Neuropsychological and Psychoeducational Services
Tedd Judd, PhD, ABPP
Diplomate in Clinical Neuropsychology
Certified Hispanic Mental Health Specialist
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TO THE REFERRING ATTORNEY

The following notes are to help you in knowing how best to use me as a forensic neuropsychologist. These notes are only an overview. I will provide more details on specific points upon request.

Ways to use forensic neuropsychology

In addition to consulting me for a full evaluation of a client, you can also consult me for an opinion as to whether or not a case might be worth pursuing or challenging, the viability of a case, records review, strategies for dealing with other expert witnesses, literature and trends in forensic neuropsychology, etc.

CIVIL LAW
Personal Injury and Medical Malpractice

I can be helpful in any case where the injury may involve damage to the brain and loss of cognitive abilities or behavioral, emotional, or personality change. Causes may include:
- Physical trauma (auto and industrial accidents, assaults, falls)
- Toxics (industrial toxins, pollutants, pesticides, solvents, drugs, medications)
- Anoxia (partial drowning, smoke inhalation, cardiac arrest)
- Infections (encephalitis, meningitis, AIDS, syphilis, etc.)
- Stroke (thrombosis, embolism, hemorrhage, aneurysm)
- Brain tumors, including metastases from elsewhere in the body
- Metabolic disturbances, including hormonal systems, liver, kidneys, etc.
- Seizures
- Hydrocephalus
- Developmental disorders (learning disabilities, mental retardation, Attention Deficit Hyperactivity Disorder, autism, fetal alcohol syndrome)

I can be helpful in determining:
- causes of the disability
- prognosis
- level of disability
- recommended rehabilitation and care
- disability accommodation

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Competence
I can help to determine competence to:
- sign contracts and wills
- make personal decisions
- manage money
- designate representatives
- give consent for medical treatment
- parent
- drive a vehicle
- perform professional work (where the public may be at risk)
- learn English and civics for the citizenship exam

CRIMINAL LAW
When a brain disorder is involved I can help to determine:
- competence to testify
- competence to stand trial
- the degree of damage to a crime victim
- state of mind at the time of an alleged crime
- not guilty by reason of insanity
- mitigating and aggravating circumstances
- sentencing recommendations

Clinical versus Forensic Evaluation
If you would like my forensic opinion on your case I recommend that you retain me as an expert witness rather than getting the client’s physician to refer the client to me. A clinical evaluation is discoverable, which you may not always want. A clinical evaluation may involve less thorough fact-finding and non-standardized tests and procedures that may be more vulnerable in court, although useful for treatment planning. A clinical evaluation may not address questions of forensic interest. In some instances, addressing forensic issues in a clinical evaluation may constitute health insurance fraud. I prefer to avoid the dual role of treating therapist and forensic expert for the same client.

My philosophy
My primary professional identification is as a clinician, and my primary commitment is to serve the needs of individuals, families, and communities affected by brain illness. This commitment involves conducting a clear, objective evaluation of the impact of brain illness and educating those affected by it about that impact, its implications, and remediation. I am aware of the dangers of failure to recognize or acknowledge deficits, as well as the dangers of overemphasizing deficits and sick roles.

It is my goal to carry out forensic evaluations that are neutral and objective. I would like to write reports such that the reader cannot tell from the content or interpretation which side of the case retained me. I would like to have the reputation that when I am involved in a case it is not necessary to involve another neuropsychologist because my evaluation will be both thorough and objective. I realize that this may not always be the most lucrative approach, but I am willing to let that go.

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**My Neuropsychological and Forensic Experience:**

I have been in the field of clinical neuropsychology for 31 years (see my CV). I have also been involved with forensic neuropsychology for that entire time, with the proportion of my professional time devoted to forensics gradually increasing to its current 30%. I have been qualified as an expert in 8 Washington counties and in state and federal court, and have never been rejected as an expert. I have also performed evaluations for attorneys in British Columbia, Oregon, California, and Idaho, although I have never testified there. I estimate that I have testified in court, arbitrations, or hearings about 40 times and given at least twice that number of depositions. I have conducted over 300 forensic evaluations, addressing all of the legal questions listed above. In addition, I have given forensic consultation on cases that I saw clinically, and on record reviews. I have also done hundreds of evaluations for the Department of Labor and Industries, as well as evaluations for Child Protective Services and Social Security Disability. I have conducted about 400 N648 citizenship exam medical exclusion evaluations (all of them non-English speakers). If yours is an N648 evaluation, please ask for my flyer concerning how to prepare for those.


