

Expert Teams and Forensic Reporting

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Introduction

In this paper three different approaches to gathering and integrating expert witness reports are discussed. In the “Traditional” approach the vocational expert and the earnings analyst work independently from each other. In the “All in One” approach the analysis of economic damages and the vocational evaluation are performed by the same person. In the “Expert Team” approach the vocational expert and earnings analyst work together as a team.

The idea that a team approach can provide better quality and efficiency than individuals working in isolation is well established across a variety of fields. According to Total Quality Management (TQM) theory, working in small teams on clearly defined projects can improve quality, efficiency and timeliness (Poister & Harris 1996). Improved quality means that costs decrease because of less rework, fewer mistakes, fewer delays, better use of resources and improved productivity (Deming 1981). Watson, Hallett and Diamond (1995) show that lateral multi-disciplinary teams of academics foster cross-fertilization of ideas and achieve significant outputs through these relationships in a comparatively short time. The rehabilitation counseling field has long recognized the advantages of the team approach. In comprehensive rehabilitation agencies, physicians, psychologists, vocational specialists and various therapists work with clients to formulate and implement rehabilitation plans. Unfortunately, in litigation relatively few clients have had the advantage of being supported by multi-disciplinary teams. Attorneys preparing various types of litigation such as, personal injury, medical malpractice, product liability, wrongful termination, wrongful death, and other cases must “put it all together.” They typically secure reports from various experts who work in isolation. The problem remains how to achieve efficiency with quality and continuity in an isolated process of preparing a case for litigation.

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Three different approaches to gathering and integrating expert witness reports are discussed. It is suggested that “Expert Teams” have advantages over both the “Traditional” and “All In One” approaches by increasing quality and efficiency while maintaining professional autonomy.

The Traditional Approach

In the Traditional approach, the attorney sends a file regarding the plaintiff or defendant to experts from various fields to secure reports and possible future testimony on, for example, a personal injury case. Typically medical and/or psychological reports with statements regarding residual functional capacities are secured first. Next, vocational expert reports are secured to establish pre and post injury earnings capacity, labor market access and possibilities of rehabilitation. Finally, the earnings analyst or forensic economist projects economic and earnings losses over the remaining worklife.

In this approach each expert, working in isolation, must go through the same file. Each gathers much of the same information. Medical, vocational and earnings analysts all need to know about the personal circumstances including: date of birth, gender, race, marital status, age, and health before and after the injury. Attorneys face the difficult task of assuring that each expert has all the relevant information from the previous expert. However, often one report has not been finished before the next one is started. In addition, an expert may need to modify an already completed report because of new information gleaned from a late report of another expert.

For example, the authors worked on a case which showed poor communication between the economist and the vocational expert. In this case the medical reports indicated that the injured person could only walk for one hour, stand for one hour and sit for eight hours in an eight-hour workday. The economist concluded that the plaintiff could only do two hours of household services per day. However, a subsequent report of the vocational expert indicated that there were a number of chores that the plaintiff could do while sitting. In addition, some household chores could easily be modified to meet the injured person’s physical limitations. As a result, the economic losses were overstated since the plaintiff could actually do more than two hours of household work and, thus, the economist had to resubmit a report based on the vocational expert’s analysis. This problem could have been

avoided if the economist and vocational expert had communicated about the case prior to the final submission of the reports.

One approach to dealing with this inefficiency of the “Traditional Approach” is to have one person function as both the vocational expert and earnings analyst/economist.

The “All in One” Expert Approach

Since litigated medical conditions vary across the entire spectrum of medical specialties, it is unlikely that one medical expert would be suitable for all cases. Discreet medical reports will continue to be the first necessary step in the typical case building process. However, the roles of the vocational expert and earnings analyst have been examined with some proposing that, with proper cross training, one person from either field can perform both functions (Hultine 1996). While this approach may have some advantages in terms of efficiency and cost, it remains controversial. The debate continues between those who advocate merging these roles and those who believe that they should remain separate. The authors believe that few individuals will be able to stand up under rigorous *voir dire* cross-examination to qualify in both fields. Moreover, the chance of denial of admissibility of reports developed by individuals without adequate credentials may be gradually increasing as a result of the United States Supreme Court decision in *Daubert vs. Merrell Dow Pharmaceuticals Inc.* on June 28, 1993 (Ireland 1997). Attorneys may not be willing to risk or jeopardize a “good” case by hiring one person in both roles in order to reduce the cost of litigation.

