



## ABVE in New Orleans March 27 - 29, 2009 Hotel Monteleone

*By Don Jennings, Conference Chair*

I hope you are planning on attending the ABVE Spring Conference, which will be an exciting time both professionally and recreationally. The conference has been planned to include a variety of programs that directly address the needs and current issues in the vocational field. The kick-off on Friday will utilize a different format for the conference, where we will have a judge, attorneys, and vocational experts, who will interact over the first four hours of the program. On Saturday and Sunday, there will be presentations on various issues which will directly address the function of vocational experts, including physicians, consultations, elements in testimony, and most assuredly, a hotly debated program concerning functional capacities evaluations (FCE). All are encouraged to attend and to keep in mind that not only will this be an excellent conference, but, hey we're in New Orleans!

### Frommer's Favorite New Orleans Experiences

**Beignets & Café au Lait at Café du Monde:** Sit on the crowded patio gazing at the action on Decatur Street and Jackson Square. Gorge on hot French-style doughnuts liberally coated in powdered sugar (everyone will know what you've been doing from the sprinkles on your shirt) and washed down with potent chicory coffee. And do it at any hour of the day — 3pm or 3am. It's open 24 hours!

**Jazz at Preservation Hall:** Drop your eight bucks in the hat and squeeze into one of the country's time-honored jazz institutions. Your feet will be moving and your ears will be happy, even if they never knew they liked jazz before.

**A Crowded Night at the Maple Leaf:** The Maple Leaf is a very "New Orleans" club and a terrific place to hang out. On nights when popular bands fill the place to hot, sweaty capacity and the crowd spills over into the street and dances right on the sidewalk, it's sublime.

**Dinner at Commander's Palace:** It took over a year after Katrina for this legendary restaurant to reopen, thanks to massive reconstruction requirements. It's romantic, gracious, attentive, and delicious.

**A Stroll through the Garden District:** These elegant (not flashy) old homes, nestled among lush trees, are wonderful to gaze at and covet. At the right time of day, you might have the streets largely to yourself and feel you've slipped back in time — or into an Anne Rice novel.

**A Stroll along St. John's Bayou:** Most tourists don't get much beyond the Quarter or they speed past this low-slung body of water as they head for City Park. Slow down local-style, finally away from the hordes as you meander along the bayou and admire the less high-profile but no less romantic neighborhood around it.

**Bourbon Street After Dark:** Even if you end up hating it, you have to see it at least once. Music spurts and oozes out of windows and doors, drinkers reign supreme, and sex is widely available — on paper, on stage, and on video. It's wild, disgusting, and strangely exhilarating.

**Food, Glorious Food:** With a nearly infinite selection of outstanding restaurants and other food sources, meal planning in New Orleans is very serious indeed. There is never time to do it all: a muffuletta from Central Grocery eaten on the banks of the Mississippi; boiled crawfish or oyster shooting at Acme or Felix's; a po' boy from Gene's; classic Creole at Arnaud's; and amazing, innovative cuisine at Cuvee. Can you eat five meals a day here? We've tried!

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## President's Message

By G. Michael Graham, ABVE President, 2007-2009

It seems that time flies! I realize that it has been some time since I interacted with some of you at the last ABVE Conference, even though it seems like just a few weeks ago! In the interim lots has taken place in the world, in our nation and in your own region. The success of Michael Phelps at the Olympics has been "mediated" to death and yet the Olympics are still in progress and many Americans are doing very well and winning gold medals!

Other news that is perhaps old news, but still is of interest to you as members of ABVE include the following:

1) The collaborative network I was in hopes of establishing between ABVE and the American Bar Association has gone into limbo. After about 1 year of telephone calls, emails and introductory letters to the then President of the ABA, Mr. Neukom in Seattle, and absolutely no response or show of interest, I dropped this attempted project for lack of time on my part. The ABA now has a new President (each rules for but 1-year) and a new attempt may be in order. I ordered and paid for 5,000 great looking brochures touting the "whys" of ABVE which I had hoped we could use in this project. These brochures are now in the ABVE Headquarters in Santa Cruz. I have asked Kristie Black, our contact with the management company, to send a notice to every ABVE member indicating the availability of these brochures as well as their content, so members could use them in their local areas as they market attorneys. Contact Kristie if you are interested in obtaining a sample of this brochure to see how it might be helpful to you.

