

Fire Science Litigation



The Voice of the
Defense Bar

**Give Blood,
Sweat, & Tears
For An
Expert Direct
Exam**





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A Few Quotes About Fear

- *There is no such thing as paranoia. Your worst fears can come true at any moment.*
- Hunter S. Thompson
- *There are only two forces that unite [us]—fear and interest. All great revolutions originate in fear, for the play of interests does not lead to accomplishment.*
- Napoleon Bonaparte

Rule 702. Testimony by Expert Witnesses

A witness who is **qualified** as an expert by **knowledge, skill, experience, training, or education** may testify in the form of an opinion or otherwise if:

- (a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to **understand the evidence** or to determine a fact in issue;
- (b) the testimony is based on **sufficient facts or data**;
- (c) the testimony is the product of **reliable principles and methods**;
and
- (d) the expert has **reliably applied** the principles and methods **to the facts** of the case.

The primary objective of a direct examination is to provide the trier of fact with admissible testimony.

Federal Rule of Evidence 401.

Evidence is relevant if:

- (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and
- (b) the fact is of consequence in determining the action.

Does the item of evidence tend to prove the matter sought to be proved?

- Whether the relationship exists depends upon principles evolved by experience or science, applied logically to the situation at hand.

James, Relevancy, Probability and the Law, 29 Calif.L.Rev. 689, 696, n. 15 (1941), in Selected Writings on Evidence and Trial 610, 615, n. 15 (Fryer ed. 1957).

Definition of scientific method:

Principles and procedures for the systematic pursuit of knowledge involving the recognition and formulation of a problem, the collection of data through observation and experiment, and the formulation and testing of hypotheses.

- Merriam-Webster

- **NFPA 921, Testing:** Experimental vs. Cognitive

The Introduction—The Five Minute Rule

Name, title, and why should a jury listen to you.

The most valuable of all talents is that of never using two words when one will do.

- Thomas Jefferson

Speak clearly, if you speak at all; carve every word before you let it fall.

- Oliver Wendell Holmes



Direct Examination is a one-sided, closely watched conversation which should transform into a classroom for a jury.

Setting the Fire Scene

Product/Client

Date, Day, Time

Background Information

Location (residence v. business)

Photographs (before & after)

Key People Involved

Agree on Names, Practice the Names, and be Consistent



Describing the Investigation

Collection of Evidence vs. CSI the Movie

Photographs, Diagrams, and Digital Magic

The shovel and the clipboard

Overcoming the fear of being photographed

Find the Word to Fit the Audience:

*Don't use words **too big** for the subject. Don't say **infinitely** when you mean **very**; otherwise you'll have no word left when you want to talk about something really infinite.*

-C. S. Lewis

















Solving the Puzzle (Sometimes): Your Opinions

Don't let your explanation bury your Opinion

The great enemy of clear language is insincerity. When there is a gap between one's real and one's declared aims, one turns, as it were, instinctively to long words and exhausted idioms, like a cuttlefish squirting out ink.

- George Orwell

Be Organized: Photographs and Diagrams



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THE LIST OF REMINDERS

- Preparation
- Organization
- Physical Appearance
- Attitude and Demeanor
- Nervousness
- Candor
- Confidence
- Terminology
- Communication with the Jury



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QUESTIONS?

