"One of the most acclaimed monitoring manuals..."

Jonathan Horowitz, One World Research

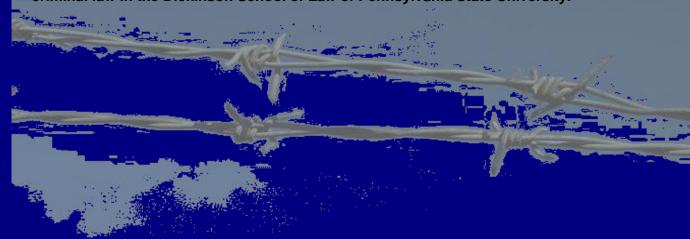
"Considered a cornerstone text by many leading human rights investigators and activists."

The Humanitarian Law Centre

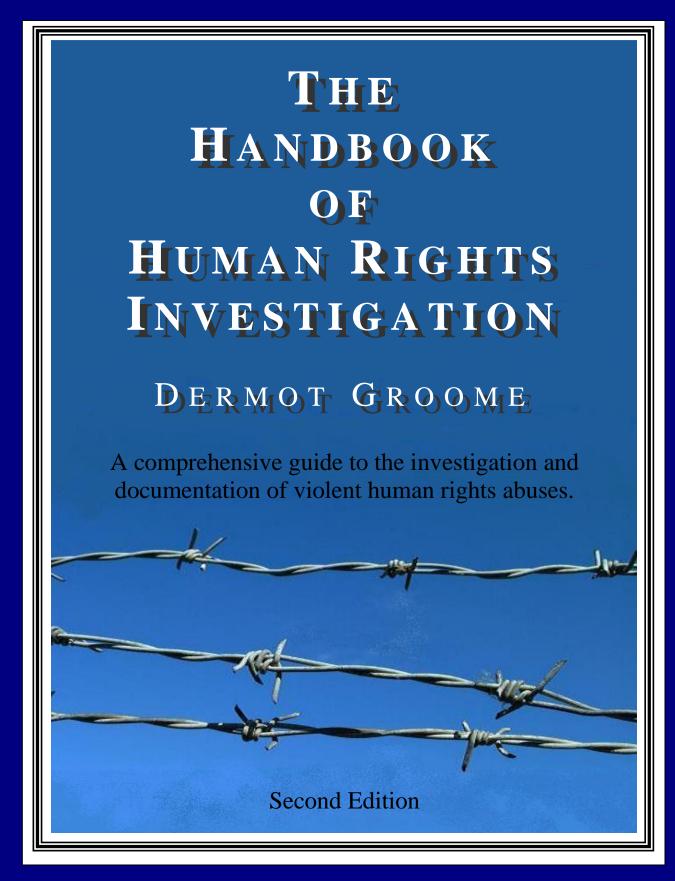
"The First Edition of Dermot Groome's Handbook of Human Rights Investigation established itself as an indispensable tool for the human rights investigator. The Second Edition surpasses it, and cements Dermot's reputation as an attorney/investigator who can clearly and concisely explain how to conduct these complex and difficult inquiries. The Handbook is an essential guide for human rights investigators worldwide."

John Ralston, Institute for International Criminal Investigations

Dermot Groome is a Senior Trial Attorney in the Office of the Prosecutor of the International Criminal Tribunal for the former Yugoslavia. He has served in this capacity in four international criminal trials. He led the investigation into crimes committed by Slobodan Milošević in Bosnia and Herzegovina. He has been a legal advisor with the International Human Rights Law Group, a consultant to the Office of the High Commissioner of Human Rights and has appeared before the Human Rights Council as an expert. Prior to his work in human rights he was a prosecutor in the Manhattan District Attorney's Office specializing in crimes of sexual violence. He teaches international criminal law in the Dickinson School of Law of Pennsylvania State University.



HRP HUMAN RIGHTS PRESS



FOREWORD BY: RICHARD J. GOLDSTONE

HR

Handbook

o f

Human

Rights Investigation

Dermot

Groome

# THE HANDBOOK OF HUMAN RIGHTS INVESTIGATION

A COMPREHENSIVE GUIDE

TO THE
INVESTIGATION AND DOCUMENTATION

OF
VIOLENT HUMAN RIGHTS ABUSES

SECOND EDITION

DERMOT GROOME





All of the opinions, standards and protocols expressed in this book, except where otherwise stated, are the author's. These opinions and standards are not from, nor are they endorsed by, any organization the author has previously worked for or is presently working for. They are the author's personal opinions regarding the topics discussed.

The Handbook of Human Rights Investigation 2<sup>nd</sup> Edition Copyright © 2011 by Dermot Groome. Printed and bound in the United States of America. All rights reserved. No part of this book may be reproduced in any form or by any electronic or mechanical means including information storage and retrieval systems without permission in writing from the author except for short passages used in critical reviews of the book.

Handbook of Human Rights Investigation 2<sup>nd</sup> edition © 2011 ISBN

For
Mag, Ned and Cara
and
my parents
Dermot and Marie Groome



## ACKNOWLEDGMENTS

Many people were instrumental in the writing of the first edition of this book and the value of their contribution remains vital in its second edition. Yvonne Milewski, now the Chief Medical Examiner of Suffolk County in New York made an essential contribution to the chapters related to the documentation and identification of injuries. She was willing to draw from her experience working for both the Medical Examiner of New York City and the *International Criminal Tribunal for the former Yugoslavia* to develop workable protocols for human rights investigators with limited training in forensic criminology. I continue to pass on the many lessons I learned from Warren J. Murray Jr. and Steve Saracco, my colleagues from the Manhattan District Attorney and my close friend and former NYPD homicide detective Tim Muldoon.

Over the past ten years I have had the privilege of practicing intensively in the field of international criminal justice. Over the course of this decade I have worked with many victims of and witnesses to some of the most serious crimes perpetrated in recent history. The courage of these people and their undeterred quest for justice motivates my work. I have incorporated the many lessons I have learned from them in this edition. I have also been fortunate to work with some of most experienced and skilled practitioners in the field. These colleagues, from whom I have learned much, are not only fellow prosecutors, but colleagues from the defense bar and the judicial bench alike. I have incorporated what I have learned from our collaborative efforts to deliver justice for international crimes in fair and reliable proceedings.

I want to give special mention to my colleagues on Team 5 of the Office of the Prosecutor of the ICTY with whom I worked on several important and challenging cases including the investigation into Slobodan Milošević's crimes in Bosnia and Herzegovina. Any success we had was the result of the combined dedication, hard work, tenacity and creative problem-solving of a multi-cultural and inter-disciplinary team. I will always remember fondly those long days filled with excitement and challenge. These team members are: Archna Govil, Bojana Vuleta, Bernie O'Donnell (investigation team leader), Bretton Randall, Brittany Kessleman, Camille Bibles, Claire Harris, David Bruff, Diana Zunić, Dragana Colaković, Finn Tollensin, Frederic Ossogo, Garry Selsky, Gavin Hood, Gerry Sexton, Ib Jul Hansen, Isabelle Aoustin, Jenny Mohamedhoesein, Jonathan Struggles, Josie Hendrikx, Kaiser Rizvi, Karim Agha Khan, Leanard Phillips, Mark Vlasic, Markus Eikel, Melissa Pack, Mike Bellot, Mirna Mandić, Morten Torkildsen, Nancy Patterson (1953-2010), Nataša Čakić, Paivi Vaananen, Kazimierz Piekos, Predrag Dojčinović, Rita Pradhan, Rohan Schapp, Snejžana Stanković, Stephanie Hwee, Suzanne Hayden, Svetlana Jovanović, Thomas Ackheim, Tore Soldal, Tracy Holyer, Vlasta Veličan, William Smith and Yves Roy.

Thank you all.

Dermot Groome

## NOTE FROM THE AUTHOR

It has been ten years since *The Handbook of Human Rights Investigation* was released. I have been pleased with the positive response it. I have enjoyed hearing about the experiences of investigators and practitioners using the book. I can never forget the day investigators from Stung Treng, Cambodia sent a video showing them process a homicide scene according to the methods described in this book.

Since the HHRI was first published, international criminal justice has taken several significant steps forward. Most notably, on July 1, 2002 the International Criminal Court came into existence. As greater focus is placed on the enforcement of human rights and the investigation of serious violations, human rights workers and investigators must endeavor to establish a set of investigative standards to ensure that any evidence brought before the International Criminal Court or other international bodies meets the most exacting standards. The HHRI is my adaptation of generally accepted principles of criminal investigation for use by human rights workers and international criminal investigators.

Not all of the procedures and techniques described in this book are appropriate in every context. The most serious of human rights violations most often occur in places of tremendous upheaval and danger. Some of the procedures described here may be unsafe, inappropriate or impossible given your particular situation. I encourage every investigator to carefully consider the applicability of these methods before employing them in his or her context. For some investigators, it may not be appropriate at any time to collect physical evidence. For them, their primary task will be the interviewing of witnesses. For others, caught in the direct of circumstances, it may not be possible to engage in any of the procedures described in this book. For you I hope this book teaches you to become a professional and careful observer of the crimes you witness until hopefully a day comes when your evidence can be brought before the world.

It is my hope that together, our work continues to serve the interests of justice for the most vulnerable, both in the more consistent enforcement of human rights and the effective prosecution crimes in both national and international courts. I wish you every success in your efforts in this regard.

Dermot Groome

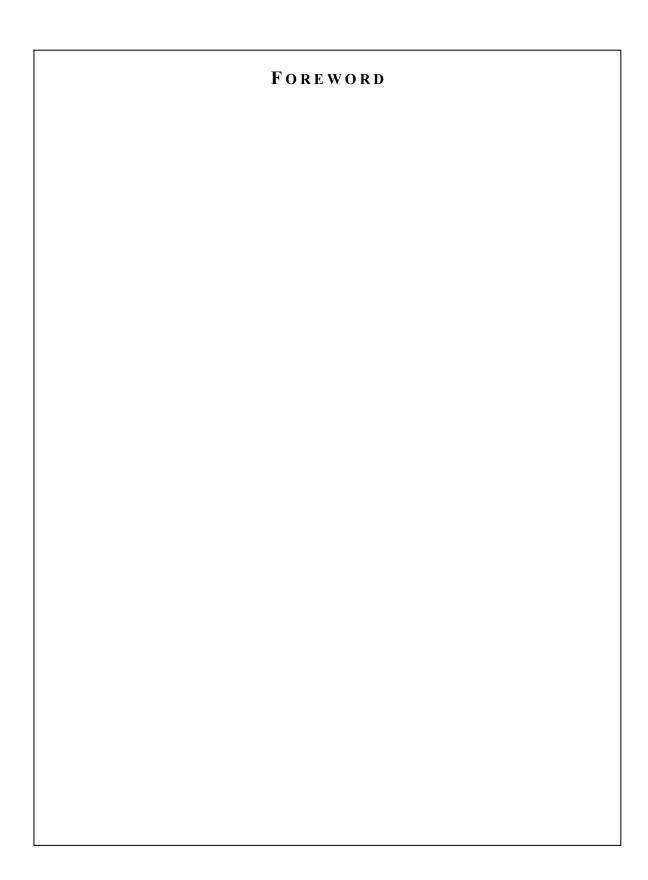


## TABLE OF CONTENTS



FOREWORD	ix
CHAPTER 1 OVERVIEW OF HUMAN RIGHTS LAW	1
SECTION 1.1 THE BIRTH OF MODERN HUMAN RIGHTS.	3
Section 1.2 International Criminal Law	
SECTION 1.3 THE PROMOTION AND ENFORCEMENT OF INTERNATIONAL LAWS	
AND COVENANTS PROTECTING HUMAN RIGHTS	18
Summary	35
CHAPTER 2 HUMAN RIGHTS INVESITGATION	37
Section 2.1 Overview of the Investigative Process	42
SECTION 2.2 ROLE OF THE HUMAN RIGHTS INVESTIGATOR	
SECTION 2.3 WORKING WITH WITNESSES AND VICTIMS	
SECTION 2.4 USING TRANSLATORS	50
SUMMARY	54
CHAPTER 3 THE INVESTIGATION KIT AND CASE FOLDER	55
Section 3.1 The Investigation Kit	55
SECTION 3.2 CREATING AND MAINTAINING AN INVESTIGATION FOLDER	
SECTION 3.3 RECORD-KEEPING ISSUES.	72
SECTION 3.4 PROTECTING THE IDENTITY OF WITNESSES	75
SECTION 3.5 STORING EVIDENCE	76
SUMMARY	78
CHAPTER 4 PHYSICAL EVIDENCE	79
Section 4.1 Identifying the Investigative Scenes	80
SECTION 4.2 PROCESSING AN INVESTIGATIVE SCENE.	
SECTION 4.3 COLLECTING AND PRESERVING EVIDENCE (CHART)	101
Section 4.4 Forensic Testing	103
SECTION 4.5 FORMING AN INVESTIGATIVE TEAM	108
SUMMARY	110
CHAPTER 5 DOCUMENTING PHYSICAL INJURIES	111
SECTION 5.1 OBSERVING AND DOCUMENTING INJURIES: LIVING VICTIMS	111
SECTION 5.2 OBSERVING AND DOCUMENTING INJURIES: DECEASED VICTIMS	117
SUMMARY	130
CHAPTER 6 IDENTIFYING PHYSICAL INJURIES	131
SECTION 6.1 SHARP FORCE INJURIES	131
SECTION 6.2 BLUNT FORCE INJURIES	
Section 6.3 Combination Injuries	
Section 6.4 Defensive Injuries	
SECTION 6.5 GUNSHOT WOUNDS	
Section 6.6 Asphyxiation Injuries	153

Section 6.7 Drowning	
Section 6.8 Is it Murder or Suicide?	
SECTION 6.9 THE PROCESS OF DECOMPOSITION	
Injury Charts	166
CHAPTER 7 INTERVIEWING WITNESSES	173
SECTION 7.1 GENERAL PRINCIPLES	
SECTION 7.2 THE PRELIMINARY INTERVIEW	180
SECTION 7.3 THE COMPREHENSIVE INTERVIEW	184
SECTION 7.4 WITNESSES REQUIRING A SPECIAL APPROACH	198
Summary	206
CHAPTER 8 IDENTIFYING SUSPECTS	207
Section 8.1 Eyewitness Identification Testimony	208
SECTION 8.2 IDENTIFICATION PROCEDURES	213
SECTION 8.3 PHYSICAL EVIDENCE	220
SECTION 8.4 DOCUMENTARY EVIDENCE	222
SECTION 8.5 ADMISSIONS BY A SUSPECT	223
SECTION 8.6 IDENTIFYING CULPABLE SUSPECTS	223
Summary	231
CHAPTER 9 INVESTIGATIVE ANALYSIS	233
SECTION 9.1 PRINCIPLES THAT APPLY THROUGHOUT THE INVESTIGATIVE PRO	OCESS234
SECTION 9.2 EVALUATING THE EVIDENCE.	237
SECTION 9.3 THE INVESTIGATIVE PROCESS	248
SUMMARY	255
CHAPTER 10 THE INVESTIGATION REPORT	257
Summary	271
CHAPTER 11 SPECIAL CASES	273
Section 11.1 Assault	274
Section 11.2 Extra-legal Execution	
SECTION 11.3 GENOCIDE	277
Section 11.4 Torture	280
SECTION 11.5 CRIMES OF SEXUAL VIOLENCE	283
SECTION 11.6 ARBITRARY DETENTION AND ENFORCED DISAPPEARANCE	285
SECTION 11.6 ARBITRARY DETENTION AND ENFORCED DISAPPEARANCE  APPENDIX A: FORMS	
	289
APPENDIX A: FORMS	311





## CHAPTER 1

## **OVERVIEW OF**

## HUMAN RIGHTS LAW

Most of the world's present population has been born since the advent of the modern human rights movement. This fact, as well as the continued existence of serious human rights violations, sometimes diminishes our realization of just how much the world has changed since the human rights movement began sixty years ago. Human rights will have an increasingly significant impact on the course of our developing civilization. Although not without controversy or significant setbacks, incremental progress has been made toward the articulation, recognition and enforcement of a set of freedoms, rights and protections that are inherent and inalienable in every person. As a consciousness of human rights increasingly permeates each of the world's diverse cultures and becomes embedded as a cornerstone in a germinating global culture, we are likely to see human rights law play an ever-increasing role in world affairs.

The idea that all humans are possessed of certain natural or God-given rights can be found in many forms and in many diverse cultures. This has been the rationale and moral impetus behind several revolutions and has been embodied in the early constitutions of numerous countries. At a point around the middle of the last century these rights began to be spoken of as "human rights." The development of human rights into a modern body of law owes a great deal to its older cousin, international humanitarian law. "Humanitarian law" is a term encompassing several movements that sought to protect vulnerable groups and the laws and norms that developed as a result. The more significant of these movements were for the abolition of slavery and the efforts of the Red Cross's founder Jean-Henri Dunant on behalf of prisoners of war. 1 Both of these movements sought to protect particularly vulnerable groups from the atrocities they suffered. While people had long battled to protect their own rights, these causes were among the first taken up on behalf of others – taken up on the rationale that being human guarantees each of us minimum standards of treatment and obliges each of us to seek humane treatment for others. The principles promoted by these grass-roots movements grew to be widely recognized and eventually became the standards governing the treatment of these vulnerable groups. Many of these norms were eventually codified in such documents as the *Treaty of Vienna* (prohibiting the slave trade, 1815) and the *Convention* with Respect to the Laws and Customs of War on Land (1899).

Today *international humanitarian law* is used to refer to that body of law and customs which seeks to minimize the consequences of war by limiting its methods and extending protections to those affected by it – including combatants. Humanitarian law proposes the seemingly incongruous principle that even during times of war the dignity of human life must be respected. The international treaties which comprise humanitarian law are a cooperative effort on the part of the world's nations to define and create a set of legally binding standards applicable during times of armed conflict.

\_

Throughout this book words that are defined in the glossary are emphasized with bold italics.





## THE UNITED NATIONS CHARTER AND

## THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

The Charter of the United Nations (1945) and the Universal Declaration of Human Rights (1948) are the two foundational documents of human rights law. Together they form the basis for over forty treaties, resolutions and documents that articulate the rights, freedoms and protections which make up human rights law.

The primary contributions of the *Charter of the United Nations* to human rights are:

- ◆ The Charter is an international treaty that firmly establishes each country's general obligation to observe and promote human rights.
- ♦ The Charter created the United Nations and set forth human rights as a paramount part of its mandate.

Although the Universal Declaration of Human Rights is not a treaty and itself offers no statutorily enforceable rights, freedoms or protections, it is a very important document in that:

- ♦ The Declaration clearly articulates in broad terms the types of rights, freedoms and protections that are inherent to the human person.
- It is the framework upon which subsequent treaties have been modeled and built.
- ♦ It is a touchstone for legal scholars and ordinary people alike with which to measure human rights situations around the world.

Human rights law is distinguished from humanitarian law in that it seeks to extend a set of protections, rights and freedoms to all people, at all times. The rights embodied in human rights law come into play any time an individual within a state interacts with the government of that state. Human rights law therefore defines the essential relationship between a state and those living within its authority. However, despite this difference, there are areas in which the protections extended by human rights law and international humanitarian law overlap. Although some human rights may be properly suspended during times of national emergency or war there remains a vital core of key protections that apply during both times of peace and war. Similarly, *genocide* and *crimes against humanity*, often referred to in the context of humanitarian law, prescribe certain especially egregious and inhumane acts making them universal crimes whether or not they occur during times of war. This overlap is also evidenced by language in the two additional protocols to the *Geneva Conventions* which refer to human rights instruments.<sup>2</sup>

Like international humanitarian law, modern human rights law is comprised mainly of a body of international treaties. Countries, after a deliberative process that achieved consensus, formed binding agreements regulating how a state may treat individuals within its borders and its obligations towards them. Although there still remain clear historical and practical distinctions between human rights law and humanitarian law, their shared foundational principle of the inherent dignity of the human person appears to destine them to a parallel course, if not eventually to a merged one.



## Section 1.1 The Birth of Modern Human Rights

One of the first significant developments in human rights law came after the First World War when the League of Nations established principles and practices which guaranteed basic rights to minority populations within trust territories.<sup>3</sup> In guaranteeing these rights, the League of Nations defined the relationship between the minority individuals and the interests of the states in which they lived, placing individual rights in a place of primacy. Around the same time the International Labour Organization was established to promote social justice and respect for the inherent dignity of workers.<sup>4</sup> Through the years, the International Labour Organization has done a great deal to promote the of workers and was eventually brought within the United Nations system.

The actual birth of modern human rights came during the Second World War as news of Nazi atrocities shocked the global consciousness. The world community recognized, for the first time, the relationship between world peace and individual human rights. In response, a search began for a way to prevent the future commission of grave crimes against subjects of the state by establishing universal protections for all people.

The *Charter of the United Nations*, adopted June 26, 1945, was a multilateral treaty which established the United Nations as an international institution and created a venue for world states to work toward world peace, security and prosperity. From the beginning, human rights have been a significant part of the organization's mandate. Although the Charter does not clearly define what rights, freedoms and protections are to be considered "human rights," it does establish the conceptual and legal framework for their development. The *Charter of the United Nations* is the first international treaty to set forth as an explicit goal the universal respect for human rights. Article 1(3) of the Charter states as one of the United Nations' purposes:

To achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.

Article 55 of the Charter goes on to state:

With a view to the creation of conditions of stability and well being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

•••

(c) universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

The Charter continues in Article 56 with a pledge by treaty members to work individually as well as collectively toward the achievement of the goals set forth in Article 55. The Charter carefully and subtly recognized that no nation could claim a spotless human rights record and, rather than mandating any immediate action, exacted a pledge from each member state to work toward the universal observance of human rights; each country working by itself as well as in cooperation with the other member states.



The United Nations Charter established the Economic and Social Council as one of the primary organs of the new body, one charged with, among other things, setting up a commission to study and promote human rights. In its first session the Economic and Social Council inaugurated the Commission on Human Rights and assigned as one of its duties the task of defining and articulating the specific rights, freedoms and protections that should be recognized as "human rights." This task proved more formidable than anticipated and it was not until 1966 that two documents that together are known as the "International Bill of Rights" came into being. These documents were the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

However. the most \_ urgent task for the newly created Commission Human Rights was prepare a draft Universal Declaration of Human Rights. Soon after the establishment of the United Nations there was a great call for some universal declaration concerning human rights. There was a need for a globally articulated rebuttal to the mass atrocities committed during World War II. Many governments, governmental organizations, and individuals worked to define the fundamental freedoms rights, and protections that would make up a comprehensive system of human rights. Their unified efforts resulted in the adoption of the Universal Declaration of Human Rights in 1948. Although this Universal Declaration was not a binding treaty and offered enforceable no protections, it was the first collective definitive

Below is a chart showing the different rights embodied in several significant historical documents.						
Fundamental Rights and Freedoms	Magna Carta (1215)	Bill of Rights England (1689)	Rights of Man France (1789)	Bill of Rights U.S.A. (1791)	Rights of Russian Peoples (1917)	Intl. Bill o Rights (1966
Right to Due Process	*	(1000)	*	*	(1011)	*
Freedom of Expression	·	*	*	*		*
Prohibition of Torture		*	· ·	*		*
Right to a Fair Trial		*		*		*
Right to Own Property			*	*		*
No Arbitrary Detention			*	*		*
Equal Protection of the Law			*		*	*
Freedom of Religion			*	*		*
Freedom of Thought			*	*		*
Freedom of The Press			*	*		*
Participate in Government			*		*	*
Presumption of Innocence			*	*		*
Protection of Right to Life		*		*		*
Prohibition of Slavery						*
Right of Asylum						*
Recognition By the Law						*
Right to a Nationality						*
Right to Privacy				*		*
Right of Assembly				*		*
Freedom of Association				*		*
Right to Education						*
Freedom of Movement						*
Right to Know Charges				*		*
Right to an Impartial Judge				*		*
Right to Remain Silent				*		*
Right to a Lawyer				*		*
No Double Jeopardy				*		*
No Ex Post Facto Laws						*
Examine Witnesses				*		*
Right to a Public Trial				*		*
Right to be Present at Trial				*		*
Right to a Speedy Trial				*		*
No Illegally Obtained				*		*
Rights to Seek Redress				*		*
Right to Appeal a Conviction						*

pronouncement of "human rights," and its clear articulation of those rights and their universality have made it a touchstone for every human rights document and treaty that has followed.



The *Universal Declaration*, as well as its progeny, are all based upon a single foundational principle. This is the recognition of the **inherent dignity of the human person**. The Universal Declaration in its first paragraph states:

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.

The word "inherent" embodies the concept that this dignity is an integral part of human nature, that it belongs to all people equally and individually. It is not something a state bestows on an individual or can take away, but is something which is inborn and inextricable. While the state may regulate the enjoyment of these rights and freedoms to ensure equality, it may not abrogate them.

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

## Universal Declaration of Human Rights (1948) Article 1.

This inherent dignity defines the essential relationship between individuals and the essential relationship between each individual and the state. In order to promote respect for this dignity, the relationship between individuals and the state needed to be articulated as concrete rights, freedoms, and protections. Like the drafters of the *Rights of Man* after the French revolution, the drafters of the *Universal Declaration* believed it would become a clear measure against which to examine the actions of a state.

A solemn declaration of the natural, inalienable and sacred rights of man... being constantly before all the members of the social body, shall remind them continually of their rights and duties...and may be this more respected; and, lastly order that grievances of the citizens, based hereafter upon simple and incontestable principles, shall tend to the maintenance of the constitution and redound to the happiness of all.

## The Rights of Man (1789)<sup>8</sup>

By seeking a consensus on which rights, freedoms, and protections are universal, the countries comprising the United Nations sought to create a universal standard much like the *Rights of Man*, the *United States Bill of Rights*, and the *English Bill of Rights*, which measure and protect the individual rights of their respective citizens.

The *Universal Declaration* defined human rights, freedoms, and protections with broad strokes, leaving the task of finding more precise language to the *International Bill of Rights* already being formulated by the Commission on Human Rights. Some of these broadly defined rights, freedoms, and protections in the *Universal Declaration* are:

**Rights:** The right to life, liberty, security of person, recognition under the law, to redress under the law, to a fair trial, to privacy, to seek asylum, to a nationality, to marry, to own property, to participate in government, to work, to leisure, to an adequate standard of living, to an education, and to participate in cultural life.



**<u>Freedoms</u>**: The freedom of movement, of thought, of conscience, of religion, of opinion, of expression, and of peaceful assembly.

<u>Protections</u>: The protection from *ex post facto* laws, protection of the presumption of innocence, the prohibition against slavery, torture, discrimination, and arbitrary arrest.

The *Universal Declaration* was one of the earliest international documents to enunciate the integral role economic, social, and cultural rights had in an overall scheme of human rights. It clearly states their role as "indispensable for [man's] dignity and the free development of his personality." However, the *Universal Declaration* did acknowledge the importance of social order and of defining limitations upon the exercise of these rights:

- 1. Everyone has duties to the community in which alone the free and full development of his personality is possible.
- 2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.
- 3. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

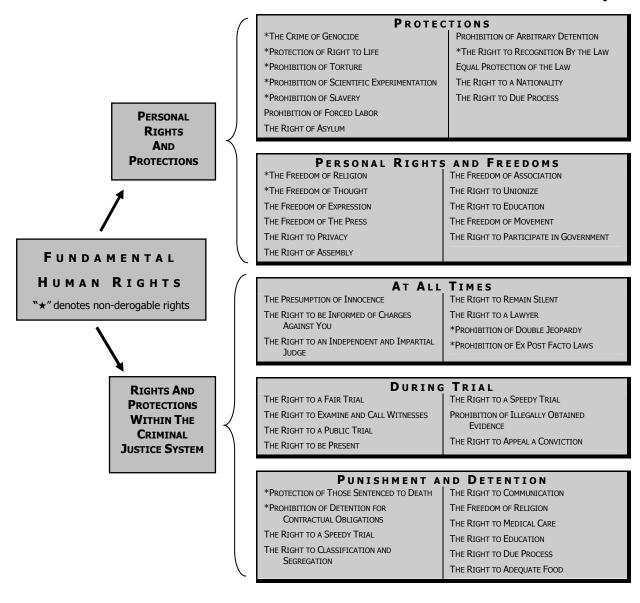
It took the Commission on Human Rights twenty years to fulfill the mandate it received from the Social and Economic Council in 1946 to draft an *International Bill of Rights*. It completed its task with the adoption of the *International Covenant on Civil and Political Rights* and of the *International Covenant on Economic, Social and Cultural Rights* in 1966. These documents achieved two important goals: first, they defined with specificity the rights, freedoms, and protections which encompass "human rights." Secondly, they created an international covenant recognizing these rights and providing for their enforcement.

Since the adoption of the *International Bill of Rights*, a significant body of over forty treaties, UN resolutions, and documents has been promulgated. This progeny has, in part, expressed these rights with greater specificity, and in some cases expanded the rights and protections themselves. This body of international and normative law is a clear articulation of every state's obligations to each individual living within its borders.

Specific human rights become enforceable in a particular country when that country ratifies a treaty thereby agreeing to its terms which may include:

- 1. Definitions of rights, freedoms and protections.
- 2. Mechanisms for each country to monitor and report to the United Nations on its own human rights situation.
- 3. Mechanisms for adjudicating allegations or disputes regarding human rights by international committees or courts.





This diagram illustrates the rights, freedoms and protections conveyed by the International Covenant on Civil and Political Rights, other international covenants and international customary law.

4. A state's voluntary recognition of an international committee's jurisdiction or authority to accept and adjudicate complaints against it.

Some countries have ratified these covenants in their entire original form. Others have only ratified these treaties in part. These countries typically recognize the rights propounded by the treaty and commit to reporting on their own progress toward compliance, but stop short of submitting to the commission's authority to receive and adjudicate complaints against them.

The International Covenant on Civil and Political Rights (CCPR, 1966) (which established the Human Rights Committee) and the International Covenant on Economic, Social and Cultural Rights



(CESCR, 1966) (which established the Committee on Economic, Social and Cultural Rights) remain the most significant of these treaties. The rights, freedoms and protections conveyed by the CCPR have received greater international attention than those conveyed by the CESCR, largely because violations of the CCPR often result in death or serious irreversible consequences for the individuals involved.

## CHARTERS, CONVENTIONS AND TREATIES - BINDING

Charter of the United Nations (1945)

Convention on the Prevention and Punishment of the Crime of Genocide (1948)

European Convention on Human Rights (1950)

Convention on the Elimination of All Forms of Racial Discrimination (1965)

International Covenant on Civil and Political Rights (1966)

International Covenant on Economic, Social and Cultural Rights (1966)

American Convention on Human Rights (1969)

Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1975)

Convention on the Elimination of All Forms of Discrimination Against Women (1979)

African Charter on Human and People's Rights (1981)

Convention on the Rights of the Child (1989)

Convention on the Protection of All Migrant Workers and Members of Their Familites (1990)

Convention on the Rights of Persons with Disabilities (2008)

## **DECLARATIONS – ADVISORY/NORMATIVE**

Universal Declaration of Human Rights (1948)

Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (1981)

Declaration of the Basic Principles of Justice for Victims of Crime and Abuse of Power (1985)

Declaration on the Protection of All Persons From Enforced Disappearance (1992)

Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992)

## RESOLUTIONS, GUIDELINES AND OTHER NON-BINDING DOCUMENTS ADVISORY/NORMATIVE

## RESOLUTIONS

Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty (1984)

## **GUIDELINES**

Guidelines on the Role of Prosecutors, (1990)

## RULES

Standard Minimum Rules for the Treatment of Prisoners (1957)

United Nations Standard Minimum Rules for the Administration of Juvenile Justice (1985)

United Nations Rules for the Protection of Juveniles Deprived of Their Liberty (1990)

### PRINCIPLES

Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment (1988)

Basic Principles on the Role of Lawyers (1990)

The rights conveyed by the *CESCR* include the right to education, to gainful employment, to participate in the cultural life of the community, and other rights and freedoms which are integral to the development and happiness of each individual. While violations of these rights are very important, they



tend to garner less international attention. This book will focus on the investigation of violations of the types of rights, freedoms, and protections conveyed by the *CCPR*.

The fundamental human rights propounded by the *CCPR* can be divided into two broad categories. The first category includes all the rights, freedoms and protections that each individual has at all times (except during a derogation of some). These personal rights and protections create a zone of protection around the individual into which the state may not ordinarily infringe. These personal rights and protections define the constitutive relationship between each individual and the state. They include rights such as: the right to privacy, the right to due process, the right of assembly, the right to education and the right to participate in government. They also include the freedom of religion, of thought, of expression, and of association. These rights protect the individual from arbitrary detention, involuntary scientific experimentation, and forced labor.

The second category of rights and protections applies to any individual who is detained or charged with a crime. These rights recognize that any time the state seeks to impose punitive measures on an individual, the disparity in resources makes these individuals particularly vulnerable to abuses by the state. This second category therefore extends special rights and protections to ensure those detained or accused of a crime are treated fairly. These rights include: the presumption of innocence, the right to remain silent, the right to a lawyer, and the right to a public trial. The prohibitions against double jeopardy and *ex post facto* laws protect the individual against repeated or unfair prosecutions.

## Section 1.2 International Criminal Law

International criminal law refers to three categories of criminal prohibitions that if violated incur individual criminal responsibility for international crimes. These categories are: *international humanitarian law* or *war crimes; crimes against humanity* and *genocide.* Although each of these



## THE VIENNA DECLARATION AND PROGRAMME OF ACTION

During July of 1993, UN officials, country representatives, non-governmental human rights organizations, and observers from around the world gathered in Vienna for the World Conference on Human Rights. From that conference came the *Vienna Declaration and Programme*. This document reaffirmed the developments in human rights law up until that point and settled differences of interpretation which weakened the import of the *Universal Declaration of Human Rights*. *The Vienna Declaration*:

- Reaffirmed the universality of human rights.
- Annunciated the principle that all human rights are interrelated and interdependent.
- Reaffirmed the high priority human rights have in the United Nations.
- ♦ Recognized democracy as the form of government most conducive to the development of human rights.
- Recognized the need to expand accountability to include individuals and organizations.
- ♦ Recognized the importance of non-governmental organizations in the enforcement and education of human rights.



categories has a somewhat distinct legal genesis, today they are applied as a cohesive body of criminal law to some of the most grievous acts in recent history.

## International Humanitarian Law

By its simplest definition *international humanitarian law* describes the laws and customs applicable during times of armed conflict. It consists of that body of international law which seeks to minimize the destruction and suffering caused by war by limiting its methods and by offering protection to those directly affected by the conflict. <sup>10</sup> Even though the *Charter of the United Nations* makes aggressive war illegal, <sup>11</sup> modern history proves that it may be a long time before the laws and customs of war become unnecessary.

Armed conflict by its very nature involves horrific acts of violence and destruction. But as long as there has been war, there have been standards drawn from an intrinsic sense of decency, justice, and humanity that combatants have either consciously observed or disregarded. These standards have been articulated in a variety of ways depending upon the period, the culture, and the means of combat available. In pre-colonial Africa a battle code developed among some tribes that prohibited poison arrows, spared fallen enemies, and protected women and children. An ancient Chinese text called the *Sun Tzu (Art of War)* written around 500 BC admonished soldiers to avoid needless violence, to win without destroying the enemy or non-combatants, and to show respect for captured soldiers. The *Code of Manu*, developed in India between 200 BC and 200 AD, prohibited the use of poison and fire and instructed soldiers to refrain from attacking an unprepared combatant or one who was wounded or had surrendered. In 12<sup>th</sup> century Japan a moral code known as *Bushido* stressed that the goal of battle was not the annihilation of the enemy. It extolled the humane treatment of wounded and conquered combatants as an honorable and noble act. In both Muslim and Hebrew texts there are several accounts describing the humane treatment of conquered peoples.

During the 19<sup>th</sup> century there was a growing public consciousness of the horrors of war. Perhaps the greatest contribution to this growing awareness was Jean-Henry Dunant's *A Memory of Solferino*, published in 1862, which detailed the inhumane suffering of fallen soldiers after the battle of Solferino in 1859.<sup>17</sup> Moved by what he witnessed, Dunant established the *International Committee of the Red Cross (ICRC)* in 1863, a non-governmental organization whose principal mandate has been the alleviation of suffering through humanitarian activities and the promotion of respect for *international humanitarian law*. In 1864 Dunant, General Guillaume-Henri Dufour (who fought in the battle of Solferino) and several prominent Swiss citizens, with support from their government, convened a diplomatic conference to discuss ways by which to minimize the suffering occasioned by war and to develop international standards through a treaty process. That conference eventually resulted in the first *Geneva Convention* (1864) governing the conduct of war. Around the same time Francis Lieber began work on a code of military conduct during the American Civil War. The ferocity and horror of that war prompted President Abraham Lincoln in 1863 to adopt that code now referred to as the *Lieber Code*.<sup>18</sup>

As a result of these efforts there exists today clearly articulated legal standards governing all aspects of warfare. These standards are embodied in the four *Geneva Conventions* of 1949, the primary source of current *international humanitarian law*. These *Conventions* have been ratified by almost every country in the world and provide a comprehensive set of enforceable prohibitions regulating conduct during war. The four *Geneva Conventions* of 1949 are:



Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field. Geneva, 12 August 1949.

Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea. Geneva, 12 August 1949.

Convention (III) relative to the Treatment of Prisoners of War. Geneva, 12 August 1949.

Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949.

In 1977 two protocols were adopted which supplemented and expanded the protections provided by the Geneva Conventions. These are:

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977.

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977.

The Geneva Conventions are not only the most significant international legal instruments in effect today governing armed conflict whose principles if not precise language has been incorporated, in part, in the statutes of the ad hoc tribunals for Rwanda and the former Yugoslavia as well as the International Criminal Court. A complete discussion of each of the four Geneva Conventions is beyond the scope of this book. It is, however, important for the human rights investigator to understand at least in general terms the protections that the Conventions extend and what constitutes a violation of international humanitarian law.

Although humanitarian law and human rights law both seek to secure protection for those most vulnerable to inhumane treatment, they do it in different ways. Human rights law shields citizens living in a state with certain protections and rights which the state, through the treaty process, has bound itself to observe. Humanitarian law protects the victims of war not with individual "rights" but rather by imposing obligations and restrictions on the combatants and hostile powers engaged in war. However, implicit in these humanitarian obligations and restrictions is a recognition of the same inherent human dignity that is the explicit foundational principle of human rights law. Humanitarian law, like human rights law, recognizes the inalienable nature of this dignity even during times of war and seeks ways to ensure respect for it in the context of military battle. So inalienable are the protections afforded by the *Geneva Conventions* that those protected by them are not even free to voluntarily renounce them. Similarly, the universality of these protections is codified in articles that prohibit application of the *Conventions* in a discriminatory manner.

One of the most significant protections provided by the *Conventions* is that civilians and combatants who are no longer actively engaged in hostilities because of surrender or casualty may not be harmed and must be cared for.<sup>22</sup> Opposing sides to a conflict must take immediate measures to identify, collect and properly bury the dead.<sup>23</sup> Information regarding the dead, injured or sick must be collected and forwarded to the adverse party.<sup>24</sup> The *Conventions* also mandate that impartial humanitarian organizations be given access to and offered the necessary protection to allow them to engage in medical, religious, and humanitarian missions.<sup>25</sup>



Under the *Conventions* it is forbidden to kill, wound, or torture an adversary who has been captured, has surrendered, or has been wounded.<sup>26</sup> Prisoners of war cannot be the victims of reprisals or group punishments and must be accorded fundamental guarantees of due process before punishment for **individual** criminal responsibility may be imposed.<sup>27</sup> The *Conventions* grant delegates from the Red Cross authority to enter and inspect any place containing prisoners of war or others protected by the conventions and to talk with them privately.<sup>28</sup>

The *Conventions* also provide a comprehensive code for the protection and humane treatment of civilian populations living in occupied territories. They may not be taken hostage or harmed and may only be subject to punishment for acts of individual criminal responsibility and only after a fair and impartial judicial process.<sup>29</sup>

The *Conventions* also regulate the actual conduct of battle. They mandate that in choosing the methods and means of war it is impermissible to use weapons or methods that cause indiscriminate, excessive, or unnecessary suffering. Article 35 of *Protocol (I)* states:

In any armed conflict, the right of the Parties to the conflict to choose methods or means of warfare is not unlimited.

It is prohibited to employ weapons, projectiles and material and methods of warfare of a nature to cause superfluous injury or unnecessary suffering.

It is prohibited to employ methods or means of warfare which are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment.

The parties to a conflict must take steps to spare civilian injuries and property and all attacks must be justified by clear military objectives.<sup>30</sup> The *Conventions* oblige the parties to avoid destruction of the environment<sup>31</sup> and cultural property.<sup>32</sup> To facilitate the protection of "protected peoples" the *Conventions* make provisions for the establishment of safety zones,<sup>33</sup> neutral zones,<sup>34</sup> de-militarized zones,<sup>35</sup> non-defended zones,<sup>36</sup> and medical zones.<sup>37</sup>

One very important feature of the *Conventions* is that a power's obligations under the treaties are still in force even when the opposing party fails to meet its obligations or willfully disregards them. The obligations are not reciprocal in nature and each party to a conflict is bound to its obligations regardless of an opposing party's violation of the *Convention's* provisions. The first article of each of the four conventions is the same and states, "The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances." This is quite different from other conventions and treaties which ordinarily release one party from its obligations upon the failure of the other party to meet its obligations.

One of the limitations of the *Geneva Conventions* is that the bulk of the protections they offer take effect only during international armed conflicts (officially declared wars between two states) in which at least two of the powers are parties to the Conventions. Many of the important protections do not apply to significant armed conflicts that occur within the borders of a single state. The *Conventions* do, however, extend some important restrictions on the combatants of any conflict regardless of its nature. The same text is incorporated into each of the four treaties in Article 3. This common article provides for the humane treatment of civilians and combatants who are no longer actively participating in hostilities. It prohibits violence to life and person, the taking of hostages, degrading treatment and extra-judicial punishments.



While these protections are not comprehensive, they are viewed as a minimum set of standards to be applied during internal armed conflicts.