I have taught neuropsychology in 22 countries. I have evaluated clients from at least 50 different countries. Cross-cultural evaluations typically take longer than within-culture assessments, especially when an interpreter is involved. I use only certified medical interpreters. Cross-cultural assessments may involve less testing, but more interviewing of informants.


In addition to consulting me to perform cross-cultural neuropsychological evaluations, you might consider consulting me to determine to what extent another neuropsychological (or psychological or psychiatric or neurologic) evaluation was culturally competent, or to what extent a cross-cultural neuropsychological evaluation would be feasible.

**Agreeing to a Forensic Neuropsychological Consultation:**

At the end of this document you will find my Sample Forensic Neuropsychological Evaluation Letter of Agreement. If we agree to a neuropsychological consultation I will ask you to complete such a letter with me. This can be modified to the circumstances, such as a consultation that does not include a neuropsychological evaluation.

**Qualifying me (and other professionals):**

Aside from the usual review of my CV, the following questions may also be useful:

What is the process of board certification in neuropsychology?

How many board certified neuropsychologists are there in the U.S.?

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What does your current practice consist of?
What is your clinical experience relevant to this case?

IF THE CASE IS CROSS-CULTURAL:
What is a Certified Hispanic Mental Health Specialist?
Is a neuropsychological assessment pretty much the same regardless of the person’s culture, like taking blood pressure or X-rays?
Are there standards for cross-cultural work?
Do you follow those standards?
How have you prepared yourself for working with people of this culture?
What is your experience in working with people of this culture?
Could you give some examples of cultural differences that are important to take into account in working with someone of this culture?

Records:
The more conscientious you are in getting records to me, the better the job I will be able to do for you. I need to receive the records at least one week prior to the evaluation. I appreciate it when records are sent as a pdf file or on a CD ROM disk since this saves paper, postage, storage, shredding, and trees.
Typically, I will need:
- Police reports of the accident.
- Ambulance reports.
- Emergency Room reports.
- Hospitalization records.
- Rehabilitation records.
- All previous mental health and substance abuse treatment records, especially psychological testing.
- Medical records for 3 years prior to the accident/incident/onset.
- School records and grades prior and subsequent to the accident/incident/onset. If the evaluatee received special education services, these records are stored separately in the Special Education department and need to be requested specifically. These are often very valuable because they can contain previous cognitive testing.
Depending upon the case, I may need:
- Criminal records.
- Employment records.
- Military records.
- Depositions related to the case.

The Evaluation:
Please see the proposal below regarding an Agreed Evaluation and consider sending it to the opposing attorney.
For the evaluation I will typically need the client for an 8-hour day and an informant (usually a close family member) with them for the first two hours. If there is to be a feedback session it will typically be for an hour a week or more later, and will typically include the informant. The feedback can often be done the same day for people who travel a long distance.

Follow-up:
I would typically expect to talk to you or your representative when making the referral agreement,
after reviewing records, after the evaluation, and after you receive my report. It can often be helpful if you or your representative is available for brief discussion on the day of the evaluation. I prefer to give you the opportunity to edit my report for clarity and omissions (but not for opinions) before producing the final draft. My standard is to have such a draft or full report available to you within two weeks of our discussion following the evaluation.

Testimony:
I need a minimum of two weeks to prepare for testimony. I will need all of the relevant records and possibly depositions that have emerged since my evaluation two weeks prior to testimony. I will want to speak with you beforehand.

Fees:
I ask for a $1000 retainer for full forensic assessments. Retainers for consultation and for partial assessments can be negotiated. My standard forensic rate is $270/hour for all consultation, interview, testing, records review, phone calls, report and letter writing, etc. If an interpreter is needed, I pass the interpreter’s bill directly to the attorney. If my work is directly in Spanish my rate is $300/hr for client contact time (to reflect the market value of the added skill. In fact, this is much less expensive than an evaluation with interpreter, not only because of not paying an interpreter, but also because of time saving with material not needing to be repeated, and more direct communication.) Note that cross-language evaluations can take longer than evaluations in English because extra time for interpretation, exploring cultural background, extra time for establishing rapport, etc. Travel time is $150/hour for greater than 30 minutes one-way. Deposition and testimony time is $480/hour ($400/hr for public agencies during the current fiscal crisis) beginning from when I am asked to appear until I am dismissed. I take some cases for reduced fee or pro bono when agreed in advance based especially on the financial need of the client, when my particular skills are needed, and when the referring attorney is working for reduced fee or pro bono. I do not accept payment on contingency, lien on settlement, or reduction of an already-negotiated fee.
AGREED NEUROPSYCHOLOGICAL EVALUATIONS

