paper reports the findings of a survey of 79 Australian psychologists who do assessments for the courts. The results reveal that most of the respondents had post-graduate qualifications in psychology and were experienced psychologists, but were less experienced in doing assessments for the courts and lacked formal forensic training. The study identifies areas in forensic training that respondents believe were not adequate, including key areas such as childcare and custody evaluations. It highlights the importance of reports in the forensic field because, relative to the number of reports they prepare, it is rare for respondents to testify. Finally the study discloses that while respondents are generally satisfied with the treatment they receive, and the court atmosphere, they believe that their answers and testimony are sometimes distorted.

Forensic psychology, while a relatively new speciality in Australia, is well established. The Australian Psychological Society's Board of Forensic Psychologists, was formed in 1982 and changed its name to the College for Forensic Psychologists (Forensic College) in 1993 and currently has 285 members (John Aidone, personal communication, July 10, 2000). The College recognises eight forensic psychology courses around the country. We therefore believed that it was an opportune time to collect information about the activities of practising forensic psychologists in Australia that can inform decision-making of leaders in the profession and the coordinators of forensic psychology programs. We were not able to find a published Australian study that examines the profile of Australian forensic psychologists and their activities and experiences. Some information can be

gleaned from studies such as that of Priest (1994) who examined training in psychology applied to justice systems and Hogg's (1997) study of fitness to stand trial evaluations. In contrast, there have been comprehensive studies in Europe (McGuire, 1996), the United States (Borum & Grisso, 1995; Keilin & Bloom, 1986; Lees-Haley, 1992), the United Kingdom (Castell, 1966; Gudjonsson, 1985; 1996), and South Africa (Louw & Allan, 1998) that investigated the activities of forensic psychologists in these countries.

A review of these studies, and other literature, demonstrates similarities, but also differences, amongst psychologists who do evaluations for the courts in different countries. Some of the more salient findings in other countries are briefly discussed next.

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Correspondence to: Associate Professor Alfred Allan, School of Psychology, Edith Cowan University, 100 Joondalup Drive, Joondalup, WA 6027, Australia.

Louw and Allan (1998) found that while South African forensic psychologists as a group are experienced clinicians, they have notably less forensic experience. About 80% of their respondents receive nearly half of their referrals from solicitors. This may explain why, with notable exceptions, they are required to testify in about half of the cases where they write reports (Louw & Allan, 1998). In comparison, psychologists in the United States (Blau, 1984) and United Kingdom (Gudjonsson, 1985; 1996) give testimony in only 20% of cases where they write reports.

Heilbrun and Collins (1995) found that in respect of reports prepared in both community (95%) and hospital (99%) settings, American psychologists express opinions about ultimate issues, i.e. an opinion about a central issue of law or fact that is the function of the judge or jury to determine.

Gudjonsson (1996) found that 27% of his respondents had been asked by lawyers to change completed reports. This is a disturbing finding given the concern that has been expressed about the perceived partiality of expert witnesses in general (cf. Law Reform Commission of Western Australia (LRCWA), 1999) and psychologists in particular (cf. Bazelon, 1982; Faust & Ziskin, 1988).

Both in the United Kingdom (Gudjonsson 1985; 1996) and South Africa (Louw & Allan, 1998) respondents considered the forensic training they had received as inadequate. This may explain why Gudjonsson (1985) found that many of the respondents in his study had difficulty understanding the legal terms used in the survey.

Many psychologists in Gudjonsson's studies (1985, 1996) felt that legal work was stressful and time consuming. South African psychologists also found the work time consuming, but believe they are generally treated courteously in court and only gave marginal support to the statement that their answers and testimony in court are distorted (Louw & Allan, 1998).

Based on the results of their respective studies, Gudjonsson (1996) and Louw and Allan (1998) concluded that the testimony of psychologists might be achieving more acceptability in their countries despite the undeniable limitations of psychological testimony (Faust & Ziskin, 1988; Grisso, 1986; Melton, Petrila, Poythress, & Slobogin, 1997; Ziskin, 1995; Ziskin & Faust, 1990).

In this article we report the findings of a study that focussed specifically on the activities of those forensic psychologists who do assessments for the courts.

