

# Gender and the Experience of Mental Health Expert Witness Testimony

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Mental health expert witness testimony involves complex tasks, and the capacity to perform under pressure is a fundamental skill of a forensic professional. In this context, it is important to understand the nuances of the provision of expert witness testimony. There have been several efforts to examine gender bias across legal and medical systems. Despite these reviews, little is known about how men and women differ or are similar with regard to performing expert witness functions. The purpose of this pilot study was to examine whether the testimony experiences of psychiatry and psychology experts vary by gender. Differences across certain domains, such as the sense of never experiencing anxiety and the sense of one's impact on case outcome were seen across genders. Few other gender-based differences in the experience of providing expert witness testimony were seen. Although the findings of this study raise further questions, they highlight some of the important subtleties noted in forensic practice and the work of the expert witness. In future studies, researchers should continue to explore these findings on the influence of gender and expand to consider culture and race as additional factors in the experience of expert witness testimony. As forensic professional practice evolves, it is important to understand unique aspects of forensic practice, to improve training of forensic experts, and to assist forensic experts in anticipating what they may experience related to the provision of expert testimony.

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The purpose of this pilot study was to examine whether the testimony experiences of psychiatry and psychology experts vary by gender. Perceived gender bias in law and medicine has been repeatedly recognized. Ednie noted the challenges for women in forensic psychiatry, pointing out that “the specialty intersects several predominately male systems: medicine, law, and the criminal justice system” (Ref. 1, p 43). The recognition of the potential for gender bias in the courtroom raised such significant concern that, throughout the late 1980s and 1990s, many states and federal courts created task forces on gender bias in the courts.<sup>2</sup> Common problems faced

by women in the legal profession included exclusion from politicking and networking, inappropriate interactions, and conflict with family life. With regard to courtroom interaction, the Eighth Circuit Gender Bias Task Force found that two-thirds of female litigators and one-half of male litigators were exposed to general incivility.<sup>2</sup> Female litigators reported that incivility came from male litigators and judges, whereas male litigators reported that incivility came mainly from judges. Sixty percent of female lawyers surveyed reported experiencing some form of gender-related inappropriate behavior, the most common being “unprofessional forms of address, offensive comments about appearance, offensive jokes and comments, and, most commonly, being mistaken for a non-lawyer” (Ref. 2, p 623). The Eighth Circuit Task Force provided a series of recommendations including that “the law school review its operations, including the course of study offered, to ensure that gender fairness is being taught and that students are sensitive to the issues of gender bias in the law” (p 633) Likewise, the Ninth Circuit Task Force noted “we must learn to recognize gender bias—both apparent and subtle, and we must work to eliminate it from our chambers and courtrooms” (p 618). The

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Ninth Circuit Task Force went on to state that learning to treat women and men with equal respect “requires more than simply eliminating overt discrimination . . . it requires that we rethink some of the underlying assumptions by which we live” (p 618).

Similarly, studies of academic medicine have revealed reports of gender bias. In a study of over 3,000 faculty from 24 U.S. medical schools, Carr *et al.*<sup>3</sup> found that female faculty were 2.5 times more likely than male faculty to perceive gender-based discrimination. About half of female faculty reported experiencing some form of sexual harassment, which was associated with lower career satisfaction but had no impact on productivity. Ash *et al.*<sup>4</sup> found that female medical school faculty neither advance as rapidly nor are compensated as well as male colleagues with similar roles and achievements. Data suggest that female medical students are more likely to experience gender discrimination and sexual harassment and that exposure to gender discrimination and sexual harassment in medical school influences specialty choice and residency program selection.<sup>5</sup>

In recent years, more and more women have pursued careers in forensic psychiatry and forensic psychology, thereby entering the traditionally male-dominated arenas of medicine and law in which gender bias has been well-documented. In 1994, women made up an estimated 10 percent of the membership of the American Academy of Psychiatry and the Law (AAPL),<sup>1</sup> while, in 2004, they accounted for approximately 25 percent of the membership.<sup>6</sup> Also, in 2004, women accounted for 20 percent of the American Board of Forensic Psychology (ABFP) diplomates.<sup>7</sup> Lacoursiere<sup>8</sup> recently summarized advances in gender equality in the professions of law and forensic psychology and psychiatry.

