Hi, this is Pat Iyer with Legal Nurse Podcast. We have a show every week in which we bring in experts to talk about various aspects of medicine, legal nurse consulting and running a legal nurse consulting business. One of the subjects that has long fascinated me has been the forensic aspects of medicine. I’m the person who likes to read about serial killers, who loves to solve problems, and who finds forensic psychology fascinating in terms of how people react and what they do.

I brought with me on the show today Ken Manges, who specializes in the field of psychological and vocational evaluations, treatments, and consultations. He testifies as an expert witness. He’s a certified forensic psychologist, a vocational expert, and the President and CEO of Ken Manges & Associates. He’s qualified and has testified in federal, military and state courts. He has expertise in both psychological and vocational testing, and interpretation.

Ken, welcome to the show.

Thank you Pat. I appreciate the invitation and the opportunity to share my interest with you.

Tell us about how you got started in this field.

It’s an interesting story. We’re talking about 51 years ago. I was a soldier in Vietnam, and as soldiers we were not infrequently called out to protect various locations. At that particular time, I was stationed in Saigon, Tan Son Nhut, where General Westmoreland was stationed as well. We were told to go to sleep with our boots on. We could untie them, but we couldn’t take them off because we were anticipating being called out, which we were in the middle of the night. At about 3AM, we were called out to protect the soccer field because Bob Hope
was going to be there the next day. Rest assured, the soccer field survived.

The next morning, I went to chow and the sergeant comes up to me and he says, “Manges, after chow I want you to go over, and I want you to see those Viet Cong who tried to kill us in the middle of the night.” I said, “Sarge, I’ve seen dead people before, but no thanks.” He said, “Manges, did you think that was a request?” and I said, “Yes, Sarge,” so I went over to see the misshapen bodies of the people who tried to overrun our camp the night before.

Although I was struck by the dismemberment, and the blood and the guts, what really shocked me was that I recognized three of those men. The reason I recognized them was they were our barbers, and that freaked me out. I was trying to appreciate and understand what made them flip from wanting to cut our hair doing the day to wanting to cut our throats at night.

Before that time, I was your average GI Joe, but after that I had a mission. I wanted to figure out what would make them change, what would have them thinking that they wanted to kill the people whom they had a close relationship with. Because of that, I wanted to figure out how to best understand that and I became a forensic psychologist.

Pat: You came back from the war, I assume that you became a psychologist and then specialized in forensic psychology.

Ken: I entered college. I wasn’t a college student until after the war, a GI bill, and then I said, “Hmm, psychology.” I finished an undergraduate degree and I said, “Is that all there is?” When I finished the master’s, I said, “Is that all there is?” I finished the PhD and I said, “Is that all there is?”

I was called to do forensic evaluations and testify a few times. The first time I was sliced and diced. It was not a comfortable situation, and I said, “I don’t know that I want to go through this again,” but I was enticed. I tried it again and nope, no way. Then I tried it one more time, and I
realized that at that point the attorneys really didn’t have an appreciation of how to use my skills.

I didn’t know that at the time, but I realized that after getting my certifications from the University of Virginia in 1984 in Forensic Psychology, of course, that was after my PhD. I then could appreciate and understand what the federal rules were, what the state rules were, how to testify, how to do evaluations that would withstand or that I could support during the scrutiny of cross-examination, depositions, discovery, and direct testimony. I used that skill from school to pursue a more forensic-oriented practice.

My first practice in that area was in clinical work when I was doing clinical therapy, which I still do. I still practice. A matter of fact, in order to testify as a forensic expert, as a psychologist, you must maintain a clinical practice, which I do. I then developed my forensic practice to do evaluations, both criminal as well as civil.

Pat: What separates clinical psychology from forensic psychology?

Ken: A good question. It’s not uncommon that I am asked to review cases in which a clinician has offered an opinion, a cause or opinion between the plaintiff’s condition and what it is that they are asserting as damages in a legal case. It turns out that if you’re a clinician, you have an advocacy role for your clients and as a forensic, you don’t. You are neutral.

The difference between being a clinician and a forensic is that a clinician is offering treatment, and a forensic is offering causative evaluations and opinions with regards to what the circumstances are that the individual is experiencing that may have led them to the symptoms that they’re talking about. A clinician cannot testify as an expert. They can be a fact witness. A forensic is not a clinician doing treatment. He or she is doing evaluations from a neutral position.

Pat: Then, if I understand what you’re saying, in the example of a person who is accused of committing a murder, the question is what was the state of mind of that person at the time of the crime? The clinician
would not be qualified to offer an opinion, but the forensic psychologist would be. Is that right?