## Method

The questionnaire was based on those used by Gudjonsson (1985, 1996), Louw and Allan (1998), and Keilin and Bloom (1986). It asked respondents to provide information about their work settings, number of years registered as psychologists, numbers of years they have been doing forensic work, and College membership. It also sought details about their qualifications in psychology, forensic training, estimates of the adequacy of the training, and their other areas of expertise. Another focus of the questionnaire was respondents' experiences of the legal environment. Finally the questionnaire examined respondents' evaluation practices. The information generated by this part of the questionnaire is reported in a separate paper (Martin, Allan & Allan, submitted).

Questionnaires, under cover of letters explaining the study, were posted to potential participants. A reply paid envelope was provided to return completed anonymous questionnaires.

We tried to make the survey representative of all psychologists who do assessments for the courts (forensic psychologists) irrespective of whether they are members of the Forensic College. We therefore used the Telstra Yellow Pages directory to identify psychologists who advertise that they perform forensic services. In order to reach psychologists working in institutions, we also sent questionnaires to institutions that might employ a psychologist to do assessments for the courts. This included forensic units at psychiatric hospitals and government centres that were likely to deal with forensic clients.

Three hundred and sixty one questionnaires were distributed to 264 locations. Fourteen surveys were returned address unknown; four were returned from locations that did not have a psychologist; and one returned survey was not usable. Seventy-nine usable surveys were received, giving a response rate of 23%. This response rate is lower than that found in similar surveys which report response rates in the range of 40 – 69% (Brown & McGuire, 1976; Louw & Allan, 1998; Lubin, Larsen, Matarazzo, &

Seever, 1985; Piotrowski & Keller, 1978; Warkins, Campbell, Nieberding, & Hallmark, 1995). We believe two factors may have contributed to this. First, due to a time restraint we did not send out reminders. Second, many questionnaires were deliberately sent to institutions without knowing whether they employed psychologists who do court work. This strategy seemed to have worked as 41.8% of respondents indicated that they work in institutional settings. However, had all the surveys been sent to particular individuals, as Louw and Allan (1998) did, the response rate may have been higher, but the sample may have been less representative. The response rate is still better than the 7.3% and 9.5% respectively of Gudjonsson (1985; 1996) in his surveys of British psychologists.

## Results

### The Respondents

Thirty-seven respondents were male (46.8%), 41 were female (51.9%), and details for one respondent were missing. Surveys were received from respondents in each state: Western Australia (19.0%), New South Wales (16.5%), Victoria (19%), Queensland (20.3%), South Australia (8.9%), Tasmania (3.8%), Northern Territory (7.6%), and Australian Capital Territory (3.8%).

Participants had the option of choosing more than one work setting, as psychologists often do part-time work in different settings, or do contract work in different settings even if they work full-time. Just over half ( $n = 41$ ) of the respondents reported that they worked in only one setting. As Table 1 demonstrates, a large proportion of the respondents work primarily in a private setting on a full or part-time basis. This

**Table 1**

Work Settings of Participants

WORK SETTING	<i>n</i>	% OF RESPONDENTS ENDORSING SETTING
Private practice — Forensic/legal work	46	58.2
Private practice — General/clinical	36	45.6
Institution — Mainly forensic work	17	21.5
Institution — General psychological work	13	16.5
Institution — Some forensic work	8	10.1
Other setting	4	5.1

Note.  $n = 79$ . Some respondents' replies fall in more than one category.

was in a forensic (58.2%) and, or, in a clinical (45.6%) practice. A closer analysis of the data indicated that 41.8% of respondents primarily work in an institution on a full or part-time basis.

Table 2 shows that more than half (57.2%) had been registered for more than 10 years, with three respondents reporting that they had been registered for more than 30 years. In comparison, only 40.5% of respondents have been doing forensic work for more than 10 years, one for more than 30 years. (This question caused some difficulty because registration of psychologists in Australia was only introduced in 1973 in South Australia, and as late as 1994 in the Australian Capital Territory.)