Ednie<sup>1</sup> listed potential difficulties specifically faced by women in the practice of forensic psychiatry, including perceptions of their professional status by courtroom participants, finding sponsors and mentors, obtaining referrals, being seen as having the same amount of expert power as men, and being recruited by attorneys. In 2004, Price *et al.*<sup>6</sup> conducted a study of AAPL members to evaluate whether there are any differences in the practice patterns of male and female forensic psychiatrists. Not surprisingly, they found that women in the sample tended to be younger and had fewer years of experience. They also found that women performed evalu-

ations in fewer categories than men. In addition, 80 percent of the women in the sample, compared with only 41 percent of the men, thought that gender was a significant factor in the selection of a forensic expert, indicating that women had different beliefs about being retained.<sup>6</sup> This variation suggests that women and men may experience their interactions within the legal system and their work as forensic experts differently. Specifically, female experts are more likely than their male counterparts to perceive sexual bias (either positive or negative) in the medicolegal context.

Reasons for this discrepancy remain unclear. Price *et al.*<sup>6</sup> listed the presence of incivility, sexually inappropriate behavior, disrespectful conduct, patronizing language, and improper forms of address by attorneys and judges as factors that could indirectly affect an expert’s perception of sexual bias. In a commentary on the study by Price *et al.*, Hackett recommended that variable exposure to what she termed “hassle factors” (Ref. 9, p 260) be explored as a possible contributor to female experts’ more frequently perceiving gender bias than male experts. Such hassle factors may include subtle disrespect toward the expert (e.g., failing to provide information needed to formulate an opinion), unrealistic last-minute time demands, and requests to produce more primary work product (e.g., notes).<sup>9</sup>

Ednie<sup>1</sup> pointed out that differences in communication styles between men and women may affect courtroom testimony. Women’s communication style tends to be more indirect and less arrogant than men’s, with more use of powerless speech.<sup>1</sup> Resnick<sup>10</sup> noted that powerful speech, as opposed to powerless speech, is associated with greater credibility of and greater attraction to the expert witness, whereas powerless speech is used by persons accorded low power and status by the court.<sup>10</sup>

Strasburger *et al.*<sup>11</sup> found that gender and number of years in practice influence stress levels. Specifically, men and respondents with more years of experience reported lower stress levels, whereas women and respondents with fewer years of experience reported higher stress levels. Irrespective of years of experience, women were more likely than men to report somatic complaints (e.g., stomach pain, nightmares, and headaches) in connection with work-related stress.

More recent studies have indicated that jurors’ perceptions of the credibility of expert witnesses

may vary according to the expert's gender.<sup>12,13</sup> Neal *et al.*<sup>13</sup> found that gender differences emerge when experts are perceived by jurors as lacking in either warmth or competence, with male experts being viewed more positively in such situations than comparable female experts. In a related commentary, Lacoursiere<sup>8</sup> noted that, despite increasing percentages of women in the fields of law and forensic psychiatry and psychology, gender differences persist that often work to the advantage of men in how expert witnesses are perceived in their roles in the courtroom.

These data support that gender matters in the courtroom and that men and women experience careers in the fields of medicine, law, and forensic psychiatry differently. Variations in courtroom interactions, jurors' reactions, communication styles, stress levels, and responses to stress may cause women to experience testimony in different ways than men. In this study, we sought to determine whether any gender-based differences related to testimony would be found across a group of surveyed experts. We hypothesized that, like the female attorneys polled in the Eighth Circuit,<sup>2</sup> female psychiatry and psychology expert witnesses would report being subject to courtroom incivility more often than would male experts. Furthermore, based on our anecdotal experience in supervising trainees and their reported experiences in providing testimony, we hypothesized that female psychiatry and psychology experts would report higher levels of anxiety and self-criticism related to testifying. With the influx of women into the field, we wanted to provide insight into factors significant for expert witnesses of both genders, to become familiar with and identify areas of focus for forensic psychology and forensic psychiatry training that would improve practice effectiveness and satisfaction.

