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More on Standards

Scott Streater, D.V.S.

Standards, standards, standards, how many times have we heard that word and yet we as practitioners still for the most part are errant in our lack of their use. If something exists it can be measured. If something cannot be measured, it does not exist, Thorndike was right. Oddly enough we can thank the Arabs for their help in adapting description and measurement to things that exist. Our Moslem brethren concocted our numbering system, the concept of algebra and the algorithm, which is much of the descriptive measurement we use today.

The use of standards requires concepts of measurement and language or symbols to describe the concepts utilized and the quantities measured. The United States Department of Labor (US DOL) recognized this when they set out to establish the measurement system we are all familiar with which is codified in the Handbook for Analyzing Jobs (HAJ)(1972, 1991 revised). Carefully constructed and standardized to describe the work available in the United States, this descriptive standard is the system of measures we all refer to when we utilize the Dictionary of Occupational Titles (DOT) in referencing and describing work.

While the DOT has some years on it and has become less accurate over time, the basic system of measure and description has stood the test of time and has been adopted by many of the world's

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ABVE 2004 FALL CONFERENCE

October 1 - 3, 2004



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President's Message

By Harold Kulman, ABVE President, 2003-2005



As any editor will do in order to keep to production scheduling, Cynthia (Cindy) Grimley, our Newsletter editor has been pestering me about writing the President's Message. She says things like, "write something light and inspirational, don't be formal, and there has never been a Newsletter without a President's message." Well, this was enough to get me started writing! The reason for my procrastination is that my wife, Nancy, and I are downsizing. We put our eight room house with attachment office up for sale and it sold so fast (three days) we could not find another house quick enough. Consequently, we are moving into an apartment until we can find a

home.

You are well aware that we are all very busy people and we mean well when we try to get things done on time, but many times they don't work out the way we want them to. If Cindy didn't pester me, I would not be writing this light and really not inspirational message.

When Cindy mentioned light, it reminded me of weight. You know like, physical exertional levels of sedentary, light, medium, etc. And, this made me think about the fact that I have never purged my files since I began private practice in 1980. When I gathered all my files together to be incinerated, I had to rent a huge dump truck to put them in. I was shocked when the guy at the weigh station said I had 2.4 tons of paper in the truck...that is not light!! I was even more shocked when he gave me the bill for the incineration. That was also not light. To prevent another panic attack on my part, I will not tell you what it cost me. When I looked at this huge pile of folders, I could not believe that it represented 24 years of my worklife. How could I have produced so much paper?

As if this problem was not bad enough, added to it is the fact that when you move, you have to make a lot of decisions and lift, carry, bend, squat, kneel, and strain your back and knees. The decisions are many...keep this, sell this, throw this out, whom do I give this to, and who asked for it. This all results in a real mind spin. As a result of all of this, Nancy says she is going to have a nervous breakdown and I am ready to leave for Las Vegas now. Both Nancy and I, being involved in other organizations, which also expect us to keep our commitments, further complicated the move. And, of course we have to keep our business going and earn a living.

So, we are all busy people in this vocational world and it is difficult to get things done. I guess what this message mostly amounts to is an excuse for me not getting it done on time. However, the lesson to be learned is not to wait to the last minute to get something done, especially to the point of having a friend pester you. Our Newsletter is a great means of communication for our organization and we should all make good use of it. Do not wait for the editor to request articles. If you have an article in mind, do it and send it in right away. Don't procrastinate like your President!

Future ABVE Conferences

Mark Your Calendars Now!

Fall 2004 - Las Vegas, NV

October 1-3, 2004

Alexis Park Resort

Hotel Rate: \$ 129.00 Single/Double - Reservation Number (800) 582-2228

Spring 2005 - New Orleans, LA

March 18 - 20, 2005

Hotel Monteleone

Hotel Rate: \$ 169.00 Single/Double - Reservation Number (800) 535-9595

Fall 2005 - San Francisco, CA

Dates To be Determined

Cynthia Grimley, MS
Newsletter, Editor

Dear Members:

A few facts regarding *The Vocational Expert*. It is not known if there was a formal newsletter prior to 1993 or at least as we know it today. John Williams was the newsletter editor from 1993 until 1996. Lindette Mayer was editor from 1997 until early 2000. I became the newsletter editor beginning Spring 2000. I will conclude my term as newsletter editor with this issue. I have been the Editor of *The Vocational Expert* since Spring 2000 until Summer/Fall 2004.....it does not seem possible that four years have gone by already. My successor will be Ellen Nagourney. Ellen will resume the duties of the newsletter. I am confident that Ellen will do well with this position. Let's not forget to keep our eyes open and submit articles of interest, especially for the Information for the Work Place column.

