



National Tile and Stone Authority

NTSA Forensic Principles Series

Never Be More Certain Than the Evidence Allows

Why Intellectual Restraint Strengthens an Expert Opinion

The evidence did not answer the question everyone wanted answered.

A property had experienced a water event several years earlier. By the time the conditions were evaluated, the stone flooring showed discoloration, cracking, hollow sounding, and other forms of distress. The retaining party wanted to know whether the earlier event had caused all of it.

The existing conditions could be documented. The affected areas could be mapped. The apparent deficiencies could be evaluated, and the likely repair requirements could be discussed.

Causation was a different matter.

Time had passed. Moisture conditions had changed. Some materials had been repaired or removed. The installation history was incomplete, and several conditions could have existed before the reported event.

A simple answer would have been more convenient.

The evidence supported a narrower one.

That experience reinforced one of the most important principles in forensic work:

An expert should never be more certain than the evidence allows.

The Pressure to Provide a Clear Answer

Experts are retained because attorneys and clients need answers.

What failed?

Why did it fail?

Who is responsible?

What must be repaired?

Those are reasonable questions. They are also questions the available evidence may not fully answer.

Litigation creates understandable pressure for certainty. Attorneys must evaluate claims and defenses. Clients must make financial decisions. Judges and juries may ultimately be asked to choose between competing explanations.

A careful opinion can sometimes sound less useful than a confident one.

The problem is that confidence is not evidence.

An expert may speak with complete certainty and still lack a reliable factual foundation. Another may explain the limits of the investigation and appear less decisive, even though the second opinion is far more defensible.

The expert's responsibility is not to eliminate uncertainty by language.

It is to explain what the evidence supports and where that support ends.

Evidence Supports Different Levels of Opinion

Not every conclusion rests on the same quality or quantity of evidence.

In some matters, the failure mechanism is well preserved. The original materials remain available. Destructive testing exposes the relevant interfaces. Project records are complete, and laboratory findings correspond closely with the observed distress.

That evidence may support a strong causation opinion.

In other matters, the expert becomes involved years later. Repairs have altered the assembly. Materials have been discarded. Access is limited. Sampling is restricted. Photographs are incomplete, and the recollections of those involved do not agree.

The same degree of certainty would not be justified.

There are times when the evidence establishes a cause with a high degree of confidence. There are times when it supports a probable explanation. There are also times when several explanations remain possible and the available information does not reliably distinguish

among them.

Those conclusions should not be expressed as though they are equal.

The language of the opinion must remain proportional to its foundation.

Experience Helps Interpret Evidence

Experience is invaluable because it helps an expert recognize patterns, identify possibilities, and decide what should be examined next.

It does not replace missing facts.

An expert may have investigated hundreds of similar failures. That experience can make a particular explanation appear highly likely. But the opinion in the present case must still be connected to the evidence from the present case.

Similarity is useful.

It is not proof.

A familiar crack pattern may suggest movement.

A familiar stain may suggest moisture.

A familiar bond failure may suggest inadequate surface preparation.

Those possibilities deserve investigation. They do not become established causes simply because the expert has seen similar conditions before.

Experience may guide the investigation.

It cannot replace the facts.

Every opinion still requires a reliable factual foundation that can be explained, examined, and defended by the expert who formed it.

The Danger of Filling the Gaps

Incomplete evidence creates a natural temptation to fill the missing spaces with assumptions.

A report does not identify which product was used, but one product seems likely.

No photograph shows the concealed condition, but experience suggests how it was probably built.

The original moisture condition is unknown, but the present

condition appears consistent with moisture exposure.

Each assumption may be reasonable.

Several reasonable assumptions placed together can still produce an unreliable conclusion.

The danger is not always obvious because the final opinion may sound logical. The problem becomes visible only when someone asks which parts were actually established and which parts were inferred.

That distinction is especially important during deposition.

Opposing counsel may ask:

What did you personally observe?

Which records support that conclusion?

Was the original condition preserved?

Did you test that explanation?

What other causes did you consider?

Which part of your opinion depends on an assumption?

If the expert cannot separate the evidence from the inference, the apparent certainty of the report begins to weaken.

