

The Fundamentals and Practice of Forensic Neuropsychology

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* Annotated version

Informed Consent/Disclaimers

Safety First!!

If you're not having fun, you have my permission to leave.

The following represents the views of only Robert Heilbroner and are not meant to be representative of any organization, religion, political action committee, splinter group, etc.

In other words....it's **MY TALK** and I can do whatever I want!!!!

Disclaimers con't...

I will only respond to questions when I want to (in other words...when I think I know the answer). Otherwise, ask me on break or....

Ask someone else who knows!!

Disclaimers con't...

...and in the words of that great American, Jeffrey Lebowski (aka "The Dude")...

“Yeah, well, that’s just, ya know, like, your opinion, man.”

A

Attorney (Webster's): *Attornicus manipulatamous;*

One who is legally appointed to on another's behalf. An attorney-at-law, is an individual licensed to practice law by the highest court of a state or some other form of jurisdiction.

Attorneys are commonly referred to as lawyers.

<http://en.wikipedia.org/wiki/attorney>;

www.merriam-webster.com.

A

Not your Ally!

Not your friend...even if he/she promises
other cases to you,
...a week's vacation at the firm's condo in
the Berkshires, etc.

A

Other "A" terms that apply to attorneys:

Aggressive

Assaultive

Argumentative

A—hole

Interacting with Attorney

Initial Phone Contact:

Get the facts of the case

Discuss your expertise and qualifications

Clarify time frame and special arrangements
(i.e., interpreter, TPO, multiple sessions,
etc.)

Conflicts of interest and other factors that
might compromise objectivity

Interacting with attorney con't...

Initial contact con't:

Keep dated notes of conversations

Do not let attorney set time constraints

Clarify financial arrangements at the outset

Obtain a retainer?

Avoid liens

Charge same amount for forensic & clinical?

Interacting with attorney con't...

Subsequent interactions:

Avoid ex parte communication

Resist attempts by attorney not to write report (if no report, do you still document your opinions?)

Do not let attorney influence your opinions

Prepare an addendum if necessary

Insist that raw data be released only to qualified professional

A

Advocate:

An attorney is a “zealous advocate” for his case and for his client.

As a treater, you are an Advocate for the...
Patient

As an expert, you are an Advocate of the...

Facts

You are defending *your opinion*.

Different Roles: Treater

Patient is your "client";

You are an advocate for him/her;

May not have all/adequate records;

Preservation of confidentiality;

Determine of dysfunction, effect of dysfunction on the person, prognosis; usually not concerned about causality.

Different Roles: Expert

Patient is not your client: attorney, court, insurance company are;

Issues of informed consent;

Confidentiality not preserved;

Requires access to all/adequate records;

Tasks same as treater (i.e., diagnosis, prognosis, etc) but also determination of **cause** of dysfunction

Know the rules of Admissibility

Frye Rule:

General acceptance
within relevant
scientific community

Innovative procedures
may require publica-
tion in peer journal

Daubert Rule:

Judges preliminarily
assess:

- Validity
- Reasoning
- Methodology

Is novel theory
sufficiently supported
or is it junk science?

It's the rule in federal
court

B is for...

Bias:

(Webster's): "...a peculiarity in the shape of a bowl that causes it to swerve when rolled on the green."

A particular tendency or inclination, esp. one that *prevents unprejudiced consideration* of a question.

Bias

Bias con't..

A *preconceived opinion* about someone or something (may be favorable or unfavorable)

A *highly personal and unreasoned* distortion of judgment

Bias

May be conscious or “intentional”

May be unconscious or “unintentional”

In either case, it can affect the expert’s objectivity and lead him/her away from being an objective and uninvolved “advocate of the facts”

Constructive control of bias is the *responsibility of the expert* and no one else

Psychologists tend to overestimate how good they are at managing bias

Bias

In forensic work, a lot of pressure is placed on psychologists to present findings favorable to the retaining party.

“Experts must be mindful of potential sources of bias in forensic evaluations and to highlight conditions and behaviors that should be avoided in the practice of these evaluations to ensure that *high ethical standards and objectivity* are upheld.”

– (Van Gorp & McMullen, 1997).

Potential Sources of Bias

Van Gorp and McMullen (1997). *The Clinical Neuropsychologist*, 11, 180-187.

