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Title: “The Importance of Evidence Collection Guidelines in Developing a Prosecutable Case”

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Title: The Importance of Evidence Collection Guidelines in Developing a Prosecutable Case

Preface: Effective criminal litigation relies on the proper collection and interpretation of forensic evidence. This article is designed to address this question from the perspective of the prosecutor: Did law enforcement follow standardized evidence processing guidelines?

It is critical that proper forensic information obtained by law enforcement be incorporated into the overall evidentiary matrix of the case. This information can better facilitate an indictment and subsequent conviction. Forensic evidence evaluation by the prosecuting attorney poses a challenge for several reasons:

1. First, the forensic evidence is initially collected and integrated outside the presence of the prosecutor's purview and/or control.
2. Secondly, the crime scene is subject to degradation almost immediately after the occurrence of the event. With respect to a crime scene, there are constant environmental changes (e.g. temperature and light), physical/biological changes (e.g. body decomposition) and importantly, changes resulting from human intervention. This can be easily seen in the example in the Constance Bailey murder crime scene photograph, Photo Plate 1, taken by the Chicago Police Department (CPD) in June of 1999.



Photo Plate 1(CPD Crime Scene Photograph/ Constance Bailey)

Initially the above scene was interpreted as a *primary* scene. However this proved to be a *secondary* scene. A close inspection of Bailey's face revealed that the left side of her face had been beaten and a black butterfly earring had been torn off the left ear lobe.

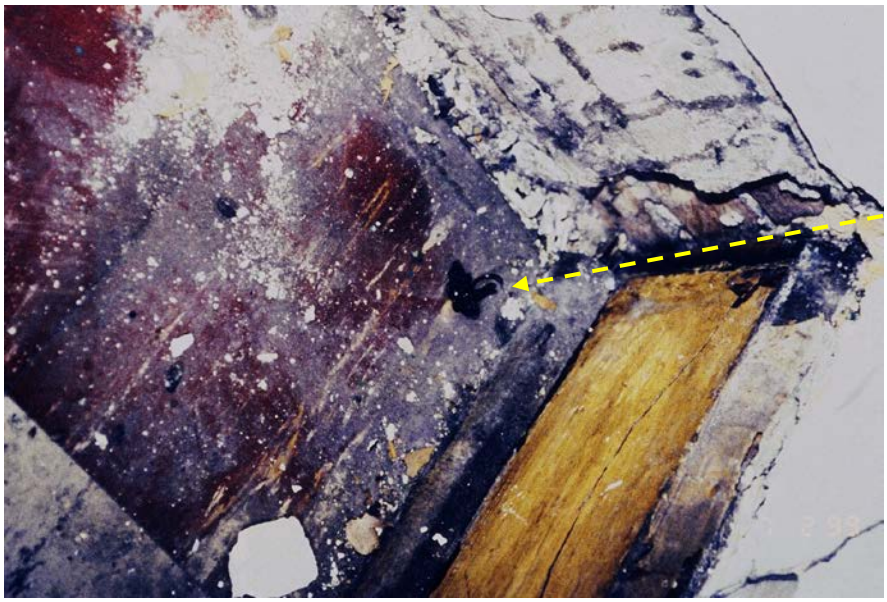


Photo Plate 2 (CPD Crime Scene Photograph/Constance Bailey)

If it were the primary scene, there would have been some form of blood stain evidence in and around the area. The above scene yielded no physical evidence except DNA recovered by the medical examiner at autopsy. The writer concludes that Locard's Principle should have been in effect. This environment should have yielded shoe impression evidence and trace evidence such as hair and fibers, but did not, since the victim had been carried and positioned on the floor of the attic as photographed in Photo Plate 1.

The black earring was recovered by the writer and Special Agent Douglas Seccombe (FBI ERT Chicago Division) approximately two to three weeks after the initial search in a second floor closet. The earring can be seen in the upper right hand corner of the picture in Photo Plate 2 on the floor. Also recovered in the confines of the closet was bloodstain evidence, which later proved to be that of Constance Bailey and Andre Crawford aka the "Inglewood Murderer".

