Training Guidelines for the Fire Debris Analyst

Lesson Plan (Module) 15

Date: December 2004                        Instructor: Qualified Instructor

Subject: Courtroom Testimony and Presentation Techniques       Total Time: 12 hours

Learning Objectives

➢ Demonstrate a basic understanding of terms, legal decisions and issues relevant to the forensic scientist.
➢ Demonstrate a basic understanding of the judicial process and how cases are tried in various courts of law.
➢ Understand the importance of and how to prepare for testimony.
➢ Understand the demeanor and delivery of an expert witness testimony.
➢ Demonstrate how to effectively employ visual displays to aid in testimony.

Suggested Reading


Introduction

This lesson will cover expert witness testimony as a forensic scientist in fire debris related cases.
Outline

1. Terms and definitions of frequently used words related to expert witness testimony
   a. deposition
   b. disclosure
   c. discovery
   d. spoliation
   e. subpoena
   f. subpoena duces tecum
   g. voir dire

2. Laws and legal decisions relevant to forensic scientist testimony
   a. Brady v. Maryland, 1963
   b. Frye v. United States, 1923
   c. Daubert v. Merrell Dow Pharmaceuticals, Inc., 1993
   d. Kumho Tire Co., Ltd. V. Carmichael, 1999
   e. Federal Rules of Evidence, No. 702
   f. Arson law
      i. arson: first and second degree
      ii. reckless burning
      iii. malicious mischief

3. How different court systems operate
   a. federal
   b. state superior
   c. municipal
   d. criminal v. civil
   e. problem of proof
      i. intentionally set
      ii. maliciously set

4. Roles of the various players
   a. judge
   b. prosecutor
   c. defense attorney
   d. court reporters
   e. jury
   f. forensic scientist

5. Preparation for testimony
   a. pretrial meeting with attorneys
   b. review of case notes and report
   c. CV
6. Courtroom appearance and dress  
a. professional appearance  
b. appropriate attire  
c. posture  

7. Courtroom demeanor  
a. exclusion from the courtroom  
b. eye contact  
c. tone of voice  
d. volume  
e. courtesy  
f. impartiality  
g. ethics  

8. Presenting Testimony  
a. taking the oath  
b. taking the witness stand  
c. qualifying as an expert  
i. voir dire  
d. handling evidence on the stand  
i. recognition  
ii. safety  
iii. gloves  
e. direct examination  
i. communication skills  
   - verbal: avoid slang, professional jargon, profanity  
   - nonverbal  
   - pace  
ii. use of analogies  
iii. credibility  
   - recognizing limits of knowledge or expertise  
iv. admitting mistakes, limitations and problems  
v. inability to remember  
vi. objections  
f. cross-examination  
i. open-ended questions  
ii. leading questions  
iii. unclear questions  
iv. compound questions  
v. hypothetical questions  
vi. yes or no questions  
vii. listening carefully  
g. re-direct  
h. re-cross-examination  
i. leaving the witness stand
9. Defense tactics
   a. attacking credibility and qualifications
   b. attacking chain of custody
   c. attacking procedures
   d. attacking conclusions
   f. weight of testimony
   g. proffering “authoritative” texts

10. Use of visual displays and other presentation aids
   a. prior discussion with attorney
   b. easily seen and understood
   c. photographs and glare
   d. digital images
   e. use of colors on charts, graphs
   f. demonstrations

Teaching Aids

Handout
PowerPoint presentation
Testimony observation
Mock trial set-up
Videotape

Summary

Familiarization with how courts operate and how trials are conducted are important first steps in becoming proficient at expert witness testimony. Careful pre-trial preparation and knowledge of the types of questions that may be asked by both the prosecutor and defense attorney will increase the expert’s comfort level on the stand. A testimony should begin with a professional appearance, include clear, honest and accurate answers to all questions, and continue with impartiality and a calm demeanor. Certain presentation aids may assist the trier of fact in understanding the testimony and these should be skillfully prepared and presented. A video taped mock trial following this class will be a valuable aid to the testifying scientist.

Test Questions

1. By taking the witness stand, a scientist becomes qualified as an expert witness. True or False
2. Use of technical terms and professional jargon when speaking to a jury makes you appear more credible. True or False

3. If you do not know the answer to a question posed by an attorney,
   a. pretend you know the answer
   b. admit you do not know
   c. redirect the question such that you can answer it
   d. provide an answer that seems adequate

4. Jury members may include scientists and others trained in fire investigation. True or False

5. If you are unsure of what a question means, you can
   a. ask for clarification
   b. state “I don’t understand the question.”
   c. ask to have the question repeated
   d. all of the above

6. You can help control the speed of questions by pausing. True or False

7. It is usually appropriate to answer a question to the best of your knowledge when the question involves an area outside of your field of expertise. True or False

8. You should provide a yes or no answer when
   a. it would not be misleading to do so
   b. when the attorney demands it
   c. when the judge demands it
   d. the answer is true, complete and accurate
   e. a and d
   f. b and c

9. It is the role of the forensic scientist to prove intent in an arson case. True or False