Legal Considerations

Knowledge Objectives (1 of 2)
• Recognize and list the major legal issues and considerations that may arise in a fire or explosion investigation.
• Describe the legal authority for both public and private sector investigators required to conduct a fire investigation.

Knowledge Objectives (2 of 2)
• Define the different types of evidence that you may utilize in trial and give examples of each type.
• Explain the difference between fact witnesses and expert witnesses and summarize the basic requirements for expert testimony to be admitted at trial.

Skills Objectives
• Brief your attorney on the importance of NFPA 921 and NFPA 1033.
• Prepare and revise your curriculum vitae so that it is suitable for your use as an expert witness.
• Demonstrate effective techniques for delivering testimony.

Introduction
• NFPA 1033 requires investigators to:
  – Know a wide variety of legal topics.
• NFPA 921 has a Legal Considerations chapter
  – Touches on most of the NFPA 1033 legal topics.

Legal Considerations During Investigation
• All aspects of the investigation can be scrutinized.
• Legal proceedings may be criminal or civil.
• Investigator should be familiar with applicable laws
  – Or seek guidance from local counsel
Authority to Conduct the Investigation

• Granted by
  – Law (public sector investigations)
  – Contract (private sector investigations)
• Arson immunity reporting acts
  – Exchange of information between public officials and insurance companies
• Licensing requirements

Right of Entry (1 of 2)

• Can be granted by consent
• Public investigator may still need a search warrant
• Private investigator might need consent, eg, from property owner
• Preservation of fire patterns and potential evidence is important.

Right of Entry (2 of 2)

• Entering a scene without authority:
  – Criminal charges
  – An action for civil liability
  – Inadmissible evidence at trial
• Preservation of fire patterns and potential evidence is important.

Public Sector Investigator Right of Entry (1 of 3)

• A fire scene investigation is considered a search and seizure
• Under constitutional law, every entry must be justified by:
  – Consent
  – Exigent circumstances
  – Administrative search warrant
  – Criminal search warrant

Public Sector Investigator Right of Entry (2 of 3)

• In the case of fire, an exigent circumstance exists that allows entry of fire crews.
  – Must take place within a “reasonable time”
  – Must begin at first opportunity.

Public Sector Investigator Right of Entry (3 of 3)

• An administrative search warrant is intended for situations in which the reasonable time has passed.
• A criminal search warrant is based on the probable cause that a crime has occurred at the location to be searched.
Private Sector Investigator
Right of Entry

- No constitutional issues
- Consent entry is used almost exclusively.
  - Express consent from owner or occupant
  - Implied consent from insurance policy
  - Right of entry granted by court order

Witness Interviews and Interrogation (1 of 3)

- To have witness interview legally admissible at trial, investigator must follow:
  - Fifth Amendment—person cannot be compelled to give incriminating testimony
  - Sixth Amendment—person has right to counsel
- Warnings under Miranda Rule must be given.
  - When interview/interrogation takes place in custodial setting

Witness Interviews and Interrogation (2 of 3)

- A witness has a right to:
  - Remain silent
  - Have an attorney present

Witness Interviews and Interrogation (3 of 3)

- Custodial setting factors
  - Authority of the interviewer
  - Location of the interview
  - Length and context of interview
  - Participants at the interview

Arrests and Detentions

- Arrests
  - Officer must have probable cause
  - If Constitutional rights are violated, arrest may be dismissed and evidence excluded at trial
- Detentions
  - Officer has reasonable suspicion of crime
  - Detention must be brief

Spoliation of Evidence (1 of 4)

- Loss, destruction, or alteration of evidence
- Issue that arises in most fire scene investigation:
  - When investigator moves or removes material, other parties cannot investigate it.
Spoliation of Evidence (2 of 4)

• A dryer dismantled by fire crews may be considered spoliation of evidence.

Spoliation of Evidence (3 of 4)

• The court may take action against the party responsible for spoliation.
  – Prohibit testimony about spoliated evidence
  – Prohibit testimony at all
  – Instruct jury that spoliated evidence would have been damaging to case
  – Judge in favor of victimized party

Spoliation of Evidence (4 of 4)

• Avoid claims of spoliation by using common sense:
  – Do not needlessly discard, destroy, or lose evidence.
  – Alert other parties to evidence in their interest.
  – Secure the scene.
  – Document the scene.

Investigator as Trial Witness

• Become familiar with:
  – Courtroom
  – Civil and criminal trial proceedings
• Know procedural steps that occur before and at trial.

