

'Nightmare' Warehouse Fire Erases Evidence in Many Unsolved Cases

Lawyers say evidence in cold cases and bids for exoneration disappeared or was ruined when a Police Department storage facility in Brooklyn went up in flames.

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4 MIN READ

When a massive Police Department warehouse burned Tuesday, troves of evidence gathered over decades disappeared in a towering column of smoke or crumpled into soggy ruin, along with the possibility of justice in untold cases.

On Wednesday, debris scattered outside the Erie Basin Auto Pound, in Brooklyn's Red Hook neighborhood, could only hint at the legal significance of what was lost to the three-alarm blaze the day before. The waterfront compound had held everything from souped-up vehicles seized from reckless drivers to forensic fibers from decades-old murders and cold cases.

Now soggy, crumpled boxes bearing fragments of bar codes slumped onto fire-hose-flooded streets. The sooty wreckage included a mélange of sneakers, basketball jerseys and women's blouses, along with an array of fishnet stockings, panties and bras. Small plastic cylinders containing genetic material lay melted, or broken open and submerged in dirty water.

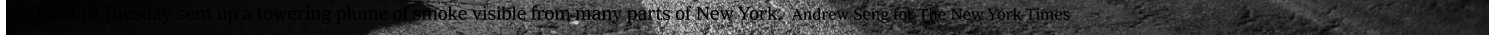
Fire Department officials said on Thursday morning that the fire's cause was still being investigated, and officials were still trying to determine how many criminal cases would be affected. It was clear that the ramifications would be significant.

In addition to the property damage, the fire may have destroyed "the hopes and dreams of uncounted innocent people," said the civil rights lawyer Ron Kuby, who was unsure whether any of his clients' evidence had been in the warehouse.

Fire officials said everything inside was either lost or damaged. Police officials on Tuesday said the storage center contained items like sensitive DNA evidence from burglaries and shootings, as well as vehicles, motorbikes and e-bikes.

Standing in front of the still-smoldering compound on Tuesday, Jeffrey Maddrey, the Police Department's acting chief of department, told reporters that the Erie Basin warehouse had housed sensitive DNA material, as well as evidence from past burglaries and shootings, but that it had not stored rape kits, which contain genetic material for sexual assault cases.





By Wednesday, the blaze was under control but firefighters were still battling flare-ups in the warehouse as fire marshals inspected the property.

Police officials did not answer questions on Wednesday regarding the loss of evidence, but veterans of the city’s criminal justice circles said the fire could prove disastrous for future cases.

“There’s no question that this is a nightmare,” said John M. Ryan, a former acting Queens district attorney, on Wednesday. “The question at this point is how big of a nightmare is it?”

Much of the stored evidence would likely have already been photographed and documented and much of the DNA would already have been tested, according to a law enforcement official who spoke on the condition of anonymity because he was not authorized to comment on the matter.

The Erie Basin warehouse was flooded in 2012 when Hurricane Sandy tore through, destroying many of the nearly 10,000 barrels of evidence stored there that contained sensitive DNA material. Within weeks, police officials began testifying at trials that evidence kept at Erie Basin was inaccessible.

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For many cases that had relied on evidence lost to Sandy, judges allowed prosecutors to use photographs instead of the lost or destroyed item itself, the law enforcement official said, adding that one concern was the loss of cold-case evidence that could have been tested with new techniques.

Contaminated with raw sewage, the Erie Basin buildings were sealed so that workers in hazmat suits could clean up. Contractors then assessed the damage to the evidence. In the months after the hurricane, police officials said there were no plans to repair the damaged warehouse and that the contents would be transferred to an interim site in Brooklyn until a new consolidated storage center was built.

It is unclear why the Police Department continued to store evidence there for another decade until Tuesday’s fire.

The latest destruction of forensic evidence — from genetic information on clothing to paper trial transcripts — could be “catastrophic” for people relying on it to appeal verdicts, as well as for inmates making exoneration claims, Mr. Kuby said.

“If there are cases that rely on forensic evidence using technology that didn’t exist years ago, now that evidence has all been destroyed,” he said. “Something like this can be catastrophic for someone’s hope for freedom.”

Attorneys with cases that had relied on evidence destroyed by Hurricane Sandy said the losses posed frustrating complications.



The wreckage included a wet heap of clothing and other items, interspersed with small plastic cylinders containing genetic material. Andrew Seng for The New York Times

“People’s lives depend on this evidence,” said Debra Cohen, a Manhattan civil rights lawyer who helped argue a 2013 suit against New York City that claimed police officers wrongfully shot Mohamed Bah in his Harlem apartment. The case succeeded even though supporting evidence was destroyed after being placed in the Police Department’s Kingsland Avenue waterfront warehouse in Greenpoint, Brooklyn, days before Sandy flooded it, she said.

Ms. Cohen questioned the Police Department’s decision to keep Erie Basin in operation.

“Of all the places you’d think they would have state-of-the-art fire protections, you think it would be there,” Ms. Cohen said. “If the police can’t protect it against a hurricane when they’re sitting in a flood plain, then what are they doing to protect against a fire?”

The loss of physical evidence can also hurt a prosecutor’s case. Simply having a physical object to show a jury — like a knife from the scene of a homicide — is particularly powerful in court, said Robert J. Masters, a retired chief counsel to a former Queens district attorney.

“Losing that drama is something that makes my case less powerful,” he said. “Whether or not there was forensic evidence potential, we lost the exhibit and that can help persuade a jury.”

Defense lawyers in New York City cited difficulties and delays in obtaining evidence from the department even without having to deal with additional complications from disasters.

Vanessa Potkin, the director of special litigation at the Innocence Project in New York, which specializes in exoneration cases, said that her organization had a harder time accessing evidence for post-conviction DNA testing from the city’s Police Department than from departments in any other jurisdiction in the country. That often led to cases being closed, she said.

Ms. Potkin said the extent of the fire’s damage may never be known, because the Police Department never fully cataloged old cases using the bar coding system it initiated in recent years. She said the Innocence Project is currently reviewing over 200 potential cases from people in the city who are requesting DNA testing to prove their innocence.

Although it is difficult to know how many of those will be affected by the fire on Tuesday, “the ability of wrongfully convicted and imprisoned people in New York City to prove their innocence literally went up in smoke with this fire,” she said.

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