Forensic Neuropsychology: A Reply to the Method Skeptics

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Various critics or "method skeptics" have contended that clinical neuropsychology is not sufficiently developed as a science to be offered as evidence in legal or trial proceedings. The present article attempts to balance the extreme position of the method skeptics with an overview of legal and research data that support forensic applications of neuropsychology. It is suggested that clinical evidence can usefully inform legal decision making and that the modern trend has been for courts to be increasingly open to such expert testimony. The relevance of studies of clinical judgment, experience, and actuarial prediction is discussed, and neuropsychological assessment validity is specifically addressed. It is concluded that the arguments of the method skeptics should guide future research and caution forensic neuropsychologists, but that a retreat from the courtroom is unwarranted.

INTRODUCTION

It was only ten years ago that McMahon and Satz (1981) addressed themselves to the "stimulating and challenging" issues associated with clinical neuropsychology in the forensic setting, and just six years since Galski (1985) heralded the neuropsychologist as a key member of the doctor-lawyer team. Which of us has not felt great satisfaction in assisting our patient and a trier of fact, in understanding some of the intricacies of brain-be-
behavior relationships and their relevance to diagnosis, recovery curves, rehabilitation, and psychosocial and vocational outcome? Yet we now find that what Morris referred to in 1968 as "method skeptics" are contesting the legitimacy of clinical neuropsychology as it relates to the sophistication, accuracy, and validity of its techniques and methods, and the usefulness of training and experience in clinical judgment. The fundamental question of the validity and relevance of neuropsychological expert testimony in civil and criminal litigation has been raised in an apparent logical and convincing fashion, with a resultant hair-raising, and sometimes expletive producing, effect throughout the profession.

It is our opinion that this is an old controversy, at least in the legal (primarily criminal) context, and that its discussion, debate, and careful examination need not be viewed as adversarial or catastrophic to our field, but rather as a constructive and facilitative dimension to our quest for neuroscientific understanding, and to our pursuit of fairness and ethical responsibility in clinical/scientific practice. As neuropsychologists, we must adhere to the principles of scientific inquiry that encourage challenges to the bases of decisions and theories, and discourage purely emotional and defensive positions.

This article will attempt to remove some of the emotionally perceived threat from this controversy by delineating some of the many strengths in our field, challenging the interpretation and generalization of selected research findings, and suggesting that we recognize and respect the contributions of those who question the forensic applicability of our methods and clinical judgments, so that we can transform this controversy into a learning experience. This is not an all-or-none situation, and neuropsychology will continue to grow and have considerably greater impact in the forensic arena if we are not afraid to evaluate the findings objectively, recognize their merit while challenging their assumptions, and learn to improve our methods and understanding from the debate.

To place this controversy in proper perspective, one must realize that although the method skeptics on occasion take the radical and legally untenable position that neuropsychological testimony should not be admissible in courtroom proceedings, or if admitted, given little weight, they do more often seem to embrace a high regard and respect for the neuropsychological method. Ziskin and Faust (1988), in a self-acknowledged one-sided evaluation of neurocognitive assessment methods and applications, suggested that the field of neuropsychology "has not yet reached the state at which accurate conclusions can be expected," yet they went on to state,

Overall, in our opinion, the field of neuropsychology shows substantial promise, and the quality of research methods are often a cut above that seen in many other areas of clinical psychology. If the beginning trend toward increased focus on pre-