

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

1. *Forensic Science Handbook*, Saferstein, Richard, Ed.; Chapter 1 Legal Aspects of Forensic Science, Prentice-Hall, 1982; 2nd ed., 2002.
 2. *Forensic Science Handbook, Volume III*, Saferstein, R., Ed.; Chapter 1 Legal Standards for the Admissibility of Novel Scientific Evidence, Regents/Prentice-Hall, 1993.
 3. *McCormick's Handbook of the Law of Evidence*, 2nd ed., Cleary, E.W., Ed., West Publishing Co., 1972.
 4. Kogan, J.D., On Being a Good Expert Witness in a Criminal Case, *Journal of Forensic Sciences*, Vol. 23, 1978, pp. 190 – 200.
 5. Kantrowitz, S.B., Expert Testimony and Scientific Evidence in Arson-Related Cases, *Journal of Forensic Sciences*, Vol. 26, No. 1, Jan. 1981, pp. 142 – 152.
 6. *United States v. Plaza*, Eastern District of Pennsylvania Judge Louis Pollak's opinion on fingerprint evidence, 2002, Cr. No. 98-362-10,11,12.
 7. *Effective Expert Witnessing*, 4th ed., Matson, Jack V, CRC Press, 2003.
-

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
-

- j. being finally excused
 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 experts 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**