The majority of respondents who were members of the APS ( $n = 60$ ) indicated that they were members of the APS College for Forensic (56.7%) or Clinical psychologists (51.7%), or

**Table 2**

Number of Years Registered and Number of Years Doing Forensic Work

NUMBER OF YEARS	REGISTERED AS A PSYCHOLOGIST		FORENSIC WORK	
	<i>n</i>	%	<i>n</i>	%
0 – 2	6	7.6	6	.6
3 – 5	10	13.0	17	21.5
6 – 10	17	22.1	24	30.4
11 – 20	26	33.8	25	31.6
21 – 30	15	19.5	6	7.6
Over 30	3	3.9	1	1.3

Note. For years registered as a psychologist ( $n = 77$ ); years doing forensic work ( $n = 79$ ).

Table 3

Australian Psychological Society College Membership

COLLEGE	N	% OF RESPONDENTS
Forensic	34	56.7
Clinical	31	51.7
Clinical Neuropsychologist	14	23.3
Counselling	10	16.7
Educational/developmental	7	11.7
Health	6	10.0
Sports	3	5.0
Community	1	1.7

Note.  $n = 60$ . Some respondents are members of more than one college.

both Colleges. Table 3 shows the breakdown of responses to APS membership.

#### Forensic Training

A large proportion of participants had completed either a Masters degree or equivalent ( $n = 45$ ), or PhD ( $n = 19$ ) as their highest qualification. Other responses included Bachelor of Psychology ( $n = 2$ ), Honours degree ( $n = 6$ ), and Postgraduate Diploma ( $n = 7$ ). Only 13 respondents (9.8%) had completed postgraduate studies in forensic psychology. Those who had no formal forensic training most frequently acquired their forensic knowledge by working in a forensic setting (48.5% of responses) or through informal training (41.7%). This entailed workshops, conferences, supervision, and self-directed reading.

Participants were asked to rate on a five-point scale (1 = extremely inadequate, 5 = extremely adequate) how adequate the various aspects of their forensic training were. Table 4 shows that participants felt that their training was generally adequate for report writing ( $M = 3.64$ ), confidentiality and privilege ( $M = 3.56$ ), and the use of psychological tests ( $M = 3.31$ ). They rated the training in the detection of malingering ( $M = 3.05$ ) and prediction of risk of future violence ( $M = 3.00$ ) marginally adequate. Respondents were slightly dissatisfied with all other aspects of their forensic training. Like respondents in Louw and Allan's (1998) study, they were least satisfied with training in the use of hypnosis in forensic settings ( $M = 1.81$ ). Some respondents replied that hypnosis was inappropriate in this setting. Participants were also given the opportunity to list other topics that they felt would have been useful in their training. Eleven respondents replied to this question. The following is a list of topics they would have liked to have had included in their training: rehabilitation/treatment of offenders, psychopathology in criminal settings, dealing with cross-examination, the court's requirements for assessments, and ethical issues in forensic settings.

Respondents were also asked in what other areas of psychology, besides forensic, they considered themselves to be experts. By far the most frequent response was clinical (46% of cases), followed by neuropsychology (23.8%), trauma (12.7%) drug and alcohol use (9.5%), developmental (9.5%), counselling (7.9%), and disability

Table 4

Adequacy of Forensic Training

ASPECT OF TRAINING	M	SD	n
Report writing	3.64	1.11	67
Confidentiality and privilege	3.56	1.20	68
The use of psychological tests for court work	3.31	1.12	67
Detecting malingering/deception	3.05	1.17	66
Prediction of future dangerousness	3.00	1.27	64
Court etiquette	2.91	1.23	67
Court procedures	2.84	1.20	67
Assessment of criminal responsibility	2.69	1.24	62
Legal principles	2.69	1.12	67
Assessment of fitness to stand trial	2.63	1.16	64
Evaluation of child witnesses/ testimony in sex abuse cases	2.38	1.26	63
Evaluations for child custody and access cases	2.38	1.25	58
Use of hypnosis in forensic settings	1.81	1.11	57

Note. 1 = extremely inadequate, 5 = extremely adequate.

(6.3%). Other areas of expertise mentioned by two or more participants were: stress management, suicide, psychological assessment, anxiety disorders, and mental health. Sixteen respondents (20.3%) did not consider themselves specialists in any field, other than forensic psychology.