**Ken:** The clinician could offer a fact opinion, saying that this individual suffers from delusions. They suffer from paranoia. They suffer from other circumstances which they are treating. The forensic can say that those conditions are the cause of their incompetency.

**Pat:** Okay. How did you learn those pieces? You mentioned earlier of the federal rules, the state rules on how to present testimony. Were you self-taught? Did you go through a course? Was it the School of Hard Knocks?

**Ken:** All of the above. There are courses that are offered for expert witnesses. There are seminars that I myself present, and so, as a teacher, you may know that you’re going to know a topic very well. Your students will grill you, so you must know it very well. As a matter of fact, it’s not uncommon for me to present to other experts about the areas that I am an expert in.

In April, I’m scheduled to go to Tucson to present to the American Board of Vocational Experts under Federal Rule 35. Federal Rule 35 allows opposing counsel to sit in on or videotape the interview that the expert does. Recently I had a series of them in which there were two, in which one videotaped me, one audio taped me, two different cases, and then the third one, the opposing counsel demanded to sit in on the evaluation. It was very disruptive, so I can appreciate in that case Federal Rule 35 is in terms of the right for the plaintiff’s counsel or opposing counsel to sit in or to video- or audiotape the expert witness’s evaluation.

I always ask, “What are the parameters of the statute that I am being asked to offer my opinion about? What’s the opposing counsel’s name? What’s the opposing counsel’s witnesses’ names?” to see if I have any conflict, but also to see if there are any elements of that particular case that go beyond the bounds of customary rules and statutes that I’m familiar with. I testify all over the United States, and
there are some circumstances that I’m just not familiar with because they haven’t occurred with me in certain instances.

There’s a thing in military court where there’s *ex parte* communication between the expert and opposing counsel. That I was very unfamiliar with. They could invite me in without the plaintiff or the defendant’s representation there. It was more like an informal deposition. That’s very unusual for me, but it’s allowed in military courts. I always ask beforehand, “What am I facing?”

**Pat:** You also have this combination which I don’t think is common of being involved in clinical and forensic psychology, and also in vocational expertise. How did you combine those two pieces?

**Ken:** I have always been interested because of my degrees in both. My PhD is in counseling and personnel services. I started doing treatment, and I started working with children, then I worked with adults. In working with adults, my expertise is in terms of the counseling and personnel services. They were asking me to do evaluations, either self-referred or other referred agencies, about the vocational skills and choices that people are making because of either being let go of a job that they had for many years or wanting to make transitions to new work.

When I became involved in forensic work, I was asked, “Can you evaluate this person’s damages from a vocational perspective?” and I said, “Yes” because I have that background. I hadn’t pursued the psychological side, but I said, “Yes, I can pursue that.” I then reached out to the community at large and I said, “Where can I get the competency training in terms of testifying as a vocational expert?”

The only federally recognized association in that area is the American Board of Vocational Experts. I said, “That’s a good group to join,” so in 1987 I joined that group. I climbed up the administrative ladder, and in 2000 I was the President of the American Board of Vocational Experts.

The law caught up with that interestingly because of, as you are probably familiar, the pain and suffering aspect. There are caps on pain and suffering for damages in civil matters, and usually they’re capped about $250,000
but there are no such caps in vocational cases. Many of the communities in which I testify are very conservative, and so the damages that a plaintiff’s counsel may be able to obtain in a matter in which the person has been terribly injured, if they only pursue pain and suffering, there is a cap in what they might be able to return in terms of compensation.

I am called upon to do both of those things, both the vocational side and the psychological trauma side. In some cases, I can certainly tell stories, as most of your listeners might also be able to do. I have multiple cases in which there are multiple plaintiffs in which I’m doing one or the other or both.

**Pat:** That’s an interesting point, Ken, because of the states that have caps, and for the benefit of our listeners, not all states in the United States have caps on pain and suffering. The attorneys are focused on what are the damages and can there be vocational loss? Is there loss of consortium, and are there other types of losses, medical bills that influence whether a case is even attractive for a plaintiff attorney to file?

I know that you have been involved in evaluating losses for a variety of types of cases. What do you do, or have you encountered the situation of a person who’s never worked, such as a child? How do you evaluate the losses when that person is catastrophically injured?

Let me break into the discussion at this point to share a resource with you that I know is vital to expert witnesses. Many experts are anxious about testifying. I saw
this so frequently that I brought you two experienced expert witnesses to provide a one-hour training called, “Take the Terror out of Testifying”.

