

**EXPERT WITNESSES**

Expertise to GO

In a hurry? Then order your forensic expert witness credentials--if you have the bucks--from entrepreneur Robert O'Block. But are they legitimate?

BY MARK HANSEN

Robert O'Block has come a long way since 1994, when he made \$40,000 a year as a professor at the College of the Ozarks in Point Lookout, Mo.

Now he's making a six-figure income as the executive director of the American College of Forensic Examiners, a Springfield, Mo.-based nonprofit organization that credentials forensic experts.

O'Block started in 1992 with \$500 of his own money and in the beginning ran a credentialing service single-handedly out of a spare room in his home. It has since grown into a 13,000-member organization with more than \$2.2 million in annual revenue.

He was paid nearly \$190,000 for his efforts in 1997, according to the most recent federal tax return available for the organization.

But O'Block, 48, apparently has made few friends and admirers along the way. One former associate calls him a con artist. And more than one describes his organization's

credentialing process as a complete scam.

"He basically takes people's money and gives them a worthless piece of paper," says Robert Phillips, an Audubon, N.J., document examiner. "He's just in it for the money." Phillips claims he has reason to know. He says he resigned as chair of the organization's certification committee in 1993 after discovering that O'Block was issuing credentials to unqualified candidates behind the committee's back.

Many of the nation's leading forensic scientists don't seem to have much use for O'Block or his organization either.

James Starrs, a professor of law and forensic sciences at George Washington University, says the organization's certification process lacks objectivity. "It's driven by the felt needs of the people in charge," he says. "If they want you in, you're in, even if they have to break all of the rules to do it."

Andre Moenssens, a law school professor at the University of Missouri-Kansas City and an expert on scientific evidence, goes even further. He says O'Block's organization is basically a certification mill. "For the right amount of money, he will certify just about anybody as an expert in anything," Moenssens says.

And Carol Henderson, a Nova Southeastern University law school professor who frequently lectures on how to find bona fide experts, says there is a term forensic scientists use for the kind of certificates O'Block's organization gives out. "We call them checkbook credentials," she says.

These critics fear that some judges, who don't know the difference between one credentialing organization and another, will assume that a prospective witness who has been board-certified by the ACFE is qualified to testify as

an expert, even if he or she isn't.

And they fear that some juries, upon hearing that a judge has declared a prospective witness an expert, will treat his or her testimony as gospel.

O'Block refused to be interviewed for this story but agreed to answer questions in writing. In his response, he says that the college has clearly defined and nationally accepted standards for membership and that it credentials only a fraction of the people the courts would probably qualify as experts.

He also says he doesn't know how anybody who knows anything about the organization could speak negatively about it, although he suggests that it might have something to do with professional rivalry.

"How would General Motors [respond to] criticism from Ford, or Sears from J.C. Penney, or McDonald's from Burger King?" he says. "Detractors will try tactics to advance themselves and put down their competitor, even to the point of using the media to do an investigative report against their rival."

The Road to Success

But his critics say the facts speak for themselves. And the facts tell a different story.

O'Block, who received a Ph.D. in philosophy from Kansas State University in 1976, worked as a small-town policeman, a juvenile probation officer, a children's counselor and a college administrator before going into teaching full time in 1979.

He taught criminal justice at Appalachian State University in Boone, N.C., until 1991, when he was fired over allegations of plagiarism. He was accused of having claimed

co-authorship on several academic papers he hadn't written, according to a letter from college officials notifying him of his intended dismissal.

But O'Block says in his prepared statement that he was fired for being a whistleblower, for repeatedly pointing out inequities in teaching loads and pay raises, and, finally, for reporting that teaching evaluations had allegedly been altered. "I suffered the normal fate of whistleblowers--bogus countercharges," he says.

O'Block then landed in Branson, Mo., where he became a full professor and chairman of the criminal justice department at the College of the Ozarks. It was there that O'Block decided to form an association of handwriting experts. He apparently had a personal interest and some experience in handwriting analysis, but no formal training in the field.

