

THE VOCATIONAL EXPERT



Fall, 2001

Volume 18, No. 2

Official Publication of the
American Board of
Vocational Experts

ABVE Fall Conference September 14-16, 2001 Williamsburg, Virginia



Williamsburg was and is a proud society that celebrates hospitality of the very highest order. The colonial inns and the taverns are a relaxing place to have a meal fashioned on the menus of 300 years ago. A stroll down the streets of Williamsburg will allow a look into the past from both a social and a vocational viewpoint. The attempt is to allow us to educate ourselves, as well as relax and enjoy one of the premiere vacation destinations in the United States. It is second only to New Orleans as a destination for vacation travelers. Our education slate is beyond reproach with powerfully dynamic speakers geared to our needs. Our location is dramatic, in that it replicates life in the United States, some 300 years ago. The vocational information you obtain at the sessions will deepen your knowledge base and the setting will enrich your practice with a historic vocational perspective depth that will add to your personal life as well as your knowledge base. We hope to see you all there. Visit the ABVE Web Site (www.ABVE.net) to register on-line. Remember the classic symbol of hospitality around the world is also the symbol of Williamsburg, the pineapple.

Garbage in, Garbage Out (or Vocational Mysticism)

By Scott E. Streater, DVS

As forensic experts we have all, at sometime or another, wondered if what we are doing to arrive at our conclusions, is appropriate. Starting a forensic practice back in the 1970's as a DVR counselor, I began answering plaintiff attorney's questions in Workmans' Compensation cases. After a year or so, I abruptly stopped taking cases that were court bound and refused testimony on some lingering cases, as I was not convinced that I was providing factual information. I was certainly providing information...the information must have had *some* relevance to what was being asked, but was it truly what was needed, and did it offer a factual picture of what the future held for the individual in question? Not knowing for certain, I stopped testifying for a period of several years.

A friend and colleague who was working in forensic clinical psychology was having some success. Slowly losing interest in what I was doing, and tired of straining under an ever demanding bureaucracy and an agency direction that was serving to "dumb down" the rehabilitation counselor position a job change became a mandate. The government apparently reasoned it would need more money to remain effective and a reduction in the qualifications of the rehabilitation counselor job description, along with corresponding increase in the regulations were occurring on a rapidly advancing timetable. This would certainly guarantee management a foothold on the future. Without some changes, I was going to be stuck in a "do and report" job. I needed an instant job change. Fortune smiled. I segued to a more stimulating environment, a medical/surgical center with an attached 465-bed hospital. Collaterally, discussion began in earnest, regarding the probability of a private practice. During this period of time, all manners of microcomputer programs were being offered for calculating outcomes in forensic vocational areas. These programs were purporting to effectively answer the future job/wage questions about injured workers who had incurred decreased vocational capacity. In addition to job information, many would calculate the wage differential, pre- and post-injury for a loss of earning capacity estimate. Wow, (this is a rhetorical wow!)

What a find! My partner and I traveled to an adjacent metropolitan area, listened to a "sales presentation." We watched in awe as the little box on the table spit out all the "information" one might need to be a "well informed" expert with "gobs" of data as a backup. We instantly ponied up the dough and headed home with our 5.25" disks in hand. Back then we had a 48K computer called a TRS 80 on an 8088 platform.

Bring on those attorneys and their "slick" questions now. We thought we had all the answers and we could pin their ears back with just a few syllables. Well, all was not what it seemed. While the language used to describe the program would allow its use back "in those days," the numerical outcomes did not meet what we suspected were the "real" answers. The answers were radically different from our anecdotal estimates. They seemed to amplify loss even beyond our best estimate and totally disable far too many, far too quickly. We felt the program lacked at least face validity. We called the owner/vender and found that a "tweaking" was necessary in one of the worker traits. We tried this and discovered we could possibly arrive at more reasonable outcomes by applying this "tweaking." The problem was *when* to apply the correction. We could not introduce the changes in a logically consistent basis. We did not wish to be arbitrary and capricious in our outcomes and conclusions. Was it to be like adjusting the idle/mixture screw on an old outboard motor? You simply turned the screw back and forth until the motor ran right. So much for our factual outcomes upon which we could stake our professional future. After running three or perhaps five cases, we stopped using the program. We went back to our former, far less sophisticated, but we hoped more realistic method, even though we knew that it was not as factual as it should be and that we had left nearly \$1000 "laying along the road."

