

Book Review

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Assessment of Earning Capacity, Third Edition
Michael Shahnasarian, Ph.D.
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304 pages, \$85

Abstract

The book being reviewed was written by a vocational expert. Dr. Shahnasarian has a Ph.D. in counseling psychology from Florida State University and is president of Career Consultants of America, Inc. located in Tampa, Florida. As such, the book is of greatest interest to other vocational experts. Nevertheless, since vocational experts work so closely with forensic economists in many cases, the book is potentially useful to economists as well.

The book is divided into three parts. Conceptually, the primary goal of the vocational expert is to analyze both the pre-injury and post-injury earning capacity of the individual. How to achieve this goal is the subject of the first part of the book. The second part looks at specific cases, including cases of acquired disabilities, cases involving the Americans with Disabilities Act, employment law cases, family law cases, and cases related to long-term care insurance. The last part of the book concerns practical issues, including testimony and case studies.

As was true in the first edition, which also was reviewed by this author (Slesnick, 2001), the most significant value of the book to forensic economists is that it lays out what vocational experts should do in a typical court case. This is important because, as mentioned above, economists frequently work with vocational experts, especially in personal injury/death cases. If the vocational expert does not provide a satisfactory foundation for the calculation of pre- and post-injury earning capacity, then the economist's testimony itself is not credible.

Chapters 4 and 5 are probably the most important in the book, at least for the forensic economist. Chapter 4 ("Processes Undergirding the Assessment of Earning Capacity") goes into great detail concerning how the vocational expert develops the groundwork for determining pre- and post-injury earning capac-

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ity. Chapter 5, on the other hand, explores the process of actually calculating pre- and post-injury earning capacity.

As described in Chapter 4, the first step in the process is a thorough records review, which is often tedious and time-consuming given the volume of medical and other records that often have been put into evidence. Next is the subject examination, which consists of a clinical interview, normally about six to eight hours in length, and the administration of standardized tests. Third, there is labor-market and related research, where the vocational expert examines the kinds of job the injured individual is now capable of doing and possibly outlines retraining programs that will assist in providing necessary labor market skills. Finally, for additional information the expert will consult with other individuals, such as family members, caregivers, employers, case managers, and other experts.

It should be noted that the approach that Shahnasarian advocates is not the only one available. Another approach that is mentioned is the RAPEL method and is outlined in a chapter by Robert Taylor that describes the functions of a vocational expert. (Taylor, 2007) Briefly, the RAPEL method first develops a rehabilitation plan, which is designed to bring an injured client to his or her maximum earnings potential. This is followed by a study of labor markets, along with an analysis of "placeability" (the ability of the individual to successfully compete for a job). Finally, there is an estimate of both pre-injury and post-injury earning capacity in terms of both earnings and worklife.

Although there appears to be a variety of different methodologies utilized by vocational experts, most of them emphasize that a vocational write-up, if performed correctly, takes both time and skill. Shahnasarian has a number of appendices based upon his own reports. A sample client intake form is 14 pages. A sample clinical interview runs for 30 pages. A sample report is 17 pages long. There is obviously a substantial amount of detail that must be sorted out in order to properly analyze a particular client. For example, under subject examination, the standard methodology used by Shahnasarian includes the clinical interview, background information, chronology of vocational activity, potential physical or psychological problems that may affect career development, activities of daily living, mental health issues, education and special training, and career development.

Chapter 5 specifies how pre-and post-injury earning capacity is calculated and enumerates Shahnasarian's particular methodology. The methodology is too complex to explain here, but consists of the expert examining 14 factors that affect career development and earning capacity. These factors include phases of career development, need and capacity for retraining, preexisting vocational handicaps, demonstrated earnings history, and career motivation. Shahnasarian explains the methodology by using several case studies, including an example of a head injury to a college-bound 17-year-old, orthopedic injuries to a construction worker, and psychological injuries to a mid-life professional.