#### *Evaluation Practices*

More than half the respondents (57%) prepared more than 20 forensic reports a year (Table 5). In contrast, it appears that psychologists rarely appear in court to present their evidence, with 70.9% appearing less than 5 times per year.

The questions about referral sources (Table 6) and types of cases respondents worked on (Table 7), required answers in percentages. A weighted score (WS) was calculated for these questions to better represent the volume of varying responses. The mean percentage score for each response type was multiplied by the percentage of respondents endorsing that particular response and then divided by 100 to give a weighted percentage score which was then rank ordered.

Table 6 shows the referral sources, the mean volume of work generated from those sources, and the WS. Similar to findings in other studies (Gudjonsson, 1985, 1996; Louw & Allan, 1998), the most frequently mentioned source of referrals was defence lawyers. Forty-six respondents (58.9%) receive 50.7% of their forensic work from defence lawyers. However, this represents 29.9 % of the total volume of forensic referrals received by respondents. Government departments, in comparison, contribute at least 48.9%, with Ministries of Justice and Corrections Departments providing nearly half of the work.

As Table 7 demonstrates, pre-sentence reports and personal injury claims form the bulk of forensic work undertaken by respondents, with childcare and custody evaluations a distant third. The "other" category included the assessment of offenders, criminal injury assessments, fitness to stand trial (FST), and intellectual ability assessments for civil cases. As with Gudjonsson's study (1985), some respondents had difficulties with some of the legal terminology used in this question. For example one

**Table 5**

Mean Number of Reports and Appearances in Court

NUMBER PER YEAR	REPORTS		APPEARANCES IN COURT	
	n	%	n	%
0 – 5	10	12.7	56	70.9
6 – 10	9	11.4	11	13.9
11 – 20	15	19.0	10	12.7
21 – 30	12	15.2	1	1.3
Over 30	33	41.8	1	1.3

Note. N = 79.

**Table 6**

Referral Sources and Mean Volumes

REFERRAL SOURCE	N	MEAN % OF WORK	WS	WS RANK
Defence lawyer	46	50.74	29.9	1
Ministry of Justice/Correctional Dept	32	56.81	23.3	2
Other Government Dept	19	53.16	13.0	3
Prosecution	21	32.67	8.8	4
Psychiatrists	12	35.00	5.4	5
Other	12	33.08	5.1	6
The accused/defendant	28	11.18	4.2	7
Another psychologist	23	12.22	3.6	8
Family & Children's Services	22	12.27	3.5	9
Another party involved in case	13	12.08	2.0	10
The police	4	6.25	0.3	11

Note. n = 78. WS = weighted score.

Table 7

Types of Referral Questions and Volume of Workload

TYPES OF CASES	N	MEAN % OF WORK	WS	WS RANK
Pre-sentence reports	51	39.69	27.0	1
Personal injury	43	41.65	23.9	2
Custody/childcare decisions	25	33.30	10.6	3
Post traumatic stress disorder	33	21.12	9.3	4
Parole reports	22	29.18	8.6	5.5
Other	13	49.77	8.6	5.5
Fitness to stand trial	24	15.08	4.8	7
Insanity	16	21.19	4.5	8
Diminished responsibility	22	10.59	3.1	9

Note.  $n = 75$ . WS = weighted score.

Table 8

Participants' Experience of Legal Environment

EXPERIENCE	M	SD	n
Treated courteously	4.17	.70	59
Answers/testimony distorted	3.61	1.09	56
Court atmosphere conducive to testimony	3.76	.90	58
Time wasted by lawyers and procedures	2.98	1.22	55
Fees paid for services fair	3.53	1.14	55

Note. 1 = never, 5 = always.

respondent confused the terms insanity and fitness to stand trial, and several respondents set up new categories to answer questions despite there already being a valid category for their response.

#### *Experience of the Legal Environment*

Respondents were asked to rate their experience of the legal environment on a five point scale (1 = never, 5 = always). Respondents believed that they were mostly treated courteously in court ( $M = 4.17$ ). While they generally found the court atmosphere conducive to testimony (see Table 8), a closer inspection of responses revealed that 60.7% of those who responded felt that their testimony was "almost always" or "always" distorted in court. Although the respondents believed that the fees paid to them were mostly fair, some respondents noted that they had difficulty answering the question about fees, primarily because they worked in government departments and as such did not receive a fee for forensic work they did.

