Recommendation for Test Administration in Litigation: Never Administer the Category Test to a Blindfolded Subject

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Fox (1994) purports to determine the appropriateness of the normative data for the Logical Memory subtest of the Wechsler Memory Scale — Revised for individuals in litigation and suggests that "...many of these people would have been incorrectly diagnosed as having a neuropsychological problem that did not exist." His data do not support such a conclusion, but rather appear simply to demonstrate that patients in litigation concerning potentially painful orthopedic and/or emotional injuries can, as a group, perform slightly below average levels on memory tests.

Consideration of the possible effects of financial and other incentives for impaired performance on neuropsychological tests has increased dramatically in recent years (e.g., Binder and Willis, 1991; Larrabee, 1990). Fox (1994) has recently purported to determine the appropriateness of the norms for the Logical Memory subtest of the Wechsler Memory Scale — Revised (WMS-R) for individuals in litigation. He reported findings on 100 subjects who had claims of emotional and/or orthopedic problems in a workman’s compensation setting and who were administered the Trail Making Test and the Logical Memory subtest of the Wechsler Memory Scale — Revised (WMS-R), as well as the MMPI and other unspecified tests in a battery that is reported to require about 2 hours to complete. He reports that 62% of these subjects scored below the 30th percentile on Logical Memory I and that 49% did so on Logical Memory II. He further reports that about 30% of the subjects scored below the 20th percentile on each measure. The average percentage of initially produced material retained following a 30-min delay was reported as 88.3%.

Fox (1994) makes a number of statements that are puzzling. For example, he suggests that the WMS-R norms as presented in the test manual (Wechsler, 1987) "overestimate the degree of memory impairment when applied to litigating clients." He further states that "this

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sample of neuropsychologically normal claimants performed below normal on the memory
measures.” [Emphasis added.] As discussed below, inspection of the results he presents
does not appear to support the first statement, and, with respect to the second statement, one
might ask: How does the author define “normal”?

Perhaps the pivotal statement of the article is: “Regardless of the precise factors
involved, the practical consequence is that many of these people would have been incorrectly
diagnosed as having a neuropsychological problem that did not exist.” (Fox, 1994, p.
213) On what basis can such an impairment be said not to exist? If this is merely an
assumption on the author’s part, perhaps based upon the absence of documented acute
structural cerebral lesions in this sample, this assumption would seem to imply that: (1)
“neuropsychological problem” equals such acute structural cerebral lesions, and (2) sub-
jects claiming only potentially painful orthopedic and/or emotional injuries do not have
neuropsychological impairments, for example, memory problems. These implications are
clearly contradicted in the literature, for example, Yozawitz’s (1988) work describing the
application of neuropsychological assessment to the rehabilitation of psychiatric patients,
and the rationale presented by Tarter, Edwards, and Van Thiel (1988) for neuropsychologi-
cal assessment of medical disease.

On the other hand, Fox (1994) may be basing his assumption of no neuropsychological
impairment on the test performance of his subjects. For example, he reports “completely nor-
mal scores on the Trail Making Test” [emphasis added] for his subjects and goes on to state
that this indicates absence of “genuine neuropsychological impairment.” While such scores
may well contribute to such an ultimate diagnosis, making such an inference from any single
test score would seem to be a serious distortion of the practice of clinical neuropsychology.

Returning to the pivotal statement quoted above, specifically with respect to the con-
tention that “… many of these people would have been incorrectly diagnosed . . . ,” one
might ask: So diagnosed by whom? The author’s statement seems to imply that test scores
themselves somehow effect a “diagnosis,” but it is actually the application of scores by the
clinician that results in a diagnostic conclusion. Considering the data presented by Fox
(1994), no cut-off scores for the Logical Memory test that have been validated as separating
any group of neurologically impaired subjects from nonimpaired subjects are provided.
Neither are the results of any such classification of his subjects. Further, percentage of ini-
tially registered (or produced) material that is later recalled (“savings”) has been shown to
be a major measure of interest in documenting memory impairment in neurologically
impaired subjects (e.g., Kopelman, 1992; Troster et al., 1993). In the Fox (1994) study, the
average percentage of initially produced material recalled following a 30-min delay was
reported as 88.3%. According to recent data from the WMS-R normative group, produced
by The Psychological Corporation (Prifitera and Ledbetter, 1992), for 35- to 45-year-old
subjects this score falls between the 60th and 65th percentiles. This would seem to be a
“respectable” mean score for the sample reported by Fox (1994). In addition, Fox (1994),
again referring to savings scores, also alludes to “the usual 80% cut-off” for impairment on
this measure and states that 32% of his subjects fall below this level. A reference providing
the basis for the use of such a cut-off is not provided. Again, using the Psychological
Corporation data from the WMS-R normative group (Prifitera and Ledbetter, 1992), 80.8% retention falls at the 40th percentile for 35- to 45-year-old subjects. In isolation, this would
hardly seem to be an indication of “impairment.”

It is of interest that the sample reported by Fox (1994) performed, as a group, and on
some measures below the average level of the normative group for the WMS-R. However,
this finding presents no more of a “normative problem” for the WMS-R than an elevation
on Scale 7 in a group of depressed subjects presents for the MMPI-2. Depressed patients
can be anxious. As Fox (1994) has demonstrated, patients in litigation concerning potential-
ly painful orthopedic and/or emotional injuries can, as a group, perform slightly below average normative levels on some memory measures. Further investigation as to the underlying cause of this finding should be encouraged and may provide valuable insights about these patients. However, whether this finding, in and of itself, would result in patients being incorrectly classified as brain-damaged or as having a neuropsychological problem "which does not exist" seems still to be an open question.

REFERENCES