2) A revision of the current ABVE National Certification Examination is well under way. The committee, made up of 17 seasoned ABVE members with Diplomate status, has been hard at work on this project. To date we have completed Phases 1 & 2 of the project. By way of information, I will briefly lay-out our charge and activity.

**The Charge** came about as the result of individuals who have taken the ABVE National Certification Examination (primarily given at ABVE Conferences) over the past three years complaining that many of the test questions were out of date, did not reflect the current role of the forensic vocational expert, were too specific to a single avenue of information, were poorly written and contained specific content that was not readily needed or used in a forensic setting.

**Phase I** of the revision process had each committee member assigned a separate group of questions from the existing examination. The task was for the committee member to review this grouping of questions and to indicate which of the specific group should be retained and which should be rejected.

**Phase II** allowed all the rejected questions to be put into a single document and then sent back to each of the 17 members of the committee for a review. The task of the committee at this phase involved a final review of all rejected test items from Phase I, and then a group decision of a final rejection of the item or a group decision to rehabilitate the test item and retain it for the exam. In order for a test item to come off the rejected list and back onto the retained list, a simple majority of the committee membership had to indicate this status change.

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## President's Message Continued...

**Phase III** – (yet to be initiated) will involve each committee member writing new test items to be included in a newly reconstituted examination. In order to assist with this awesome task, Tim Field's publishing company has generously provided the following books, at his cost, to the committee for use as resources in developing new test questions: *The Revised Handbook of Vocational Experts; The Admissibility of Evidence; Rules, Civil Procedure and Evidence; Life Care Planning in Light of Daubert and Kumbo; Admissible Testimony; Methods & Protocols-meeting the criteria of general acceptance and peer review under Daubert & Kumbo; The Daubert Challenge – from case referral to trial and Scientific vs Non-Scientific Admissibility of Evidence By Rehabilitation Consultants.*

Committee members will be using these resources, and others they may deem appropriate, and the CCRC test item construction process, to develop new ABVE test items. Therefore, there is a detailed protocol that has to be followed to assure reliability of the new items submitted by committee members.

Once these test items are submitted by individuals, all items will be accumulated into a single document, and once again, sent to all committee members for their review, comment and vote as to keep the test item or reject it. Rejected items will have to have a comment as to why the committee member is voting to reject that item.

**Phase IV** will provide the start of several validation studies of the new test items. Once the committee members have accepted a group of new test items, they will be set up in a test format and sent to the ABVE Board to take the exam under a non-prejudice agreement (meaning that the score obtained by any member will have no effect on their current ABVE standing). A second reliability assessment will be undertaken by having all Diplomates within ABVE take the "new test item" preliminary examination under the same non-prejudice conditions. The results of these two assessments of new test items will be analyzed to assure reliability and validity of each new test item. The outcome of these assessments will be filed with the ABVE Headquarters for historical and maintenance purposes. At the conclusion of these assessments, the valid new test items will be integrated into the remaining initial test items and will constitute the revised ABVE National Certification Examination. As this new exam is administered to prospective ABVE members seeking certification, item analysis (old and new) will be activated and maintained in much the same way as Dr. McCrosky has accomplished in the past for ABVE.

This is quite an undertaking for the volunteer committee members who are spending their time on behalf of ABVE and our profession. Committee membership includes: Estelle Hutchinson, Larry Sinsabaugh and Dave Martin (representing your Board of Directors), Joe Havanek, Jenipher Gaffney, Carl Gann, Kathy Farnsworth, Scott Stipe, Jeff Lucas, Cynthia Grimley, Peter Lento, Ann Wallace, Keith Wilkinson, Eugene Van de Bittner, Robert Cottle, Crisann Shiro-Geist, and Michael Graham, chair.

It is my belief that the new and revised ABVE National Certification Examination will be reflective of what we, as a forensic group, do in our daily professional lives and will truly be a unique and definitive instrument to discern those in our profession who can meet the challenges of forensic engagements.

