

Personal Insurance

Fire Scene Preservation for First Responders

- David Row, IAAI-CFI, CFEI, IAAI-CI, MIFireE
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Objectives

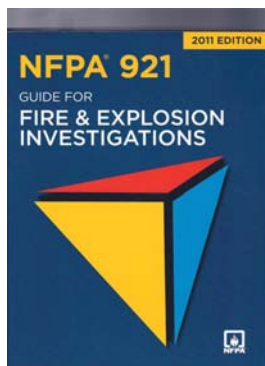
- ✓ Understanding the importance of fire investigation & its purpose.
- ✓ Understand scene preservation & its purpose.
- ✓ Understand the responsibility & role of fire suppression personnel.
- ✓ Why overhaul & salvage are critical and should be kept to a minimum.
- ✓ Scene security
- ✓ Evidence
- ✓ Understand Spoliation
- ✓ Understanding public v. private issues

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What is the purpose of Fire Investigation?

- ❑ To determine the origin, cause, and development of a fire or explosion.
- ❑ To determine the responsibility, circumstances and factors that were necessary for the fire to have occurred.
- ❑ Fire Prevention!!!to identify & learn how to keep this type of problem from occurring again!

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How do Fire Investigators arrive at the Origin??

- ❑ NFPA 921: Guide for Fire & Explosion Investigations – (2011 Edition)
- **(1) Witness Information:** The analysis of observations reported by persons who witnessed the fire or were aware of conditions present at the time of the fire (including first responding engine crews).
- **(2) Burn Pattern Analysis:** The analysis of effects and patterns left by the fire on all surfaces.
- **(3) Arc Mapping:** The analysis of the locations where electrical arcing has caused damage and the documentation of the involved electrical circuits .
- **(4) Fire Dynamics Evaluation:** The analysis of the fire dynamics; that is, the physics and chemistry of fire initiation and growth, and the interaction between the fire and the building's systems.

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NFPA 921 Sec. 16.3.1.2

- **16.3.1.2** The responsibility for the preservation of the fire scene and physical evidence does not lie solely with the fire investigator, but should begin with arriving fire-fighting units or police authorities. Lack of preservation may result in the destruction, contamination, loss, or unnecessary movement of physical evidence.

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What is Scene Preservation?

- The ability to maintain the fire scene as close as possible to its original form after extinguishment/overhaul, with little or no significant changes that would destroy or alter evidence.



Scene preservation **is not** the sole burden of the fire investigator! It's everyone's responsibility, starting with fire suppression personnel!



Responsibilities:
Fire Suppression Personnel



- Consider the ***Entire*** scene as evidence
- Preservation begins with the 1st arriving unit
- Secure the scene to the best of your ability!
- Avoid *contamination* and *spoliation*!

Fire Suppression Personnel

ALWAYS!!



LIFE
PROPERTY
ENVIRONMENT



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**Evidence Preservation Responsibilities of
Fire Suppression Personnel**

- Observe
- Recognize
- Protect
- Notify

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OBSERVE

Scene Observations/ Size-Up

- ✓ Victims / Injuries (body locations)?
- ✓ Witnesses?
- ✓ Fire Location (multiple)?
- ✓ Windows (open/closed)
- ✓ Fuel packages
- ✓ Shoe / Tire Impressions?

OBSERVE

Entry / Suppression

- ✓ Obstructions?

PROTECT

☐ Scene Integrity

- ✓ Limit Access only to those who need to be there!
 - ✓ Fire line / Barrier tape
 - ✓ Set up a perimeter
- ✓ Avoid Contamination
 - ✓ Tracking foreign substances
 - ✓ Refueling
- ✓ Avoid Spoliation
- ✓ Understand that the *entire scene is evidence!*

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PROTECT

☐ Control Suppression

- Water
 - ✓ Limit water usage after knockdown
 - ✓ Limit & supervise wash-downs
 - ✓ Limit drain-holes to areas away from the area of origin.
 - ✓ Limit overall usage of water
- Tools
 - ✓ Use clean tools
 - ✓ Clean PPE
 - ✓ Avoid gas powered equipment usage indoors
 - ✓ Fuel equipment well away from scene
 - ✓ Avoid contamination!!

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PROTECT

☐ Control Suppression

☐ Windows

- ✓ open vs. breaking
- ✓ preserve positioning
- ✓ ventilation (vertical vs. horizontal)
- ✓ burn patterns ?

- Doors

- ✓ avoid removal or destruction
- ✓ evidence of forced entry?
- ✓ ventilation (open & closing)
- ✓ burn patterns

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PROTECT

☐ Control Suppression

- Walls & Ceilings
 - ✓ avoid collapsing to maintain fire patterns.
 - ✓ make inspection holes vs. full openings
 - ✓ use Thermal Imaging Camera
- Overall Considerations:
 - ✓ Your 2nd priority..... to protect "property".
 - ✓ Treat the victims property as if it was yours!
 - ✓ Don't create unnecessary damage
 - ✓ There is a reaction to your actions!!

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PROTECT

☐ Control Salvage:

- Make every attempt to protect property & evidence.
- Flag/Cover items of evidence instead of removing.
- A scene reconstruction will occur in the future. Leave contents, furnishings and fixtures in their original position; it will save the investigator time and allow for a more accurate scene examination.
- If possible, delay the completion of overhaul and salvage until the area of origin has been established (IFSTA manual)
- Remain observant through overhaul and salvage operations for concealed evidence.