This reviewer is not advocating the Shahnasarian method. Indeed, a thorough evaluation of all available methodologies is really the province of vocational experts. Nevertheless, there are a number of conclusions one can make

from a careful reading of this book. One is that analyzing the vocational potential of a client is hard work, and there are no easy shortcuts. Why is this important to the forensic economist? As mentioned previously, a weak vocational analysis and report constitute a weak foundation for the forensic economist's report. If the economist is provided the report of the vocational expert based upon a two-to-three hour interview, no standardized tests, no labor market access study, and reference to standardized tables which may or may not refer to the plaintiff, the economist more than likely will face difficulty in the case.

Second, both the Shahnasarian method and various others reviewed (such as RAPEL) emphasize the importance of focusing on the individual. As Shahnasarian states:

Present and future damages to career development and earning capacity must be comprehensively and accurately assessed to articulate present damages and acquired disability causes. Every vocational assessment is unique and must be based on information, findings, and case-specific information that merge from a pending vocational evaluation. (Shahnasarian, 2011, p. 123)

This, of course, is related to the first point in that providing a report relevant to the case at hand requires a detailed analysis that includes, among other things, a thorough review of records, a comprehensive subject analysis, a study of local labor market conditions, and other factors cited earlier.

Third, and again related to the first two points, reliance on overly broad statistical data is a last resort to be used only when specific case data are not available.

Earning capacity assessments can lose integrity when evaluators make abstract inferences and stray from subject-specific information. The more remote the data is from the subject, the greater the risk that the data may distort facts. An example is the use of computers with databases of occupations that allow vocational evaluators to configure vocational profiles (typically limited to mental and physical capabilities) intended to simulate basic subject characteristics. (Shahnasarian, 2011, p. 117)

In looking at a specific case involving a 34-year-old unemployed individual who was in a motor vehicle accident, Shahnasarian criticizes the vocational expert's reliance on aggregate data by contending that:

Statistical information can provide helpful input to a vocational evaluation; however, as noted repeatedly in this book, questions about earning capacity must be considered within the context of the specific facts at hand and characteristics of the subject. In the preceding case, the vocational evaluator's almost exclusive reference to aggregate statistical data for her opinion on loss of earning capacity was simplistic and certainly does not require the analysis of an "expert." (Shahnasarian, 2011, p. 118)

From this reviewer's perspective as a forensic economist, there are two main problems with the book. There are many examples of vocational evaluations that are considered inadequate from the point of view of the book's author. In fact, these sections generally contain valuable insights. Nevertheless, most of the deficiencies cited relate to inadequate analysis of the types of jobs available to the injured party rather than to worklife issues. There are numerous examples where the cited vocational report will say something like "The plaintiff's earning capacity was reduced by 30% over his remaining worklife." But the book generally does not distinguish whether the reduction was in terms of reduced earnings, reduced worklife, or some combination of both. Where both factors are mentioned, there is no attempt to quantify how the overall percentage was determined. Why is this important? Forensic economists have become interested in worklife issues for the disabled, not as experts who can make this determination but as experts who face what they believe are methodologies of worklife based upon aggregate data which are not scientific. From the perspective of this reviewer, it would be extremely useful if the community of vocational experts would evaluate these methodologies. As noted above, Shahnasarian does describe some of the deficiencies related to relying on aggregate data, but a more specific judgment of this data and their use in court cases would be a more useful endeavor, at least for forensic economists.

No one disagrees that aggregate data can be useful in situations where data specifically related to the individual are either unavailable or simply do not exist, such as a case involving a minor. Also, standard worklife tables are used in most cases unless the individual had an unusual labor market history. But use of tables concerning disability status have been questioned by many experts, and one would hope that a book such as that being reviewed here would have shed some light on the subject.