Just a reminder that the newsletter is being sent to most of you via email and it is very important that you keep BTF updated of any email address changes.

So long for now.....

Cynthia Grimley, MS
Newsletter, Editor

WEBSITE REVIEW

Peter Nordberg is the owner of www.DaubertOnTheWeb.com. Attorney Nordberg is a Harvard-educated and brilliant litigator. This website is developed primarily for attorneys but I found many interesting things that would give insight to the expert preparing for court, especially Federal Court.

One of the directories on the site is titled Tactics. Mr. Nordberg provides suggestions for attorneys and "some things to try." Of particular interest is Tactical Notion #5: Remember the Report. Mr. Nordberg says, "the expert must be made to understand that depositions are not seminars. There is no requirement for the expert to rephrase the required reading to the satisfaction of the opposing counsel.....If the deposing counsel's question is addressed on section 1.3 of the report, the witness is allowed to say that, and should." Under the directory of Tactics, there is a Generic Expert Deposition Checklist. This may be helpful to the expert who has had very little experience testifying or who does not testify that often. This checklist will refresh your memory as to the types of questions that may be asked of you when testifying.

Post-Daubert Decisions in the Supreme Court is another directory. There are currently four Supreme Court decisions elaborating on Daubert. General Electric Co. v. Joiner (standard of review), United States v. Scheffer (polygraph evidence), Kumho Tire Co. v. Carmichael (non-scientific experts), and Weisgram v. Marley Co. (retrial). The links to the cases are found within the website. This will lead you to *discussions* of those decisions. Links to

the opinions themselves appear within each discussion.

There is another directory titled Resolving Daubert Challenges. Daubert carries implications for many stages of litigation beginning with the courts initial scheduling conference and continuing all the way through trial and appeal. This section lists the rules so attorneys and experts are aware of them.

Expert discipline areas are listed alphabetically and attorneys can see how experts in these various disciplines are faring. Vocational experts are listed under the discipline of Psychologists and Psychiatrists. There is also a User Forum where you can ask a question or state a view. This area does not appear to be widely used. One would expect to have links to other Daubert related websites, and this is provided. There is also a link to the Circuit Courts. Mr. Nordberg also posts a list for disclosures stating that the site does not provide legal advice.

The website has value for the expert to learn how an attorney may want to prepare you for a Daubert Challenge or how to challenge the expert in a deposition. To read more, link to the above listed website.

Submitted by:

Cynthia P. Grimley, MS

Journal Guidelines Available

Those interested in submitting manuscripts for *The Journal of Forensic Vocational Assessment* can request specific guidelines from:
Bruce Growick
Phone: 614-292-8463.
mailto:growick.1@osu.edu

The American Board of Vocational Experts, never has and currently does not endorse the use of any specific tests, test batteries, or commercial products.

Welcome to the Following New Members

Congratulations to the following new members, who have applied for membership, upgraded their status or reinstated their membership. Welcome to all!

Patricia Anctil, Associate
Lisa Anderson, Associate
Eizabeth Bauer, Associate
Michael Boissevain, Associate
Jill Brown, Associate
Daniel Cohen, Associate
Patricia Costantini, Diplomate
Cindy Delgado, Associate
Marianne Dodd, Associate
Daine Durr, Associate
Stephanie Lynn Emirzian, Associate
Sean Fitzgerald, Fellow
Gale Gibson, Associate
Russ Gurley, Fellow
Jane Hall, Fellow
Richard Hall, Diplomate
Dennis Helffenstein, Diplomate
Christine Kampi, Associate
Paul Lukasik, Associate
Jeff Malmuth, Diplomate
Thomas Mehaffey, Diplomate
Ellen Nagourney, Diplomate
Carol Nimietz, Associate
Vincent Pellegrino, Associate
Cloie Petgrave, Diplomate
Lisa Ann Porter, Fellow
Grace Rafael, Fellow
Sharon Ringenberg, Associate
Jeannine Salck, Associate
Julie Sawyer-Little, Fellow
Dianne Simmons-Grab, Associate
Dale Thomas, Diplomate
Leslie Tuttle, Associate
Mindell Woehr, Associate

More On Standards Continued from page 1

countries. It is presently published in multiple languages and works well in its ability to describe work in all parts of the world.