Protocol (I) extended and supplemented the protections of the Geneva Conventions to internal armed conflicts against colonial domination, alien occupation and racist regimes. Protocol (II) expanded the abbreviated protections in common article 3 with a more complete set of protections applicable to any internal armed conflict not covered by Protocol (I) in which there are armed groups under responsible command and in control of sufficient territory to sustain concerted military operations. Unfortunately, neither of these protocols have been as universally ratified as the original four conventions, and Protocol

The Geneva Conventions: Summary of Protections					
Treaty	Who is protected?	When are they protected?	Summary of Protections		
Geneva I	Civilians and military personnel who are wounded, sick, or nor longer engaged in hostilities	During any international armed conflict.	Establishes minimum standards of treatment for the dead, injured, and sick. It obliges the parties to protect and permit medical, religious, and humanitarian personnel to assist the injured.		
Geneva II	Members of the armed forces who are wounded, sick, or shipwrecked at sea.	During any international armed conflict.	Establishes minimum standards of treatment for the dead, injured and sick. It obliges the parties to protect and permit medical, religious, and humanitarian personnel to assist the injured.		
Geneva III	Members of the armed forces who become prisoners of war.	During any international armed conflict.	Obliges the capturing party to ensure the observance of fundamental protections, rights, and freedoms.		
Geneva IV	Civilians in occupied areas or areas affected by armed conflict	During any international armed conflict.	A broad range of protections that guarantee fundamental protections, rights and freedoms.		
Article 3 which is common to Geneva I,II,III, & IV	Civilians and military personnel who are not actively taking part in hostilities.	During an internal armed conflict.	Prohibits: murder, torture, cruel treatment, hostage taking, humiliating and degrading treatment, extra-judicial punishments and executions. It imposes minimum protections of due process and an affirmative duty to collect and care for the wounded and sick.		
Protocol I	All persons affected by the armed conflict	Armed conflicts in which people are fighting: colonial domination, alien occupation or racist regimes	All of the protections of I,II, III, & IV. Prohibits the use of weapons that "cause superfluous injury or unnecessary suffering" (Art. 35).		
Protocol II	All persons affected by the armed conflict	During internal armed conflicts where there are identifiable groups under responsible command,in control of territory and able to support sustained military operations.	All of the protections offered by Article 3 common to all of the four <i>Geneva Conventions</i> plus: basic due process rights and a prohibition against soldiers under the age of 15 years old. It imposes a duty to educate children and a duty to reunite families.		



## (II) lacks enforcement provisions.

The four *Geneva Conventions* and the two additional *Protocols* combine to form a comprehensive body of law regulating all aspects of armed conflict. For obvious reasons violations of some provisions are more serious than others. Certainly a violation of Article 41 of the *Third Convention*, requiring the public posting of the *Convention* in prisoner of war camps, would not be considered as serious a violation as using a prisoner of war for medical experimentation (prohibited by Article 13).

The Conventions designate the most serious violations as "grave breaches." Each of the four conventions as well as Protocol (I) have specific articles designating which violations constitute grave breaches.<sup>38</sup> The Geneva Conventions impose an obligation on each state party to apprehend and prosecute anyone alleged to have committed a grave breach, or, in the alternative, to extradite such a suspect to a country willing to conduct a trial on the allegations. This combination of universal jurisdiction and an affirmative duty to apprehend and prosecute is intended to give perpetrators of such grave breaches 'no place to hide.' Grave breaches are also commonly referred to as "war crimes" or "crimes of war," although recent developments in international law have expanded the definition of war crimes to include offenses not found in the "grave breach" provisions of the Geneva Conventions.



## INTERNATIONAL CUSTOMARY LAW

Before there were international humanitarian treaties spelling out prohibitions and obligations between hostile states there were customs. International *customary law* gives legal effect to certain customs that are generally accepted and practiced by the countries of the world.

Consider the following: most, if not all of the world's cultures have customs and rituals that require individuals to show respect for the dead. Although the unique rituals of each culture may vary, they all signify a universal respect that people have for the deceased. One individual's desecration of a corpse causes a visceral reaction in all of us and is considered to be abhorrent.

Similarly, there are customs of war that have been so universally recognized and incorporated into state practice that they have the same legal effect as law created by the treaty process. A violation of these customs can be prosecuted even absent a statutory prohibition. The practical differences between customary law and treaty law diminish as more customs are codified into treaties and more countries ratify those treaties. The most important aspect of customary law today is that it still binds those parties that have not formally ratified a treaty prescribing certain conduct. For example, a country that has failed to ratify any treaties prohibiting the use of poisonous gases would still be bound by the customary law that prohibits its use.

## **War Crimes**

War crimes comprise the most serious of all violations of *international humanitarian law* and incur individual criminal liability upon perpetrators of them.<sup>39</sup> The most significant body of law to define *war crimes* can be found in the "grave breaches" provisions in each of the *Geneva Conventions*. These articles confer special status on the violation of the most important provisions of the *Conventions*. The



statutes creating the *International Criminal Tribunal for the former Yugoslavia (ICTY)* and the *International Criminal Tribunal for Rwanda (ICTR)* give both courts jurisdiction over these *grave breaches*. The statute for the proposed *International Criminal Court* incorporates the *grave breaches* into its definition of *war crimes* but broadens the scope of what is to be considered a *war crime* in the 21<sup>st</sup> century.

War crimes consists of a wide variety of egregious acts involving all aspects of armed conflict. While the grave breaches of the Geneva Conventions are only concerned with those crimes that occur during international armed conflict, Protocol (I) and the statute of the International Criminal Court (ICC) extend accountability for crimes of war to national wars of liberation and internal domestic armed conflicts.<sup>40</sup>

The *Geneva Conventions* codified a long-observed custom of war prohibiting killing a combatant who has surrendered or who is no longer a threat because he is injured, sick or shipwrecked.<sup>41</sup> The *ICC* has expanded this prohibition to also outlaw the killing of a combatant through treacherous acts such as feigning injury or surrender and then killing a duped opponent.<sup>42</sup> The laws of war expressly prohibit torture, and mutilation, biological experiments on prisoners of war or civilians, and willfully causing excessive suffering and serious injury to civilians and soldiers who are no longer a threat. In recognition of the human mind's capacity to imagine new and cruel forms of treatment, there is a blanket ban on any treatment which is inhumane and an "outrage upon personal dignity." The *ICC* statute recognizes statutorily that sexual violence can and has been used as an impermissible method of war and expressly prohibits rape, indecent assault, enforced prostitution, enforced pregnancy, enforced sterilization, and any other form of sexual violence, making all of these *war crimes*. In the combatant who

A serious breach of the laws governing the treatment of prisoners of war or civilians under the control of a hostile army is a *war crime*. Neither soldier nor civilian can be compelled to serve in a captor's army. After the cessation of hostilities, it is a crime to unjustifiably delay the return of interned civilians or prisoners of war. Before a soldier can be punished, he or she must have the benefit of a fair and regular disciplinary procedure or trial, and civilians must always have the benefit of a regular and fair trial. 1

Some of the limitations on the methods of war impose *war crime* status on the use of children under 15 as soldiers, <sup>52</sup> the use of "human shields" to protect military objectives from bombardment, <sup>53</sup> and the starving of civilians to achieve a military objective. <sup>54</sup> It is a *war crime* to use poisonous gas, <sup>55</sup> certain especially cruel types of ammunition of or methods that are indiscriminate and result in unnecessary injury to civilians. <sup>57</sup> The laws and customs of war also limit the types of locations that are considered legitimate military targets. Intentionally targeting hospitals, <sup>58</sup> facilities marked with the red cross or red crescent, <sup>59</sup> undefended or de-militarized zones, <sup>60</sup> or religious buildings and cultural institutions is considered a *crime of war*. It is a crime to direct attacks toward civilians, civilian objects, <sup>62</sup> or UN sponsored peace-keeping or humanitarian missions. <sup>63</sup> It is a *war crime* to intentionally launch an attack knowing that it will cause severe long-term damage to the environment. <sup>64</sup> It is also illegal to target a facility which is likely to unleash dangerous forces if attacked, such as a dam or nuclear power plant. <sup>65</sup> It is also a *war crime* to make treacherous or perfidious use of the red cross symbol <sup>66</sup> or "blue helmets" worn by UN peacekeeping troops. <sup>67</sup>



## **Crimes Against Humanity**

The term "crimes against humanity" describes a special category of international crimes. The term "laws of humanity" was first used in the preamble to the 1907 Hague Convention to describe those principles and values that are so essential and universal that they are evidenced by common tenets in the world's many diverse cultures. 68 Crimes against humanity are those acts that are so egregious and which so clearly deviate from universal norms of humane treatment that they are in fact not simply committed against a single individual but against all of humanity. Former Secretary-General of the United Nations, Kofi Annan, in his address to the diplomatic conference that adopted the *Rome Statute of the International Criminal Court*, stated:

There can be no global justice unless the worst of crimes – crimes against humanity – are subjected to the law. In this age more than ever we recognize that the crime of genocide against one people truly is an assault on us all – a crime against humanity.<sup>69</sup>

Crimes against humanity have been included in and defined in the Nuremberg Charter and in the statutes establishing the *ad hoc* tribunals for Rwanda and the former Yugoslavia. The most recent articulation of what constitutes a *crime against humanity* can be found in the *Statute of the International Criminal Court*. Article 7 of the Statute provides:

- 1. For the purpose of this Statute, "crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:
- (a) Murder; (b) Extermination; (c) Enslavement; (d) Deportation or forcible transfer of population; (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; (f) Torture; (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender . . . , or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court; (i) Enforced disappearances of persons; (j) The crime of apartheid; (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health...

The most important aspect of *crimes against humanity* is that they can be committed during a time of peace as well as during a time of armed conflict.<sup>70</sup> In this sense their protections are more expansive than war crimes, which ordinarily only have effect during times of armed conflict.

## Genocide

In 1933 Raphael Lemkin, a Polish scholar working in the United States War Department coined the word 'genocide' to describe the targeting of national, ethnic, and religious groups for annihilation.<sup>71</sup> He was one of the first to advocate for making such intentional targeting of an identifiable group an international crime. The *Genocide Convention* formally created the international crime of *genocide* and has been almost universally adopted.



The key provisions of the Convention on the Prevention and Punishment of the Crime of Genocide (1948) define the crime of genocide.

Article I The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish.

Article II In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group.

Article III The following acts shall be punishable: (a) Genocide; (b) Conspiracy to commit genocide; (c) Direct and public incitement to commit genocide; (d) Attempt to commit genocide; (e) Complicity in genocide.

The *Genocide Convention* makes it clear that the intentional targeting of certain groups for eradication is an international crime whether committed during times of war or peace and imposes upon parties to the convention an affirmative duty to prevent and punish by enacting domestic legislation, prosecuting offenders and invoking the United Nations to act on behalf of the targeted group.<sup>72</sup>

The statutes of the *ICC*, the *ICTR* and the *ICTY* have all adopted this definition of *genocide* and provide jurisdiction for the prosecution of genocide offenses. In 1998 the *ICTR* rendered a verdict against Jean-Paul Akayesu finding him guilty of the crime of genocide for his role in the genocidal targeting of Tutsi's during the Rwandan crisis. This was the first time anyone has been held accountable for genocidal acts in the fifty years since the *Genocide Convention's* adoption. Proving that the intent of perpetrators was to destroy a protected group as such. Absent the perpetrators having expressed specific genocidal intent it may be more practical to prosecute them for *war crimes* or *crimes against humanity* which do not require specific proof of genocidal intent.

## The Relationship between Human Rights Law and International Criminal Law Law

While human rights law and international criminal law have developed independently of each other there exists significant overlap between them. It is quite possible that in any particular situation the rights and prohibitions from these related sets of law may both apply. While some human rights can be abrogated during war the most critical protections cannot. Similarly, while the international criminal law of war crimes only has applicability during an armed conflict crimes of humanity and genocide can be committed within and without an actual armed conflict. The fundamental difference between the two that remains even in areas of overlap is that human rights law examines the actions of the state towards its subjects and international criminal law examines the conduct of individuals. In cases in which the individual is acting on behalf of the state both areas of law can be directly implicated. An experienced investigator will be cognizant of the applicability of both areas of law as well as the applicability of domestic national law when engaged in his or her work.



# Section 1.3 Promotion and Enforcement of International Laws and Covenants Protecting Human Rights

The promotion of human rights and protection for the essential integrity and dignity of the human person is the subject of a plethora of mechanisms deriving their legal authority from a number of international instruments. While each mechanism is different some rough lines can be drawn around these mechanisms categorizing them by their fundamental approach and the institutions responsible for each individual mechanism. Some mechanisms seek to promote and protect human rights by promoting compliance by state authorities with international commitments. Although many of these mechanisms have been incorporated into the UN system some remain independent of it and have their own established enforcement mechanisms. Other mechanisms seek to ensure compliance with international norms by assesrting international criminal prohibitions and establishing criminal procedures to investigate, prosecute and adjudicate violations of these norms.

The challenge of promoting and enforcing these human rights has been met on six major fronts. Each of these seeks to foster compliance using a different set of strategies and mechanisms. They are:

- 1. Mechanisms established through the authority of the *Charter of the United Nations*.
- 2. Mechanisms established by international treaties and covenants.
- 3. Mechanisms established by regional human rights covenants.
- 4. Ad hoc international and hybrid courts created to deal with specific situations.
- 5. The International Criminal Court.
- 6. The advocacy work of non-governmental human rights organizations.

Each of these fronts can rightfully claim some victories and must admit some defeats. Which of these has been the most effective is the subject of an ongoing debate. The following section will take a brief look at each of them. It is important to remember that all of these mechanisms act as safety net to domestic national law and in most cases it must be demonstrated that national courts and systems have failed or been unable to address alleged wrongs before many of these mechanisms can be invoked.

## Promotion and Enforcement of Human Rights and International Criminal Law in the UN System

## Mechanisms Based on the Charter of the United Nations

Each of the United Nations' principal organs is charged with the responsibility of promoting human rights. The General Assembly as the main body of the United Nations oversees the activities of all its subsidiary organs. The Security Council, the Office of the Secretary-General and the Economic and Social Council all come under the authority vested in the General Assembly. The General Assembly under Article 13 of the *Charter of the United Nations* is empowered to "initiate studies and make recommendations for the purpose of" assisting in the global realization of human rights and fundamental freedoms.

The General Assembly has eight committees that report to it directly on the implementation of and compliance with eight conventions. These committees are: the Human Rights Committee; the Committee Against Torture; the Committee on the Elimination of Racial Discrimination; the Committee on the Elimination of Discrimination Against Women; the Committee on Economic; Social and Cultural Rights;



the Committee on Migrant Workers and the Committee on the Rights of Persons with Disabilities. The General Assembly by its own authority has established a number of other committees that have responsibilities for human rights monitoring and advocacy such as the Committee on the Inalienable Rights of the Palestinian People.

## The Security Council

The Security Council through Article 34 has the authority to "investigate any dispute, or any situation which might lead to international friction or give rise to a dispute." Historically many such disputes have arisen because of egregious violations of human rights such as apartheid, and have been taken up by the Security Council. The Security Council relying on its authority under Chapter VII established the two *ad hoc* international tribunals examining violations of international humanitarian law in the former Yugoslavia and Rwanda.

## The UN Human Rights Council

The UN Human Rights Council is the successor to the UN Commission on Human Rights and was established by the General Assembly on 15 March 2006. It was established to build on the Commission's achievements and to "redress its shortcomings." In 2007 the Council adoped a package of institution building mechanisms which will guide its future development. One of these mechanisms is Universal Periodic Review in which the human rights records of all member states will be the subject of regular scrutiny. The General Assembly elects member states to sit on the forty-seven seats of the HRC. Each term is three years and states cannot be elected to consecutive terms. Seats on the Council are distributed between the UN's regional groups: Asia has thirteen; Africa, thirteen; Eastern Europe, six; Latin American and the Carribean, eight, Western Europe and Others, seven. The rights of any member of the Council may be suspensed upon a finding that it persistently commits grave and systematic violations of human rights.

On June 18, 2007, the Council adopted its complaint procedure. The complaint procedure relies on two subsidiary working groups. The Working Group on Communications is comprised of five experts who determine if a particular communication to the Council merits investigation. In those cases in which the Working Group on Communications determine that such investigation is necessary it refers the complaint to the Working Group on Situations which in turn investigates the matter and makes specific recommendations to the Human Rights Council.

The Human Rights Council continued the Commission on Human Right's practice of appointing Special Rapporteurs, Special Representatives and Independent Experts to monitor and report on specific issues and situations.

## The Secretary-General's office

Although the office of the Secretary-General has no regular venue for the reception of human rights complaints, the office is empowered to negotiate with State members to resolve disputes over human rights. The Secretary-General has in fact interceded and represented the General Assembly in significant human rights disputes.



## The Office of the High Commissioner for Human Rights

In 1993 the General Assembly approved the creation of the post of the United Nations High Commissioner for Human Rights. <sup>78</sup> The High Commissioner is appointed by and works under the direction of the Secretary-General. Navanethem Pillay, the present High Commissioner, is the United Nations official having primary responsibility in human rights. She coordinates and facilitates all aspects of the United Nations work in human rights within the existing framework. The General Assembly charged the High Commissioner with a duty to "Play an active role in removing the current obstacles and in meeting the challenges to the full realization of all human rights and in preventing the continuation of human rights violations throughout the world."

The OHCHR provides a venue for open discussion on current human rights challenges, and acts as a focal point for research, education, public information, and advocacy within the UN system. Recognizing that member states have the ultimate responsibility for compliance with international human rights law the OHCHR plays a supportive role providing expertise, technical advise and training to assist member states in discharging their international obligations in this regard.

The OHCHR serves as the secretariat of the Human Rights Council and provides administrative and technical support to the rapporteurs, experts and working groups acting pursuant to the Special Procedures under the authority of the Council. OHCHR staff also directly engages in monitoring some particularly acute human rights situations. It has established offices in some of the most dangerous conflict areas and its staff have commendably undertaken efforts to monitor and promote human rights for some of the world's most vulnerable at significant personal risk to themselves.

## The Specialized Agencies

There are also six specialized agencies which are part of the United Nations system. Each of these is very involved in various aspects of human rights. These agencies are:

- 1. The International Labor Organization (*ILO*)
- 2. The UN High Commissioner for Refugees (UNHCR)
- 3. The UN Development Program (*UNDP*)
- 4. The UN Educational, Scientific and Cultural Organization (UNESCO)
- 5. The UN Children's Fund (*UNICEF*)
- 6. UN Relief and Works Agency for Palestine Refugees in the Near East (UNRWA).

## **Mechanisms Based on International Covenants**

Although the member states gave the United Nations broad powers in its Charter, they did not give the United Nations the power to legislate or to create binding laws on the individual states. The only vehicle for creating internationally binding laws is a treaty, often called a "covenant" or "convention." Proposed treaties are created after a consensus is forged and a resolution adopted recognizing a document intended to become a treaty. These documents are then reviewed and debated by the legislatures of the individual states.



## HUMAN RIGHTS IN THE UNITED NATIONS

## **UN GENERAL ASSEMBLY**

While many of the UN's institutions operate with considerable autonomy each institution's legal authority ultimately derives from the grant of authority to the General Assembly by state parties in the UN Charter. In addition to this, a number of separate human rights treaties grant the UN special powers to oversee implementation of and compliance with these treaties.

## UN SECURITY COUNCIL UNSC

Article 24 of the UN Charter confers upon the SC "primary responsibility for the maintenance of international peace and security." The UNSC acts on behalf of the General Assembly to maintain peace and security and becomes involved in human rights situations which threaten such. It has relied on Chapter VII of the Charter for the legal authority to establish international tribunals.

## INTERNATIONAL COURTS

Int'l Criminal Court for the former Yugoslavia **ICTY** (1993)

> Int'l Criminal Court for Rwanda ICTR (1994) HYBRID COURTS

These courts are created within the national judicial system in agreements between the UN and member states and approved by the UNSC.

> East Timor Tribunal ETT (2000)

Special Court for Sierra Leone SCSL (2002)

Extraordinary Chambers of Cambodia **ECCC** (2004)

> Special Tribunal for Lebanon STL (2007)

either be thematic, geographic or situational.

submit complaints.

### OFFICE OF THE SECRETARY GENERAL UNSG

The Secretariat carries out the daily work of the UN. It serves the other principal organs and implements the programs and policies established by them. The Secretariat is engaged in important tasks such as the on of peacekeeping and mediating in administration missions international disputes.

The office is lead by the Secretary-General who is appointed by the General Assembly and approved by the Security Council for renewable five year terms. The SG is sometimes given the task to prepare reports on particular human rights situations.

## **CHARTER BASED MECHANISMS**

### INTERNATIONAL COURT OF JUSTICE ICJ (1945)

The ICJ is the principal judicial organ of the UN. It was established by the UN Charter. Its primary purpose is to adjudicate legal disputes between member states. It has also handled cases which involving issues of human rights and international criminal law. It has jurisdiction over the Genocide Convention.

## OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS **OHCHR** (1993)

The High Commissioner of Human Rights is the primary UN official charged with coordinating and facilitating all aspects of human rights within the UN system. The mandate of the OHCHR is unique in that it is responsible for the promotion and protection of all human rights and supports all of the other mechanisms in the UN human rights system including the Human Rights Council, its Special Procedures and the treaty-based committees.

### SPECIALIZED AGENCIES

International Labor Organization ILO (1919)

The ILO is a tripartite organization that brings together governments, employers and workers to promote human and labor rights.

UN Educational, Scientific and Cultural Organization UNESCO (1946)

UNESCO works to foster dialogue between civilizations, cultures and peoples based on shared values. It does this in part to promote greater observance of human rights.

UN Children's Fund UNICEF (1946)

UNICEF is the UN organization primarily responsible for the promotion and protection of human rights as they apply to children.

UN Development Program UNDP (1965)

Engages in capacity building in the promotion and protection of human rights.

UN High Commissioner for Refugees **UNHCR** (1950)

UNHCR's primary purpose is to safeguard the rights and well-being of refugees.

UN Relief and Works Agency for Palestine Refugees in the Near East UNRWA (1950)

UNRWA provides assistance, protection and advocacy for 4.7 million Palestinian refugees including promotion of their human rights.

## TREATY BASED MECHANISMS

The following treaties created committees to monitor implementation and compliance. These committees make reports to the General Assembly.

\* These committees receive complaints from individuals, state parties and non-governmental organizations.

\*Committee on the Elimination of Racial Discrimination CERD Convention on the Elimination of All forms of Racial Discrimination (1965)

HUMAN RIGHTS COUNCIL

HRC (2006)

Inter-governmental body within the UN charged with promoting and

protecting human rights. It is comprised of 47 member states and answers directly to the General Assembly. The HRC assumed responsibility for the

Special Procedures of the disbanded Commission on Human Rights, a

system of mandates that includes numerous independent experts, special

rapporteurs, special representatives and working groups. Their focus may

The HRC has implemented a Universal Periodic Review in which the

human rights situation of all member states is examined and assessed every four years. It has an Advisory Committee which operates as a think

tank on various human rights issues. It also has a procedure that allows

individuals, groups, non-governmental organizations, and other states to

\*Human Rights Committee CCPR International Committee on Civil and Political Rights (1966)

\*Committee Against Torture CAT

Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1975)

\*Committee on Elimination of Discrimination Against Women CEDAW Convention on the Elimination of All Forms of Discrimination against Women (1979)

Committee on Economic, Social and Cultural Rights CESCR International Covenant on Economic, Social and Cultural Rights (1966)

## Committee on Migrant Workers CMW

International Convention on the Protection of All Migrant Workers and Members of Their Families (1990)

Committee on the Rights of Persons with Disabilities CRPD Convention on the Rights of Persons with Disabilities (2008)

> Committee on the Rights of the Child CRC Convention on the Rights of the Child (1989)



They become binding treaties or international law when a certain number of states ratify them or accede them as part of their own domestic law. The number of accessions required before the covenants to take legal effect is stated in the document itself.

In effect, the only way to create truly global laws is to have the legislative body of every country vote to adopt the same law. Obviously, achieving this type of consensus is extraordinarily difficult and this is why it took over eighteen years to create the *International Bill of Rights*.

Eight of the international human rights covenants currently in force established a committee to review compliance and to adjudicate human rights complaints against individual states. It is important to realize that many states did not ratify those portions of the covenants granting the committee the authority to adjudicate complaints. This obviously weakens the respective committee's authority. These include:

- 1. The Human Rights Committee;
- 2. The Committee on Economic, Social and Cultural Rights;
- 3. The Committee on Elimination of Discrimination Against Women
- 4. The Committee on the Elimination of Racial Discrimination
- 5. The Committee against Torture
- 6. The Committee on the Rights of the Child
- 7. The Committee on the Rights of Persons with Disabilities
- 8. The Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families<sup>80</sup>

## The European System of Human Rights

The first of the regional human rights convention to come into effect was The Convention for the Protection of Human Rights and Fundamental Freedoms, more commonly referred to as The European Convention on Human Rights (ECHR). It came into effect on September 3, 1953 an implemented many of the rights articulated in the Universal Declaration of Human Rights. It would become a model for the other two regional human rights conventions. All members of the European Union (Council of Europe) must ratify the ECHR. States parties have incorporated the ECHR into national law thus making the rights embodied in the ECHR directly enforceable before national courts.

The ECHR created the European Court of Human Rights (ECtHR), a supra-national judicial organ with the authority to adjudicate alleged violations of parties to the Convention. The seat of the court is in Strasbourg, France. Judges are elected to non-renewable terms of nine years by the Parliamentary Assembly of the Council of Europe and serve on the court in their capacity as individual jurists and not as representatives of their respective states. When Protocol 11 to the ECHR came into force in 1998 the European Commission of Human Rights was dissolved and individuals were allowed to file applications for redress directly with the Court. Such applications can be filed by individuals, groups of individuals and non-governmental organizations. Such applications must allege harm caused by a state party's violation of the Convention. Individuals, non-governmental organizations and other state parties can also be granted permission to intervene in cases brought by an applicant and participate as a third party. An applicant must demonstrate that he or she has fully exhausted domestic judicial remedies prior to filing an application.



Typically cases reach the ECtHR after a final deterimination by the highest domestic court available to the applicant.

Once a judgment is rendered it is transmitted to the Committee of Ministers of the Council of Europe which has the responsibility of conferring with the state party about practical implementation of the judgement; such often requires amendments to domestic law. The Committee of Ministers is also responsible for ensuring that any compensation ordered to applicants is delivered to them.

## The Inter-Americas System of Human Rights

The American Convention on Human Rights (ACHR) was adopted in 1969 and came into force in 1978. It has been ratified by 25 countries. Enforcement of the ACHR is the responsibility of two independent organs. The Inter-American Commission on Human Rights (IACHR) is an autonomous organ of the Organization of American States (OAS). Members of the Commission are elected by the General

## DEROGABLE AND NON-DEROGABLE RIGHTS

All human rights can be categorized into either derogable or non-derogable rights. Non-derogable rights are those rights that are deemed so critical that their violation may never be excused by war, national emergency or any other calamity.

Non-derogable rights, freedoms, and protections include:

Protection of the right to life Protection against slavery Freedom of thought

The right to recognition under the law

Protection from prosecution of ex post facto laws (A person cannot be charged with a crime for conduct that was legal when the accused engaged in it).

Protection against genocide
Protection against torture
Freedom of religion

Protection from detention due to debt.

Protection against double jeopardy (An individua can only be prosecuted once for alleged crimina conduct).

Other rights and freedoms such as the right to privacy or freedom of the press are called derogable rights. Under certain conditions a country may excuse the violation of these rights because of some national emergency. The *International Covenant on Civil and Political Rights* (1966) Article 4 defines the circumstances under which the derogable rights contained in that treaty may be suspended:

- 1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.
- 2. ... [Paragraph two defines the non-derogable rights.]
- 3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.



Assembly of the OAS. The Commission has the mandate to ensure compliance with the Convention by monitoring the human rights situations in member states and publishing reports regarding the situation in certain states. It has the power to conduct investigations in the country being scrutinized and can send reports of abuses to the General Assembly of the OAS.

The Commission also receives and investigates petitions from individuals, groups and non-governmental orgnizations alleging violations to the Convention. The Commission is empowered to make recommendations to member states and can formally request "precautionary measures" in cases where serious and irreparable harm is likely. It can seek "provisional measures" from the Inter-American Court even in advance of any formal filing before it. Finally, the Commission serves a public education function promoting widespread knowledge of the rights guaranteed by the Convention.

The second arm of the inter-americas system is the Inter-American Court of Human Rights based in San José, Costa Rica. It adjudicates the merits of cases brought by the Commission against state parties to the Convention. It can issue advisory opinions interpreting the Convention at the request of the Commission.

Individuals do not have a right of direct access to the Inter-American Court and must first file a petition with the Commission. The Commission can commence an investigation of the situation described in the petition with a view toward resolving the matter in consultation with the member state. The Commission, if not satisified that the state party has responded adequately, may bring cases arising out of such petitions before the Inter-American Court for final adjudication.

## The African System of Human Rights

The African Charter on Human and People's Rights (ACHPR) came into effect on 21 October 1986. Its primary enforcement mechanism is the African Commission on Human and People's Rights with headquarters in Banjul, Gambia. Progress has been slow in the establishment of a court to adjudicate claims of violations of the ACHPR. The ACHPR is similar in scope and application to its cousins in Europe and the Americas and recognizes most of what are generally recognized as the civil and political rights of individuals. The ACHPR stands apart from the ECHR and the IACHR in that it also extends collective or peoples' rights and guarantees such collectives rights to self-determination, development and disposition of natural wealth and peace and security. It was envisaged that the African Court on Human and People's Rights would adjudicate alleged violations of the ACHPR. Efforts to merge the court with the African Court of Justice have delayed effective work of the court and its ultimate form is uncertain.

## Ad Hoc Tribunals

Since World War II there have only been three temporary truly international courts established to adjudicate serious violations of humanitarian law. The first of these, the Nuremberg Trials, was established to deal with crimes against peace, *war crimes*, and *crimes against humanity* committed by the Nazis.<sup>81</sup> This court was a powerful demonstration that individuals could and would be held accountable for serious crimes even when committed pursuant to military authority and orders.<sup>82</sup>



	European Convention on Human Rights ECHR	American Convention on Human Rights ACHR	African Charter on Human and People's Rights ACHPR
ENTRY INTO FORCE	September 3, 1953	July 18,1978	October 21, 1986
MONITORING BODY	European Court of Human Rights Council of Europe 67075 Strasbourg Cedex France Phone: + (33) 3 88 41 20 18	Inter-American Commission on Human Rights 1889 F St. NW Washington, DC, USA 20006 Email: cidhoea@oas.org Phone: + (1) 202 458-6002	African Commission on Human and People's Rights No. 31 Bijilo Annex Layout Kombo North District Western Region P.O.Box 673 Banjul The Gambia E-mail: achpr@achpr.org Phone: + (220) 441 05 05
COUNTRIES	Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Monaco, Montenegro, Netherlands, Norway, Poland, Portugal, Romania, Russia, San Marino, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, The former Yugoslav Republic of Macedonia, Turkey, Ukraine and United Kingdom.	Argentina, Barbados, Brazil, Boliva, Chile, Columbia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, Trinidad & Tobago, Uruguay and Venezuela.	Algeria, Angola, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Côte d'Ivoire, Democratic Republic of the Congo, Republic of the Congo, Djibouti, Egypt, Equatorial Guinea, Ethiopia, Gabon, Gambia, Ghana Guinea-Bissau, Kenya, Lesotho, Liberia, Libya, Malawi, Mali, Mauritania, Mauritius, Mozambique, Namibia, Nigeria, Rwanda, São Tomé and Príncipe Senegal, Seychelles, Sierra Leone, Somalia, South Africa, Sudan, Swaziland, Tanzania, Togo, Tunisia, Uganda, Sahrawi Arab Democratic Republic, Zambia and Zimbabwe.
COMPLAINT PROCEDURE	Cases can be brought directly by individuals, groups of people or non-governmental organizations. State parties can also bring cases against other state parties.  Cases can only be brought after exhausting national judicial remedies.	Petitions can be made to the Commission by individuals, groups of people or non-governmental organizations.  Petitions can only be brought after exhausting national judicial remedies.  The Commission seeks to investigate and resolve these petitions and may decide to bring some cases before the Inter-American Court of Human Rights.	Communications can be sent to the Commission by states, individuals, groups of people or non-governmental organizations.  Communications will only be considered if the author is known and all national judicial remedies have been exhausted.  The Commission can only investigate upon permission of Assembly of the African Union.

The next such court of international criminal jurisdiction was founded by the United Nations Security Council in 1993 in response to persistent reports of "widespread and flagrant violations of international humanitarian law occurring within the territory of the former Yugoslavia." These reports included graphic accounts of concentration camps and ethnic cleansing. In establishing the ICTY the Security

Council once again reaffirmed the principle of individual criminal responsibility for serious breaches of humanitarian law. In 1994 the Security Council decided to establish a similar tribunal to investigate the mass genocide in Rwanda. 85



Both of the ICTY and ICTR have made great strides in articulating and developing nascent principles of international criminal law in the carefully reasoned jurisdprudence they have produced. Despite persistent criticism about their costs they have established that international justice can be fair, can be effective and has an important role to play within the international community.

#### The International Criminal Court

Universal accountability for the most serious violations of international criminal law took a significant step forward on July 17, 1998 when 120 countries voted to adopt a statute for the *International Criminal Court* (seven countries voted against it and twenty-one countries abstented.) The statute of the court came into force on July 1, 2002 and crimes committed after this date by nationals of 114 states parties or on their territory are now within the jurisdiction of the ICC. The Court also has jurisdiction over cases referred to it by the UN Security Council. The ICC has the authority to adjudicate the crimes of genocide, crimes against humanity and war crimes, and in the future may include the crime of aggression.

A foundational principle of the court's jurisidiction is the concept of complementarity. Under Articles 17 and 20 of the statute the Court is empowered to act only when the judicial system of a state party is unable or unwilling to investigate and prosecute serious international crimes. The Court currently has five cases, all of which arise from situations in Africa – a fact which has brought criticism to the ICC. The statute of the ICC grants victims an active role in all phases of the adjudication process. This right of direct participation is an innovation which has been welcomed but has made the overall process more cumbersome.

Although the court is still in the process of establishing itself as a venue for international justice and effective detterent to those contemplating international crimes, its existence heralds a decisive step in the direction of universal accountability, and therefore a decisive step in the history of humankind.

During the negotiations on the Rome Statute significant focus was given to dignity and rights of victims of serious international crimes. The statute reflects that international justice is restorative as well as retributive. In recognition of this the Statute gives considerable rights to victims and grants them an active role in the criminal justice process that is unprecedented.

Article 85 of the Rules of Procedure and Evidence of the ICC define who is a victim.

- (a) "Victims" means natural persons who have suffered harm as a result of the commission of an crime within the jurisdiction of the Court;
- (b) Victims may include organizations or institutions that have sustained direct harm to any of their property which is dedication to religion, education, art or science or charitable purposes, and to heir historic monuments, hospitals and other places and objects for humanitarian purposes."

While victims do not have the capacity to initiate a criminal case before the ICC, once they demonstrate they meet the definition of victim as applied to a pending case they have the right to participate in all stages of the case and to do so independently of the Prosecutor. Article 68(3) of the Rome Statute states:

Where the personal interests of the victim are affected, the Court shall permit their views and concerns to be presented and considered at stages of the proceedings



determined to be appropriate by the Courtn and in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. Such views and concerns may be presented by the legal representatives of the victims where the Court considers it appropriate, in accordance with the Rules of Procedure and Evidence."

The precise participatory modalities that victims can use in ICC cases is still evolving but to date it seems clear that at a minimum victims will be able to:<sup>86</sup>

- 1. Attend and participate in court hearings;
- 2. Present opening and closing arguments at trial;
- 3. Present their views and concerns at any stage of the proceedings;
- 4. Make submissions to a Pre-Trial Chamber regarding a request for authorization of an investigation pursuant to Article 15(3) of the Statute;
- 5. Make submissions regarding challenges to jurisdiction or admissibility of cases; and
- 6. Request a Chamber to order protective measures for them.

In 2005 the Office of Public Counsel for Victims was established at the ICC to support and assist victims in fully exercising their rights before the ICC.



# nformation

# THE INTERNATIONAL CRIMINAL COURT

On July 17, 1998, in Rome, 120 countries voted to adopt a statute establishing the International Criminal Court. The statute entered into force on 1 July 2002. On 1 November 2010 the Republic of Seychelles became the 112<sup>th</sup> country to come under the jurisidiction of the ICC.

The court has jurisdiction over:

- 1. The crime of genocide
- 2. Crimes against humanity
- 3. War crimes
- 4. The crime of aggression

The statute gives the court the authority to hold individuals responsible for any of the crimes above and does not recognize immunity for heads of state.

The consensus of the participating countries evidences a collective recognition of the need for an international venue where those who have committed the most serious violations of international criminal law will be held individually accountable in a world court. The *International Criminal Court* may prove in time to be as significant a development in the human rights movement as the *Universal Declaration of Human Rights* itself. Human rights investigators and monitors must fully participate in this nascent criminal justice system and support it by ensuring that their efforts to document and gather evidence about serious human rights abuses meet the highest international standards applicable. While communications provided to the Office of the Prosecutor which are supported by evidence that has been gathered properly



and analyzed appropriately will facilitate its work, communications based on speculation or unreliable evidence will only divert scarce resources and impede other investigations. The Prosecution will inevitably conduct its own full investigation of a matter; a dossier of credible and reliable evidence will assist ICC investigators in beginning this task.

## The Role of Human Rights Organizations in the Enforcement of Protections

Behind some of the most significant advancements in human rights have been the many non-governmental human rights organizations around the world. These important organizations range in size from small local organizations to large multinational organizations such as Amnesty International and Human Rights Watch. Human rights organizations have done their best to attack the problem of human rights violations from every angle. Some of these organizations have been the first to bring atrocities into broad public awareness. Non-governmental organizations have been very effective in combating human rights abuses by persistently focusing international attention on them. The international stigma associated with their reports has been a powerful influence over individual state violators. These organizations have had an increasing advisory role in many of the developments of the United Nations and continue to do so with regard to the International Criminal Court.

#### THE PROBLEM OF SOVEREIGNTY

While finding universal agreement on the rights, freedoms and protections which encompass "human rights" has been a formidable task, the more challenging work has been in devising ways to enforce these rights or at least promote their observance. Designing a system of universal accountability on human rights issues has been a seemingly intractable problem, primarily because such accountability can in some cases be a direct infringement on the sovereignty of individual states.

Sovereignty is the long-standing principle that each state is independent of each other and has the right to control its own destiny. Historically, sovereignty has prevented other countries from interfering with the internal affairs of other states. In some cases the idea that human rights should be enforced wherever they occur is in direct contradiction with a country's desire to do what it wants within its borders. It is one of the most enigmatic obstacles to solving the problem of an integrated system of enforcement. It has been solved through the promulgation of international covenants or treaties in which sovereign states qualify absolute sovereignty by contracting with other states and giving them a measure of influence on human rights issues in exchange for having similar influence themselves.

One of the most prominent examples of the impact a non-governmental organization can have in the field of human rights is the *International Committee of the Red Cross (ICRC)*. The *ICRC* was founded in 1863 by Jean-Henri Dunant.

The *ICRC* and international humanitarian law exist in a symbiotic relationship and it is impossible to speak of one without the other. The *ICRC* has been involved in every significant development of humanitarian law. It is charged with specific duties under the *Conventions* and subsequent *Protocols* and the countries of the world reflexively look to the *ICRC* in times of international crisis to provide humanitarian assistance and promote strict observance of *international humanitarian law*. The *ICRC* has become the guardian of international humanitarian law and is uniquely placed to educate and promote its principles; to confidentially intercede in difficult and sensitive situations; to urge powers to correct



specific abuses; and to act as an impartial intermediary between hostile powers in order to explore peaceful resolutions.

As human rights law continues to develop, it is important to recognize that the simple enunciation of its principles and protections is not enough to ensure that the human rights of all people are observed. It is only through the systematic review and enforcement of human rights law that people will benefit from the protections, freedoms and rights promised by the *Universal Declaration of Human Rights* and its progeny. We cannot forget the genocides in Cambodia, Bosnia and Rwanda or the enforced disappearances in El Salvador, Chile or Guatemala, or the many other serious human rights violations which have occurred since the *Universal Declaration* came into being. Like the domestic laws of any country, without enforcement, they are mere ideals. However, with effective lawful enforcement, domestic laws dramatically improve the lives of citizens and foster equal opportunities for prosperity. Similarly, the most significant advances in human rights in the next several decades will be the development of better mechanisms to enforce and promote their observance. The rights, freedoms, and protections have been articulated for the most part; future development must focus on making them a reality in the everyday lives of all people.

Effective and just enforcement of the law in any legal system depends upon the professional investigation and monitoring of violations. Before the law can be applied to a case, there must be a clear and complete understanding of the facts; an understanding not based on speculation or rumor, but on critically examined evidence. Evidence that comes before a tribunal by way of a meticulous, professional investigative process, which gathers all relevant evidence; tests its reliability and credibility; and presents it in a fair and balanced way. The professional and reliable investigation of human rights violations is the foundation of human rights enforcement.

The effective enforcement of human rights depends upon both professional monitoring and investigation. While monitoring and investigation are closely related activities it is important to distinguish them at the outset.

Human rights monitoring is the regular periodic observance of governmental systems, policies and actions to check that they are in compliance with local and international standards of human rights.

Human rights monitoring is the careful observation and study of situations which have the potential for human rights violations. The act of monitoring does not itself indicate the presence of human rights violations, although monitoring may be undertaken in response to complaints of such violations. Monitoring, as established by the reporting requirements of the United Nations and the international covenants, recognizes that wherever the lives of individuals and states intersect there is the potential for human rights violations to exist. One of the goals of monitoring is to identify problems early enough to permit correction before irreversible harm occurs. Just as a doctor might monitor a growing child's health by examining the child each year, looking for diseases or infirmities that might impede the child's development, the human rights monitor carefully observes governmental policies, systems, and actions for human rights problems.

Some good examples of human rights monitoring are the monitoring of national elections or of refugee camps. In these situations monitors are trained in the relevant law and set out to check compliance by observing practices and interviewing witnesses. The mandate of these monitors, as well as the availability of resources, usually restricts these monitors from embarking on a full investigation of any one particular



incident. It is unlikely that they are at liberty to suspend their monitoring duties to begin a comprehensive investigation of an individual complaint.

Human rights investigation is the professional, in-depth examination of a specific allegation by pursuing and gathering all relevant physical, testimonial, and documentary evidence and then critically evaluating that evidence so that the truth is revealed by credible and reliable evidence.

A human rights investigation is different from monitoring in that its focus is always on the particular. By gathering all the available evidence regarding specific allegations, the investigator uncovers the truth about a single event or series of related events. An investigation is a commitment to discovering the truth, regardless of what that truth may ultimately be. Even in cases where an investigative team is assigned with the task of investigating several allegations, each one must be examined individually and must stand or fall upon the sufficiency of its own evidence.

The difference between monitoring and investigation is similar to the difference between a police patrol officer and a police detective. The patrol officer is a monitor; he or she is charged with patrolling an area, vigilant for any violations of the law. The police detective, on the other hand, investigates specific allegations that come to his or her attention by way of the patrol officer or directly from witnesses.

Monitoring and investigation are closely related activities and will very often overlap each other. Monitors will sometimes recommend the investigation of specific allegations or perhaps even engage in some limited investigative activities themselves. Investigators, similarly, may recommend that an investigation be followed by monitoring to ensure against the repetition of human rights violations. The primary focus of this book will be the investigation of human rights violations. This book will discuss how to apply generally accepted principles of criminal investigation to the investigation of human rights.

<sup>&</sup>lt;sup>1</sup> A.H. Robertson, <u>Human Rights in the World</u> (Manchester: Manchester University Press, 1972) 18.

<sup>&</sup>lt;sup>2</sup> There is additional overlap in that both article 72 of Protocol (I) and the preamble of Protocol (II) refer to international human rights instruments.

<sup>&</sup>lt;sup>3</sup> Boutros Boutros-Ghali, The United Nations and Human Rights 1945-1995 (New York: United Nations, 1995) 5.

<sup>&</sup>lt;sup>4</sup> Boutros-Ghali 5.

<sup>&</sup>lt;sup>5</sup> Boutros-Ghali 3.