The following case demonstrates one of the risks of the “All in One” approach. In a sex discrimination case the earnings analyst, attempting to also be the vocational expert, used only one vocational resource publication to determine the future earnings capacity of the plaintiff. This earnings analyst did not take into account the fact that plaintiff was let go from a job which usually required an advanced degree. The plaintiff’s well-constructed resume emphasized her experience while effectively camouflaging the fact that she had only a high school diploma. Since the earnings analyst had never personally interviewed the plaintiff, he made the error of grossly overestimating her earnings capacity. Upon receipt of the report, the attorney referred the case to a vocational expert. Using a variety of vocational resources and an extensive interview with the plaintiff, the vocational expert was able to demonstrate that the level of future earnings capacity would be substantially less than the earnings analyst had indicated. As a result, the

earnings analyst was required to rewrite his report reflecting this lower level of future earnings.

It would be useful to develop an approach that combines the efficiency of the “All in One” approach while maintaining the professional autonomy of the “Traditional” approach.

The Expert Teams Approach

As an Expert Team, the vocational expert and earnings analyst or economist work together as early as possible in the case development process. By working as a team, forensic experts can depend on one another for specialized expertise as well as information and other resources to arrive at a consistent theory of the case. The increased autonomy, decentralized authority and open communication of teams best facilitate this kind of cross-functional exchange.

The authors, a vocational expert and an earnings analyst have adapted such an approach. Communication is greatly facilitated by having offices in the same suite. Daily, face to face case conferences are common. Typically, referred cases are reviewed together with information necessary to both experts developed once. One expert occasionally identifies information in the often-voluminous file that the other may have missed. Multiple or ambivalent interpretations of case issues can be discussed from each discipline's point of view. Research resources are shared. A theory of the case is developed. Each expert writes his own report. Before they are submitted, each expert reviews the other's report to ensure consistency. Reports are signed separately but mailed together. As professionals in other fields have found, the team approach has the effect of improving the quality of each expert's report. Critical review by a trusted colleague often leads to modification of reports with improved quality.

The following case description shows how the earnings analyst and the vocational expert can work together without crossing boundaries and complement each other's work. A carpet installer who had injured his arm and hands could not go back to his former position. Here, the vocational expert found that this worker would have good future earnings potential if he would be retrained. Testing showed that he had the intelligence, interest and aptitudes for working in the design area. In addition, he enjoyed and had done well in a high school mechanical drawing class. Therefore, it was the vocational expert's opinion that with vocational training he would be able to become a draftsman.

As a result of working together, the vocational expert and the earnings analyst demonstrated the most efficient solution to the problem in their reports. Basically there were two scenarios. In the first scenario, the carpet installer could only work at the minimum wage and the subsequent loss would be for the rest of his work life. In the second scenario, following the vocational expert's opinion, the earnings analyst showed the impact of retraining on the plaintiff's future earnings capacity. This analysis demonstrated that the plaintiff's future earnings capacity after training would at least equal the pre-injury earnings capacity, thus minimizing future losses.

How To Make It Work

Proehl (1996) emphasizes the importance of the team leader in (1) seeing a project as a priority; (2) maintaining momentum; (3) keeping all members informed; and (4) supporting and recognizing the work of the other members of the team. In other words, the team leader should be someone who "champions" the project, who is skilled at integrating the different perspectives of lawyer, vocational expert and earnings analyst, and helping personnel from different backgrounds work together for a common goal - producing high quality reports in an efficient manner (Hill & Jones 1998).

Special care must be given in choosing the team leader. The writers' experience is that the person having the initial relationship with the attorney is generally the best team leader for that particular project. This ensures consistent and direct communication with the attorney.

Another issue is whether or not experts need actual physical proximity in order to be effective as a team. Sharing office space has the distinct advantage of increasing communication. A great deal of important information sharing takes place informally during unplanned brief meetings. However, the current communication technology of phone, fax and e-mail, can partly replace the physical proximity of the office. In order to compensate for the lack of face to face interaction in the "virtual office," team members may choose to set up regular and frequent conferences.

Even though professional boundaries need to be respected it is important that the barriers between the earnings analyst and the vocational expert be broken down in order to ensure mutual cooperation and understanding. It will be useful for each professional to have a basic understanding of each other's area of expertise in order to be able to communicate effectively and efficiently. By developing personal relationships

between earnings analysts and vocational experts, informal as well as formal partnerships between professionals may grow. In addition, cross training can lead to cooperation between the two groups rather than competition between “all in one experts.” Finally, charging the same hourly rate for all services regardless of which expert provides the service and regardless of the academic background of the team members sends a strong overt signal to the client that this is a true team.

Summary

As has been demonstrated in a variety of settings, forensic experts should recognize the potential of multi-disciplinary teams. Bringing a team perspective to forensic problems helps build understanding, problem solving, coordination and communication. This results in improved quality, improved timeliness, and cost reduction to the case development process. These benefits are achieved without sacrificing the autonomy of the vocational or economic disciplines.

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