## ABVE is proud to welcome the following...

### New Associate Members

- Thomas Sartoris
- Laura Wilson
- Joel Greenberg
- Carmen Roman
- Lynda Boyd
- Roy Katzen
- Kathryn Melamed
- Kim Coenen
- Fritz Godfried
- Bruce Ryan

Additionally, we would also like to **congratulate our newly certified members:**

- Keith Wilkerson, Diplomate
- Judith Rebuffatti, Fellow
- Jason Miller, Fellow
- Emily Tincher, Fellow

We also extend congratulations to Ross Skirda and Kimberly Van Dyke for their **successful upgrade from Fellow to Diplomate status.**

Finally, ABVE wishes the following candidates **good luck on their upcoming exam:**

- Sean Hanahue
- Gregory Gusha
- Gabriella David

## Future ABVE Conferences

### Mark Your Calendars!

Spring 2009  
March 27 - 29  
Hotel Monteleone  
New Orleans, LA

Spring 2010  
March 24 - 28  
Town & Country  
San Diego

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## President's Message Continued...

### David S. Frank Award

During the 1997 ABVE Fall Conference in Minneapolis, the ABVE Board of Directors established the David S. Frank Lifetime Achievement Award. This award is to be presented to an ABVE member or other, who actively has participated in the organization, freely devoting time, energies and expertise toward the development of ABVE or to the body of knowledge of the vocational expert in a forensic setting. Award recipients will be chosen on the basis of their character, expertise, and professionalism as exemplified by David S. Frank, as well as their efforts to foster a growing knowledge of ABVE as an ethical, credible, and professional body.

### 2007 David S. Frank Award Recipient: John M. Williams



Mrs. Ann Williams accepts the David S. Frank Award on behalf of her late husband, Dr. John M. Williams

3) **WHO'S THE CLIENT?** You will recall that this issue was discussed by your Board of Directors and an issue statement was sent to all ABVE membership and was passed about 6 months ago. The late John Williams, Larry Sinsabaugh and Michael Graham were the activists who spent their time working on the details of this idea. The concept revolved about the idea that, as vocational experts, engaged in forensic testimony, ABVE members should not be subject to the interests and pressures of any other party involved in the forensic matter. What was finally adopted by the ABVE Board of Directors, passed by a vote by the ABVE membership, and incorporated by language in the ABVE Code of Ethics indicates that the only "client" reasonable and ethically available to a forensic expert is the TRUTH. This means that a vocational expert is not to hold any party as their "client" in a forensic setting. As has been seen in the literature for years, especially that espoused by Paul Deutsch, PhD, an expert witness is to be an educator to all parties involved in litigation as to the facts of the matter and the expert's clinical judgment, which requires that the final opinion be predicated on valid, reliable and relevant foundation information and data that has been scientifically established through theory and technique building and generally accepted within the professional community. It is clear that to uphold these principals, the expert's "client" in a forensic setting can be none other than the "truth".

This concept was discussed at a meeting of professionals following the last IARP Forensic Section conference. These professionals represented a wide range of organizations and included Michael Graham - ABVE, President, Mary Barros-Bailey - Chair 2007-2008, CCRC, Jeffrey Carlisle - Ethics Chair for CCRC and IARP, Florida Chapter, Ann Neulicht - Ethics Committee Chair 2007-2008 CCRC, Ann Wallace - 3007-2008 IARP Forensic Section Chair, Robert Taylor - Past President IARP. A consensus was derived and adopted by these organizations that paralleled the ABVE stand. Adoption of this concept for professionals working in a forensic setting has been confirmed by the Boards and memberships of these organizations, a clarifying moment to say the least. A "White Paper" is currently being developed by these organizational representatives and will be published and distributed soon, which will attest to the unification of these organizations around this concept which makes it clear that (a) if a professional is providing Direct Services to the person with a disability, that person is your client, but (b) if the professional is retained to provide clinical judgment and admissible testimony in a forensic setting, the only client that is viable for that professional is the "truth."

4) ABVE is gearing up for its annual conference in New Orleans in March 2009. Under the leadership of Past President, Don Jennings, this year's conference is shaping up to one that provides skills, techniques and information that can be used in your practice as soon as you return home. Check the ABVE web site (ABVE.net) for conference registration, hotel reservations, and a listing of conference topics. You are encouraged to bring at least one potential ABVE new member with you to this conference and receive a discount on your conference registration!

# ABVE Headquarters Update

Today is the first day of autumn - where did the summer go? It's time to put away the water skis and start carving the pumpkins.