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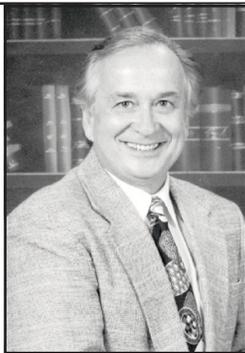
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President's Message

By G. Michael Graham, Ed.D.

Welcome to the world of exponential growth...the cutting edge of innovative practice development and management happens among the membership of the American Board of Vocational Experts!

A statement that is not a secret to anyone in our profession is that the year is almost 50% spent and the piles of "Need To Dos" only change in character but not in height!

A few specific "need to know" items to pass along to the membership as reminders involve:

a) The upcoming conference in Williamsburg, Virginia—Sept. 14–16

This conference promises to continue the trends of the last few conferences with sessions that will replace the normal small incremental efforts of everyday work effort

with exponential knowledge that will propel you to new knowledge sets that will affect the way you do your everyday business. ABVE member, Larry Sinsabaugh and his sidekick Scott Streater, have put together innovative pre-conference and conference sessions.

b) ABVE Certification Test Item Developmental Workshop

Several members of the ABVE Board of Directors will be joined by several persons from the ABVE membership, for a week-end workshop. The outcome will be new and cutting edge questions for the certification examination. Modeling the process used by the Commission on Rehabilitation Counselor certification (CRC) this group of innovative thinkers will develop a series of new questions for the test that will place greater emphasis on the "Forensic" realm of our membership. The ABVE examination has evolved over the past five years under the able guidance of the Test Maintenance Committee. The thrust of this Test Item Development ad hoc group will be to combine the test maintenance effort with the structure of item analysis and development fostered by the CRC Commission. Test items will be drawn from the relevant literature for our field today and will have answers that are trackable to the literature itself. It is anticipated that these test items will be "test driven" with the Spring 2002 test session so that reliability can be established. If you would like to join this group of test item designers, please contact Michael Graham, ABVE President, at (831) 685-1673 or email him at Grahamcons@AOL.com

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From the Journal Editor

Dear Members:

It is with great pleasure that I have accepted the responsibility of editor of the *Journal of Forensic Vocational Analysis*, the official journal of the American Board of Vocational Experts. With the support of The Ohio State University, I look forward to providing a journal worthy of ABVE and its members.

As you know, the JFVA is an annual publication and we are hoping to continue that tradition with an issue in December 2001. We invite members and non-members to submit full-length articles, monographs, empirical research, and letters to the editor that blend traditional scholarship with many special features, designed to provide useful information to readers with attention to the current state of the field and its developing nature.

Please make sure to review the guidelines for developing and submitting a manuscript, located on the back inside cover of past issues of the *Journal*. We will contact you upon receipt of your submission, and we promise a blind review with a response regarding our publication decision.

Manuscripts should be directed to the attention of the Assistant Editor, Craig Johnston, Ohio State University, 1945 North High Street, Room 354, Columbus, OH 43210-1120.

Bruce Growick, Ph.D.

Editor, Journal of Forensic Vocational Analysis
Diplomate, ABVE

Craig Johnston

Ass't. Ed. Journal of Forensic Vocational Analysis
Associate Member, ABVE

Information for the Work Place

In recent research that I conducted I found some interesting facts regarding *Daubert and Kumho*.

