



The Fire Trailer News



WINTER 2009

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Fire Trailer News

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The Fire Trailer News is the official publication of the Georgia Fire Investigator's Association and is published four times a year: Summer, Fall, Winter and Spring. Views and opinions expressed in articles herein are those of the authors and are not necessarily those of the officers or membership of the Georgia Fire Investigator's Association. Articles, manuscripts and photos are solicited for this publication. No payment is made for contributions. Submissions should be sent to the editor. Appearance of advertisements in the Fire Trailer News does not constitute endorsement by the Georgia Fire Investigator's Association. Advertisers shall not use the Georgia Fire Investigator's Association name or image in its commercial activities in any manner.

President's Message

I would like to wish everyone a Happy New Year. We have a challenging year ahead of us due to the economy. However, we are looking forward to giving the membership the best training available in 2009.

The Spring Seminar will be held in Henry County and is scheduled for March 24 – 27, 2009. The Georgia Fire Investigator's Association Southeastern Annual Training Conference

will be held in Savannah. The dates are August 3 – 7, 2009. The Georgia Fire Investigator's Association Officers have been meeting with the Training and Education Committee and have lined up excellent speakers for both seminars. The Georgia Fire Investigator's Association will be offering the K.G. Davis scholarship for the Southeastern Annual Training Conference and information on how to apply for this scholarship will be in an upcoming newsletter.

If anyone would like to place an advertisement in the newsletter, the cost is \$100 for a business card size advertisement. Details are on Page 2. Please contact Ken LeCroy if you are interested. Also, if you have an article that you feel would be beneficial to the members of the Georgia Fire Investigator's Association, please send it to Ken to published in the newsletter.

If you would like to serve on a committee or help out at one of the seminars, please let me know. We can always use the help.

Take care and I look forward to seeing you at the Spring Seminar.

Charlie Mangan
GFIA President



Advertising is Welcome

The Georgia Fire Trailer News welcomes business advertisements. The cost is \$100 for a business card advertisement in the newsletter for one year (4 issues). Make checks payable to: The Georgia Fire Investigator's Association. Please forward a JPEG file of your business card or ad and send your payment to:

Ken LeCroy
Cobb County Fire Investigation's Unit
1595 County Services Parkway
Marietta, GA. 30008

If you would like more information about advertising, please can call Ken LeCroy at 770-499-3867 or by email to: kenneth.lecroy@cobbcounty.org.

Georgia Fire Investigator's Association Constitution and By-Laws

Article III/Election, Terms & Officers

Section 5. Nominating Committee. The nominating committee shall be appointed by the incoming president and their names published in the first quarterly issue of the "Fire Trailer News," or announced by special letter, electronic mail, or web page posting at least thirty (30) days prior to publication of the second quarterly issue of the "Fire Trailer News."

The committee shall consist of five (5) members who are representatives of the insurance industry, civil authorities, the legal community and the private investigator profession.

The Members of the 2008 GFIA Nominating Committee are:

Dennis Ellerbee - Chairperson

email: FM113@bellsouth.net
Phone/Fax: 770-233-0121

Greg Cloer

email: greg.cloer@cobbcounty.org
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Preparing to Testify

Guy E. "Sandy" Burnette, Jr.

Testimony at trial in an arson case is the ultimate objective of every fire investigator. It means that the fire incident has been thoroughly investigated, the evidence has been properly collected and preserved, the cause of the fire has been definitively established and it is now time to prove the case. Everything that has been done in the investigation of the fire hangs in the balance; if the case cannot be proved, then everything will have been in vain.

The fire expert occupies a unique position in an arson trial. The testimony of the expert is indispensable to the case in the most literal sense of the word. Without expert testimony in the record to establish the fire as incendiary, the *corpus delecti* of the crime cannot be proved. In a civil case, the essential elements of the defense cannot be proved. The case will never even get to a jury for a decision unless the fire expert has proved the cause of the fire through testimony at trial.

