

Five Critical Issues When Using a Neuropsychology Expert to Build Damages.



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Disclosures



- I am not compensated for today's talk.
- I am the author of multiple science and trade books.
- I am the author of multiple psychological and neuropsychological tests.
- I direct a fee for profit neuropsychology clinic conducting clinical and forensic evaluations, case consultation and treatment.

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My Bio

Sam Goldstein, Ph.D. is a Board Certified Pediatric Neuropsychologist. He is also Board Certified by the American Academy for Cerebral Palsy and Developmental Medicine, the American Board of Forensic Examiners and is a Certified School Psychologist. He is a Fellow in the American Psychological Association and National Association of School Psychologists. For the last forty-two years he has served as the Clinical Director of the Neurology, Learning and Behavior Center in Salt Lake City providing evaluation, case management and treatment for 400 to 500 children and adults yearly. He has authored, co-edited, or co-authored over fifty clinical and trade publications, three dozen chapters, nearly three dozen peer-reviewed scientific articles, and eight psychological and neuropsychological tests. He is the Editor in Chief of the *Journal of Attention Disorders*. During his career he has evaluated over 1500 individuals in forensic matters. He has been deposed hundreds of times and testified in multiple jurisdictions. He also provides research updates on his website concerning issues that follow the nexus between forensic neuropsychology and litigation.

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About Experts.



- (1) the testimony is based upon **sufficient** facts or data;
- (2) the testimony is the product of **reliable** principles and methods; and
- (3) the witness has **applied** the principles and methods reliably to the facts of the case.

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About this Expert

Based on the foregoing, the Court concludes that Dr. Goldstein is qualified to testify as an expert in the field of neuropsychology. He has extensive knowledge on the subject of neuropsychology. He also has extensive experience, training, and education in this field. Importantly, his curriculum vitae and testimony establishes that he is recognized by his peers as a neuropsychologist.

Dated this 10 day of October, 2011.

BY THE COURT:

Thomas L. Willmore
Thomas L. Willmore
DISTRICT COURT JUDGE



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Knowledge is power.

Sir Francis Bacon



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The greatest obstacle to discovery is not ignorance -
it is the illusion of knowledge.

Daniel J. Boorstein

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Why Hire an Expert?

- Support your advocacy.
- Negate their expert.
- Find truth.
- It's the thing to do.



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How “Expert” are Experts?

- Education
- Experience
- Qualifications (e.g. degrees)
- Knowledge of the legal system.
- Understanding of their role.
- Appreciation of the boundaries of their given expertise.
- Appreciation of what beyond a “report” of opinions that assists you.



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Can an Expert Become a Treater?

Can a Treater Become and Expert?



**YES FOR THE FIRST.
NO FOR THE SECOND.**

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What You Must Provide to Your Expert

- A full set of records or explanation why you have cherry picked provided records.
- Specific questions you want answered in the evaluation.
- Assistance in scheduling if meetings or assessments are necessary.
- Completion of the retainer agreement.

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What Must You Insist Upon From Your Expert?

- A preliminary review of records and feedback.
- Initial “unofficial” response to your referral questions based on record review.
- Timely scheduling.
- A finished written and/or oral report within 2 weeks of obtaining final data.
- A report, not a bible.

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What Must You Insist Upon From Your Expert?

- In plaintiff matters a willingness to meet and explain findings to client.
- Help in identifying other needed experts or treaters.
- Availability to respond to your needs moving forward.
- Avoid making too many recommendations that most plaintiffs don't follow.
- Knowledge of the legal system. Discover opinions
- Knowledge of the subject that can be conveyed to you.

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Why Take the Expert's Deposition?

- Discover opinions
- Discover strength of foundation for the opinions.
- Evaluate performance under fire.



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Effective Deposition Strategies

- Don't waste time.
- Find out my opinions first.
- Establish the limits of science in my opinions.
- Find out what if any of your expert's opinions I agree with.



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Preparing the Expert For Trial Testimony

- Cover high points in my vitae.
- Set foundation of the science of what I do.
- Cover review of my procedures.
- Offer my opinions.
- Cover basic points in the testing but not every score.

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Best Trial Cross.

- Be brief.
- Raise doubts about my 3 key points.
- Focus on science.
- Make sure jury understands correlation versus causality.
- Don't waste time on fees, who I have worked for, membership organizations, my research and writing focus, or clients I evaluate clinically, or if I have played golf with the retained attorney.