- Since 1993, there have been approximately 1,700 Federal court cases, either at trial court or the appeals court that make mention of and where *Daubert and Kumho* have been an issue.
- There are approximately 610 State cases; either at trial court or the appeals court that make mention of and where *Daubert and Kumho* have been an issue
- Approximately 22 States apply some version of *Daubert*. The *Daubert* test varies widely among the states, which

ostensibly use it. Many of the larger states continue to use *Frye*, including CA, FL and NY. However, especially New York and Florida, the *Frye* test has increasingly assumed *Daubert* overtones.

- There are 14 Federal cases that are related to vocational. There are some shades of gray such as overlapping disciplines, (e.g. vocational psychologist, industrial psychologist, economics etc.)

Submitted by: Cynthia Grimley

We had, without question, become victims of our own wants and desires, and, to a degree, a victim of some “snappy” advertising. We had made an error, a very basic error, but an error none-the-less. While the data manipulated by the program was government data and measures used were accurate, the wage data and the worker traits utilized were far too general for outcomes of a valid estimated loss of earning capacity. More over, the algorithm used was flawed, as it did not separate measurements from the simple descriptors denoting the mere presence of a quality. We had not read any research on this program, and in fact, at that time, no validating research was available. We could not prove our position on anything. Our perceptions became our reality.

Purchasing any program for calculation of future estimates that has no research is risky if not downright fool hearty. The absence of multiple scholarly articles by a variety of authors expressly stating the validity of the calculations, the reliability of the process, and the error margins found in the various research efforts, can cause serious challenges in the credibility of the opinions rendered. If the findings cannot be proven than the conclusions and opinions probably have little merit. A professional's lack of competence in this measurement area is grounds for a malpractice. We were fortunate that no one challenged our opinions. Your testimony and written reports become footprints in the sands of time and you can always be subject to revisit past opinions, which can be embarrassing and virtual career suicide. I have known several practitioners over the 30 years I have practiced, who have had to withdraw from forensic work, move geographically, or recant their opinions because of similar circumstances.

It was not long after our error in judgment that we discovered a program with ongoing credible research. To its credit we both still use the refined editions of this program. While research was at that time (1980's) rather Spartan, investigative papers were available and have multiplied in number. More and more authors have signed on, to a point where the empirical data available has proven and reproven the accuracy of the outcomes calculated, over and over and over again. Each new refinement is researched which establishes a higher level of confidence in the estimates and calculated outcomes.

What had happened to us, the mistakes we made, were interesting and worth writing about. In making our decision to purchase our first system, we became victims of what could be termed a “charismatic prophet.” *Correlation* had become confused with *causation*. Our perceptions became our reality. We had, in effect, purchased a “groundless ritual” that would, we had hoped, solve all of our problems. Because of the lack of mathematical/statistical proof of the veracity of the outcomes we simply were not dealing with empirical fact. Had we proceeded with this scenario to the point where we had started winning cases and earning money, we would have literally have virtually become victim of a “char-

ismatic cult.” A cult based on this “data based” program, which was in fact, a *groundless ritual*. Groundless rituals provide comfort; comfort based on a belief system that had no basis in fact. I had enough of this sort of belief system at that time in my life with my “lucky testimony tie.” I did not need this sort of thing in my professional life, as a basis for all of my opinions! Opinions that would stand and be regarded even studied over time by the attorneys I would be working with in the future.

Some years later I found an ad in the American Trial Lawyer magazine. This ad was requesting copies of my reports. I was actually proud of this occurrence for I knew what the outcome of any comparison would be. I have and always will work these cases on a factual basis. It does not matter who requests the analysis; they are all done the same way. Many attorneys appreciate the veracity, as they are not interested in wasting their time or taking a case, which has no merit into the courtroom.