In almost every trial, the fire expert will be the most important witness to testify. The witness must testify effectively to ensure a successful result at trial. It is not enough to simply say that a fire was deliberately set. The fire expert must be able to explain the basis of the conclusion that the fire was intentionally set and must do so persuasively for the jury to accept the testimony. Successful testimony at trial requires thorough preparation. It is a tedious and time-demanding process to properly prepare for testimony at trial. But it may be the most important thing an investigator does in handling the case. There is great truth in the expression "There is nothing worse than preparing a case for trial, but there is nothing better than a well-prepared case at trial."

Preparation at the Scene

In a very real sense, preparation for testimony at trial begins at the fire scene. When conducting the fire scene investigation, thought must be given to the presentation of testimony and evidence when the case goes to trial. When the fire scene is photographed, the investigator must keep in mind that those photographs will be the jury's only connection to the fire scene. It will be their only opportunity to get a sense of what the fire scene looked like and where the critical evidence was found. Photographic overlays, aerial photographs and wide-angle photographs provide the visual perspective a jury needs in order to understand the fire scene and what the expert is testifying to at trial. A seldom-used, but highly effective consideration at the fire scene is the collection of physical evidence from the fire to illustrate what the expert will be testifying about at trial. Sections of flooring, furniture, structural framing members and other such items brought into the courtroom can have a powerful effect on a jury's understanding of the fire. This is where the preparation process truly begins.

Preparing for Deposition Testimony

The importance of adequately preparing for deposition testimony is often misunderstood and seldom recognized by investigators. A common misconception is that a deposition really doesn't count and since the judge and jury won't be there at the deposition, it really doesn't matter. Nothing could be further from the truth. In some respects, deposition testimony is even more important than trial testimony.

What needs to be understood is that without successful deposition testimony, there can be no successful trial testimony. Careless testimony or mistakes in describing the facts of the fire can have disastrous consequences. The primary purpose of conducting a deposition is to develop evidence which can be used to impeach the witness at trial.

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When an expert testifies at trial in a manner inconsistent with prior deposition testimony, the damage can be irreparable. At best, it suggests carelessness or even sloppiness in conducting the investigation. At worst, it raises questions of credibility and believability on the part of the witness. An “honest mistake” is still a mistake. The attorney cross-examining the witness wants to show that everything the witness has done is a “mistake”, including the determination of the fire’s cause. When an investigator has to admit that a mistake was made in previously testifying about the investigation, the next question to be faced is whether the investigator made a mistake in conducting the investigation itself and the fire is not the result of arson.

Successful Preparation for Testimony at Trial

Whether preparing to testify at deposition or at trial, the same steps must be taken to properly prepare. Here are the Ten Commandments for testimony preparation.

1. Nothing is more important than the first rule: knowledge and understanding of the file. To effectively testify, the expert must demonstrate a complete mastery of the file. The names, addresses, dates and events of the fire and the investigation of the fire must be recited accurately and without hesitation or uncertainty. An expert who has to flip through the file to find the correct address for the incident will make an unfavorable impression with the jury immediately. All of the key facts must be committed to memory. The chronology of events must be correctly presented. The steps taken in the investigation must be outlined to the jury without hesitation.
2. The contents of the investigative file, the fire scene photographs and diagrams, the physical evidence from the fire scene and everything else which will be used in presenting the testimony must be neatly organized, properly labeled and put in the order in which those things will be used at trial. Key photographs must be identified and enlargements made. Similarly, fire scene diagrams must be enlarged and mounted. In other words, every physical item which will be used at trial must be ready to be shown to the jury. It is the responsibility of the expert to make certain this is done in advance of testifying. A disorganized file folder on the witness stand projects carelessness, sloppiness and a lack of professionalism.
3. Just like a movie, television show or stage production, every trial needs a “dress rehearsal.” The expert must arrange to meet with the attorney who will be handling the trial to review the anticipated testimony, discuss the evidence which will be presented, and anticipate the challenges to be presented by the other side. A true “dress rehearsal” is the best way to prepare for testimony. The attorney should take the expert through the actual direct examination which will be offered at trial. The expert and the attorney both need to know what needs to be asked and how it needs to be asked. Equally as important, both need to know what should *not* be asked in direct examination. Then, a “dress rehearsal” of the anticipated cross-examination should be conducted. The expert and attorney should know the weak spots in the case and the expert should be cross-examined on those points. When the most challenging questions are asked at trial, the expert needs to be ready for those questions with a credible response at hand.
4. Personal appearance should never be under-estimated as a factor in successful testimony. Certainly, at the time of trial this is an imperative. The investigator coming to trial to testify as an expert should look the part. For law enforcement and fire service representatives, a uniform should always be worn. For private sector expert witnesses, business attire is required. Shoes should be shined; jewelry should be avoided. When an expert first enters the courtroom and walks to the stand to be sworn, every member of the jury has already formed an impression of that witness. It is entirely based upon how the witness looks, how they are dressed and how they carry themselves. Recognizing this fact and preparing accordingly will make a difference.

