

Misconceptions About Fire Investigations

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Part V/Fragmentation of Investigations

In a recent investigation of a fire at a highway diner the following events occurred:

The structure, a combination small diner, garage and living quarters in one building, burned late one night while the owner was away on vacation. The first volunteer firefighter arrived, and found the controls on the pumper malfunctioning so that he was unable to put any water on the fire. Since the diner was far from any city water supply, by the time the second pumper arrived the building was consumed by the fire. A scene inspection by a causation expert established the fire cause as incendiary.

The fire investigator's report noted, along with other pertinent information, the presence of several gun barrels in the debris indicating a gun collection. There was nothing found at the fire scene which in itself pointed to a suspect.

During the follow-up investigation, however, a witness was interviewed who knew specifically about the insured's gun collection. The witness, during the course of the conversation, expressed regret at the terrible loss of two particular guns. When he described the two guns the investigator knew immediately there were no guns of that type in the debris. Suddenly, facts that had been little more than fire scene inventory now became critical clues in identifying a suspect.

Further investigation revealed that the first arriving firefighter (with the disabled pumper) was a gunsmith, and the missing guns were used as payment to him by the insured to set the fire. When the firefighter was confronted with the facts discovered by the investigator, he turned State's evidence, and the case was solved.

One thing is very clear from the above story. If this was a **fragmented investigation**, conducted by two separate investigators, the evidence discovered during the conversation would have been insignificant. This case was not solved by a report sent in by a causation expert or by information gained from a routine follow-up investigator. It was solved from seemingly insignificant information known only to the scene investigator but which later, in the light of new facts, became the key to the solution.

Recently, there has developed a trend in the insurance industry to use one investigator for origin and cause determination and a different one for follow-up investigation. The reasons given for this practice are several. In general, the cost of an expert, for example a fire causation expert, is higher than that of a private investigator. Insurance companies, to save money, often prefer to have the follow-up investigation conducted by the less experienced and less expensive investigator.

A very small, but recently very vocal, number of attorneys representing the insurance industry have also emphatically espoused this practice. The reasons for their asseveration on this point differ, however, from those of the insurance companies. Their most common argument for fragmented investigation is that information obtained by the expert may be threatened with disclosure during discovery.

Some authors with little or no investigation experience have quickly caught the tone set by the tuning fork of those few who are recommending split investigations but for different reasons still. They fear that the determination of the cause of the fire might be prejudiced by knowledge gained from background investigation.

The final defense, especially when they are challenged, used by those embracing the split investigation method is that traditionally fire departments have turned the follow-up investigation over to the police department with its criminal investigation expertise. Of course this practice is common because fire departments seldom have the resources or experience to conduct a criminal investigation. It is not a positive choice; it is a negative necessity.

A large number of insurance investigations start with great promise and slowly die an expensive death. Is it more difficult to investigate a crime where insurance is the motive? Are the people committing insurance fraud more intelligent than those involved in other areas of crime? Is there a lack of interest or concern on the part of the insurance industry? Does the fact that insurance is involved lessen the seriousness of the crime?

The answer to all those questions is a very emphatic **NO!** In fact, many of the crimes in which insurance funds are the motive should be easier to investigate successfully than others in which the motive is hidden in a maze of human emotions. People committing insurance fraud are committing a crime, and they make mistakes as any other criminal does. Certainly in the past few years we have seen concentrated effort and interest by the insurance industry to pursue defense against fraud and arson; so, why is it a fact that insurance investigators fall short of an acceptable success rate?

Could the answer be as simple as the method of investigation? Investigation was not a profession invented by lawyers or the insurance industry. It is also not a profession that is learned in law school or by adjusters in a training class. *Investigation is a profession all its own, and it is a profession that was developed by the law enforcement agencies of the world.* The vast majority of successful investigators either are a product of law enforcement or have worked very closely with law enforcement.