So what does one look for in vocational software designed to forecast or predict the future? The obvious first finding should be literature from investigative research. Both the program author(s) and others can generate this in the field. A full and open disclosure of all of the aspects of the research is an absolute necessity. University or other research based in formal institutions is a real find. This sort of research has often been passed by the “eyes” of multiple qualified individuals before it is allowed into print.

Physically, the program that works well may be a bit more difficult to run. Some educational effort may be required to be a “qualified” or knowledgeable user of the program. Simple answers to complex problems are not real answers at all. Read all you can about the program before you invest, than take any training that may be offered by the developer.

Program input should make sense. Input should be standardized and all inputs should be quantitative in nature and not simple “on and off” variables. The quantitative variable should all be of the same nature. Raw scores and percentiles should not be combined; rather all scoring should be of a percentile basis. The program should offer smooth linearity to the criteria measured. Often time when the scales are limited by large percentage jumps in a distribution, we began working with what I called “lumped data”, data that is not sufficiently specific so as to offer true linear adjustment of a persons capacities. If you are forced to sort 4000 pairs of shoes, shoes, which are so dissimilar that no two pairs are the same, into 10 boxes, the resulting “sort” is so condensed that it is of no value. No description would be available for each of the 10 boxes because of the wide variety of shoe styles and colors in the box. This is an exaggeration but it makes a point. This is the reason that the O*NET is impractical for forensic decisions. This is also the reason the SOC and SIC codes, which do not allow sufficient linearity, cannot be used in many cases to designate potential jobs for persons with impaired vocational capacity.

The program used should probably sort jobs by individual worker traits and not categories of jobs assembled on some basis that is not predicated on quantitative factors.

There has been a fair amount of research demonstrating that wage and job difficulty are related at remarkably high levels. Programs that run on this algebraic algorithm through direct calculation of vocational capacity tend to have a distinct advantage over programs that simply reference government data. The increased value is obtained because of increased specificity in outcomes. The reference based programs tend to be less specific and can not generate earning capacity based on an individuals specific vocational capacity, rather on referenced average or modal wage reported by some entity, but never verified. In comparing the calculated earning capacity against referenced reported wage, variations are found and while similarities exist, specificity is lost. What will this individual's vocational capacity generate in the way of wage in this specific geographical area? What did it generate before the injury, what does it generate now and what is the difference? Sound familiar... It should, as this is a factually based loss of earning capacity calculation. An individual's specific capacity applied to work in a specific geographic region yielding a wage differential in dollars per hour, pre- and post injury. One should be able to generate figures for almost any geographic region, in any state in the nation. Some of the programs even cover the US Territories and Canada.

I am well aware of the intense arguments that are generated by these separate methods of calculation. Suffice it to say that when that when an argument becomes legitimized by empirical research, people who formerly held middle positions, will behave like polarized molecules and move toward the extremes in an attempt to remove the “power” or dilute the authority of scientific proof. This is often the case and is often affected by well meaning individuals who either is not sufficiently educated in the science of measurement or who have a financial or personal stake in their position. Well, let the games begin; this dispute will sort itself out in the newsletters, on the Internet, in journals and the courts. The courts are where we seem to want to take all our disputes. I wonder what will happen when we not longer have faith in the courts and their ability to sort things out? Anyone remember authority, civility, and polite behavior?

Journal Guidelines Available

Those interested in submitting manuscripts for
The Journal of Forensic Vocational Analysis
can request specific guidelines from:
Bruce Growick, Ph.D.
Tel: (614) 292-8463
Fax: (614) 292-4255
Email: growick.1@osu.edu



IARP Forensic Conference New Orleans, Louisiana November 30–December 1, 2001



Come join us in New Orleans, *The Big Easy*, for this year's IARP Forensic Section Conference

The 2001 Forensic Conference will be a conference of firsts. Not only is this the first time the conference has been held away from Las Vegas, it is the first time we will have separate tracks for LCP and VE topics of interest.