<sup>&</sup>lt;sup>6</sup> Boutros-Ghali 5.

<sup>&</sup>lt;sup>7</sup> See: Charter of the United Nations, articles 62 and 68.

<sup>&</sup>lt;sup>8</sup> John A. Maxwell and James J. Friedberg, ed., <u>Human Rights in Western Civilization 1600-Present</u> (Dubuque: Kendall/Hunt, 1991) 25.

<sup>&</sup>lt;sup>9</sup> Universal Declaration of Human Rights, article 22

<sup>&</sup>lt;sup>10</sup> Jean Pictet, <u>Development and Principles of International Humanitarian Law</u> (Boston: Martinus Nijhoff Publishers, 1985) 1.

<sup>&</sup>lt;sup>11</sup> Article 2(4) of the United Nations Charter states: "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations."

Adamou Ndam Njoya "The African Concept," The Henri Dunant Institute, <u>International Dimensions of Humanitarian Law</u> (Boston: Martinus Nijhoff Publishers, 1988) 7.



<sup>13</sup> Sumio Adachi "The Asian Concept," International Dimensions of Humanitarian Law 13.

- Abu Bakr, the first caliph (c. 632) prohibited the killing of women and children and admonished against the needless destruction of property, land and trees. See Dieter Fleck ed., <u>The Handbook of Humanitarian Law in Armed Conflicts</u> (New York: Oxford University Press, 1995) 14. In 2 Kings, 6:21-22, the prophet Elisha instructed the King of Israel to feed captured Aramaean soldiers and to permit them to return to their masters.
- <sup>17</sup> International Committee of the Red Cross, "International humanitarian law: Answers to your questions" 6 January 2000 <a href="http://www.icrc.org/icrceng.nsf/">http://www.icrc.org/icrceng.nsf/</a>.
- <sup>18</sup> International Committee of the Red Cross, "International humanitarian law: Answers to your questions" 6 January 2000 <a href="http://www.icrc.org/icrceng.nsf/">http://www.icrc.org/icrceng.nsf/</a>.
- <sup>19</sup> Jean Pictet calls this common principle a principle of "human law" and defines it as: "Military necessity and the maintenance of public order must always be compatible with respect for the human person." Jean Pictet 63.
- Article 7 in Geneva (I) states: "Wounded and sick, as well as members of the medical personnel and chaplains, may in no circumstances renounce in part or in entirety the rights secured to them by the present Convention...", See also article 7 in Geneva (II), and (III); and Geneva (IV) article 8. Protocol (I) article 11 prohibits medical experiments and certain procedures even with the consent of the person. A country may also not renounce its obligations under the *Conventions* during a time of armed conflict. See Geneva (I) article 63.
- <sup>21</sup> Geneva (I) article 12; Geneva (II) articles 12, 30; Geneva (III) article 16; Geneva (IV) articles 13, 27; Protocol (I) articles 9, 10, 75; Protocol (II) articles 2, 4.
- <sup>22</sup> Geneva (I) articles 12, 15 (Each power has a duty to collect the wounded and sick, protect them from mistreatment and ensure that they receive adequate care.); Geneva (II) articles 12 and 18 (Each power has a duty to search for the wounded, sick and shipwrecked.); Geneva (III) articles 12 (Each Power absolutely responsible for the treatment of prisoners of war irrespective of the culpability of any individual offenders), 13, 20, 30, 31, 55 (Prisoners who must work must receive regular medical exams.), and 110 (Seriously ill prisoners and those who are unlikely to recover within a year must be repatriated.); Geneva (IV) articles 13, 16, 27 and 32; Protocol (I) articles 10 and 11; Protocol (II) articles 4, 5, 7, and 8.
- <sup>23</sup> Geneva (I) articles 15, 16, and 17; Geneva (II) 18, 19, 20, and 21; Geneva (III) articles 120 (Prisoners who die in captivity must be buried honorably.), and 121 (Deaths from unknown or unnatural causes must be investigated by an official inquiry.); Geneva (IV) articles 16, 129-130, and 131 (Suspicious deaths must be investigated.); Protocol (I) article 34.
- <sup>24</sup> Geneva (I) article 16; Geneva (II) article 19; Geneva (III) article 122; Geneva (IV) article 136; Protocol (I) article 33
- <sup>25</sup> Geneva (I) articles 9, 18, 24-32, 35-37; article 24 (Imposes an affirmative duty to protect medical and religious personnel engaged in collecting the wounded and sick.); Geneva (II) articles 9, 36, and 37; Geneva (III) articles 9 and 33; Geneva (IV) article 20; Protocol (I) 15-17; Protocol (II) articles 9 and 10.
- <sup>26</sup> Geneva (I) article 12; Geneva (II) article 12; Geneva (III) articles 12, 13, 17 (Torture or coercion in order to gain information is impermissible.), 87, and 99; Geneva (IV) articles 31 and 32; Protocol (I) articles 20, 56 and 75; Protocol (II) article 4.
- <sup>27</sup> Geneva (III) articles 82-108
- <sup>28</sup> Geneva (III) article 126; Geneva (IV) article 143.
- <sup>29</sup> Geneva (IV) articles 70-77(These articles set forth a basic set of fundamental due process guarantees including: prompt notice of charge, means of a defense, presumption of innocence, presence at trial, right to remain silent,

<sup>&</sup>lt;sup>14</sup> Sumio Adachi 13.

<sup>&</sup>lt;sup>15</sup> Sumio Adachi 13.



right to call and examine witnesses and the right to be tried once for a particular event.), 117-126; Protocol (I) articles 5, 45, and 75; Protocol (II) article 6.

- <sup>30</sup> Protocol (I) article 48.
- <sup>31</sup> Protocol (I) articles 35 and 55.
- <sup>32</sup> Protocol (I) article 53; Protocol (II) article 16.
- <sup>33</sup> Geneva (III) article 29; Geneva (IV) article 14.
- <sup>34</sup> Geneva (IV) article 15.
- <sup>35</sup> Protocol (I) article 60.
- <sup>36</sup> Protocol (I) article 59.
- <sup>37</sup> Geneva (I) articles 19, 20, 23, 33, and 35-37 (Protection extends to medical transports.); Geneva (II) articles 22-35 (Protection extends to hospital ships.) and 38-40; Geneva (IV) articles 14, 18, 21, and 22; Protocol (I) articles 12, 13, 21,20, and 24-31.
- <sup>38</sup> Geneva (I) article 50; Geneva (II) article 51; Geneva (III) article 130; Geneva (IV) article 146 and Protocol (I) article 85. Protocol (II) does not contain any enforcement provision.
- <sup>39</sup> Steven R. Ratner, "War Crimes, Categories of' <u>Crimes of War: What the Public Should Know</u>, Editors: Roy Gutman and David Rieff (New York: W & W Norton and Company, 1999) 374.
- <sup>40</sup> Rome Statute of the International Criminal Court (ICC) article 8(2)(e).
- <sup>41</sup> Geneva (I), article 50; Geneva (II), article 51; Geneva (III), article 130; Geneva (IV), article 147; and Protocol (I), article 85.
- <sup>42</sup> ICC articles 8(2)(b)(xi) and 8(2)(e)(ix).
- <sup>43</sup> Convention (I) article 50; Convention (II) article 51; Convention (III) article 130; Convention (IV) article 147; Protocol (I) article 85. ICTY article 2(b). ICC articles 8(2)(a)(ii) and 8(2)(c)(i).
- <sup>44</sup> ICC article 8(2)(b)(x) which states, "Subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons." article 8(2)(e)(xi) extends similar protection to non-international conflicts.
- <sup>45</sup> Convention (I) article 50; Convention (II) article 51; Convention (III) article 130; Convention (IV) article 147; Protocol (I) article 85. ICTY article 2(b). ICC articles 8(2)(a)(ii), 8(2)(b)(x), and 8(2)(e)(xi).
- <sup>46</sup> Convention (I) article 50; Convention (II) article 51; Convention (III) article 130; Convention (IV) article 147; Protocol (I) article 85. ICTY article 2(c). ICC articles 8(2)(a)(iii) and 8(2)(c)(i).
- <sup>47</sup> ICC article 8(2)(b)(xxi) which states, "Committing outrages upon personal dignity, in particular humiliating and degrading treatment." See also: Convention (I) article 50; Convention (II) article 51; Protocol (I) article 85 and ICC article 8(2)(c)(ii)
- <sup>48</sup> ICC article 8(2)(b)(xxii). article 8(2)(e)(vi) extends "war crimes" status to crimes of sexual violence committed in certain non-international armed conflicts.
- <sup>49</sup> Convention (III) article 130. Protocol (I) article 85. ICTY article 2(e). ICC articles 8(2)(a)(v) and 8(2)(b)(xv).
- <sup>50</sup> Protocol (I) article 85.
- <sup>51</sup> Convention (III) article 130. Convention (IV) article 147. Protocol (I) article 85. ICTY article 2(f). ICC articles 8(2)(a)(vi), 8(2)(b)(xiv), and 8(2)(c)(iv).
- <sup>52</sup> ICC articles 8(2)(b)(xxvi) and 8(2)(e)(vii)
- <sup>53</sup> ICC article 8(2)(b)(xxiii).



<sup>54</sup> ICC article 8(2)(b)(xxv).

<sup>56</sup> See article 8(2)(b)(xix) of the ICC.

- <sup>57</sup> Article 8(2)(b)(xx) of the ICC states: "Employing weapons, projectiles and material and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of international law of armed conflict, provided that such weapons, projectiles and material and methods of warfare are the subject of a comprehensive prohibition and are included in an annex to this Statute, by an amendment in accordance with the relevant provision set forth in articles 121 and 123."
- <sup>58</sup> See ICC statute article 8(2)(b)(ix) which states: "Intentionally directing attacks against buildings dedicated to religion, education, art, science, or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives." See also 8(2)(e)(iv).
- <sup>59</sup> See ICC statute article 8(2)(b)(xxiv) which states: "Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law."
- <sup>60</sup> See Protocol (I) article 85(3)(d), ICTY article 3(c), and ICC Statute, article 8(2)(b)(v).
- <sup>61</sup> See Protocol (I) article 85, ICTY statute article 3(d), and ICC statute articles 8(2)(a)(viii) and 8(2)(e)(iv)
- <sup>62</sup> See Protocol (I) article 85(3)(a) which states, "making the civilian population or individual civilians the object of attack;" and article 85(3)(b) which states, "launching an indiscriminate attack affecting the civilian population or civilian objects in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects, as defined in article 57, paragraph 2 (a)(iii)." See also ICC statute articles 8(2)(b)(i) which states, "Intentionally directing attacks against the civilian population as such or against individual civilians not taking part in hostilities." and article 8(2)(b)(ii) which states, "Intentionally directing attacks against civilian objects, that is, objects which are not military objectives."
- <sup>63</sup> See ICC statute articles 8(2)(b)(iii) and 8(2)(e)(iii) which states: "Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict." [8(2)(e)(iii) applies to armed conflicts that are not international]
- <sup>64</sup> See ICC statute article 8(2)(b)(iv)
- <sup>65</sup> See Protocol (I) article 85(3)(c) which states, "launching an attack against works or installations containing dangerous forces in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects, as defined in article 57, paragraph 2 (a)(iii)."
- <sup>66</sup> Protocol (I) article 85(3)(f) which states: "the perfidious use, in violation of article 37, of the distinctive emblem of the red cross, red crescent or red lion and sun or of other protective signs recognized by the Conventions or this Protocol." An example of such perfidious use would be an ambush of opposing injured troops by luring them to a facility designed to look like a "red cross" medical facility and where they were entitled under law to feel safe.
- <sup>67</sup> ICC statute article 8(2)(b)(vii) makes it a war crime to use a flag of truce or any of the UN symbols to commit a treacherous attack. An example of such a violation would be Serbian army's use of UN vehicles and blue helmets to lure soldiers and civilians out of hiding in the hills surrounding Srebrenica in July of 1996.
- <sup>68</sup> M. Cherif Bassiouni, "Crimes against Humanity," <u>Crimes of War</u> 107.

<sup>&</sup>lt;sup>55</sup> The use of poisonous gas is presently a violation of a norm or custom of war. It was prohibited by the Hague Convention of 1907. Article 3(a) of the Statute of the International Criminal Tribunal for Yugoslavia (ICTY) prohibits its use as do articles 8(2)(b)(xxvi) and 8(2)(e)(vii) of the ICC statute.



<sup>69</sup> The address of the Secretary-General of the United Nations, Kofi Annan, to the Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court (Rome, 17 July 1998).

<sup>&</sup>lt;sup>70</sup> M. Cherif Bassiouni 107.

<sup>&</sup>lt;sup>71</sup> Diane F. Orentlicher, "Genocide," Crimes of War 154.

<sup>&</sup>lt;sup>72</sup> Edward Lawson, <u>The Encyclopedia of Human Rights 2<sup>nd</sup> edition</u> (Washington, DC: Taylor & Francis, 1996) 624.

<sup>&</sup>lt;sup>73</sup> Orentlicher 153.

<sup>&</sup>lt;sup>74</sup> Orentlicher 153.

<sup>&</sup>lt;sup>75</sup> Orentlicher 156.

<sup>&</sup>lt;sup>76</sup> Boutros-Ghali 11.

<sup>&</sup>lt;sup>77</sup> General Assembly resolution creating the Human Rights Council A/RES/60/251 (2006).

<sup>&</sup>lt;sup>78</sup> General Assembly resolution creating the post of the United Nations High Commissioner for Human Rights A/RES/48/141 (1993).

<sup>&</sup>lt;sup>79</sup> General Assembly resolution creating the post of the United Nations High Commissioner for Human Rights A/RES/48/141 (1993).

This committee has yet to be convened because the <u>International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families</u> (1990) is not yet in force.

<sup>&</sup>lt;sup>81</sup> Flood 33.

<sup>82</sup> Flood 32.

<sup>83</sup> Security Council resolution adopting the Statute of the International Tribunal for the Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991. Preamble. S/RES/827 (1993)

<sup>&</sup>lt;sup>84</sup> Boutros-Ghali 119.

<sup>85</sup> Security Council resolution containing the decision to establish an international tribunal for the prosecution of persons responsible for genocide and other serious violations of international humanitarian law committed in Rwanda or in the territory of neighboring States. S/RES/955 (1994).

<sup>&</sup>lt;sup>86</sup> Office of Public Counsel for Victims (OPCV) ICC, <u>Representing Vicitms before the International Criminal</u> Court: A Manual for Legal Representatives, (2010).



## CHAPTER 1 SUMMARY

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.

Universal Declaration of Human Rights (1948)

## **Human Rights**

This is only a partial list of the rights, freedoms and protections conveyed by international covenants that are presently in force.

FOR All People	at All limes
*except during	derogation)
PROTECTIONS	Personal Righ

THE CRIME OF GENOCIDE	PROHIBITION OF ARBI
PROTECTION OF RIGHT TO	DETENTION
I TEE	*THE RIGHT TO RECOGN

PROHIBITION OF TORTURE PROHIBITION OF SCIENTIFIC EXPERIMENTATION

PROHIBITION OF SLAVERY PROHIBITION OF FORCED I AROR THE RIGHT OF ASYLUM

TRARY NITION BY THE LAW

**EQUAL PROTECTION OF THE** Law THE RIGHT TO A NATIONALITY

THE RIGHT TO DUE PROCESS

#### Personal Rights and Freedoms

THE FREEDOM OF RELIGION THE FREEDOM OF THOUGHT THE FREEDOM OF EXPRESSION THE FREEDOM OF THE PRESS

THE RIGHT TO PRIVACY THE RIGHT OF ASSEMBLY THE FREEDOM OF

ASSOCIATION

THE RIGHT TO UNIONIZE THE RIGHT TO EDUCATION

THE FREEDOM OF MOVEMENT THE RIGHT TO PARTICIPATE IN GOVERNMENT

#### FOR PEOPLE IN THE CRIMINAL JUSTICE SYSTEM

#### AT ALL TIMES

THE PRESUMPTION OF INNOCENCE THE RIGHT TO BE INFORMED OF CHARGES THE RIGHT TO AN

INDEPENDENT AND IMPARTIAL JUDGE

THE RIGHT TO REMAIN SILENT THE RIGHT TO A LAWYER

\*PROHIBITION OF DOUBLE **TEOPARDY** \*PROHIBITION OF EX POST **FACTO LAWS** 

THE RIGHT TO A FAIR TRIAL THE RIGHT TO EXAMINE AND

CALL WITNESSES THE RIGHT TO A PUBLIC TRIAL THE RIGHT TO BE PRESENT

**DURING TRIAL** THE RIGHT TO A SPEEDY PROHIBITION OF ILLEGALLY ORTAINED EVIDENCE THE RIGHT TO APPEAL A

CONVICTION

#### **DURING IMPRISONMENT**

PROTECTION OF THOSE SENTENCED TO **DEATH** PROHIBITION OF DETENTION FOR CONTRACTUAL OBLIGATIONS THE RIGHT TO A SPEEDY TRIAL

THE RIGHT TO CLASSIFICATION AND **SEGREGATION** 

THE RIGHT TO COMMUNICATION THE FREEDOM OF RELIGION THE RIGHT TO MEDICAL CARE THE RIGHT TO EDUCATION THE RIGHT TO DUE PROCESS THE RIGHT TO ADEQUATE FOOD

DENOTES NON-DEROGABLE RIGHTS

#### **Human Rights Enforcement and Investigation**

The effective and just enforcement of rights or laws in any legal system depends upon the professional investigation and monitoring of violations. As the mechanisms for the enforcement of human rights continue to develop, and with the advent of the International Criminal Court, the standards of human rights investigation will become increasingly important. Evidence that comes before any tribunal adjudicating a human rights case must be by way of a meticulous, professional investigative process, which gathers all relevant evidence, tests its reliability and credibility, and presents it in a fair and balanced way.





## Chapter 2

## HUMAN RIGHTS INVESTIGATION

Human rights investigation, like any professional pursuit, benefits from employing the systems and procedures that experience has demonstrated to be the most effective. Over time, standards and methods will emerge as the best means of solving the problems that face professional human rights practioners. Although human rights investigation is a relatively new science, it can benefit from the closely related field of criminal investigation. Human rights investigators can learn a great deal from their counterparts involved in the investigation of crimes. This book is written in the belief that criminal investigative practices and procedures have a great deal to contribute to the work of human rights investigators. It seeks to adapt the principles and safeguards of modern criminal investigation to the unique venues and circumstances of human rights investigators. As the science of human rights investigation matures, it will certainly tailor procedures and practices, honed and shaped by experience. There is no doubt, however, that it will (and should) always remain closely aligned to its cousin.

Every investigation attempts to uncover the truth of a specific event or incident. Most investigations are initiated in response to the receipt of an allegation that some serious wrongdoing has occurred. Each allegation poses two key questions which the investigator attempts to answer through a thorough investigation into the matter. First, was there a violation of domestic or international law? Second, who violated those laws? In addition to these two key questions each individual case may present a myriad of other questions that must be tackled before these ultimate questions can be answered satisfactorily. Depending on the type of case, there may be standard queries and facts that an investigator must pursue. For example, in the case of summary executions:

The purpose of the investigation shall be to determine the cause, manner, and time of death, the person responsible, and any pattern or practice which may have brought about that death. It shall include an adequate autopsy, collection, and analysis of all physical and documentary evidence, and statements from witnesses. The investigation shall distinguish between natural death, accidental death, suicide, and homicide.

Principle 9 of Principles on the Effective Prevention and Investigation of Extralegal, Arbitrary and Summary Executions (1989).<sup>1</sup>

In cases of alleged summary executions, the investigator must collect evidence that answers a number of questions. What was the cause of death? What was the manner in which the victim died? Who was the person or persons responsible for the death? Is there a pattern or practice that brought about the death? Was the death a natural death, an accidental death, a suicide, or a homicide? Each type of case will present its own unique set of questions to be answered before determining whether local or international laws have been violated and by whom.

Investigations may be carried out by a variety of organizations and individuals. In many countries, independent organs of the government such as the police or the public prosecutor conduct effective impartial investigations into allegations made by victims or their families. Local human rights organizations may regularly receive and investigate complaints by citizens. Some large international human rights



organizations regularly send out investigators to examine specific allegations of wrongdoing. The United Nations appoints special rapporteurs and representatives to investigate specific human rights situations and possibly intercede in an effort to rectify them. Although the experience of the investigator and the available resources may differ greatly, all of these "investigators" seek to uncover the truth about allegations of human rights abuses with credible and reliable evidence.

In some instances fact-finding commissions are established to investigate serious violations. Very often these alleged violations have occurred in countries that are so repressive that local investigators cannot function safely. The mandates of these fact-finding commissions may be to investigate specific allegations of violations or to investigate the overall human rights situation of a particular country.

These fact-finding commissions are usually limited in time and resources, and have a very specific mandate. They may have limited access to physical evidence and incomplete control over the witnesses they choose to interview.

In August of 1980, the International Law Association (a non-governmental organization) by consensus, adopted *The Belgrade Minimal Rules of Procedure for International Human Rights Fact-finding Missions* (known as *The Belgrade Rules*). The document was the result of a four-year study by a subcommittee of the International Law Association comprised of participants from ten different countries, representing diverse geographic regions.<sup>2</sup> The rules were a response to what the subcommittee perceived to



## THE MINNESOTA PROTOCOL

The Model Protocol for A Legal Investigation of Extralegal, Arbitrary, And Summary Executions also known as, The Minnesota Protocol defines the purpose of a homicide investigation as:

- (a) To identify the victim;
- (b) To recover and preserve evidentiary material related to the death and to aid in any potential prosecution of those responsible;
- (c) To identify possible witnesses and obtain statements from them concerning the death;
- (d) To determine the cause, manner, location and time of death, as well as any pattern or practice that may have brought about the death;
- (e) To distinguish between natural death, accidental death, suicide and homicide;
- (f) To identify and apprehend the person(s) involved in the death;
- (g) To bring the suspected perpetrator(s) before a competent court established by law.

Reprinted with permission from "The Model Protocol for A Legal Investigation of Extralegal, Arbitrary, And Summary Executions." <u>Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions</u>. (New York: United Nations 1992) 15.



be serious departures from fundamental principles of due process by some fact-finding missions.<sup>3</sup> The two-fold goals of *The Belgrade Rules* are: to encourage the cooperation of states in the investigative process and to lend greater credibility to the conclusions of such fact-finding missions.<sup>4</sup> The complete text of the *Belgrade Rules* is contained in the appendix and should be consulted before forming a fact-finding mission.

## Are Objective Investigative Standards Possible?

Some have suggested that the very nature of human rights investigation defies objective standards. This belief maintains the view that a number of exigencies peculiar to human rights investigation require that fact-finding methods be adapted for each situation.<sup>5</sup> While it is true that human rights investigation does present a number of unique obstacles to the investigator, chief among them the fact that often the evidence is in the control of the suspect government, this does not preclude a set of standards to which investigators should aspire. Human rights investigation, shares with all other disciplines, a void between its ideals and its praxis. The procedures and methods that will endure as standards will be those that are born from ideals and tempered through practice. In some situations not all of the techniques described in this book will be possible. Human rights investigators, however, should be competent in the recognized methods of collecting physical and testimonial evidence and should employ them whenever it is possible.

Consider the following analogy to the field of medicine. A rural doctor in a developing country may not have access to an x-ray machine. The fact that he diagnoses and sets fractures without x-raying the injured bones does not mean that he is not practicing good medicine. This doctor is practicing the best medicine possible within the limitations of his particular context. The lack of an x-ray machine should not preclude him from receiving the same quality training other doctors receive, nor should it excuse him from practicing the highest standard of medicine possible. Should an x-ray machine become available, he is remiss if he fails to raise his standard of practice accordingly. Similarly, the human rights investigator should be trained in generally accepted standards of investigation and must aspire to them by employing the highest level of investigative practice possible, given the particular situation he or she faces.

To say that all investigators should aspire to the same level of professional rigor is not to denigrate the efforts and findings of those investigators constrained by the reality of very difficult circumstances. Many investigators have made heroic efforts and assumed grave risks to expose human rights violations which, but for them, might have continued unabated. However, while extenuating circumstances may justify the abbreviation of an investigative method, we must recognize that such abbreviation will always serve to qualify confidence in that investigation's findings. For example, while extenuating circumstances may require the use of hearsay evidence in a report, no circumstances can ever make hearsay testimony more reliable than eyewitness testimony. Without minimizing the efforts or expertise of the investigator who necessarily relies on hearsay evidence, confidence in the investigation's conclusions will always be diminished by substantial reliance on hearsay evidence to establish material facts. While no investigative report should be summarily dismissed because it fails to meet generally accepted standards of investigation, each investigator should strive to use the highest standards that the exigencies of the particular case permit.

Having said this, exigent circumstances or the gravity of an alleged abuse can never excuse speculation, exaggeration, claims unsupported by evidence, or the failure to document all investigative actions taken. Nor does it relieve the investigator of the duty to disclose any exculpatory evidence the investigation uncovers. Good human rights investigation always obliges the investigator to seek the truth using the most exact methods available.



#### The Role of Evidence

Evidence is the most important aspect of any investigation. Unless an investigator is able to discover and document evidence, he or she cannot discover the truth regarding an allegation.

Evidence is <u>anything</u> that can provide information about the incident being investigated. It may include: physical objects; the investigator's observations; the testimony of witnesses and suspects; documents; and scientific analysis.

The word "anything" is emphasized because in any given case, evidence may come in many forms from a wide variety of sources. I want to introduce an analogy that I will return to several times in this book. The analogy is useful in visualizing the role evidence plays in every investigation. Investigation has sometimes been likened to assembling a jigsaw puzzle and each piece of evidence to an individual piece of the puzzle. However, unlike the puzzle assembler, the investigator cannot look on the cover of the box to see what the completed puzzle will look like. The investigator must carefully collect the "pieces" of the puzzle from a variety of sources and then assemble them with logic and common sense in order to see the entire picture. Although a partial picture may develop as more and more pieces are added, it is not until the final piece is placed that the investigator can clearly see the entire truth.

This analogy also demonstrates the relationship between evidence and speculation. Assume that the person assembling the puzzle, like the investigator, does not know what the completed puzzle will look like. It is impossible for that person to look at any one piece and know what the entire picture is. If that person only has ten percent of the puzzle's pieces and assembles them as best he or she can, it is probably still impossible to accurately guess what the picture looks like. The person may speculate, but with ninety percent of the puzzle missing, it is very likely that he or she will be wrong. The more pieces the assembler finds, the less he or she will have to speculate about the picture. Similarly, in an investigation, the investigator must gather all the evidence and assemble it with common sense before a clear picture of what happened is revealed. While an incorrect guess about what a puzzle will look like is of no consequence, the gravity of a human rights investigation requires that an investigator never speculate or guess about the ultimate facts of a case. The investigator must carefully and methodically gather as much evidence as possible in hopes that it will be sufficient to determine, without speculation, what happened.

The only permissible use of speculation during an investigation is in the search for evidence. During the early stages of the investigation it is proper for the investigator to "guess" at what might have happened and then to test that guess by searching for evidence which supports or contradicts that particular theory. By speculating what happened, an investigator can identify where physical evidence or knowledgeable witnesses may be found. Aside from this very limited use of speculation, it has no place in the work of an investigator.

One of the most important principles the investigator must adopt is that there is always evidence in a case. It is impossible to commit wrongdoing and leave no trace of evidence. The task for the investigator is to identify it and document it. If an investigator fails to turn up evidence in a case, it is not because there was no evidence; it simply means that the investigator could not find it. In some cases it may be impossible for the investigator to gain access to where evidence might be, such as, in the control of a hostile government. If evidence is not presently available, the investigator should still attempt to identify it and exhaust all reasonable efforts to document its existence. Some physical evidence may only become accessible many years after the event being investigated. Even if perpetrators take great care to cover their tracks and destroy or conceal evidence, there will be evidence of this deception. An experienced



investigator keeps in mind that there is always evidence, anything can be evidence, and embarks on an unrelenting search until all the evidence has been identified.

Each piece of evidence proves a fact in one of two ways: directly or indirectly. Any evidence that directly proves a fact without the need for logical deduction is called *direct evidence*. For example, a woman sees a mouse nibbling at a loaf of bread she left on the table. Her observation is considered *direct evidence* that a mouse lives in the house. Indirect evidence is commonly referred to as *circumstantial evidence*. This evidence does not directly prove anything, but when considered in light of our experience and common sense, it indirectly proves a fact. For example, a woman has never seen a mouse in her house, but she has noticed every morning that something has nibbled on the full loaf of bread she leaves on the table each night. Using her experience and reasoning she considers the size of the bite-marks and the crumbs left behind and concludes that there must be a mouse living in the house. The bite-marks on the loaf of bread are *circumstantial evidence*, or indirect proof that there is a mouse. There are many examples of circumstantial evidence.

Here is another example:

A man lives in a dry country where it has not rained for months. Before he goes to bed he locks his house and looks sadly at the dry dusty earth in his small rice field. He has a deep, uninterrupted sleep until 8:00 o'clock the next morning. When he goes out of his house he sees his field muddy and wet. There is water dripping from his roof and the road is covered with puddles. Although he never saw or heard rain (direct evidence), the puddles, muddy field, and wet roof (circumstantial evidence) prove that it rained while he slept.

In most cases, there will be both direct and circumstantial evidence. The investigator should try to gather all the evidence regardless of what type of evidence it is. An important difference between the two comes into play whenever the investigation only discovers circumstantial evidence. An investigator can only rely on circumstantial evidence to answer the important questions of an investigation if that evidence excludes every other possibility. Reconsider the woman who believed there was a mouse living in the house because of how her bread appeared in the morning. If the woman had a pet cat then the *circumstantial evidence* no longer implicates only the mouse. Whenever an investigator is faced with a case in which there is only *circumstantial evidence*, great care must be taken to check for other explanations besides the one pointing to a particular suspect's guilt.

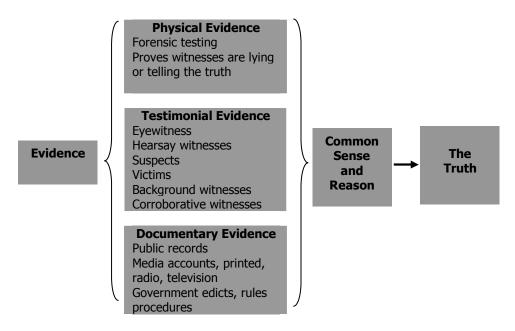
All evidence can be classified into three groups. These groups are *physical evidence*, *testimonial evidence*, and *documentary evidence*. *Physical evidence* refers to any physical object that can provide information about an event. It may include weapons that were used, the condition of the victim's body, or the area where an attack took place. *Physical evidence* includes objects and traces of materials that can only be detected with scientific testing. Because physical evidence is not subject to human perception, exaggeration, or deception it is inherently reliable.

**Testimonial evidence** is a broad term that includes the statements of all victims, witnesses, and suspects. It is different from physical evidence in that testimonial evidence is only as reliable as the witness who gives it. The accuracy of the facts testified to depends completely on the honesty, perception, and communication skills of the witness.

The last category of evidence, *documentary evidence*, refers to forms, documents, or letters. *Documentary evidence* is a combination of *physical* and *testimonial evidence* in that although the



document itself is a piece of physical evidence, the information contained in the document is testimonial in nature. Some documents are business records that must be filled out by personnel in the course of a business transaction and others are written expressions of ideas such as letters and diaries.



## Section 2.1 Overview of the Investigative Process

An investigation into an alleged human rights violation, like any other professional inquiry, benefits from an organized and orderly approach. A systematic approach to the investigation is an important part of the investigation and ensures that the investigation achieves its primary objective of uncovering the truth. This book will encourage investigators to look at the entire investigation as being comprised of four phases. These phases are more like "mind-sets" or paradigms than clearly defined and separate steps. The investigator should consider these phases as a flow-chart or road map to maximize his or her efforts during the different stages of a case.

## Phase One: "Casting the Net"

The first phase of the investigation can be compared to the casting of a fishing net. The investigator tries to cast as wide a net as possible, soon after the incident, to capture as much evidence as possible. At this early stage of the investigation, the investigator's primary concern is to identify as much evidence as possible and either collect it or document it. Immediately after an event there is likely to be an abundance of both physical and testimonial evidence. The investigator tries to capture as much of this evidence as possible without trying to analyze or test it. These tasks can be done at a later time.

As the investigator gathers evidence, he or she should continually re-evaluate the evidence collected so far to determine whether or not it points to additional sources of evidence. Is there a trail of evidence that should be followed? Does a particular piece of evidence indicate additional evidence? For example, an investigator responding to an assault at a public rally finds a press identification card. This card indicates that a member of the press might have been at the rally. The investigator finds the owner of the press



identification card and interviews her. She was in fact at the rally with her television crew. From this information the investigator tracks down the television crew and obtains a copy of the video tape of the rally. By asking the question, "Does this lead to more evidence?" each time new evidence is discovered, the investigator widens the "net" and increases the likelihood that more evidence will be found.

## Phase Two: "Discovering the Case"

An investigator realizes that he or she is moving into the second phase of the investigation when it appears that most of the evidence has been identified and documented. While it may be impossible to gain access to some of that evidence, he or she is confident that the majority of evidence has been identified. At this point the investigator begins to "discover the case." I use the word "discover" to draw the important distinction between discovering and inventing. The investigator must not "invent" a case by starting with what he or she believes to be the truth and then creating that "truth" with a biased assessment or manipulation of the evidence. The investigator must "discover" the case by carefully examining the evidence collected and allowing the case to reveal itself. The investigator must suspend any prejudices, biases and assumptions and listen to whatever the evidence has to say. The investigator must allow the case to be whatever the evidence says it is without contorting it toward some conclusion the investigator presumes is the ultimate reality of the case.

Investigators, like all humans, fall victim to their own unconscious biases, expectations, and beliefs. Remaining objective should be a conscious, deliberate effort on the part of the investigator. It is not enough to be alert for biases because they most often affect us unconsciously; investigators must be continually and deliberately vigilant to ensure that they do not arrive at "their" conclusion, rather than that of the evidence.

Once the investigator has discovered the case, he or she can begin the process of formulating theories and lists of suspects. The evidence, at this stage, may not point to a single scenario or suspect. It is more likely that the evidence may support several different theories and perhaps be consistent with a number of potential suspects. The investigator must identify all possible scenarios and consider all possible suspects. For example, the investigator, after examining a corpse and interviewing all available witnesses, may theorize that a person was killed for his political activities. The investigator also realizes that at this early stage of the investigation, the physical evidence is consistent with both murder and suicide. The investigator does not eliminate either of them at this point but simply identifies both theories.

#### Phase Three: "Exploring the Case"

The third phase of the investigation returns to a search for evidence. The investigator, after identifying all possible theories and suspects, sets out to gather evidence which either supports or eliminates each theory or suspect. During this phase of the investigation, the investigator carefully "explores" the evidence to extract all the information he or she can. Some physical evidence may be sent for forensic testing. The accounts of witnesses should be checked against each other. The investigator must try to find evidence that corroborates or contradicts each account. As the investigator explores the case, some of the theories and suspects will clearly be eliminated while others will become more likely scenarios.

It is important that any exculpatory leads regarding a suspect be diligently pursued until they either implicate or eliminate that suspect. As every investigation begins to focus on particular individuals as suspects there will be evidence that not only inculpates that suspect but also evidence that will be considered "exculpatory" and require its eventual disclosure to the suspect if he or she is charged with a crime. The legal concept of the term exculpatory is broader than its common usage and does not only



include evidence which would exonerate an accused but would also include evidence that would be relevant as a mitigating factor in sentencing or might cast doubt on a prosecution witness. Article 54 of the Rome Statute of the ICC imposes upon the Prosecutor the affirmative duty to investigate incriminating and exonerating circumstances equally.

Just as it is impossible for an investigator during the early stages of an investigation to know the inculpatory import of each piece of evidence it is also impossible to know whether a piece of evidence may ultimately prove to be exculpatory. It is for this reason that all evidence should be carefully collected and recorded. Once an investigation identifies particular suspects there must be a systematic review of the evidence collected to identify exculpatory evidence and that designation should be recorded prominently in the record keeping system.

Experienced investigators will already appreciate the wisdom in thoroughly investigating exculpatory information. The ultimate goal of any properly conducted investigation is to establish the truth by collecting the most reliable evidence possible. Any investigation that intentionally or accidentally overlooks an investigative lead that may be contrary to the current view of the evidence is seriously flawed in its methodology. There can only be confidence in the results of an investigation if all investigative avenues have been properly pursued. An investigation must always be balanced and always cognisant of the presumption of innocence that protects all suspects and all accused.

For example, in a particular case a suspect states that he was with friends in another town at the time a murder occurred. If this is true, then he could not have committed the murder. This is exculpatory information which, if true, proves the suspect's innocence. The investigator must pursue all exculpatory leads. In this example, the investigator should interview the people the suspect claims to have been with. An investigator cannot ignore an exculpatory lead simply because he or she believes that another theory of the case is more likely or that the suspect has lied. The investigator is obliged to carefully examine and explore every possible lead that could prove a suspect's innocence.

The investigator continues to explore the case, searching for additional evidence until there is sufficient credible and reliable evidence to indicate what happened and clearly identify those who are responsible for the crime.

#### Phase Four: "Building the Case"

At this stage of the investigation, the investigator should have a clear idea of what happened and who is responsible based upon compelling, credible and reliable evidence. During this phase of the investigation the primary focus is on examining the evidence in light of the law. The investigator critically examines the case and applicable law to determine if the evidence in the case meets the legal criteria in the case.

The investigator must identify any gaps in the evidence and devise strategies to discover evidence that may close those gaps if it exists. Perhaps there is a time gap and the investigator has no evidence of where the victim was just prior to his or her death. Perhaps there is a gap in the physical evidence and the investigator still has not located the weapon used in an attack. During this final stage of the investigation the investigator must ensure that every investigative avenue has been exhausted to fill these gaps.

Another important task during this stage is a detailed examination of the laws that apply to the alleged conduct. An assessment must be made whether or not the evidence proves beyond a reasonable doubt all aspects or elements of the law. During this process it is important to be cognizant that the elements of international and crimes are different and that if there is uncertainty about where the case may ultimately be



brought the investigator must consider both bodies of law. In some cases a review of the law will indicate that some important evidence was overlooked.

For example, during phase four of a torture investigation, an investigator may determine that there is ample evidence of the torturous act and the identity of the people who committed it. However, on examining the legal definition of torture the investigator realizes that he or she overlooked evidence indicating that "...Such pain [was] inflicted by or at the instigation of ...a public official...." as required by Article One of *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (1975). The investigator must resume a search for evidence of this element of the crime of torture.

At the conclusion of the investigation, the investigator should be able to draft a report that reflects a thorough, professional investigation which reveals the truth about an event with credible and reliable evidence.

## Section 2.2 Role of the Human Rights Investigator

An investigator has a clearly defined role, which is very different from the role of other people who may be involved in a particular case or cause. The investigator must know his or her role, recognize the underlying rationale of it, and endeavor to work within the confines of that role. A narrowly defined role for the human rights investigator helps to ensure the investigator's objectivity and enables the investigator to more effectively accomplish his or her important tasks. One way of describing the role of an investigator is to contrast it with the roles of others involved in a case.

## **Investigator versus Witness**

The role of an investigator is very different from that of a witness. The investigator's role is to discover and document evidence. The evidence, if properly documented, should speak for itself and require minimal testimony from the investigator. While it will most often be necessary for an investigator to testify at a trial about his or her observations and how the investigation was conducted, the investigator should minimize the need for his or her testimony. The investigator must find and bring the evidence to a tribunal, not "be" the evidence.

For example, when an investigator examines a corpse, he or she should take enough quality photographs of the corpse so that a court can clearly see the corpse for itself. The photographs should speak for themselves. Although the investigator will have to testify about when and where the pictures were taken the investigator minimizes his or her role as a witness by taking good photographs. The court can rely on the photograph and not the investigator's memory to determine what the corpse looked like. Although in some instances the investigator will unavoidably become a witness to some important aspect of a case, every attempt should be made to minimize this.

When an investigator has an opportunity to speak with a suspect, he or she should record the interview on audio or video tape. If the suspect is eventually prosecuted, it is very likely that he or she will contest the investigator's account of the interview. The audio record of the interview allows the court to hear for itself the investigator's questions and the suspect's responses. The recorded tape becomes the "witness" to what was said, minimizing the need for the investigator to testify about the details of the interview.

The findings of an investigation will be scrutinized very carefully and likely to be contested by people who oppose its conclusions. One way to controvert an investigation's findings is to attack the credibility of the investigators. Regardless of the truth of an investigation's findings, a successful attack on the credibility



or reliability of the investigator can undermine the most persuasive evidence. Investigators can minimize such attacks by documenting evidence in such a way that it speaks for itself; it is self-authenticating despite any criticism leveled at the investigators.

#### **Investigator versus Advocate**

Chances are your organization is also involved in the advocacy of human rights. It develops and advocates particular positions and points of view consistent with its mandate. If possible the investigative function of the organization should be separated from the advocacy function. Investigators should not be advocates or visa versa. Separating the two functions gives greater credibility to the findings of an investigation.

We are all subject to human shortcomings and prejudices. If we embark on an investigation with the intention of eventually taking a particular public position it will invariably and perhaps unconsciously affect our objectivity. You as an investigator must have the objectivity and the freedom to "call it like you see it." The organization must insulate the investigator from the pressures and demands of a particular campaign and give the investigator the freedom to speak the truth as revealed by the evidence, even if that truth undermines the organization's advocacy efforts.

## Investigator vs. Judge

Similarly, an investigator must realize that his or her role as an investigator is different from that of a judge. The ultimate decision regarding whether or not the evidence is sufficient to prove a violation of local or international law is reserved for a court. Local law as well as international human rights law both hold that a person is to be presumed innocent until proven guilty according to the law.<sup>6</sup>

The human rights investigator must always treat the suspects of an investigation as innocent people. No matter how convinced the investigator is of the suspect's guilt, the investigator must recognize that the suspect is innocent until an appropriate tribunal, after hearing all the evidence in a fair trial, determines otherwise. The investigator must always be cognizant of, and respect the rights of a suspect. Respecting the rights of suspects in an investigation does not mean that the investigator should not pursue evidence against them vigorously. It does mean that they should benefit from any reasonable doubts and exculpatory evidence must be pursued with equal vigor. It also means that whenever an investigator deals with a suspect he or she should scrupulously observe whatever rights and protections are conferred upon that suspect by local or international law.

#### The Importance of Balance

It is important that the investigation present a balanced view of any human rights situation. Many violations occur in countries with significant internal turmoil. The government may be in a prolonged violent conflict with one or more groups seeking a change of government. It is possible that both sides to the conflict may commit egregious acts. Because human rights laws (with the exception of international humanitarian law) apply only to government action, most investigations focus on the actions of the government. Investigations are commissioned to specifically examine the policies and actions of a particular government. Even though an investigation's mandate may direct where the bright light of inquiry will shine, the investigation should report on everything illuminated by that light. If credible evidence of abuses by rebels is discovered during the course of the investigation or there is verifiable evidence of



positive governmental action, these should be included in a balanced report. Although the investigative team may have no authority to expand its own mandate, it must objectively report all relevant evidence which is found, in a fair and balanced way, which neither minimizes nor exaggerates the actions of either party to a conflict.

