

# *The Eyewitness—Not To Be Unnoticed*

It would seem that any fire investigator or fire science attorney worth his or her salt would know the value of the eyewitness. Still, time and time again, eyewitnesses are overlooked because of time constraints, mismanagement of the fire scene, or simply because a fire investigation was prematurely closed. While eyewitness statements may have their limitations, they may be a powerful tool in fire litigation that should not be underestimated.

A fundamental element of fire origin determination as set forth by *NFPA 921* is the gathering of “observations reported by persons who witnessed the fire or were aware of conditions present at the time of the fire” – eyewitnesses. *NFPA 921: Guide for Fire and Explosion Investigations*, Ch. 17, 17.1.1 (2), (2004 Edition). Indeed, *NFPA 921* states that “[i]n some instances, a single item, such as . . . a dependable eyewitness to initiation, can be the basis for a conclusive determination of origin. . . .” 17.1.2.

In addition to shedding light on the *origin* of a particular fire, witness statements may also provide information on whether flashover has occurred or the location and extent of fire at a particular time. The description of certain “benchmark events,” such as a roof collapsing, a window breaking out, or an explosion, can provide critical assistance to a fire modeling expert in developing a timeline and examining fire spread and causation issues as well. *NFPA 921* at §20.2.4.

Of course, the [eye witness] statements are not infallible. “[A]ny information solicited or received by the fire investigator during a fire investigation is only as reliable as the source of that information.” *NFPA 921* at §13.1.2.1. Eyewitness information, perhaps even more so than other verifiable information gathered by the investigator such as photographic evidence, is susceptible to being called into question. Multifarious factors affect the reliability of the eyewitness statement:

- whether the witness is a trained observer--for example: [fire fighter], law enforcement, emergency personnel, etc., as opposed to a lay person;
- the length of time from the event to the statement;
- the stress, if any, to which the witness was subjected at the time of the observation;
- corroboration of statements by others, facts and evidence;
- duration of event;
- complexity of event;

*NFPA 921* §13.1.2.2 further states that ultimately the determination as to the reliability of the witness’ observation rests with the investigator, leaving it to his or her “common sense, the fire investigator’s personal knowledge and experience, the information source’s reputation, or the source’s particular interest in the results of the investigation.”

To be sure, the investigator must make a reliability assessment to determine what consideration to give the statement in his or her determination of origin and/or cause. Then again, so long as all witness statements are gathered, the true test of the reliability of the witness statement may lie with the jury.

Indeed, the reliability of the investigator may depend on his or her thoroughness in information gathering. Thus, it behooves the investigator *to collect all* such statements, regardless of whether he or she in the end gives them credence.

In sum, *NFPA 921* endorses the notion that fire investigators, in the course of investigating the origin and cause of fires, obtain witness statements of the event. Such statements are necessary to develop origin theories as well as causation and fire spread theories as well. Moreover, it is critical that the investigator obtain all such statements whenever possible to present the most reliable and thorough investigation.