

International Association of Arson Investigators

IAAI — HAWAII CHAPTER

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Hawaii Chapter Newsletter



It has been a wonderful experience serving as the President of our chapter for 2008. I would like to thank you for allowing me the opportunity to serve you in this capacity. The newsletters were very difficult to keep up with and it was decided to go with a quarterly issue instead of a monthly one. No October and November issues exist.

Please help me by supporting Scott Seguirant with the reigns for the 2009 year. He is the new president and will do a fine job. 1st VP is Sonny Santos as he moves up from 2nd VP position. I hope the quarterly newsletter can continue. We also rolled out a new website that we hope can be more user friendly. For the first time, we were able to post the PDF application for the annual conference. This saves the chapter money by not having to mail out to many. It was also easier for us to email the application to people who may be interested in our conference.

For the first time in the Chapters 14 year history, we were able to hold a conference outside Oahu. Please get involved in the chapter as we all need your help. All members volunteer their time and you know how hard it can be. Currently, elections are held in person at our annual conference at the end of the year. I hope the chapter can work toward having some type of absentee ballot so more can participate. The by-laws may need to be changed to accomplish this.
Aloha,

Val Martin
2008 President

Election Results for 2009

Chapter Elections were held at The Willows restaurant on December 7th. Here are the results:

-2nd VP is James Blando
-Secretary is Terio Bumanglag
-Treasurer remains Steve Whiting.
Oahu Director is Jesse Meyers

Outer Island Directors will be appointed in the future by the respective Fire Chiefs of the counties.

I would like to take this opportunity to graciously thank Bobby Carvalho for his untiring years of work as the chapter Secretary. He did an outstanding job and will be sorely missed. I

know he will still be around so thank him when you see him. He has been with the chapter for over 10 years. Terio Bumanglag will take over the position as Secretary.

Thanks Again Bobby!!

Article by Jeff Hooker, CFI

“Fire Scene Searches – Requirements and Implications”

When we discuss searches, we need to be cognizant of the Fourth Amendment and how it dictates when, where and how we as investigators conduct searches. The Fourth Amendment to the United States Constitution is defined as:

‘The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.’

That means we cannot simply enter a dwelling or a property without first having cause. Fortunately the judicial system has foreseen this and made the necessary exceptions for emergency situations. The fire service can investigate a fire (be it a dwelling, warehouse or vehicle) to determine the origin and cause of a fire without violating a persons Fourth Amendment rights and there is a fine line that needs to be walked particularly if arson is alleged. When conducting a fire scene investigation, it must be remembered that we are searching for the origin and cause of the fire and cannot indiscriminately search non associated areas.

Searches conducted by fire investigators for the most part mirror that by which law enforcement personnel are bound. There are basically 3 types of searches/seizures:

Those with a **Search Warrant**

Those with an **Administrative Search Warrant** (exigent circumstances)

Those with the owner/occupants **Consent**

Search warrants are issued by the judicial system to an enforcement agency based on probable cause that a crime has been committed. Probable cause must be proven to the judge that the search/seizure is necessary and must be spelled out in great detail as to what is being looked for and where it is most likely to be found. A search warrant must be obtained in advance of the actual physical search. Search warrants can be time consuming and sometimes difficult to obtain and therefore not particularly practical for a fire investigation to determine origin and cause. They are however required if it is determined that a fire was set intentionally (arson) and this is where the fine line is drawn between a Search Warrant and an Administrative Search Warrant.

An Administrative search warrant or warrant less search can be conducted provided one or more “exigent circumstance” or exception applies. An exigent circumstance exists in an “emergency situation requiring swift action to prevent imminent danger to life or serious damage to property, or to forestall...the destruction of evidence” (*People v. Ramey*, 1976). For a law enforcement agency that might be “hot pursuit” of a criminal into a building or

for a fire investigator that enters a dwelling to determine the origin and cause of a fire. In either case the search would be conducted on the premise that an emergency exists (emergency exception) and must be done for the safety of those and property involved. It must be remembered however that once the emergency has been mitigated and/or the fire origin and cause has been determined, all further searching must cease. This is particularly important for the fire investigator if there is a concern about possible arson, as continued searching and seizure of evidence must be performed under a formal Search Warrant. Even within the exceptions clause there are exceptions to evidence found. For example; if an investigator was actively working an incident within the exigent circumstances exemption (emergency situation) to determine a fire’s origin and cause, and in doing so discovers multiple open flammable fluid containers and trailers, all evidence to this point would be admissible under the plain view doctrine while conducting a legitimate search for the fires origin. Once the origin and cause are determine (no emergency exists) an arson investigation should then be initiated and a search warrant should be secured for subsequent searches of the property and seizure of evidence.