This descriptive system with its system of measure allows us to speak and write in standardized terms and be understood by all that use it. That is the beauty of a standard. Look at our number system. It is also Arabic and is a standard understood by all. The real wonder is not that one plus one is always two but the real marvel is that one of anything and one of anything is always two of that thing. The number system works on apples, oranges, and peanuts. In fact it never fails us. The same is true for standards of measure in the world of work.

Speaking of work, how many of you know that there is a standard definition for work? Published by the US Department of Labor in the early '70's, it is as follows: Work is the sustained performance for wages, of a specific physical and/or intellectual function, during a fixed period of time; to meet a competitive standard, at a place and time designated by an employer, and in a setting characterized by certain interpersonal, and environmental conditions.

In addition, a job is a specific type of work. A job description is unique to a single employer, industry or place of business. And finally, a job title is a specific description of work which has been analyzed by the US Department of Labor and has an identifying number, known work capacities attached to the title and can be referenced in the Dictionary of Occupational Titles (DOT) and related publications.

I rarely utilized this language in a written report but I sure worked the daylights out of these definitions in testimony, usually to great advantage to the points I was trying to put across. Standards matter. With them you can be in charge of your testimony as opposed to the attorney who is trying to disarm you and your position.

A Vocational Evaluation sets forth the basic identification of a client's capacity to enter the labor market, earn a wage or qualify for long-term disability payments. The client's past work and the ability to acquire work and produce a wage is a key element in the complicated puzzle of personal injury, workers compensation, social security disability and divorce. Anytime a client's ability to work is in question, nothing is more revealing of future capacity than a Vocational Evaluation. The Vocational Evaluation consists of several parts or segments, the physical capacity and environmental conditions portion is perhaps the most difficult to present. To provide this information I have in the past utilized a form detailing the factors to be considered. It is similar to a form we have all seen, with the exception that categories are explained and the responses can be gauged based on having all of the possible response categories. Much of the time outsiders have little idea of what they are responding to. Being able to view the possible response items aides the evaluator in their response accuracy. I hope you find this information helpful.

The following is a copy of the form, which you may copy and use as tool in your practice.

This information and other ideas and concepts are available at the conferences and through research articles sponsored by the American Board of Vocational Experts. Hope to see you in Las Vegas this fall.

Residual Functional Capacity Form (RFC)

Use of this form will permit a reliable, standardized, and therefore, valid assessment of your opinion regarding the residual functional capacity of your patient. There are 13 standardized physical capacities and environmental tolerances which fall into exertional, postural, manipulative, visual, communicative and environmental classifications commonly found in all functional capacity literature. They are based on and follow exactly the U.S. Department of Labor's literature. These scales are designed to assist you in making decisions. They will aid in decision making by presenting a specific category, defining it and then offering the graded levels of that category. It is neither difficult nor confusing; a person simply "fits" in the level you believe they fit in. It is opinion pure and simple but offered in a standardized fashion, which meets the measurement standards in evaluating work in the American (and by the way most of the world today) labor market. This system is more than 30 years old and has been very well researched and documented.

You will be asked to make a judgment about capacities and tolerances that are the rudimentary functional aspects of work. They will be portrayed over a standard workday. A standard workday includes periods of time, four in all that comprise the standard workday. The periods of time are called SIP's (standard industrial periods) and are four in number. Never mind what the patient tells you about their workday, we are interested in what you believe this person can do in a standardized workday because that is the usual or customary day they will be confronted within the U.S. Labor Market. The typical day includes the start of work at a specific time, a break, usually 1 hour and 45 or 55 minutes into the day, the noon break, another in about 1 hour and 45 or 55 minutes and the end of the workday. A total of eight hours with four Standard Industrial Periods (SIP's).

This form makes your opinion reproducible so that other professionals evaluating this individual can come to the same or very similar conclusions.

Exertional Capacities:

The exertional capacities are commonly called **Physical Demands (PD's)**. There are a total of six of them, all considered necessary to perform work. The physical demand of **Strength** requires tolerances in the areas of **sitting, walking, and standing**, as well as **lifting and carrying, pushing and pulling**. These demands are measured by intensity, the amount of weight involved, and duration, the accumulated total time spent throughout the normal workday. The worker must have the ability or capacity to perform the exertional task described, and then return to work the next day, ready to perform the task again. Intensity and duration of a task should be a definite consideration in making choices.

Please consider the following for your patient:

Strength Capacities:

Please consider work, which requires:

Occasional Lift/Carry including pulling upward for up to 1/3 of the working day or less (2.5 hours or 33%) of an eight-hour workday.