Financial Incentives (including the potential for future referrals)

Initial Expert/Attorney Contact (“impression management”)

Record Review Phase (selective request by expert and/or provision by attorney)

Record review con’t: add statements about the “limitations due to not having necessary records”; prepare an addendum as warranted

Potential Sources of Bias con't

Post-evaluation feedback (minimizing some of the findings, maximizing others, assigning etiology, etc)

Personal/political biases (previous experience with the other expert, issues of individual responsibility, perceived system injustice, etc)

Methods of Bias

Interview and test selection (short vs. long, short forms, only one measure of each domain, etc.)

Normative data used (local vs. national norms, appropriate demographic corrections, etc.)

Interpretation of data (acknowledge large std. error of measurement, a few abnormal scores as evidence of brain damage, etc.)

Controlling for Bias

How do you control for the effects of bias when you offer opinions as a treater and as an expert?

Sweet ('05) - 1). possess self-awareness that factors exist that can affect objectivity and 2). consciously examine the bases of opinions as they develop and as they are maintained or evolve across the life of the case (i.e., opinions may change over time).

Overconfidence in one's ability and knowledge may ensure diminished objectivity

Controlling for Bias con't

Greiffenstein (^05) - There are multiple types of bias. The better question is "How do you control for the effects of unacceptable, harmful biases?"

Harmful biases are shaped by advocacy

Acceptable biases reflect predilections toward a certain philosophy unaffected by monetary considerations

Controlling for Bias con't

Lees-Haley ('05) -Do a careful screening before you agree to accept a case. This includes a conflict check, evaluate potential multiple relationships, etc.

Use the same methodology (in combination with keeping current with the literature) in all essentially similar cases.

Identify your key opinions and prepare a list of evidence for and against each opinion.

Self-examination questions

Sweet & Moulthrop (1999). Self-examination questions as a means of identifying bias in adversarial cases. *Journal of Forensic Neuropsychology*, Vol 1, pp. 73-88.

General Self-Examination Questions:

“Do I receive referrals from only plaintiff or only defense attorneys?”

“Do I almost always reach conclusions favorable to the side that has retained me?”

“Have I been reaching the same diagnostic conclusion at a much higher base rate than described in the literature?”

Self-examination questions con't

Questions pertaining to reports:

Would a panel of my peers, composed of experts of known standing, arrive at a consensus with me regarding each and every statement in my test findings and conclusions?

How will I defend each statement in the report if pressed to do so?

Have I used exaggerated or dramatic descriptors?

B

Billing:

Flat fee?

Hourly?

Based on outcome of the case?

Different rates for records review vs. examination vs. testimony?

Should you have a retainer agreement?

C

Civil *Civil litigation* - (e.g, personal injury, medical malpractice)

Someone suing someone or an institution for putative damages.

There are many scenarios in this category: medical malpractice claims, personal injury claims, product liability claims, competency claims involving guardianship or testamentary capacity, among others.

Neuropsychologists may be retained by plaintiff or defense.

C

Criminal: white collar crimes, assault, murder, capital cases, etc.

