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As related to Wage Loss and Special Considerations

Volume 1, Number 2

June 1998

Vocational Economic Methods, Parameters, and Underpinnings In Personal Injury Litigation: an Interview with Everett G. Dillman.

Toppino, D. C.

Abstract. During an interview with Everett G. Dillman, who is often recognized as the "grandfather of vocational economics," discussion revolved around areas wherein vocational evaluation and forensic economics overlap, but are distinct. Noting that the two fields have more similarities than divergences, Dr. Dillman notes the biggest difference within these two groups of experts is the use of different words for similar things. Within this insightful interview, the impairment model of evaluating Loss of Earning Capacity, areas of work-life expectancy, a perspective of ADA, household service loss, and additional points of interest to the vocational and economic forensic expert are explored.

Interfacing the Economic and Vocational in Personal Injury Cases.

Dillman, E.G.

Abstract. Estimation of the monetary value of damages in a personal injury case usually includes both vocational and economic input. Most often the process will involve what has been described as "chaining" – that is a doctor establishing some of the parameters for the vocational expert who, in turn, sets the foundation for the residual capacity for us by the economist (Brookshire,1987). This paper explores the essential interface between the vocational and the economic roles from the point-of-view of the economist.

Thinking Outside of the Box But Stay Inside It- Defining Earning Capacity

American Board of Vocational Experts, Vancouver, BC - April 10, 2016

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Volume 2, Number 1**August 1999****Special Issue: Emerging Markets of Vocational Experts***Vocational Assessment: Evaluating MultiCultural Consumers With Disabilities.*

Williams, Brent. (1999)

Abstract. The demographics of the United States are changing and vocational evaluators are assessing more consumers who identify themselves as being of minority status. If current trends hold and demographic projections pan out, with the next 20 years individuals who identify themselves as being members of a minority group will become the statistical majority of the U.S. population. Vocational evaluators, indeed all rehabilitation professionals, must closely examine these trends and develop an understanding of how diverse cultural beliefs and values may impact their vocational evaluation process. The level of acculturation identification, language fluency of the consumer and the biases inherent in standardized test are typically the most pervasive challenges encountered by vocational evaluators. Despite these challenges, it is the vocational evaluator's task to understand and work with cultural diversity rather than against it. Although initially more time consuming and expensive, thorough and accurate multicultural vocational evaluations are both more efficacious and economical in the long-run. This article discusses the problematic issues in the vocational evaluation of consumers to identify themselves as being of minority status as well as possible solutions and recommendations for future practice.

Volume 3, Number 1**December 2000***Earnings Capacity Mitigation: Three Paradigms and A Common Investigative Approach.*

Toppino, D. & Agrusa, J.

Abstract. In most forensic cases involving future pecuniary loss, the plaintiff's mitigation earning capacity is a critical variable which must be determined with accuracy. Operationally defined as the "highest probable level of post-incident earnings reasonable attainable by the plaintiff following injury, divorce or employment discrimination from which he or she has a legal responsibility and in some jurisdictions a legal duty to minimize impairment to income stream, "mitigation earning capacity' is the offset in a comprehensive earnings loss assessment. A related concept loss of earning capacity (LOEC), is the projected difference in wage and fringe benefit earnings streams between the plaintiff's pre-incident and post-incident power to earn money in the competitive marketplace. This paper presents the three primary vocational LOEC models and their applicability to various case types. A comparison of the pre-incident versus post-incident income base is discussed in terms of fluidity of earnings, The article concludes with a comprehensive review of six primary variables which impact upon the forensic expert's independent evaluation of post-incident employability and mitigation earning capacity. This generalized investigative approach may reveal discordance and potential disparity between demonstrated post-

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incident earnings and mitigation earnings capacity. Abbreviated case histories are incorporated to assist the reader in further conceptualizing mitigation earning capacity.

Book Review

Ireland, T.R., Horner, S.M., Rogers, J.D., Gaughan, P.A., Trout, R.R., and Piette, M.J. (1998). Tucson, AZ: Lawyer and Judges Publishing Company. *Expert Economic Testimony: Reference Guide for Judges and Attorneys*. 325 pages, \$75.00.

Dillman, Everett G

Volume 4, Number 1 December 2001

Defining Earning Capacity: A Process Paradigm

John P. Tierney and Ronald E. Missum

Abstract. Though earning capacity is the usual standard in defining lost earnings, the courts do not always allow it. Distinguishing earning capacity from expected and actual earnings may create unduly limited categories of thought that detract from insightful perception of the issue. This article proposes a process model for considering earning capacity. It differs from traditional models by forsaking common definitions, and, by focusing on the process, allows the earning capacity of a particular individual to emerge.