Entering the area of a crime scene without protective clothing may add trace evidence to the scene that is not associative and can be misleading. An example can be seen in Photo Plate 1 in which the technician's or the investigator's uncovered shoes are visible. Protective shoe covering is essential for all investigative personnel to wear at the scene to prevent new debris from coming into the incident area as well as to allow technicians to focus on the recovery of footwear impressions associated with the incident. The opening of windows and doors by investigators and technicians can cause movement of light material from one point to another. In addition evidence collection personnel may inadvertently dislodge hair or fiber samples while

processing the scene. One example is dusting for latent prints. The crime scene technician must be flexible in considering the hierarchy of evidence while processing the scene due to its constant state of flux, either from natural causes or from human intervention. This applies to a small area such as the cabin of Theodore Kaczynski (the "UNABOMBER") in Lincoln, Montana (Photo Plates 3 & 4)…



Photo Plate 3 (Exterior of Kaczynski's cabin)



Photo Plate 4 (Interior of Kaczynski's cabin)

...as well as an exceptionally large complex scene environments, such as the October 31, 1994 crash site of American Eagle Flight 4184 in Roselawn, Indiana, see Photo Plate 5.



Photo Plate 5 – FBI ERT – American Eagle Crash Site

The challenge to the prosecutor is to effectively evaluate the forensic evidence and demonstrate to the jury that the evidence presented by the prosecution is credible; that critical evidence was not filtered out, missing, overlooked or misrepresented since it was collected properly. In this day of the "CSI Effect" proper evidence collection is a critical element in the eyes of the jury.

What is the Importance of observing crime scene guidelines during the initial evidence collection process?

Evidence collection guidelines provide a logical framework to capture and ferret out physical evidence at a scene. They provide a foundation based on substantive corroborative evidence which supports eyewitness statements and statements obtained from the subject.

Virtually all crime scenes are unique. Also, as was noted above, a crime scene and/or incident scene is subject to degradation from environmental, biological and/or human intervention. This is one of the reasons that the Federal Bureau of Investigation (FBI), through its Laboratory Division and the development of its Evidence Response Team (ERT) program, has designed crime scene evidence collection guidelines to insure consistency in the collection of evidence and in documentation of scenes. The development of these search guidelines has extended to the law enforcement community at large. At the national level The Department of Justice (DOJ), Office of Justice Programs and the National Institute of Justice have generated working groups to study and recommend national standards, such as in the case of the 1997 "National Guidelines for Death Investigation" research report.

A critical element associated with each FBI Guideline is the *documentation* resulting from the application of the Guideline per se. Of particular concern to the prosecutors is the absence of documentation for a particular Guideline indicating that either the Guideline was not observed, and/or that the Guideline was in fact performed but not recorded. Either way, the importance of constructing an accurate and *total* forensic presentation of the crime scene can be undermined and, depending on the nature of the omission, result in serious evidentiary consequences.

The FBI Crime Scene Forensic Documentation Guidelines:

The FBI Crime Scene Forensic Guidelines (referred to as the "Guidelines" for the balance of this article) may be named differently by various law enforcement agencies. Nomenclature aside however, the Guidelines should be routinely applied *and the results documented* for every crime scene regardless of size or complexity. It is with the documentation that the prosecutor will be able to develop the underlying structure of the forensic theory of the event.

The FBI documentation guidelines are as follows:

1) Approach Scene.
2) Secure and protect.
3) Conduct preliminary survey.
4) Document narrative description.
5) Photograph scene.
6) Sketch scene.
7) Evaluate physical scene.
8) Evaluate evidence.
9) Conduct search.
10) Collect, record, mark and preserve the evidence.
11) Conduct final survey.
12) Release the scene.

The following narrative reviews each FBI Guideline and identifies the documentation that the prosecutor should anticipate being present. Omitted documentation for a particular Guideline may suggest a defect in the forensic evidence acquisition process and should be questioned. These omissions may provide points of attack by the defense and consequently provide for a reasonable defense strategy.

Guideline 1) Approach

The arrival of law enforcement first responders can be considered the most important element in the crime scene evidence recovery process. The first responder represents the initial, professionally *trained* observer positioned to document the overall visual aspects of the environment prior to any further crime scene degradation. The initial approach to the crime scene should include noting the temperature and other environmental conditions, any artifacts which can be construed as discarded evidence and potential witnesses in the vicinity of the scene. This process is usually handled by the first responding patrol officer. The International Association for Identification (IAI) incorporated Mark R. Hawthorne's book, "First Unit Responder: A Guide to Physical Evidence Collection for Patrol Officers" as one of the referenced material needed to be mastered in preparation for the General Crime Scene Technician certification. According to Hawthorne the first responder is responsible for five active steps. These steps are 1) Approach, 2) Render assistance (medical & physical), 3) Identify – witnesses and victim(s), 4) Secure – scene and evidence and 5) Notify – supervisor, dispatch, generate the acronym ARISN. This Guideline and other of a similar ilk dovetail into each other and provide the framework for law enforcement to effective work within and support the rule of law.