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5. Nervousness is a natural condition. For some people, it is almost inconsequential; for others, it is a genuine concern. The greatest fear of all is fear of the unknown. A witness who has not properly prepared for testimony has reason to fear the questions to be faced on cross-examination. But a properly prepared witness should have no such fear. For those who have to deal with nervousness, some common sense measures should be employed. Get a good night's rest before testifying. Avoid drinking coffee all morning while you wait to testify. Use your time productively by reviewing the file as you wait to be called to the stand.

6. Recognize that an arson trial is a serious proceeding. Project professionalism commensurate with the nature of the proceeding. Making jokes or ridiculing a poorly worded question can alienate a jury or even offend them. Playing word games with a lawyer during cross-examination can undermine your professionalism—and you may find yourself on the losing end of that game. Maintain your composure and resist reacting to a lawyer who tries those same tactics on you. When a question seems aimed at insulting or demeaning you, respond directly and disregard the offensive tone of the question. The lawyer will ask such questions only to see if you will react, lose your composure or blurt out something you will later regret. Know that and don't let it happen.

7. Project confidence in your observations, opinions and conclusions. If you have any doubt about your findings, you don't belong in the courtroom. When you testify, it should be unequivocal. Words like "probably", "most likely" or "maybe" should never be used at trial when talking about your observations and conclusions. If you have concluded the fire was incendiary, say it with conviction. You are asking a jury to believe you are right. If they sense you are in any way unsure of your findings, they will never accept those findings.

8. Candor is essential to effective testimony. While you must "stick to your guns" when talking about your findings, a witness who will concede nothing is perceived as unreasonable and not believable. "Could something else have caused this fire? Yes, but there was no evidence to indicate it did. Couldn't something different have happened to explain that aspect of the fire? Yes, but I found no evidence to suggest that it had. Do you hold yourself out as an expert in chemistry or physics? While I have no degree in chemistry or physics, I have been trained in those disciplines as they relate to fires." Admit what must be acknowledged or conceded, but use that as an opportunity to underscore the facts and evidence which prove your case.

9. Effective testimony is persuasive and convincing. But testimony alone may not be enough to convince a jury. Demonstrative evidence, physical evidence from the fire scene, and enlarged photographs and diagrams are the stage props of an effective witness. Show them to the jury, let them hold the evidence, stand right in front of them and point out the significant burn patterns in a photograph—get them engaged in what you are talking about and they will respond more readily to your testimony.

10. Testimony is all about communicating with the jury. They are the only people in the courtroom who matter and you should act like you know that. They are the ones you must persuade. When you testify, it should be directed to the jury both figuratively and literally. Eye contact is essential. Look to the jury when answering a question, not to the lawyer. As you answer questions, move from one juror to the next in making eye contact and directing your answer to that individual juror. When you see an affirmative response, a nod of the head or a knowing smile, you have convinced that juror. Then you can focus in on the remaining jurors who seem un-persuaded or difficult to convince. Make them the object of your testimony until you have persuaded all of them. You will know when that has happened.

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The process of testifying as an expert witness involves effective communication in reciting the facts, demonstrating your expertise, and using the courtroom as your stage and classroom to both entertain and educate the jury. By following these rules, you can ensure success in the courtroom and in your case.

About the Author: **Guy E. “Sandy” Burnette**

Law Firm of Guy E. Burnette, Jr. P.A.