Headquarters has been busy gearing up for the 2009 ABVE Board elections – remember to get your nominations into Headquarters by the November 15<sup>th</sup> deadline, the 2009 ABVE Spring Conference is ready to roll at the Hotel Monteleone in New Orleans, and we are ready to launch upgrades to the ABVE webpage ([www.abve.net](http://www.abve.net)).

The ABVE website upgrades include:

- **Going Green with Online Dues invoicing and renewal payment.** Your annual invoice notification will be delivered to you through your email and you will be able to pay your dues through our **secure** online system. We will still keep the options of mail and phone available for those of you who do not access your computer very often.
- **Simple and Easy secure Online Event Registration and Event Calendar.**
- **Additional Directory sort options.** Example: If an attorney is looking for a Vocational Expert who specializes in Marital Dissolution, he/she will be able to sort by State and Specialties.
- **Broadcast email system:** One of the benefits of this email system is that the system has the ability to email to all ABVE Members who have *not* registered for a conference; therefore those that have registered will not get continual conference emails.
- **Bookstore and Document Library**
- **Bulletin Board:** A great way for members to communicate and share information. Very similar to a list serve or forum, but easy to use.
- **Access to the system anywhere you have an internet connection.**



We anticipate a go live date of mid October. Once the implementation has taken place you will receive an email with a new log on and password. You may change your password by logging into the members' only section. I encourage you all to log onto your new system to check out your profile, register for the conference, and get familiar with the Bulletin Board.

While checking out your profile, please double check your information. The individual member pictures were the only item that I could not import to the new system. Please upload a new profile picture.

I will be available at the registration desk at the 2009 Annual Conference and will be happy to answer your questions, and show you the new functions available to everyone on the web page. If you would like assistance before that time, please feel free to contact me at 831-464-4890.

Have a safe and joyous holiday season!  
Kristie

## Scott E. Streater Educational Award

The Scott E. Streater Educational Award was designed in 2006 to recognize that member of ABVE who has made a significant contribution to the learning and educational base of the ABVE membership through one's participation in:

1. Active research and publication of substantive issues and underpinnings for the forensic arena in which said membership participates and publishes such information via the organization's *Journal*, newsletter and website, and, or...
2. Activities contributing to the educational base of the ABVE membership through the development and coordination of ABVE's annual conferences and/or continuing educational presentations and exchange of information and expertise which provide educational underpinnings for its membership.

## 2007 Scott E. Streater Award Recipient: G. Michael Graham



# ABVE Call For Nominations 2009 - 2011 Board

The time has come for the 2009 elections. The three year term (2009-2011) for the positions listed below commence at the Board Meeting, March 26<sup>th</sup> at the 2009 ABVE Annual Conference, March 27<sup>th</sup> – 29<sup>th</sup> at the Hotel Monteleone, New Orleans, LA.

The positions that are open for the 2009 elections are:

- **Secretary/Ethics Chair**
- **Treasurer/Membership Chair**
- **Director-at-Large (5 Openings)**

If you have a desire to work toward the advancement of the goals and mission of ABVE please consider this opportunity to be instrumentally involved in the leadership of ABVE.

## Terms & Conditions for Nominations

Nominees must be either a Fellow or Diplomate in good standing and be willing to attend all of the board meetings (up to six times per year, including telephonic meetings and the annual conference board meeting). Position descriptions are attached and may be found at [www.abve.net](http://www.abve.net).

Diplomates and Fellows may nominate themselves. If nominating a colleague, please obtain a letter for consent before submitting the nomination. All nominees must complete the Candidate Profile/Statement form located at [www.abve.net](http://www.abve.net). The Candidate Profile/Statement form will not be edited for spelling or grammar.

Return Nominations and the Candidate Profile/Statement form using one of the following methods:

- Email to [kristie@btfenterprises.com](mailto:kristie@btfenterprises.com)
- Fax to (831) 576-1417
- Mail to ABVE Headquarters,  
3540 Soquel Ave., Ste A,  
Santa Cruz, CA 95062

Mailed documents will be scanned and placed on-line at election time (document quality may be diminished).

The Profile/Statement forms must be ***postmarked, faxed or emailed no later than November 15, 2008***, the date in which nominations close.

Direct any questions to

- Donald Jennings, Past President & Elections Chair at (215) 364-5780, [djenn826@aol.com](mailto:djenn826@aol.com), or
- Kristie Black, ABVE HQ at 831-464-4890, [kristie@btfenterprises.com](mailto:kristie@btfenterprises.com).