My primary professional commitment in my forensic neuropsychological consultation is to offer an objective, unbiased opinion. Melvin Belli once said, “If I got myself an impartial witness I’d think I was wasting my money.” I am not interested in working for such attorneys. As part of my commitment to objectivity, I am suggesting to all attorneys who are considering consulting me for a neuropsychological evaluation that they consider the possibility of an Agreed Evaluation. This is when both sides in the case agree to hire me to do a neutral evaluation and that they split the costs evenly between them, or jointly ask the judge to appoint me as an expert. U.S. judges are generally free to appoint their own experts, but rarely do. Agreed Evaluations are now often used in child custody cases, for some of the reasons listed below.

In 1996 I taught what may have been the first course in forensic neuropsychology in Latin America, in the forensic medicine unit of the Supreme Court of Costa Rica. In that system, most forensic medicine is carried out as a consultation to the court itself rather than to either side. This arrangement made a great deal of sense to me and I was pleased with the results. That is part of what has motivated me to propose this now. The usual system in most countries is to have neutral experts who report to the court. This issue was explored in an August, 2008 article in the New York Times http://www.nytimes.com/2008/08/12/us/12experts.html?hp.

ADVANTAGES

- **Decreased bias.** This approach allows me to keep a neutral stance as a finder of fact and removes any perceived motivation to be biased in order to accommodate the side that has hired me. It helps to maintain the dignity of the profession of neuropsychology.
- **Decreased cost.** This approach is less costly to all involved. It results in costs for only one evaluation, one deposition, and one trial expert witness rather than two. The cost of the evaluation itself may be slightly decreased because there will not be two neuropsychologists who need to review each other’s work.
- **Improved test validity.** When someone undergoes repeated neuropsychological evaluations within a brief period of time, test validity can be compromised, for example, because the person may remember the materials of the memory tests or the strategies of the problem solving tests. A single evaluation decreases the possibility of such a confound.
- **Efficient use of scarce resources.** There are few cross-cultural neuropsychologists, and I am the only Spanish-speaking, board-certified neuropsychologist in Washington State. Bringing a comparable expert from out of state can be time-consuming and expensive, and may not be practical for smaller cases.
- **Decreased stress.** As a clinician, my primary motivation in proposing this is to decrease the stress of evaluation on the person with claimed or suspected brain disability (client/plaintiff/defendant). Neuropsychological assessments are often stressful because of the many hours of hard cognitive work.
involved and because of the probing of emotionally stressful issues. It is generally better to undergo that once rather than twice.

- **More therapeutic.** Neuropsychological evaluations can be countertherapeutic either by overly reinforcing symptomatology or by doubting and questioning one’s veracity and experience. I am interested in conducting an evaluation that is mildly therapeutic and which results in incidental useful clinical recommendations relevant to the forensic issues.

**DISADVANTAGES**
- This approach does not allow me to be a strategy consultant to either side. If such a consultant is needed, attorneys may face that additional expense from another expert.
- If the results of the evaluation are not favorable to one side or the other, that side does not have the opportunity to suppress the evidence.
- This approach may be somewhat unfamiliar to all of us and may take some getting used to.

**CONDITIONS**
- Agreed Evaluations are probably most appropriate to low-stakes, lightly contested cases, and also in cases where there is clearly brain disability.
- I cannot do an Agreed Evaluation if one of the attorneys has had significant consultation with me concerning the case. (I would not consider a preliminary phone call or records review to determine if the case is appropriate for me to be significant consultation.)
- I am willing to take either of two approaches in sharing information and clinical opinions with each side, to be agreed upon in advance by both sides. Either I will share only my report and my deposition testimony, or I will make myself available for direct and private consultation with both sides concerning my clinical opinion (the latter probably being most appropriate to low-stakes cases).
- I usually share a draft of my report with the hiring attorney for corrections of fact, typos, and clarity before issuing a final version. I do not alter my clinical opinions based on such a review (except in the rare circumstance of a major error of significant fact, and I cannot recall any such examples). Changes from such a review are typically minor. I will offer the same draft review to both sides in an Agreed Evaluation.
- I will enclose this proposal routinely in my packet to attorneys and raise this issue routinely. In this way, it will not appear that I am proposing an Agreed Evaluation as a form of strategic consultation favoring one side or the other.
- I usually ask for a $1000 retainer on forensic cases. For Agreed Evaluations I would ask that I receive $500 from each side before I review significant records or see the client.