Thus was born the American Board of Forensic Handwriting Analysts. It didn't take long for him to realize, though, that the market for credentialing handwriting experts was rather small.

So O'Block soon opened the organization up to anyone who might fairly be described as a forensic examiner--a professional who forms expert opinions based on "orderly analysis, investigation, inquiry, test, inspection or examination," in the words of the group's literature.

He rechristened his group the American Board of Forensic Examiners in 1993 and the American College of Forensic Examiners in 1995.

The organization was doing so well by 1994 that O'Block could afford to leave his teaching job and work full time for the group. He and his two minor children, who made up the board of directors at the time, apparently decided he should

be paid \$51,493 that year, according to the organization's 1994 tax return.

Before long, he was creating different credentialing boards for different forensic specialties. Now there are 11 such boards in all, in everything from forensic accounting to recorded evidence.

Today the ACFE is the biggest credentialing body in forensic science and the only one that credentials experts in many specialties. It has 13,000 members and nearly 17,000 board-certified diplomates. (There are more diplomates than members because many have more than one certification.)

Even with those membership figures, the ACFE is still relatively small, says O'Block. It's board-certified diplomates are probably "less than one quarter of 1 percent of persons whom the courts would qualify as experts in their field," he says.

O'Block's organization is just one of dozens of credentialing bodies that have sprung up in the forensic sciences since the early to mid-1970s, when the American Academy of Forensic Sciences began a concerted effort to raise the level of professionalism among those in the field who hold themselves out as experts.

The idea was that these credentialing bodies could help the courts decide who qualifies as an expert by creating a voluntary peer review process known as board certification. It is supposed to indicate that the person being certified has demonstrated a certain level of expertise in a given specialty to the satisfaction of his or her peers.

The problem with that idea is that there are no standards as to what constitutes the proper qualifications for board certification. And while some credentialing organizations have established rigorous certification standards, others

have requirements that are relatively easy to meet--or relatively easy to get around. Critics say O'Block's organization clearly belongs in the latter category.

To become board-certified by the American Board of Criminalistics, for example, a candidate must have a bachelor's degree in the natural sciences and at least two years of experience. Candidates for diplomate status must pass a test of general knowledge. Candidates for fellowship status must also pass a test in one of several specialties.

And the certification is good for only five years, according to Wisconsin state crime lab director Michael Haas, the board's secretary and registrar.

Getting certified by the American Board of Forensic Document Examiners is even tougher, according to board president and Mississippi state crime lab director A. Frank Hicks. Candidates must have a bachelor's degree and at least two years' experience in a recognized laboratory.

They also must pass a three-part test: one part written, one part practical problem-solving and one part oral. And they, too, must stand for recertification every five years.

The requirements for board certification by the ACFE are constantly evolving, O'Block says, and are different for every specialty. But the requirements begin with Rule 702 of the Federal Rules of Evidence--which says a witness may be qualified as an expert by reason of knowledge, skill, education, training or experience--and build from there, he says.

The ACFE, like many young associations, offers a two-year grandfather period after a new specialty board is created, O'Block says. During this time, a candidate who meets the basic requirements for board certification may apply for diplomate status without having to take an exam.

Three Easy Steps

But once the grandfather period has expired, O'Block says, every candidate for board certification must meet an ever-increasing set of requirements, including a passing grade on a three-part test: one in ethics, one in law, and one specific to the field in which the candidate is seeking credentials.

While that may be true today, critics say, it hasn't always been the case.

In fact, for much of the organization's history, they say, the only apparent requirements for board certification were a completed application, the payment of a \$350 fee, and a passing grade on a multiple choice ethics exam.

The ACFE maintained in promotional materials that it scrutinized applications to make sure candidates met the minimum requirements of Rule 702. The only other requirements were that the candidate had never been convicted of a felony nor subject to any disciplinary action.