- Less than 10 pounds
- Up to 10 pounds
- Up to 20 pounds
- Up to 50 pounds
- 50 - 100 pounds or more.

Please consider work, which requires:

Frequent Lift/Carry including pulling upward more than 1/3 (2.5 hours or more) of an eight-hour workday.

- Less than 10 pounds
- Up to 10 pounds
- Up to 20 pounds
- Up to 50 pounds
- 50 - 100 pounds or more

Please consider work, which requires:

Push and Pull including slapping, striking, kicking and treadle operations, which can place impact, strain on joints, or a torque on the shoulders and the hip/waist area. Pull can include jerking. Normal SIP's are considered.

- Less than 10 pounds
- Up to 10 pounds
- Up to 20 pounds
- Up to 50 pounds
- 50 - 100 pounds or more

Please consider work, which includes:

Stand or walk (with normal SIP's) for a total of:

- One hour per day or less (minimal 0% - 12.5%)
- One hour, up to three hours per day (occasional 12.5 - 33%)
- Three hours up to five hours per day (frequent 33% - 66%)
- Five hours up to eight hours per day (constant 66% - 100%)

Postural Capacities:

Postural movement generally requires whole body or spinal motion rather than primarily extremity motion.

Please consider work, which includes:

Climbing and Balancing, which is described as the ability to ascend or descend ladders, stairs, scaffolding and ramps using the feet and legs and/or hands and arms.

- One hour per day or less (minimal 0% - 12.5%)
- One hour, up to three hours per day (occasional 12.5 - 33%)
- Three hours up to five hours per day (frequent 33% - 66%)
- Five hours up to eight hours per day (constant 66% - 100%)

Please consider work, which includes:

Stooping, Crouching, Kneeling, Crawling, requires an ever-increasing degree of spinal motion, beginning with the head tipped forward and ending with activity that requires nearly a full range of spinal motion. These activities, which were found by actual job analysis to be in combination more than 66% of the time in actual work settings. Therefore, they are combined here.

- One hour per day or less (minimal 0% - 12.5%)
- One hour, up to three hours per day (occasional 12.5 - 33%)
- Three hours up to five hours per day (frequent 33% - 66%)
- Five hours up to eight hours per day (constant 66% - 100%)

Manipulative Capacities:

Manipulative levels cover primarily the upper extremities, although shoulder and upper back considerations may play a roll in your opinions in this area.

Please consider work, which includes:

Reaching, Handling, Fingering and Feeling, found in combination by actual work analysis more than 66% of the time, they have been combined here. **Reaching** is defined as extending the hand or hands, arm or arms, in any direction (includes overhead).

Handling is defined as the holding or grasping, turning or otherwise working with the hands. **Fingering** is defined as picking, pinching or otherwise working with the fingers primarily (rather than with the whole hand or arm as in handling). **Feeling** is defined as perceiving attributes of objects such as size, shape, temperature, or texture by means of the receptors in the skin, in particular the tips of the fingers.

- One hour per day or less (minimal 0% - 12.5%)
- One hour, up to three hours per day (occasional 12.5 - 33%)
- Three hours up to five hours per day (frequent 33% - 66%)
- Five hours up to eight hours per day (constant 66% - 100%)

Visual Capacities:

Visual Levels include the capacity to use visual abilities. Work, which includes:

Seeing, the ability to perceive the nature of objects by the eye. This includes: **Acuity (far)** clarity of vision at 20 feet or more; **Acuity (near)**, clarity of vision at 20 inches or less; **Depth Perception**, three dimensional vision, able to judge distance and spatial relationships so as to see objects where they actually are; **Field of Vision**, the area up and down and to the left and to the right while the eyes are fixed on a given point; **Accommodation**, adjustment of the lens of the eye to bring objects into sharp focus and **Color Vision**, the ability to identify and distinguish colors.

- One hour per day or less (minimal 0% - 12.5%)
- One hour, up to three hours per day (occasional 12.5 - 33%)
- Three hours up to five hours per day (frequent 33% - 66%)
- Five hours up to eight hours per day (constant 66% - 100%)

Communication Capacities:

Communication abilities are concerning communication for business purposes. They include working with an employee or a customer and can include over-the-counter interaction or telephone communication where written messages are required.

Please consider work, which includes:

Talking and Hearing. Talking is expressing or changing ideas by means of the spoken word. Hearing perceives the nature of sounds by ear. These capacities are found in combination more than 66% of the time by actual job analysis, therefore they are combined here.