Guy E. “Sandy” Burnette, Jr. has been a practicing attorney for over 31 years. His office is located in Tallahassee, Florida where his practice is dedicated to civil litigation involving insurance coverage issues and arson/fraud cases, exclusively representing insurers.

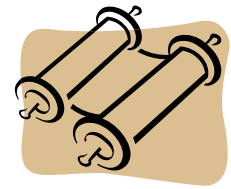
Sandy attended Vanderbilt University where he received his Bachelor of Arts Degree. He received his Juris Doctorate at the Florida State University College of Law. After graduation, he was appointed Assistant State Attorney for the Second Judicial Circuit of Florida as a felony trial prosecutor. Sandy also served as an instructor in legal affairs at the Lively Law Enforcement Training Center, Tallahassee.

Sandy joined the Florida Division of State Fire Marshal as the first Legal Counsel to the Bureau of Fire and Arson Investigations. He was legal advisor to the Deputy State Fire Marshals and training instructor in legal affairs. While with the State Fire Marshal’s Office, he authored Florida Arson Prosecution, a manual for the investigation and prosecution of arson cases. He is the author of the Arson Immunity Reporting Act, Florida Statute 633.175 (1983 and 1995); the Fraud Immunity Reporting Act, Florida Statute 626.989 (1997); the Florida SIU Act, Florida Statute 626.9891 (1995); the Federal Anti-Arson Act of 1993; and several other state and federal laws relating to arson and fraud issues. He has authored over 100 articles and papers on these subjects. He was a contributor to the *NFPA 921 Handbook*; the *Motive, Means and Opportunity* video; and *interFire VR*, the first interactive virtual-reality training program for fire investigators, which has been distributed in over 70 countries around the world.

He is the past Chair of the Property Insurance Law Committee of the American Bar Association; past Ethics Chair of the Florida Defense Lawyers Association; past President and Life Member of the Florida Advisory Committee on Arson Prevention (FACAP); a Life Member of the California Chapter of the International Association of Arson Investigators (CCAI); a Life Member of the IAAI International, and a Life Member of the Florida Chapter of IAAI, having served for the past twenty-seven years as the Legal Advisor to the Chapter. He has received numerous awards for his work in the field of arson, including the Award of Recognition from the Department of Justice and the Silver Hammer Award from the office of the Vice-President of the United States. He is a Certified Instructor at the Florida State Fire College and the Federal Law Enforcement Training Center/ATF National Academy.

**Editor’s Note – This article was originally published in the Florida IAAI Newsletter, “The Informer,” in February 2008 and has been re-published with consent from the author.*

Chaplain's Corner



Jesus' Invitation, Revelation 3:20 NKJ

20 "Behold, I stand at the door and knock. If anyone hears My voice and opens the door, I will come in to him and dine with him, and he with Me.

Most people think this verse is directed to non-believers. Not so. Jesus was talking to those already in the church.

How sad!

This is the Lord, the Head of the church, speaking to His own people. "If you will open up to Me, we will enjoy times of fellowship."

God desires your fellowship. He wants you to spend time with Him. But He invites -- He never forces.

I pray that everyone had a blessed Christmas and a Happy New Year, but most of all my prayer is that everyone will open the door and dine with Jesus, the "reason for the season".

May God bless each family this year and may we keep our priorities in the proper order; God, Family and work.

Chaplin Bill Barrett

How successful is the Georgia Arson Control Program in Fighting Arson?

Since its inception in 1979, GAC has approved 498 rewards totaling \$1,411,850. The average reward paid is \$2,835 (as of 05/12/08). Total property damage from arson fires that resulted in rewards since 2004 is approximately \$7,193,448.

Upcoming Events



2009 Georgia Fire Investigator's Association Spring Seminar
hosted by
Georgia Fire Investigator's Association and Henry County Fire Department
to be held in McDonough, GA. March 24-27, 2009

Call 770-978-1251 for details. More info to come.



Residential Electricity for Fire Investigators
April 15-16, 2009

Check out www.firefindings.com for details



International Association of Arson Investigators
60th Annual Training Conference
Arlington, Texas May 17-22, 2009.

**THE GEORGIA FIRE
INVESTIGATOR'S ASSOCIATION
PO BOX 382
SNELLVILLE, GA. 30078**



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