## **Reputation of Your Organization**

The weight accorded to the results of your investigation will depend on you and your organization's reputation for accuracy and integrity in making such reports. It is perhaps your most valuable asset. While a reputation for accuracy, fairness and integrity can do much to bring human rights abuses the attention they deserve, a reputation for exaggerated, biased or inaccurate findings can result in serious, legitimate human rights complaints being ignored.

Building a reputation as a competent investigator or investigative organization is a long and continuous process. It involves a daily commitment to uncovering and documenting the truth in ways that can be independently verified. It requires the experience to make conclusions and issue reports that are clearly substantiated by credible evidence and are void of speculation and conjecture.

The development and enforcement of human rights law has been one of the most significant factors in the continued development of a world community. The reporting of human rights abuses by both large and small human rights organizations has been a major impetus behind the increased prominence human rights has received. It is important for the individual investigator to realize that each investigation or case either contributes to this movement or detracts from it. To the extent that the investigative work of small organizations proves to be reliable and credible, human rights enforcement, in general, benefits. Conversely, a false or exaggerated report casts suspicion not only on a particular organization but also on human rights reporting in general. The gravity or exigency of a particular situation can never excuse a false or misleading report and can do much to set back both the individual case and the attention paid to other bona fide reports.

## Section 2.3 Working with Witnesses and Victims

Working with victims and witnesses can be one of the most rewarding aspects of a human rights investigator's job. Helping to expose injustices endured by a victimized people gives a voice to their suffering and is often an important first step in recovery toward a normal life. An honest search for the truth which ultimately recognizes the illegality of the harm inflicted on them can be a powerful healing force for them.

Working with victims and witnesses, however, can often be frustrating and can present pitfalls that the investigator must be alert to. This is especially true for local investigators working in their own community. It may be difficult to retain an objective perspective when the investigator knows the victims and has personally seen the effects of the crimes against them. However, it is extremely important that the investigator always maintain a professional distance from the witnesses and victims in a case and a seasoned objectivity to their claims. The best way for an investigator to help victims and witnesses is to keep the objectivity necessary to investigate and draft a credible report on the abuses that they have suffered.

One of the most important aspects of working with witnesses is to be very conscious of what you promise them. The primary measure a witness or victim will use to assess an investigator is the value of his



or her word. If you promise to do something, a witness will certainly judge you harshly if you fail to keep that promise. Even if you do not explicitly "promise" something, be careful that your words will not be interpreted as a promise. Stating your intention to do something may be interpreted as a promise. In some Asian cultures, even the statement, "I will try…" is likely to be interpreted as a firm promise.

An investigator's word is very important to witnesses and victims because in many cases they will risk their safety and that of their families on the word of the investigator. Cooperating with human rights investigators can be filled with risks for the witnesses and victims. A witness must come to trust the investigator; confident that if the investigator said he or she would protect the witness's identity, it will be protected. Witnesses and victims who are asked to place so much trust into the hands of an investigator they hardly know are very sensitive to the slightest indication that the investigator is unreliable.

Even such minor lapses as being late for an appointment may be interpreted as cause for concern by a frightened witness. Investigators should learn to be very conscious about what they say to witnesses, taking special note whenever they say something that may be interpreted as a promise. Learn to commit to only those things you are sure you can guarantee. If a witness asks for a commitment you cannot make, such as guaranteeing them protection if they are threatened, be completely honest with them. The witnesses and victims you will deal with are well used to the harsh realities of a difficult life. They much prefer hearing an unpalatable truth they can be sure of than pleasantly spun words that they have little faith in.

It is also important when dealing with witnesses to be careful what you say. Professionalism requires that you choose your words carefully with witnesses and victims. They are not your colleagues or your friends; they are people who, by virtue of the investigation, have a professional relationship with you. It is best to avoid jokes, sarcasm, pithy observations about suspects, or other witnesses. A very respected prosecutor once taught me, "Never say anything to a witness that you would be ashamed or embarrassed by if it appeared on the front page of the newspaper." This is good advice for the investigator. If you have doubts about how prudent it is to say something to a witness, ask yourself how you would feel if it showed up on tomorrow's newspaper. If you have any reservations, it is probably better that you do not say it.

Professionalism also dictates that you never inadvertently make the witness a part of the investigative team. Through the course of a difficult investigation it is natural to feel some kinship with the victim and witnesses. It is important to keep a professional distance between you and the witnesses. Victims and witnesses should never be part of the "investigation team." They should not be privy to other evidence in the case; they should not be aware of, or made part of, any discussions regarding evidence.

The investigator must be careful what he or she asks a witness to do. While it may be permissible to ask a witness to contact another witness for you, it should never be more than that. A witness must never be used to collect evidence or ask other witnesses questions about the facts of the case.

In many situations the incident you will be called upon to investigate will be one in a long history of abuses. These victims may be desperate and harbor tremendous animosity toward their abusers. They may feel justified in telling lies against their oppressors. No matter how much victims have suffered, the investigator's task is to uncover the truth. The suffering of a people can never justify an investigation's failure to ferret out false information or exaggerated accounts. The greatest assistance a human rights investigator can render a victimized people is a credible, reliable investigation that can be relied on when made public. The human rights investigator must sift out exaggerations and inaccurate information and develop evidence based on credible and reliable sources. National or international human rights organizations or tribunals cannot take public action unless there is confidence in the integrity of the



## VICTIM'S BILL OF RIGHTS

- 1. All victims shall be treated with professionalism, compassion, and respect for their inherent human dignity.
- 2. **Victims have a right to privacy.** All reasonable measures will be taken to protect it. Private information shall not be made public without the prior knowledge and consent of the victim.
- 3. Victims have the right to be informed about their case. The investigator must take reasonable measures to keep them informed about the status of their case and any proceedings held in connection with the case.
- 4. A victim's cooperation with investigators must be voluntary and based on informed consent. The human rights investigator has a duty to make the victim aware of all probable consequences and risks of his or her cooperation so that the victim can make an informed choice whether or not to assume those risks. If during an investigation the human rights investigator learns of a serious risk to the victim or the victim's family, the investigator has a duty to take all reasonable measures available to notify the victim as soon as possible.
- 5. Under international law (and possibly local national laws) victims have the right to medical care, due process, redress of wrongs, compensation, social assistance and other mechanisms of justice to help them recover from their ordeal. The human rights investigator should use reasonable measures to ensure that the victim is aware of these rights and the means by which they can be exercised.
- 6. Victims have the right to express their views regarding how the investigation is being conducted. The human rights investigator must ensure that victims have ample opportunity to express their views, concerns, or objections to the work of the investigator. The victim's ideas should be considered and given the appropriate weight they deserve. Attempts should be made to accommodate the witness's concerns if they do not jeopardize the integrity of the investigation.
- 7. Victims have the right to the best efforts of the human rights investigator. If the investigator undertakes the investigation of a victim's complaint, he or she has a duty to use due diligence and his or her best efforts to investigate that complaint completely or until such time as compelling credible evidence indicates that the complaint is meritless. In the event that the complaint is found to be without merit, the investigator has the obligation to communicate the basis for this finding to the victim.

investigation and the truth of its conclusions. Any investigation must be able to withstand the close scrutiny it will receive in a judicial or quasi-judicial forum.

## Can and Should You Help Victims?

Many of the victims the investigator will encounter will have urgent material needs. Whether or not you should offer direct assistance is a difficult question. Oft times the human rights investigator is in the best position to help someone who has suffered a significant loss. Unfortunately, rendering such assistance can affect the integrity and credibility of the investigation itself. Once a victim receives a benefit as a direct result of speaking to the investigator, the victim's credibility is placed into question. A court can and should



properly consider whether the victim's allegations are true or a cleverly crafted tale to impress the investigator and obtain a material benefit.

The best practice is simply to refer the victim to another organization that can help them. If your organization is going to help, it should come through a different person in your organization. Investigators should avoid giving aid directly to victims. Your organization should develop a pamphlet that describes what services are available locally for victims and makes suggestions of how best to proceed. If your organization has the resources, it should consider designating a person who can be an advocate for victims. This person can become familiar with the services available to victims and can assist them in applying for services and getting all that they are entitled to. If witnesses are to be compensated for their travel and lodging expenses while being interviewed by an investigator such compensation must be uniform and based on actual expenses; meticulous records should be kept of any monies provided witnesses.

## Section 2.4 Using Translators

Human rights investigators will at times need translators to interview witnesses, speak with government officials, and review documents. The necessity of using a translator always complicates the investigative process. Not only do interviews take at least twice as long but also the investigator's ability to assess the candor and reliability of the witness is diminished.

Choose an experienced translator with whom you can communicate comfortably. It takes a long time for a translator to develop all the skills necessary to qualify as a good investigative translator. Just being able to speak two languages does not qualify a translator. Be aware that even though people from Great Britain, America, and Australia all speak English, the language does not sound the same to a translator. Consider how difficult it can be for you to understand your native tongue when spoken by someone from a different country or region. Regional accents and local idioms can hamper clear communication. Talk extensively with your translator about a variety of subjects to ensure that you both understand each other. Any communication difficulties you have will only worsen under the stress of an investigation. If possible, use translators who have experience translating medical and legal terminology. It is a great advantage for a translator to have some familiarity with the words and concepts you are likely to encounter in an investigation. Review any technical terms that may be used during the investigation.

Before hiring a translator, investigate his or her background as best you are able. You must be able to trust your translator to translate sensitive information correctly and confidentially. One way to check a translator's competency is to ask him or her to translate a written passage related to your work into his or her native tongue. Ask another qualified translator to examine the translation and assess its accuracy. Repeat this test with the original text in the translator's native tongue and have him or her translate it into your tongue. Again, with the help of another experienced translator, assess its accuracy.

Some translators have worked as spies for subversive governments and have used their position to gather information on both human rights organizations and witnesses. These translators may work for the government or simply sell information to government authorities. Try to identify well-respected translators who have proven their integrity with other organizations. Seek out translators who have demonstrated some measure of commitment to human rights in their country. Speak with other investigators with whom the translator has worked and ask them for a candid opinion.

Once you have a translator you trust and are comfortable with, try to use the same translator in all your investigations. The more you work with a translator the better you will both become at



communicating, and the process of translation will become less cumbersome. In time, working with a good translator can become almost transparent to both the investigator and the witness. As you learn to work better with your translator, consider other ways in which he or she can assist you.

A good translator can also be a "cultural" translator. The translator can help cross the divide created by different customs and cultures. Before approaching witnesses or unfamiliar situations, consider seeking the translator's advice regarding the best way to proceed. The translator can help you successfully navigate local etiquette and salutations. While a foreigner's failure to observe local customs may be excused, showing that you have taken time to learn them can go a long way in breaking down barriers. In some cultures, particularly eastern ones, specific signs of respect are afforded people of different social status. This includes the elderly and those in public office. Give your translator the freedom to extend to these people the appropriate salutation rather than simply translating the salutation you customarily use.

Ask your translator to warn you when you are about to make a *faux pas*. An investigator may say something, which if literally translated, might be offensive. A translator can quickly indicate a better way to make the point that will not alienate your listener. When investigating sensitive subjects such as sex crimes, a translator can brief you on local sensibilities and how best to approach the topic. Even if you do not need a language translator, consider seeking the assistance of a local person to familiarize you with regional customs and practices.

Before any important interview or meeting, the investigator should spend time with the translator to discuss the objectives and goals. Seek the translator's advice on the best approach. If the translator understands the ultimate goal of a meeting in advance, he or she is better able to help the human rights worker during the exchange. It is also important to "debrief" a translator after an interview or meeting. The translator may not have been able to translate everything a witness said because he or she was under pressure to keep the conversation flowing. Talk about the meeting while it is fresh in both your memories. Ask the translator for his or her opinion of the witness. The witness may have shown signs of nervousness or deception that would not be visible to a foreigner. Debriefing the translator will always yield valuable information.

It is important to keep in mind that often translators are among the same victim group as the person being interviewed. These translators may have also been affected by the particular campaign of violence being investigated. Be sensitive to the fact that the interview may precipitate a psychological and emotional response in some translators. Giving them an opportunity to discuss the interview's impact on them afterward is often enough to help them deal with the challenges of translating difficult material.

The investigator should speak slowly and clearly. If your language is the translator's second language, chances are he or she cannot speak it or comprehend it at the same speed you do. Avoid using idioms and words that the translator may not understand. Idioms rarely translate well. Consider whether or not there is another way to say something using simpler words the translator is more at ease with.

Keep in mind that it is difficult to remember what someone has said and then translate it for someone else. Give the translator only a few sentences at a time to translate. Good translators relate ideas and concepts, not merely words. It is easier for the translator if you speak in a way that allows him or her to understand the concept you are trying to convey, and then proceed to translate it. If you do not speak in complete, succinct ideas, you run the risk that the translator will simply robotically translate individual words. Because many words have different meanings and hence different translations, such translations have a high risk of error.



Investigators often tend to look at and speak to the translator instead of the person the investigator is trying to communicate with. You should maintain culturally appropriate eye contact with the person you are interviewing – not with the translator. Refrain from referring to the person you are speaking with in the third person. Instead of saying: "What did he or she see after entering the house?" you should say, "What did you see after entering the house?" Address the witness as if the translator were not present.

It is also important to remember that even though someone may say that he or she does not speak your language, he or she may understand it and comprehend much of what you say. This is particularly true if your language is English, French, or Spanish. Many people who speak other languages will have studied one of these in school or may have tried to learn it themselves. The investigator should assume that everyone in the room will understand everything said aloud to the translator. Be careful never to say anything that is inappropriate or offensive because you believe only the translator will understand you.

If possible, consider spending at least one day training your translator. Discuss and come to an agreement on how both of you will deal with particular situations. Encourage the translator to candidly discuss any problems he or she has in understanding you. Experiment with the cadence of your speech until you find one that is comfortable for you both. Review vocabulary and technical terms that are likely to be used in the course of your work together. Review the interviewing techniques described in Chapter Seven with your translator. Contemporaneous translation is a difficult task. Identifying and eliminating potential problems before an actual meeting or interview will simplify the translator's job and facilitate effective communication with witnesses.

## Foreign Investigators

It can be difficult for a foreign investigator unfamiliar with a country to conduct an effective investigation. Local people may be skeptical of the foreign investigator's presence and be unwilling to cooperate. The foreign investigator may not fully understand how cultural differences will impact the investigation. If possible, try to identify a local human rights worker or investigator who shares your organization's methods and goals. Working with a trusted and respected member of the local community will open doors ordinarily closed to foreigners.

A foreign investigator should try to learn about local culture and customs before beginning the investigation. The investigator should learn about the current political situation and the context in which the alleged human rights abuses have occurred. Knowing the recent political history will help the investigator spot biases and fears that might affect the investigation. It is very important to observe local customs and be sensitive to local sensibilities when dealing with witnesses.

I observed a foreign investigator investigate an incident in an Asian country. We arrived soon after it occurred and there were many witnesses eager to give their account of what happened. Because of the late hour the investigator decided to interview several small children present so that their parents could take them home. One of the older witnesses, a highly regarded person in the community, left before the investigator had an opportunity to speak with him. That witness interpreted the investigator speaking to the children before him as an offensive act of disrespect which could not be tolerated. The investigator's failure to recognize and observe the importance some Asian cultures place on proper respect for the elderly and community leaders turned a cooperative witness into a reluctant one.



You will also learn that one of the quickest ways to earn the respect and trust of people is to demonstrate an authentic and sincere desire to learn about their customs. Most often people respond well to a foreigner's sincere attempt to learn about and participate in their cultural life. Enthusiastically experiencing their way of life without continually comparing it to your own will endear you to the local community.

<sup>1</sup> <u>Principles on the Effective Prevention and Investigation of Extralegal, Arbitrary and Summary Executions</u> (1989) E/RES/1989/65.

<sup>&</sup>lt;sup>2</sup> International Law Associatoin, "The Belgrade Minimum Rules of Procedure for International Human Rights Fact-finding Missions," 75 <u>American Journal of International Law</u> 163 (1981).

<sup>&</sup>lt;sup>3</sup> Thomas M. Franck and H. Scott Fairley, "Procedural Due Process in Human Rights Fact-finding by International Agencies," 74 <u>American Journal of International Law</u>, 308 (1980).

<sup>&</sup>lt;sup>4</sup>International Law Association 163.

<sup>&</sup>lt;sup>5</sup> David Weissbrodt & James McCarthy, "Fact-Finding by International Nongovernmental Human Rights Organizations," 22 Virginia Journal of International Law 1 (1981).

<sup>&</sup>lt;sup>6</sup> International Covenant on Civil and Political Rights (1976) Article 14(2)



## CHAPTER 2 SUMMARY

## The Role of Evidence

Obtaining credible and reliable evidence is the paramount goal in any investigation. In the search for evidence it is important to remember:

#### THERE IS ALWAYS EVIDENCE and ANYTHING CAN BE EVIDENCE

#### **Overview of the Investigative Process**

A systematic approach to the investigation is an important part of the investigation and insures that the investigation achieves its primary objective of revealing the truth. There are four phases to an investigation:

#### Phase One: Cast the Net

The first phase of the investigation is like casting a fishing net. At this initial stage the investigator's main concern in identifying, collecting, and preserving as much evidence as possible before it is lost or destroyed. For every new piece of physical, testimonial or documentary evidence the investigator must ask, "Does this lead to additional evidence?

#### Phase Two: Discovering the Case

Once all the initially apparent evidence is gathered the investigator must discover what facts the evidence reveals and begin to formulate theories of the case and lists of possible suspects.

#### Phase Three: Exploring the Case

The investigator must now set out to test his or her theories about the case and suspects by searching for additional evidence which will either confirm or contradict those theories until two ultimate questions can be answered: "What happened?", and "Who is responsible?" Any information tending to prove that a suspect is innocent must be fully investigated.

#### Phase Four: Building the Case

During this phase the investigator must critically examine the evidence in the light of applicable law to determine whether or not there is legally sufficient credible and reliable evidence to prove the guilt of suspects. The investigator must identify any elements of a crime which are not supported by evidence and return to a search for evidence relevant to that element.

#### The Three Sources of Evidence

There are three sources of evidence:

**Physical Evidence** is any physical object that can provide information about an event. It may include weapons that were used, the condition of a victim's body or trace evidence which is not recognizable to the unaided senses.

**Testimonial Evidence** is witness testimony. It is a broad term that includes the statements of all witnesses including victims and suspects. It may be eyewitness testimony or hearsay testimony. Unlike physical evidence testimonial evidence is subject to the perception, memory, credibility and reliability of the person giving the statement.

**Documentatry Evidence** is any object with the recorded thoughts and observations of a witness. It is a combination of testimonial evidence and physical evidence. Documentary evidence includes business and government records, letters, diaries and any manner in which a person has recorded information relevant to the investigation.



## Chapter 3

#### THE INVESTIGATION KIT

## AND CASE FOLDER

The most important first step in any investigation is a response to the scene where an attack or crime took place. Once the investigator arrives, his or her ability to immediately begin the orderly collection of evidence and information increases the chance that no evidence will be lost and that all the witnesses' accounts will be gathered. Therefore, it is essential that the investigator arrives at the scene with everything he or she needs to investigate the case. Well in advance of the first investigation, the investigator should prepare two important items: an *Investigation Kit*, containing the basic tools to document and collect physical evidence, and an *Investigation Folder*, containing files and forms to help gather and organize information.

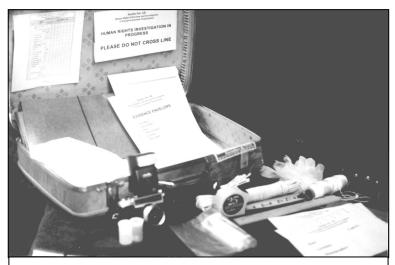
Just as a surgeon checks that the necessary instruments are at hand before starting an operation, the investigator should respond to an incident fully equipped to begin the investigation. Unlike the surgeon who knows a great deal about a patient's condition before surgery, the investigator rarely knows what he or she will find at the scene. The investigator must carry the tools necessary to work on many types of cases. The *Investigation Kit* and *Case Folder* described in this chapter can be used to investigate most serious human rights abuses.

Although thousands of dollars can be spent on specialized equipment and supplies, it is possible to put together a basic kit for approximately 200 U.S. dollars. This kit will enable the investigation of most of the

cases that a human rights investigator is likely to encounter.

# **Section 3.1 The Investigation Kit**

The Investigation Kit can be either a briefcase or a small suitcase. It should be large enough to contain all the necessary tools, yet compact enough to carry whatever on transportation is available in the area. The contents of the kit should be checked regularly against an inventory list to ensure that the kit is complete and supplies are replenished. Although the kit requires little maintenance, someone should check it periodically to



The above investigation kit contains everything an investigator needs to process most investigative scenes for physical evidence.

-

<sup>•</sup> Throughout this book *italicized* words refer to items from the *Investigation Kit*.



replace expired items and batteries. The following is a description of the items that should be included in a basic *Investigation Kit*. This kit is designed for use with the evidence collection techniques described in this book. If the investigator has special training in such skills as the lifting of latent prints, additional equipment can be added.

#### Camera

The camera is usually the most expensive piece of equipment in the *Investigation Kit*. The prices of cameras vary greatly, and the one chosen will depend upon the organization's budget and the features desired. The only essential feature is an electronic flash. It is often necessary to take photographs at night or in areas where the lighting is poor and a flash is necessary. Many cameras, even inexpensive ones, have a sensor that automatically activates the flash when needed. This feature is useful for investigators unaccustomed to cameras and prevents the loss of photos because the investigator forgot to turn the flash on. The camera should be a digital camera with a resolution of at least eight megapixels.

The most inexpensive 35mm cameras are "fixed-focus" cameras. They are called fixed focus because the lens cannot be adjusted. For most of these cameras, any object one-meter or more from the camera will be in focus. Although this is the cheapest camera it takes good clear pictures in most situations. The next grade of camera, also a fixed-focus camera, has two interchangeable lenses. One is a wide-angle lens for taking general pictures and the other is a telephoto lens for taking close-up photographs. A switch on the camera permits the two internal lenses to be changed quickly. A telephoto lens is a real asset to an investigator. He or she can capture objects in greater detail. These sharper images may enable forensic



#### CHOOSING THE RIGHT CAMERA

A good camera is an essential tool in every human rights investigation. Photographs capture how an *investigative scene* or victim appeared more accurately than any sketch or written description can. The camera should be chosen carefully. Cameras come with a variety of features, some of which are useful, and others which unnecessarily complicate the process of taking pictures. The paramount concerns in selecting a camera are choosing one that is reliable and that investigators feel comfortable using. An inexpensive "point & shoot" camera is adequate in most investigations. As the number of features increase, so does the chance that pictures may be taken incorrectly. In most cases, there will not be an opportunity to re-take poor photographs.

The ideal camera should:

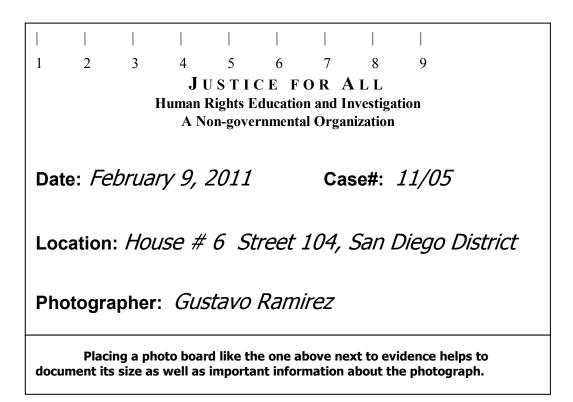
- 1. Be manufactured by a company with a reputation for reliability.
- 2. Be able to take digital photographs.
- 3. Have an electronic flash that automatically activates in low light conditions.
- 4. Automatically record the date.
- 5. Have the capacity to take both wide-angle and close-up photographs.



scientists to make more detailed findings about the evidence photographed.

The most expensive camera is a automatic **variable-focus** camera, which uses a built-in computer to automatically focus the lens and correctly adjust the camera's settings to different lighting conditions. These cameras take high quality images and are easy for novices to use. The camera automatically adjusts the camera's settings and focus to capture the sharpest image possible. This type of camera is a good choice for investigative photography. It is possible to get these cameras with a "zoom" lens. A zoom is a combination lens that takes both wide-angle and close-up photographs. By adjusting a control on the barrel of the lens, the photographer can adjust the degree of magnification to suit the subject being photographed.

The camera you choose will ultimately depend upon your budget. If your budget is limited, purchase a



good quality, name brand, fixed-focus camera with an automatic flash. A reliable inexpensive camera is better than one that is unreliable or that may be too difficult to use. Investigators will not have much time to make adjustments to a camera's settings at an *investigative scene*. A fixed-focus camera will take good quality photographs, quickly and reliably.

One useful, although not essential, feature to have on whatever camera you choose is date imprinting. This feature automatically prints the date and time a photo was taken in the border of the print. It is important to record the date photos are taken and so the automation of this task is helpful. Sometimes it is helpful to know the order in which pictures were taken at an *investigative scene*; the time stamp makes this easy. Although there are other ways to record this information, having a camera that does it automatically, leaves one less thing for the investigator to remember.



Whichever camera you buy, it is important that investigators practice with it and become familiar with all its features. An *investigative scene* is not the place to learn how to use the camera. Practice taking wide-angle photographs of entire areas as well as close-up pictures of individual objects. Practice taking photographs in different lighting conditions. Have these practice shots printed and assess their quality and composition. Practice until you are completely comfortable using the camera. You must be able to take photographs quickly and confidently at an *investigative scene*.

#### **Evidence Photo Board**

An *Evidence Photo Board* is a useful tool for photographing evidence. The board can be a small chalkboard or a blank piece of paper on which the investigator writes key information. By placing this board near the photographed object the investigator documents information that will help identify the photo at a later time.

The board should contain space to write the date and place where the photograph was taken. It should also include space to write the case name or number. Include a ruled edge along the top of the board so that when it is placed next to the object, it also documents its size.

#### Measuring Tape

Each kit should contain a measuring tape to record distances at the *investigative scene*. A 5 to 10 meter tape is usually sufficient. Occasionally it will be necessary to measure distances greater than 10 meters. If your budget permits, include a 100-meter spool tape in the kit. If your budget is limited, take a large ball of good-quality string that does not stretch and tie a knot at distances of one meter along its length. Wind the knotted string around a wooden peg like a kite string. When measuring distances greater than 10 meters, stretch out the string and count the knots. This is an inexpensive and sufficiently accurate way to measure these longer distances.

#### Ruler

A short ruler, 20 to 30 centimeters long, is useful when photographing individual items of evidence. It

is difficult to judge the size of an object by looking at a photograph of it unless it is a common object like a pencil or a coin. Placing a ruler next to an object when it is photographed accurately documents its size. A simple wooden ruler with large black numbers works best. Avoid plastic rulers because when they are used with a flash, glare can render them unreadable. Take practice photographs with the ruler to ensure that it will be visible when photographed under various lighting conditions.



The *Investigation Kit* should contain a ruler with large numbers that photograph clearly. Avoid plastic or lacquered rulers that may reflect the photoflash.



#### Sketch Pad

Later in the book, I will describe the importance of properly sketching and recording measurements at an *investigative scene*. The *Investigative Kit* should include a pad of paper for this purpose. Standard A4 size paper is suitable. Many investigators find that graph paper or lined paper aids them in sketching a scene. It is also helpful to have blank diagrams of human bodies to facilitate documenting injuries.

## Rope And Signs To Secure Incident Scene

It may be necessary at some *investigative scenes* to keep curious bystanders from contaminating the scene. Many police forces use a bright yellow tape with the words "**POLICE LINE DO NOT CROSS**" printed across it. They stretch this tape around the perimeter of the investigative scene to keep unauthorized people from entering the scene. This tape can be expensive and hard to find in many countries. An alternative to this tape is stringing ordinary rope around the area and hanging a sign identifying your organization and requesting that no one cross the line. A simple sign is often enough to gain the cooperation of people at the scene. Be careful that it is not misleading in any way. It should unambiguously identify your organization and your purpose. It must clearly distinguish you from the local police.

## Justice for All

Human Rights Education and Investigation A Non-governmental Organization

# HUMAN RIGHTS INVESTIGATION IN PROGRESS

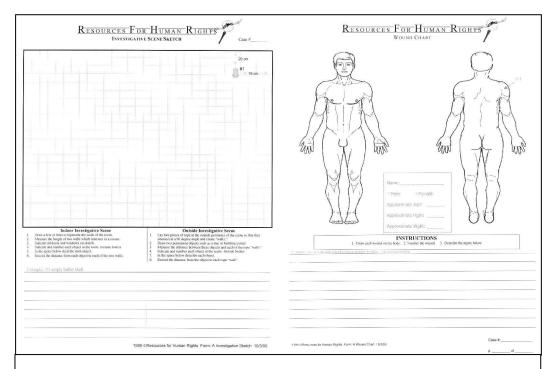
## Please Do Not Cross Line

A simple sign and rope is all that is needed to secure an investigative scene.

#### **Rubber Gloves**

Latex rubber gloves are an essential part of the kit for two reasons. First, the investigator must be careful not to contaminate an *investigative scene* with his or her fingerprints. Significant resources and time can be squandered if forensic scientists have to collect and identify the fingerprints of investigators as well as suspects. Secondly, many scenes will contain blood and body fluids that can expose investigators to dangerous diseases. There is no way to determine if an injured person is infected at the scene. In order to protect themselves, investigators must handle all victims and body fluids as if they are diseased. All investigators processing the scene must wear clean rubber gloves at all times.





The form on the left is for sketching *investigative scene* sketches and documenting the location of evidence. The form on the right is used for documenting the location of a victim's injuries.

Latex rubber gloves are available in different qualities at a variety of prices. It is not necessary to buy the expensive, sterilized, powdered, well-fitting gloves a surgeon uses. The cheapest grade of disposable latex gloves is usually sufficient. The *Investigative Kit* should have several sets of gloves. The gloves should never be re-used. Once the investigator has finished with the gloves they should be discarded and not returned to the kit. If a case involves processing more than one scene, it is important for new gloves to be used at each scene. Using the same gloves at several scenes will result in contaminating the new scene with trace evidence from the others.

#### **Cotton Swabs**

Cotton swabs are useful to collect specimens of body fluids or unknown liquids. Those used for cleaning ears are suitable. It is not necessary to purchase individually wrapped swabs but you should take precautions to ensure that they are clean and that it is possible to take one without contaminating the rest. Cross-contamination can be avoided by wrapping bundles of 3 or 4 in clean paper. Once a bundle is removed from the kit it should not be returned.

## **Plastic Bags**

Some evidence should be kept in plastic bags. Small bags are usually sufficient. If possible use transparent bags so its contents can readily be seen. Keep at least 10 plastic bags in the kit.



## **Evidence Storage Envelopes**

The *Investigation Kit* should have a supply of large paper envelopes in the kit to preserve and store evidence. The envelopes should be labeled with important information about the evidence and the case it relates to. Chapter 4 on Physical Evidence describes how to label and use these envelopes to preserve and store evidence. Each piece of evidence should be placed in its own envelope and sealed with cellophane tape. The kit should contain a supply of at least 20 envelopes and two rolls of cellophane tape.

Police departments with ample resources seal evidence envelopes with special tamper-proof tape. Once the envelope is sealed with this tape any attempt to open it will permanently alter the appearance of the tape. If such resources are not available to your organization there is a way to effectively seal evidence envelopes using materials available in most local markets. This system is described fully in Chapter 4 and requires a roll of clear cellophane tape 4 centimeters wide; the type of tape used to seal shipping cartons. It is inexpensive and readily available. Clear cellophane tape is also used to collect trace evidence such as hair or clothing fibers. The kit should contain 2 rolls of cellophane tape.

INVESTIGATIO	IN INTO		
CASE NO.			FIREARM [
ENVELOPE N	D.		Knife
DATE		P P	OSSIBLE POISON
			DISTREE TOTSON
NAME OF PER WHO FOUND EVIDENCE	RSON	P	OSSIBLE DRUGS
LOCATION W			LATENT PRINTS [
		<b>⊣</b>	
2. <u>L</u> 3. <u>P</u>	INST  Iark the evidence itself with your initials and the mall tag with the same information directly on the label this envelope.  Iace evidence in the envelope and seal with a tag.	RUCTIONS the date of colle e evidence. mper-proof seal.	
1. M/SI 2. L/3. P/4. S	INST  Iark the evidence itself with your initials and until tag with the same information directly on the abel this envelope.  Iace evidence in the envelope and seal with a tatore evidence in a secure place protected from the envelope.	RUCTIONS the date of colle e evidence. mper-proof seal. theft and natural	ction. If that is not possible attach a elements.
1. <u>M</u> ss 2. <u>L</u> 3. <u>P</u>	INST  Iark the evidence itself with your initials and the mall tag with the same information directly on the label this envelope.  Iace evidence in the envelope and seal with a tag.	RUCTIONS the date of colle e evidence. mper-proof seal.	elements.  How to Collect  Place in a sterile glass jar or clean, empty water bottle.
1. Magnetic Street Stre	INST  Iark the evidence itself with your initials and in all tag with the same information directly on the abel this envelope.  Iace evidence in the envelope and seal with a tatore evidence in a secure place protected from to the secure place indoors.  Allow to air dry in a clean secure place indoors.  Unload the weapon safely. If it is to be	RUCTIONS the date of colle e evidence. mper-proof seal. theft and natural  Object Poison or Unknown Liquid	elements.  How to Collect  Place in a sterile glass jar or clean, empty water bottle.  Clearly indicate on bottle that it may contain poison.
1. No. 1 No.	INST  Iark the evidence itself with your initials and in all tag with the same information directly on the abel this envelope.  Iace evidence in the envelope and seal with a tatore evidence in a secure place protected from the envelope.  Allow to air dry in a clean secure place indoors.	RUCTIONS the date of colle e evidence.  mper-proof seal. theft and natural  Object Poison or Unknown	ction. If that is not possible attach a  elements.  How to Collect  Place in a sterile glass jar or clean, empty water bottle.  Clearly indicate on bottle that it may contain poison.  Use gloves.  Pick up by an area unlikely to have been
1. N. SI 2. L. L. SI 3. P. 4. S Object Wet or bloody clothes Firearms Knives, weapons or	INST  Iark the evidence itself with your initials and in all tag with the same information directly on the abel this envelope.  Iace evidence in the envelope and seal with a tatore evidence in a secure place protected from to the collect.  Allow to air dry in a clean secure place indoors.  Unload the weapon safely. If it is to be processed for prints handle with rubber gloves.  Collect using rubber gloves.  Collect using rubber gloves.	RUCTIONS the date of colle e evidence.  mper-proof seal. theft and natural  Object  Poison or Unknown Liquid  Hard objects with possible	ction. If that is not possible attach a  elements.  How to Collect  Place in a sterile glass jar or clean, empty water bottle.  Clearly indicate on bottle that it may contain poison.  Use gloves.  Pick up by an area unlikely to have been touched. Pick up a glass by bottom edge; knife by its blade not handle.  Use a small amount of cellophane tape to attach hairs to a clean piece of paper.  Place paper with hair or fiber in evidence
1. Msi Si	INST  Iark the evidence itself with your initials and that the same information directly on the abel this envelope.  Iace evidence in the envelope and seal with a tatore evidence in a secure place protected from the thing of the security	RUCTIONS the date of colle e evidence.  mper-proof seal. theft and natural  Object  Polson or Unknown Liquid  Hard objects with possible latent prints  Hair sample or unknown fibers  Teeth or pieces of	elements.  How to Collect  Place in a sterile glass jar or clean, empty water bottle.  Plick place in a sterile glass jar or clean, empty water bottle.  Clearly indicate on bottle that it may contain poison.  Pick up by an area unlikely to have been touched. Pick up a glass by bottom edge; knife by its blade not handle.  Use a small amount of cellophane tape to attach hairs to a clean piece of paper.
1. Msi Si	INST  Iark the evidence itself with your initials and in all tag with the same information directly on the abel this envelope.  Iace evidence in the envelope and seal with a tatore evidence in a secure place protected from the envelope.  Allow to air dry in a clean secure place indoors.  Unload the weapon safely. If it is to be processed for prints handle with ribber gloves.  Collect using rubber gloves.  Collect using rubber gloves.  Allow blood to air-dry.  Remove bullet carefully taking steps to insure that the instrument you use does not mark or seratch bullet.  If the bullet is lodged in a piece of wood cut out the portion of wood surrounding the bullet and	RUCTIONS the date of colle e evidence.  mper-proof seal. theft and natural  Object Poison or Unknown Liquid  Hard objects with possible latent prints  Hair sample or unknown fibers  Teeth or	ction. If that is not possible attach a  clements.  How to Collect  Place in a sterile glass jar or clean, empty water bottle.  Clearly indicate on bottle that it may contain poison.  Use gloves.  Pick up by an area unlikely to have been touched. Pick up a glass by bottom edge; knife by its blade not handle.  Learner and the description of cellophane tape to attach hairs to a clean piece of paper.  Place paper with hair or fiber in evidence envelope.

Most evidence should be kept in clean paper envelopes. Although ordinary envelopes work well, preprinted ones like the one above provide detailed directions on how to preserve evidence and include forms to insure proper labeling.



#### Clean White Sheet

The *Investigative Kit* should contain a clean white sheet in which to wrap corpses for transportation if a post-mortem examination is going to be performed. The sheet should be kept in a sealed envelope or wrapped in paper to keep it clean. If handled carelessly the sheet can become contaminated with trace evidence from other scenes. Keeping it wrapped minimizes this possibility. If the sheet is to be used repeatedly it must be laundered thoroughly to minimize the transfer of trace evidence.

#### **Flashlight**

A reliable flashlight is an important tool to include in the kit. Many investigations will be conducted at night and without a flashlight the investigator is likely to miss important evidence. Keep a spare bulb and a spare set of batteries in the kit. Each member of the investigative team should have his or her own flashlight.

#### **Audio Recorder**

A digital recorder is an important and relatively inexpensive tool to record witness statements. It is difficult to accurately write down everything a witness might say. Although a recorder does not eliminate the need for written notes, it does ensure that nothing is missed. I recommend a small digital Dictaphone. These recorders fit easily into a pocket. The recorder should be battery operated and the kit should include spare batteries.

Investigators should practice using the recorder and become familiar with its operation prior to an investigation. It is also important to test the recorder before taping an interview. Do this by pressing record, counting to ten and then playing it back.

#### Memo Pads

Each investigator should have a small pad for taking notes. It should be small enough to fit into his or her pocket. The memo pad is useful for recording observations at an *investigative scene*, for making notes during interviews, and for keeping track of tasks that need to be done. Pads with perforated leaves that can easily be removed and stored in the *Case Folder* are ideal.

#### Ink Pad

The Evidence Kit should also contain a standard inkpad with black ink. This pad will be used to take inked prints from unidentified corpses to help in the identification of the body.

#### **Evidence Kit Inventory**

The Evidence Kit should be checked regularly to ensure that all the tools and materials that should be in the kit are there. Valuable time can be wasted if the kit is not checked until it is needed. Once a month the lead investigator should examine the kit's contents against the inventory sheet to be sure that all of its contents are intact and in working order. Batteries should be checked to ensure that they are still usable.



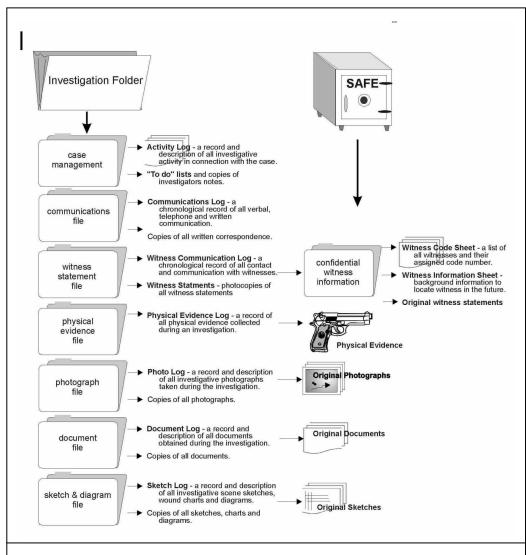
Investigation Kit Inventory								
	Items	,			e checked	<i>2011</i> .		
#	Item	quantity	Jan 2	Feb 1	Mar 1			
1	camera with automatic flash	1	X	X	X			
1a	Batteries	1 spare set	X	X	X			
2	evidence board	2	X	X	X			
3	photograph board	2	Χ	X	X			
4	sketch pad	1 pad	X	X	X			
5	measuring tape – 30 meters	1	Χ	X	X			
6	measuring tape or knotted string - 50 meters	1	Χ	X	X			
7	short ruler	1	Χ	X	X			
8	Rope	100 meters	X	X	X			
9	signs - do not enter	4	X	X	X			
10	rubber gloves	20 pairs	X	X	X			
11	cotton swabs	20	X	Χ	X			
12	plastic bags	10	X	X	X			
13	paper envelopes (A4)	20	X	X	X			
14	cellophane tape (4 cm)	1 roll	Χ	X	X			
15	Clean white sheet	1	Χ	X	X			
16	Flashlight	1	Χ	X	X			
16a	Batteries	1 spare	Χ	X	X			
16b	Bulb	1 spare	Χ	X	X			
17	Digital Dictaphone recorder	1	Χ	X	X			
17a	Batteries	1 spare	Χ	X	X			
18	Ink pad	1	Χ	X	Χ			

The Investigation Kit Inventory is a good way to ensure that the kit is regularly checked and ready for use. The lead investigator team should check the kit at least once a month.



### Section 3.2 Creating and Maintaining an Investigation Folder

Experienced investigators know that how an investigation is conducted is as important as the evidence gathered by it. Good record keeping helps the investigator to organize and evaluate the information gathered. Proper documentation of the investigation also indicates the professionalism and thoroughness of the investigator by recording every investigative effort, regardless of whether or not it resulted in the discovery of evidence. Investigators should be required to account for their activities and progress in an



The above diagram shows the *Investigation Folder* and the files that it contains. All physical evidence, original documents, and any items that cannot be easily replaced should be kept in a secure place. Investigators should work with the copies kept in the *Investigation Folder*.



investigation. These records should be maintained in a separate *Investigation Folder* for each investigation. The *Investigation Folder* should be organized and maintained in such a way that other investigators can review it and learn what the original investigator knew about the case. A human rights organization or court should be able to read the *Investigation Folder* and understand what transpired during the course of the investigation.

Investigators should not simply rely on their own recollection of the investigation but should document it in the *Investigation Folder*. At trial, an investigator who testifies about undocumented facts will be considered unprofessional and may be looked upon with suspicion. A thoroughly documented case presented in an organized *Investigation Folder* reflects the thoroughness and careful work of a professional investigator.

The *Investigation Folder* itself should be a large expandable folder. It should contain individual files for the different types of information gathered. For example, there should be a separate file folder for photographs, witness statements, and sketches. Every significant aspect of the investigation should have a separate file containing the documents pertinent to that part of the case. All of those files should be placed in the *Investigation Folder*.