**Alternatives:**

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SAMPLE FORENSIC NEUROPSYCHOLOGICAL EVALUATION
LETTER OF AGREEMENT

This is letter of agreement between neuropsychologist Tedd Judd, PhD, and attorney Lee F. Bailey. It concerns a forensic neuropsychological evaluation of John Q. Evaluee to be performed by Dr. Judd. The primary purposes of the evaluation are:

- Diagnosis
- Personal Injury
- Disability Determination
- Competence to Manage Funds
- Competence for Personal Decisions
- Treatment Planning and Recommendations
- Vocational Planning
- Educational Planning
- Disability Accommodations
- Competence to Stand Trial
- Not Guilty by Reason of Insanity
- Diminished Capacity
- Mitigation/Aggravation
- Sentencing Recommendations
- Other: ____________________________________________________________________

The evaluation is currently scheduled for 4/1/12.

Dr. Judd agrees to the following:

- Maintain attorney-client confidentially regarding all aspects of the case.
- Follow the professional rules and guidelines of the American Psychological Association and other professional organizations and the laws governing the practice of psychology in the State of Washington.
- If Dr. Judd uses assistants in his evaluation he will be professionally responsible for their work and will assure that they also comply with the above-noted laws and regulations.
- Carry out the assessment in an objective and scientific manner.
- Choose tests suited to the purposes described above, administer the tests and score them according to the instructions in the tests' manuals and interpret the scores according to scientific findings and guidelines from the scientific and professional literature and clinical judgment. In addition, Dr. Judd may sometimes use tests that do not meet these criteria, or modify tests if needed to meet the individual situation, and will document the reasons for doing so and the limitations of such uses.
- Discuss initial impressions of the evaluation with Lee F. Bailey within one week of the final evaluation session and/or informant interview and/or receipt of records (whichever is latest) and prior to writing the report, unless this review is waived.
• Produce a **report draft** within two weeks of the above-mentioned discussion for review by Lee F. Bailey according to guidelines presented with the draft.
• Produce a **final draft** within one week of receiving comments from Lee F. Bailey.
• Notify Lee F. Bailey if **accumulated expenses** are about to exceed $3000.
• **Invoice** Lee F. Bailey for services upon completion of the final draft (or at other times by mutual agreement in response to the specific needs of the case).
• Be reasonably available for further **letters, opinions, depositions, trial testimony, records release**, etc. as needed and as paid for under the terms of this agreement.

Lee F. Bailey agrees to the following:

• Pay Dr. Judd a **retainer** of $1000 at least one week prior to the scheduled evaluation on 4/1/09 (unless alternate arrangements are made such as payment by the court).
• Deliver needed **medical and other records** to Dr. Judd at least one week prior to the scheduled evaluation on 4/1/09.
• **Inform** Dr. Judd adequately about all pertinent aspects of the case.
• Facilitate **communication with the evaluatee** and informants, when needed.
• Facilitate **access to jail** or other facility where the evaluatee is being held, as relevant.
• **Respond to the report draft** within 2 weeks unless otherwise agreed upon.
• Pay any needed **interpreters** directly.
• **Pay Dr. Judd** promptly for the evaluation as invoiced according to the following:
  o Forensic services (evaluation time, records review, consultation with attorney, report writing, etc.) **$270/hr**
  o Forensic services in Spanish (evaluatee and informant contact time) **$300/hr**
  o Travel **$150/hr**
  o Deposition and testimony (from when asked to appear until dismissed) **$480/hr**
  Note: Dr. Judd does **not** work on **contingency** and does **not** wait for payment for close of trial/ settlement.
• Facilitate communication necessary for **clinical services** for the evaluatee when recommended in the report and when the specifics of the case allow for such communication.
• Keep Dr. Judd informed with reasonable anticipation regarding **report and letter deadlines, testimony scheduling**, etc.
• Respond promptly to questions from Dr. Judd regarding **requests for release of Dr. Judd’s records**, even after the case has closed.

Estimated cost of this evaluation is $3000.

This is a letter of agreement and not a contract. Failure to uphold any part of this agreement will not excuse the other party from their commitment to the remaining parts.

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