The title of this year's conference is **Point/Counterpoint: Diverse Approaches in Forensic Rehabilitation** and it promises to be high-spirited and informative. The Forensic Board has arranged a dynamic program. Utilizing the talents of local and national speakers, we have secured presenters who are energetic and outspoken in their areas of expertise. The topics are controversial, presenting different points of view. This conference format will allow for dialogue between the presenters and attendees.

So, welcome to this conference of firsts in the historic city of New Orleans and Laissez Les Bon Temps Roulez!!

Robert A. Mosley, MA, LPC, CRC, CLCP
Chair, Forensic Section 2001-2002

For more information call IARP (831) 662-0310 or www.rehabpro.org for details and to register on line

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- c) **ABVE is participating in the O*NET analysis task force**—ABVE members Mary Barros-Bailey, Michael Graham and Larry Kontash are serving on this task force. The mission statement of this Task Force reads, “*The purpose of the inter-organizational O*NET Task Force is to develop interdisciplinary advisory opinions and recommendations for the content, descriptors and use of the Occupational Information Network (O*NET) as it involves individuals with functional limitations.*”

Several national groups are exploring the methodology and the means to become interactive with the O*NET Task Force in carrying out the tenets of this mission statement. Most notable among these are the Social Security Administration, The Department of Labor, Employment and Training

Administration and the Disability Research Institute at the University of Illinois.

- (d) **The Disability Research Institute—Partnership In A New Paradigm**

This reminder is for those who are not yet familiar with this resource for their practice management. The Institute is a part of the College of Applied Life Studies, University of Illinois. The Director and Co-principal Investigator is ABVE member, Chrisann Schiro-Geist, Ph. D. The Institute plans and conducts broad range of research to further disability policy information. Perhaps more important to ABVE members is that the Institute acts as a clearing house for researchers and practitioners who want to access Social Security Administration data for research purposes. Further the Institute has mechanisms to keep practitioners abreast of the results of new research. Reports developed by the staff of the Institute for the Office of Research Evaluation and Statistics will be published in scholarly, governmental and popular media as well as the electronic publication of the *DRI News*. Check out their website at <http://www.als.uiuc.edu/dri> or email Chrisann Shiro-Geist at dri@uiuc.edu for more information and how you might access their data fields as you develop for practice formats. Several of their first year research project titles included: (a) *Employment Outcomes For Persons With Disabilities in A Mature Economic Environment*, (b) *Research Approaches to Validation of the SSA's Medical Listings*, (c) *Disability Ben-*

efits as Household Income & Labor Supply Decisions of Household Members, and (d) New Work Arrangements & Disability Income.

- e) The ABVE Listserv is up and running but continues to be very inactive. I urge each of you to take a few minutes to get yourself logged on. It is a very fast and simple process. Go to the website at <http://www.ihwy.com/mailman/listinfo/abve> and register. Once you are registered the process is simple, fast and informative. It can be a great place to solicit expert advice on the “how to” stuff or to obtain resource data, websites, etc. from your colleagues.

I am looking forward to visiting with many of you in a few weeks at the ABVE Williamsburg, Virginia, conference. Please take a few minutes to stop me and tell me about your experience with ABVE and how your Board members can enhance the value of the organization for you as an individual member. . . we need your comments to be able to widen-out the Board's effectiveness.

Change on ABVE Board

The ABVE Board accepted with regret the resignation of Janice Wexler. President G. Michael Graham is pleased to announce that Donald E. Jennings, Ed.D., has agreed to serve the remainder of her term as Member at Large. We thank Janice for her service to ABVE and welcome Donald to the Board.

Welcome to the Following New Members

Brenda Daley, Associate
Barry Murphy, Associate
Alfred Chichester, Associate
Stephen J. Dolan, Associate
Craig S. Johnston, Associate
Corinne T. McAuley, Associate
Richard L. Metz, Associate
Earl Shimogawa, Associate
Ann T. Wallace, Associate
Gary A. Young, Associate
Alan Winship Associate