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# ABVE Call for Nominations Continued...

## DESCRIPTIONS OF OPEN POSITIONS

### **SECRETARY/Ethics Chair**

- The Secretary shall serve a three-year term,
- Record the minutes of all meetings of the Board of Directors, and record the minutes of all meetings of the Membership.
- Minutes of these meetings shall be distributed to the members of the Board of Directors in a timely manner
- Shall attend to the giving and serving of all notices of the Corporation; may sign with the President, in the name of the Corporation, all contracts authorized by the Board of Directors, and when so ordered by the Board of Directors, shall affix the seal of the corporation, if any, thereto; shall have charge of the membership records, transfer books, corporate seal, if any, and membership ledgers, and such other books and papers as the Board of Directors may direct, all of which shall, at all reasonable times, be open to the examination of any Director or Member of the Corporation in good standing, upon application at the office of the Corporation during business hours; shall sign, with the President, all certificates for membership in the Corporation; and shall, in general, perform all the duties incident to the office of Secretary, subject to the control of the President, the Board of Directors and the Members.
- **As Ethics Chair**, he/she shall be responsible for the development and formalization of ethical standards and practices to be adhered to by the Members. They shall review, examine and regulate the professional and ethical conduct of the Members.

### **TREASURER/Membership Chair**

- The Treasurer shall serve a three-year term of office.
- The Treasurer shall have responsibility for the custody of all the funds and securities of the Corporation which may come into the Corporation's hands.
- When necessary or proper, shall endorse on behalf of the Corporation, for collection, checks, notes, and other obligations, and shall deposit the same to the credit of the Corporation in such bank or banks or other depositories as the Board of Directors may designate.
- Shall sign all receipts and vouchers for payments made to the Corporation.
- May sign all checks made by the Corporation, and shall pay out and dispose of the same under the direction of the President, the Board of Directors or the Members.
- Shall sign with the President or such other person or persons as may be designated for the purpose by the Board of Directors, all bills of exchange and promissory notes of the Corporation; whenever required by the Board of Directors.
- The Treasurer shall render a statement of all cash accounts periodically to the Board and the Membership.
- Shall monitor regularly, the books of the Corporation to be kept for the purpose, a full and accurate account of all monies received and paid on account of the Corporation.
- Shall monitor the management company so that at all reasonable times the books and accounts are exhibited to any Director or Member of the Corporation upon application at the office of the Corporation during business hours; shall perform all acts incident to the position of Treasurer, subject to the control of the President, the Board of Directors and the Members; and shall be bonded for the faithful discharge of duties, by the Board of Directors, in such sum as the Board of Directors may require.

### **DIRECTOR-AT-LARGE: 5 POSITIONS OPEN**

- Ensure adherence to ABVE's mission.
- Attend and actively participate in all of the Board's meetings, Conference sessions and other functions of the Corporation, and notify ABVE Headquarters or Board President of anticipated absences.
- When absent from a meeting, review minutes and results of the missed meeting to maintain awareness of issues and solutions.
- Do their homework to be prepared to participate fully in Board and committee meetings.
- Serve actively on at least one committee.
- Act only with the full Board, not individually unless authorized to do so by the full Board.
- Speak for the full Board only when the full Board sanctions their doing so.
- Be prepared to vote on all issue motions unless a conflict of interest exists and is stated according to Board policy.

## Congratulations to Dr. E. Davis Martin

Dr. E. Davis Martin, Editor of the Journal Forensic Vocational Analysis, has been promoted as Interim Head, Department of Special Education, Rehabilitation Counseling & School Psychology within the School of Education at Auburn University. He has new administrative assignments with four departments. Dave can be reached as follows.

### E. Davis Martin, Jr., Ed.D

Wayne T. Smith Distinguished  
Professor of Rehabilitation and  
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**Good job, way to go Dave!**

## Journal Guidelines Available

Those interested in submitting  
manuscripts for  
**The Journal of Forensic  
Vocational Assessment**  
can request specific guidelines from:

E. Davis Martin, Jr.

Phone: (334) 844-7685

email: [martiev@auburn.edu](mailto:martiev@auburn.edu).