The ethics exam included such questions as whether it is ever OK to "stretch the truth" or "misrepresent yourself" in any way. A candidate for board certification only had to answer 75 percent of the questions correctly to pass the exam.

And if by some chance the candidate *did* fail, he or she could take the test again up to three more times.

But any candidate for board certification could qualify for a waiver of the exam by accumulating a certain number of points on his or her application. And it only took as few as 100 points in some specialties to qualify for a waiver.

Applicants awarded themselves points based on their education, experience, knowledge, skills and training. And they got 50 points for every doctorate-level degree, 30

points for every master's degree and 20 points for every bachelor's degree they had. They also got five points for every year of experience they had, 10 points for every article they had ever written, and five points for every scientific meeting they had attended in the previous 10 years.

Too Easy?

Under the ACFE's criteria, critics say, the requirements for board certification could be satisfied by the educational component alone. And even somebody without a medical degree could become board-certified in forensic medicine.

Unless something else has changed, critics say, O'Block himself ultimately decides who gets credentialed. And once a candidate has been board-certified with the ACFE, the certification is good for life.

George Murphy, a professor emeritus of psychiatry at Washington University in St. Louis, says he got board-certified by the ACFE without even trying. Murphy says he applied for credentials after coming across an ad for the organization in a medical journal. But Murphy says he took one look at the ethics exam and changed his mind. "The questions seemed so trivial, I didn't even bother to fill it out," he says.

Murphy says he got his credentials anyway. Then he started receiving solicitation letters to apply for even higher levels of certification, each at an additional cost.

"I realized then this wasn't a serious academic offer," Murphy says. "Everything was negotiable--for a fee."

O'Block says he hasn't reviewed an application for board certification in six years. And applicants are rejected any time they don't meet the criteria. But the rejection rate should be low, he says, because existing members are asked

to recommend as new members only those they believe will qualify.

A Bad Rap?

O'Block has his defenders.

Carl Edwards, a Boston-area lawyer and psychologist who has written about credentialing organizations in other fields, says when a new group like the ACFE comes along, it is always controversial.

But Edwards, a board-certified life fellow in the ACFE since 1996, says he has seen nothing to suggest that its members are unqualified or are being represented as anything they're not.

As a lawyer, Edwards adds, he doesn't really care where an expert got his credentials as long as he or she knows the subject matter, is comfortable in court and comes off well in front of a jury.

"People who join an organization for the credentials are not investing their time well," he says.

Mike Baer, a Rochester, N.Y., psychologist and president of the American Psychotherapy Association, an offshoot of the ACFE, says O'Block bears the brunt of a lot of unfair criticism.

"He's not trying to compete with anybody," Baer says. "He's just trying to build a good organization from the ground up."

Baer, who was credentialed by the ACFE four years ago, says he didn't get any special consideration when he applied for board certification. "I don't believe for a moment" that the ACFE is a certification mill, he says. "Otherwise, I wouldn't be a part of it."

John Brick, a Philadelphia-area psychologist who chairs the ACFE's continuing education committee, says he likes the organization for its openness and inclusiveness.

Brick, who joined the organization several years ago, says his first annual meeting with the group was the best professional meeting he ever attended. "I met more people at that meeting than I have at any [other] professional meeting."

Although Brick says he qualified for diplomate status without taking the exam, he elected to do so anyway. "It was more difficult than I thought it would be," he says. "It was definitely not a Mickey Mouse-type of thing."

The critics may win out in the end, though, because of the work of a task force that is developing a set of standards for accrediting the entities that do the credentialing. Its work is being sponsored by the American Academy of Forensic Sciences under a grant from the National Institute of Justice.

The task force was formed three years ago in response to the proliferation of credentialing organizations in the forensic sciences, including the ACFE.