Each individual file should have a *File Log* attached to the inside cover. Every document contained in the file should be numbered consecutively and recorded on the file log. Anyone reviewing the file should be able to check the documents in the file against the log to determine if any are missing. Because physical

		Commi	unication Log						
	Case # <u>11-005</u> Page <u>1</u> of <u>2</u>								
Number	Date	Name	Substance						
1	Nov 1, 2011	Unknown person	Received anonymous letter claiming that a person by the name of Jose Maldonado was wrongfully arrested and imprisoned by a soldier by the name of Rivera at T. district prison.						
2	Nov. 1, 2011	Commander Jones	Sent letter to Commander Jones requesting an opportunity to interview officer Herbert Rivera						
3	Nov. 3, 2011	45-03	Spoke with witness 45-03 about coming to office for interview. Witness will come Nov. 12th.						
4	Nov. 7, 2011	Commander Jones	Made a phone call to Commander Jones regarding lette of the 1st. He was not in - left a message.						
5	Nov. 11, 2011	45-02	Spoke with family of witness 45-02 about witness's fears about talking with me. They will speak with 45-02 and get back to me.						
6	Nov. 13, 2011	Commander Jones	Commander Jones called. He wants us to meet to discuss my request to interview Rivera. I agreed to meet him Nov 14th at 2:00 PM at his office.						

COMMUNICATION LOG — The communication log is a chronological record of all verbal and written communication in a case. All communications except for those with witnesses should be recorded in this log. A copy of all written communication should be kept in the *Communication Folder*.



evidence is stored separately in a secure storeroom, the log for the *Physical Evidence File* should refer to each of the stored items. The expandable *Investigation Folder* should also have a master index indicating the names of all the individual files contained in the folder. The following sections describe the individual files contained in the *Investigation Folder*. If a computer is going to be used to draft investigation paperwork the directory structure of the computer files should mirror the case folder.

#### **Communication Log**

The *Communication Log* contains a record of all conversations and written correspondence relevant to an investigation. The only communications that are not recorded here are witness interviews; they are recorded in a separate file. Copies of all letters received or sent by investigators should be kept in the file and an entry made regarding the date of the letter, the author, and its substance.

Every phone conversation related to the case should be entered in the log and should include the date and time, the names of parties speaking, and the substance of the conversation. Conversations that occur in person with people other than witnesses should also be entered in the *Communication Log*. For example, an investigator who speaks to a prison warden about interviewing a prisoner should describe that conversation in the communication log.

The Communication Log should be filled out at the time the communication occurs. At the conclusion of the case it should be a chronological record of all communications that occurred during the investigation. The first entry should describe how the investigator was notified of the incident to be investigated. A meticulously kept communication log not only reflects the professionalism of the investigator but also allows him or her to testify very precisely about letters or conversations that occurred during the entire investigation.

RESOURCES FOR HUMAN RIGHTS Witness Code Sheet  Case # 11-005 . Page 1 of 1.						
Number Date Info Sheet Completed Witness Code Number Completed Comments						
1	Nov. 1 2011	Rafael Hernandez	45-01			
2	Nov. 1 2011	Felicia Gomez	45-02			
3	Nov. 1 2001	Theresita Gomez	45-03	Daughter of Felicia Gomez		
4	Nov 3 2001	Dr. Jose Torres	45-04	Doctor who examined the deceased's body.		
5						

WITNESS CODE SHEET – This sheet is the main document in the witness protection system. It is the only sheet that contains the identity of all the witnesses and their code numbers. Extreme caution must be used with this sheet to prevent the unauthorized disclosure of witnesses' identities. This sheet should never be carried in the *Investigation Folder*; it should be kept secure in the evidence storeroom.



#### Witness Statement File

The Witness Statement File contains all of the written statements of witnesses as well as the notes investigators took during these interviews. The Witness Log, which is attached to the inside of the witness file, is a record of all communications with witnesses. It is important that an investigator document every contact with a witness. It is possible that a witness may later recant his or her statement, or may misrepresent a conversation with the investigator. Careful documentation of every communication or contact with a witness offers the investigator some protection against specious claims. The description of

the interview should not include the substance of the interview but should simply indicate whether the interview was a preliminary interview or a comprehensive interview.\* It should also indicate whether there are plans to interview the witness at a later time.

Record the interviews of different witnesses on separate sheets of paper. If it is necessary to interview a witness again, use a separate piece of paper to record the new statement.

# RESOURCES FOR HUMAN RIGHTS Witness Interview Log

Case # 11-005 Page 1 of 2

Number	Date	Name of Investigator	Witness Code Number	Substance/Action
1	Nov. 1 2011	Johnson	45-01	Preliminary interview at incident scene. Witness coming to office tomorrow for detailed interview
2	Nov. 1 2011	Johnson	45-02	same as above
3	Nov. 1 2011	Johnson	45-03	same as above
4	Nov. 1 2011	Ramirez	45-04	same as above
5	Nov.1 2011	Ramirez	45-05	Spoke briefly with witness at scene. Witness will come by office later today for detailed interview.
6	Nov. 1 2011	Ramirez	45-05	Comprehensive interview at office.
7	Nov. 1 2011	Johnson	45-03	Comprehensive interview at office
8	Nov. 1 2011	Johnson	45-02	Comprehensive interview at office
9	Nov 1 2011	Johnson	45-01	Witness could not come to office. Full interview at witness's home.

WITNESS INTERVIEW LOG — This log is part of an overall system designed to protect the identity of witnesses. All communications with witnesses are written on a separate log and kept in a special file. Witnesses are referred to by their code numbers and not their names or other identifying information.

<sup>\*</sup> These terms will be defined in Chapter 7 *Interviewing Witnesses*. For the purpose of this discussion the *preliminary interview* is an initial cursory interview which may occur at the investigative scene. The *comprehensive interview* is a lengthy detailed interview that most often occurs in the investigator's office.



Each sheet should indicate the witness's code number, the name of the investigator conducting the interview, the date, the time, and place of the interview, and the names of all people present.

To protect the identity of the witness, code numbers should be used instead of names. **Witnesses' names should not appear on the notes.** Refer to witnesses by their code numbers. This protects the witnesses should an unauthorized person gain access to the notes. The original written statements of witnesses should be preserved in the same way as physical evidence: in a secure place. Original statements should not be kept in the file but with the physical evidence in the case. Place a photocopy of the statement in the *Witness Statement File* after names and other identifying information have been removed. Duplicating the original statement in this manner protects the witness should the Investigation Folder be lost or stolen.

Be careful about what details are included on the *Witness Interview Sheet*. Avoid references that disclose the identity of the witness. For example, if the witness states that on her way home from work at the Raybok garment factory she saw an incident; information identifying her workplace should be omitted. The woman's workplace is not relevant to the case. If identifying information is relevant, write it on a separate piece of paper and attach it with the *Witness Information Sheet*. Place any biographical information that is relevant to the case on the *Witness Information Sheet*.

#### Witness Information File

At the start of an investigation witnesses may be readily available to the investigator. They may be very cooperative and accessible because they live in the community. But we live in a very transient world.

People are far more likely to move out of their community than a few years ago; this is true in all countries. People leave for a variety of reasons related

HIN<sup>t</sup>

## Protecting Witness Information

Consider treating information that can be used to identify and locate witnesses in the same manner important physical evidence is treated. Place confidential and sensitive witness information in an evidence envelope and seal it with tamper resistant tape. An examination of the envelope will reveal whether an unauthorized person has gained access to the information and the investigator can take appropriate protective measures.

to work and family. It is important that an investigator has enough information about witnesses to be able to locate them if they move. The investigator must be able to find a witness at a later time for further interviews or court proceedings. If he or she cannot be found, it is unlikely that a court will consider the original statement. This is especially important given the unfortunate reality that it often takes several years for human rights complaints to be heard before an international body or court.

The *Witness Information File* should contain detailed background information about each witness. It should include information about work, skills, and plans for the future. The investigator should ask for the names of close relatives and friends whom witnesses will remain in contact with should they move. Most witnesses will provide this information if the investigator explains the purpose for collecting it and assures them that it will be kept in strict confidence.

Taking such detailed information raises genuine security concerns for the safety of the witnesses and the other people they tell you about. To ensure the security of witnesses, it is important to place this



information in the *Witness Information File* which should be kept in a separate, secure place. There is no need for this sensitive and private information to be carried around in the *Investigation Folder*. The information is not directly relevant to the investigation and should only be used to help locate a witness in the future. An investigator has a duty to the witnesses to take whatever steps are necessary to ensure that this information is not used against them or their families. This background information should be recorded on a *Witness Information Sheet*. Create a *Witness Information Sheet* for each witness and keep it in this special file.

The actual information recorded on the *Witness Information Sheet* will vary depending upon the culture and the circumstances of each witness. The goal is not to seek exhaustive intimate details about the witness's life but to obtain sufficient information about the witness and at least three permanent contacts to the community that can be used to find him or her in the future.

Information regarding the witness should include:

- 1. Name
- 2. Address
- 3. Telephone number
- 4. Date of birth
- 5. Place of employment and his or her job skills
- 6. Any national identification number
- 7. Copy of driver's license, passport, national identification card or voter registration card.
- 8. Photograph of witness if it does not unreasonably jeopardize his or her safety.
- 9. The names of at least three significant permanent contacts to the community.

Information concerning the witness's community connections should identify at least three people who are likely to know where the witness is should he or she move from the community. These people should be relatives or friends who do not live in the same household. They should be permanent residents of the community with significant ties to the community such as owning property or a business. Older people are often more settled and less likely to move. Try to obtain the name of at least one elder in the community with whom the witness is likely to remain in contact with.

The *Witness Code Sheet* is a list of all the witnesses in the case. The *Witness Code Sheet* should include the witness's name, a code number and a note indicating that a *Witness Information Sheet* has been completed. This document is perhaps the most sensitive document in the file and should be carefully guarded to prevent access by unauthorized people.



#### Physical Evidence File

The *Physical Evidence File* contains a log of all physical evidence collected during the course of an investigation. Each piece of evidence should have a separate entry containing the following information: a consecutive log number, the date it was collected, the evidence envelope number, the name of the person who collected it, and a description of the item.

If an object is too large to be placed in a sealed envelope, that should be indicated on the *Physical Evidence Log*. The investigator should write a note describing how the item was documented or preserved

evidence. example, For in the case of a the car, investigator will probably thoroughly photograph the The car. investigator should write a note indicating that the car was not kept evidence as but was photographed.

Resources For Human Rights  Physical Evidence Log								
Number Date Envelope Person who found or collected evidence #								
1	Nov 3 2011	1	Investigator Smith	A small knife smeared with what appears to be blood.				
2	Nov 3 2011	Photo taken	Investigator Smith	Chains and shackles used on the victim.				
3	Nov. 11 2011	2	45-01	Bloody clothing alleged to have come from victim				
4	Nov. 13 2011	3	Investigator Smith	A photocopy of a prison detention log showing when victim was brought to prison				

PHYSICAL EVIDENCE LOG — All physical evidence in an investigation should be listed on this log. If evidence is too big to store describe how it was documented.

#### Photograph File

A copy of all photographs related to the investigation should be kept in the *Photograph File*. This should include photographs taken by the investigator or supplied to him or her by witnesses. The *Photo Log* should contain a separate entry for each photograph containing the following information: the log number, the date the photograph was taken, the name of the photographer, and a description of what the photo depicts.

When describing photos, include enough information about them in order that they can be distinguished from each other. For example, if there are several pictures of a corpse, include some unique detail about each photo (i.e. face-up, etc.). Write the log number corresponding to each photograph on the back of each picture to help others match the photos with the descriptions on the log. If the date the picture was taken is not obvious from the photo itself write it on the back. A duplicate of the digital image files should be burned onto a CD or DVD and stored employing the same procedures used for physical evidence.



#### Sketch & Diagram File

The *Sketch File* should contain all of the *investigative scene sketches* created during the investigation. The *Sketch File Log* should contain a separate entry for each sketch and should include the sketch number, the date it was drawn, the name of the person who drew it, and a description of what the sketch depicts.

All *investigative scene sketches* should be kept in this file. If the investigator took measurements or drew draft sketches in the case, these should also be kept in this file.

	Resources For Human Rights  Photograph Log								
Number Date Photo taken Photographer Case # 01-005 Page 1 of 1    Case # 01-005 Page 1 of 1   1   1   1   1   1   1   1   1   1									
1	Nov. 7 2001	45-01	A photograph of victim's body taken prior to burial						
2	Nov. 11 2001	Investigator Smith photograph of area alleged to have been the scene of the victim's beating - facing North							
3	Same	Same photograph of scene facing West							
4	Same	Same	photograph of scene facing South						
5	Same	same	photograph of scene facing East						
6	Nov. 11 2001	Investigator Smith	Close-up of blood spots on ground at area of beating.						

PHOTOGRAPH LOG — This log contains a record of all photographs that were taken in the case. It will help to identify the photographs and determine who took them.

	Resources For Human Rights Sketch Log							
Case # 11-005 Page _ 1of _ 1								
Number	mber Date Sketch Name of Person Description of Sketch Made Drawing Sketch							
1	1 Nov. 7 2011 Investigator Smith A sketch of cell area in prison where victim was found dead.							
2	2 Nov. 11 2011 Investigator Smith Interrogation room of prison where victim spent 8 hours.							
3	same	same	Rough sketch of prison yard showing location of guard towers					

SKETCH LOG – This log is a record of every *investigative scene sketch* that was drawn during the investigation.



#### **Document File**

In many investigations there may be important documents obtained from a court, a prison, a witness, or other sources. A copy of any document obtained during an investigation should be kept in the *Document File*. The original should not be kept in the *Investigation Folder*. A clear photocopy of the document should be made as soon as possible and the original should be placed in a sealed *evidence envelope* and kept with the rest of the physical evidence in the case. The photocopy should be kept in the *Document File* and used during the investigation. The *Document Log* is a record of all documents gathered in an investigation; every document should be logged into the *Document Log*. A separate entry should be made for each document and should include the following information: the log number, the date it was received, the number of the evidence envelope, the name of the person who collected it, and a description.

Resources For Human Rights Document Log								
			Case #	# 11-005 Page 1 of 2				
Number	Date Rec'd	Envelope #	Person who found or collected document	Description of Document				
1	Nov 3 2011	6	Investigator Smith	Prison sign-in log				
2	Nov 3 2011	7	Investigator Smith Victim's death certificate					
3	Nov. 11 2011	8	Investigator Smith	Prison sign in sheet showing all guards on duty the night the victim died				
4	2011 and the mean area							

DOCUMENT LOG – Every document obtained during the course of an investigation should be recorded on this log. The original should be kept in a safe place with other physical evidence and a copy kept in the *Document File*.

### **Section 3.3 Record-Keeping Issues**

#### Case Management File

The records in the *Investigation Folder* must not only accurately document the results of the investigation but must also accurately document the investigation itself. The *Investigation Folder* must contain the names of the investigators and describe their activities. A court reviewing the case will have to assess the integrity and effectiveness of the investigation before it can consider the evidence gathered by that investigation.

Accountants design and maintain record-keeping systems that accurately track money. If they design them well, others reviewing their work can determine when money came into a company, what was done with it, and when it was spent. When designing forms and record-keeping systems for a human rights organization create a system that records every aspect of an investigation. The records should clearly reveal what people were involved in the investigation, what they did and when.



The integrity of the investigative team is always at issue in a review of the investigation. A court must have confidence in the veracity and effectiveness of the investigators if it is to draw conclusions from the evidence gathered by them. Complete, detailed records, created as the investigation progresses, reflect well on the investigators. Incomplete records or records created after the investigation is over arouse suspicion in judges and cast doubt upon the evidence itself.

A good system of record keeping should be established before the first investigation commences. Such a system not only achieves the important goals described above but also facilitates a more efficient and professional investigation. The following section offers some suggestions for the design of a good record-keeping system.

#### **Investigator Activity Log**

One of the simplest ways to document an investigation is for each investigator to keep a diary of all his or her activities during the investigation. Every time an investigator performs work he or she should write an entry in the diary indicating the type of work, the date and time it was done.

How detailed a description is necessary will depend upon the activity involved. For example, if an investigator interviewed a witness and completed a *Witness Interview Sheet*, then a short note indicating that this occurred (referring to the witness by code number) is sufficient. If the work involved examination of an investigation *scene* for several hours and no evidence was found, the diary should describe the search in detail. The diary itself becomes evidence that there was no physical evidence at the scene. The diary should not be a needless repetition of information found elsewhere in the folder; it should complete the *Investigation Folder*.

During an investigation many activities will not result in the discovery of evidence. Although these efforts fail to yield evidence, they do indicate the quality of the investigation. Such diary entries provide documentary proof of the thoroughness of the investigation and eliminate speculation regarding what the investigator did and whether a particular piece of evidence might have been found if the investigator had only looked in a particular place.

An alternative to each investigator keeping a personal diary would be the use of *Activity Logs*. An *Activity Log* is a form issued to each investigator for recording all his or her work activities during the

Resources For Human Rights Activity Log								
	Investigator John Smith Case # 11-005 Week 6/7/11 to 13/7/11							
Number	Number Date Activity							
1	1 Nov. 7 2011 Visited prison to sketch cell areas. 8:00 –9:15							
2	2 Nov. 7 2011 Interviewed 01-005-01 and 02 and 03 1:00 - 4:00							
3								

ACTIVITY LOG - It is important that all investigative activity is documented whether or not it results in additional evidence. One way of doing this is for every investigator to fill out an *Activity Log*.



week. The information recorded there is kept in the same way as the diary and at the end of the week is turned in to the lead investigator. The lead investigator should keep all the *Activity Logs* in the *Case Management File* of the *Investigation Folder*. If investigators are working on more that one case at a time they should photocopy the logs so that each *Investigation Folder* has a copy of their activities.

#### **Identifying the Work Product**

It is very important that the *Investigation Folder* record the efforts of every investigator involved in a case. Each document in the folder must indicate who is responsible for the work described in it. While this may be an easy task when only one or two investigators work on a case, it becomes increasingly difficult as additional investigators assist. Each investigator's work must be clearly identifiable for three reasons. First, documents and forms only summarize what an investigator learns during an investigation. When the lead investigator reviews the case or when the case is presented to a court, it will be necessary to hear from each investigator in person. There will be questions and clarifications that only the investigator who did the work can answer.

Second, most courts and tribunals prefer information to come directly from witnesses actually present in court. Many domestic courts will not permit the use of hearsay evidence. While international courts do admit hearsay they have a strong preference for non-hearsay evidence information on material issues. The lead investigator will not be permitted to testify about the work of other investigators. Each investigator will be required to appear personally and testify about his or her own work. The court must make its own determination of that investigator's reliability and credibility.

Finally, the documents in the *Investigation Folder* must clearly identify who found each piece of physical evidence. If the evidence was recovered by a witness and given to an investigator, there must be a clear record of that. Courts will require each person who found evidence to testify as to how they found it before it will be considered.

Investigators should develop a habit of clearly identifying all of their work. When designing forms, always include a space for the investigator to write his or her name. Someone reviewing the file must be able to quickly and certainly identify those people responsible for the information contained on the form.

During the course of an intense investigation, overworked investigators may want to help each other fill out forms. After completing a number of witness interviews, an investigator may be tempted to brief others about what the witnesses said and seek their assistance in filling out the *Witness Interview Sheets*. This is dangerous and can lead to inaccuracies and future accusations that records were falsified. This practice should be forbidden. When your organization drafts a code of conduct, consider incorporating a ban on this practice. The lead investigator should impress upon the others that their personal integrity and the integrity of the entire investigation requires each person to report only on those events which he or she personally witnessed.

#### **Ensuring Against Loss of Investigation Folder**

The human rights investigator should exercise great care to safeguard the *Investigation Folder* against loss or theft. The loss of the folder can irreparably damage the investigation and seriously jeopardize witnesses' safety. If possible, keep the *Investigation Folder* in a secure place in the office. When investigators must leave the office to pursue leads, they should take only those parts of the folder that are



necessary. Once an investigation is underway the *Investigation Folder* should be considered a vault where important documents are kept and not a means of carrying blank forms that may be needed.

Besides safeguarding the *Investigation Folder*, the human rights investigator must also prepare for its loss. An inquiry into an important matter cannot end because a file was inadvertently lost or stolen by someone trying to impede the investigation. The best way to ensure that the loss of a *Investigation Folder* does not irreparably harm the investigation is to maintain a photocopy of every document in it. Original documents should be photocopied and kept in a separate and secure place. Investigators should work from photocopies of the original documents whenever possible. **The organization should adopt a policy whereby no original documents are permitted out of the office.** In recent years some investigators have adopted a practice by which they bring an electronic copy of the entire investigative file with them when they are working in the field. This practice is fraught with danger for witnesses as computers and memory sticks can be easily lost or stolen. A minimum amount of case information should be taken into the field in an encrypted format.

Whenever audio and video recordings are recovered from an *investigative scene*, it is very important that they are duplicated and the originals securely stored. Investigators will need to repeatedly view and listen to these recordings; they should not work with the originals. A substantial amount of evidence can be lost by inadvertently pushing the wrong button or using a defective machine. Original recordings should be duplicated on a quality, reliable machine. Once copies are made, the original media should be placed in sealed evidence envelopes and stored carefully with the other physical evidence in the case.

#### **Section 3.4 Protecting the Identity of Witnesses**

In most investigations witnesses have reservations about cooperating because they fear retribution. Depending upon the case, this belief may or may not be well founded. Even unwarranted fears can seriously impede an investigation. Witnesses who are fearful may not cooperate or may withhold the information that they fear jeopardizes them. They may describe an event with great detail but falsely claim they did not see the assailant. It is imperative that both the investigator and the witness fully appreciate the risks involved in cooperation. The investigator should help the witness distinguish between those fears based upon real threats and those that are the product of a nervous imagination. The investigator must be candid about the actual risks and what, if anything, can be done to protect the witness.

This task is easier if the investigator has a good reputation for vigilantly protecting the identity of witnesses and candidly discussing any risks with them. Most witnesses realize that your organization's resources are limited and may be unable to relocate them and their families. They appreciate an honest assessment of the risks involved and a truthful discussion of what can be done should they be threatened. Since it is the witnesses who must face these risks, they must assume them voluntarily after being candidly informed about them.

One of the best ways to reduce the risks of retaliation against witnesses is to carefully guard their identities. People seeking to intimidate them can be thwarted if their identities are kept secret. Impress upon investigators the importance of protecting the identity of witnesses. Prior to actual court proceedings, there is rarely a need for an investigator to reveal the identity of a witness.

Investigators often erroneously believe that it is all right to use the names of witnesses when interviewing other witnesses. They assume that all of the witnesses, by virtue of their involvement in the case, share a mutual bond and will not divulge any information about each other. The investigator should assume that everything he or she says in front of a witness, including the names of other witnesses, will be



repeated to others who should not have access to that information. **Investigators should never refer to other witnesses by name when conducting an interview.** Disclosing the names of other witnesses to a witness needlessly endangers them and destroys any confidence the witness might have that the investigator will keep his or her identity secret.

There are ways to design a record-keeping system that can minimize the risks for witnesses. By creating a system that carefully guards the identity of witnesses, investigators can reduce the risk that witnesses will be subject to retaliation.

#### **Coding the Witnesses**

Referring to witnesses by code numbers in forms and documents helps keep their identities secure. Any system will work if it protects the identity of a witness and is easy to use. The lead investigator should establish a uniform system that all investigators use to assign code numbers to witnesses.

The coding system should permit someone with access to both the *Witness Information File* and the *Witness Interview File* to easily and reliably identify which witness gave which statement. Conversely, it should be impossible to identify a witness by looking at the *Witness Statement File* alone. Therefore, the coding system should not include information regarding the age or sex of the witness, or contain the initials of their name. It is not necessary that the code provide any reminder of the witness's identity; investigators familiar with the case will invariably learn the code number and can usually recognize the witness from the content of the statement itself.

#### **Encrypting Computer Files**

Computers are an excellent tool for organizing the information gathered during complex investigations. However, a human rights investigator must consider the security risks involved before placing sensitive information on a computer. Information on a non-secure computer can be copied by anyone with access to that computer. Files can be copied and taken from the office without any indication that they were taken.

The simplest solution to this problem is to install an encryption program on the computer. Simply put, an encryption program uses complex mathematical formulas to encode the digital information on a computer, making it virtually impossible to access that information without a password. These programs are easy to use and newer versions offer a very sophisticated level of security for minimal cost. Unless investigators are certain that their computers are completely secure, they should use an encryption program.

Even after installing an encryption program, exercise great care when using the Internet or the World Wide Web. It is possible for others to look at the contents of your computer without your knowledge when you are on-line. If possible, do not keep sensitive information on any computer that will be used to work on the Internet.

## **Section 3.5 Storing Evidence**

One of the best indications of an investigator's professionalism is the way in which he or she stores evidence. It is critically important to establish a secure storage area designated for evidence. Once an investigator takes possession of evidence, he or she is responsible for its care. The loss or deterioration of



physical evidence always reflects poorly on the investigator and can be fatal to the case. Suitable storage areas for evidence require two things. First, that the place is safe from the weather and other environmental factors that can damage evidence, and second, that it be accessible only to authorized investigators.

To protect evidence from environmental factors, the evidence storage area should be dry, cool, and protected from rain and direct sunlight. It should be safe from excessive heat, cold, and moisture. In addition, evidence containing paper and wood must be protected from termites. The area around the evidence store should be treated to prevent insect infestation. Bloody or wet clothes should not be placed with other evidence until they have thoroughly dried and been wrapped in paper or sealed in a paper Evidence Envelope.

	Resources For Human Rights Evidence Storeroom Log								
#	Date	Name	Case	Env.	In	Out	Signature	Description	
1	3/12/ 01	Inv. Smith	01- 005	2	X		John Smith	Bloodstained clothes	
2	Same	Same	Same	3	Χ		John Smith	Wooden stick	
3	6/12/ 01	Inv. Smith	01- 006	2		Χ	John Smith	Took clothes to show witness	
4	7/12/ 01	Inv. Smith	01- 006	2	Χ		John Smith	Returned clothes taken out on 6/12/01	
5	9/1/0	Inv.	01-	3		Χ	Jose Garcia	Gave wooden stick to	

EVIDENCE STOREROOM LOG - Anyone entering or removing evidence from the evidence storeroom should make a record. It is very important that once evidence is taken into custody its whereabouts can be accounted for every day it is in custody.

To prevent anyone from tampering with evidence, the number of people who have access to the storeroom should be limited. A log should be kept of any person who enters or leaves the evidence room. Any persons removing evidence should sign the log indicating they have removed evidence. They should sign the evidence log again when they bring the evidence back.

If possible, your organization should set aside a room dedicated to the storage of evidence. The room should be outfitted with shelves to keep evidence off the floor and separate from other evidence. Place a sign designating a separate shelf for each investigation. Keeping the room well organized will make it easier to keep track of the evidence. If your organization is unable to dedicate a room solely for evidence storage obtain a large secure cabinet in which evidence can be stored. The cabinet should be placed in the supervisor's office or another office without public access.



## CHAPTER 3 SUMMARY

Before beginning any investigation, the human rights investigator must create an *Investigation Kit* and *Investigation Folder*. With both of these the investigator is prepared to investigate many different types of cases in an organized and methodical manner.

## PROTECTING WITNESSES

The Investigator must take steps to safeguard the Witnesses. These include:

- 1. Keeping any information which can be used to identify a witness in a separate secure place.
- 2. Assign witnesses code numbers. Use these code numbers instead of their names in investigative documents and reports.
- 3. Do not store any witness information on a computer unless that computer is secure.
  - 4. Video record witness statements. Once a statement has been recorded there is less incentive to harm the witness.

## The Investigation Folder

The *Investigation Folder* contains all the files and blank forms an investigator is likely to need in an investigation. By carrying a prepared *Investigation Folder* to the investigative scene, the investigator can document physical evidence and gather witness information in an organized and efficient manner.

The Folder should contain the following files:

- 1. Case Management File
- 3. Witness Statement File
- 5. Photograph File
- 7. Sketch & Diagram File
- 2. Communication File
- 4. Physical Evidence File
- 6. Document File
- 8. Witness Information File



## Chapter 4

### PHYSICAL EVIDENCE

What is physical evidence?

## Physical evidence is any object that can provide information about the event being investigated.

It may include any weapons used, the condition of a body, the appearance of the surrounding area, and the clothes of people involved. Physical evidence includes microscopic matter and other substances undetectable to the unaided senses.

Before discussing the identification and collection of physical evidence, I want to relay an important lesson about it that an experienced prosecutor taught me. He advised me to think of the physical evidence in every case as a witness.

You must learn to listen to the physical evidence and hear what it is trying to tell you about what happened in the case. In most cases the physical evidence will be your most reliable witness. Human witnesses may forget, they may have a motive to lie, or be afraid to testify; they may move away, or even die. Physical evidence on the other hand, will never lie to you, is rarely mistaken, and if you take some basic steps to preserve it, it will be available to tell its story for a long time. Learn to listen to what it has to say.

There is a great deal of truth in this lesson. If you learn how to "hear" what physical evidence can say about a case it can become your best witness, a witness you can trust to tell the truth and to assist in exposing dishonest or unreliable witnesses. While a clever and deceptive person can alter physical evidence (this rarely happens when the investigator responds promptly) a careful examination of all the physical evidence in a case will reveal which objects were altered or placed at the scene to deceive investigators.

The greatest challenge in collecting evidence is that it is impossible to know which objects are evidence during the brief time available to collect them. Therefore, experienced investigators presume that every object found at the scene of an incident might be evidence. Nearly every investigator has learned this lesson the hard way by failing to collect an item that later proved to be important. The best practice is to assume that every object is significant and to treat it as evidence. An object that appears insignificant at the beginning of the investigation may ultimately prove to be a key piece of evidence as the case unfolds. The importance of individual items only becomes apparent after all of the witnesses have been interviewed and all of the *investigative scenes* have been examined. A seemingly insignificant object often becomes critical when it corroborates or contradicts the account of an important witness.

In order to learn all that a piece of evidence can say about an incident it is sometimes necessary to have forensic experts review and test it. While an experienced investigator can draw some conclusions from his or her own observations of the evidence, the opinion of a forensic scientist can add a great deal to an understanding of what happened. These specialized scientists can provide valuable information about an incident by analyzing the evidence collected from an *investigative scene*.



This book cannot give the human rights investigator competency in the many fields of forensic science. However, by being familiar with what these scientists do, and learning how to properly preserve evidence, an investigator can assist the work of forensic scientists. In many cases the forensic scientist will not visit the investigative scene and has to rely on the investigator's work. The accuracy of their scientific findings depends directly on the competency and integrity of the initial investigator who came into contact with the evidence.

### **Section 4.1 Identifying the Investigative Scenes**

Before processing any *investigative scenes*, the investigator must first identify which locations to visit in the search for evidence and when to go to them. Failure to identify all the investigative scenes can result in the permanent loss of important evidence and affect the overall investigation. This section will offer some suggestions on how to identify all of the investigative scenes relevant to an investigation.

After learning about a possible human rights abuse, one of the investigator's first tasks is to identify all the places where physical evidence may be found. A common mistake of inexperienced investigators is failing to recognize all of the important *investigative scenes* in a case. Investigators with some police background customarily think of processing the "crime scene," the place where the crime took place. In addition to the significant evidence recovered at "crimes scenes" there is usually other important evidence to be found at other locations.

## An <u>Investigative</u> <u>Scene</u> is any place where there <u>might</u> be physical evidence related to the incident being investigated.

This definition does not limit the *investigative scene* solely to where a body is found or where an attack occurred. The word "might" is emphasized because an investigator must process any location where evidence could be found, and not only where the investigator knows evidence will be found.

It is not easy to identify all the investigative scenes in the early stages of an investigation. At that time it may not be clear who is involved, what happened and where key events took place. The investigator must work quickly to learn as much about the case as possible in order to begin formulating an investigative plan. The most effective way to do this is to conduct *preliminary interviews* to help orient him or her to the case.

A *preliminary interview* is a relatively brief interview conducted with potential witnesses out of earshot of other witnesses. This interview is the first of at least two interviews which the investigator must conduct with each witness. A *preliminary interview* is not a thorough interview and has the limited goals of orienting the investigator and assisting him or her in identifying *investigative scenes* and other potential witnesses. This is discussed in detail in Chapter 7. Experience will help the investigator identify the best people to interview and good questions to ask. I suggest that you begin with:

- 1. The victim or the victim's friends and family.
- 2. Witnesses who were physically present at the incident.
- 3. Witnesses who claim to know who committed the act being investigated.

<sup>•</sup> As the case develops it may be necessary to have "follow-up" interviews with witnesses.



Always maintain a healthy suspicion when interviewing people who claim to know who committed the act you are investigating. Bystanders to a violent event often speculate about who is responsible. The human rights investigator cannot allow mere speculation to dictate the course of an investigation.

Misplaced belief in such a witness can cause serious problems in an investigation. An investigator should ask each person claiming to know who committed the act the basis

Helpfu Hint

#### Media Photos and Videos

In many cases the media can be an important source of evidence. Get to know the reporters and television crews. If you investigate a case involving a public demonstration it may have been captured on video or audio tape. Careful review of these tapes can reveal a great deal about the event. The assassination of President John F. Kennedy was captured on the movie film of an ordinary bystander filming the presidential motorcade (the Zapruder film).

Sometimes media sources are reluctant to give out anything other than that which was publicly released. But they may permit human rights investigators to examine all of the audio and video-tapes including those parts not shown to the public (the out-takes). Investigators should cultivate media contacts in their countries.

for his or her belief. Unless the witness can provide direct evidence of the person's involvement, the investigator should not allow that information to limit the scope of the investigation. A mistaken focus on a single or narrow group of suspects is a fatal flaw. The investigator should remain open to the possibility that many people could responsible and trust that careful investigation will reveal the true identity of the people responsible.

Once several *preliminary interviews* have been conducted, certain locations will become clear

*investigative scenes* requiring examination. Listed below are some possible *investigative scenes*. Keep this list in mind when speaking with witnesses and develop a list of relevant *investigative scenes* for the case you are investigating.

#### **Possible Investigative Scenes**

- 1. Any area where the <u>victim</u> was present, immediately prior to, during, or after the incident. This could include:
  - the hospital where the victim was treated,
  - the victim's home,
  - the victim's workplace,
  - the car or bus the victim traveled in, or
  - the road or path the victim took to and from the scene.
- 2. Any area where possible <u>suspects</u> were immediately prior to, during, and after the incident.
  - their car,
  - their workplace,
  - their home,
  - the road or path they took to and from the scene.
  - Any place where they may have gathered to plan the attack.
  - Any place where they may have gathered after the attack.



Consider the following case:

A political leader opposing the current government assembled with a small group of supporters to protest the government's policies. Although the assembly was peaceful, a car drove past the assembly and fired an automatic weapon out of the window of the car killing 4 people and injuring 38 including several members of the press who were covering the demonstration. The wounded were taken to 4 area hospitals and the dead were taken to 3 different churches for burial preparations. A witness to the event believes that she saw the car used in the attack abandoned at the end of an alley near her house.

How many different investigative scenes are there?

Name of Scene	Possible Evidence
Site of demonstration	<ul> <li>bullets and shells</li> </ul>
	<ul> <li>bloody clothing</li> </ul>
	<ul> <li>photographs of scene</li> </ul>
Area hospitals	<ul> <li>clothing of victims</li> </ul>
	<ul> <li>bullets recovered by doctors in surgery</li> </ul>
	<ul> <li>photographs of injuries sustained by victims</li> </ul>
News agencies	<ul> <li>video-tape, audio-tape, photographs may</li> </ul>
	contain a record of the attack as well as the
	car and its occupants
Churches	<ul> <li>photographs of victims</li> </ul>
	<ul> <li>clothing of victims</li> </ul>
Homes of the victims	<ul> <li>clothing</li> </ul>
	<ul> <li>photographs taken by individuals</li> </ul>
Roads between scene of	• Evidence discarded from the car
attack and where the car was found.	
Abandoned car	• bullets or shell casings
	• fingerprints of assailants
	• personal effects left behind
	<ul> <li>Information about the car which might lead</li> </ul>
	to the owners and possibly the assailants.
	<ul> <li>Cigarettes in ashtray may provide trace</li> </ul>
	evidence that can identify the car's
	occupants.

The number of scenes will depend upon the circumstances surrounding each case. Even if you are sure that you will not be able to process some of the *investigative scenes*, make a note of them and include them in your report along with the reason you could not examine those scenes.

When investigating the death of a person in police custody, every location where the deceased was, while in custody, is an *investigative scene*. Identify every room the person was interrogated or kept in, as well as all vehicles used to transport him or her. Even if you do not have access to all of these areas, each possible *investigative scene* should be listed in your report.



When investigating a sex crime case any location where the victim or suspect went after the incident is just as important as the place where the attack occurred. Trace evidence is very important in these cases and is likely to be found on the person and the clothes of both the victim and the attacker. Obtain a good description of this clothing in your *preliminary interview* and identify *investigative scenes* where it may be found.

After identifying all of the *investigative scenes*, formulate a plan for visiting and processing each scene. The order in which they are processed will depend upon their relative importance and the likelihood that evidence may be lost sooner at some scenes. Prioritize the scenes so that you have the best opportunity to collect evidence before it is lost or tainted. If there are indoor and outdoor *investigative scenes* it may be prudent to process the outdoor ones first before bad weather destroys any evidence. Some cases will present difficult choices between several scenes.

One way to avoid this difficulty is to have staff secure all of the *investigative scenes* to guard against contamination and then process them in an order best suited to obtaining the most important and fragile evidence. Securing an *investigative scene* requires no formal training and involves little more than

**CAUTION** 

## **Problems and Procedures**

#### **Finding All the Evidence**

#### Problem:

Investigators sometimes overlook places where important physical evidence is located. They may only visit the place where an attack occurred or where a body was found (the crime scene). Evidence in other locations is often missed.

In every case, physical evidence will be found in more that one location.

#### Procedure:

The exact locations where evidence will be found depends upon the individual case. As a general rule, look for evidence in the following places:

- 1. Any place where the victim was immediately before, during or after the incident.
- 2. Any place where possible perpetrators were immediately before, during or after the incident.

preventing unauthorized people from entering the scene. Consider the benefits of training community leaders to secure *investigative scenes* until the investigator's arrival.

In most cases, the initial investigative scene will be where an attack occurred or a body was found. While these locations are good places to start, be aware of the other possible places where evidence might be. Before beginning to the "crime scene" process consider what other areas should be processed and prioritize your work accordingly. Depending upon the case, the scene of the attack may easily be safeguarded while another important location may not. Assess each individual case carefully in deciding the order in which to proceed.

The problem of deciding when to visit each of the *investigative scenes* is further complicated in cases where witnesses are injured or may become unavailable for interviews. Consider the political demonstration example above. It would be a mistake to spend several hours meticulously processing the scene of the attack if during that time, seriously injured victims were dying at the hospital. In this example, an experienced investigator would try to secure the attack scene for later processing and go to interview the seriously injured. Of course, if you have enough staff you can assign members of the team to different tasks



and work simultaneously on several aspects of the investigation. The person in charge of the investigation should use *preliminary interviews* to assess the entire case and decide upon an investigative plan that has the best chance of capturing the most evidence.

Whatever the order, it is important to remember that evidence changes and disappears over time. The faster the investigator responds to a scene the more likely important evidence will be recovered. Waiting even an hour can result in significant changes to the *investigative scene* and the irretrievable loss of evidence. Corpses and trace evidence undergo rapid changes in the hours

after an incident, particularly in tropical climates and outdoor locations.

# Problems and Procedures

#### **Processing the Investigative Scene**

#### Problem:

Processing an *investigative scene* involves several important tasks. In the confusion surrounding an incident, important evidence is often lost, overlooked, or contaminated by investigators.

#### Procedure:

The best way to ensure that all the important information and evidence is gathered from an *investigative scene* is to process the scene using a careful procedure that is practiced in advance.

There are six steps in Processing an Investigative Scene

STEP ONE - Secure the Scene

STEP TWO - **Observe** the Scene

STEP THREE – **Photograph** the Scene

STEP FOUR - Sketch the Scene

STEP FIVE - Collect Evidence

STEP SIX - **Preserve** Evidence

If the investigation leads to some type of legal proceeding it will be necessary to show how each piece of evidence is relevant to the inquiry. The court will not consider a piece of evidence unless there is a clear link between the object and the subject of the inquiry. A response to investigative scene facilitates making this connection. In the example above, it is easier to connect a shiny brass shell casing discovered hours after the attack than to connect a tarnished shell casing found days later. The intervening delay makes it difficult to connect the shell to the attack. Failure to collect evidence in a timely manner may result in a court refusing to consider it because its link to the inquiry is too tenuous.

## Section 4.2 Processing an Investigative Scene

Keeping in mind that physical evidence may ultimately be the most valuable witness in an investigation, it is important that the investigator learn the skills necessary to identify physical evidence, make observations about it, and properly preserve it.

This section outlines procedural steps and techniques; describes important concerns for each step, and suggests ways to methodically implement these steps under difficult working conditions. Before beginning any processing at the scene the lead investigator should record the exact time the team arrived at the scene.



This information will be important for several reasons and any tribunal inquiring into the incident will want to know when the investigators arrived.

#### Step One: Secure the Scene

Once an investigator arrives at a scene and assumes control over it he or she is responsible for what happens there. While an investigator might not be held responsible for contamination of any evidence before arriving, once there, he or she is accountable for any further contamination. When arriving at an *investigative scene*, take immediate steps to safeguard the scene from further interference and loss of evidence. Take precautions to ensure that investigators do not corrupt the scene and secure it to prevent bystanders from compromising it.

Securing the scene gives the investigative team the time and space necessary to methodically process it and ensures the proper collection of evidence. The person securing the scene should ask people at the scene to stand in a place where they will not contaminate evidence and wait for the lead investigator to arrive. This first person at the scene should secure it and prevent others from entering it or doing anything that might contaminate evidence such as walking on it, touching objects or smoking cigarettes.

#### Securing an investigative scene: inside a building

If the *investigative scene* is in a building, the easiest way to secure it is to ask all people not working on the team to leave and then post guards at the entrances. The investigator should record the names of all people who were present when he or she arrived; they may be important witnesses. They may also be able to describe what was altered at the scene before the investigators arrived.

When securing the entrances, be aware that perpetrators probably entered or left through them. Entrances may contain trace evidence such as latent fingerprints or blood drops. If an entrance might contain evidence it must be treated as an *investigative scene* and secured in a way to prevent the destruction of any trace evidence. For example, station the guard several meters in front of the doorway to control access to it.

#### Securing an investigative scene: outside locations

Outdoor investigative scenes are more difficult to secure because they are more public and are exposed to the weather. When a crime occurs inside a room, the walls determine the boundaries of the *investigative scene*. Outside, it is more difficult to establish the boundaries of the area that needs to be processed. Try to find an eyewitness who can describe what happened and where it happened to help establish the scene's boundaries. Just as doorways are important areas for processing, so too is the path that a victim and suspect used to arrive and leave an outdoor location. Try to identify how they entered and left the scene and secure those areas as well.

An outside scene should be secured by surrounding it with a rope and hanging the sign from your *Investigation Kit* (asking people not to enter) from it. Most people will respect this request and remain off the scene when they know who you are and what you are trying to do. When placing the rope, leave enough room around the perimeter for investigators to be able to walk inside the rope without contaminating evidence.