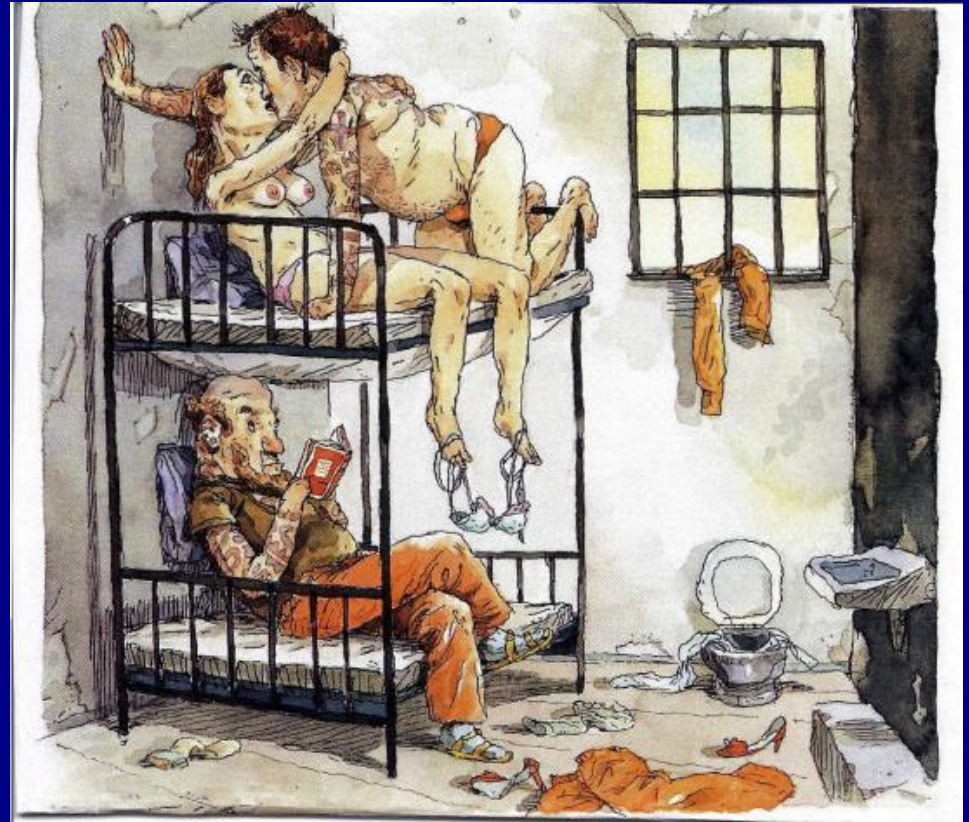
Defendants may be evaluated for various competency issues, including competency to stand trial, competency to waive/ understand Miranda rights, competency to act as one's own attorney, competency to enter a guilty plea, or waive or engage in plea bargain, competency to be subject to the death penalty, among others.

Criminal forensic referrals may also involve diminished capacity defense, mitigation at penalty phase (i.e., death penalty), post-conviction relief, or the insanity defense.

C

Conjugal Visits:

1. A means of rewarding a well behaved prisoner by which he is granted privacy to engage in romantic activity; 2. sex granted by a wife or girlfriend to a man who at the moment is **unworthy** or **undeserving** of such charity (*as in the Heilbronner home*)



C

Conjugal visit: Do NOT schedule your examination during family visitation hours. Compliance will likely be very low!

(i.e., which would you rather do, spend personal time with your girlfriend or spouse, or undergo several hours of arduous testing by a doctor who thinks he/she is important enough to take away your family visit?)

C

Capacity vs. Competency: they are not interchangeable terms.

Capacity denotes a *clinical* status as judged by a health care professional;

Competency denotes a *legal* status determined by a legal professional (e.g., judge). Judge will consider clinical capacity findings plus other sources of authority, such as relevant statutes, case law, etc.

C

Competency: relates to an individual's legal capacity to make certain decisions and to perform certain acts.

In the U.S., the law presumes that adults possess the capacity to exercise choices and make decisions for themselves until proven otherwise.

Because a finding of incompetency may entail a significant deprivation of rights and autonomy, competency evaluations and determinations are serious matters.

C

There is not simple “one” competency. A person can be competent in one domain (e.g., to make a will) but not in other areas (e.g., to make medical decisions).

Each capacity involves a distinct combination of functional abilities and skills that sets it apart from other competencies.

Important: Neuropsychological impairment and a diagnosis of dementia do **not** constitute incompetency.

(See work of Marson and colleagues)

C

Correspondences: do them in writing

Confidentiality: Adhere to APA Ethics

Good Communication

C

What is the most anxiety-provoking part in testifying? (50 pts)

C

The **Cross-examination!!**

C

Cross-examination: occurs in immediate succession to direct examination and is carried out by the opposing attorney. The main purpose of cross-examination is to test the “reliability, accuracy and credibility” of testimony produced during the direct examination. Questions posed during cross-examination typically fall into two categories: 1) **those intended to expose weaknesses or errors** in the expert witnesses’ data acquisition or interpretations, and 2) those related to **expose biases** in the testimony.

C

Why is the Cross-examination so arduous?
You don't know the questions
Attorney on the "opposite side"
Attorney usually more aggressive
Maybe there is a neuropsychologist
providing questions? (always prepare as if
there is!)

C

“If G-d were an expert witness and testified enough in court, he (she) would get devastated now and then during cross-examination.”