The group has proposed standards that are being circulated among more than a dozen credentialing organizations for comment. They cover everything from education, training and experience to testing and recertification, according to task force chairman Graham Jones, an Edmonton, Alberta, toxicologist.

And if all goes according to plan, the American Forensic Specialties Accrediting Board, as the proposed accrediting organization will be known, could start operating by next year. The independent, nonprofit corporation would confer the equivalent of a Good Housekeeping seal of approval on any credentialing organization that meets the standards, says

Barry Fisher, immediate-past president of the American Academy of Forensic Sciences.

O'Block says he would welcome the opportunity to be a part of that effort but he has not been asked.

Buoyed by his defenders and unfazed by his critics, O'Block is working on a new idea. He wants to start the first Internet-based educational program to offer a doctorate degree in forensic science.

O'Block says the proposed Ph.D. program would put the world's best forensic scientists together with its most talented students, a prospect that would not have been possible prior to the advent of the Internet.

"Educators have been transmitting knowledge by means of a chalkboard for a hundred years," he says. "Look at how much more powerful the Internet is in transmitting knowledge than a chalkboard."

But critics say the proposed Ph.D. program would do for diplomas what the ACFE's credentialing process has done for board certification.

"It's basically a sham," says Jay Siegel, a forensic science professor at Michigan State University who has studied the proposal in detail. "It's an affront not only to forensic science but to graduate programs in general."

The ACFE had applied for a certificate to operate such a program from Missouri state education officials in 1997, but withdrew its application in 1998 after encountering heavy opposition from dozens of forensic scientists nationwide.

The same thing happened in 1999 when the ACFE approached Oklahoma state education officials with a proposal to establish a similar program there.

O'Block likens criticism of the proposal to a racial or ethnic slur. He says it's easy for critics to presume something before it happens, but he predicts that the critics will eventually be proven wrong.

The program's proposed faculty will include only experienced professors who hold Ph.D.s from the country's top-rated universities, he says. Teachers, presumably, who got their credentials the old-fashioned way--by earning them.

Tracing the Bullets

A child is killed by a stray bullet. Who fired the shot? A law enforcement agent kills a man wielding a shotgun. Was it self-defense?

Those were the issues in recent cases where experts certified by the American College of Forensic Examiners were ready to venture an opinion. But were they qualified to testify?

Critics of the acfe say the organization is giving credentials to those who lack expertise, and they fear that judges and juries will be swayed by those credentials. They cite several instances in which questions have been raised about the testimony and qualifications of acfe board-certified experts.

One case involves Wayne N. Hill Sr., a licensed gunsmith and former police officer from East Moline, Ill., who has been a board-certified forensic examiner since 1994. Hill, who calls himself a homicide events-reconstruction expert, says he has testified in more than two dozen courts in 12 states and the Philippines.

But a judge in Baldwin County, Ala., ruled last year that Hill wasn't qualified to testify as an expert about anything.

Hill had been hired by the lawyer for a man charged with manslaughter in the 1997 shooting death of a 12-year-old boy.

Prosecutors alleged that the defendant, who was target shooting with a deer rifle in his backyard, accidentally fired one round through the front door of a mobile home 600 yards away. They claimed the bullet then deflected upward and struck the boy in the head.

Dale Carter, supervisor of the firearms and trace section of the state crime lab in Mobile, says the bullet's trajectory was tracked directly back to the defendant, who also happened to be the only person in the area known to have been firing such a weapon at the time.

But Hill, who says he has a curiosity that would kill a planet of cats, was prepared to testify that the bullet couldn't have come from the defendant's rifle for two reasons. First, he says it is highly unlikely that the bullet would travel through 600 yards of dense woods without hitting something else first. Second, the bullet would not have deflected upward after striking the door.

"Given the totality of the physical evidence, I don't think this guy could've done it," Hill says. "There are just too many things to overcome for him to be the shooter."