Reports

• Legal factors determine whether expert witnesses prepare a report.
• Report content will be determined by:
  – Procedural rules
  – Your usual practice
  – Attorney requirements

Types of Evidence

• Real or physical evidence
• Demonstrative evidence
• Documentary evidence
• Testimonial evidence
Real or Physical Evidence (1 of 2)

- Physical items that may be produced in court
  - From miniscule cloth fibers to a section of wall
- May be subjected to testing
- May become subject of demonstrative evidence
- Chain of custody must be established to ensure evidence is admissible at trial

Real or Physical Evidence (2 of 2)

- Collecting physical evidence.

Demonstrative Evidence

- Tangible evidence relevant to a case
  - Photograph, diagram, or chart
  - Items gathered from fire scene
  - Other tangible items
- Proper authentication helps ensure admissibility, but chain of custody is not required.

Documentary Evidence (1 of 2)

- Any type of written record relevant to the case
  - e.g., business records, incident reports, insurance policies, investigative notes
- Must be properly obtained
- Must be authenticated at trial

Documentary Evidence (2 of 2)

- To avoid hearsay challenges, evidence should be properly presented

Testimonial Evidence (1 of 4)

- Verbal testimony
- Given under oath
- Subject to cross-examination
- Relevant and reliable
Testimonial Evidence (2 of 4)

- Investigator may be involved with affidavits, interrogatories, depositions
  - Affidavit is voluntary written statement of fact or opinion
  - Interrogatory is set of questions served by one party to another
  - Depositions are oral testimonies made under oath

Testimonial Evidence (3 of 4)

- Lay witnesses (also called fact witnesses)
  - Testify about matters within firsthand knowledge
  - Restricted in their testimony by FRE Rule 701, which limits the types of opinions they can give
- Expert witnesses
  - Can render opinion on the incident
  - Judge assesses admissibility and relevance of evidence and the qualifications of expert

Testimonial Evidence (4 of 4)

- Trial judge also determines qualifications of an expert.

Arson

- One of the oldest criminal offenses
- Generally a felony
  - Punishable by imprisonment and fines
- Arson to occupied structure is first-degree
  - Prison time may range up to life

Circumstantial Evidence

- Circumstantial evidence may prove arson.
  - Evidence based on inference rather than personal observation
- Arson crimes usually require three things:
  - Fire was incendiary
  - Person who set fire had criminal intent
  - Defendant set fire or arranged for someone else to

Other Fire-Related Criminal Acts

- Vandalism
- Burning to defraud
- Wildfire arson
- Disabling fire alarm system
- Failure to report a fire
- Many others
Civil Litigation

- Far more common than criminal prosecution
- Similar procedures to criminal cases
  - But usually much longer discovery phase
- Lawsuits have been filed against investigators.

Negligence

- Conduct that falls within the legal standard established to protect others against harm
  - Carelessness
- Conduct of plaintiff is a primary consideration in the ruling.

Product Liability (1 of 2)

- Makers or sellers of defective products may be liable for persons injured by those products.
  - Manufacturing defects
  - Inadequate warnings
  - Design defects

Product Liability (2 of 2)

- Fire investigator must consider:
  - Spoliation
  - Chain of custody
  - Possibility of defective components
  - Product’s history
  - Retaining experts
  - Obtaining undamaged exemplar for comparison

Summary (1 of 7)

- NFPA 921 and NFPA 1033 can be used in litigation to evaluate the qualifications of experts and to support or challenge the reliability of their opinions.

Summary (2 of 7)

- A single fire or explosion incident can give rise to a number of different civil or criminal legal proceedings. For this reason, investigators must be familiar with both civil and criminal litigation.
Summary (3 of 7)

- Arson is the crime of causing unlawful and intentional damage, by fire or explosion, to designated types of property, including residences, buildings, sheds and other structures, vehicles, aircraft, watercraft, and personal property.

Summary (4 of 7)

- The elements of a criminal arson offense are specified by state or federal statutes.
- Investigators should stay current with the arson laws in their jurisdictions.
- There is an entire range of other federal and state fire-related criminal offenses with which investigators should be familiar.

Summary (5 of 7)

- Civil litigation is more common than criminal prosecution for fire incidents.
- Before commencing an investigation, both public and private investigators must ensure that they have the legal authority to investigate.
- Right of entry is also required.

Summary (6 of 7)

- Investigators should be familiar with real, demonstrative, documentary, and testimonial evidence.
- To reduce the chances of spoliation, documentation of physical evidence is critical.
- Notifying other interested parties before investigating or conducting destructive testing is also important.

Summary (7 of 7)

- There are two types of witnesses at trial: lay witnesses (fact witnesses) and expert witnesses.
- Many jurisdictions require the preparation and disclosure of expert reports in civil cases. Criminal cases can also benefit from expert reports.