- One hour per day or less (minimal 0% - 12.5%)
- One hour, up to three hours per day (occasional 12.5 - 33%)
- Three hours up to five hours per day (frequent 33% - 66%)
- Five hours up to eight hours per day (constant 66% - 100%)

Environmental Capacities:

Environmental Capacities are concerned with where work is performed. Work exposure is the primary concern.

Please consider work that includes:

Inside, Outside or Both. **Inside**, implies the protection from weather but not necessarily temperature change. **Outside**, implies no effective protection from weather. **Both**, implies equal exposure to both inside and outside environments.

- Inside 75% - 25% of the day
- Outside 75% - 25% of the day
- 50%/50% Inside/outside

Please consider work that includes:

Extremes of Cold: Temperatures sufficiently low to cause marked body discomfort (43°s or lower, assumes adequate clothing protection).

- One hour per day or less (minimal 0% - 12.5%)
- One hour, up to three hours per day (occasional 12.5 - 33%)
- Three hours up to five hours per day (frequent 33% - 66%)
- Five hours up to eight hours per day (constant 66% - 100%)

Extremes of Heat: Temperatures sufficiently high to cause marked body discomfort (93°s or higher. Assumes adequate water, but does not assume shade).

- One hour per day or less (minimal 0% - 12.5%)
- One hour, up to three hours per day (occasional 12.5 - 33%)
- Three hours up to five hours per day (frequent 33% - 66%)
- Five hours up to eight hours per day (constant 66% - 100%)

Please consider work, which includes:

Wetness. Wet is defined as contact with water and or other fluids (assumes levels beyond those found in the climate).

- One hour per day or less (minimal 0% - 12.5%)
- One hour, up to three hours per day (occasional 12.5 - 33%)
- Three hours up to five hours per day (frequent 33% - 66%)
- Five hours up to eight hours per day (constant 66% - 100%)

Humidity. Humid is defined as atmospheric conditions with moisture content sufficiently high to cause marked body discomfort.

- One hour per day or less (minimal 0% - 12.5%)
- One hour, up to three hours per day (occasional 12.5 - 33%)
- Three hours up to five hours per day (frequent 33% - 66%)
- Five hours up to eight hours per day (constant 66% - 100%)

Please consider work, which includes:

Noise. Noise is defined as constant or intermittent sound greater than 80db, the level at which ear protection becomes a requirement.

- One hour per day or less (minimal 0% - 12.5%)
- One hour, up to three hours per day (occasional 12.5 - 33%)
- Three hours up to five hours per day (frequent 33% - 66%)
- Five hours up to eight hours per day (constant 66% - 100%)

Please consider work, which includes:

Jolting and Jarring Vibration: Jolting/jarring vibration is defined as movement, which by its nature produces jolts and jars which can cause bodily harm, a tractor over rough ground, or a scoop bucket ramming material to fill itself.

- One hour per day or less (minimal 0% - 12.5%)
- One hour, up to three hours per day (occasional 12.5 - 33%)
- Three hours up to five hours per day (frequent 33% - 66%)
- Five hours up to eight hours per day (constant 66% - 100%)

Please consider work, which includes:

Hazards. While all of these categories could be considered hazardous, hazards generally refer to situations involving unprotected height (greater than 6 feet), chemicals, electricity and machinery where the worker is in danger of losing their life, health or body parts.

- One hour per day or less (minimal 0% - 12.5%)
- One hour, up to three hours per day (occasional 12.5 - 33%)
- Three hours up to five hours per day (frequent 33% - 66%)
- Five hours up to eight hours per day (constant 66% - 100%)

Atmospheric Conditions:

Atmospheric Conditions include:

Dusts. Particles generated by handling, crushing, grinding, rapid impact of organic material such as ore.

Fumes. Solid particles generated from condensation from gaseous state, generally volatilization from molten metals. These are often accompanied by a chemical reaction such as oxidation. Metal fume fever is a concern.

Odors. Odors include noxious non-toxic smells.

Mists. Mists include suspended liquid droplets.

Gases. Gases include normally formless fluids, which occupy space and displace oxygen.

Poor Ventilation. Includes situations of poor or excessive air movement, which can cause the feeling of suffocation or exposure to drafts.

- One hour per day or less (minimal 0% - 12.5%)
- One hour, up to three hours per day (occasional 12.5 - 33%)
- Three hours up to five hours per day (frequent 33% - 66%)
- Five hours up to eight hours per day (constant 66% - 100%)

Comments:

Signature: _____

Date: ____/____/____