Thirty-eight respondents indicated that they had been asked to change a report. The most common reason given was to expand a point or

for clarification of information ( $n=13$ ). Other reasons included requests to minimise the seriousness of information given or to show the client in a more favourable light ( $n = 9$ ); change minor details ( $n = 3$ ); changes necessary after there had been changes to the case ( $n = 2$ ); change incorrect facts ( $n = 2$ ); and psychologists asked to change their opinion ( $n = 2$ ). Relevance of information, client request, delete recommendations, to narrow the focus, and protection of information about another witness, were also mentioned once.

#### **Discussion**

Most of the respondents had post-graduate qualifications and more than half of them are members of the Forensic College. In general, they were experienced psychologists; just less than 60% have been registered as a psychologist for 11 or more years. Though less experienced in the forensic field, about 40% of them have been doing forensic work for 11 or more years. However, it is not possible to say how representative this sample is of Australian psychologists who do assessments for the courts. Therefore, the

degree to which these results are generalisable is unknown. Equally troublesome is the issue of self-reporting that requires retrospective evaluations that is vulnerable to memory's imperfections. Consequently, caution is warranted in interpreting the results of this study.

#### *Forensic Training*

Despite the fact that the majority of respondents hold post-graduate qualifications in psychology, only 13 had specialist training in forensic psychology. This is in accordance with Louw and Allan (1998) and Gudjonsson's findings (1985) that many of their respondents had limited experience and training in forensic work. Melton et al. (1997) point out that the knowledge and skills required in forensic practice are more specialised than those obtained in general training as practitioners. For example, forensic evaluators require knowledge about legal standards and issues. While a good number of respondents had gained their forensic knowledge and skills through experience and informal training, such training is not standardised, nor is there always proper scrutiny of the credentials of those who provide this training. This state of affairs will probably be corrected as more graduates from the accredited Forensic Psychology Programs join the ranks of those who do assessments for the courts. However, current practitioners must be given an opportunity to remedy the deficits identified by them.

Respondents believed their forensic training had been inadequate in a number of areas. First, the assessment of fitness to stand trial and criminal responsibility of defendants. Both these are areas where psychologists traditionally have a secondary role, in that they usually report to a psychiatrist and not the court. Nevertheless, even in this role they may be able to make a valuable contribution, provided that they have proper training. However, Hogg (1997) found that Australian psychologists have an insufficient understanding of the legal criteria for fitness to stand trial. Second, the results of this study also suggest that more attention should be given to training regarding court procedures and etiquette, and the legal principles that underlie the assessments psychologists do. The fact that some respondents found it difficult to understand the terminology, for example one respondent confused the terms insanity and fitness to

stand trial, may confirm that some forensic psychologists lack knowledge about basic legal concepts. A third notable finding is that the respondents were dissatisfied with their training in the evaluation of child custody and access cases, as this type of work forms a relatively large part of the assessments undertaken for the courts. (The weighted score of the volume of this type of work was ranked third.) This appears to be an area that requires the attention of those responsible for the forensic training of psychologists.

On a positive note, almost 80% of respondents considered themselves experts in areas other than forensic psychology. Psychological expert opinion evidence is accepted by the courts on the basis of specialist knowledge only (Freckelton & Selby, 1999; Melton et al., 1997). Per definition, psychologists have no right to be giving expert testimony about a matter if they are not in fact experts in the relevant area (cf. *R v. Darrington*, 1980). According to Freckelton and Selby (1999) Australian courts are demonstrating an increasing rigour in the application of this rule (cf. *J v. The Queen*, 1994). It is also clear that a psychological qualification alone does not bestow specialist standing in the eyes of the legal system (Ackerman & Kane, 1990; *J v. The Queen*, 1994; Melton et al., 1997). Non-specialist psychologists who testify in court as expert witnesses not only disregard the legal requirements of their role, but also act unprofessionally (Louw & Allan, 1998). In Australia, general principle II of the APS Code of Ethics (1997) provides that psychologists should "...refrain from offering advice or undertaking work beyond their professional competence" (p. 1).