Once the scene has been secured take a moment to observe the scene and identify those areas where you can walk without contaminating evidence. Disturbed grass and blood may indicate where most of a



struggle occurred. Indicate these areas to staff and instruct them to avoid them unless actually processing them. The lead investigator should not only control access to the scene, but should also control where in the scene investigators may go. When walking in an area where evidence is strewn about, walk around evidence rather than stepping over it. Investigators should take the same path back and forth across the investigative scene; if some contamination is inevitable it is best that it be confined to a single path.

The integrity of outdoor scenes is also threatened by the weather. If it begins to rain before the scene can be processed, quickly photograph the scene and then cover it with a clean waterproof covering. If night comes before the scene is processed and there is no way to illuminate it, secure the scene, post guards to protect it overnight and return in daylight to finish. Attempting to process a scene in the dark risks contaminating or destroying evidence.

#### Securing an investigative scene: other cases

There may be *investigative scenes* that can not be secured. Perhaps you do not have the authority to secure a scene or securing it would jeopardize your safety. The scene may be in the control of local police or military investigators who will not permit human rights investigators to access it. In such cases someone should observe the scene and record all activity there. In such cases an investigator should be assigned to make a written record of everything moved at, removed from, or carried onto the scene. Once the investigators can access the scene, this log will help reconstruct what the scene was like at the time of the incident.

In the political demonstration example above, the investigator may decide to interview seriously injured victims before processing the scene even though it cannot be properly secured. In this case, an

investigator should remain at the attack scene and observe all activity from a safe distance.

Hint Hint

### Using Witnesses at the Investigative Scene

In addition to making your own observations at an investigative scene consider asking a person:

- 1) who is clearly not a suspect, and
- 2) who is familiar with the location,

to look at the scene with you.

Ask the witness whether or not any objects appear to be missing or out of place? Are objects present that were not there the last time the witness was?

A witness familiar with the scene can provide valuable information and help you understand significant aspects of the scene which may not be readily apparent.

Consider the following case:

You respond to a murder scene. There is no obvious evidence of motive. You ask a close friend of the victim to look at the scene. That person immediately notices that a document the victim was working on criticizing the government is missing. This is an important lead you would not have were the friend not consulted.

This observer should be able to describe all activity at the scene as well as the identities, if possible, of the people entering and leaving the scene.

You should consider training community leaders how to secure an investigative scene. Such people are often willing to be trained and eager to accept the responsibility when the occasion arises. Train them recognize when an area should be secured and how to do it. Most will cooperate and secure a scene if they can do so safely. In most cases local leaders may be able to secure a scene before human rights investigators arrive and prevent the contamination or loss of evidence.

## Step Two: Observe the Scene

Before processing any evidence at



the *investigative scene*, it is important that you examine it carefully and document your observations. Take several minutes to simply look over the scene and study the various objects there. Try to imagine what might have occurred, how the scene may have looked before the incident, and what changed during its course. For example, in the case of a person killed by gunshot, look for blood splatters and trails to determine where the victim might have been standing when he was shot; concentrate the search for bullet shells and bullets in that area. Taking the time to carefully observe the scene will help the investigator to process it in a way that maximizes the amount of evidence recovered.

Careful observation of the scene will also provide important clues about how and when the incident took place. Although experienced investigators will readily recognize important features of a scene a novice investigator can use common sense to also make important observations. In every case, it is important to look for particular features that may provide important information before collecting any evidence.

#### Evidence of time of death

Examine murder scenes to determine if there are any clues indicating when the murder occurred. Look for objects that change quickly over time like a glass of ice; a burning cigarette, a mosquito coil, ashes in a fireplace, cold or hot food; or food that changes color when exposed to air (such as cut apples, bananas or mangos). Look for videocassette recorders or audiotape players that may contain a tape that is still running. Look at the lights in the room. Are they on? Did the attack occur at night? Any of the above observations will help establish a time frame for the murder. If the incident happened several days ago look for newspapers or postmarked letters that might assist in establishing a time frame.

Since you are looking for objects that change rapidly over time it is important that you look for these items first. Carefully examine the scene for any indication of when the incident occurred. Document and photograph such evidence as soon as possible. Later, you may be able to calculate when the incident occurred. For example, if upon arriving at a murder scene you observe a burning cigarette, extinguish it immediately and preserve it in a way that does not damage latent prints or trace evidence (saliva). Later, another cigarette can be lit and the time calculated for how long it takes for the cigarette to burn as much as the one recovered at the scene. Subtracting that time from the time the team arrived precisely fixes the time when the cigarette was lit and a living person was present (victim, witness or suspect).

In the case of an audiotape or videocassette stop the tape in a way that does not contaminate possible latent fingerprints on the tape or the device playing the tape. At a later time the tape can be rewound and replayed to estimate when it was turned on helping to establish the time frame of the incident.

#### Evidence of struggle

Another important observation is to look for evidence of a struggle. Evidence of a struggle between a victim and an assailant is valuable in reconstructing what happened. When looking for signs of a struggle, carefully examine any corpse found at the scene as well as the area surrounding it.

The condition of the surrounding objects may indicate whether or not there was a struggle. Do some of the objects appear broken or out of place? Do some objects appear to have been pushed over in a struggle? Do some objects appear as though they were used as a weapon?

Conversely, are there small light objects in the area that would have been knocked over or broken during a struggle? If the area surrounding the body is not disturbed does that indicate that the victim offered no resistance to the attacker? The absence of a struggle reveals just as much about how an incident occurred.



#### Evidence of entry - forced or unforced

In cases where an incident occurs indoors, it is important to look for indications of how the assailant entered. Is there any indication that the assailants forced their way into the building? Examine all possible means of entering a building from both the inside and outside for signs of a forced entry. If there is some sign that an entry was forced, then note it in your report and photograph it.

If there are distinctive marks left by the tool used to forcibly enter the building, examine the scene for tools that could have left those marks. Consider processing the tool and the area for latent fingerprints.

The lack of any signs showing a forced entry is equally important. It may indicate that the victim knew his or her assailant or that the perpetrator entered by threatening the victim or by using the guise of a lawful authority.

#### Evidence that body was moved

Examine the area around the body to determine whether the person died there or was moved from another location. If the body is discovered outdoors look at the surrounding area for grass that is trampled in a way consistent with a body being dragged across it. Are there spots of blood on the ground or on leaves? Follow any blood trails to determine the boundaries of the areas in which an attack took place. Carefully examine the clothes of the body. Is there soil or dirt on the clothes that would indicate that the body was dragged along the ground?

If there is evidence in one room of a building, examine the other rooms. An attack may have occurred in more than one room. It is common for violent attacks to transpire in several rooms; victims will try to escape their attacker and may die in a different room from where they were attacked. Examine them all and document the presence or absence of anything unusual. Examine places where an assailant might have discarded evidence such as a garbage bin or the back of the building. Check any sinks in the house for signs that assailants cleaned themselves before leaving.

#### Evidence of motive

Knowing why a person was attacked is one of the most effective ways to identify the person's assailant. Any evidence you can discover which indicates that a person was attacked for a particular reason will help in determining who might be responsible.

Is there evidence indicating that robbery was the motive? Does the victim have money or a wallet in his or her pockets? Is the victim wearing jewelry that you would expect to have been stolen in a robbery? In some countries, especially in rural areas, people may keep their money in their home instead of in a bank. If there is money missing, identify all those people who knew about the money. You may need the assistance of a relative in determining what property the victim had with him or her and what was in the house prior to the attack. Had the victim just been paid at work? Had he or she recently sold something valuable or was he or she in possession of a large sum of money? Who would have been aware of these things?

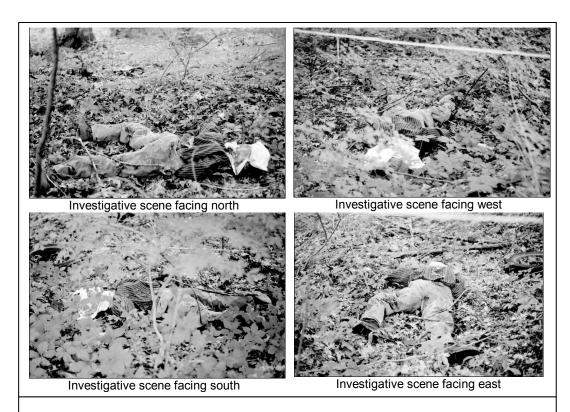
The presence of valuables at the scene is a strong indication that the person was attacked for reasons other than theft. Keep in mind however, that it is common for assailants, not motivated by robbery, to steal property from the victim as an afterthought. Consider whether theft was the primary or secondary motive in the case.



If something has been taken, get a detailed description of it and ask for a picture of the item. While people rarely intentionally take photographs of their possessions, these valuables often appear in the background of family photographs. In the case of missing jewelry ask the victim's family to look through old photographs for ones showing the valuables that were stolen. Depending upon how unusual the item is, it may help identify the assailant. It may turn up again in the hands of a suspect or someone who bought it from the suspect. Some suspects brag about their new acquisitions even though they are stolen. A good description or photographs of the items will help to assess a witness's claim that he or she saw the stolen goods in the possession of a suspect.

Is there evidence that a sexual attack was the motive? Was the victim clothed as expected or forcibly stripped? A close relative can be of assistance in determining the condition of the clothes prior to the attack. In any case where you suspect a sexual attack it is of critical importance to obtain the assistance of a pathologist or a doctor. A human rights investigator is not competent to conduct the type of examination required in cases involving sexual attacks. A doctor can glean a great deal of information from observing the victim's body and the surrounding scene.

It is important to know whether alcohol played a role in the incident. If there are glasses of liquid in the room smell them and consider preserving them for analysis. Examine the trash for empty bottles and the *investigative scene* for bottle caps or other indications that alcohol was present and used by the victim, suspects, or witnesses.



The first photographs taken should depict the entire *investigative scene* before investigators begin to process it. Take at least 4 photographs, one from each direction. Additional photos should be taken if necessary to show the entire scene.



#### Step Three: Photograph the Scene

Photographing the *investigative scene* is a very effective and easy way to document the condition of the scene and the evidence discovered there. Taking good photographs is an easy skill to acquire and greatly enhances the investigator's ability to convey to a court what the scene looked like. Photographs of an investigative scene must do two things. First, they must clearly and accurately show the piece of evidence or object at the time it was found, and in the condition it was found. Secondly, they must clearly and accurately depict the location of the evidence within the entire *investigative scene*. The scene should be photographed in a way that allows people who never saw the scene to understand the condition and location of the various items found there. This is best accomplished by taking pictures that show large areas of the scene, as well as pictures that zoom in on individual items of evidence within the scene. Each piece of evidence should be in at least 2 photographs; one that shows the object in a clear and detailed shot, and one that shows its location in the overall scene.

#### Wide-angle photographs

Document the entire scene and the location of individual items within it by taking several wide-angle photographs before walking onto the *investigative scene*. Take at least four shots, each from a different direction. Stand back far enough to ensure that everything of importance in the scene is photographed. When photographing indoors you may need more than four photographs to capture everything in the room. Usually the best place to take wide-angle photos in a building is from the corners of the room. The photographs should overlap so that objects appearing on the right side of one photograph, also appear on the left side of another. This overlapping of photos allows someone reviewing the photographs to see that you have photographed the entire scene and that no portion has been omitted.

When taking wide-angle photos outdoors take the photos facing each of the four compass points. Make a note in the *Photograph Log* indicating the direction you were facing when you took the picture. It

is easier for someone reviewing your work to orient themselves to the *investigative scene* with these directional references. The location of the photograph and the direction it was taken from should be recorded in the photograph log as follows:

Photo 1 – from edge of scene - entire scene looking North

Photo 2 - from edge of scene - entire scene looking South

Photo 3 - from edge of scene - entire scene looking West

Photo 4 - from edge of scene - entire scene looking East

Photo 5 - close-up of gun

Be aware of any objects that may be hidden from view by larger objects





This is a wideangle photograph of brick containing possible blood. This photo shows the location of the brick in the overall scene.

This is a close-up photograph of the same brick showing it in greater detail.



when taking the 4 basic wide-angle photographs. If an important item is not visible from one of the 4 compass points because it is obstructed by another object take additional photographs to show that item's position within the *investigative scene*.

#### Close-up photographs

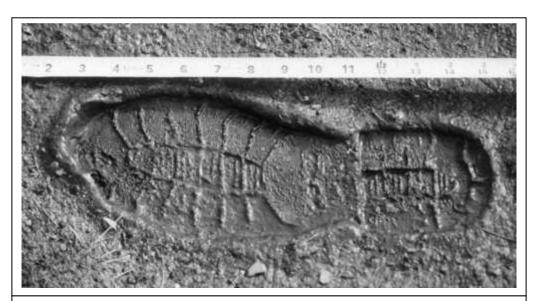
Once you have taken wide-angle shots begin to take close-up photographs of each piece of evidence and every significant feature of the *investigative scene*. How close you can get to the object will depend upon the camera you are using. Take photographs that fairly and accurately depict each feature or piece of evidence as it looked at the scene.

You should photograph all of the evidence in the scene before anyone has touched any of the objects. It is quite possible that objects may be upside down or obstructed by the body or another piece of evidence. During this first pass through the scene, nothing should be moved and every item should be photographed just as it was found. It is extremely important that nothing be moved before the entire scene has been photographed exactly as it was when the investigative team arrived.

After you have taken a photograph of each piece of evidence or significant feature in the *investigative scene*, re-photograph any piece of evidence that was obstructed by another object. Some objects such as knives or clubs may need to be turned over and photographed to show the side that was facing the ground.

When moving a body, immediately photograph the area under the body. You may also need to move some items from under the body to photograph them more clearly. Notes in the photo log must make clear which photographs were taken before items were moved and which ones were taken after.

Whenever possible, close-up photographs should be taken while standing directly over the objects being photographed. Taking pictures at an angle distorts the apparent size and shape of the object. This



Placing a ruler next to the evidence being photographed will assist forensic experts to analyze the evidence. In the picture above, it may be possible to identify the type of shoe and its size from the impression left here in the mud.





This investigator is taking a photograph of a machete that was used in an attack. The photo on the left is the <u>wrong</u> way to take the photo. Taking a picture at this angle results in a visual distortion called foreshortening. If possible take the photo directly above the object as demonstrated in the photo on the right.

distortion is called foreshortening and should be avoided if possible.

It is difficult for a person who never saw the *investigative scene* to estimate the size of objects photographed there. The size of the photographic image will not correspond to the object's actual size. It is very helpful to place a ruler next to the item to be photographed and to photograph the ruler along with the evidence. The ruler should not obstruct the view of the object and need not touch the item. The ruler should be visible somewhere in the photograph. Photographing the evidence with a ruler in the photograph will assist the viewer to estimate the object's size. Experiment by taking photographs of the rulers before going to an investigative scene. Rulers that have large dark numbers and do not have a glossy finish photograph the best.

#### Photographing suspects

If you have the opportunity to photograph a suspect you should. There are two reasons for photographing a suspect. First, to document any significant physical feature of the suspect's clothing or body. Second, to obtain a photograph to show witnesses to help establish the identity of the suspect.

If you only need a photograph of the suspect for identification purposes it is sufficient to take 1 photograph showing the entire body of the suspect and 2 close-ups of the suspect's head. One of the close-ups should show the suspect facing directly toward the camera and the other of his or her profile. Both of these pictures should depict the area from the top of the suspect's head to the top of his or her shoulders.

When taking photographs for the purpose of identification the photographs should not contain any item that might indicate the person is under arrest. The suspect should not be in a prison uniform or wearing handcuffs. Proper identification procedures (described in Chapter 8) will require that photographs of the suspect be shown along with other photos of similar-looking people who are not suspects. To ensure that the witness only identifies a suspect by his or her appearance there must be nothing in the photo to indicate which person is in fact the suspect.

If the suspect has an unusual tattoo, birthmark, or scar, document this feature with a photograph. When taking these photographs, take the picture in a way that shows as much as possible of the suspect's face. For example, if the suspect has a tattoo on his forearm ask him to hold his arm next to his face for the photograph. The photograph itself should clearly make the connection between the tattoo and the person who has it. A court will not consider the significance of the tattoo until it is convinced that the tattoo





#### PHOTOGRAPHING SUSPECTS

If you have the opportunity to safely photograph a suspect you should. There are usually two different reasons for photographing suspects. First, to use the photographs with witnesses in identification procedures. Second, to document the physical condition and appearance of the suspect at a particular time. These photos must be taken as soon as possible after the incident.

How you intend to use the photographs will dictate what photos are necessary. Consult the following checklist to determine what photos to take. If there is any uncertainty regarding how the photos are to be used take a full set.

Photograph	Identification	Document Suspect's Condition
Face forward	X	X
Rear view of head		X
Right profile	X	X
Left profile		X
Full front standing	X	X
Any injuries		X
Scars and tattoos	X	X
Blood spots or body fluids		X
Foreign bodies, hair or other trace evidence		X

belongs to the accused person. A photograph showing both the tattoo and the accused's face is the best evidence of this. If the suspect has injuries, that might connect him or her to the crime, photograph these as soon as possible. Some injuries such as light bruises and small scratches may heal quickly.

#### Step Four: Sketch the Scene

One of the most important tasks in processing an *investigative scene* is sketching it. Although photographs are an effective tool to document an *investigative scene* they have two significant shortcomings.

First, photographs can be misleading regarding the distance between objects. It is difficult to accurately determine the distance between two objects at a scene from a photograph. While photographs give an excellent idea of where an item was in relation to other evidence, a good *investigative scene sketch* is essential to determine its precise distance from other evidence.

Secondly, photographs do not accurately depict the lighting conditions and can mislead someone trying to determine the lighting at a scene. Cameras, by design, manipulate the light entering them in order to capture an image on film. Pictures can appear darker or lighter than the actual scene depending upon how



the photograph was taken, the settings used, and whether the flash was on. In many cases it is important to know what the lighting conditions were at the time of an incident.

Sketching the *investigative scene* is an essential part of processing it. If the sketch is done well it allows someone to calculate important distances between physical evidence and to understand what the lighting conditions were. Many investigators are frightened by the idea of having to draw a picture of a scene. The goal of an *investigative scene sketch* is not to create a piece of art but to accurately document where specific objects are. It does not matter whether the drawing looks realistic or whether it is drawn to scale. What is important is that every significant object at the scene is represented and labeled in the diagram, and that measurements are recorded to enable someone reviewing the case to determine the precise location of each piece of evidence and reconstruct the scene if necessary.

Drawing an *investigative scene sketch* is a relatively simple task. The following are some suggestions on how to draw good sketches for both indoor and outdoor scenes.

#### Sketching indoor investigative scenes

For incidents occurring in a building you should use a separate piece of paper for each room you sketch. When drawing the sketch follow this procedure:

- 1. Draw a box on a piece of paper that roughly corresponds to the walls of the room.
- 2. Measure the length of two of the walls that intersect in a corner. These two walls are the *reference walls*.
- 3. Indicate all the windows and doors on the sketch.
- 4. Indicate where each piece of evidence is in the scene and measure the distance between each piece of evidence and both of the walls. Each piece of evidence will have two measurements. A measurement to each of the two walls which intersect in a corner.

Measuring and recording the distance between each piece of evidence and two adjoining walls documents each object's exact position in the room. These measurements make it possible to fix its exact position in the room as well as calculate the distance between objects. These coordinates also allow someone to reconstruct the scene by using the coordinates to place the evidence in the same position in which it was found.

If there are many objects in the room, and there is not enough room to label each one in the diagram itself, number the objects and then list them at the bottom of the diagram. For example 1= bed, 2=body, 3=gun, etc.

In addition to recording the two measurements to each wall, there are times when it is helpful to include an additional measurement. In cases of murder or suicide it is important to know how far weapons or bullet shells are from a corpse. In addition to measuring the distance between these objects and two intersecting walls, measure the distance between them and the corpse. A court reviewing the case may want to know how far a gun was from the hand of the deceased; documenting this measurement at the scene is important.

It is also important to sketch and record significant features of the walls or ceiling area. Do this by labeling each wall A, B, C, D on the primary sketch and then using another piece of paper, label it "Sketch



of Wall A" and then record the important features of that wall. Record two measurements for each feature, one from the floor and the other from an adjoining wall.

Graph paper is a good aid and makes drawing a sketch much easier. Keep in mind that you are not drawing the picture to scale; you are accurately recording important measurements from the scene. This sketch can be redrawn later to improve its appearance and clarity. If this is done, however, the original sketch and measurements must be kept in the *Investigation Folder*.

Indoor floors are often constructed of square tiles of equal size. When sketching an *investigative scene* that has a tile floor, record the measurement of the floor tiles.

This measurement will be helpful when looking at photographs. Knowing the dimensions of the floor tiles enables you to calculate the distance between two objects by counting the number of tiles between them.

Sometimes there may be several items on a desktop or table. It is difficult to accurately measure the distance between the individual items and two of the walls. A more precise method is to record the table's dimensions; measure the distance between the table and two walls; and then measure the distance between each item and two adjoining edges of the table. This sketch of the desktop and its contents may be done on a separate sheet of paper for clarity.

#### Sketching outdoor investigative scenes

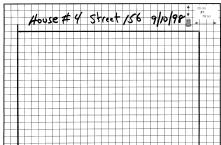
When sketching an outdoor scene or an indoor scene in a large open area it may not be possible to measure the distances between objects and two intersecting walls. In these cases establish two artificial walls that intersect at a 90-degree angle. These artificial walls can be made from the measuring rope in your kit or the rope used to secure the investigative scene. It is important that the two artificial walls meet at a right or 90 degree angle. To check this, place the case of the *Investigation Kit* in the corner created by the two ropes. The two rope "walls" should each run parallel to intersecting edges of the suitcase. After these artificial walls are in place measure the distance from two permanent fixtures to each of the two "walls." Pick two objects like a tree or a corner of a building and record the distance of these two objects to the artificial "walls." If you use a tree, carve your initials and the date on the bark of the tree so that you can find it at a later date. Take a photograph of the tree with your initials so others can find it as well. This will allow someone to place the ropes in the exact location as the original investigator and reconstruct the scene. After establishing the two rope 'walls' proceed to measure each piece of evidence in the scene from each rope.

The following is the procedure for sketching a scene that is outdoors.

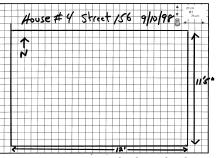
- 1. Draw a box on a piece of paper to represent the investigative scene.
- 2. Lay two pieces of rope at the perimeter of the scene in a way that they intersect at a 90-degree angle. Draw two lines in the sketch to represent these ropes.
- 3. Measure the distance from 2 permanent fixtures in the scene to each of the artificial "walls" if possible. Draw these permanent fixtures on the sketch and record the distance between them and the ropes.
- **4.** Measure the distance between each piece of evidence and both artificial "walls." Each piece will have two measurements, one to each of the rope 'walls' at the perimeter of the *investigative scene*.



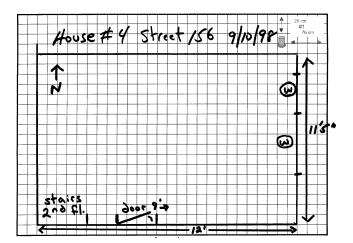




Step One: Draw a box to represent the walls of the room.

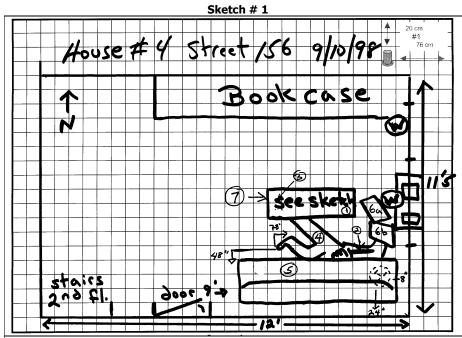


Step Two: Measure the length of two walls in the room which intersect in a corner.



Step Three: Indicate all the doors and windows on the sketch.





#1knife - 8" x 2" blade -cont aining possible blood - from table see sketch of table

#2 knife - 8" x 1' blade - no apparent blood - from victim's left hand.

#3 knife  $-4\frac{1}{2}$ "  $\times$  x  $\frac{3}{4}$ " blade - found on plate with fruit.

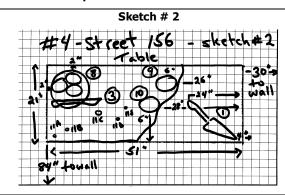
#4 body of deceased male - approximately 50 years old. Identify not known.

#5 green couch 80" x 40"

#6a and 6b-t wo pillows covering deceased's right hand.

#7 small t able - 51' x 21" containing evidence - see separate sketch

Step Four: Draw a representation of each object in the scene. Number it and describe it. Measure the distance between each object and both intersecting walls. Record two measurements for each item of evidence. Use additional sheets to show the contents of table tops.



#1knife - 8"x2" blade - possible blood - from table

#3 knife – 4½" x¾" blade – no apparent blood – on plate with fruit

#8 plate with three apples - one was cut - see photo

#9 cup - "Coca Cola" written on side - empty

#10 cup - plain cup - small amount of liquid in bottom - smelled like whiskey

#11-Coins-A, D, E all 5 cent pieces, 11B-10 cent piece and 11C 25 cent piece



#### Lighting at the scene

In many cases it is important to document any sources of artificial light at an investigative scene. Having this information will help the investigator to understand the lighting conditions at the scene and assess the ability of witnesses to see what they claim to have seen. As stated earlier, photographs do not accurately reproduce the lighting conditions of an *investigative scene* and in fact are misleading. Depending upon the type of camera and film used, photographs may appear significantly darker or lighter than the actual lighting at the scene. The only way to assess the lighting conditions at a nighttime scene is to document the location and strength of any sources of artificial light.

Indicate the position of each light source on the *investigative scene sketch* and measure the distance between two adjoining walls or "rope walls" if outside. Document its location like any other object at the investigative scene. In the sketch, record the wattage marking on the bulb (40-Watt, 100-Watt, etc.). Turn the light switch on and record whether or not the light actually works.

In the event that the lighting conditions become an important issue in the investigation the court can return to the scene and recreate the lighting conditions as they existed on the day you examined the scene.

#### Step Five: Collect Evidence

After having finished photographing and sketching the *investigative scene* it is time to collect and mark the evidence. Ordinarily there will be only one opportunity to collect evidence and the decision about what to collect and how to collect it will impact the remainder of the investigation. The decision about what to collect is difficult because you can only begin to understand the significance of individual items after speaking to all the witnesses and processing all the *investigative scenes*. Given this difficulty, it is better to collect and preserve any item that <u>could possibly be evidence</u>. If there is a doubt about an object's relevance, collect it. It is easier to return an item after you are certain it is not important than to return to a scene in hopes of finding something you failed to collect. It is prudent to collect and preserve any object that might provide information about a case.

What is collected will depend upon what the investigator learns about the case from the *preliminary interviews* and observations. The following is a list of items that should always be collected from an *investigative scene*.

- ♦ Any **weapons** present at the scene.
- ◆ Any **object that could have been used as a weapon** given the injuries sustained by the victim.
- ♦ Any object which appears to have blood or body fluids on it.
- ♦ The clothes of the deceased.
- ♦ Any **object that might have traces of body fluids** on it such as used cigarettes, underwear, or bedclothes.
- ♦ The contents of the pockets of the victim.
- Any object that could yield good latent fingerprints and which an assailant was likely to have touched.
- Any documents or letters which might indicate a motive or the identity of the assailant.
- Exposed photographic films, developed photographs, or audiocassettes.
- Anything which appears out of place (property not belonging to the deceased, a stone



or garden tool when found inside a house, etc).

See Chapter 11 Special Cases for evidence that should be collected in specific cases such as torture, sexual attacks, etc.

When collecting physical evidence at a scene it is helpful to collect the evidence at the perimeter of the scene first,

#### RUBBER GLOVES

Steps must be taken to protect investigative scenes from contamination by people at the scene and to protect those people handling evidence from infectious diseases.

The number of people handling objects at the scene should be limited and anyone touching evidence should be wearing a new pair of disposable rubber gloves.

A new pair of gloves must be worn at each new investigative scene even if the gloves were only used to process another scene in the same investigation. You must be careful not to carry trace evidence from one investigative scene to another.

and gradually work toward the center of the scene. Collecting evidence in this manner reduces the risk that you will walk on evidence or contaminate it as you reach for another object.

Inexperienced investigators sometimes contaminate evidence by stepping on it trying to get to a gun or some other significant object. If the scene has been properly secured and the gun is not posing a risk to anyone, the floor in front of the gun should be examined and processed before being walked on to get the gun.

### CAUTION

# **Problems and Procedures**

#### **Preserving Evidence**

#### Problem:

Once evidence is collected it is often mishandled, mislabeled, or improperly stored. The result is that it becomes lost, contaminated, or destroyed before it can be examined by scientific experts or presented to a court.

#### Procedure:

Evidence if properly marked, preserved and stored will be usable for a very long time. It is important to take the time to properly preserve it as soon as it is collected. The following four steps will ensure that each piece of evidence you collect is properly preserved.

- 1. <u>Mark the evidence</u> itself with your initials and date of collection.
- 2. <u>Label a paper evidence envelope</u> with: a description of the item, name of person who collected it, date it was collected, where it was found and the case number.
- 3. Place evidence in the envelope and **seal with a tamper-proof** seal.
- 4. **Store the evidence in a secure place** protected from theft and the natural elements.



#### Step Six: Preserve Evidence

Once an investigator picks up a piece of physical evidence he or she will be accountable for what happened to it and how it was preserved. Preserving evidence so that the evidence is protected from deterioration and interference is quick and easy to do in most situations.

Prior to collecting the evidence establish a small work area away from the *investigative scene* but close enough for quick access to it, such as a hallway outside the room you are processing. This area should be used to preserve and package the evidence for transportation to where it will be stored.

#### STEP ONE: Make the evidence unique

As an investigator you will be called upon at some time in the future to testify about the evidence that you collected at the scene. This may be a year or more after you processed the scene. Many objects such as guns and bullets look alike and are easily confused with other similar items. It is important that you can identify, with certainty, each of the objects you collected at the scene. The best way to ensure that you can readily identify each item in the future is to make it unique with some identifying mark. You can do this by putting your initials and the date you recovered the item somewhere directly on the item.

For example, if you collect a document as evidence, write your initials and the date it was collected on the rear of the document. If you recover a wooden baton or gun you should scratch your initials in the wood. By placing your mark on each item of evidence you can look at the item several years later, recognize your handwritten initials, and know with certainty that the item is the one you collected on a particular day.

If there are several similar items collected at the scene such as bullet casings or knives, you should indicate the corresponding number from the *investigative scene sketch* in addition to your initials and date. For example two similar knives should be marked:

Initials	Date	Item number
MGH	3/3/99	#1
MGH	3/3/99	#2

By marking them in this way someone reviewing the case can determine precisely where the item was recovered. If the item is too small to mark your initials directly on it, you should make a small tag from

paper, label the tag, and then tape it onto the evidence itself. The process of marking each item of evidence must be done by the person collecting the evidence and cannot be assigned to anyone else.

When handling evidence be mindful of the possibility that the item may be processed for latent fingerprints. Use those parts of the item least likely to yield a good latent print for placing initials or identification tags. The general rule regarding latent fingerprints is that smooth dry surfaces yield better prints than rough surfaces. If the item has both rough and smooth surfaces handle the item by the rough areas and attach any tag to that area.



Each knife must also be numbered to correspond to the investigative sketch.



#### Distinguishing between similar pieces of evidence.

There will often be several similar pieces of evidence at an investigative scene. You may find two knives or a number of used bullet shells. It is very important that your sketch clearly distinguishes similar pieces of evidence. When labeling these items in the sketch include a note about some distinguishing characteristic and assign them each a number. For example,

- 1. knife #1 8" x 2" blade, black handle
- 2. knife #2 8" x 1" blade, black handle
- 3. knife #  $3 4\frac{1}{2}$ " x  $\frac{3}{4}$ " blade, dark brown handle.

When the evidence is collected the *Evidence Envelope* should be labeled to correspond with the sketch.

When bullet shells are found, it is possible for a forensic scientist to match the shell casing with the gun that fired it. Where more than one gun is used it is possible to reconstruct the positions from which each gun was fired by identifying the unique marks on each shell and identifying exactly where in the *investigative scene* the shell casing was found. Marking pieces of similar evidence differently and recording the precise location of each will permit experts to draw more detailed conclusions from the evidence.

#### STEP TWO: Label the envelope

The best way to preserve the majority of evidence is to place it in a clean dry paper envelope and seal it. Plastic airtight containers and bags should be avoided because they trap moisture inside and can cause the evidence to deteriorate. **Most evidence placed in a paper envelope and kept in a dry place will remain in the same condition as when it was found.** Before placing wet or damp items into an envelope allow them to air dry in a clean secure environment indoors.

Hint

#### Labeling Evidence Envelopes

At an investigative scene the person assigned to label the envelopes should fill out several evidence envelopes in preparation for preserving evidence upon arrival at the scene. This person can label all of the items on the envelope except for the description of the item to be preserved. Doing this speeds up the process of collecting and preserving evidence.

Before placing the evidence in the envelope, the envelope must be properly labeled. The labeling of the envelope should provide some basic information about the case and the evidence itself. Once an investigator takes a piece of evidence into custody he or she is responsible for it. A properly labeled envelope will assist in the task of keeping track of evidence.

Below is a list of the minimum information that should be recorded on the front of the envelope containing each piece of evidence.

- 1. A brief description of the item.
- 2. The name of the person who collected the evidence.
- 3. The date it was collected.
- 4. The place from where it was collected.
- 5. The case name or number.



#### STEP THREE: Place evidence in an envelope and seal

After the envelope has been labeled and the evidence placed inside, the envelope should be sealed. The envelope should be sealed in a way that discourages tampering with the evidence inside. When you preserve evidence you must guard the evidence against destruction by environmental factors and from tampering by people trying to interfere with the investigation. Even locking evidence in a safe place is no guarantee that at some point the safe might be left open or someone may gain access to the evidence and contaminate it. While you should take every precaution to minimize access to the evidence you should also place each piece of evidence in a separate and secure envelope. This added measure discourages tampering by providing an immediate indication that someone has tampered with the evidence.

When I was training investigators in Cambodia, I devised a system for sealing evidence envelopes using materials that were available in the local marketplace. Using ordinary envelopes, cellophane tape and a ballpoint pen it is possible to create a tamper proof evidence envelope. To create a tamper proof envelope follow this procedure:

- 1. Seal the envelope with cellophane tape. If the envelope is constructed so that it would be possible to open and re-glue other parts of the envelope seal those parts with cellophane tape.
- 2. Draw pen lines across the tape and onto the envelope surface itself.
- 3. The person sealing it should sign their name across the tape so that half of the signature is on the tape and the other half is on the envelope itself. The same should be done for the date the envelope is sealed. A standard ball-point pen works best.
- 4. Keep the envelope in a safe place protected from the weather and theft.

One of the very few exceptions to the rule that all evidence should be stored in a clean paper envelope is in the case of powdered drugs. Powdered drugs like cocaine and heroin are usually found in plastic bags.



#### **LATENT PRINTS**

A latent print (sometimes called fingerprint) is an impression of the fingers, palms or soles of the feet left by oil and moisture excreted by the skin. Although they are not readily visible to the eyes, they can be revealed using special powders and chemicals. Since every person's fingerprints are different, finding a latent print and matching it to a suspect is positive proof that the suspect touched the item at some point in time. Under some conditions latent prints can last a long time so they alone cannot tell when a person touched something, only that he or she did

Consider collecting any object that a suspect may have touched and could yield a latent print. Some surfaces capture latent prints better than others. The best surfaces are smooth and hard like glass or polished metal. Soft, porous or textured surfaces do not retain clear latent prints.

Even if a latent print technician is not immediately available, package the evidence in such a way as to preserve the prints for future analysis. If properly packaged and stored the latent print will remain on the object. See the *Evidence Collection Chart* at the end of this chapter.



If suspected drugs are found at an *investigative scene* and they are already in a plastic bag they should be left in that bag and the entire package placed in a clean and secure paper *evidence envelope*. If a suspected powdered drug is lying out in the open, carefully scoop it into a clean plastic evidence plastic bag, seal it and then place the entire package in a clean and secure paper *evidence envelope*. Drugs not placed in a plastic bag may be affected by moisture in the air.

#### Step Four: Store the evidence in a secure location

When storing evidence it is important to safeguard it against human interference and environmental factors. The lead investigator should choose a secure place, which can be designated for evidence storage. An entire room or an entire closet in a room should be used only for the storage of evidence. The area must be relatively clean, dry, free from excessive dust, and protected from the direct rays of the sun. It should also be a place where access is restricted to as few people as possible.

If more than one person will have access to the room the lead investigator should establish a logbook in which all those entering the room write their name and the reason why they are there. Good records can help track missing evidence and may be required by a court examining the chain of custody.



#### CHAIN OF CUSTODY

**Chain of custody** is the principle that once evidence is removed from an **investigative scene** or person there must be a record of every person who had possession of it. The identity of every person having custody must be documented. Each person is considered a link, in a *chain of custody*.

A court, reviewing the case, will determine whether any link in the chain is missing or has tainted the evidence. Courts must only rely upon physical evidence that is in substantially the same condition as when it was found. The court in making this determination will closely examine the *chain of custody*.

The general rule is to keep the *chain of custody* as short as possible. In other words, as few people as possible should handle the evidence or have access to where it is stored. The name of each of these people and when they had possession of the evidence must be recorded.

## **Section 4.3 Collecting and Preserving Evidence**

At any *investigative scene* there can be many types of physical evidence to be collected. Certain types of evidence require special handling. Consult the checklist below on how to handle different types of evidence.



Object	COLLE How to Collect	CTING AND PRES How to Make Unique	EERVING EVIDENCE  How to Preserve
Wet or bloody clothes	Allow to air dry in a clean secure place indoors.	❖ Write initials and date of collection on each piece of clothing.	<ul> <li>Place in a labeled, paper evidence envelope and seal.</li> <li>If clothing cannot fit in envelope wrap in clean paper and seal with cellophane tape.</li> </ul>
Powdered drugs or unknown powders	<ul> <li>Place in a plastic bag if the substance appears dry.</li> <li>If already in a plastic bag do not open.</li> </ul>	❖ Write initials and date on bag or on a label attached to the bag.	<ul> <li>Place in a labeled, paper evidence envelope and seal.</li> <li>Evidence envelope must clearly indicate that it contains suspected drugs.</li> <li>Use great care in handling drugs. Their value makes them a likely item to be stolen.</li> </ul>
Footprints or tire tracks in mud, dust	<ul> <li>Photograph with a ruler next to the footprint</li> <li>If possible use dental plaster to take impression.</li> </ul>	<ul> <li>Label and date photographs.</li> <li>If preserved with plaster write initials and date on back of casting.</li> </ul>	Place in labeled, paper evidence envelope and seal.
		WEAPO	NS
Firearms	Unload the weapon safely. If it is to be processed for prints handle with rubber gloves.	Scratch initials and date of collection on the butt of the gun or attach a small tag to the gun.	<ul> <li>Place in a labeled, paper evidence envelope and seal.</li> <li>Evidence envelope must clearly indicate that a gun is inside.</li> </ul>
Knives, weapons or any object appearing to have blood	<ul> <li>Collect using rubber gloves.</li> <li>Do not clean the item.</li> <li>Allow blood to air-dry in a clean, secure place indoors.</li> </ul>	❖ Write initials and date directly on the item by scratching or use a label. Affix to an area without blood.	<ul> <li>Place in a labeled, paper evidence envelope and seal.</li> <li>Clearly mark on evidence envelope that a forensic expert should examine the item.</li> <li>If the item is a weapon, clearly mark the envelope to indicate this.</li> </ul>
Shell casings	Collect one at a time using rubber gloves.	Attach a tag to each casing containing initials, the date, and number that corresponds to sketch.	<ul> <li>Place in a labeled, paper evidence envelope and seal.</li> <li>Clearly mark evidence envelope that the item should be examined for latent fingerprints.</li> </ul>
Bullets or bullet fragments	<ul> <li>Remove bullet carefully taking steps to ensure that the instrument you use does not mark or scratch bullet.</li> <li>If the bullet is lodged in a piece of wood cut out the portion of wood</li> </ul>	<ul> <li>❖ Attach an initialed and dated tag to the bullet or place in a small envelope.</li> <li>❖ If there is more than one bullet recovered be sure that each bullet is also numbered to correspond to the investigative</li> </ul>	<ul> <li>Place in a labeled, paper evidence envelope and seal.</li> <li>Label envelope and include a detailed description of where the bullet was recovered.</li> </ul>



Object	How to Collect	How to Make Unique	SERVING EVIDENCE  How to Preserve
	surrounding the bullet and preserve the wood and bullet for expert.	scene sketch.	
Ligature hangman's rope	<ul> <li>Pathologist should remove from victim.</li> <li>Preserve the knot; cut ligature away from knot.</li> </ul>	Attach a tag with initials and date.	Place in a labeled, paper evidence envelope and seal.
		LIQUII	os
Poison or Unknown Liquid	Place in a sterile glass jar or clean, empty water bottle.	❖ Write initials and date on bottle label or on label affixed to the bottle.	<ul> <li>Seal the container.</li> <li>Label "POISON."</li> <li>Place in a labeled, paper evidence envelope and seal.</li> <li>Clearly mark the evidence envelope that a forensic expert should examine the item.</li> </ul>
Flammable materials	Place in a sterile glass jar. Some flammable solvents can dissolve plastic bottles.	❖ Write initials and date on bottle label or on label affixed to the bottle.	<ul> <li>Seal the container with cellophane tape</li> <li>Label "FLAMMABLE"</li> <li>Place in a labeled, paper evidence envelope and seal.</li> <li>Clearly mark the evidence envelope that a forensic expert should examine the item.</li> </ul>
		TRACE EVII	DENCE
Hard objects with possible latent prints	<ul> <li>Use gloves.</li> <li>Pick up by an area unlikely to have been touched. Pick up a glass by bottom edge; knife by blade.</li> </ul>	❖ Write initials and date directly on the item by scratching or use a label. Affix to an area without blood.	<ul> <li>Place in a labeled, paper evidence envelope or box and seal.</li> <li>Clearly mark evidence envelope that the item should be examined for latent fingerprints.</li> <li>Handle with special care so that latent prints are no rubbed off.</li> </ul>
Hair sample or unknown fibers	Use a small amount of cellophane tape to attach hairs to a clean piece of paper.	Initial and date the piece of paper.	Place in a labeled, paper evidence envelope and seal.
Teeth or pieces of bone	Allow to dry in a clean secure place indoors.	Attach tag. If not possible include very detailed description on evidence envelope.	Place in a labeled, paper evidence envelope and seal.
		DOCUMENTARY	EVIDENCE
Documents and letters	If document is wet allow to air-dry in a secure place indoors.	Mark the back of the document with initials and date collected.	<ul> <li>Photocopy the document and use the photocopy in the investigation.</li> <li>Place original documents in a labeled, paper evidence envelope and seal.</li> </ul>
	❖ If film is still in	<ul> <li>Place initials and</li> </ul>	<ul> <li>Place in a labeled, paper evidence envelope and</li> </ul>



Object	COLLE How to Collect	CTING AND PRES How to Make Unique	SERVING EVIDENCE  How to Preserve
film	camera seek assistance from someone who knows how to unload the film without losing the photographs.	date on the film canister.	<ul> <li>seal.</li> <li>As soon as possible take to photo lab, unseal envelope, and develop film. Obtain two sets of prints.</li> <li>Place the negatives, the canister, one set of prints and original evidence envelope in a newly labeled evidence envelope, and seal.</li> <li>Use the second set of prints in the investigation.</li> </ul>
Audio tape	❖ Collect, using rubber gloves or a soft cloth to preserve possible latent fingerprints.	❖ Write initials and date on the cassette label or attach an initialed tag directly on the tape.	<ul> <li>Place in a labeled, paper evidence envelope and seal.</li> <li>Duplicate the audiotape.</li> <li>Place original tape in the original evidence envelope and re-seal.</li> <li>Listen to the duplicate tape and use it in the investigation.</li> </ul>
Photos	Collect using rubber gloves or a soft cloth to preserve fingerprints.	Write your initials and the date on the rear of the photograph.	<ul> <li>Make a copy by photographing or by photocopying.</li> <li>Place original photograph in labeled, paper evidence envelope and seal</li> <li>Use copy for investigation.</li> </ul>

### **Section 4.4 Forensic Testing**

The forensic testing of physical evidence can reveal valuable additional information about that evidence and the case being investigated. The investigator should consider the value of sending evidence for forensic testing. Evidence should be collected from the scene as if it were going to be tested even if such testing seems impossible at the time. In most cases, if the evidence is properly collected and stored, forensic scientist can analyze it years later. The following is a chart of some of the more common forensic tests and what is needed from the *investigative scene*.