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PROTECT



PROTECT



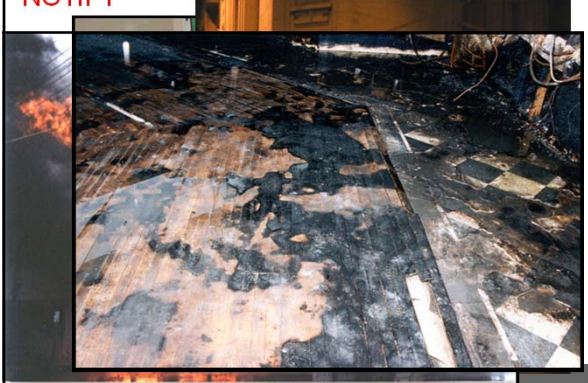
PROTECT



NOTIFY



NOTIFY



What is Spoliation?

- Derives from Latin: “Omnia praesumuntur contra spoliatores”.
- Translation: “All things are presumed against the destroyer or wrongdoer”

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Definition

- Spoliation of Evidence
 - “The destruction of evidence which is relevant and may benefit a party in a lawsuit, done by another party in an intentional, willful or negligent manner”.

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Spoliation of Evidence Can Have Severe Consequences

- Determination is within the discretion of the trial judge. Remedies may include:
 - Dismissal of case or directed verdict
 - Order against use of, or reference to, the evidence
 - Striking or limiting lay or **expert** testimony
 - Jury instructions with inferences regarding evidence.
 - If warranted, contempt orders, fines, and even criminal prosecution.

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Fire Scene Investigations: What does NFPA 921 say?

- 16.3.5.3.2 Overhaul
 - (A) It is during overhaul that any remaining evidence not damaged by the fire is susceptible to being destroyed or displaced. **Excessive overhaul** of the fire scene prior to the documentation and analysis of fire patterns can affect the investigation, including failure to determine the area of origin.

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Continued.....

- (B) While the fire fighters have a responsibility to control and extinguish the fire and then check for fire extension, they are also **responsible for the preservation of evidence**. These two responsibilities may appear to be in conflict and as a result, it is usually the evidence that is affected during the search for hidden fire.
- However, if overhaul operations are performed in a systematic manner, **both responsibilities can be met successfully**.

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Who are the culprits?

- First Responders/Fire Personnel
- Public sector investigators
- Private sector investigators
- Structure owners
- Contractors and board up crews

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Point of View:
Public vs. Private

- What's the difference?
 - Public investigation is geared to the criminal issues
 - Private considers incendiary & accidental equally important.
 - Insurance has the "cooperation" clause
 - Insurance has outside expertise
 - Money!

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Watch your fire classification on NFIRS

- The classification of an "Accidental" fire
 - 19.2.1.1 Accidental fires involve all those for which the proven cause does not involve an intentional human act to ignite or spread fire into an area where the fire should not be. When the intent of the person's action cannot be determined or proven to an acceptable level of certainty, the correct classification is undetermined.

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Public vs. Private

Subrogation

- 3rd Party
- Circumstances in which an insurance company tries to recoup expenses for a claim paid out when another party is responsible.
- Plaintiff in an action

Liability

- Being responsible for someone else's loss/damages.
- Defendant in an action

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Spoliation is NOT just a Private Sector Issue...

- Public sector officials' actions also impact many aspects of investigations:
 - Criminal charges may be compromised or even dismissed, based upon the spoliation of evidence.
 - We suggest that public officials do their duty and do it well, but have a regard for how their activities may impact other investigations yet to be conducted...

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Key Issue for Public Sector Investigators


- We (private and public) should all work cooperatively together to identify and preserve any potentially necessary evidence.
 - We must acknowledge and respect our separate and distinct roles.
 - Investigators should work within the limitations of their knowledge or expertise.

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–Don't exceed the scope of your duty.
–We are all working toward the same goal: To identify the TRUTH regarding what has occurred.

CONCLUSION

- Spoliation
 - What you do not know (or consider) can hurt you, your case, or the homeowner.
 - Spoliation of evidence is NOT ONLY a defense to an action, but can be a separate tort action (civil fines and penalties).
 - The day is coming when public officials will be subject to similar penalties.

 Hopefully, you now have a clearer understanding of:

- ✓ What the fire investigator needs to conduct origin & cause investigations.
- ✓ The roles and responsibilities of fire suppression personnel.
- ✓ Scene security issues and why we should limit access to the scene.
- ✓ Why we should be conservative during fire suppression, overhaul and salvage operations and how these operations affect the fire investigation.
- ✓ What is evidence, why we should safeguard it and the spoliation & contamination of the same
- ✓ Public fire investigators obligations vs. private fire investigators obligations, and that cooperation is the best plan!

What should you do?

- Be aware of the spoliation issue on EVERY fire you are involved in, whether from public or private sector perspective.
- When in doubt: SLOW DOWN.
- Err on the side of preserving and protecting the evidence
- Be prepared to document in writing what you did and WHY.

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- If the structure has insurance, remember that an origin and cause investigator will most likely be responding. Most private investigators want to work with the public officials to determine the origin and cause of the loss. Parallel investigations and cooperation tend to produce the desired results that benefit both entities.
- Expenses for conducting the investigation will be paid by the insurance carrier, in most instances. Use this resource to your benefit.

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A Final Thought...

- **Spoliation of Evidence can be both a sword and a shield.**
 - It can be used against you if you are not fully prepared and have addressed evidence issues.
 - It can be used very effectively to defend cases where the opposing party has disposed of or altered the evidence.

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Questions?

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