It is incumbent upon the officer-in-charge (OIC), lead investigator or search team leader to confer with the first responder to determine that what is being viewed is the original scene and not a scene that has been disturbed and/or distorted.

Document Evidence: Personal notes of law enforcement first responders should include rough sketch(es) or diagrams and written notations (rough notes).

Guideline 2) Secure and Protect Scene

Securing and protecting the crime scene is critical. It is the responsibility of the OIC of the investigation to define the perimeter of the crime scene and to initiate measures to protect the crime scene in its pristine form. The OIC may or may not define the same crime scene perimeter as drawn up by the first responder. It is the responsibility of the OIC to document this expanded or contracted perimeter. The importance of expanding a perimeter can easily be observed in the Constance Bailey murder scene where her body was discovered in the walk-in attic on the third floor, but the murder site was located in a second floor bedroom closet. See Photo Plate 1& 2.

Of equal importance to securing the crime scene is protecting it. Avoiding crime scene contamination is critical to maintaining the integrity of the environment and subsequent evidence collection. It is critical that the prosecution identify initial responders, the OIC, law enforcement and forensic personnel with legitimate reasons for entering the crime scene. Seasoned investigators will routinely use an Entry Log not only to document who has entered the scene but also to control access to the scene. In many cases the Entry Log will control both law enforcement and civilian personal attempting unauthorized entrance into the perimeter of the crime scene. This Entry Log should be made part of the case file. The Entry Log can be drawn up as a preprinted formal document or just drawn up on a piece of paper. A crime scene Entry Log includes ingress and egress times, names, affiliations and reasons for entry.

Guideline 3) Preliminary Survey & 4) Narrative Description

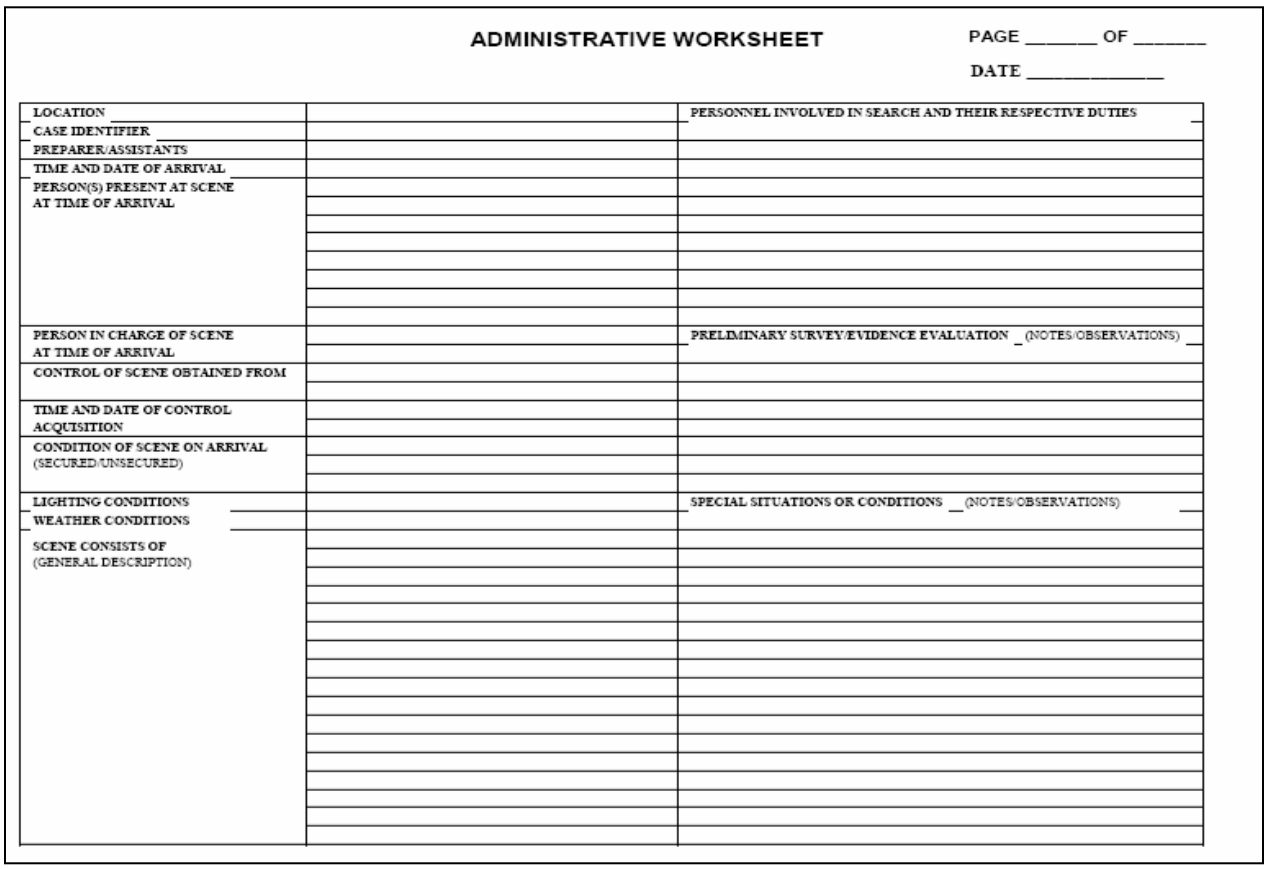
The preliminary survey is designed to support the management, organization and logistical elements of the crime scene. An important component of the preliminary survey is the "Narrative Description" of the scene. The narrative description does not rise to the level of granularity of other evidentiary elements such as the crime scene sketch, photographs and notes developed during a detailed search of the crime scene. Rather, the narrative description is designed to convey the overall conditions as they were first encountered by the OIC. The narrative description also chronicles the condition of elements subject to change including weather, temperature and light conditions. It provides a documentary reference to establish changes in objects or conditions resulting from subsequent more detailed searches in the investigation.

