

A farmer has sued a neighbor for starting a fire that burned down the farmer's barn. At trial, the farmer offers, under the public records exception, a properly authenticated copy of the fire marshal's official report, which found that the neighbor started the fire. The report states that this conclusion is based on the fire marshal's extensive training in fire investigation, on the fire marshal's examination of the scene, and on interviews with numerous witnesses. The report quotes one witness as saying, "I saw [the neighbor] light the match that started the fire." The neighbor objects to the admission of the report.

How should the court rule on the report's admissibility?

- A. Admit the report containing the fire marshal's conclusion as a public record but exclude the witness's statement.
- B. Admit the report in its entirety as a public record.
- C. Exclude the report, because admitting it would deny the neighbor his right to confront witnesses against him.
- D. Exclude the report, because the fire marshal's conclusion is based on multiple hearsay.

Correct

Collecting Statistics

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### Explanation:

Hearsay is an out-of-court statement (eg, fire marshal's report) offered for the truth of the matter asserted therein. When such a statement contains another that is offered for its truth (eg, eyewitness's statement), a **hearsay within hearsay** issue arises. In such a case, both statements must be **excluded** or **excepted** from hearsay to be admissible.

Here, the fire marshal's report is excepted from hearsay as a **public record**—ie, a record that sets out:

activities of the public office or agency

**matters observed** pursuant to a **legal duty to report**, excluding observations of law-enforcement personnel in criminal cases *or*

factual findings from a legally authorized investigation offered (1) in a civil case or (2) against the government in a criminal case.

However, **statements** in such reports by **third parties** who are under **no legal duty to report** (eg, eyewitnesses) do not fall within the public records exception and must independently satisfy a hearsay exclusion or exception. And when, as here, no other hearsay exclusion or exception applies, the third party's statement should be **excised** from the report (**Choice B**). Therefore, the court should *admit* the report as a public record but *exclude* the witness's statement.

**(Choice C)** The Sixth Amendment right to confrontation guarantees a *criminal* defendant's right to confront adverse witnesses at trial, so it does not protect the neighbor in this *civil* action.

**(Choice D)** The fire marshal's conclusion is based on interviews with multiple witnesses (ie, hearsay) as well as the marshal's extensive training in fire investigation and examination of the scene. And since public officials may properly consider hearsay as part of a larger investigation when making factual findings, this is not a basis to exclude the report.\*

\*However, a public report that rests solely on hearsay is subject to attack by the opposing party as lacking in trustworthiness and is likely inadmissible.

### Educational objective:

Each statement of multiple hearsay must be excluded or excepted from the hearsay rule to be admissible.

### References

Fed. R. Evid. 805 (hearsay within hearsay).

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## Hearsay within hearsay (FRE 805)

Woman's statement is hearsay



FRE = Federal Rules of Evidence

Witness's statement is hearsay within hearsay



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