(Brodsky, 2004)

D

Deposition:

The taking and recording of testimony of a witness under oath before a court reporter in a place away from the courtroom before trial. A deposition is part of permitted pre-trial discovery (investigation), set up by an attorney for one of the parties to a lawsuit demanding the sworn testimony of the opposing party (defendant or plaintiff), a witness to an event, or an expert intended to be called at trial by the opposition. The testimony is taken down by the court reporter, who will prepare a transcript if requested and paid for, which assists in trial preparation and can be used in trial either to contradict (impeach) or refresh the memory of the witness, or be read into the record if the witness is not available.

D

Recommendations for doing well at a deposition or at trial.

- 1). Prepare, prepare, prepare (scheduling and conferences).
- 2). Demeanor makes a difference (dress appropriately, polished shoes, etc.

D

Recommendations for doing well at a deposition or at trial con't...

- 3). Speak to the jury and do not use jargon.
- 4). Charts and Illustrations (do they matter?)
- 5). Maintain composure and don't get emotional!
- 6). **Be Honest!!**

D

Brodsky's points for telling an effective narrative on the stand:

- 1). Make sense to the listener;
- 2). Treat jurors as interested lay acquaintances;
- 3). Maintain an attitude of respect and admiration for the other experts;
- 4). Learning to testify is a career-long process;

D

Determining whether or not you want to take on a case.

Depends on:

Experience

Time

Conflict of Interest

Cajones

E is for...

ENERGY

Decide, at the outset, if you have the time, commitment and energy to take on a case.

Is it okay to decide later that you do not have the energy to continue and to pull off (recuse yourself from) the case?

E is for...

Expert

How do you define "expert?"

An expert witness is a witness who has knowledge beyond that of the ordinary lay person enabling him/her to give testimony regarding an issue that requires expertise to understand. Experts are allowed to give opinion testimony which a non-expert witness may be prohibited from testifying to.

Who is an expert (in neuropsychology)?

1. Does the witness possess sufficient scientific, technical or other specialized knowledge?
2. Will that knowledge be helpful to the trier of fact?

Doesn't say anything about:

What level of training do they need?

What kinds of patients do they see?

Do they publish in the area in which they testify?

Do they need to be board-certified?

Federal Rules of Evidence

Rule 702-Testimony by Experts:

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

Federal Rules of Evidence

FRE#702 Revised in 2002 to include:

The testimony must be:

- 1) based on sufficient facts or data;
- 2) the testimony is a product of reliable principles and methods; and
- 3) the witness has applied the principles and methods reliably to the facts of the case (Daubert, Joiner, & Kumho).

E

Common **ERRORS** in forensic cases

Common Errors

1. Accept referral without adequate training, background or experience
2. Poor understanding of neuroanatomy & behavioral neurology
3. Failure to review patient's academic, vocational, medical & psychiatric records
4. Failure to obtain adequate clinical/background history

Common Errors con't...

5. Failure to interview family or significant others (not always possible)
6. Strict reliance on (neuro)psychological test data
7. Failure to recognize the effects and limitations of testing in a highly structured and artificial environment

Common Errors con't...

8. Failure to consider non-neurological explanations of poor test results (e.g., pain, effects of medications, etc.)
9. Failure to consider the effects of reduced motivation and effort
10. Failure to include appropriate norms
11. Failure to recognize limitations of the test data

Common Errors con't...

12. Failure to understand brain injury recovery process
13. Failure to recognize patient's neuro-behavioral impairments not evident on standardized testing
 - (adapted from Sbordone, 1992)

Ethics

The 1992 APA Ethical Principles included a specific section devoted to **forensic activities** (Section 7). The 2002 version does not include specific standards devoted to forensic activities. But...revised Principles have a lot to say about how psychologists should conduct themselves in the forensic arena (Heilbronner, 2004)

Ethics

Which standards and principles of the 2002 APA Ethical Principles should we pay attention to?

ALL OF THEM!!

*Also, pay attention to Specialty Guidelines for Forensic Psychologists (discussed later)

Ways to stay ethical and objective

1. Avoid or resist attorney efforts into joining the attorney-client team;
2. Respect role boundaries and do not mix conflicting roles;
3. Arrive at opinions only after reviewing *all of the evidence* from both sides of the adversarial fence;

Ways to stay objective...

4. Spend time actually treating the patient population being examined or being offered testimony about;
5. Balance cases from plaintiff and defense;
6. Ensure against excessive favorability to the side of the retaining attorney or firm;

Ways to stay objective...

