



Engineering Sciences Section – 2004

C30 Arson/Murder - Expert Witnesses - Biased Opinions

Marshall L. Smyth, BS*, Smyth Consulting Engineering, 809 N Shepherd Hills, Tucson, AZ 85710

After attending this presentation, attendees will understand that the modification of current sex offender program protocols for correctional populations to meet the growing number of sex offenders being identified in psychiatric centers. Enhanced program development centers can better serve this population by providing an effective treatment protocol; better serve the courts by proving more informed opinions regarding the risk of re-offending; and better serve the community by safeguarding the inappropriate discharge of individuals who are likely to re-offend.

This presentation will impact the forensic community and/or humanity by demonstrating the severe consequences of prosecution fire investigator overreach in determining the causes of two high profile Arson/Murder cases in which the author testified as a defense expert witness.

These two Arson/Murder cases involved different defendants (John Henry Knapp in Arizona and Ernest Ray Willis in Texas), and widely separated times. Each residence involved in the fire experienced Flashover and Post Flashover burning in rooms of the residence. Nearly all of the burnable materials in the rooms of origin were destroyed during the fires.

The evidence and representative fire tests performed by the defense after the initial trials and convictions indicate the prosecution's fire investigators misinterpreted the burn patterns and misidentified the cause of each fire.

These experiences indicate that the misinterpretation of floor and low level burn patterns resulted from one or a combination of the following:

1. Excessive freedom allowed experts in their testimony, now being curtailed by the effects of:
 - a. Federal Rule of Evidence 702, *Daubert v. Merrill-Dow Pharmaceuticals* case, *Benfield v. Michigan Millers Mutual Insurance Company* case, and perhaps others
 - b. The advent of the National Fire Protection Association's "*NFPA 921 Guide for Fire and Explosion Investigations*" a science based, consensus derived, authoritative guide, first issued in 1992 and now undergoing its fourth update
2. Failure to perform representative corroborative tests or analyses
3. Failure to appreciate the dynamics of Flashover and Post Flashover combustion
4. A lack of understanding of the impact of burning floor carpet, carpet pad, combustible wall paneling, celotex ceiling tile and furniture upholstery on the development of a room fire
5. Lack of engineering/scientific training and experience
6. Arrogance
7. The halo effect of being a member of the "Good Guys" team ordained to rid the world of the "Bad Guys"
8. The pressure to convict applied by prosecutors

Two individuals were wrongly convicted of arson and murder. Both were sentenced to death. Both have survived by the skins of their teeth because of outstanding and very expensive pro bono efforts, in the John Henry Knapp case by Attorneys Larry A. Hammond and Colin F. Campbell of the law firm of Meyer, Hendricks, Victor, Osborn & Maledon, Phoenix, Arizona, and in the Ernest Ray Willis case by James S. Blank of the law firm of Latham & Watkins, New York, New York.

John Knapp was finally freed after three trials, many appeals, and a post conviction evidentiary hearing.

Ernest Willis is still on death row after one trial, many appeals and a post conviction evidentiary hearing. His case is being reviewed by the Federal Western District Court of Texas, Pecos Division.

Fire Investigation, Expert Testimony, Biased Opinions