Consent searches are just that, the owners/occupants of a property (building, apartment, automobile, etc...) give permission to investigators to enter and conduct their investigation. It is important that investigators remember that consent must be given by an individual that has both the capacity and authority to grant the consent. It is a particularly good idea and should be a matter of policy, to document that consent was requested and granted by having the individual sign a consent form. There are many attributes about consent searches that investigators need to be aware of and which may adversely effect their investigation should they be overlooked. First, consent must be given freely without coercion by the person who can legally give such authority. For example; an apartment landlord cannot give consent for a search in a particular unit (unless stated in the lease) as the tenant has a reasonable expectation of privacy within that apartment. Co-ownership requires only consent from one owner, however it can be denied by either, in which case a formal search warrant would need to be secured. Investigators must be careful when asking for consent so that they do not inadvertently coerce an individual into giving consent simply by their presence as an authority figure. Professionalism and an unbiased focus on the task at hand is the best policy here.

Secondly, consent must be given clearly by the party with the authority to do so and it must be stated in such a way that there is no confusion to the fact that the individual is consenting to the

search (verbal affirmation and/or signing of a consent form). Thirdly, consent is not continuous, if the investigator leaves after a consent search and returns later, consent must be obtained a second time and so forth for the duration of the investigation. Lastly, consent may be withdrawn at anytime by the person granting consent.

Two cases that have become the corner stones for fire investigators regarding search/seizure are *Michigan v. Tyler, 1978* and the *Michigan v. Clifford, 1984*. The cases set precedence for accessing a property in a “timely” manner to conduct cause and origin investigations, as well as when it becomes necessary to obtain a formal search warrant to not only search a property, but to seize evidence as well.

In *Michigan v. Tyler*, fire officials discovered flammable liquid containers during active fire operations and took them into custody (perfectly legal form of evidence preservation and collection). As the incident scene was too hot to continue an origin and cause investigation that day, fire officials left and returned later with police investigators. Officials came and went several more times over the course of about one month searching and seizing evidence each subsequent time. At no time during the investigation was a search warrant obtained or consent given by Mr. Tyler (later convicted of arson). Tyler appealed and the courts found much of the evidence was obtained illegally without a proper search warrant and ruled that only evidence found during the actual fire (flammable containers) was to be allowed at retrial.

In the case with *Michigan v. Clifford*, a fire occurred in a private residence in which the owners were out of town. Later that same day after all fire officials have left the residence, the owners had their insurance carrier send a crew out to secure the property. Arson investigators arrived to perform a post fire investigation after the crew had began boarding up the property. The court found that because this was a private dwelling, the owners had legitimate expectation of privacy particularly since a contracted crew was in the process of securing the property. Since investigators did not have a search warrant to enter and search the property, all evidence related to the case was disallowed and the case was thrown out.

In conclusion, nothing could be more frustrating to a fire investigator than to conduct a thorough investigation involving countless man hours and preparation, only to have key evidence thrown out in court because it was obtained improperly and/or illegally. Property searches during a fire investigation are only a small part of the overall process in determining the origin and cause of the fire, but they become an incredibly valuable tool should indications of foul play arise. If we do not take care in how and where we search in addition to how we obtain the authority to search, we may be setting ourselves up to fail right from the beginning. It is very important that we as fire investigators remain cognizant of the rights of those we serve. By conducting unbiased investigations under the umbrella of a just and fair judicial system, we not only foster greater cooperation from those in the community, but ensure the timely and proper incarceration of those who choose to commit crimes against society.

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