But Hill never got a chance to present his findings to a jury because Circuit Judge Robert Wilts refused to qualify him as an expert.

The defendant was convicted of criminally negligent homicide, a misdemeanor, and sentenced to one year in jail.

Defense lawyer Jim May says Hill certainly qualifies as an expert under the Alabama rule, which basically says that if a witness knows more than the average person, he or she is qualified. "You'd have to know this judge to understand

why" Hill wasn't allowed to testify, May says.

May also says he is confident his client's conviction will be reversed, if not on that issue then on other grounds. "The evidence just wasn't there," he says.

And Hill, who says Wilters was "definitely a prosecutor's judge," stands by his assessment of the case. "It might well have been a drive-by," he says.

Assessing Blame

Retired Bellevue, Wash., police chief D.P. Van Blaricom has been board-certified as a forensic examiner with the American College of Forensic Examiners since 1995. An expert on police practices, he says he has testified for one side or the other in close to 150 police liability suits since 1976.

But it was an affidavit he filed last year on gunshot wound ballistics that has raised eyebrows within the forensic science community.

The Drug Enforcement Administration was sued by the family of a Tucson, Ariz., man shot to death in 1997 after mistaking a dea agent for a child molester and confronting him with a sawed-off rifle.

The dea agent said he shot the man in self-defense as the victim approached his car on a dirt road near the victim's house, where the agent was posted as part of a surveillance team on a suspected drug trafficking operation.

But the plaintiffs alleged that the agent was in no danger when he began shooting because the victim had already lowered his rifle and was turning away from the agent when he was shot.

The dea's expert was Martin Fackler, a board-certified surgeon who is generally considered to be one of the world's leading authorities on ballistics and wound ballistics. He says the evidence was clearly consistent with the agent's claim that he shot the man in self-defense. "It was a no-brainer," Fackler says.

But Van Blaricom, the plaintiffs' expert, filed an affidavit in the case in which he says the bullet entered the victim's body on the left side of the chest and exited the right side of his back at about a 60 degree angle.

Fackler, however, says the bullet traveled through the victim's body at about a 29 degree angle, plus or minus 10 degrees. And even if Van Blaricom was correct about the angle, Fackler says, he would have been wrong in saying it meant the victim had been turning away because a person pointing a rifle turns his body at about a 45 degree angle to the target.

Fackler says Van Blaricom's affidavit was so off-base the plaintiffs didn't even bother to call him as a witness when the case was tried last June. (Steven Copple, the plaintiffs' lawyer, couldn't be reached for comment.)

But Van Blaricom says the dea did such a poor job defending itself his testimony wasn't needed.

In the end, U.S. District Judge Robert Whaley held that the agent and the victim were equally to blame, awarding the victim's family a \$1.38 million judgment.

The government is appealing.

Shopping Tips

Lawyers shopping for an expert need to look beyond the

credentials given by organizations like the American College of Forensic Examiners.

Failing to do that could land lawyers in ethical trouble. Several of the ABA's Model Rules of Professional Conduct, which have been adopted in a majority of states, may come into play.

They include:

- * Rule 3.3, which requires a lawyer to investigate the background of expert witnesses to avoid putting on perjurious testimony regarding their credentials.
- * Rule 3.8, which requires that prosecutors disclose any exculpatory evidence they have uncovered, including any evidence of fraud relating to an expert's acts or knowledge.
- * Rule 5.3, which says lawyers are barred from ratifying the unethical conduct of nonlawyers, including experts.
- * Rule 8.3, which requires prosecutors to report unethical conduct by other lawyers, including knowingly using an expert they have discovered to be a fraud.
- * And Rule 8.4, which states that it is professional misconduct to violate the Model Rules; commit a crime that reflects adversely on a lawyer's honesty, trustworthiness or fitness; engage in conduct involving dishonesty, fraud, deceit or misrepresentation; or engage in conduct that is prejudicial to the administration of justice.

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