

Book Review: "Evaluation for Personal Injury Claims" [by Andrew Kane and Joel Devoskin]

BY WENDY SAXON

[Wendy Saxon, PhD, CT, CTS](#) is a trial consultant based in Los Angeles County. She has been picking juries since 1977.

The authors, both psychologists and diplomates, could have entitled this book "Sizing up the Psychological Experts on Both Sides". Their information is elegantly and efficiently presented and arms those of us in the trenches with everything we need to know by providing empirically based descriptions of best practices in the field of forensic psychology.

Far too often, lawyers and trial consultants are at a loss regarding how to shop for a truly competent forensic psychologist and how to effectively counter the methods, report writing, and testimony of the psychological expert testifying for the opposing side. Add to these troublesome tasks the fact that ultimately a jury of twelve with no education, training, and experience in the complex field of forensic psychology has to listen to "dueling experts" and you have the potential for disaster.

Jurors receive such little direction from the Court's Instructions that it is no wonder that they may end up relying on nothing more than preconceived notions based on personal dramas and expectations. When this happens, awards for righteous damages can be rejected and plaintiffs with frivolous claims can receive awards of hearty proportions.

Contrary to popular belief, we who put heart and soul into working these civil cases want the truth to be known and honored. Routinely we examine the reports of psychologists and psychiatrists sensing and/or knowing that best practices were not utilized. And so we turn to and trust our experts to guide us, educate us, perform properly for us. Indeed, the reputation of forensic psychology and the field of psychology in general are at stake as evaluations of personal injury claims often become public and live on in trial transcripts.

Evaluation for Personal Injury Claims by Andrew Kane and Joel Devoskin gives us the resources, thoroughly yet straightforwardly, to evaluate the evaluators. This 262 page, soft cover volume is packed with wisdom, common sense, and guidance. It reads so well that the committed lawyer and/or trial consultant can virtually memorize its contents, so that analysis of methods, reports, and testimony can be done quickly, precisely, reliably, and convincingly. If you grasp this book, you will never be caught speechless in depositions, round tables, mediations, and most importantly, during direct and cross-examination.

Clarifying the difference between an expert witness and a consulting expert nicely, the authors then caution regarding potential sources of bias and error. Much too often, we fail to pause to consider the possibilities: anchoring bias, attribution bias, confirmation bias, conformity effects, halo effect, observer effects, overconfidence bias. Lawyers and trial consultants alike need to know about these potential pitfalls. The mentally healthy and insightful, self-examining professional knows how to rise above such biases and hence become attack-proof in formulating opinions and ruling in, as well as out, both diagnoses and likely causes of psychological disorder and/or distress. These authors have detailed potential sources of bias rather than just making the usual comments about objectivity being a must.

The main portion of the book is devoted to application, including the absolute essentials on data collection, interpretation, report writing, and the giving of testimony. Clearly, the authors are not at all interested in deviating from a neutral stance and endeavor to delineate best practices for psychological experts called upon by both the plaintiff and the defense.

We find extensive coverage of the types of records which must be reviewed, the reliability and validity of acceptable psychometric instruments and their strengths and weaknesses, and the gathering of collateral information from those persons who know the person being evaluated and can provide third-party history and observations.

Then, we find clarification on how to frame a referral question, the necessity of a proper literature review, cautions on misinterpretations or going beyond the data (a dilemma as all clinical opinion by definition requires going out on a limb to some extent), and finalizing conclusions that factor in all discoverable alternative interpretations. Incremental validity is discussed and a caveat as to computer-based test interpretations, the bane of many of us when utilized inappropriately by psychiatrists with no appreciation of the limitations of such data.

Malingering is a “tread lightly” issue that hovers over every evaluation of psychological distress, including chronic pain complaints. All ethical and seasoned professionals know that it must be ruled out in the forensic context. The authors describe how to do this in a manner that insults no one and short changes no one. It simply must be done, like an unpleasant part of a routine medical examination. Ample and gratefully received research is intertwined with clinical practice suggestions. Since we all want to feel “clean” at the end of the day, preserving the dignity of the plaintiff, the respectful handling of this uncomfortable topic is enough on its own to recommend this book.

Proper report writing is also addressed, with emphasis on a logical progression from history and presenting complaint, to methods and results of assessment, to clinical opinions, to summary and conclusions. The ten most frequent problems with reports are outlined. Satisfying the referral question is addressed in such a way that testimony should follow clearly and concisely. Transparency is emphasized, which is to say that each opinion must be based in empirical evidence to the extent possible

This is a book you will want to refer to frequently and recommend to every personal injury attorney and to every psychological expert you may engage. Any psychological expert that relies on this book as a roadmap for excellence in the forensic field will be assured of success in the courtroom. If you have just one book on the subject in your library, this is the one to have.