The critical importance of the narrative description cannot be overstated. The narrative description represents a principal work product of the OIC and is designed to be an objective, realistic and unbiased depiction of the crime scene as encountered by the OIC during the initial "walk through/preliminary survey" of the scene. A narrative description which is lacking in detail, perspective, or, in the worse case, incomplete or missing altogether represents a major defect in the forensic evidence acquisition process.

The narrative description may be in the form of handwritten or electronically recorded notes, audio tapes, video tapes, or a combination of media. It is critical that the narrative description be completed since it represents the OIC's "walk through/preliminary survey" of the crime scene. Lacking any of the latter characteristics represents a serious defect in the evidence recovery process. See Plate 6 – FBI Administrative Worksheet, as an example of *one way* an agency or department can record a narrative.

The narrative description is the foundation for an OIC to establish a good working plan for the search. Of additional importance is the consistency of the notes of the first responder(s) with the OIC narrative description. Inconsistencies between first responder(s) notes and the OIC narrative

can be developed into an area of focus for the prosecuting attorney and an area of attack for the defense.



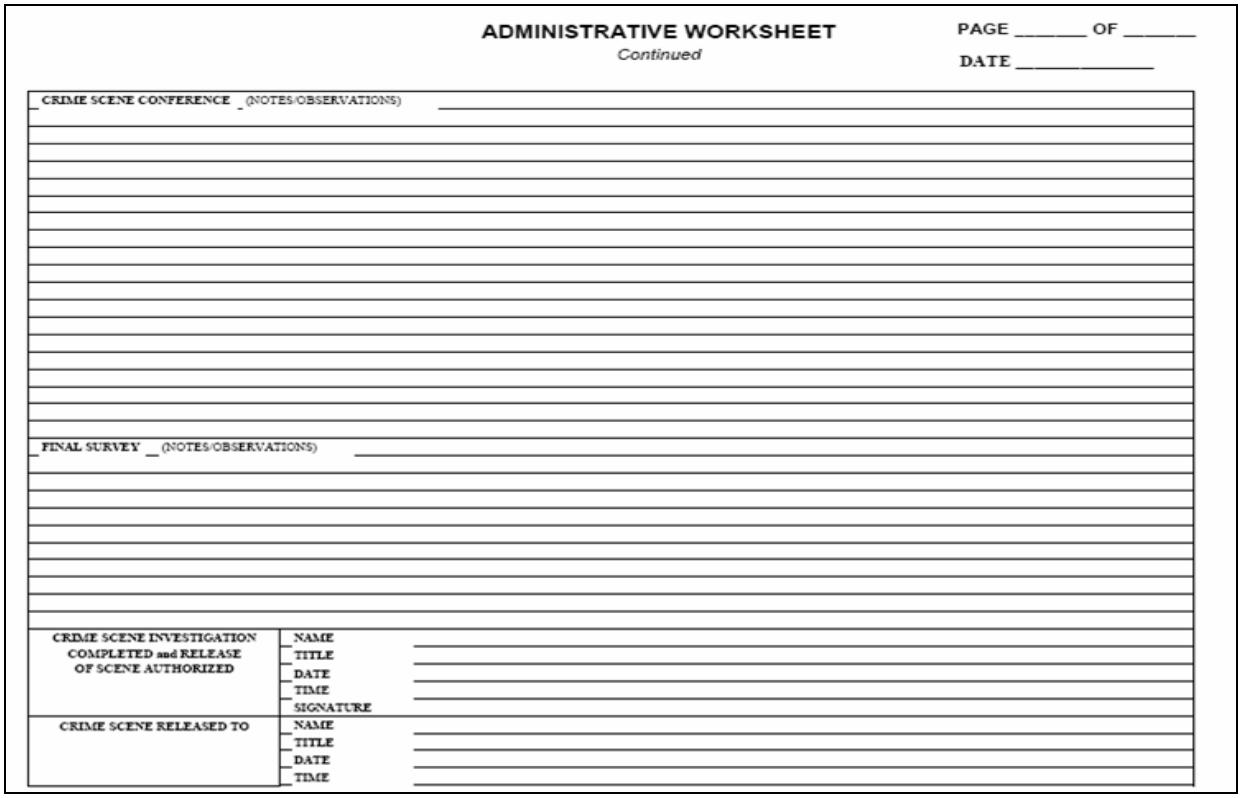
ADMINISTRATIVE WORKSHEET

PAGE _____ OF _____

DATE _____

LOCATION		PERSONNEL INVOLVED IN SEARCH AND THEIR RESPECTIVE DUTIES
CASE IDENTIFIER		
PREPARER/ASSISTANTS		
TIME AND DATE OF ARRIVAL		
PERSON(S) PRESENT AT SCENE AT TIME OF ARRIVAL		
PERSON IN CHARGE OF SCENE AT TIME OF ARRIVAL		PRELIMINARY SURVEY/EVIDENCE EVALUATION (NOTES/OBSERVATIONS)
CONTROL OF SCENE OBTAINED FROM		
TIME AND DATE OF CONTROL ACQUISITION		
CONDITION OF SCENE ON ARRIVAL (SECURED/UNSECURED)		
LIGHTING CONDITIONS		SPECIAL SITUATIONS OR CONDITIONS (NOTES/OBSERVATIONS)
WEATHER CONDITIONS		
SCENE CONSISTS OF (GENERAL DESCRIPTION)		

Plate 6 – FBI Administrative Worksheet



ADMINISTRATIVE WORKSHEET
Continued

PAGE _____ OF _____
DATE _____

CRIME SCENE CONFERENCE (NOTES/OBSERVATIONS)

FINAL SURVEY (NOTES/OBSERVATIONS)

CRIME SCENE INVESTIGATION COMPLETED and RELEASE OF SCENE AUTHORIZED	NAME	
	TITLE	
	DATE	
	TIME	
	SIGNATURE	
CRIME SCENE RELEASED TO	NAME	
	TITLE	
	DATE	
	TIME	

Plate 6A – FBI Administrative Worksheet

Guideline 5) Photograph Scene

Portrayal of crime scene evidence through photography is essential. Photographic evidence which is incomplete or poorly organized is unacceptable to all participants in the courtroom proceedings. The photographic array should portray a chronology and should tell a "story" comprehensible not only to law enforcement and the court but to the jury. A critical component supporting the photographic array is the *photographic log.* The photographic log documents photographic equipment used, personnel involved, sequence of photos taken, locations, orientation and detailed photographs of all evidentiary items.

Crime scene photographs are usually taken in a chronological order starting with a facesheet (identification sheet) showing case number, date, location and photographer. Photographs should provide a clear visual documentation of the scene. In many instances these photographs show the nature of the crime/incident, the results of the crime/incident and physical evidence produced as a result of the crime/incident. A crime/incident scene poorly photographed will only assist in distorting the facts and provides the defense counsel with an area that can be probed in court.

Guideline 6) Sketch Scene

Photographs do not replace a crime scene sketch. Photographs represent a two-dimensional representation of the space while a sketch will provide spatial (distance) relationships which supplant and complement the two-dimensional photographs.

