



F27 National Fire Protection Association (NFPA) 921 in Court: Lessons From 500 Case Decisions Over a Quarter Century and Across Two Countries

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Learning Overview: For attendees who are involved with fire cases, the purpose of this presentation is twofold: (1) to highlight the reasons why judges have cited NFPA 921 Guide for Fire and Explosion Investigations in court decisions, and (2) to predict future issues likely to be raised in civil and criminal cases by evaluating revisions in the latest edition of NFPA 921 taken together with the large body of existing cases. For those who are involved in forensic science disciplines other than fire investigations, the lessons from the use of NFPA 921 in court may shed light on how issues based on industry standards in other fields could develop once more members of the legal community become familiar with such standards.

Impact on the Forensic Science Community: It is rare to have an industry standard or guide published as recently as 1992, which has produced such a huge body of written decisions from courts in not one, but two countries. With the increasing emphasis on standardization and certification that the National Academy of Sciences/National Research Council (NAS/NRC) Report has inspired, it is incumbent on lawyers and forensic science experts to understand the many ways that industry standards can be used in court.¹ This presentation will impact the forensic science community involved in fire investigations by summarizing the lessons to be learned from the NFPA 921 cases. It will affect those in other disciplines by identifying the types of issues that they can expect to face when the many ways that industry standards can be used in civil and criminal cases becomes widespread knowledge among lawyers and judges.

The first edition of NFPA 921 was published in 1992.² A year later, the first mention of NFPA 921 was made by a judge in a written court decision. In the 25 years since, there have been more than 400 written case decisions specifically mentioning NFPA 921 in the United States, and another 60 in Canada. These numbers do not include the thousands of cases across both countries where NFPA 921 is mentioned by experts in their testimony or reports, nor where it is referred to by counsel in written briefs or oral argument. While it is common practice for trial lawyers and experts to use “learned treatises” (the legal term for authoritative publications) in various ways, it is very rare for so many state, provincial, federal, and appellate courts in two countries to expressly mention an authoritative publication in reasons for their decisions.

This presentation will examine the past lessons and the future trends in fire investigations that can be learned from these court decisions. It includes a timeline analysis showing the growing influence of NFPA 921. A geographical breakdown is also incorporated so attendees can consider whether the use of NFPA 921 in court is truly an international phenomenon or simply concentrated in localized jurisdictions. The most significant issues that the courts have considered are delineated, as well as some of the litigation effects, such as disqualification of experts and post-conviction relief in criminal cases. The latest edition of NFPA 921 is then considered in the context of the existing case decisions to predict future issues in fire litigation.¹ Finally, lessons learned from NFPA 921 in court are generalized to provide insights for those in other forensic science disciplines as to ways that their industry standards and guides may be used in civil or criminal litigation.

Reference(s):

- ¹ National Research Council (NRC), Committee on Identifying the Needs of the Forensic Science Community. (2009). *Strengthening Forensic Science in the United States: A Path Forward*. Washington, DC: The National Academies Press.
- ² Tech. Committee on Fire Investigations. *NFPA 921 Guide for Fire and Explosion Investigations*. (Quincy, MA: Natl Fire Protection Assn, 1992 to 2016.)

Fire Investigation, NFPA 921, Consensus Standards