Does the idea of testifying at a deposition or trial give you butterflies? Many legal nurse consultants fear giving deposition or trial testimony. In this one-hour training, two experienced expert witnesses share lessons learned from the hot seat.

*Take the Terror out of Testifying as an Expert Witness* will:

- Show you effective ways to deliver testimony while avoiding common pitfalls
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- Give you greater confidence about testifying
- Help you keep from blurting out something you shouldn’t
- Show you how to effectively present your CV to prevent mischaracterization of your experience and accomplishments

Get this training at this link: http://LNC.tips/terror and use the code listened to get a 25% discount. Now let’s return to the show.

**Ken:** It’s not an uncommon phenomenon. With catastrophic injuries where the person has died as a consequence of the injuries, as an adult you may have a track record. You may have a work history that you can use to project had they survived, using the forensic journals of economics. You can project how many average work life years they would have remaining had they not been killed, but in a pediatric case where the person, the child, has never worked, you are not relying upon obviously their work history.

I have probably three active cases in that regard, so I’m fairly up-to-date in terms of what you look at. You look at what the graduation rate is for the community in which they live in terms of high school. You look
have intellect to complete high school and to go on to other levels of higher education.

You look at what the parents have done in terms of their own education. You look at what the parents have done in terms of their own job-seeking skills. You craft a profile within a reasonable degree of certainty what the likelihood is of a person in that home with those parents in that school system to have attained should they have not been harmed or should they have not been injured the way they have been.

The more difficult things certainly are those when you have disfigurement, post-traumatic stress disorder, and the number of digits or appendages that they still may be left with, because then you look at other nuances within their world of work and how those restrictions would play themselves out.

I do that in both catastrophic injuries where there are disfigurements, there is burning, there is loss of limb, and also sexual molestation that happens as well. If I’m asked to testify for a plaintiff, and they ask me what we have going forward in terms of their quality of life, I talk about the possibility or likelihood within a reasonable degree of certainty what milestones at which they might be retraumatized. It might be when they’re going through puberty. It might be when they’re graduating school. It might be when they’re getting married, in which their injuries come into play in terms of both employment as well as quality of life.

**Pat:** As you were talking, I was thinking about a couple of cases that I worked on involving children who were spinal cord injured in motor vehicle accidents because they weren’t restrained properly. There were all kinds of implications of that type of injury, one child was two and the other child was 10, of the cases that I’m thinking of. The vocational impact, the medical impact, the body image impact, they’re just phenomenal damages when you have that type of a situation for a child.

**Ken:** Sure, because what happens is from a plaintiff’s perspective, relates to self-esteem. They now perceive themselves as impaired, as disabled,
and injured parties. Some identify themselves as being victims, and so that projects itself forward in terms of how they would then greet the world and how they would be in terms of competition, entering into school, and peer relationships. All of those things are things that I consider and look at.

It’s not uncommon for a defense counsel to call me not to testify, but to look at whether or not the assertions by a plaintiff’s experts are overreaching, consistent with the literature or inconsistent with the literature, and how that plays into it, how that expert from a plaintiff’s position is not being straightforward in terms of their assertions.

Whenever I look at a case, whenever I’m asked to be involved in a case, I look at it from both sides because I fully expect that I’ll be cross-examined about whatever it is that I opine about. That comes with the territory, but if I don’t consider that opposing counsel’s expert’s position, then I’ve done a disservice to my client, and my client is the attorney. My client is not the injured individual. I’d do a disservice to my client because I’m not prepared for those cross-examination questions, the scrutiny of the basis for my opinions.

**Pat:** And attorneys can be very persuasive in trying to sell their theory of the case and having their experts testify the way that would be most helpful to the attorney. I remember several discussions I had with attorneys over the years emphasizing that my role was to let them know about the strengths and weaknesses of their case so that they wouldn’t be surprised by their adversary in the courtroom. I would imagine that you have had similar discussions with attorneys.

**Ken:** Many times. I often ask, “Has the question come up about loss of consortium, quality of life? Is there an opinion with regards to long-term consequences in terms of employability?” They will call me in from a psychological standpoint, and I would say, “That’s fine, and I can share with you what some of the challenges are in this manner. Does opposing counsel have a vocational expert? Are you pursuing that?” I ask them those questions as well.
Pat: Have you ever had your opinions challenged with a Daubert ruling?