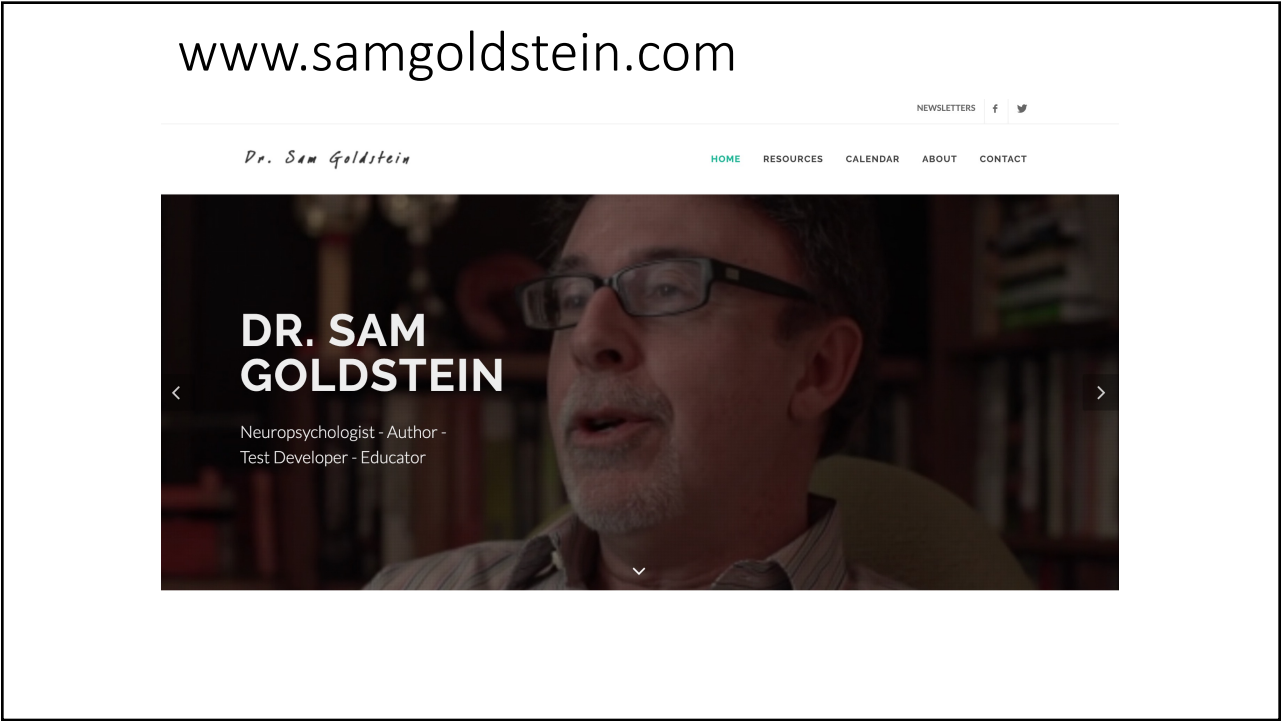
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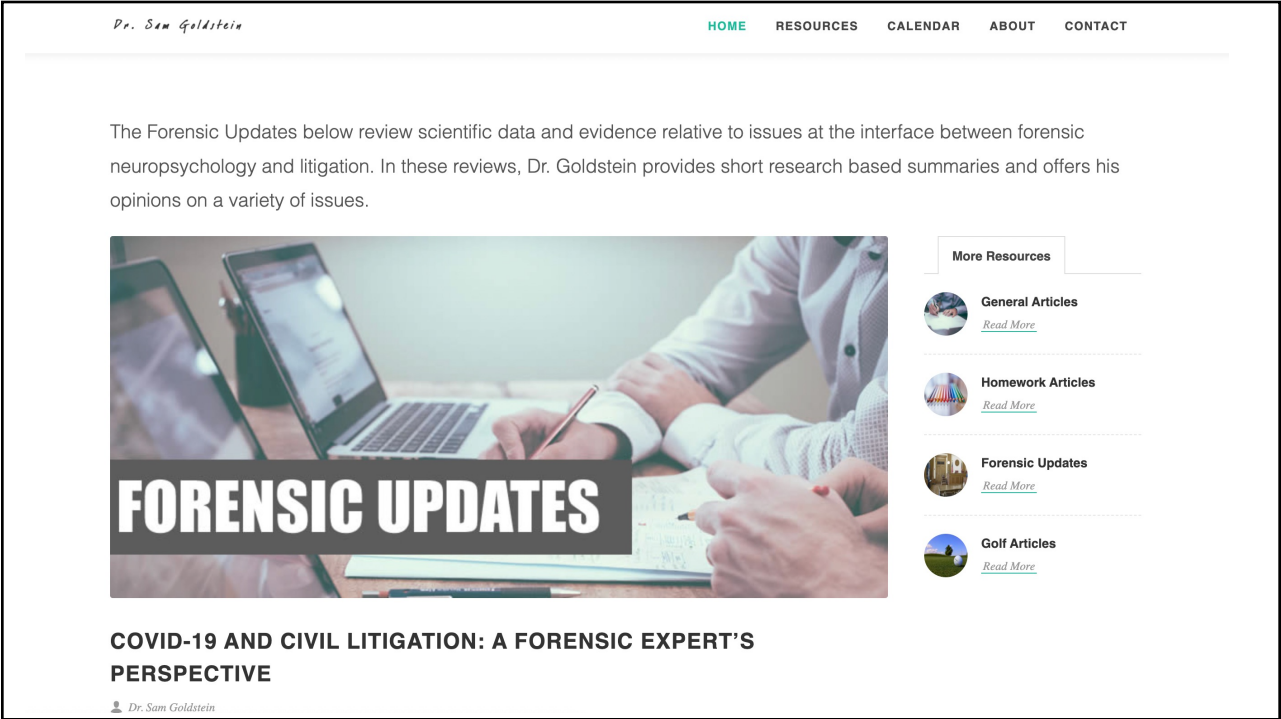
Five Critical Issues

1. Appreciating the difference between assessment of impairment versus assessment of ability and knowledge.
2. Assessment in a laboratory setting with neuropsychological tests versus evaluating everyday functioning.
3. Appreciating that neuropsychologists assess functional outcome and perhaps are not best used to make the case for post-accident brain injury.
4. The components of an effective defensible evaluation building damages. This includes history, extensive review of medical records, patient and observer reports, testing and a science as opposed to pseudoscientific assessment of all the data.
5. The slippery slope some experts find themselves on in an effort to comply with the Utah new rules for experts.

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Questions?

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TEDx: <https://www.youtube.com/watch?v=isfw8JJ-eWM>