Predicting Wage Earning Capacity in Litigated Personal Injury Cases

Larry S. Stokes, PhD Kristin L. Maestri, MHS, CRC, LRC

Abstract. A study was conducted on 75 subjects involved in personal injury litigation, through a review of closed files in a private vocational rehabilitation practice. The purpose of this study was to determine the predictive relationship between age, education, pre-injury hourly wage, skill level, exertion level, physical restrictions, time since injury, number of previous injuries, intelligence, letter/word recognition, reading passage comprehension, arithmetic calculation, arithmetic applied problem solving, the number of job search efforts, and wage earning capacity. A principal component analysis was conducted to reduce the variables resulting in loading on four factors. A varimax rotation of the factors revealed six variables heavily loading on Factor 1, which is educational achievement. These variables included education, intelligence, letter/ word identification, passage comprehension, arithmetic calculation, and arithmetic applied problem solving. A step-wise regression analysis was conducted, which included only Factor 1 in the equation model. The conclusion is that educational achievement is correlated with wage earning capacity both pre- and post-injury, and can be used in a predictive model.

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Volume 5, Number 1**December 2002 - Special Issue: The Assessment of Transferable Work Skills in Forensic Settings***Toward a Foundation for Determining Loss of Earning Capacity: Transferability of Skills Definition, Method and Application*

Gale G. Gibson, MA James H. Earhart, MEd Peter J. Lento, MEd

Abstract. Foundation, method, definition and application of Transferable Skills Analysis (TWS) are developed in detail as the preferred method for establishing the basis for determining future Employability and Earning Capacity. The skills and worker traits possessed by a worker are rooted in the work history and verified by the vocational expert. The work history profile is adjusted using the results of medical, educational and vocational evaluations to establish the residual employability profile of skills, physical abilities, and worker traits as defined by the Department of Labor in the Dictionary of Occupational Titles. With this profile the transfer of skills process searches the occupational database to determine vocational alternatives. The search methodology is based on the U.S. Code of Federal Regulations and involves a complex matrix that confines the search to skills within the same or similar Work Fields (WF) and Materials Products Subject Matter and Services (MPSMS) at or below the associated skill levels defined by the Specific Vocational Preparation (SVP) values in the individual's work history. The adjusted worker trait profile is used as a filter through which occupations selected by the WF-MPSMS-SVP search are subjected, as opposed to other methods that utilize worker traits as the primary search criteria. The authors caution that the TSA process requires the vocational expert's judgment on establishing the work history, adjusting the worker trait profile and interpreting the results.

The Classic Model of Transferability of Work Skills: Issues Affecting the Accurate Assessment of Future Vocational Options in Earnings Capacity Assessment

Steve Bast, MHS, John M. Williams, DEd, Patrick L. Dunn, PhD

Abstract. This article discusses initially the elements of a classic transferability of skills analysis (TSA), and then presents a number of strategies designed to facilitate the effective use of this methodology by vocational experts charged with assessing future earning capacity in civil litigation. In addition, it covers the degree to which transferability of skills parameters influences the pre-injury work histories of persons who were later involved in administrative and/or civil law procedures. The work histories of 258 clients of private rehabilitation services were analyzed using the classic TSA model.

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Volume 6, Number 1
June 2003

Transferable Skills Analysis and Standards of Practice: Wherever the Two Shall Meet?

Larry G. Kontosh, Ph.D. Joe Wheaton, Ph.D.

Abstract. This study examined the Standards of Practice for the execution of transferable skills analysis (TSA). Specifically, it investigated the relationship among rehabilitation case type, method of transferable skills analysis, and TSA computational procedure. No statistically significant relationship among the variables was found causing concerns about the application of TSA in forensic settings. Respondents reported using computer programs to perform a TSA approximately 56% of the time. This percentage is problematic because of issues of interrater reliability, differential application to case types, and the arrival of O*NET.

Volume 8, Number 1
August 2005

A Systems Approach to Placement: A Holistic Technique

Madan M. Kundu, Chrisann Schiro-Geist and Alo Dutta

Abstract: In order to enhance the quality and rate of placement of people with disabilities, the search for new theories, models, and techniques continues. However, little has been written to aid the front line rehabilitation placement professionals in their search for successful placement strategies. This article describes a systems theory as applied to the placement of persons with significant disabilities and gives credence to an instrument created to operationalize a Systems Approach Placement (SAP). The interrater reliability of the instrument ranges from 0.88-0.93. The approach, if used appropriately, has the capability to assist consumers and service providers in intake assessment and outcome evaluation in the job placement process. The SAP and its reliable model instrument can be used by rehabilitation professionals, including vocational forensic practitioners, case managers, rehabilitation counselors, and job placement specialists, as a way of justifying their work with persons with disabilities. It supports the need for services and evaluates the quality of outcome produced by the service delivery process.

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Volume 9, Number 1
Summer 2006

Determining Diminished Future Earning Capacity in State Workers' Compensation: The California Model

Eugene E. Van de Bittner

Abstract: California's new workers' compensation law has changed the standard for determining permanent disability from diminished capacity to competing for jobs in the open labor market to diminished future earning capacity. A new Schedule for Rating Permanent Disabilities, with an adjustment factor for diminished future earning capacity, has been developed, and has attracted substantial challenges on the adequacy of permanent disability benefits by employees, unions, and applicants' attorneys. Vocational experts have been asked by attorneys to evaluate the actual diminished future earning capacity as compared with the adjustment for diminished future earning capacity included in the new Schedule. Three formulas are presented for evaluating diminished future earning capacity under the new law. Implications for practice by rehabilitation counselors and vocational experts are presented for California as well as for other states.

