

國民法官制度下 精神鑑定的新風貌(二)

New Characteristics of Psychiatry
Assessment under Lay Judge System (II)

廖建瑜 Chien-Yu Liao*



摘要

精神鑑定結果左右職業法官審判決定，對於一般國民所擔任之國民法官可能更有權威效應之影響及複數鑑定上判斷困難，因此在精神鑑定前之資料蒐集及避免複數鑑定形成極為重要，並且職業法官應盡指示說明之義務使國民法官明白精神鑑定之證據屬性及其證明力的界限，而精神鑑定人也必須修正以往法庭活動模式，以更簡明方式讓國民法官理解鑑定過程及結論，而最後在進行評議過程中職業法官應讓國民法官了解精神鑑定與責任能力判斷之關聯性，並協助在複數鑑定中提供判斷優劣的觀察角度。

The results of the psychiatry assessment influence the decision of the professional judges, and may have more authoritative effects on the lay judges, not to mention

*臺灣高等法院刑事庭法官 (Judge of Taiwan High Court)

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diverse assessments which cause the difficulty in respect of decision-making. It is extremely important to collect information before the psychiatry assessment and to avoid the diverse assessments. Besides, the professional judges should fulfill the duty to instruct the lay judges to understand the nature of the evidence and the limits of the probative value of the psychiatry assessment. On the other hand, the expert witness of the psychiatry should revise the pervious pattern of the activity at court, making the process of the assessment as well as the conclusion more concise for the lay judges. Finally, in the phase of the court deliberation, the professional judge should make the lay judges aware of the relevance of the psychiatry assessment to the evaluation of the capacity for responsibility, assisting in providing perspectives on the evaluation when having diverse assessments.

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（二）精神鑑定人之法庭活動

1. 精神鑑定人法庭陳述之重點

依刑事訴訟法第197條除有特別規定外，準用人證之規定，又依同法第208條第2項實施鑑定或審查之人為言詞報告或說明之情形，準用刑事訴訟法第166條至第167條之7，亦即精神鑑定人在法庭上必須接受如同證人之調查方法——交互詰問，然而鑑定人與證人雖均以供述協助法院發現真實，二者仍有極大的差異，前者是以專門知識經驗為必要，但具有可代替性，後者是親身見聞事實為必要，具有不可代替性¹，故前

1 吳耀宗，鑑定人在刑事訴訟程序的角色與權利義務，中央警察大學法學論集，12期，2007年4月，160-161頁。