7. Strive to demonstrate objectivity by disputing the opinion of other experts only through a *complete, deliberate, and logical dispute*;
8. Avoid cutting of corners. Be thorough, and rely on standardized, validated, and well-normed procedures;

Ways to stay objective...

9. Always assess response bias and make efforts to guard against motivational threats to assessment validity;

10. BE HONEST!

- (adapted from Martelli & Zasler, 1999)

F

Forensic means “in the forum”

“Forensic neuropsychology is the practice of providing neuropsychological evidence and opinions for court systems on issues involving cognitive status.”

Greiffenstein, (2008). Basics of forensic neuropsychology. In J.E. Morgan & J.H. Ricker, (Eds.), *Textbook of Clinical Neuropsychology*. New York: Psychology Press.

F

“...forensic neuropsychology includes all neuropsychological practice in which a clinician provides evaluation or consultative services to an individual that is potentially *adversarial* in nature.”

Sweet, Ecklund-Johnson & Malina, (2008). Forensic neuropsychology: An overview of issues and directions. In J.E. Morgan & J.H. Ricker, (Eds.), *Textbook of Clinical Neuropsychology*. New York: Psychology Press.

“...forensic neuropsychology: the application of neuropsychology to legal issues...in both criminal and civil proceedings.”

Larrabee, (2005). A scientific approach to forensic neuropsychology. In G.J. Larrabee, (Ed.), *Forensic Neuropsychology: A Scientific Approach*. New York: Oxford.

The “value” of Forensic Neuropsychology

Why are clinical neuropsychologists called upon to consult and testify in adversarial proceedings?

It's a natural outcome of the success of a strong **scientist-practitioner** orientation. We are familiar with disciplined scrutiny (i.e., peer review), clinical procedures emphasizing data-based decision-making (i.e., accountability), and a hypothesis-testing approach (i.e., differential diagnosis) to answer questions (*Sweet, 1999*).

The “value” of Forensic Neuropsychology

The value of what neuropsychologists do is closely related to the quality of their work, which intimately ties into the competency of the person writing the report, consulting to the attorney, testifying in court, etc. *(Heilbronner & Pliskin, 2003)*.

F

Specialty Guidelines for Forensic Psychologists (AAFP, 2013).

“...designed to provide more specific guidance to forensic psychologists in monitoring their professional conduct when acting in assistance to courts, parties to legal proceedings, correctional and forensic mental health facilities, and legislative agencies.”

Primary goal: is to “...improve the quality of forensic psychological services offered to individual clients and the legal system and thereby to enhance forensic psychology as a discipline and profession.”

G

AACN Practice Guidelines for Neuropsychological Assessment and Consultation (2007).

... intended to provide guidelines for competence and professional conduct within the practice of neuropsychology by describing the “most desirable and highest level of professional conduct” for neuropsychologists providing clinical neuropsychology services. The guidelines are intended to be fully compatible with the current APA (2002b) Ethical Principles of Psychologists and Code of Conduct (EPPCC) as well as the Criteria for Practice Guideline Development and Evaluation (2002a).

G

AACN Practice Guidelines for Neuropsychological Assessment and Consultation con't...

...They represent *recommendations for the practice of clinical neuropsychology* as opposed to mandatory standards. The practice guidelines detail consideration of ethical and clinical issues as well as specific methods and procedures for the practice of neuropsychology.

G

Parts of the AACN Guidelines specifically related to forensic practice include:

1. Informed Consent
2. Third Party Assessments
3. Test Security Issues
4. Cultural Issues

I is for...

Independent Medical Exam (IME)

Is it really Independent?

Bush NAN Policy and Planning (2005) article emphasizes:

1. Maintaining responsibility for highest standards of professional practice;
2. Understanding relationships with retaining parties and examinees;
3. Relevant issues such as: revising reports, releasing raw data, who holds privileges regarding the results/data, etc.

(see also Bush & Heilbronner, in press).

I

Informed Consent: Key points

Who contacted/retained you?

You don't work for them. You are an independent practitioner.

Legal work is part of my practice.

Do both plaintiff and defense.

Issues of confidentiality (will document when you refuse to answer)

Won't be providing a report to you.

Not for treatment.

I

Impact

DON'T LET THE **STRESS** IMPACT YOU!!

Do not get caught up in the outcome of the case!

