ARSON '76

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PREFACE

Approximately four years ago the Fraud and Arson Division of the American Insurance Association was discontinued by the participating insurers. At that time many insurers felt that the demise of the Fraud and Arson Bureau would leave a gap between the insurance industry and law enforcement. Insurers approached the General Adjustment Bureau (GAB) and suggested that, as a national organization, GAB was in the best position to form a unit concentrating their activity toward the investigation of fraud, arson and other related crimes directed towards the insurance industry or insurance funds.

After considerable research and contact with various insurers and law enforcement agencies, the practicality and need for a fraud and arson investigative unit was obvious and GAB proceeded to organize just such a unit.

In an attempt to benefit from the experience of predecessors certain commitments and certain restrictions were formulated into the basic policy of the new Investigations Division. It was not possible or practical to fund the unit on a subscription basis but rather it was necessary to offer service to the insurance industry with charges on an individual case basis, charging actual time and expense incurred in the investigation.

It was apparent that any attempt to staff the entire United States immediately would affect adversely the quality of the investigations. Therefore, the expansion of the Investigations Division was programmed over an extended period. The commitment to the insurance industry did not involve special investigational service in any area until the services of qualified arson investigators were available. Because of this commitment to quality investigations, service is still limited although available presently in 17 locations. Any expansion is based on the availability of qualified investigators.

The Investigations Division operated completely separate from all other services of GAB. The separation included recruitment, employment, training and supervision. Special Agents of the Investigations Division did not report to nor were they accountable to any supervisory personnel from other divisions of GAB. All supervision and control was maintained within the Division. Division files were maintained under top security. Access to the files is available only to members of the Investigations Division.

Assignments were accepted from insurers only and the reports were made only to the individual who made the assignment. All reports were maintained on a totally confidential basis. In some states, investigations were made under private detective licenses which involved severe legal penalties for breach of confidentiality.

On July 1, 1976, GAB Investigations Division was totally severed from GAB and was established as a subsidiary corporation, becoming the INS Investigations Bureau, Inc.
Arson in the United States today is one of the most severe problems facing the insurance industry with the problem extending beyond the insurance industry and representing the most expensive crime directed against the American public. Knowledgeable statisticians in the law enforcement field have stated that arson represents a dollar loss, four to eight times greater than any other individual crime committed in the United States. Obviously, such a loss not only affects the insurance industry, but has an effect on the Nation's economy that is difficult, if not impossible, to calculate.

Unfortunately, the crime of arson does not receive the publicity or invoke the concern of citizens that it truly deserves. While arson has recently received a great deal of publicity it is still a crime that frequently passes undetected. Even when a fire is established as arson, it rarely invokes a public outcry or demand for action. If a bank is robbed in your town today, suffering loss of $5,000 or $6,000 you would very shortly find local police, county police, state police, the F.B.I. and several private agencies involved. If at the same time a building, insured and valued at considerably more, is destroyed by arson, you would, under the best conditions, probably find one fire marshal searching the ruins and pursuing an investigation. In some communities that fire marshal would be a highly trained and very competent investigator. In other communities he would be a political appointee who is struggling in a very technical field about which he possesses very limited knowledge.

While this situation is improving it most certainly has a long, long way to go before it reaches a level of acceptable investigation and control of the arson problem.

The only reason arson is now receiving increased publicity and greater public concern is the number of deaths that have occurred from arson. Unfortunately, in many communities not only does arson pass undetected but deaths that occur from arson are quickly written off as accidental. There are many established cases where fires and resulting deaths were originally attributed to accidental causes and subsequently, upon investigation by a competent arson investigator, were determined to be arson and murder.

The crime of arson has certain peculiarities that set it apart in a sphere of its own, different from any other crime. While the motives of arson are basic and in many ways are similar to motives for other crimes, the similarity stops at that point. The factors involved with arson make it a very difficult crime to investigate, and frankly, many competent criminal investigators would far prefer assignment to any other type crime than arson. Arson investigation is frustrating, difficult, time consuming, and at times dangerous while the degree of success cannot be compared to the success achieved in other major crimes.

A peculiarity of arson is the established fact that in a vast majority of the cases the victim or alleged victim can frequently provide both the motive and the suspect. Arson is a very personal crime and regardless of whether the motive be financial, jealousy or revenge the victim is closely associated with the crime and the perpetrators. The victim may not be responsible for the crime, but in a vast majority of the cases he does have information that would materially assist an investigator in reaching a successful conclusion. Obviously, I am discounting arson motivated by terrorism, pyromania or thrill. Those motives account for a minor percentage of the arson committed in the United States today. This is strictly a personal opinion but I firmly believe that the financial motive, insurance funds, represents the primary motivation for arson.