### Methods

For participants, the investigators targeted psychiatrists and psychologists who have experience providing expert witness testimony in the United States. Subjects were included if they were board certified (as noted by directory listings) members of the American Academy of Psychiatry and the Law (AAPL) or members of the American Board of Forensic Psychology (ABFP) in 2008. The online/e-mail format of the study required access to e-mail addresses of the subjects. Therefore, only sub-

jects who had an e-mail address listed in the AAPL or ABFP member directories were asked to participate. The subjects were presented with an informed-consent statement and were then asked if they accepted the terms and conditions of participation in the survey. They were allowed to continue only if they consented. The survey contained a question regarding whether the subject had ever testified as an expert witness in the United States. Individuals who had not were excluded.

The investigators attempted to contact an equal number of male and female ABFP and AAPL members. All female members of ABFP ( $n = 46$ ), as best determined from their names and information in the ABFP directory, were included in the study and served as the anchor pilot sample, since they represented the smallest group. A matched number of male ABFP members ( $n = 46$ ) was selected with a random number generator, to identify which would be selected as potential subjects. The same number of female ( $n = 46$ ) and male AAPL members ( $n = 46$ ) was selected. Because there were more AAPL members than ABFP members, male and female AAPL members were selected by random number generator to identify a randomized list of study subjects to complete the study sample. In total, 184 subjects were surveyed.

The survey consisted of 23 questions beginning with consent to participate in the study. Other questions requested information about demographics, experience providing testimony, testimony-related anxiety, and exposure to courtroom incivility and hassle factors, including comments about age, appearance or attire, improper forms of address, unrealistic time demands, hostile cross-examination, inadequate records, inadequate preparation by the attorney before testimony, and requests to reduce fees or being told fees are excessive. In addition, we sought to assess how experts weighed the impact of their testimony on cases by surveying participants regarding their perception of testimony in cases in which the court ruled in agreement versus in disagreement with the expert's opinion. Subjects were asked their opinions regarding the degree to which certain traits (e.g., quality of written reports, quality of testimony, fees, academic productivity, experience, age, gender, appearance, reputation, and training) affect selection of an expert witness. Finally, subjects were invited to enter any additional comments. The study was approved by the Institutional Review

Boards of the University of Massachusetts Medical School and the University of Arizona.

Because of the small sample size, Fisher’s exact test for contingency tables was used for data analysis.

**Results**

Of the 184 surveys e-mailed, 53 were returned, for a response rate of almost 28 percent. All respondents consented to participate in the study and all had testified as expert witnesses. There was no significant difference in response rates based on gender. Twenty-eight (52.8%) of the respondents were women and 25 (47.2%) were men. There were no significant differences between respondents in demographics or testimony experience based on gender. Sixty-two percent of the sample ( $n = 33$ ) were psychologists; and 38 percent ( $n = 20$ ) were psychiatrists. The majority of participants (94.3%) described their race as white and practiced in locales distributed throughout the United States, with the Northeast being the most common (24.5%) followed by the Midwest (22.6%). The most often reported age range was 51 to 60 years for both the men (48%) and the women (35.7%). Thirty-two percent of the male and 25 percent of the female respondents were over the age of 60. No respondents were less than 30 years old, and only five (9.4%) were between the ages of 31 and 40 years. Years since completion of training in psychiatry and psychology ranged from less than 5 (1.9%) to greater than 30 (24.5%). Most participants (67.9%) had not completed a forensic psychiatry fellowship or a postdoctoral forensic psychology fellowship.

Thirty-six percent of male respondents and 28.6 percent of female respondents indicated that they had completed such a fellowship. Fifty-two percent of the men and 36 percent of the women reported that they had testified as an expert witness more than 100 times. Most respondents (82.6 percent of the men and 72 percent of the women) indicated that they had testified in both criminal and civil cases.

Responses to the survey are delineated further in Tables 1 and 2. In regard to anxiety levels experienced before and during testimony, the responses indicated no significant differences based on gender with regard to extreme, high, moderate, and mild levels of anxiety. However, there was a trend toward significance in the frequency that experts experienced no anxiety. Approximately 70 percent of the men reported experiencing no anxiety regarding testimony, compared with only 40 percent of women ( $p = .056$ ).

In terms of hassle factors, being told that fees were excessive differed significantly by gender. Although approximately 65 percent of the men had been told that their fees were excessive, only 28 percent of the women had been ( $p = .01$ ). Differences related to being improperly addressed during testimony trended toward significance. Sixty-four percent of the female experts indicated that they rarely or sometimes experienced improper forms of address, whereas a smaller portion (52 percent) of the men reported such experiences ( $p = .058$ ).