## Disorders of the Immune System - Medical and Vocational Issues

17<sup>th</sup> Annual Educational Conference,  
August 12-14<sup>th</sup>, 2008, Portland, Oregon  
Association of Administrative Law Judges

A phone call was received from Claude Peacock in late July. Claude asked if I could travel to Portland, Oregon from Seattle and present in his place for a Social Security Judges Annual Conference.

The topic this year was *Autoimmune Disorders, Medical and Vocational Issues*. Claude's persuasive verbal skills and charm, in part due to his southern accent, always gets to me, so I succumbed to his request. After realizing how ignorant I was about autoimmune disorders, time was made to pony up on my research of "auto immune diseases." I developed a reference file to speak from and power point presentation. Multiple phone calls to stranger, ALJ Michael Brownfield, allowed some degree of preparedness. As Judge Brownfield stated in his introductory remarks about me, "John Berg came to assist us on his own time, at his own expense on short notice; I guess the Beatles had it right, I get by with a little help from my friends". Thanks Michael for the kind words and appropriate analogy!

The audience was 123 total from all over the US who are all HEW hearings and appeal judges. I even saw a couple from Seattle and a new judge from Virginia who had transferred from the Washington State Attorney General's office to the Federal Court.

ALJ Michael Brownfield was the Judge assisting in my presentation. Or should I say, two presentations over the day for two separate groups. The session had to do with overviews on the various autoimmune disorders followed by vocational implications for rendering "capacity to perform work" on which SSA is focused. Judge Brownfield then created some hypotheticals and the group developed theories of how to administer decisions of disability for SSA/SSI. Let it be said, some lively debate ensued by three or four ALJ's from each of the two sessions. I suppose each room at any professional conference, on any topic, always has the same few personalities!

Autoimmune disorders to me are a sort of "Cellular Dysphoria". This is my new word for the day. Yes, autoimmune disorders invoke immune reactions in which something triggers the immune system to react against the body's own tissues and produce abnormal antibodies that affect those tissues. The type of conditions we spoke to and the Rheumatologists presenting medical aspects include:

Sarcoidosis, Iritis/Uveitis, HIV, Scleroderma, Rheumatoid Arthritis, Myasthenia Gravis, Multiple Sclerosis, Lupus, Hepatitis, Guillain-Barre Syndrome, Graves Disease, Goodpastures Syndrome, and Lambert-Eaton Myasthenic Syndrome (LENS). Systemic Vasculitis, Poly or Dermatomyocytis, Inflammatory Bowel Disease, Ulcerative Colitis or Chron's Disease, Diabetes, Hemolytic Anemia, Glomerulonephritis, and Sjogren's syndrome.

The key vocational implications for many of the autoimmune disorders have a common array of restrictions no matter the "diagnosis". Most common restrictions are reduced capacity for repetitive fingering, feeling, visual disorders, reduced capacity to sustain walking, standing, environmental restrictions for dust, dirt, smoke, gases or fumes, and other pulmonary irritants, fatigue, and reduced concentration or persistence. Some have serious components of chronic pain and/or side effects of medications. By the time a VE is called to a hearing, very heavy, heavy, and medium work are out the window. Therefore, what jobs can a claimant perform at the sedentary or light exertional levels that are unskilled, or perhaps semi-skilled assuming transferable work skills remain viable.

## Disorders of the Immune System Continued...

Those who perform any level of Social Security work must have a copy of the Code of Federal Regulations (CFR). Some of the sections to be aware of in CFR include Section # 404.1545 and # 416.945 (non exertional impairments). While the “claimant” may have the Specific Vocational Preparation (SVP) to qualify for specific work in sedentary or light levels, do they possess the capacity to perform at a competitive rate or quota and/or show up for work routinely to retain work?

The CFR has specific sections that those who perform Social Security work need to know including the general section under Listings of Impairments 14.00 Immune System Disorders. Also, references to SSR-85-15, “Capability to do other work – The Medical-Vocational Rules as a framework for evaluating solely nonexertional impairments”.

Our vocational hypotheticals included the proverbial occupations VE’s and ALJ’s use or hear frequently including Cashier, Security Guard, Assembler, General Office Clerk, Telephone Solicitor, Ticket Taker, Outside Delivery Driver, Industrial Sewer, Bottle Line Attendant, etc.