Insurance claims people consistently seek out investigators with a law enforcement and a criminal investigation background to the point that they want this experience documented on the investigator's resumé. *Why is it, then, that, when that criterion is met, the industry will follow the recommendation of relatively few advisors with no such background and allow the investigation to be handled in a manner that no law enforcement agency would consider practical?* Can you imagine a metropolitan law enforcement agency splitting

investigations by having one detective do the scene while another detective performs the follow-up? Can you imagine one detective examining a murder scene and then turning the file over to another who never saw the scene? That would be considered the height of supervisory incompetence, and most proficient, professional law enforcement officers would have a hearty laugh at that concept.

The fire scene is connection, and, in many cases, the only connection to the responsible party. It is impossible, however, to conduct a scene examination and record all information in any report. The investigator will include routine information and information that he believes to be important at that time. He cannot possibly be expected to report information or facts that might develop an association in the future.

How can an investigator conduct a proper follow-up investigation or even a witness interrogation if he has only the limited knowledge gained from a report? He simply cannot know what questions are important, what answers are proper or what answers should trigger further questions.

When I read statements taken from witnesses by investigators with limited fire-scene knowledge, I usually find a routine statement that anyone could have taken over the telephone with a pre-established list of questions. I usually wonder why anyone bothered.

To those insurance companies still convinced that using a different investigator or follow-up investigations will save them money, a word of caution. **Any private investigator recommending a split investigation is usually one who is incapable of handling the entire investigation.** Those recommendations are frequently made by investigators who cannot qualify in Court as expert witnesses in the determination of origin and cause of fire or who are very proficient on a fire scene but find it impossible to succeed in the interrogation or interviewing of witnesses and the pursuit of an investigation.

Ironically, it is relatively simple to train a proficient fire scene examiner (the one for whom the insurance industry is willing to pay big bucks) and arrange sufficient educational courses enabling him to qualify as an expert. It is extremely difficult, however, to locate competent follow-up investigators. It is almost impossible to train a qualified investigator unless he possesses the natural instincts, imagination and intuitiveness required. **It takes many, many years to develop expertise as an investigator** and frankly the investigator, if he is truly qualified, experienced and successful, is the more costly.

There are available to the insurance industry investigators that are very capable on the fire scene and very capable of carrying the investigation to a conclusion. Unless the industry begins to utilize those talents to a greater degree the situation will eventually change and the cross-trained investigator will become a difficult asset to find.

As for attorneys who recommend split investigations, it is a capital mistake to assume that all defense attorneys are totally experienced in fraud and arson defense work. If an

attorney hires a follow-up investigator who is not knowledgeable in insurance, the investigation is doomed from the beginning. In fact, if the investigator is not completely knowledgeable in regard to the civil laws pertaining to slander and libel, the result could very well be financial disaster.

To those who use the thinly disguised insult of bias as a defense for split investigations, consider the chronology of the typical fire investigation. In most cases, the fire scene examination is performed first before any background information is obtained. Whatever the chronology, however, the accusation of bias does not merit defense. *Bias is the weapon of those who have no valid argument.* It can be directed arbitrarily at any profession. The responsibility of any professional is to eschew bias.

Finally, to address the problem of discovery, in many cases insurers are not favored litigants in Court nor in the eyes of the jury. If discovery and disclosure of certain information is the reason for recommending fragmented investigation then it is difficult for most jurors to understand the secrecy in such an investigation. Withholding evidence only serves to exacerbate what is already an area that could be interpreted as a demonstration of bad faith. The insurer owes its insured fair treatment and must insure fairness throughout each step in the handling of the claim.

As most experienced adjusters are aware, if a case is going to trial most evidence discovered during the investigation will be available to the plaintiff. It is folly to recommend an ineffective non-productive split investigation when such a small percentage of cases actually go to litigation and when such a small percentage of reports are subject to discovery. One must question which is the most detrimental-not allowing a witness' testimony to be discoverable, or not having any valuable information in the investigative file worth discovering.