The sketch also facilitates portrayal of all crime scene objects in relation to each other including items which are difficult to photograph. A rough crime scene sketch should be executed with the expectation that the rough sketch can be converted at a later date for presentation at Grand Jury or in court. At a minimum, the sketch should include: specific location, date, case identifier, preparer/assistants, scale or scale disclaimer, compass orientation, evidence/pertinent objects, measurements if needed, a key and a legend. While essential to the overall understanding of the crime scene, especially by the jury, *if a police agency omits a crime scene sketch from its initial report, it can open "Pandora's Box"*. This is a serious omission and can compromise the overall portrayal of the crime scene per se.

An example of a poorly articulated scene sketch can be observed in **Plate 7 – South Carolina v. Bobby Lee Holmes.** In this case the sketch was generated on January 6, 1990 for a sexual assault (later to a homicide) that took place on the morning of December 31, 1989. The sketch, Plate 7, lacks clarity since it does not have a compass orientation or clear layout of the floor plan of the victim's apartment. Written on the sketch is a notation instructing the reader that a latent print was recovered on the inside front door. The sexual assault took place in the bedroom, but again the reader has no way of knowing the location in the bedroom. When a sketch is missing from an initial report, especially in the case of felonious crimes, one wonders about the reason for the absence, and what other pertinent pieces of information might be missing or possibly fabricated. A typical crime scene sketch can be seen in Plate 8.