FORENSIC SPECIALTY	DESCRIPTION	WHAT IS NEEDED
Ballistics	Ballistics analysis can determine whether a bullet recovered from the victim or the scene was fired from a gun thought to be the murder weapon. Ballistics experts can also match used shell casings to the guns that fired them by comparing the indentations made by the firing pin and/or the ejector pins.	Bullets taken from the investigative scene or the victim in good shape. Empty shells found at the investigative scene should also be collected. Experts also need any guns which were possibly used.
Blood Analysis	Blood samples recovered from the investigative scene can be analyzed to determine the blood type perhaps eliminating suspects (cheaper than DNA analysis).	A properly preserved blood sample.
DNA	DNA analysis can compare the DNA structures of body fluids recovered at the scene with a DNA sample taken from	As large a sample as possible of any body fluid or hair recovered from the scene.
	a known suspect or victim.	A blood or hair sample from the person to be compared. The victim's DNA on a suspects clothes can be as important as the suspects on the victim.



FORENSIC SPECIALTY	DESCRIPTION	WHAT IS NEEDED
Fiber Analysis	An Expert in Fiber Analysis can examine clothing fibers recovered from the victim, suspect or investigative scene and	Fibers recovered from the victim, the suspect or the investigative scene.
	provide information about where they came from. The expert can also compare the fiber with fiber samples known to be connected to the victim or suspect and render an opinion as to whether they are the same.	If a definite match is required then a sample from a known source is needed.
Forensic	Can examine skelatal remains and make conclusions which	Skelatal remains.
Anthropology	may help in positively identifying the victim and perhaps the cause of death.	If at all possible the remains should not be disturbed and the forensic pathologist should be brought to the scene to examine the remains.
Forensic Entomology	If a body is not buried soon after death it is likely that insects will lay eggs on the corpse. A forensic entomologist	A sample of the insect preserved in clear alcohol.
	can examine eggs, larvae or maggots that are found on the corpse and determine their age, thereby helping to estimate the time of death.	Information regarding the weather conditions during the period beginning with the victim's disappearance and the taking of insect samples.
Forensic Odontology	Is the comparison of bite marks found on a victim with the teeth of a suspect.	High quality photographs of the bite mark with a ruler in the picture. A dental impression of a suspect.
Forensic	By performing an autopsy an expert examines all the	A corpse as soon after death as possible.
Pathology	systems of the body to determine the cause of death. The pathologist can give a great deal of information about the manner in which wounds were inflicted.	If possible the pathologist should examine the body at the scene as it was found.
Handwriting Analysis	An expert can compare the handwriting of an unknown author with samples known to belong to a suspect and determine if the suspect wrote the note.	The original document containing the writing and an original sample of writing known to belong to the suspect.
Document Analysis	There are a number of tests forensic scientists can perform on documents to: determine the age of the ink and paper, to recover latent fingerprints, and to reveal what was written on missing pages in a book by analyzing impressions left on the remaining pages.	The original document or book.
	It is also possible to recover latent prints from the surfaces of documents and books.	
Latent Prints	A Latent Print expert can lift and preserve latent prints from physical evidence recovered at an investigative scene.	An object preserved in such a way as to preserve latent fingerprints.
	An expert in analyzing latent prints can compare those prints with other latent prints or the inked fingerprints of a suspect and determine if they are from the same person.	Another set of latent fingerprints or a set of inked fingerprints which are known to belong to a suspect.
Speech Analysis	An expert using special equipment that can analyze the acoustic properties of recorded speech and compare them	A good quality recording of the speech to be analyzed.
	with a known sample of a suspect speaking.	A good quality recording of a suspect saying the same or similar sounds of the speech to be tested.
Tire track/ shoe	An expert can compare the impression left by a tire track or shoe at an investigative scene with the tire track or shoe	An impression of the imprint made with dental plaster or a high quality photograph



FORENSIC SPECIALTY	DESCRIPTION	WHAT IS NEEDED
comparison	imprint left by known shoes.	with a ruler in the picture.
		The shoes or tires suspected of leaving the tracks at the scene.
Typewriter analysis	An expert can examine a typewritten sample and compare it with a sample produced on a suspect typewritter to determine if both samples were made on the same machine.	The original typewritten document to be analyzed.  The suspect typewritter or a sample known to have been typed on that typewriter.

### Section 4.5 Forming an Investigative Team.

The resources of your organization may include many investigators who can assist in the different tasks of processing an *investigative scene*. There are many benefits to having several investigators form a team. Each person can concentrate on a particular task and the team can more effectively process large and complex scenes. Below is a recommended team and the different roles and responsibilities of the different team members

- 1. **Lead Investigator or Team Leader** The team leader should be the most experienced member of the team. The team leader is ultimately responsible for all facets of the investigation and the work of the other investigators present at the scene.
- 2. Investigative Scene Guard This person is usually the most inexperienced investigator present. The guard's responsibility is to secure the scene, under the direction of the team leader. After the building has been secured or ropes have been placed around the perimeter of an outside scene the guard should remain and control access to the scene. Very often the team leader also instructs the guard to keep a record of all authorized personnel entering and leaving the scene. This is a good precaution against the inadvertent contamination by an investigator. For example, if the team leader believes that a footprint found at the scene appears significant, checking the shoes of all the investigators who entered the scene may reveal that the footprint was left by one of them.
- 3. Photographer The photographer is responsible for taking all of the photographs at the scene. Once the team leader has instructed the photographer to begin work on the scene, the photographer should take the required wide-angle and close-up photographs. After taking these photographs the photographer should remain at the scene while the team continues to process the scene and wait for further instruction from the team leader. Often, as the scene is processed and evidence is moved, additional photographs are necessary.
- 4. **Person to Sketch and Measure** The sketch person is responsible for sketching and measuring the *investigative scene* once the team leader has instructed this person to enter the scene. The process of sketching and measuring progresses faster if the sketch person has assistance from two other people. While two people stretch the measuring tape and call out the distances the sketch person can be drawing the objects found at the scene and recording the measurements.
- 5. **Person to Collect Evidence** One person should be assigned to pick up evidence at the instruction of the team leader. This person should wear clean rubber gloves and collect



evidence only after the team leader has advised this person that the evidence has been photographed, sketched and is now ready to be collected. Once the evidence is taken up it should be carried to an area close-by but separate from the *investigative scene* where the collector should mark it with his initials and the date. Allowing more than one person to collect evidence complicates the process and increases the risk that evidence will be mishandled.

6. **Person to Preserve Evidence** - The preserver of evidence is primarily responsible for accepting the evidence from the evidence collector and properly preserving it. As soon as the team arrives at the scene the evidence preserver should begin labeling evidence envelopes with basic information about the date, place and name of the evidence collector. When the evidence collector carries a piece of evidence to the work area the evidence preserver should finish labeling the envelope by writing down a description of what was recovered. The evidence collector should then place it into the envelope and the preserver should seal it in the presence of the evidence collector and enter the envelope number on the *Physical Evidence Log*.

The team leader must assume responsibility for coordinating the efforts of each of the different investigators. While each must do his or her specific job, great care must be taken to accomplish the tasks in a manner that does not taint the work of each team member or affect the over-all integrity of the investigation. If possible, the team leader should not become involved in other tasks such as photography or evidence collection. It is important that the team leader remain at the scene in order to oversee all the work and not be drawn into specific tasks that might limit his or her observations and direction of those working at the *investigative scene*.

The team leader should examine the sketch before leaving to see that it has all the required measurements. The team leader should also examine the evidence envelopes to be sure they have been labeled and sealed correctly and logged in properly on the *Physical Evidence Log*. All paperwork generated at the scene should be given to the team leader for organization and placement in the file. Investigators often make notes and record important information on anything from personal memo pads to scraps of paper. The team leader should encourage the use of forms intended to record information about the investigation. If investigators have used scraps of paper to record information the team leader should collect them and place them in the case file.



# CHAPTER 4 SUMMARY

**Physical Evidence** is any object that can provide information about an incident. Some physical evidence is collected; some collected and scientifically analyzed; and some simply observed and documented.

**Physical Evidence** is often the best witness in a case. It will not lie, it is rarely mistaken, it is not afraid of telling the truth and if properly preserved will be available for a long time to tell its story.

Before processing any place for physical evidence it is important to identify all of the *investigative scenes* in a case. An *investigative scene* is anywhere evidence might be found. Every case has more *investigative scenes* than just the "*crime scene*." As a general rule investigative scenes include:

- 1. Any place the victim was immediately before, during or after an incident; and
- Any place possible suspects were immediately before, during, or after an incident.

Processing an
Investigative Scene
There are six steps to processing an
Investigative Scene.
Secure the Scene
Observe the Scene
Photograph the Scene
Sketch the Scene
Collect Evidence
Preserve Evidence

### **Preserving Evidence**

It is important to properly preserve any evidence collected at a scene. Once a human rights investigator takes custody of evidence he or she is accountable for it. There are 4 necessary steps to properly preserve evidence.

**Mark the Evidence** with your initials and date of collection.

**Label a Paper Envelope** with: a description of the item, the name of the person who collected it, the date it was collected, where it was found, and the case number.

Place evidence in the envelope and **Seal With a Tamper-Proof Seal**.

**Store the Evidence in a Secure Place** protected from theft and the natural elements.



## Chapter 5

#### **DOCUMENTING PHYSICAL INJURIES**

Anytime a person is violently attacked, the resulting injuries provide important evidence indicating how the attack took place. A great deal of information can be gleaned from the careful observation and documentation of a victim's injuries. Familiarity with the unique marks left by different weapons can help the investigator determine what weapons were used and how they were employed.

The procedure for documenting injuries will be different depending upon whether or not the victim has died from the injuries. Obviously, if the person has survived the attack, obtaining medical treatment for the victim should be the paramount concern. A human rights investigator must be careful never to allow the investigation to interfere with, or delay, any medical treatment. It may not always be possible to safely document a victim's injuries before they are treated. In such cases, the first opportunity an investigator has to document injuries is after medical treatment. The investigator must rely on post-treatment observations, descriptions by the victim, and interviews with medical personnel to assess the injuries. Detailed interviews with medical personnel can help overcome the inability to examine and photograph wounds before treatment.

In cases where the victim has died, the investigator faces a different set of problems and must employ a different approach. In the absence of reliable witnesses who observed what happened, an investigator must rely on his or her own observations of the corpse and the surrounding area to determine how the victim died. The investigator must act quickly to examine and document the condition of the body because it begins to undergo rapid changes soon after death, changes that dramatically affect its appearance and makes the examination of wounds more difficult.

The seriousness of the victim's condition will determine which of two sets of procedures an investigator should follow. I will discuss these examination procedures separately. In the first section I will discuss the examination and documentation of a living victim's injuries. The second section will describe the examination and documentation of injuries when the victim is deceased.

## Section 5.1 Observing and Documenting Injuries: Living Victims

#### Step One: Notify Medical Personnel

The investigator's first concern upon arriving at the scene of a violent incident should be to locate victims and determine if they need any medical assistance. Your primary concern must always be for anyone in need of emergency medical assistance. Before going to a scene the investigator should become familiar with the emergency and medical services that are available in the area. If you arrive before emergency personnel, people will expect that you know how to contact them. You must be able to quickly notify those organizations responsible for providing emergency assistance no matter how limited that assistance may be. An investigator cannot proceed with any investigative duties until he or she is certain that everything possible has been done to hasten medical treatment. No matter how serious the case or how



important the investigation is, <u>never do anything which delays the receipt of emergency medical care</u>. Quick thinking and decisive action which helps a victim get needed care will also help earn the respect and trust of the victim and other witnesses.



#### **EXAMINING LIVING VICTIMS**

Investigative techniques can be inconsistent with the medical care a victim needs. Do nothing to interfere with or delay emergency medical treatment. Do nothing to cause undue stress or pain to a victim.

Notify medical personnel if victim's injuries need medical attention.

**Introduce yourself** and explain your purpose. Ask the victim for permission to interview and examine him or her.

Ask the victim where he or she is injured and ask them to describe what happened.

**Photograph the injuries.** Whenever possible include the victim's face in the photograph.

**Examine and document the injuries** and other important observations on the *Wound Chart*.

Interview medical personnel.

1. **Obtain the victim's medical records** if possible.

Once you have done everything possible to facilitate timely medical treatment, begin to assess the situation from an investigator's point of view. Begin to analyze the case and identify evidence in a way that is appropriate to the situation. There is nothing improper about beginning to secure an *investigative* scene before medical help arrives, providing it does not interfere with any assistance people may be rendering to the victim.

#### Step Two: Introduce Yourself

As soon as practical you should introduce yourself, your organization, and your purpose for being present. If you have worked in the region before or work for a well-known organization people may already recognize you. At a minimum, the victim and others present should know your name, the name of your organization, the purpose of taking photographs and speaking with witnesses. You should answer questions if they are appropriate and do not compromise the investigation.



If the victim is conscious talk directly with him or her. Describe what you want to do and ask permission to examine his or her injuries. After you receive permission, examine the victim in a way that neither causes additional harm or pain. If a victim is bleeding profusely and someone has placed a compress on the injury to minimize bleeding, you should not remove the compress, even momentarily, to take a photograph. Be careful that your actions do not place the victim at additional risk.

If the victim is a child or is unconscious, identify the parents or an adult family member with whom you can speak. Talk to them and seek their permission to examine the victim. Failure to obtain permission may raise suspicion and mistrust among those present. You should record the name of the person who gives you permission to examine a minor or unconscious adult in the *Investigation Folder*. If there is no one present who can authorize you to examine the victim use good judgment regarding how best to proceed. Whether or not to continue without permission will depend upon the nature of the injuries, the type of victim, and the likelihood that important evidence may be lost without immediate action. Obviously photographing a cut on the head of an unconscious victim is very different from removing an article of clothing to photograph an injury. If possible, wait for the arrival of a guardian or other person who can give you the needed permission.

Victims may be fearful and reluctant to give you permission to photograph them immediately after an attack. If that is the case, do not be overly persistent. This is not an appropriate time to speak at length about their fears or to convince them of the importance of your work. Use good judgment when dealing with injured people. It is a frightful and difficult situation that they unwillingly find themselves in; the presence of a human rights investigator should not add to their distress. If you receive permission to document injuries, do it quickly and in a way that is sensitive to the victim's pain and the surrounding circumstances.

#### Step Three: Question the Victim

After receiving permission, gather basic information about what happened. Before examining the

# HIPTU HIPT

#### Working with the family of the victim

Although you have important tasks to perform at the scene of a violent attack, be mindful of the pain and distress the family is undergoing. You should identify an adult member of the family who appears to be in control of the situation and explain to them what you need to do.

Even after explaining what you are doing it may be very difficult for them to watch you examine the victim's body. Your task may be easier if you limit observers to those adults who appear to understand the importance of your work and who are able to watch without becoming distraught.

Be mindful of the culture you are working in and try to accommodate the particular sensibilities that might come into play. Different cultures have different ways of dealing with death or cases involving sexual assault. Try to familiarize yourself with the cultural forces in play in the particular case before going out into the field. Do your best to respect the local customs while still professionally documenting and preserving evidence. In most cases taking a little time to explain what you are doing before you begin is sufficient to set family members at ease.



victim's injuries it is helpful to know what happened. Ask the victim to describe how he or she was hurt. In most cases a brief *preliminary interview* will be enough to orient you to work that needs to be done.

If it appears that the injuries might be fatal, attempt a more detailed interview. If the person dies your initial contact may be his or her only opportunity to describe what happened. Use your experience and good judgement in determining whether a full interview is necessary or possible. If you think the victim may die, this interview should be recorded.

#### Step Four: Photograph the Injuries

Examine as much of the victim's body as is appropriate given the culture and the situation. Injured people are often only aware of their most serious or obvious injury and may be unaware of the full extent of their injuries. Examine them completely to document the presence or absence of injuries. The absence of injuries on certain parts of the body such as the hands and arms provides equally important information about an attack. Be mindful of the victim's comfort and conduct your examination of the victim in a way that minimizes moving the victim.

When examining each injury look for the following:

- 1. The size, shape and depth of the wound (if possible).
- 2. The presence of any foreign substance on the injury such as dirt, burnt gunpowder, or paint chips.
- 3. The presence of unique marks left by the weapon used.

After examining each wound, document it on the *Wound Chart* and then photograph the injury. The *Wound Chart* is simply a diagram of the body on which you indicate the position and description of all injuries observed on the body.

The purpose of photographing a victim's injuries is to document with clear pictures the nature of the wound. The pictures should be clear and well lit. A forensic scientist should be able to look at the photographs and study the wounds. It is not enough that a photo shows that a victim has an injury, it must be detailed and clear enough for further study.

#### SPINAL CORD INJURIES

A victim who has suffered an injury to his or her neck or back is at risk for spinal cord injury. Any movement may cause additional permanent damage to the spinal cord resulting in paralysis or death. If there is any possibility that the victim has suffered a spinal cord injury the investigator should instruct the witness to lie perfectly still until trained medical personnel arrive. The investigator must not do anything to cause the victim to move and risk additional injury.

Proceed from injury to injury, documenting each injury with good clear photographs. If a knife or gunshot wound was sustained through victim's clothing, photograph of the clothing covering the wound. Clothing can provide valuable information, particularly in the case of gunshot wounds. If the wound can be uncovered without causing the victim extreme discomfort, uncover and photograph

Keep in mind that the more you





Always include some measured scale when photographing injuries. This will help forensic scientists when they study the photograph in the future.

do to comfort victims and respect their modesty, the more likely they will be to fully cooperate with the investigation. Most victims are willing to allow pictures of their injuries, even if in private areas, provided you do so professionally and take steps to protect their privacy. Consider asking family members to hold up a sheet or ask onlookers to leave the room or area.

If it is possible to do so without undue discomfort, try to photograph each injury in a way that shows some part of the victim's face. For example, if a hand is injured, ask the victim to hold it up by his or her face as you photograph it. If there is an injury on the victim's back ask him or her to turn their head sideways to capture their profile as well. Taking photos in this manner not only documents the nature of the injury but also documents the identity of the injured person. It makes it easier to identify the photo at a later date and protects investigators from later claims that the photographed injuries were not those of the victim. After taking this photo to help connect the injury with the victim take additional close-up photographs of the injury for examination by medical experts.

If possible place a ruler or the *Photograph Board* from the *Investigation Kit* next to the injury to document its size. Place the ruler somewhere close to the wound without obstructing it. An accurate measurement of the wound's size will assist future forensic study of the wounds.

### Step Five: Examine and Document Injuries

After photographing each injury, carefully record your observations, paying particular attention to features that may not be clearly depicted in the photograph. Some swelling may not be readily apparent in the photographs. Make a note of any swelling you observe, recording where it is and its approximate size. Bruising also may not show up clearly in photographs. This is particularly true for people of darker skin color. Measure the area in which you observe bruising and document its size and location on the body. The shape of a bruise may correspond to the weapon used. Therefore, carefully describe the shape and size of any bruises in detail; use a ruler to measure the dimensions of these injuries. Consider whether a sketch of



#### INVESTIGATIVE PHOTOS

People all over the world share a morbid fascination with photographs of murder scenes. People will ask you to show them such pictures. Resist the temptation to show the pictures to anyone other than those with a legitimate professional purpose for seeing them. Freely showing pictures is disrespectful to the deceased and his or her family and can easily jeopardize the integrity of the investigation.

Sometimes, people who are not witnesses claim to know something about an incident. It is also common for witnesses to say that they saw more than they actually did. Such people can be convincing and can make fools out of experienced investigators if they see the photographs. Once they see them they can lie convincingly using details from the photos.

If there are legitimate reasons for making some of the pictures public, choose pictures that do not reveal everything about the evidence in the case. What is not revealed may be useful in testing the credibility and reliability of witnesses.

the bruise will assist forensic scientists. Avoid making conclusions about the bruises or what may have caused them. Do not rush to conclusions, but simply make a detailed record of your careful observations.

All visible injuries should be recorded on the *Wound Chart* from the *Investigation Kit*. Mark the approximate location of the injury on the body chart and number each wound. In the space provided, assign each wound a number and complete a description of the injury. When describing the location of a wound use measurements from anatomical landmarks on the victim's body such as the navel or the knee. Measure from imaginary lines such as an imaginary line running down the middle of the body separating the left side from right. For example, you might describe an apparent knife wound as

A 2-centimeter long wound located 4 centimeters from the midline on the body's left side and 6 centimeters below the left nipple.

The *Wound Chart* documents what you observe as an investigator. If the victim tells you of internal pain or injuries that you cannot see you should record the description of what he or she feels but note that you could not observe any external indication of that particular injury. Make a note to question medical personnel about these internal injuries when you interview them. Their testimony or medical tests may provide independent verification of these injuries. The *Wound Chart* however, should be limited to only those injuries observed by the investigator.

#### Step Six: Interview Medical Personnel

Interviewing medical personnel is an important step in gathering evidence about a victim's injuries. You should, with the victim's permission, try to interview any medical personnel who treated the victim. Their training, expertise, and examination of the victim make their observations and conclusions particularly valuable. Try to interview medical personnel about their observations and what conclusions they drew from their examination. Do this while the victim's case is still fresh in their memory. Even if the doctor has made notes in the victim's medical records, these notes are not as helpful as a thorough interview soon after the victim has been treated.



Ask medical personnel if they observed any of the characteristic marks of particular injuries and weapons (dirt, gunpowder residue, burning). Avoid asking doctors to make ultimate conclusions about how an injury occurred or what was used to cause it. Many doctors may be unqualified or uncomfortable making such conclusions. Phrase your questions to elicit precise and detailed descriptions of the injuries that will help forensic scientists make a final determination at a later time.

#### Step Seven: Obtain Medical Records

Whenever possible, obtain a copy of the victim's medical record. The medical personnel who examine and treat the victim are experts in their field. They have a better opportunity to examine the victim than experts you may consult with in the future have. What they document in the medical records of the victim is significant and should be made part of the investigation's evidence. If possible have the records reviewed by a qualified forensic pathologist before drawing any conclusions from them. Doctors who are unfamiliar with certain types of injuries may be mistaken in the identification of intentionally inflicted injuries.



When obtaining medical records, be sensitive to the victim's right to privacy regarding these records. Seek the victim's permission before obtaining the records. In most cases, a cooperative victim will grant you permission to see and copy his or her medical record. If you do obtain copies, use care to keep

#### NO CHALK LINES

Many old movies depict homicide scenes that show corpses outlined with chalk. There is no valid reason for doing this, and there are important reasons why it should <u>not</u> be done. Drawing an outline around the body is a significant contamination of the *investigative scene*.

The stated reason for drawing chalk-lines around corpses was to preserve some indication of the position of the body. The best way to document the position of the body is with photographs. Never draw a chalk-line around a corpse at an investigative scene.

them private; only those people with a legitimate interest professional should have access to them. Consider storing the copies you receive in a sealed evidence envelope with the physical evidence in the Make case. additional copy and remove any information that may identify the

victim. This copy can be kept in the *Investigation Folder* and used during the investigation.

## Section 5.2 Observing and Documenting Injuries: Deceased Victims

If a victim dies and the corpse is present at the *investigative scene* there is no question that it will yield important evidence about the attack. Although the deceased person cannot talk, the injuries, the body's condition, the position it was found in and trace evidence found on it can tell a great deal about what happened. While, the investigator may not be sure which objects at the scene are important pieces of evidence, the body is always significant and should be considered the most important evidence at an *investigative scene*. This section is devoted to the careful, methodical processing of a corpse.

In many countries, customs and religion require that the deceased be buried or cremated before the end of the day on which he or she died. Some religions place great importance on quick burials and any attempt









The first photographs should be wide-angle photographs of the body from every direction showing the body as it was found.

to delay, even for an investigation, can be met with strong resistance. The sooner the investigator arrives at a murder scene the easier it will be to complete a proper examination of the body.

#### Step One: Photograph the Body

The first step is to photograph the body completely before anyone touches it or moves any part of it. Any future analysis of the *investigative scene* by forensic scientists will depend completely on the quality of work done at the scene. In most cases, scientists will not have the same opportunity as the investigator to observe the scene first-hand. The accuracy of their analysis depends upon the thoroughness of the investigator's work. Any scientist examining the photographs of a corpse taken at an investigative scene will look for the following features:

- 1. The position the body was in when it was discovered
- 2. The pattern of blood on and around the body.
- 3. The visible characteristics of any injuries.
- 4. The absence of injuries on certain parts of the body.
- 5. The presence of foreign matter or objects on the body or on the person's clothes.
- 6. Indications that trace evidence may be present on the corpse.

Remember that the photographs of a corpse are the only visual records that a pathologist may have to examine the body. While photographs can never equal

the opportunity of actually examining the body, the photographs should be of sufficient quality and quantity to permit a careful study of every aspect of the entire body. Just as I encouraged you to consider all objects at an *investigative scene* as important pieces of evidence, I encourage you to consider every part of the body and its clothing as important evidence. Even if a pathologist will examine the corpse the investigator should still take ample photographs of the entire body.

The first photographs should be of the entire body from four different angles to show the position of the body and any items in close proximity to it. Do not place any *Photograph Boards* or rulers in the





If weapons are present, take photographs that clearly show the relative positions of the body and the weapon.

picture at this time. Simply, carefully document the condition of the body as it was found. Record that these pictures show the body as found on the *Photograph Log*. If there is something covering the body or obstructing a view of it do not move these items. Photograph the body exactly as it was found.

After taking pictures of the entire body as it was found take some close-up photographs. These photographs should be taken before anyone has moved or touched the body. Take at least 5 close-up photographs.

- 1. the head area,
- 2. the upper body,
- 3. the lower body and
- 4. all aspects of the left hand.
- 5. all aspects of the right hand

If there are other parts of the body which appear significant, take close-up photographs of them also (features such as visible injuries, torn clothing or objects lying on or near the body). If the body is positioned in a way that makes it impossible to photograph the head or the hands without moving the body, then do not photograph them yet. It is very important that any part of the body that can be photographed without moving it should be thoroughly photographed.





Use the photograph board from the Investigation Kit when photographing the deceased. This will help to document basic information about the case and provide a measured scale for forensic scientists.

If witnesses indicate that the body was already moved and is not in the same position as it was originally found, do not move it back or attempt to reposition it. Take a complete set of photographs recording its position and appearance when you arrived and note on the *Photograph Log* that it may have been moved prior to your arrival. Interview witnesses who observed the body before it was moved and record what they remember about the position of the body. Photograph the area where the witness said the body was originally and process it for physical evidence. Keep sufficiently detailed records to enable photos taken before and after a body was moved to be distinguished.

#### Step Two: Sketch the Body.

After the body has been photographed as it was found, sketch the body on the *Investigative Scene Sketch*. It is important to document where at the scene the body was found. Record the position of the body the same way you would record objects found at the scene: by measuring the distance between the body and two intersecting or *reference walls*. Because a body is large and flexible it is helpful to record several measurements to indicate its exact position at the scene. By recording the distances from both the head and the feet you give a clearer indication of the angle at which the body was lying. Depending upon the particular case, you may also decide to record the distance of the hands from the two *reference walls*. Take as many measurements as needed to permit someone to return to the scene and recreate the exact position of the body.

If the body is on a bed or in a chair, record the distance between the legs of the furniture and the *reference walls*. After sketching and recording the distance between the piece of furniture and the walls,

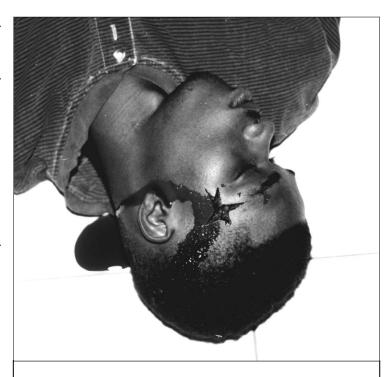


measure and record the length and width of the bed or chair. Indicate the size of the bed or chair on the *Investigative Scene Sketch*. In the case of a bed, sketch the position of the body on the bed, and record the distance from the body to the edges of the bed.

If there is a weapon or other obviously significant piece of evidence near the body record the distance between the body and the object. Depending on the circumstances of the individual case you may decide to record measurements to other objects such as empty glasses, scattered papers, etc. If you are in doubt, record the measurement; it is better to have too much information rather than too little.

# Step Three: Examine and Document Injuries

After photographing and sketching the body as it was found record your observations about the body. Working from



Take close-up photographs of any injuries or unusual features of the body.

the head and moving down toward the feet, look carefully at each part of the body and its clothing for details or unusual features, which may be important in the investigation. Examine exposed portions of the body for bruises, scratches, and small injuries. Each one should be recorded on the wound chart. Take detailed notes about what you observe and describe each injury. The size, shape, color, and presence of any foreign matter should all be recorded. Record your impressions of how the corpse smelled. Later in this book I will discuss the characteristics of particular injuries; you should use that section as a checklist to help you when you examine the corpse. Examine the clothes carefully for tears or cuts. Look for foreign objects or dirt that might indicate that a struggle took place or that the body was dragged on the ground.

#### Step Four: Preserve Trace Evidence

Trace evidence, by definition, is evidence that is not readily visible or identifiable without some scientific procedure. Most investigators will not ordinarily have the skills, the equipment, or the time to properly process the body for trace evidence. The best an investigator can do is to recognize where trace evidence might be found and take steps to preserve it.

Trace evidence is often discovered on the clothes of the victim. Whenever possible the deceased's clothes should be preserved as evidence and examined for trace evidence by forensic experts. Trace evidence is frequently found under the fingernails of deceased victims. Victims in their struggle for life often scratch their assailant and in so doing scrape off skin cells which become lodged under the nails. Such skin cells may have enough genetic material to perform DNA comparison with a suspect's DNA. The hands should be protected from contamination by carefully covering them with **paper bags** or **paper** until a pathologist can take scrapings from the nails. **Plastic bags should never be placed over the hands; they** 



will accelerate the decomposition and deterioration of trace evidence. If a forensic scientist will not to be able to examine the body before burial, the material under the nails should be scraped onto a clean piece of paper, folded and then placed in a paper evidence envelope.

#### Step Five: Turn Body Over and Repeat steps 1, 3, and 4.

When the entire body and investigative have scene been photographed and sketched as they were found, the body should be turned over and re-photographed. A similar set of pictures should be taken. Take photographs of the entire body from 4 different angles and at least 5 close-ups of the body indicating clearly the head area, the upper half of the body, the lower half of the body and both hands. Close-up photos should also be taken of any remarkable feature the investigator observes.

Before turning the body over, carefully examine the hands and body for any evidence that might fall off when the



Take a photograph of the body as well as the ground underneath as soon as the body is moved.

body is moved. If necessary, take individual photographs of this evidence. As soon as the body is moved, carefully examine the area underneath for any items of evidence or unusual features that should be documented. If there are objects under the body, photograph them as they were found before moving them for closer examination.

After thoroughly photographing the parts of the body that were lying face down, carefully remove the

#### LIMITATIONS

#### OF THE

#### HUMAN RIGHTS INVESTIGATOR

Although there is a great deal a human rights investigator can do to examine and document the condition of a victim or corpse, there are limitations.

Unless the investigator is also a licensed pathologist, prosector, or doctor the investigator MUST NEVER:

Incise the body for an internal exam.

Drain body fluids.

Take samples other than hair or fingernail scrapings.

Perform a genital exam on a corpse or living victim.

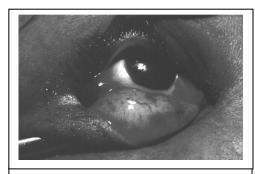
body for examination by a medical doctor or pathologist. Take a clean white sheet from the Investigation Kit and wrap the body for removal to a doctor's office or laboratory. Once you have delivered the body to a doctor, the doctor can continue the examination of the body and make detailed observations about the injuries sustained by the victim. Give the pathologist a copy of the investigative scene photographs and fully brief him or her on your observations of the scene.



If there is no pathologist available but there is a qualified doctor in the area discuss the possibility of that doctor doing a postmortem examination. Give the doctor a copy of the "Model Autopsy Protocol" contained in the appendix. Ask the doctor to read it and do as much of it as he or she feels comfortable doing. Many of the tasks on the model protocol are within the competency of a trained medical doctor.

#### Cases Where There is No Pathologist

If there is no pathologist or medical doctor to examine the body before burial the investigator should do a more thorough examination of the body and document additional information for later review by a trained pathologist. Remember that the



The eyes should be examined for petechiae and photographed. Petechiae may indicate the victim was strangled.

human rights investigator is <u>not</u> a trained pathologist and must not do anything beyond what he or she is professionally trained to do. For example, an investigator must not attempt to retrieve bullets lodged in the victim or do anything invasive to the body. In the event you feel such evidence is important record where the body is buried and hopefully in the future a professional pathologist can exhume the body and recover the projectile. Having said this, the investigator can do a more comprehensive examination of the body and

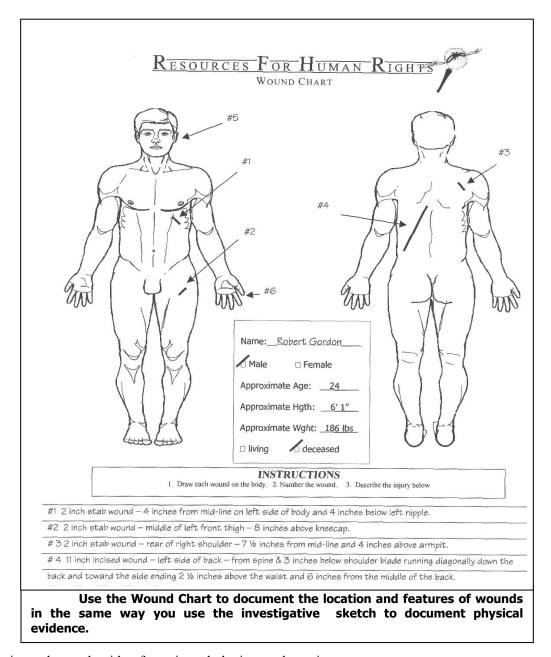
# investigation checklist

#### EXAMINING DECEASED VICTIMS

Soon after death, the body begins to undergo the process of decomposition. Over a short period of time the corpse will change dramatically making the documentation of wounds and the collection of evidence more difficult. As soon as possible examine the corpse in the following manner.

- 1. **Photograph** the body exactly as found.
- 2. **Draw** the position of the body on the investigative scene sketch and record important measurements.
- 3. Examine the body as found and **Document Important Observations** on the Wound Chart.
- 4. Examine the body as found for **Trace Evidence.**
- 5. Move the body to examine the side of the body that was facing down. Repeat Steps 1, 3 & 4.
- 6. Remove body for examination by a **Pathologist** or forensic scientists.
- 7. If body cannot be examined by a pathologist remove the clothing and Repeat Steps 1,3 & 4.
- 8. **Collect** evidence from the body.



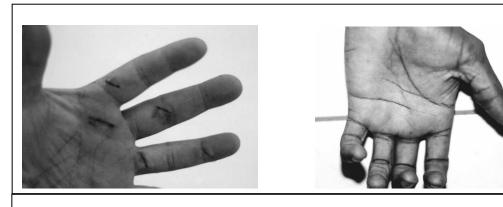


its injuries and consult with a forensic pathologist at a later time.

The clothes should be removed from the body and steps 1, 3, and 4 repeated for both sides of the body. Again, if there are any particular features that might be important, take additional close-up photographs of them. Features such as scratches, bruises, and unusual foreign objects on the body should be indicated on the wound chart and photographed. If you suspect sexual abuse, take photographs of the deceased victim's genitals.

When photographing injuries, first take a photograph of the injury as found even if the wound is not clearly visible because of blood or foreign matter. Afterward found, take a clean cloth, wipe blood from it,



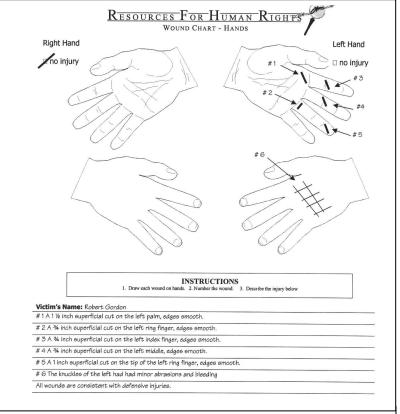


The hands, arms and legs should always be examined and photographed. The absence of injuries is as significant as the presence of them. These photos show "defensive wounds".

and photograph it again. Place the photograph board or a ruler next to the injury for this second photograph. The ruler should be visible in the picture but should not obstruct any portion of the injury or

its surrounding skin. These pictures will give a pathologist a clear view of the injury. This should only be done if a pathologist will not examine the body before burial.

The hands and arms must be examined and photographed for the presence or absence of *defensive* wounds (described in Chapter 6). The eyes must be checked and photographed for the presence of *petechial hemorrhages* (also described in Chapter 6). Even if neither of these injuries is present, you should photograph the hands and eyes to document their absence.



A special Wound Chart for the hand should be used to show clearly what injuries were sustained. The above wounds indicate that the victim was probably left-handed and that he not only grabbed the assailant's knife but also punched him.

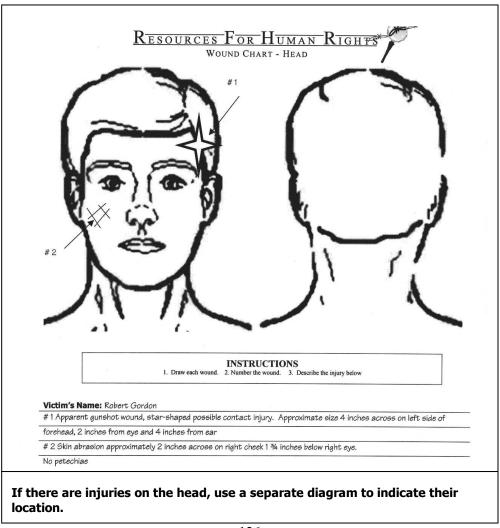


#### Filling out a wound chart

Document the location of every injury on the *Wound Chart* and write a detailed description of it. Just as measuring the location of evidence at the investigative scene is important, forensic scientists need accurate information about where injuries were located. Measure the location of the injury from obvious anatomical features of the body such as the navel or collarbone. You can also measure from imaginary lines, such as an imaginary line running from head to toe down the middle of the body or a line perpendicular across the body through the navel or through the center of the person's ears. Just as you would record the measured distance of objects from two intersecting reference walls you should record the measured distance of each injury from these two imaginary lines, one that runs from head to toe and one that runs perpendicular to it. For example on the wound chart you might describe a stab wound as:

A 2 centimeters long wound located 4 centimeters from the midline on the body's left side and 6 centimeters above the navel.

In the case of gunshot wounds, precise measurement of the wounds on the front and back of the body may assist the forensic scientist in determining the angle and path of the bullet.





#### Collect evidence from the body.

If a trained pathologist cannot examine the body, the investigator should collect physical evidence from the body before it is buried. As stated previously, collect and properly preserve all of the clothing the victim was wearing. Clothes are extremely important because they:

- 1. Can provide evidence of what weapons were used and how;
- 2. Can contain trace evidence left by the assailant; and
- 3. Can provide samples of victim's blood and DNA.

# Hint

#### Getting the deceased's fingerprints

If the identity of the deceased is unknown, and the body is still in the early stages of decomposition, it is possible to get inked fingerprints from the corpse. These fingerprints may help positively identify the body at a later date. A pathologist should do this during the course of an autopsy. If there will be no autopsy, the investigator should take a set of inked prints before the body is buried or cremated.

After you are finished examining the body and collecting trace evidence (especially from the hands) take the deceased's fingerprints. You will need an ink pad (the kind used with rubber stamps), a clean piece of paper and a firm surface like a piece of board or a book. Have an assistant hold the ink pad while you take one of the deceased's fingers and roll it on the pad. Then, while your assistant holds the clean paper on a firm surface, roll the finger while applying gentle pressure to leave an impression of the finger's ridged skin. The print should clearly show details of the skin's ridges. If it is smudged or too faint, do it again. Label each fingerprint indicating the hand and finger it came from.

The clothes should be allowed to air-dry in a clean secure place free from contamination and protected from direct sun and breeze that could blow dirt on them. Once they have dried place them in a clean paper evidence envelope for safekeeping.

Samples of any foreign substances found on the body should be collected and preserved. How you do this will depend upon what the substance is. Refer to the "Collecting and Preserving Evidence" chart at the end of Chapter 4 to find out how to best preserve different types of evidence.



# POSTMORTEM DETECTION OF TORTURE

	rom common torture techniques.
TORTURE TECHNIQUE	PHYSICAL FINDINGS
Beating 1. General.	Scars. Bruises. Lacerations. Multiple fractures at different stages of healing, especially in unusual locations, which have not been medically treated.
2. To the soles of the feet("falanga", "falaka"' "bastinado"), or fractures of the bones of the feet 3. With the palms on both ears simultaneously ("el telefone").	Haemorrhage in the soft tissues of the soles of the feet and ankles. Aseptic necrosis. Ruptures or scarred tympanic membranes. Injuries to external ear.
4. On the abdomen, while lying on a table with the upper half of the body unsupported ("operating table", "el quirofano").	Bruises on the abdomen. Back injuries. Ruptured abdominal viscera.
5. To the head.	Cerebral cortical atrophy. Scars. Skull fractures. Bruises. Haematomas.
Suspension	
<ul><li>6. By the wrists ("la bandera").</li><li>7. By the arms or neck.</li></ul>	Bruises or scars about the wrists. Joint injuries. Bruises or scars at the site of binding. Prominent lividity in the lower extremities.
8. By the ankles ("murcielago").	Bruises or scars about the ankles. Joint injuries.
9. Head down, from a horizontal pole placed under the	Bruises or scars on the anterior forearms and backs of the
knees with the wrists bound to the ankles ("parrots perch", "Jack", "pau de arara").	knees. Marks on the wrists and ankles.
Near Suffocation	
10. Forced immersion of head in water, often contaminated ("wet submarine", "pileta", "Latina").	Faecal material or other debris in the mouth, pharynx, trachea, esophagus or lungs[and stomach]. Intra-thoracic petechiae.
11. Tying of a plastic bag over the head ("dry submarine").	Intro-thoracic petechiae.
Sexual Abuse	
12. Sexual abuse.	Sexually transmitted diseases. Pregnancy. Injuries to breasts, external genitals, vagina, anus or rectum.
Forced Posture	
13. Prolonged standing ("el planton"). 14. Forced straddling of a bar ("saw horse", "el cabellete").	Dependent edema. Petechiae in lower extremities. Perineal or scrotal haematomas.
Electric shock	
15. Cattle prod ("la picana").	Burns: appearance depends on the age of the injury. Immediately: red spots, vesicles, and/or black exudate. Within a few weeks: circular, reddish, macular scars. At several months: small, white, reddish or brown spots resembling telangiectasias.
16. Wires connected to a source of electricity. 17. Heated metal skewer inserted into the anus ("black slave").	Peri-anal or rectal burns.
Miscellaneous	
<ul><li>18. Dehydration.</li><li>19. Animal bites (spiders, insects, rats, mice, dogs).</li></ul>	Vitreous humor electrolyte abnormalities.
	Bite marks.