Exposure to other hassle factors was not differentiated by gender. Most of the male and the female respondents indicated that they had never encoun-

**Table 1** Survey Items Achieving a Significant Gender-Based Difference

Item	Gender	Frequency Reported (%)					Significance
		Never	Rarely	Sometimes	Frequently	Always	
Told fees are excessive	Male	34.8	56.5	8.7	0.0	0.0	$p = .010$
	Female	72.0	16.0	12.0	0.0	0.0	
Felt adequately prepared to testify despite court’s ruling against opinion	Male	0.0	4.3	17.4	56.5	21.7	$p = .040$
	Female	0.0	0.0	24.0	76.0	0.0	
Feel confident in opinions	Male	0.0	0.0	0.0	65.2	34.8	$p = .033$
	Female	0.0	0.0	4.0	88.0	8.0	
Feels case’s desired outcome was due to expert’s effective testimony	Male	0.0	4.3	39.1	56.5	0.0	$p = .001$
	Female	0.0	4.0	84.0	12.0	0.0	
			No Impact	Low Impact	Moderate Impact	High Impact	
Impact of expert’s testimony on case’s outcome	Male	0.0		4.3	39.1	56.5	$p = .018$
	Female	0.0		0.0	76.0	24.0	
Impact of academic productivity in selection of expert	Male	0.0		73.9	26.1	0.0	$p = .002$
	Female	12.0		28.0	40.0	20.0	

## Gender-Related Experiences of Mental Health Expert Witness Testimony

**Table 2** Survey Items Trending\* Toward Significant Gender-Based Differences

Item	Gender	Frequency Reported (%)					Significance
		Never	Rarely	Sometimes	Frequently	Always	
Frequency of no anxiety before/during testimony	Male	30.4	21.7	13.0	30.4	4.3	$p = .056$
	Female	60.0	20.0	16.0	4.0	0.0	
Improperly addressed (e.g., called Mr./Ms. instead of Dr.)	Male	47.8	34.8	17.4	0.0	0.0	$p = .058$
	Female	20.0	32.0	32.0	16.0	0.0	
Felt adequately prepared to testify when courts ruled in agreement with expert's opinion	Male	0.0	0.0	4.3	69.6	26.1	$p = .071$
	Female	0.0	0.0	4.0	92.0	4.0	
		No Impact	Low Impact	Moderate Impact	High Impact		
Impact of expert's experience on selection process	Male	0.0	0.0	34.8	65.2	$p = .082$	
	Female	0.0	4.0	60.0	36.0		
Impact of expert's gender on selection process	Male	43.5	52.2	4.3	0.0	$p = .085$	
	Female	32.0	36.0	28.0	4.0		

\*  $p > .05$  and  $< .10$ .

tered comments about their age, appearance, or dress during the course of testimony, and most of both genders reported rarely encountering situations in which they were not provided with the information needed to formulate an opinion or being expected to obtain collateral data normally obtained by attorneys. Most of the male and female experts reported sometimes experiencing unrealistic time demands, being inadequately prepared by attorneys before testimony, undergoing hostile cross-examination, being provided with poorly organized or incomplete records, and being pressured to adjust schedules to meet attorneys' needs.

Perceptions of testimony showed significant gender-based differences on several items. The majority of the men (56.5%) indicated that their testimony had a large impact in the cases in which they had testified, whereas a larger majority of the women (76%) believed their testimony had only a moderate impact ( $p = .018$ ). The men tended to report feeling confident in their expert opinions more frequently, with nearly 35 percent reporting always feeling confident compared with only 8 percent of the women ( $p = .033$ ). The majority of the men (56.5%) indicated that they frequently thought a case's desired outcome was a result of their effective testimony, whereas only 12 percent of the women reported frequently having such thoughts ( $p = .001$ ). The majority of the women (84%) indicated that they sometimes thought a case's desired outcome was due to their effective testimony. Only 4 percent of both men and women respondents said that they never thought a case's desired outcome was related to their testimony. In cases in which the courts ruled in dis-

agreement with the expert's testimony, most of the female (76%) and the male (56.5%) experts nevertheless reported frequently thinking that they had been adequately prepared to testify. However, 21.7 percent of the male experts reported always thinking that they had been adequately prepared to testify in such cases, whereas none of the female experts indicated that they always felt adequately prepared ( $p = .040$ ).