Present Conditions Do Not Always Establish Past Conditions

Forensic investigations often occur long after the event being evaluated.

What exists at the time of inspection may be important, but it does not always establish what existed months or years earlier.

A moisture reading documents moisture at the time of testing.

It does not automatically establish the moisture level on the date of installation.

A cracked tile documents the present crack.

It does not, by itself, establish when the crack formed or which event caused it.

Discoloration may be consistent with moisture exposure.

That does not automatically identify the source, duration, or timing

of the moisture.

The expert must be careful when moving backward in time.

Present evidence may support a reconstruction of earlier conditions. The strength of that reconstruction depends on the quality of the records, the preservation of the assembly, the known sequence of events, and the ability to exclude reasonable alternatives.

When those elements are missing, the opinion must acknowledge the limitation.

A Deficiency May Be Established Even When Causation Is Not

Uncertainty about causation does not require an expert to ignore conditions that are clearly documented.

An installation may contain departures from industry standards, manufacturer instructions, or accepted practice.

Those deficiencies can be identified and explained.

The expert may also be able to determine that repairs are necessary.

That does not automatically establish that a particular event caused every documented condition.

Observation, deficiency, repair scope, and causation are related, but they are not interchangeable.

An expert may conclude:

The installation is deficient.

The affected area requires replacement.

The available evidence does not establish that the reported event caused the entire condition.

Those conclusions can coexist.

Keeping them separate is not evasive.

It is accurate.

Limited Scope Does Not Require Unlimited Opinions

Some assignments are intentionally limited.

An attorney may request a preliminary review before authorizing

an inspection. A client may ask for evaluation of photographs and documents only. Destructive testing may not be permitted. Laboratory testing may be deferred because of cost or timing.

A limited investigation can still be useful.

The resulting opinion must remain within the limits of the work performed.

A document review may identify important issues and recommend further investigation. It may not permit a reliable opinion about concealed construction.

A visual inspection may document surface distress. It may not identify the failed interface.

Limited testing may provide information about the sampled areas. It may not establish that the same condition exists throughout the project.

The expert should not hide those limitations.

Nor should the client be surprised by them.

The scope determines which questions can be addressed reliably. It does not give the expert permission to answer questions the investigation never reached.

Saying “I Do Not Know” Can Be the Strongest Answer

Experts sometimes worry that acknowledging uncertainty will make them appear unprepared or unqualified.

In reality, experienced attorneys often recognize the opposite.

An expert who identifies the limits of an opinion demonstrates judgment.

There is a meaningful difference between:

“I do not know.”

“I have not yet investigated that issue.”

“The available evidence does not permit a reliable conclusion.”

Each answer describes a different limitation.

None should be replaced with speculation merely because a more definite response sounds better.

A qualified answer may also identify the next step.

Additional testing may resolve the uncertainty.

A missing record may be located.

A broader inspection may reveal whether the condition is isolated or widespread.

Or the evidence may never become sufficient.

The expert's responsibility is to say which situation exists.

Intellectual Restraint Helps the Client

A restrained opinion is not less useful.

It often helps the attorney evaluate the case more realistically.

An expert who identifies both strengths and limitations allows counsel to decide whether additional work is justified, whether a theory should be narrowed, and whether certain allegations can be supported.

That information may prevent unnecessary testing.

It may also prevent the client from relying on a position that will not survive scrutiny.

An opinion that promises certainty early in the case may feel reassuring.

It becomes far less helpful if that certainty disappears in deposition.

Clients deserve to know where the evidence is strong.

They also deserve to know where it is not.

Final Thoughts

Every expert brings experience, training, and professional judgment to an investigation.

Those qualities give meaning to the evidence.

They do not enlarge it.

A reliable opinion should be no broader, stronger, or more certain than the factual foundation supporting it.

Sometimes the evidence permits a clear conclusion.

Sometimes it supports only a limited one.

Sometimes the most honest answer is that the investigation cannot reliably determine what occurred.

That answer may not satisfy every client or resolve every dispute.

It may still be the only opinion worth giving.

Because credibility is not built by sounding certain.

It is built by knowing exactly where certainty ends.

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