Second, Shahnasarian discusses at length the concept of earning capacity, which should not be surprising since that phrase is in the title of the book. On the opening page, Shahnasarian states the following: "The greatest economic asset most people possess is their earning capacity – a measure of past, present, and future ability to earn employment income with respect to maximum capacity." (Shahnasarian, 2011, p. 3) The author also cites numerous reasons why individuals may not reach their maximum capacity, such as childcare or eldercare activities or perhaps lack of financial resources.

Shahnasarian properly points out that earning capacity is just as important (if not more so) when looking at the post-injury situation as when looking at the pre-injury situation. For many individuals, pre-injury expected earnings and earning capacity may be equal or at least quite similar. After all, people have a motive to earn money in order to achieve some desired standard of living for themselves and their family. The same motivation is not always present, however, when it comes to post-injury earnings. As Shahnasarian states:

Assessing efforts to mitigate vocational damages includes evaluating the intensity, consistency, and quality of a subject's post-incident vocational rehabilitation efforts. Questions about malingering, secondary gain, and sub-optimization of efforts sometimes emerge when a

vocational evaluator suspects that a person has not made concerted efforts to mitigate vocational damages after acquiring a disability. (Shahnasarian, 2011, p. 126)

The difficulty in the book relates to pre-injury earning capacity. At times, Shahnasarian seems to imply that the alternative to earning capacity is to utilize historical earnings as a basis for future earnings. But of course that cannot be the correct approach, and surely Shahnasarian knows this as well. For example, a young college student will have jobs such as pizza deliverer, but his/her earnings in that capacity would vastly underestimate his/her future earnings. Similarly, an educated woman who is staying home for a few years to raise her young children may fully intend to return to the labor force and resume her previous occupation of nursing. Thus, the critical question is not just how earning capacity differs from historical earnings, but how earning capacity differs from expected earnings.

As an example, consider the stay-at-home mom who is now injured but who had previously been a nurse. She may have announced that she intended to return to her previous profession once her youngest child entered first grade. Further, she had been taking continuing education courses for the last several years in preparation for her labor force reentry. In this case, her expected earnings would likely be equal to that of a nurse and may also be her earning capacity as well. But her earnings at the time of the injury, which were zero, are certainly not equal to either her earning capacity or her expected earnings.

What the book does not do is to present situations where there is a clear estimate for expected earnings but where this appears to be different than what the person is capable of achieving. Consider, for example, a mid-level manager who has remained at that position for several years. He has been offered promotions in other cities but has turned them down due to family obligations. An analysis of expected earnings would assume continued work as a mid-level manager. But the fact that he has been offered promotions in the past likely means that should he change his mind, perhaps for reasons such as greater financial need, his capacity to earn a salary may be greater than that of a mid-level manager. Such situations require judgments concerning demand conditions (e.g., Would the promotions have been available for the individual in the future?) and supply conditions (e.g., Will the person still be able to perform at the higher level both from a skill level and psychologically in terms of handling the stress on the job?) (See Horner and Slesnick, 1999.) There are, in fact, some forensic economists who believe that situations where earning capacity and expected earnings are not equal are extremely rare. Still, it would have been very useful had Shahnasarian elaborated on situations where expected earnings and earning capacity might be different and how earning capacity can be measured without undue speculation.

As stated in this author's review of the first edition, the book could be a valuable addition to the forensic economist's library, especially if he or she is frequently hired in cases where different vocational experts are part of the case. The book lays out in significant detail the role of the vocational expert, and there is also a brief discussion of the role of other experts in cases, including that of the economist. This is the book's greatest strength. There are other

areas that this reviewer, in his role as a forensic economist, wishes the book had covered but did not. For example, there is little discussion of worklife issues, especially worklife estimates produced by aggregated tables for the disabled. Further, there needs to be a clearer concept of what is meant by the term "earning capacity" as opposed to expected earnings. This is a topic that forensic economists have struggled with for quite some time. But despite the title of the book, there is unfortunately little that has been added which clarifies this concept.

References

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