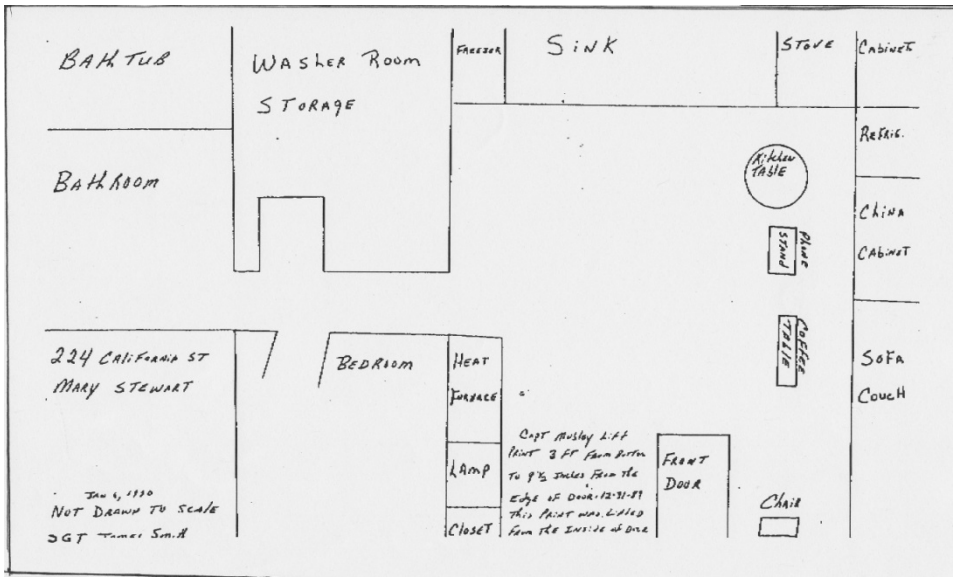


Plate 7: SC v. Bobby Lee Holmes

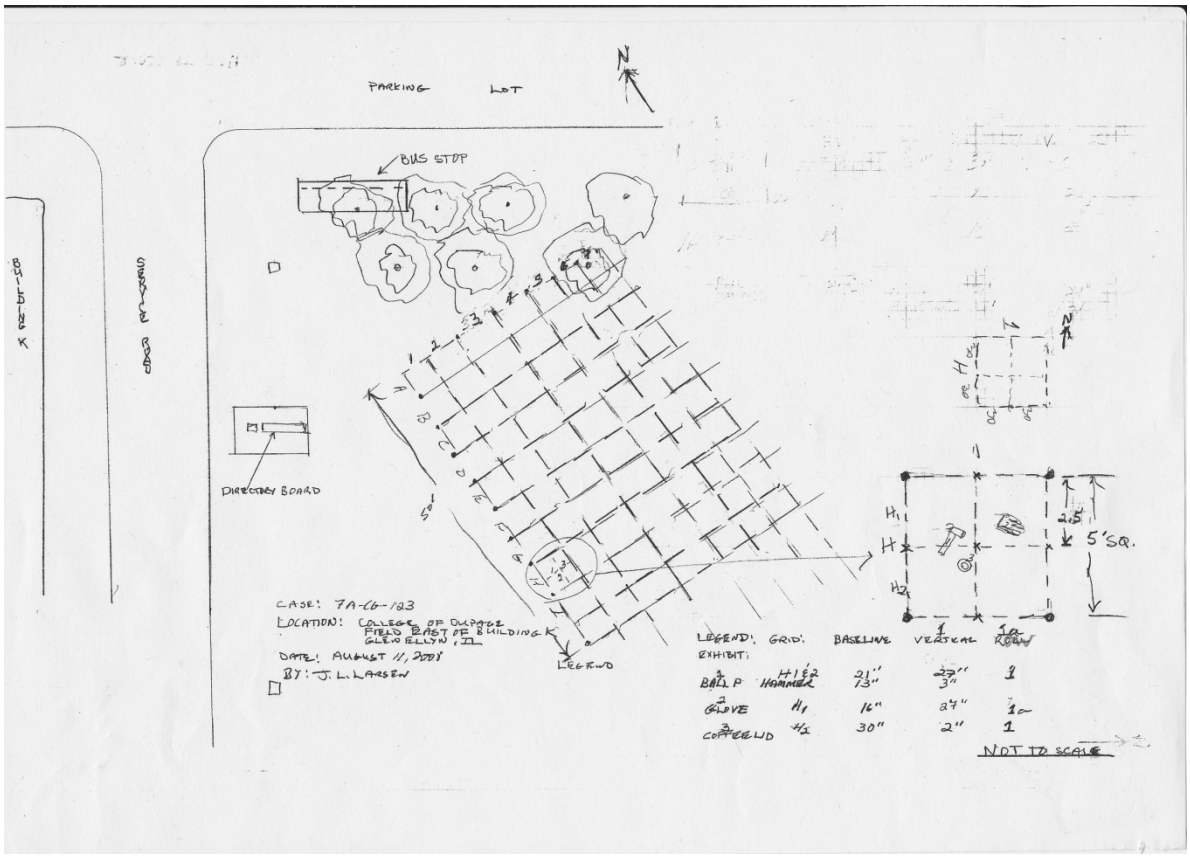


Plate 8: Death Investigation – Grid Search – Larsen

If the prosecutor is wondering why a basic piece of foundational information is not present so will the jury. The writer is unaware of any police academy in the USA that does not teach basic crime scene sketching. It is a Guideline that goes hand-in-hand with incident scene reconstruction even at the lowest levels of our legal system, i.e. basic traffic accident report.

Guideline 7) Physical Evaluation of the Scene & Guideline 8) Continuing Evaluation of the Evidence: (These suggested guidelines are associated in current ERT publications within the preliminary survey.)

These two guidelines are evaluations that are ongoing throughout scene processing. They may affect how evidence is recovered. Safety issues are addressed in Guideline 7. This Guideline affects not only the pace at which the search can be conducted but what evidence can be gathered. For example the September 11, 2001 Flight 93 crash site was highly contaminated with aviation fuel, bio-human materials and airframe debris. Once a safety officer laid out the safety equipment needs, and the agents were appropriately dressed, the search could commence. The evaluation of the evidence, Guideline 8, is closely linked to Guideline 7. The OIC is responsible for continually monitoring these two areas. An attorney questioning a lead investigator can easily walk into a minefield if unaware that these guidelines are ongoing

throughout the search. They afford the investigator testifying to bring in personal sensitive issues of safety which is more appealing to the jury, and could cloud an issue that the defense attorney is trying to clarify and/or establish. See Photo Plate 9.



Photo Plate 9 – FBI ERT Flight 93 Crash Site

Guideline 9) Conduct Search

Conducting the search seems simple, but it is not. This Guideline causes the most problems for federal, state and local officers conducting the search. The search should be systematic, and items of possible evidentiary value need to be photographed in place and recorded. Officers are trained to take overall, mid-range and close up photographs of items that are to be removed from the scene or may be of historic value. For example, a shoe print impression in blood at a murder scene may be the one piece of physical evidence that places a subject at the scene. If not documented this piece of evidence will be lost to both the plaintiff and the defense.