Volume 11, Number 1
Winter 2008

Integrating the Opinions of Different Experts in Determining Loss of Earning Capacity in Personal Injury Cases

Bentley Hankins and Patrick L. Dunn

Abstract: There is often a lack of understanding concerning the terminology that is frequently used by the experts (medical/psychological, vocational and economic) who typically comprise a forensic team. As a result, sometimes one expert will develop opinions based on false assumptions obtained from other experts. This divergence of language among the medical, vocational and economic experts can create confusion and potentially derail a plaintiff or defendant's otherwise strong case. This article discusses many of the common variances of language used by forensic experts that can foster misunderstanding and lead to erroneous conclusions.

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Volume 11, Number 2
Summer 2008

Loss of Earning Capacity in Pediatric Cases

Staci L. Schonbrun and Charlene M. Kampfe

Abstract: The loss of earning capacity and vocational choices upon reaching adulthood may have significant effects on a child with an acquired disability. In order to properly address this issue, vocational professionals must be aware of the relevant psychological, sociological, and rehabilitation literature in conjunction with a strong understanding of the child's and parents' educational and vocational characteristics. This article introduces one model as a contemporary tool to address the issue of loss in earning capacity. The Abilities and Residuals (AR) Model of Pediatric Earning Capacity is a theoretical model which compares a child's pre-injury Abilities, Access, and Awareness of occupations (A+A+A) to their post-injury Residual Abilities, Residual Earning Capacity, and Reasonable Accommodations (R+R+R). The AR Model is named for the pre-injury A variables which are compared with the postinjury R variables which provide a foundation for the vocational professional to address a child's loss in earning capacity by applying theory and literature to the individual child.

Volume 15, Number 1
Spring 2014

The Use of the Earning Capacity Assessment Form-2 in a Medico-Legal Setting

James A. Athanasou, University of Sydney

Abstract: The Earning Capacity Assessment Form-2 (ECAAF-2; Shahnasarian, 2010) is a structured interview that assesses the factors that inhibit and facilitate adults' vocational rehabilitation following an acquired disability (e.g., accident, misadventure). The purpose of this study was to provide an introduction to the interpretation of the ECAAF-2 together with a critique of its use in an Australian context. Australian accident victims (N = 87, 45% female, ages 14 to 62) from a medico-legal vocational assessment practice participated in interviews. It was concluded that there are psychometric weaknesses of the Earning Capacity Assessment Form-2 and there are substantive scoring issues to be resolved, but some components may be worthwhile where economic loss is a consideration.

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Volume 15, Number 2
Winter 2014

Economic Evaluation of Earnings Capacity Loss in Personal Injury Cases: Issues for Forensic Economists and Implications for Vocational Evaluators

Gregory K. Faulk, Belmont University

Abstract. This paper will present the early role of vocational experts in determining disability for the Social Security Administration, and then discuss ways in which this role can be expanded. Vocational experts must understand the impact that age, education, residual functional capacity, and transferable skills have on the employment of people with disabilities. This expertise is crucial to the disability determination process in Social Security. However, vocational experts can be used to improve not only the accuracy and consistency of the decision-making process for eligibility, but also increase the number of SSA beneficiaries who can return to work.

Volume 16, Number 1
Winter 2015

Vocational Apportionment: An Analysis of Medical and Vocational Factors Affecting Apportionment of Employability and Earning Capacity

Eugene E. Van de Bittner, Mirfak Associates, Inc.

Abstract. Vocational apportionment can impact an applicant's or plaintiff's employability and earning capacity. Medical factors and vocational factors affecting apportionment are discussed. Numerous recent court decisions regarding vocational apportionment are summarized. A new vocational apportionment analysis process is presented.

Economic Damages from Job Displacement: Evidence from the Displaced Workers Survey

Joseph T. Crouse, Vocational Economics, Inc.

Abstract. A large economic literature concerning earnings losses and time to reemployment for displaced workers exists. The consensus in this literature is that displacement leads to sustained earnings losses. This paper seeks to provide statistical information from the Displaced Workers Survey to aid vocational and economic experts in determining economic damages resulting from job displacement.

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Updated and Revised Methodologies for Evaluating Employability and Earning Capacity in Workers' Compensation, Civil, and Other Venues

Eugene E. Van de Bittner, Mirfak Associates, Inc.

Abstract. Methodologies for evaluating employability and earning capacity evolve over time in response to new laws, regulations, and court decisions, and evolutionary refinements in the vocational evaluation process. The methodologies may be used by vocational experts in ways that were initially not anticipated. Established methodologies for evaluating employability and earning capacity are analyzed, revised, and updated in this article to make them consistent with current expectations of vocational experts in developing defensible opinions in multiple jurisdictions.

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