



Coffee Break Training - Fire Investigation Series

Fire/Arson and Explosion Investigation Curriculum: Common Mistakes Made by Expert Witnesses

No. FI-2013-20 December 30, 2013

Learning Objective: The student will be able to list the most common mistakes made by fire investigators when testifying as expert witnesses in fire-related litigation.

An expert witness is a person who is allowed to offer opinion testimony at trial based upon his or her specialized knowledge, training or experience, if the opinion is reliable, relevant to the issues in the case, and will help the fact finder to reach a decision. At some point in the course of their careers, it may become necessary for fire investigators to serve as expert witnesses to provide opinions in criminal and civil litigation with respect to the origin and cause of fires.

The following is a list of common mistakes that fire investigators should be aware of and avoid to prevent potential challenges and problems concerning their testimony in support of their cases.

- **Not providing an accurate and up-to-date curriculum vitae.** As part of the preparation process, it is crucial for experts to update and fact check the accuracy of their curriculum vitae carefully. Failure to do so can result in needless damage to their credibility that proper preparation could have prevented.
- **Not being properly prepared to successfully defend opinions.** Experts frequently state their opinions without giving adequate thought as to how they will defend them during cross-examination. Experts should prepare for an in-depth series of questions regarding their opinions and be able to explain the facts and assumptions upon which their opinions are based and the methodology used. In the case of fire investigation, this means how the scientific method was applied to reach the conclusions presented.
- **Losing their temper.** Experts are often pushed into losing their temper by counsel's questioning. This is always a serious mistake. Experts should not allow themselves to be goaded by counsel into losing their temper. If they lose their temper, they run the risk of giving an emotional response to a question. Such an emotional response may come back to haunt them.
- **Volunteering information.** Experts sometimes seek to help counsel by volunteering information to clarify the issues at hand. Volunteering information can be one of the biggest mistakes an expert makes. An expert should answer only the questions that he or she is asked and not volunteer information. If a yes or no answer will suffice, do not volunteer any additional information since it often results in new lines of cross-examination.
- **Offering opinions outside of their area of expertise.** Experts should not offer opinions for which they do not have the requisite experience or supporting expertise. They should master the facts of the particular case in which they are testifying and not "go outside the lines" with respect to unrelated issues.
- **Becoming an advocate instead of an unbiased expert.** Experts should avoid the appearance of taking sides. They should never allow personal or professional bias or their "ego" to damage their credibility or opinion. Revealing arrogance or quibbling over peripheral issues when on the stand may also damage credibility.
- **Answering hypothetical questions without forcing the questioner to supply all the variables or assumptions.** Answering questions in direct or on cross-examination that are intentionally vague or inaccurate should not be done unless all of the required information is obtained. If an expert does not understand the question, he or she should ask that it be repeated and/or further explained before providing a response.



Expert witnesses can play a pivotal role in fire investigations by offering opinion testimony regarding determinations of origin and cause based on their knowledge, training and experience.

Fire investigators must remember that juries pay a lot of attention to their appearance, demeanor and choice of words when testifying. Fire investigators as expert witnesses have a legal, moral and ethical obligation to tell the truth. Experts who tell less than the truth run the risk of criminal prosecution for perjury, civil suits for negligence, and revocation or suspension of their professional licenses.

The National Fire Academy offers a 10-day course for fire investigators titled "Interviewing-Interrogation Techniques and Courtroom Testimony" that is designed to prepare investigators to successfully serve as expert witnesses. Additional information can be found at <http://apps.usfa.fema.gov/nfacourses/catalog/details/40>. A similar course is also offered by the International Association of Arson Investigators (IAAI). Information on the course can be obtained by contacting IAAI headquarters via www.firearson.com.

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