Ken: On several occasions opposing counsel have brought in their laptops, have imposed upon the judge to remove the jury so that they have the opportunity to voir dire me. They will then, and they have, taken my website, projected it on to a 20x40-foot wall, and examined me on every word that I have in my homepage. That’s happened several times.

I have had opposing counsel come up to me while I’m on the witness stand and to slam down in front of me depositions that they have had printed out, and they had my name on them. They would say, “You testified about these cases, didn’t you, and this person was at fault, and that person was at fault?” I said, “Yes, that’s my name, but I didn’t identify whose fault it was. That’s not my role. My role is to talk about damages.”

The answer to your question is yes, I’ve had Daubert challenges and I believe that I have been genuine in my presentation and have relied upon the scientific evidence. I have never not been able to testify because of a Daubert challenge.

Pat: Just to wrap this up, when you testify what are some of the obstacles that you have faced in addition to the Daubert challenge?

Ken: It’s not uncommon for me to be mindful of what the limitations are for my testimony. have to recognize that I have multiple areas of specialty. We didn’t go into the fact that I’m a forensic expert, as a disabilities expert, as an expert in pain management, as an expert in testing and measures, so all of those come into play.

It’s not uncommon for opposing counsel to want to say, “Doctor, you have this degree. You have this certification. You have this diploma. Why is it that you didn’t evaluate that?” And I’m locked into what the referred counsel asked me to evaluate. I say, “I wasn’t asked to offer an opinion about that,” so that’s a challenge to me. Then they’ll say, “Here’s a hypothetical for you, doctor. What if…” and then they’ll give me a series of statements.
I have to share that that’s an interesting hypothetical, but is it in context? I don’t know what was said before that, what question led up to that, whether or not that is the specific statement that the person was responding to.

Then they’ll show me a document which I had not seen because counsel who is making the referral didn’t think that it was important that I see that for whatever reason. They said, “It’s a medical record. It doesn’t address what you were talking about, Doctor, but it’s a part of the record.” I’ve learned to say, “I want all discoverable documents.”

I was in a deposition the other day and they introduced this medical note from the plaintiff’s doctor. I said, “This name up here, that’s not the doctor’s name. This is the physician assistant, so it’s not the doctor offering that opinion. It’s the physician assistant, and I don’t know if the physician assistant is restating what this person has been seen about before or if this is new data. I can’t answer your hypothetical in the absence of getting more information.”

Another challenge, another obstacle is for me to present all of my records. I said, “Fine,” obviously I have to do that. I cannot withhold that, but they’ll say, “We want to see to test data.” I said, “I’ll share with you the summary, but I won’t share with you the questions.” “Why not, Doctor?” Well, because they’re copyrighted. They’re not mine to freely give away.

They’ll say, “Where is that stated, Doctor” and I will say, “It turns out that I asked the test publisher in 1997, and if you want to see that letter, I’ll get it to you, but I won’t disclose that without some protocols.”

Here’s how I resolve the issue for the opposing counsel. I put the raw test data in an envelope. I write across the back, “This Is Sealed and Only to Be Opened by The Court.” I say, “That’s how I dealt with it in the past because I don’t want to prevent you from seeing that data if that’s something you find necessary, but it should only be disclosed to another expert who’s licensed to be able to interpret those questions.”

That’s an obstacle because they may take one question out of context and then they generate hypotheticals of their own, which is unfair to who I
evaluated, and it could be from either side. They may misunderstand that, so it’s an obstacle to maintain the criteria that I have as an ethical, responsible psychologist and vocational specialist not to disclose data that attorneys should not have in the absence of them having an expert to advise them.

**Pat:** I understand the distinction. How can our listeners find out more about you and be in touch with you?

**Ken:** I have a website. It’s called [www.drmanges.com](http://www.drmanges.com), that’s my website.

**Pat:** Thank you so much for being on the show and helping us tease apart some of the issues between clinical psychology, forensic psychology, your role in vocational evaluations. It sounds like you have got multiple facets of knowledge and resources that you can offer attorneys. I think that’s great.

**Ken:** Pat, I really appreciate the opportunity to talk with you. We didn’t touch at all about the worker’s comp issue. We didn’t touch Social Security. We didn’t touch about the criminal matters and those areas in which I spend a lot of time as well, but I appreciate all the work that you do for your constituency and thank you so much for your invitation.

**Pat:** Thank you.

This has been Pat Iyer and Dr. Ken Manges talking about forensic psychology and clinical psychology. Please be sure to like this show and tell other legal nurse consultants about Legal Nurse Podcast. We’ll be back next week. We’ll have a new show and a new interview. Thank you for joining us today.

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