For most of the items assessing perceptions of testimony, responses did not vary by gender. The majority of both the male and the female experts reported that they frequently enjoyed testifying, frequently felt satisfied with their testimony, and sometimes or frequently believed that their testimony helped a case. Most of the respondents indicated that they rarely thought that a case's undesired outcome was due to their ineffective testimony or that their testimony hurt a case. Regardless of the outcome of a case, most of both the male and female respondents indicated that they frequently thought that they had provided effective testimony, that they had worked effectively with counsel, and that they felt confident in their testimony. Most of the experts, both male and female, reported that they frequently or always spent time reviewing the strengths and weaknesses of their testimony regardless of a case's outcome.

Finally, when experts were asked about what traits are important in the selection of an expert witness, academic productivity of the expert was the only trait that showed a significant difference between the male and female respondents, with the men placing more emphasis on this factor in the selection of an expert

witness. This term was undefined in the survey but generally might include things such as publications, academic rank, and lectureships. Most of the male experts (74%) thought academic productivity had a low impact on the selection process, whereas only 28 percent of the female experts thought academic productivity had a low impact. Sixty percent of the female experts, but only 26 percent of the male experts, believed academic productivity to have a moderate to high impact on expert witness selection ( $p = .002$ ). Perceptions of the extent to which the experience and gender of the expert influenced selection approached statistical significance. Sixty-five percent of the male experts thought experience had a high impact on the selection process, compared with 36 percent of the women ( $p = .082$ ). The majority of both the male and female respondents thought that the gender of the expert had a low impact in the selection process; however, 28 percent of the women compared with 4.3 percent of the men believed gender to have a moderate impact ( $p = .085$ ). No significant gender-based differences were seen in responses assessing the impact of other expert witness traits, including quality of written reports, quality of testimony, fees, age, appearance, reputation, and training (Table 3).

## Discussion

Testifying is an essential and oftentimes anxiety-provoking aspect of practicing forensic psychiatry and forensic psychology. The experience of providing testimony is unique in many ways. Unlike conducting evaluations, forming opinions, and writing reports of findings, testifying is a skill that is not routinely taught in medical school, residency, or psychology programs. In addition, testimony involves public scrutiny in an adversarial situation, a scenario that is not typically encountered in the day-to-day practice of psychiatry and psychology. With this study, we sought to determine if male and female mental health experts differ in their experiences of providing expert witness testimony.

Contrary to our hypotheses, we found few, if any, gender-based differences in the experience of providing expert witness testimony. The men tended to express more confidence in their expert opinions and to view their testimony as having a higher degree of impact on the outcome of cases. However, confidence levels were high across both groups, with 96 percent of the women and 100 percent of the men

**Table 3** Survey Items With No Significant Gender-Based Differences

Demographics
Practice locale
Age
Race/ethnicity
Professional title (MD, PhD)
Years since completion of psychiatry/psychology training
Fellowship experience
Testimony experience
Frequency of degrees of anxiety experienced before/during testimony
Extreme anxiety
High anxiety
Moderate anxiety
Mild anxiety
Frequency of experiencing hassle factors
Comments about age/appearance/attire
Unrealistic time demands
Not provided necessary information to form an opinion
Not adequately prepared by attorney before testimony
Hostile cross examination
Provided with poorly organized/incomplete records
Asked to adjust/reduce fees
Pressured to adjust schedule to meet attorney's case needs
Expected to obtain collateral data normally obtained by attorney
Frequency of testimony-related thoughts
"I provided effective expert witness testimony."
"I worked with effective attorneys."
"I felt confident in my testimony."
"After testifying, I spent time reviewing the strengths and weaknesses of my testimony."
"I enjoy testifying as an expert witness."
"I feel satisfied with my testimony."
"I am self-critical of my testimony."
"I have felt that a case's undesired outcome was due to my ineffective testimony."
"I have felt that a case's undesired outcome was due to ineffective counsel."
"I have felt that a case's desired outcome was due to effective counsel."
"I have felt that my testimony 'helped' a case."
"I have felt that my testimony 'hurt' a case."
"I tend to focus on the weaknesses of my testimony more than the strengths."
Opinions regarding traits affecting the selection of an expert witness
Quality of expert's written reports
Quality of expert's testimony
Fees charged by expert
Age of the expert
Appearance of the expert
Reputation of the expert
Training of the expert