#### *Reports*

The survey indicates that psychologists who are writing reports for the courts are seldom required to present their evidence in court. This is consistent with findings by Gudjonsson (1985, 1996), but contrary to those of Louw and Allan (1998). This finding has three important implications. First, Gudjonsson (1985) interpreted a similar finding as an indication that in most cases the reports of psychologists are so well received by the lawyers involved, that cross-examination is not considered necessary. (It could also mean that courts place so little weight on these reports that they do not consider it necessary to call the authors', however, this is unlikely.) Second, it

indicates that courts often rely on psychological reports that are not tested by cross-examination or otherwise. This is a concern because the abolition of ultimate opinion rule has been recommended in Western Australia (LRCWA, 1999), and it has been abolished in the Federal system (Evidence Act 1995 (Commonwealth)) and New South Wales (Evidence Act 1995 (NSW)). This means that in these jurisdictions psychologists can express opinions about central issues of law or fact that are the function of judges or juries to determine. The concern of psychologists such as Allan and Louw (1997) is that courts may, in some instances, make important legal decisions based on an opinion about an ultimate issue, which was expressed by a psychologist in a report that was not tested.

Psychologists preparing reports must appreciate that it is likely that they will not have an opportunity to explain their findings and opinions to the court. Their reports should consequently be unbiased and unambiguous and require no further explanation. Even then psychologists are advised to refrain from expressing opinions in respect of ultimate issues, irrespective of the legal position (Grisso, 1986; Louw & Allan, 1998).

#### *Experience of the Legal Environment*

In general, respondents appear to experience the legal environment more positively than psychologists in other countries (Gudjonsson, 1985; 1996; Louw & Allan, 1998). Although not as dissatisfied about the amount of time wasted in court as the South African psychologists in the Louw and Allan (1998) study, 38.2% felt that their time was always or almost always wasted in court. Some respondents commented about the need for lawyers to be educated about the impact of waiting to go into court on a private practitioner's business. This confirms a need that was identified by the LRCWA (1999) for a channel of communication between judges, lawyers, expert witnesses and parties to litigation. The LRCWA (1999) recommends that an Expert Evidence Forum should be established in Western Australia to promote such communication. The finding that 60% of the respondents believed that their testimony was always, or almost always, distorted in court, confirms the need for such a body. Despite the belief of some lawyers (cf. Howard, 1991) that this claim is a myth, the strong response confirms

that there is a need to reform the manner in which expert testimony is utilised in the justice system (ALRC, 1999; LRCWA, 1999; Woolf Report, 1995, 1996).

It was disturbing to note that almost half (48.1%) of respondents had been asked to change reports they had written. While there may sometimes be valid reasons for changing a report, this should always be undertaken in a responsible and transparent manner. In fact, the preferred option would be not to amend the report as such, but to write a supplementary report. The supplementary report must document the facts that make an amendment of the original report necessary. If changes to reports are not made in a transparent manner, it will lead to suspicion about the motive for such changes. If it appears that psychologists frequently change their reports, it has the potential to damage the credibility of expert witnesses, and the profession as a whole (Gudjonsson & Haward, 1998). This is not only an ethical issue, but there is also the very real possibility of a miscarriage of justice if psychologists change reports on request (Gudjonsson & Haward, 1998). It further provides ammunition to those who believe that expert witnesses, including psychologists, are partisan (ALRC, 1999; LRCWA, 1999; Woolf Report, 1995, 1996).

#### **Conclusion**

The results of this study reveal parallels between Australian psychologists who do assessments for the court and those in other countries. As in other countries, Australian psychologists believe that there are specific areas of their forensic training that were inadequate. Key areas where it may be necessary to provide special training opportunities include childcare and custody, fitness to stand trial and criminal responsibility evaluations. In general, it appears as if psychologists who do evaluations for the courts would like more knowledge of the legal system in general and the specific legal concepts. The study also confirmed the central role that reports play in forensic psychology. The implication of this is that it places a responsibility on psychologists to be competent, to do impeccable assessments that have an acceptable scientific foundation, and to produce reports that are objective, informative and clear.

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