A second peculiarity involves the
type of people who become involved in arson. While it is true that we frequently encounter individuals of very questionable character, members of organized crime and others who can only be classed as hoods or thugs, we also encounter individuals on the complete opposite side of the spectrum. We encounter the well respected businessman who has been a long time resident of his community, a member in good standing of his church, perhaps he takes the boy scouts out on weekends and in general is an all around good fellow, highly respected in the community and an individual to whom his reputation is a matter of utmost and primary concern. An individual of this type suffering financial problems may be facing bankruptcy. Some of these people cannot face the embarrassment of publicly acknowledging their failure. They begin to consider how advantageous it would be if a wipe out fire destroyed the source of the problem. They may consider this factor on their own or the advantages of a fire may be suggested to them. A fire would preserve a reputation by avoiding bankruptcy, would preserve a credit rating and standing in the community so that financing would be more readily available. Fire would eliminate the problem, place them in a position where sympathy would be directed by the community to them and at the same time place them in a position to reorganize and continue business activity.

Contrary to popular belief arson may not be instigated by a need for immediate cash. We frequently encounter people whose current financial situation is either good or at least acceptable. Delving into the situation further we find that something has occurred that will in the foreseeable future create a severe financial problem. New competition has opened up and is in a position to produce a similar product with modern equipment, modern methods at considerably less cost. A heavy percentage of the inventory has suddenly become obsolete, the hula hoop craze dies overnight and maxi skirts did not make very many retailers rich. Perhaps, a change has occurred in public transportation. Suddenly the man cannot get his workers in or perhaps his products out. There is a situation right now in a city where bus schedules have been severely curtailed. In one particular area the changes have practically eliminated street business for many merchants. On a Friday afternoon there were thousands of people on the street commuting to and from their businesses. On Monday morning those people were commuting from an entirely different location and available business suddenly dropped to neighborhood residents. That problem will not show in the merchant's books today but it certainly will become apparent in the future.

When a fire occurs and is established as arson it is necessary to look far beyond the insured or the owners immediate needs. The investigation must be complete and must be in-depth. An investigator must determine not only what has occurred up until the time of the fire, but what potential changes and occurrences are facing the individual.

Obviously, not all motives are associated with finances but the motive may be jealousy, pyromania, sexual deviation, etc. For example, a wife aware that her husband was dating other women, decided that if she burned all his dress clothes, leaving him only his work clothes, his social life would be curtailed. She attempted to do just that, the fire got out of hand and put the building into the cellar. We have situations where a wife attempting to keep her husband home at night began to report prowlers, expressed concern to police officers and to her husband with the result that the husband stayed home for a short period. Once he starts his wandering ways again the report of the prowlers may have to be enhanced. Eventually, the lady may start a fire in an attempt to prove to her husband that she is in danger and therefore needs him at home. This situation frequently occurs with minor children. Those children want their
parents home, they are attempting to create a situation where the parents will be convinced that the children are in danger and, therefore, will stay home with them.

Motives can only be described as anything that is either beneficial or satisfying to an individual. We encounter the individual with a mental problem who has a driving urge to be a hero who will frequently discover the fire, wake everybody up in the building and assist in the evacuation often at the risk of his own life. Frequently, he will appear in the newspapers or on television and he is a local hero. Investigation may determine that this "lucky" individual has had previous experiences and has been a hero other times at other places where fires were set in a similar manner.

We have the mentally deranged person who is frustrated in his desire to be a police officer or fireman. He wants to direct traffic while waiting for the officials to arrive at a fire scene. He may wish to assist the firemen in pulling the hose off the truck, fighting the fire and he will risk his own life in doing so.

Obviously, you all have heard of the sexual deviate who can only achieve satisfaction and relief by igniting fires or by having the excitement of the fire engines, the sirens, etc. We encounter them all but by far we are primarily involved with the arson for profit.

It has been said by knowledgeable insurance executives that it is very difficult, if not impossible to underwrite against the fraud fire setter. While there is basis of truth in that statement, I do not believe the insurance industry can afford to throw up its hands, open its checkbook and accept the illusion that nothing can be done about arson. There very definitely is something that can be done about arson and in my opinion the insurance industry is coming to this realization.