Break Time!!

L

- **Litigation**: Litigation is any lawsuit or other resort to the courts to determine a legal question or matter. Lawyers who devote time to arguing disputed issues in court are referred to as litigators and those they represent are referred to as litigants. Litigation involves many complex legal issues which require not only a knowledge of the law that governs the dispute, but also the law governing the procedures to be followed in order to properly litigate a claim. In most cases, lawyers are just a preferred option for those who choose not to represent themselves in court.

L is for...

The “Law”

Legal arena is different than the medical arena and we are just visitors.

Legal terminology: probative vs. prejudice, subpoena *Duces Tecum*, in-camera review, proximate cause, burden of proof, clear and convincing evidence, etc. etc.

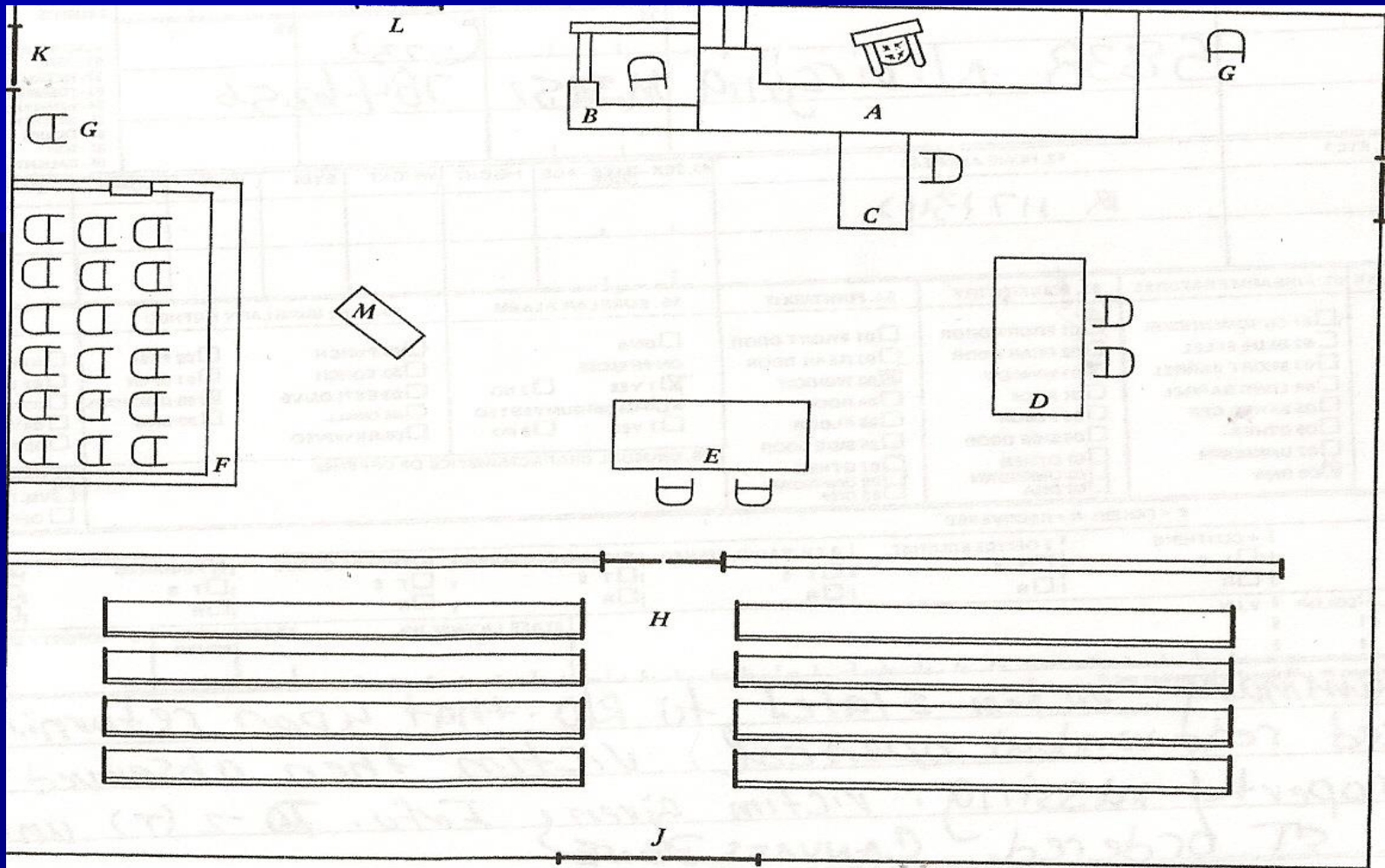


FIGURE 10.3. A typical courtroom. *A*: judge's bench; *B*: witness-box; *C*: court reporter; *D*: defense table; *E*: prosecution or plaintiff table; *F*: jury box; *G*: bailiff's chairs; *H*: spectators, observers, and reporters; *I*: witness entrance; *J*: public entrance; *K*: jury entrance; *L*: judge's entrance; and *M*:

M is for...

The "M Word"

What is it...?

Mayonnaise?

Mental Illness?

Munchausens?

Magnification?

You're getting warmer.....!

M

MALINGERING!!

M

See Heilbronner, Sweet, Larrabee, Morgan and Millis (2009). AACN Consensus Conference on the Neuropsychological Assessment of Insufficient Effort, Response Bias and Malingering. *The Clinical Neuropsychologist*, 23

M

How many of you are comfortable using the term “malingering?”

What words do you use instead of malingering?

Can you call someone a malingerer based only on test results? (isn't it real world behavior?)

Don't forget that a patient can be legitimately injured but also malinger!

M

Myths of Clinical Neuropsychology:

(Dodrill, 1997)

1. We have good knowledge of the constructs that our tests measure;
2. We have tests which are specifically sensitive to the functioning of the frontal lobes;
3. Patient report of cognitive status and cognitive change can be relied upon when malingering can be ruled out;
4. Above-average performances on neuropsychological tests are expected when intellectual abilities are above average;

M

Myths of Forensic Neuropsychology:

(Greiffenstein, 2009)

1. Only a “fixed battery” is admissible under Daubert;
2. The “practice effects” prohibition;
3. Average is the new impairment;
4. Forewarning guarantees motivation;
5. The miserable 15%;