An issue that continually comes up at searches is the removal of evidence before it is photographed, sketched or witnessed by another officer and described in a written document, ie. evidence recovery log. Documenting this evidence before it is removed is crucial. The writer has had agents and local police hand him weapons, drugs and spent shell casings without regard for any documentation. Once any item is removed it cannot be put back. As a result the officer recovering the item has to write some form of supplemental report that will have to accompany the item in order to establish its pedigree (chain of custody). This is an area where doubt can be established as to the credibility of the officer. An officer on the witness stand should be able to

explain the search guidelines to the jury and the court. When search recovery guidelines break down the credibility of the searcher, and the evidence obtained may become suspect.

Guideline 10) Collect, Record, Mark & Preserve Evidence (Chain of Custody)

The collection, recording, marking and preservation of physical evidence are the most time-consuming element of the crime scene investigation. Prior to the evidence collection, all evidentiary items will have been photographed and noted in the photographic log. Key items should be marked on the crime scene sketch. Collected items of evidence should be documented in an Evidence Log. The following items will be noted in the log: item number (barcode), general description of the item, who recovered the item (initials) and witness, whether or not the item was photographed (frame number), how was the item was marked (directly or indirectly) and miscellaneous (any observation specifically related to the item.) See Plate 10 – FBI ERT Evidence Recovery Log attached. If possible two investigators should be identified as having seen an evidentiary item prior to collection. This cannot always be affected due to the size of the search and, in many cases, the size of the department.

Document Evidence:	An evidence log is prepared reflecting all evidence collected. The crime scene sketch is updated reflecting the position of all physical evidence collected. Photographs are taken of all evidence items *before* collection. All references to specific evidence items should be entered on the evidence log and cross-referenced to the crime scene sketch and photographs.

Guideline 11) Conduct Final Survey

At the conclusion of evidence collection, the OIC should conduct a final survey of the premises. The purpose of the survey is to insure all evidence has been collected, to double check the crime scene documentation, to insure all equipment used to process the crime scene is accounted for and to photograph the crime scene premises showing its condition *after* completion of the search.

Guideline 12) Release Scene

The crime scene should be released only after the final survey has been conducted. In doing so, the following three items require documentation: 1) Time and date of release of the scene; 2) To whom was the scene released and 3) How the scene was secured and by whom. In addition, an inventory of all items removed from the crime scene should be provided to the individual to whom the crime scene is released with a supporting copy of the inventory that will be placed in

the case file. Observance of the release process is critical since once the crime scene is released subsequent alterations to the scene can occur.

Conclusion

Forensic evidence serves as a core component that will lead to and support the theory of a crime. Forensic evidence is relied upon by prosecutors, defense attorneys and jurors to facilitate formation of opinions and, ultimately, to distill the truth. Forensic evidence itself represents information which is subject to interpretation. However, the *process* of collecting forensic material and the material's underlying documentation (e.g. photos, sketches) place the collected evidence in "*context*" to reveal a complete story of the event. The FBI ERT evidence collection guidelines are a key to formulating *expectations* of the process of evidence collection and, by inference, the fidelity of the evidence recovered. Equally important, omissions or exceptions to the guidelines should require explanation.

Critical evaluation of the forensic evidence *per se*, utilizing the FBI guidelines or the national standards as a template, including establishing the presence or absence of documented evidence, can reveal missing or incomplete forensic evidence. It becomes paramount for the prosecutor to repair these deficiencies. When investigators work within these suggested guidelines, a solid foundation is laid for the admission of physical evidence at trial which eliminates the possibility of effective attack by the defense. This effectively removes reasonable doubt as an issue.

Suggested readings:

Ross M. Gardner and Tom Bevel, Practical Crime Scene Analysis and Reconstruction, 2009 by CRC Press.

Barry A. J. Fisher, Techniques of Crime Scene Investigation – Seventh Edition, 2004 by CRC Press.

Arthur E. Westveer, Jr. MLA, Managing Death Investigation, Volume I, Edition 5, United States Department of Justice, Federal Bureau of Investigation, Revise 2002.

James N. Gilbert, Criminal Investigation – Fifth Edition, 2001 Prentice Hall.

Mark R. Hawthorne, First Unit Responder A Guide to Physical Evidence Collection for Patrol Officers, 1999 by CRC Press.

John Louis Larsen, Recovering Latent Fingerprints from Cadavers, Evidence Technology Magazine, Volume 6, Number 3, Pages 11-22, May-June 2008.

John Louis Larsen, Shooting-Incident Reconstruction within a Room, Evidence Technology Magazine, Volume 8, Number 4, pages 14-17, July-August 2010.