The Rheumatologist from *Portland Health Sciences* was great! Funny, intelligent and a great speaker (future speaker at ABVE?) Dr. Richard Wenick, MD, provided an appropriate level of colorful power point slides including various levels of disease process from moderate to profound. The slides ranged from mild interest to complete disgust, visually describing what a patient and or body parts appear like per diagnosis. The Chinese saying, “a picture is worth a thousand words” came true at Seventeenth Annual Educational Conference, Portland Oregon.

Thanks Claude for forcing me to learn much more than I wanted to know about autoimmune disorders. Now, add that to my “expert” tool chest!

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### Important Items To Remember

- Watch your email for your **2009 electronic dues billing** in October
- Watch for **new editions /upgrades to the ABVE website** in October
- **Send in your Nomination for ABVE Board Elections** by November 15th
- **Register for the Annual Conference by March 6, 2009** to save \$50 on your registration
  - **Register Online for an additional savings of \$25**

# From The Editor's Laptop

**By Betty Lindsey Hale, Newsletter Editor**

One of the books that I read over this summer was entitled, The Book of General Ignorance: Everything You Think You Know is Wrong by John Lloyd & John Mitchinson. The jacket of the book states that, "Revealing the truth behind all the things we think we know but don't, this book leaves you dumbfounded about all the misinformation you've managed to collect during your life..." On page 46, the authors ask the question, "How do we measure earthquakes?" To which most of us would respond, "Why the Richter Scale, of course!" However, according to Lloyd and Mitchinson, the Richter Scale was superseded in seismological circles during the last decade by the Moment Magnitude Scale, or MMS. Interesting, but what does this have to do with vocational practice? The correlation comes not from how the measurement is taken, but what is taken into account. According to the authors, the MMS was invented in 1979 by two seismologists named Hiroo Kanamori and Tom Hanks of the California Institute of Technology. The rationale for developing a new means of measurement for seismic activity was that the pair found the Richter scale insufficient "because it only measures the strength of the shock waves, which do not fully describe an earthquake's impact. On the Richter Scale, large earthquakes may have the same score, but cause wildly different degrees of devastation." This is the same argument that forensic vocationologists use to describe the difference between "impairment" and "disability". As rightly pointed out on page 4 of the Guides to the Evaluation of Permanent Impairment, 5th Edition published by the American Medical Association, the authors of the Guides state that, "Impairment percentages or ratings developed by medical specialists are consensus-derived estimates that reflect the severity of the medical conditions and the degree to which the impairment decreases an individual's ability to perform common activities of daily living (ADL), *excluding* work. Impairment ratings were designed to reflect functional limitations and not disability." The authors of the AMA Guides illustrate their point by discussing two individuals who receive 30% whole person impairment due to pericardial heart disease is considered from a clinical standpoint to have a 30% reduction in general functioning as represented by a decrease in the ability to perform activities of daily living. Individuals working in sedentary jobs, there may have little to no decline in their work capability, while a manual laborer may be completely unable to return to his or her customary employment and may suffer a 100% work disability as a result of the same impairment. Although this discussion has certainly not plowed any new ground, I think that it is valuable to explore new analogies to use in educating attorneys, judges, and juries. Sometimes the terms "impairment" and "disability" are incorrectly and interchangeably used, which tends to confuse the issue and may result in a less than equitable judgment.

## Expert Witness

### Using a Photo with Your CV or Resume

Adding your photograph to your CV/resume is beneficial. No conscientious attorney would engage an expert for testimony without knowing what the expert looks like. A professional photo should be a head shot, cropped just below the tie knot or neckline.

You can simply enclose your photo, without going to the trouble of printing it on the CV. Keeping the photo separate from the document might make using a color photo easier.

Spend the money to use a photographer who works with professionals, not just babies and families. He will make you look better and more credible than you think you are. He should take a large number of shots. Get assistance in selecting the one that looks the most professional, intelligent, and trustworthy.

Be sure to tell him that in the future you may want to use your photo, in addition to this use, for newsprint, glossy magazines, and the Web, so that the picture(s) on the CD he furnishes you will be suitable to be cropped for various uses.

If you want multiple copies to send to attorneys with your CV, compare the photographer's prices for the printing service with those of companies that copy photos for models. These companies make multiple 5x7 copies inexpensively. This is the size preferred by the media for publicity purposes, but wallet-sized or 5x7 will do equally for attorney engagements.