6. Examiner bias causes poor effort.

M

Manipulative

Who?

Is it the patient?

Is it the attorney?

Is it you? (e.g., adding more symptom validity measures than usual, interpreting the data to satisfy your bias...)

M

Morals

N is for...

Norms

Use appropriate norms!!

Recognize and acknowledge that the test scores are based on different norms.

Related issue: how do you define

“impairment?” is it 1 s.d.? 1.5 s.d.?

N

No man is an island!

Don't be afraid to consult with colleagues.

Use list-serves.

N

Nothing: What do you do when the test data show nothing i.e., aren't helpful to the case?

O is for...

Oppportunity

Forensic neuropsychology practice provides an excellent oppportunity for practitioners and for the field of neuropsychology to demonstrate its value and worth.

However, the following is also true...

“From the forest itself comes the handle for the axe...”

---Matisyahu, 2007

Order in the Court!

Practicing in the forensic arena mandates a certain degree of order and decorum not typically found in other environments;

If you are historically oppositional and defiant (or have a Conduct Disorder), you might have some problems!!

Need to be respectful and courteous; this does not mean act like a milquetoast!

Sometimes...things can get a bit **out of order**...

P is for...

Good Practice

What's an expert to do?

1. Practice good (neuro)psychology;
2. Adhere to ethical principles and follow recommended guidelines of your discipline;
3. Know the admissibility laws;
4. Know the lawyer challenging you;
5. Be prepared to meet Daubert/Frye standards (e.g., know "error rates" reliability and validity, etc;

What's an expert to do?

6. Draw an authoritative sources;
7. Know your methodology;
8. Make sure you have all the facts;
9. Adopt a hypothesis-testing model;
10. Do a sound differential diagnosis;
11. When testifying, remain within your role;
12. Communicate in ways your audience can hear;

What's an expert to do

13. Be prepared for the case;
14. Concede your limitations;
15. Look forward to your next case!

Q is for...

Quality of your work =
your reputation as an expert =
providing for your family.

So.....

Do good quality work!!

R is for...

Roles: treater vs. consultant vs. expert

Records: Educational, Medical, Psychiatric, Vocational, Military, Legal, SSA, Previous Claims, etc.

R

Resilience: You cannot have thin skin!

The "Run-Around" (e.g., promises to stay at the firm's summer home for failure to pay fees)

R

Research: Be aware of current literature (e.g., mtbi: sports concussion, Dikmen et al., Binder & Rohling, TBI in the military, etc.