reporting feeling frequently or always confident in their opinions. The female experts seemed to express more doubt in their preparation for testimony in instances in which the court ruled in

disagreement with their opinions. The men were more likely to report experiencing no anxiety before or during testimony. High, moderate, and low anxiety levels were similarly experienced across both groups.

In contrast to hypotheses put forth by Price *et al.*<sup>6</sup> and Hackett,<sup>9</sup> there were few differences with regard to exposure to hassle factors and courtroom incivility across groups. The men were more likely to report being told that their fees were excessive. We did not ask participants about specific fees charged, but in their survey assessing gender differences in the practice patterns of forensic psychiatry experts, Price *et al.*<sup>6</sup> found that hourly rates were not affected by gender but rather by seniority and experience. Our survey further suggests that women are more likely to report being improperly addressed in the courtroom, a finding consistent with those of the Eighth Circuit Gender Bias Task Force.<sup>2</sup>

Both male and female respondents showed few differences when asked to rate the importance of various traits that might be considered in the selection of an expert witness. The men tended to place more emphasis on academic productivity and experience, and the women tended to view the gender of the expert as having more influence, a finding consistent with the 2004 survey results reported by Price *et al.*<sup>6</sup>

The results should be interpreted with caution. Although a few of the findings point to gender-based differences in perceptions of testimony-related self-performance, no such broad-based conclusions can be drawn from the current data. The sample size was small and may not be representative of expert witnesses in the fields of psychiatry and psychology as a whole. Overall, the group surveyed consisted of more senior experts who had a great deal of experience testifying in both civil and criminal cases. The seniority and experience of the surveyed experts could have diminished any gender-based differences. More gender-related distinctions may have been seen had trainees and early-career experts been included in the survey. In addition, participants might have been reluctant to disclose testimony-related anxiety, thoughts of self-doubt and self-criticism, and instances in which they had been treated unprofessionally. Variations in the ways men and women express emotions and self-doubts might have influenced the results of the survey, and written Likert scale-type inquiries with narrowly phrased questions and responses to elicit

complex internal emotional dynamics could have failed to generate responses that reflect true experience. The variables of race, ethnicity, and culture were not addressed in the study and likely contribute to variations in the way testimony is experienced by expert witnesses, regardless of gender. Further research is needed in this area.

Although equal numbers of psychiatrists and psychologists were invited to participate in the survey, psychologists represented a higher percentage of respondents (62%). The reason for the higher response rate from surveyed psychologists remains unclear. The greater representation of psychologists in the sample group could have affected the results of the survey because mental health testimony experience may vary by discipline. The sample size is too small to draw any conclusions about possible differences in testimony-related experiences between psychiatrists and psychologists, and future research on profession-based gender discrepancies is therefore warranted.

Providing testimony is a key component of forensic psychiatry and psychology practice, and the skills needed to testify are increasingly a point of focus in formalized forensic training programs. In this study, we sought to identify ways in which gender may play a role in how expert witnesses perceive and self-assess testimony experiences and may affect levels of testimony-related anxiety. Overall, we found few gender-based differences. We also did not explore race and culture as variables that could have changed self-perception and suggest further exploration of these aspects in future studies. Nonetheless, teaching and supervision strategies should be sensitive to testimony-related stressors and take into account how trainees perceive their experiences in providing expert witness testimony. Given that confidence and self-assurance are qualities valued in expert witnesses, there may be a tendency for experts of both genders to underreport anxiety, self-criticism, and other negative responses to testimony. Normalizing testimony-related fears and self-doubt and helping trainees to develop coping mechanisms for negative thoughts and emotions surrounding testimony are important elements in preparing trainees for courtroom experiences and may help to ease the transition into the role of expert witness. At the same time, having a more objective perspective on such experiences can help even the most seasoned forensic expert to be prepared better.

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