Considering the vast amount of money involved and the frequency of the crime of arson, the insurance industry must realize that it is, for all practical purposes, in a war. Law enforcement cannot solve all the problems. To begin with, law enforcement agencies are not overstaffed. There are many excellent fire marshal's departments around the United States but I don't know of any that have excess investigators. Law enforcement, of necessity, must direct its primary efforts toward crimes of violence and crimes that represent the greatest importance to the general public. It has been our experience that law enforcement agencies are very anxious to assist the insurance industry in resolving the problem. They are very cooperative and sincerely appreciate any assistance, in the form of competent and well trained investigators, that is offered to them. Primarily, however, the insurance industry is going to have to resolve its own problems and since it is a financial problem they are going to ultimately resolve that problem, not in the criminal courts but as civil matters.

Before we get into resolving the problem after the fact, consider what can be done before the fact. Insurers can no longer afford the luxury of accepting insurance coverage without some knowledge of the individual or the business they are insuring. The day is coming when insurance companies will be as actively involved in pre-insurance investigations as they are in investigations after the fact. We frequently encounter cases where a minimum amount of investigation would have convinced the insurer that he was not issuing an insurance policy but rather was providing an individual with a means of resolving problems. Citing an actual case, an individual who had operated a business for ten years without insurance, suddenly appears at an agent's office, vitally concerned about his lack of insurance. No concern for ten years, but all of a sudden he has to have it
right away. His financial condition can only be described as atrocious. The man cannot pay his bills and even the check he issued, in payment of the insurance policy, bounced. A quick look at the man's financial condition would establish that he could not even afford the insurance. His reason for needing insurance was not true or even practical. A few days later the building is a black spot. Now the investigation is after the fact. Certainly, investigations are expensive, either before or after the fact, but few could argue the cost could in any way approach the cost of insurance motivated arson.

The chain of events that ultimately result in a building or business destroyed for insurance profit does not begin with the lighting of the match. It begins as the motive develops and becomes a pressing need. The chain progresses with a review of insurance coverage and in many cases with a visit to an insurance agent's office. The purchase of insurance or the increase of existing coverage is frequently the first overt act leading to the crime of arson. Therefore, insurance agents, underwriters or anyone else involved with the acceptance of coverage is in a position to provide a vital link, evidence or testimony, that is of valuable assistance in conducting an arson investigation.

If those marketing insurance would press an insured or a prospective insured in regard to ownership of the property to be insured, the reason coverage or increased coverage is needed, changes occurring in the business that require additional coverage, amount of increased stock, description of new equipment, changes in inventory, etc. and take the time to make a record of the reasons that were offered and the comments made by the person seeking the insurance, it would be of extreme value to investigators.

Frequently it is possible to establish misrepresentation, but it is only possible when the person to whom the misrepresentation is made is in a position to accurately and factually establish exactly what was said to him and, in essence, establish the what-when-where of the misrepresentation. We have experienced cases where local insurance agents were sufficiently cautious to question a prospective insured and to make notes in the file regarding exactly what was said to them. In several cases, based entirely on the agent's testimony, it has been possible to present a proper defense based on misrepresentation. We recently conducted an investigation where, as a result of misrepresentation to an agent, a court held that the policy was null and void as of date of inception.

Considering the scope of the fraud and arson problem as it exists today, insurers must, from a practical standpoint, utilize all defenses that are available to them under the policy. Insurers have a moral obligation to utilize those defenses to protect the millions of legitimate policyholders who are ultimately paying the cost of fraud and arson as perpetrated by a relatively small percentage of insureds. It has been my experience that insurers will lean over backwards in an effort to give an insured the benefit of any doubt. When our investigations establish that the insured had no direct or indirect responsibility or accountability for an arson fire the insurers are generally quick to proceed with settlement. However, when all evidence points to or establishes responsibility on the part of the insured, even where criminal prosecution is not possible, an insurer must utilize all possible available defense.

Investigation of suspected arson or fraud claims must be intensified and the insurance industry must accept the responsibility and bear the cost of such investigation. If it does not, the arson problem is going to continue to increase. Investigations must be conducted in an effort to obtain indictments where criminal responsibility can be proven.
Further effort must be made to remove the profit from the crime through the medium of civil defense. Perhaps most important of all, investigations must be pressed as a deterrent to the crime of arson. Insurers must pursue investigation and as a routine part of that investigation must utilize policy conditions available. Investigations must anticipate misrepresentation before or after the fact, increase in hazard, illegal use of property, exaggerated claims, examinations under oath and the ultimate defense of placing the case before a civil court although such investigations are expensive. Not all cases will be won in civil court, but a majority of cases where evidence establishes a corpus delicti of arson, motive and opportunity, the arson or the fraud can be successfully defended in civil court.

