
Bar MCLE Luncheon Kick-off

On June 14, PCBA Associate Member Dr. John Fielder discussed evaluating expert mental health testimony at The Ridge. Dr. Fielder is a clinical and forensic psychologist and is the managing director of the Daubert Institute for Psychology & Psychiatry (see <http://daubertinstitute.com/>). The focus of his discussion was the use of *Daubert* principles in attacking and defending expert mental health witnesses. (*Daubert v. Merrell Dow Pharmaceuticals, Inc.* (1993) 509 U.S. 579).

Daubert held that as a matter of federal law, it was no longer necessary for a method or theory to be generally accepted in the relevant community for it to be admissible. (Later cases extend it to all expert testimony, not just scientific testimony). This portion of the holding led many to view *Daubert* as “opening the floodgates” to bad science. However, the court also strengthened the “Gate Keeper” role of federal District Courts, to ensure that the theories and methods of a proposed expert are:

1) Tested; 2) Peer-reviewed; 3) Capable of evaluation with a known error rate; 4) Subject to standards governing their use; and 5) Widely accepted.

Thus, acceptance in the relevant scientific community remains an important factor, but it is no longer dispositive. As California has not yet adopted the *Daubert* rule, that is, acceptance in the relevant community is still required here (*People v. Leahy* (1994) 8 Cal.4th 587), and state Superior Court judges are not vested with extraordinary Gate Keeper authority, what was the point of Dr. Fielder’s lecture, to a crowd of mostly state court practitioners? Plenty. By detailing the factors that should be weighed in determining whether an expert’s opinion is admissible, *Daubert* provided a clear roadmap for deposing and cross-examining any expert witness. Using mental health as an example, Dr. Fielder showed how to break down an expert’s background, experience, and methodology. If you have a case turning on expert testimony coming up, read *Daubert*.

The feedback was almost entirely positive, and the comments include “clear guide to a difficult subject matter,” “excellent,” and ratings of mostly 5s and 4s. On one point all agreed—the food was excellent.

We appreciate and need feedback. If you have speakers or topics in mind, please let us know. Our August and October luncheons will be at The Ridge, but with the courts expected to move to Roseville some time next year, we welcome ideas about other venues. We will keep you posted with e-mail alerts.

(April Maynard is the Mystery Witness this month.)



Above: PCBA Vice President Levin with Dr. John Fielder.

Below: D.D.A. Suzanne Gazzaniga and D.A. Brad Fenocchio.