Understanding your own data base. What are the base rates? How many referrals plaintiff v. defense? What % of time you don't find impairment in cases referred by plaintiff? By defense?

R

Forensic Rports: What are the functions?

1. It is a record documenting that an evaluation or record review has taken place;
2. It forces the expert to impose organization on the data; to weigh the information, integrate the findings, consider alternatives, recognize vulnerabilities, etc.
3. Permits disposition without factual proceedings and may serve as a basis for negotiation (e.g., plea bargaining, out-of-court settlements).

R

Report writing guidelines:

1. Separate facts from inferences.
2. Stay within the scope of the referral question.
3. Avoid information over (and under) kill.
4. Minimize clinical jargon.

(see Melton et al, 2007) pg 524

R

Reports con't...

Feel free to use your own style.

Make it 50 pages, make it 2, but realize there are upsides and downsides to each.

Is an affidavit or a 213 Interrogatory considered a report?

S is for...

Symptom Validity Tests (SVT's)

Do we have to use them?

Is it the Standard of Care?

Aren't there other ways to assess effort?

AACN Consensus paper (2009) on Effort,
Response Bias, and Malingering

NAN Paper on Symptom Validity Assessment

S

Schrodinger's Cat

(example)

Schrodinger's Cat Example

Is a raw score of 100 on Trailmaking B impaired or not?

In a 46 yr old Cauc. woman with 12 yrs. Ed. would be a SS of 10, T score of 52, and between 25-75%ile

What would the score be in the same in a 22 year old?

How about someone with 20 years of education?

...an African-American woman of same age and education level?

...an Hispanic woman with a 6th Grade education from Mexico?

Go a step further....

Does the obtained score represent a decline in function compared to an estimated "pre-morbid" level or not?

How do you know?

Did you establish a pre-morbid level of functioning in area of executive functions?

What if the "average" score was obtained in someone who was clearly Superior level prior to injury?

Would this be a decline?

Plaintiff expert may say "yes"

Defense expert may so "no" or...

they may agree

Trailmaking, Part B = 100 sec.

<u>– %ile</u>	<u>Norms</u>
– 56th	Bornstein (1985)
– 27th	Heaton Grant & Matthews (1991)
– 25th	Davies (1968)
– 9th	Fromm-Auch & Yeudall (1983)

So, a Trailmaking score of 100 can be both impaired and normal right?

T is for...

Test Security

NAN Policy & Planning papers (2000; 2003)

AACN Guidelines (2007)

Kaufmann, P.M. (2009). Protecting raw data and psychological tests from wrongful disclosure: A primer on the law and other persuasive strategies. *The Clinical Neuropsychologist*, 23, 1130-1159.

T is for...

Third Party Observers (TPO): Do NOT allow them!!!

What do you do if judge orders it?

Be aware of relevant literature!!

What if you are asked by attorney to sit in and observe another expert's examination?

T

What kind of neuropsychologist would agree to sit in on another's examination?

"...they are either at the tail end of a mediocre career, early wannabees, angry middle career couldabeens, or folks who just need the money."

---Anonymous

T

Testimony

Truth

Does not mean confession

You aren't the one on trial!

Does not mean revealing all of your past transgressions!

“When the truth is found to be lies,
And all the joy within you dies...”

Jefferson Airplane

Truth

What if you are asked any of the following
(and don't think it won't happen):

Doctor, were you ever terminated from a job?

Isn't it true doctor, that the police have been called to your house because of domestic abuse?

Doctor, isn't it true that you have had an evaluation for drug and alcohol abuse?

You don't have to answer all of the questions. Wait for the attorney to object or for the judge to determine whether or not the question is relevant.

U is for...

The Uncertainty Principle:

It proves we can't ever really know what's going on.

So, it shouldn't bother you not being able to figure everything out.

Do not act *as if you know* everything when you are an expert...because you don't!!!

V is for...

Victory

How do you define it when doing forensic work? (50 pts)

Is it “winning” the case?

Is it getting paid in full?

It means being honest and objective and fulfilling your role as an expert (e.g., an advocate of the facts)

W is for

Win or Lose?

What does that really mean for you???

Z

Thank you for coming to our show...

Good night Frank Zappa wherever you are!!!