The deterrent factor alone will make the effort worthwhile. When a particular area is experiencing a number of suspicious fires, that number frequently diminishes when it becomes public knowledge that in-depth investigations are being conducted. If a dwelling is destroyed tonight by fire and the perpetrator's relatives, friends and neighbors realize that no investigation is being conducted that fact alone represents an open invitation for subsequent arson fires. This point raises one of the difficulties involved with an arson investigation unit or division. No one can establish the value of the deterrent factor. It is known to exist but it is impossible to place a dollar and cents value on the deterrent factor. An arson investigator may conduct an expensive investigation, successful or unsuccessful but no one can place a dollar value on the amount of money that may have been saved, and probably was saved, as a result of the deterrent factor applying to other insureds.

Along the same lines insurers must select attorneys with great care. There are some fine insurance attorneys available to the industry and many are very knowledgeable in regard to the defense of arson or fraud. These attorneys are in a position to offer advice and counsel to an investigator and play a major role in the pursuit of a successful investigation. They are the attorneys who are ready and willing to assist in the pursuit of an investigation, and are ready and willing to present a case to a jury. They are the attorneys whose record indicates and establishes a willingness to protect and defend your interests in a civil court. Those attorneys justifiably earn the respect of all investigators.

Unfortunately, there are attorneys who rarely, if ever appear in court. When an arson investigator or an insurance company presents a case to that attorney, the only serious consideration in his mind is summed up in one word – compromise. Such an attorney may be exactly what is needed on a casualty claim, or other types of insurance claims but he is not the man to defend fraud or arson. An attorney who has not taken a fraud or arson case into civil court at any time during his career, or within a period of time, such as the previous five years, is unlikely to take your present case into civil court. When you select an adjuster or an investigator you generally do so basing that selection on his track record. Why should the selection of an attorney be any different? Attorneys specialize as do doctors and you would not generally solicit treatment for ulcers from a heart specialist. Why take an arson case to a malpractice specialist, a personal injury specialist or a products liability expert?

Insurers and claims managers are going to have to maintain greater control over fraud and arson cases. When investigation develops evidence to support a defense, claims managers and insurers are going to have to insist on an attorney whose background and experience establishes both an ability and a willingness to eliminate that word "compromise" and to press the defense into civil court. You cannot win a civil court case unless...
you take it to court and that civil court is quickly becoming the last line of defense in the war against fraud and arson.

Unfortunately, many claims executives, and even more unfortunately many attorneys, still believe the ancient propaganda that you cannot win an arson case unless you catch the arsonist with the match in his hand. Many claims people and, in fact, many law enforcement officers still believe the propaganda that in an arson fire all the evidence is destroyed in the fire. Nothing could be further from the truth.

In 85% of fires investigated, a probable cause and origin was established as well as how and where the fire started and whether the fire was accidental or incendiary. With the elimination of possible accidental or providential causes, it is possible to establish proof of arson. Every deliberate arson fire has a motive which may be difficult or even impossible to establish in only a minority of cases.

In each arson fire someone had to have the opportunity to ignite that fire. Regardless of how the fire was ignited there is an individual who had an opportunity. In many cases it can be established as an exclusive opportunity.

In the following three factors you have the foundation of developing a successful civil defense under your contract. Establishment of opportunity, especially exclusive opportunity, establishment of a factual and provable motive and establishment of a corpus delicti of arson.
Arson represents a dollar loss four to eight times greater than any other individual crime. Only in cases where there are deaths does arson concern the public. Arson investigation is frustrating, difficult, time consuming, dangerous and often fruitless. In the majority of cases of arson, the victim or alleged victim can frequently provide both the victim and the suspect. Arson is a very personal thing and the victim may be closely associated with the crime and the perpetrators. The control is based on thorough investigation before the insurance is written, aggressive investigation after the fire, and a no-compromise defense in the denial of the claim before the civil court. Thorough investigations act as a deterrent to other arsonists.
ABOUT THE SOCIETY...

Organized in 1950, the Society of Fire Protection Engineers is the professional society for engineers involved in the multifaceted field of fire protection engineering. The purposes of the Society are to promote the art and science of fire protection engineering and its allied fields, to maintain a high professional standing among its members, and to foster fire protection engineering education. Its world-wide members include engineers in private practice, in industry, in local, regional, and national government, as well as technical members of the insurance industry. Chapters of the Society are located in the United States, Canada, Europe, and Australia.

Membership in the Society is open to those possessing engineering or physical science qualifications coupled with experience in the field and to those in associated professional fields.

Benefits of membership include:

- Recognition of your professional qualifications by your peers
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Public Information program

SFPE is the international clearing house for fire protection engineering state of the art advances and information. In addition to the "Bulletin" and "Technology Reports", the Society also publishes occasional special reports.

For additional information about the Society of Fire Protection Engineers... membership... publications... Annual Meetings... chapter activities... contact the Executive Director at the above address.