— by Rosalie Hamilton, the Expert's Expert on marketing. She is a consultant, coach, outsourced marketing provider and the author of \*The Expert Witness Marketing Book\* <http://www.expertcommunications.com>

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# Are You Sabotaging Your Practice

## **My thanks to Rosalie Hamilton of Expert Communications for the content of this article**

Several years ago, while attending a professional conference, I sat in the audience and heard the speaker ask, “Are You Sabotaging Your Practice?” My immediate reaction was, “No, How Could I, My Practice Is My Living!” But in an article written several years ago by Rosalie Hamilton of *Expert Communications*, I learned of some sage advice that I wish to pass on here for your consideration.

Your most effective marketing tool is the quality of your work. When used correctly, this marketing tool leads to attorneys who retain your services again, attorneys who refer you to colleagues, inquires about your services from opposing counsel and a good reputation in the circles that make up the pool of your potential prospects.

What is being referred to here is not just the accuracy and relevancy of your expert opinion. But there are other components that add to the perception of your value in the eyes of your prospects. Ask your self the following questions about your work habits and see if you are helping or hurting the growth of your practice:

### **1. Are You Prompt in Responding to Phone Calls, E-Mails and Faxes?**

*You can burn many a bridge by ignoring communication. Initial contacts are obviously most critical as you never know where your next referral will come from. Attorneys work under tight deadlines, often imposed by others in the legal system and by factors beyond their control. Help them meet their deadlines, and earn brownie points for the future.*

### **2. Do You Do What You Say You Will, When You Say You Will?**

*Litigation occurs in stages, where “A” must happen first, then “B” and “C” can occur and, depending on the outcome of “D”, then perhaps “E” and/or “F” might occur or need to take place. Your input, opinions, and other services are steps in this process. Be reliable. Be the one the retaining attorney can count on to keep your word and make the process smooth and his job easier.*

### **3. Are You Respectful of The Attorney’s Staff?**

*In some cases, you may deal more with a paralegal or legal assistant than with the actual attorney. Develop this relationship; be helpful and responsive; ask if there is anything you can do differently that would make their job easier. The staff persons are often the ones who search for experts or even choose experts, and they communicate with each other and with other attorneys. Better to build a friendship and possible referral source, then offend or ignore someone with the potential to blacklist you with some portion of your prospects.*

### **4. Do You Ask Good Questions and Educate Your Referral?**

*Don’t assume that just because you’re referring attorney handles similar cases all the time that he or she understands or is aware of all the variables and possibilities within your profession. Clearly explain the various components, factors, offer to assist them in preparing questions to ask the opposing expert, or in listing the documents they should request from opposing counsel. Make your services “Value Added”. Understand that the retaining attorney is focused on liability issues first and foremost. Therefore, be the resource that clarifies issues having to do with vocational rehabilitation, return to work, work task accommodation, pre-and post-incident functional capacities and similar concepts within your profession and clinical judgment.*

### **5. Do you Give “Bad News” Quickly?**

*Do not delay in communicating to the retaining attorney, any bad news or holes in the case development progress. Attorneys need this information as early as possible so they can make better informed decisions and strategies, i.e. accepting a settlement offer they may otherwise decline, hiring additional experts to address the identified gap, or going for additional discovery than might not have been initially thought of. Delaying the communication of bad news, or worse, hiding it from the attorney, will only hurt your image, credibility, integrity and the perception of your value-added capacity, in the long run.*

### **6. Are You Honest and Up Front About Potential Problems?**

*If you have any potential conflicts of interest, contradictory testimony, or other “professional skeletons” in your closet, and these might disqualify you as a testifying expert, be upfront about them with the attorney who has retained you. He/she may be able to counter these issues if he/she is prepared. If it eliminates you from the case, your retaining attorney will remember your candidness and be more likely to use you on a future case. Whereas, if you did not disclose these issues and the attorney who retained you was blind-cited by the opposing counsel, you would certainly not have enhanced your image with either party.*

### **7. Do You Follow Instructions and Ask Questions If Unsure?**

*If the attorney wants an oral opinion from you first, don’t write one out and send it to him! If at any stage in the retention, you are unsure of what records you need to maintain or produce in discovery, simply ASK! Believe me, any attorney would rather have his/her expert ask these questions than to have to scramble to “clean up a mess” after the fact!*