# Problems and Procedures

#### **Identifying Victims**

#### Problems:

One of the most fundamental tasks of the investigator is to identify the deceased. Identifying remains can sometimes be a very difficult thing to do, particularly if decomposition is advanced.

#### Procedures:

Try to obtain a tentative identity of the person from witnesses at the scene. After learning the victim's name, locate the closest adult relative and have them come to positively identify the victim. Record that person's name and their identification of the corpse in the *Investigation Folder*.

If there is no one who can positively identify the body before it is buried do the following:

Take a clear photograph of the face for identification purposes.

Take photos of all tattoos, birthmarks, scars, and other unique features.

Examine the victim's mouth. Note any missing or gold teeth on a tooth chart. Examine whether or not the victim has false teeth. Photograph the teeth.

If possible take the victim's fingerprints (see "helpful hint" on taking fingerprints).

Collect all of the victim's clothes and jewelry and preserve as evidence.



# CHAPTER 5 SUMMARY

The careful examination of injuries can tell a great deal about how they were inflicted. It may be possible to identify the weapon that caused them as well as the manner in which it was used.

# The Limits of the Investigative Examination

Whenever possible the human rights investigator should seek the assistance of a qualified forensic pathologist. If there are no pathologists available ask local doctors or medical personnel to assist in the examination.

Under no circumstances should the investigator do intrusive procedures or conduct examinations that he or she has not been properly trained to perform.

#### **Examination of Living Victims:**

- 1. Check that **medical personnel have been notified** and are on the way.
- 2. Introduce yourself and explain your purpose. **Ask the victim for permission** to interview and examine him or her.
- 3. Ask the victim to describe what happened and where he or she is hurt.
- 4. **Examine and photograph the injuries**. Whenever possible include the victim's face in the picture.
- 5. Document injuries on Wound Chart.
- 6. Interview Medical personnel.
- 7. Obtain victim's medical records.

#### **Examination of Deceased Victims:**

- 1. Photograph the body as it was found.
- 2. **Draw** body on the Investigative Scene Sketch and record important measurements.
- 3. **Examine** the body as found and document observations on the wound chart.
- 4. Look for trace evidence.
- 5. Move the body to examine the side of the body that was facing down. **Repeat steps** 1 4.
- 6. Remove the body for examination by a **Pathologist** or forensic scientist.
- 7. If the body cannot be examined by a pathologist remove the clothing and **repeat** steps 1 4.



# Chapter 6

#### **IDENTIFYING PHYSICAL INJURIES**

In most cases the careful examination of a victim's injuries can reveal important information regarding what caused the injuries. In some instances an injury's characteristics may also indicate the manner in which a weapon was used. Learning to recognize the unique features of different wounds will help narrow the search for weapons that could have caused a particular injury. Knowing what weapon was used may ultimately help identify or eliminate possible suspects. This chapter will examine four primary categories of injuries: sharp force injuries, blunt force injuries, gunshot wounds and asphyxiation injuries. It will describe the features an investigator should look for and explain the significance of discovering these features in a case.

### Section 6.1 Sharp Force Injuries

The term "sharp force injury" is used to describe any injury sustained by applying force to the body with a sharp instrument. Sharp instruments include common household knives, military knives, bayonets, hunting knives, razors, machetes, cutlasses and swords as well as homemade knives created by sharpening any thin hard material so that it is able to cut the skin. Sharp instruments may also include tools such as screwdrivers or chisels. Any injury left by a sharp instrument will have features that correspond to the instrument and indicate the manner in which it is used.

The characteristics of a *sharp force injury* will be a function of 4 factors:

- 1. the "sharpness" of the instrument;
- 2. any unique features of the instrument which contact the skin;
- 3. the amount of force used; and
- 4. the manner in which the force was applied.

These four factors can result in a wide variety of sharp instrument injuries. The investigator should gather as much information as possible regarding any of these factors, take good photographs of the injury and seek the assistance of a forensic pathologist in determining what may have caused the injury.

#### **Incised Wounds**

Incised wounds are caused when a sharp instrument is drawn across the skin and cuts it. Pathologists classify all sharp force injuries by comparing the length of a wound with its depth. A sharp force injury in which the length of the wound is greater than the depth of the wound is classified as an incised wound. This manner of using a knife causes an injury by incising the skin with the sharpened portion of the weapon.



Most injuries can be classified as one of the following:				
Sharp Force	Blunt Force	Gunshot	Asphyxiation	
A sharp force injury is caused by any instrument sharp enough to cut the skin.	A blunt force injury is caused by any hard blunt object striking the skin.	Gunshot wounds are caused by weapons that use explosive substances to propel a projectile.	Asphyxiation is caused by depriving the body of oxygenated air.	
Incised Wound	Blunt Instrument	<b>Contact Wounds</b>	Hanging	
The wound is longer than it is deep.	Common blunt instruments include sticks, clubs and rocks	Firearm is held in contact with the victim's body when fired.	Suspending the body with a rope or ligature around the neck.	
Stab Wound	Stationary Object	Very Close	Strangulation	
The wound is deeper than it is long.	Hard objects such as the side of a building or a paved street.	Guns fired in very close proximity to the victim often show signs of soot from the burnt gunpowder.	Strangulation is the compression of the neck with the hands, a ligature or a blunt instrument.	
	Moving object	Close	Obstructed Airway	

Guns fired close to the

victim often have particles of

unburnt gunpowder surrounding the wound.

Typical Entry Wound

A typical entry wound that is

fired more than %% does

not have any evidence of

soot or unburnt gunpowder.

Presence of a foreign body

in the throat.

Suffocation

Covering the nose and

mouth with some object.

**Chest Compression** 

Compressing the chest with weight or some other force to interrupt respiration.

The Classification of Injuries

These wounds ordinarily:

- 1. bleed profusely;
- 2. are symmetrical: that is, the sides of the injury are mirror images of each other; and

Moving objects like a car or

piece of machinery.

Kicking

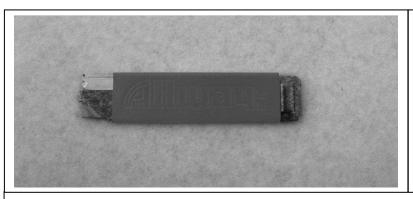
Kicking a person with a boot

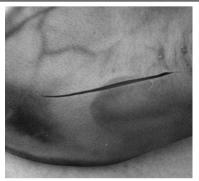
or other hard toe shoe.

3. have smooth edges.

Depending upon where the injury is sustained, skin and muscle tension may cause the wound to open into a "fish-mouth" shape. An incision on the neck, arms, or legs where the skin is ordinarily taut will stretch open to expose the tissue underneath. Although the weapon leaves a straight incision, the opposing edges of the skin open up into a smooth curve. This curving of the edges of the wound is the result of skin tension. One way to demonstrate this phenomenon is to slice a stretched rubber tire tube. The straight incision in the tube takes on a curved appearance because of the tension and elasticity of the rubber. Similarly, straight incised wounds often take on a curved appearance.







The above picture shows a slash wound and the knife that inflicted it. It is important to remember that the size of the slash wound does not indicate the size of the knife. A small razor knife like the one on the left can cause a large, fatal slash wound.

The size of an incised wound does not reliably indicate the type or size of the instrument used. A small razor can make an incised wound as large as a sword. Although it is important to document the length of the wound, that measurement can not alone reliably identify the type of knife used. An incised wound's length is not determined by the size of the knife but by how it was used. The same knife may cause multiple sharp force injuries each having a different length and width. The characteristics of the wound are a function of how sharp the knife is and the amount of force used.

Forensic scientists, by examining the wound or good photographs of it, may be able to ascertain some unique features of the weapon used to inflict it. Such analysis may be able to distinguish between an injury caused by a shaving razor and one caused by a machete. Ordinarily the sharper the blade the smoother the edges of the wound will be. Hand-sharpened implements or farm tools like a machete may leave visible tears along the edges of the wound.

#### Stab Wounds

Stab wounds are inflicted when a knife is thrust directly into the body in a stabbing motion. These injuries are usually deeper than incised wounds. Pathologists would classify any sharp force injury in which

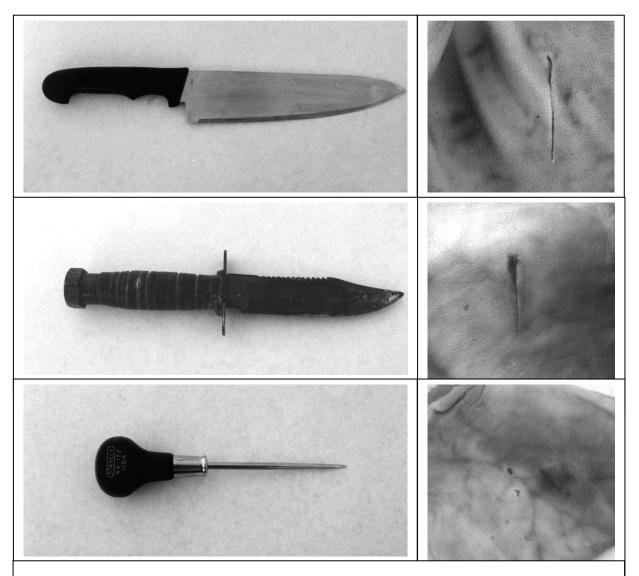
nformation

STAB WOUNDS

Stab wounds indicate the size of the knife that caused them more reliably than entry wounds indicate the size of the bullet or the type of gun. Knife wounds provide more reliable information because:

There is greater variation in the size of knife blades than in the size of bullets. Even though a stab wound may not perfectly correspond to the blade's width, a forensic pathologist may be able to match a knife to the wound it created. The investigator, can use the injury's size to eliminate some of the objects recovered from the *investigative scene* as possible weapons and help narrow the search for possible weapons. A knife also travels through the skin slower than a bullet. It slices through the skin rather than instantaneously puncturing it, like a bullet. This minimizes the distortion caused by the skin's elasticity.





Each of the above photographs shows a weapon and the different stab wound that it caused. Careful examination of a victim's injuries can help the investigator identify which objects at the investigative scene could have been used as the weapon. Consultation with a forensic pathologist is necessary for any definitive determination.

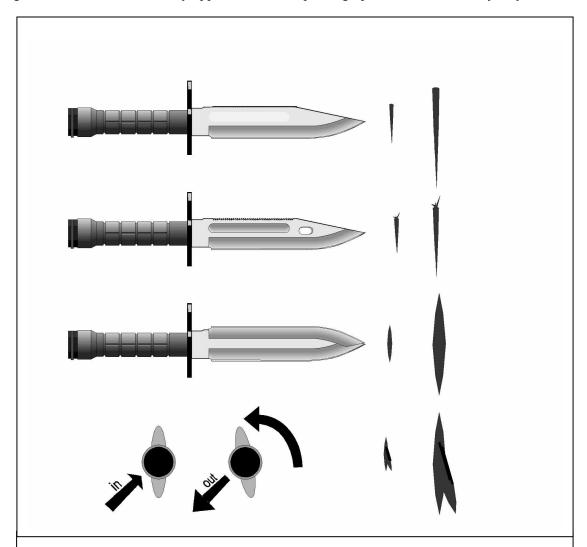
the depth of the wound is greater than the length of the wound as a stab wound.<sup>2</sup> These injuries are usually deeper than incised wounds. A knife can reach deep inside the body and seriously damage internal organs. Stab wounds may cause a great deal of internal bleeding while external bleeding appears minimal. The investigator should seek immediate medical attention for a recent stabbing victim even if the bleeding appears slight and the victim is conscious and relatively pain free; most of the damage caused by a stab wound is internal.

Stab wounds, unlike incised wounds, may provide valuable information regarding the type of knife used. Such injuries can provide information about the length of the knife (the depth of the wound) and the



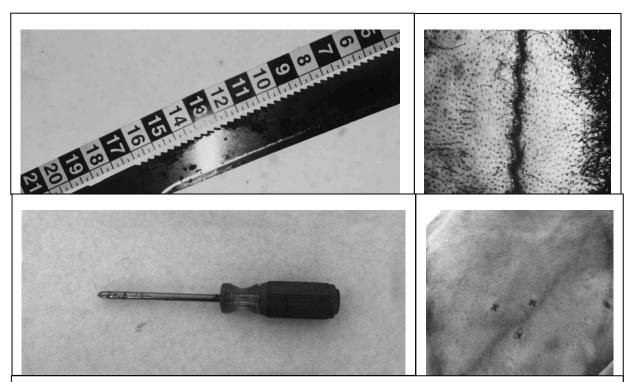
width of the blade (the width of the wound). Carefully record the width of each stab wound. Although the same knife may cause several injuries each having a different width and depth, a pathologist can analyze these injuries to determine what types of sharp instruments may have caused them.

Variation between multiple injuries does not necessarily indicate that more than one knife was used, although it may. Variation in width between multiple stab wounds is probably the result of how the knife was inserted and withdrawn. The wound may be widened slightly if either the victim or the assailant moves while the knife is inserted or withdrawn. Even if both the assailant and victim remain relatively stationary during an attack, stab wounds may appear different depending upon where on the body they are sustained.



**Different stab wounds:** The shape of the wound will be different depending upon the type of knife used. The most common knife has a single sharpened edge that leaves a point on the side of the injury contacting that edge. The skin, which is pierced by the dull side of the blade, has a blunted edge. A saw-tooth knife leaves a similar wound except that the saw-teeth may also tear the skin where they contact it. A dagger, which is sharpened on both sides of the blade leaves pointed edges at both sides of the wound.





Some implements leave characteristic injuries that help identify them as the weapons. In the top set of pictures the "saw-tooth" machete left a corresponding injury on the victim's scalp. In the photos above the phillips screwdriver left small cross-shaped injuries on the skin.

(The top two photos are printed with the permission of the Office of the Chief Medical Examiner of New York)

The most consistent measurement is probably the best indication of the width of the blade. Because of the skin's elasticity, stab wounds are slightly smaller than the width of the blade.<sup>3</sup>

Careful examination of a stab wound can also indicate the type of knife used. Knives can be divided into three categories. The most common knife has only one sharpened edge. The other side of the blade is thicker and smoother than the sharpened side. A dagger is a knife on which both sides of the blade have been sharpened. Both sides are symmetrical, equally sharp, and cut equally well. A saw-tooth knife is a special knife used by some military units for outdoor survival. This knife, like the common knife, also has one sharpened side and a thicker spine. The distinguishing feature of this knife is the back edge, which has sharpened saw-teeth. These teeth allow the knife to be used to cut wood. In some countries this knife is referred to as a "Rambo" knife after a movie in which the hero carried one.

When someone is stabbed with a knife, the sharpened edge cuts the skin resulting in a wound where the opposite edges come together in a clean, sharp point. If the knife has only one sharpened edge, like most common knives, it will leave a wound that comes together in a sharp point on one side (the sharpened side) and one side that comes together in a slightly blunt point (the unsharpened side). A dagger, or a knife with both sides of the blade sharpened, will leave clean, sharp points on both sides of the wound. A knife with a saw-tooth back may cause a wound that resembles a common knife injury, unless it was inserted past the saw-teeth. In that case the teeth will cause small tears where they were drawn past the skin. In some cases



the knife or victim may twist during the attack causing the sharpened side of the blade to slice the skin in two locations along the same wound tract (see diagram). 4

Hint

#### **Finding Weapons**

Although knives and guns are designed and manufactured to be weapons, any object can be used as a weapon. Whether an object is a "weapon" depends upon how it was used in the case you are investigating.

A car, a corner of a building or a pencil can be weapons used to cause the death or serious injury of another person. Keep this in mind when examining *investigative scenes*. Many objects at the scene might have been used as a weapon by the attacker. Examination of the injuries and interviews with witnesses will help determine what objects should be collected as evidence

It can sometimes be difficult for the investigator to differentiate between stab wounds and incised wounds; and it is always necessary to perform an autopsy to make a precise determination. There are some reliable indicators that the investigator should look for. In most cases the assailant will have stabbed or slashed the victim more than once. If the victim has more than one knife injury, compare them. Incised wounds will ordinarily vary significantly in length while stabbing wounds will not. Stab wounds will be more consistent in size and appearance. Keep in mind that an assailant may use the same knife to both stab and slash the victim during an attack.

It is important for the investigator to keep in mind that stab wounds may also be caused by other sharpened instruments. Sharp force injuries can result from a stabbing with such items as an ice pick, a screwdriver, or a bayonet. A careful examination of the injury may reveal what caused it. It is important to photograph the injury as you find it, then wipe the blood off the wound and photograph it again (do not wipe the wound if a pathologist is going to examine the body). It is possible that the implement used left a characteristic injury on the body. For example, a person stabbed by a Phillips (star-shaped) screwdriver may have injuries bearing a small cross or star corresponding to the tip of the screwdriver. Similarly, some bayonets have a four-sided blade in the shape of a cross. A puncture wound caused by such a bayonet would leave that characteristic cross-shape in the skin. An experienced investigator, after examining a wound, will consider what types of implements could

have caused the injury and then search the *investigative scenes* for weapons consistent with the injury.

# Section 6.2 Blunt Force Injuries

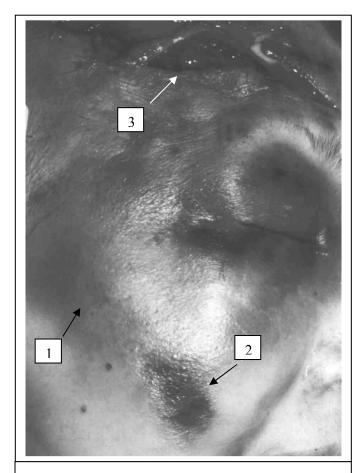
Blunt force injuries are caused when a victim is struck with a solid blunt object such as a gun butt, a stick, a bar, or a stone. Such blows may or may not break the skin and very often cause internal injuries and bleeding.

If the force used is insufficient to tear the skin there may be other evidence of blunt force. The skin should be examined carefully for signs of abrasion left by the



The above injury was caused when the assailant stomped on the victim. Careful examination and documentation of this injury may help positively identify the suspect by linking his or her shoe to the injury.





Blunt force can cause three different types of injuries. Abrasions (1) Contusions or bruises (2) and Lacerations or tears of the skin (3).

 $(Photo\ courtesy\ of\ the\ Office\ of\ the\ Chief\ Medical\ Examiner\ of\ New\ York)$ 

weapon as well as bleeding under the skin which may appear as bruising. Clothing worn by the victim may diminish the appearance of abrasions.<sup>5</sup> As with all visible injuries these should be carefully examined, documented and photographed. In such cases an expert is essential to help determine the full extent of any internal injuries.

When blunt force does tear the skin, it causes irregular shaped lacerations that may not clearly indicate the object used. An assailant using the same weapon may inflict a number of serious injuries and no two might look alike. The tremendous force exceeds the skin's elasticity and causes it to split or tear into irregular shaped injuries. The wound edges (unlike incised wounds) are ragged, may show signs of abrasion and have skin "bridges" connecting the edges of the wound.

An exception to this general rule is a case where the implement used has a sharpened edge or some protrusion likely to leave a unique mark, for example, a hammer, or a stick with a nail in it. When examining blunt trauma injuries, carefully photograph each individual injury, examine it for any distinguishing marks, and note its location on the *Wound Chart*. Examine the body carefully for bruises and other places where the person may have been struck. Because it can be

difficult to identify the weapon used to inflict a blunt trauma wound, the investigator should examine the *investigative scenes* for any stick, baton or heavy object which may have traces of the victim's blood. Preserve these items as evidence and give them to the pathologist. The pathologist may, during a close examination of the injuries, be able to determine which object was used to inflict the injury.

Blunt trauma injuries can also be caused by a moving vehicle or by the assailant slamming the victim's head against some hard stationary object like a tree or sidewalk. Examine hard surfaces such as these for any sign of blood. In cases where an autopsy will not be performed try to arrange for the body to be x-rayed prior to burial so that forensic scientists can study any skeletal damage.

#### **Kicking Wounds**

Kicking injuries are a type of blunt force injury which is commonly encountered in human rights investigations. Soldiers or police, reluctant to risk injury to their hands, use their boots to assault their victims. Kicking injuries most often appear in the region of the face and abdomen. They may consist of



slight abrasions caused by glancing blows or by deep bruises and abrasions caused by direct impact. Kicks to the face by someone wearing boots can cause severe damage to the face, such as serious fractures of the nose, cheekbones, and jaw including the loss of teeth. Significant bleeding into the victim's airway may result in death.

If you suspect a kicking death, take numerous close-up photographs and look for any feature which may indicate the type of boot worn by the assailant. In such attacks the assailant may also step on the victim, possibly leaving a dirty imprint of his or her boot on the victim's skin or clothing. If the assailant stomps on the victim with sufficient force the impact of the sole can cause a unique bruise pattern. This imprint may help identify the brand of boot that may be unique to government forces. The imprint might also reveal small imperfections in the sole that can be matched to the attacker's boot.

#### Section 6.3 Combination Injuries

In some instances there will be injuries that result from implements which cause both sharp force injuries



Abrasions like those pictured above may indicate that the victim was dragged along the ground. Such abrasions are known as "brush" marks.

(Photo courtesy of the Office of the Chief Medical Examiner of New York)

and blunt force injuries to the body. A heavy sharpened implement such as an ax or meat cleaver may in a single blow leave both an incised injury and a crushing injury. The sharp force of the blade incising the soft tissues of the body and the heavy forceful blow causing damage to the underlying bone.

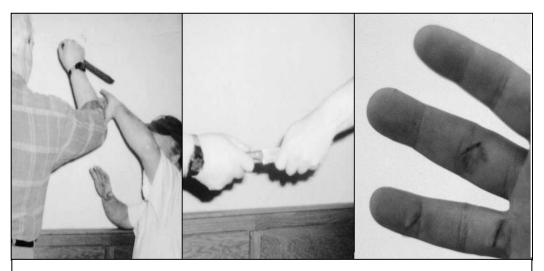
The investigator must be aware that chopping wounds caused by heavy sharpened implements may inflict both sharp and blunt force injuries. In any case where such an injury is suspected and a pathologist is not available, the investigator should attempt to have that area x-rayed before burial. A pathologist can use good photographs of the injuries sustained by the soft tissues of the body as well as x-rays of the underlying bones to help determine the type of injury that is sustained.

### Section 6.4 Defensive Injuries

**Defensive injury** is the name given to a special class of sharp and blunt force injuries. Victims receive defensive injuries when they attempt to defend themselves against their attacker. Such injuries are ordinarily found on the back and palm areas of the hands, the outer surfaces of the arms and the front surfaces of the legs.

When an unarmed person is attacked with a knife or blunt instrument he or she may reflexively put an arm up to shield the head. In some cases the victim will even grab the knife or blunt object with his or her hands. These victims will in most cases suffer injuries along the outside edge of the forearm and wrist as





The pictures above demonstrate how defensive wounds are sustained. In most cases (where a victim is able) he or she will fend off an attacker by either shielding his or her head or by grabbing the assailant's weapon. This results in characteristic injuries to the hands and forearms. The number and severity of these wounds may indicate the nature and duration of the struggle.

well as on the backs of the hands. The location of these wounds is significant because it indicates that there was a violent struggle between the victim and his or her attacker.

Numerous incised wounds on the palms of a victim's hands indicate that the victim struggled for a period of time and repeatedly grabbed the blade of the assailant's knife. The number and severity of these wounds indicate the intensity and duration of the struggle between the victim and attacker. Sharp or blunt force injuries to the front of the legs may indicate that the victim was lying on the ground during the attack and used his or her legs to shield themselves.

It is equally important to document the <u>absence</u> of defensive injuries. The lack of defensive wounds may indicate that the victim was surprised by his or her attacker or was unable to put up a defense because his or her hands were bound. Every victim should be examined for such wounds. Carefully examine and photograph the palms, wrist, and forearms of victims for the presence or absence of such injuries. Be sure to count their number and measure their length.

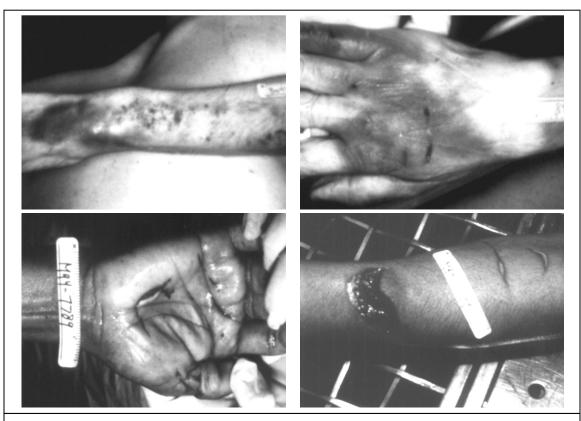
It is also possible for an <u>assailant</u> to receive such "defensive" injuries. During the course of a struggle over a weapon, particularly a knife, the assailant may have sustained "defensive" type wounds. If you have the opportunity to examine a suspect, look for *defensive wounds*. If a suspect has defensive wounds, complete a *Wound Chart* for that suspect and photograph the injuries.

#### Section 6.5 Gunshot Wounds

#### Some Basic Information About Guns

Careful examination of gunshot wounds can reveal important details about how a gun was used during an attack. Before discussing the various features of gunshot wounds that an investigator should look for, it





The above photographs show several different types of defensive wounds. These wounds usually consist of sharp force or blunt force injuries on the hands, arms and legs.

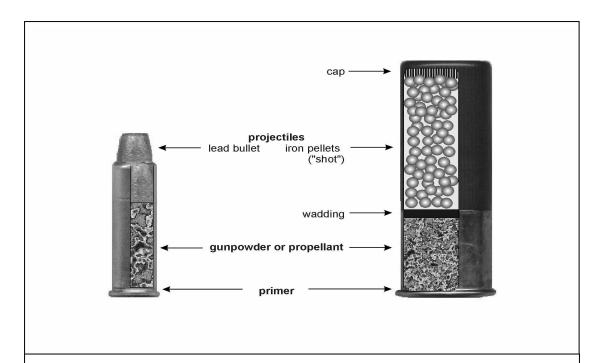
(Photos courtesy of the Office of the Chief Medical Examiner of New York)

would be helpful to have a basic understanding of how guns and bullets work. There are many types and sizes of bullets, but all are made of the same basic components.

There are two basic types of firearms: smoothbore firearms and rifled firearms. Smoothbore firearms are the older of the two types and are the direct descendent of flintlock muskets. These guns have a barrel with a smooth inside bore much like an ordinary piece of pipe. Nearly all modern smoothbore weapons are shotguns. Rifled firearms developed when gunsmiths discovered that by machining the bore of a gun barrel with spiraling grooves from beginning to end they could impart a spiraling rotation to the projectile as it left the gun. This spiraling rotation made the projectile travel further and more accurately. When a smoothbore shotgun is fired its projectiles are forced straight out of the barrel without imparting any consistent rotation. Modern rifles include most revolvers, pistols, long barrel weapons, and most military firearms.

The projectiles fired by these two types of weapons are also different. The projectile used in rifled weapons is a bullet. A smoothbore shotgun fires numerous projectiles at once; most commonly – iron pellets. Smoothbore weapons can also fire a "slug" which is like a large lead bullet. Because of the smooth bore, a slug fired from a shotgun will not travel as far or as accurately as a bullet. A rifle cartridge consists of a metal cylinder closed at one end containing a primer (which sparks when struck by the firing pin), a quantity of propellant (gunpowder or some other explosive material), and a bullet crimped into the end of the shell. The bullet is usually made of lead but is often covered with a harder metal such as copper.





Rifle cartridges, like the bullet on the left, are used with rifled weapons. When this cartridge is detonated by the gun's firing pin the bullet as well as rapidly expanding gas, smoke, and unburned particles of gunpowder are ejected from the barrel of the gun. The shotgun shell on the right is used with smoothbore weapons. This shell has a quantity of metal pellets instead of a single projectile like the bullet on the left. In addition to these pellets the following items are also ejected: rapidly expanding gases, the top cap (usually of plastic), the wadding that separates the pellets from the gunpowder (usually plastic, paper, cloth fibers or cork), and unburned gunpowder

When the firing pin strikes the back of the shell the primer ignites the propellant which burns with explosive power, driving the projectile down the barrel of the gun at high velocity. As the bullet moves down the barrel, it rubs against the raised areas of the barrel created by the spiral grooves (called the lands) causing it to spin. Because the tempered steel of the barrel is harder than the bullet, any small imperfections or protrusions on the lands cut into the side of the bullet. These microscopic marks on bullets left by the lands allow ballistics experts to determine whether a bullet was fired from a particular gun.

In addition to the bullet, other materials are also forced out of the end of the barrel. Hot gases, smoke, soot, unburned particles of gunpowder, and sometimes fire flash also leave the barrel. These are all byproducts of the burning propellant. The bullet, hot gases, fire flash, unburned, and partially burned grains of gunpowder can all leave distinctive marks on the victim that may help the investigator learn how the attack took place.

A typical shotgun shell is made from a plastic cylinder sealed at one end with a brass plate. Like a rifle cartridge, the cylinder has a primer and some type of propellant. Above the propellant there are numerous small metal projectile balls. These are separated from the propellant by "wadding" and sealed within the shell by a small plastic cap pressed into the top of the shotgun shell. Modern shotgun shells use



plastic "wads" although older cartridges may be found which contain wads made of felt, cork, or compressed paper.

When the firing pin strikes the primer, igniting the propellant, the rapidly expanding gases drive the wadding, the projectiles (also called "buckshot," "birdshot," or simply "shot") and the cap out of the gun. As the projectiles leave the end of the barrel, they spread out in a cone shape. The pattern of the shot becomes larger and more dispersed the further they travel from the shotgun.

#### Unburned gunpowder

For a long time the only propellant used was black powder which, when burned, left visible black sooty grit. Modern propellants use a variety of chemicals that burn cleaner than black powder and hence leave less residue after burning. Guns with shorter barrels typically eject more grains of unburned gunpowder. As the unburned propellant leaves the end of the gun, it sprays out in a cone shape much like the paint from a spray can. The force of the explosion can carry the unburned gunpowder up to a

distance of approximately one meter before it falls to the ground. When a gun is fired unburned and partially burnt grains of propellant are ejected from the barrel of the gun. 11 Typically, if the end of the barrel is within 45 - 60 cm of the victim when fired, then some of the unburned particles of gunpowder will land on the victim's clothes or skin. 12 This powder tattooing is visible upon examination of the body. Analysis of the pattern left by the unburned propellant may indicate how far the end of the barrel was from the victim when the gun was fired. As the distance between the gun barrel and the victim changes, the pattern left by the propellant changes in two ways. At close range, the gunpowder forms a small tight circle around the wound, and the individual grains of unburned powder form a dense pattern. As the distance increases, the diameter of the pattern becomes larger and the individual grains of unburned powder are less dense or further apart from each other. If a person is shot through his or her clothing, the unburned gunpowder will be deposited on the clothes and not the skin. It is therefore important to examine and



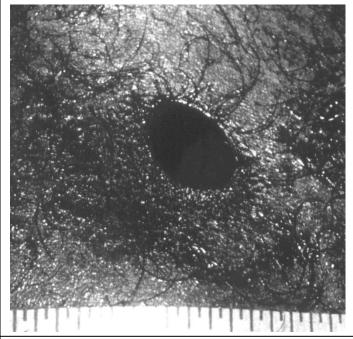
When a gun is fired in close range to the victim unburned particles of gunpowder are ejected from the barrel of the gun and penetrate the victim's skin. These minute particles cause individual injuries to the skin referred to as stippling or tattooing like those pictured above. Careful documentation of stippling may permit forensic scientists to determine the distance between the victim and the gun when it was fired.

(Photo courtesy of the Office of the Chief Medical Examiner of New York)



preserve the victim's clothes if possible.

At a distance of approximately one-meter, most of the gunpowder stops moving forward and falls to the ground. The absence of any powder on a victim and his or her clothes indicates that the weapon was probably fired from a distance greater than 45-60 cm.<sup>13</sup>



Soot appears as a blackening around the entrance wound. It is possible for evidence of soot to be washed away in preparation for burial.

(Photo courtesy of the Office of the Chief Medical Examiner of New York)

#### Soot from burnt gunpowder

If a gun is discharged in very close proximity to a victim there may be evidence of smoke and soot on the wound. All gun propellants create smoke and soot during combustion. The amount of smoke and soot created depends upon the type of propellant. Newer propellants usually create less soot than black powder. Gun smoke leaving the end of a barrel dissipates quickly into the air. Similarly soot does not travel very far before it too dissipates or falls to the ground. Because of this any evidence of either on a victim is an indication that the gun was discharged in very close proximity to him or her. This evidence should be carefully documented with photographs. If the victim's clothes have evidence of soot or smoke they should be carefully stored to preserve this evidence.

#### Hot gases and flame

The type of gun and ammunition used will determine whether or not there was a fire flash and how far out of the barrel it traveled. If the gun was close enough to the victim that the fire flash contacted the victim or the victim's clothes, it will leave a burn mark. The presence of burn marks indicates the gun was almost in contact with the victim when fired. If the gun is recovered, and a precise determination of the distance is needed, submit the gun and the clothes to a forensic expert for analysis. Typically, flame and super-heated gases which can cause burning and searing extend 1-2 inches out of the barrel of a handgun. Some military weapons have devices on the end of the barrel to suppress these flames making it more difficult to be spotted during nighttime combat. These weapons, if held close enough to the victim, may leave a "flower-like" pattern of burning where the gases left the vented sides of the flash suppressor.

#### Wounds from Smooth-Bore Guns

Shotguns create wounds that are very different from wounds created by other firearms. Because shotguns ordinarily contain small iron or lead pellets instead of a single conical projectile, they impact the skin differently. As they leave the gun, the pellets spread out into a pattern much as gunpowder does. Depending upon the distance from the end of the barrel, the type of shell, and the choke on the gun (a



device which controls the pattern or rate of the pellets' dispersal), the injuries to the body will differ. At close range a shotgun blast can leave a large gaping catastrophic hole. It is even possible for a shotgun at close range to dismember a victim or totally destroy a part of the victim's body. Further away, the pellets disperse and impact the body separately each leaving its own wound on the body. As the distance between the gun and the victim increases, the pattern gets larger and the distance between individual pellets increases.<sup>16</sup>



### A PRIMER IN BALLISTICS TERMS

The following is a list of commonly used ballistic terms.

Abrasion ring or abrasion collar

An abrasion ring is the small reddish ring found around an entrance wound. It is the result of the bullet rubbing against the skin upon entry causing an abrasion injury.

**Ballistics Match** 

A ballistics match occurs when a ballistic expert examines a bullet fired from an unknown gun (bullet recovered from the deceased or an invesitgative scene) and a test bullet from a known gun (suspect's gun). The expert compares the marks left by the rifled barrel on the bullet as it passed through the barrel. A ballistics match occurs when the expert can say, with scientific certainty, that the unknown bullet was fired from the known gun.

**Contact wound** 

A contact wound is a gunshot wound inflicted when the end of the barrel is held in contact with the victim's skin. The rapidly expanding gases from the exploding gunpowder enter the body. When the wound is inflicted over an area of the body with insufficient space to accommodate the expanding gas (such as the skull) the wound takes on a star-like shape.

**Entrance wound** 

An entrance wound is the characteristic wound a bullet makes when it enters the body. It is usually smaller than the exit wound, round, and has both an abrasion ring and a wipe ring.

Exit wound

Is the characteristic wound left by a bullet as it leaves the body. It is larger and more oblong than an entrance wound. Its edges have a torn appearance. It does not have an abrasion ring or a wipe ring.

**Fouling** 

Fouling occurs when smoke from the unburned gunpowder comes in contact with the victim's clothes or skin. This black sooty grime indicates that a gun was in close proximity to the victim when it was fired.

Stippling or Powder Tattooing

Powder tattooing occurs when a gun is discharged close enough to the victim for small particles of unburned gunpowder to land on or become embedded in the victim's skin.

Wipe ring or wipe

A wipe ring is a small ring of dirt and grease found around an entrance wound. It is the result of the skin "wiping" off dirt and grime on the bullet as



#### Wounds from Rifled Guns

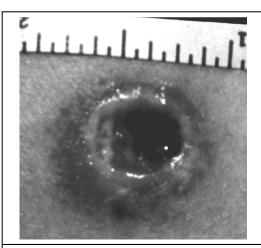
#### Entry versus exit wounds

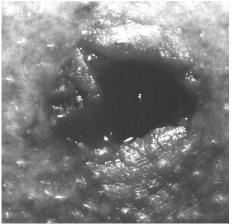
One of the most basic determinations an investigator will have to make when examining gunshot wounds is which wounds are entry wounds and which are exit wounds. Being able to differentiate between the two will permit you to reconstruct the relative positions of the victim and the assailant at the time the gun was fired. A general rule for distinguishing between entry and exit wounds is that exit wounds are larger than entry wounds. If a body has two bullet wounds and one is larger in relation to the other then in most cases the smaller wound will be the entry wound. Although this generally is an accurate rule, the investigator should be aware of the other differences and examine each bullet wound thoroughly and document other evidence that may help a pathologist make a final determination.

These differences are:

- 1. An entry wound is usually perfectly round; an exit wound is most often irregular in shape.
- 2. An entry hole usually has a reddish ring around it caused by the bullet rubbing against the skin as it passes through. This reddish ring is called an *abrasion ring*. An exit wound typically <u>does not</u> have an *abrasion ring*.
- 3. An entry wound may have a dirty ring or mark around the hole caused by the skin "wiping" off dirt and oil which the bullet collected as it passed through the gun barrel. If a victim is shot through his or her clothing, this ring may be found on the clothing around the bullet hole. An exit wound **does not** have this ring.

An exit wound may be oval-shaped, slit-like, crescent-shaped, star-shaped or completely irregular. <sup>17</sup> The skin around an exit wound often appears torn rather than pierced. <sup>18</sup> The larger irregular shape of an





The photos above show typical entrance and exit wounds. The entrance wound on the left is smaller, round and has both a "wipe ring" and an "abrasion collar." The wound on the right is an exit wound. It is larger, not as round, and shows skin that was torn as the bullet left the body.

(Photos courtesy of the Office of the Chief Medical Examiner of New York)



exit wound is primarily the result of three factors. First, the direction in which the skin is pierced will change the appearance of the wound. Piercing the skin inward results in a smooth round hole while piercing it from the inside out yields a slightly irregular hole with torn edges. To demonstrate this, pierce a piece of paper with a pen or pencil and compare both sides of the paper. The side where the pen pierced the paper will appear to have a smooth round hole and the underside will have torn edges pushed out from the paper. Secondly, the perfectly coneshaped bullet can become flattened and deformed as it passes through tissue and bone. The shape of the bullet as it leaves the body can be dramatically different from when it entered the body, thereby leaving a larger irregular hole. This is especially true in the case of hollow-point bullets. These bullets

#### GUESSING A BULLET'S CALIBER FROM THE ENTRANCE WOUND

Sometimes investigators speculate about what gun was used by looking at an entry wound. The size of an entry wound cannot reliably indicate the caliber of the bullet that caused it.

Human skin is elastic, much like the rubber tube of a bicycle tire. When a nail punctures the tube, it is difficult to see the hole unless the tube is stretched or filled with air. The rubber stretches as the nail pierces it and shrinks back when the nail is withdrawn leaving a hole smaller than the nail. Similarly, as a bullet passes through skin, it stretches the skin, and the entrance wound is usually smaller than the bullet itself. The skin's elasticity varies among people and between different parts of the body. This elasticity, along with relatively small differences between bullet sizes, makes it impossible to accurately determine a bullet's caliber bullet by looking at an entry wound.

In some areas the variety of guns may be limited to a few types of guns. If the only guns available are one small caliber gun and one large caliber gun it may be possible to distinguish between the two injuries caused by them. While such speculation may be of assitance in developing investigative leads it can never be the basis of any findings of fact in the investigation report.

have a small cavity instead of a pointed tip that causes them to spread out as they contact the body. Third, the bullet's rapid deceleration can cause the spiral to cease and the bullet can begin to tumble end over end causing a larger exit wound.

One exception to this general rule for differentiating between entry and exit wounds is the case of a ricocheted bullet. If a bullet ricochets off a hard object, it is deformed and is probably rotating erratically. Ricocheting bullets do not leave a typical entrance wound; it may be much larger and irregular in shape. The investigator may have difficulty distinguishing between an ordinary exit wound and an entrance wound caused by a ricocheted bullet without the assistance of a pathologist.

A common mistake made by inexperienced investigators is to assume that every entry wound has a corresponding exit wound. After a cursory look at two gunshot wounds some investigators may correctly identify one as an entrance wound but incorrectly assume that the other wound is an exit wound. Many bullets do not pass through the body but instead become lodged in bone or tissue. Each wound should be carefully evaluated to determine what type of wound it is. Clear close-up photographs should be taken of all bullet injuries.

#### Path of the bullet

Based on the assumption that a bullet always travels in a straight line, an investigator may try to establish the path of a bullet by drawing an imaginary line through an entry and exit wound. While this



assumption may be correct in the case of a bullet that passes through soft tissue, an autopsy is necessary to reliably trace a bullet's path. Bullets can ricochet off bones within the body and change direction. An investigator should avoid drawing conclusions about the bullet's path. The best the investigator can do is to identify all entry and exit wounds and describe them in detail on the *Wound Chart*.

#### Estimating distance

Before discussing how to determine the distance between a victim and the gun that was used to shoot him or her, it may be helpful to consider a case where such information is important.

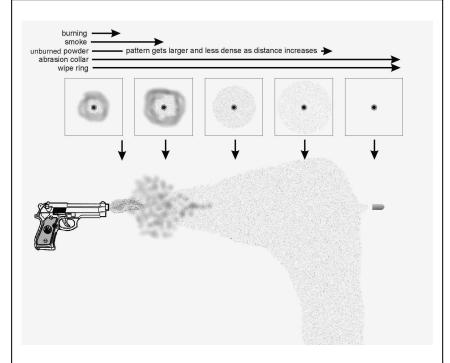
A soldier has shot a victim once in the chest with an AK59 pistol, killing him. There are no witnesses to the killing. The soldier states that the victim attempted to take his gun from him and that the two men struggled at close range over the gun. He claims that the gun discharged during the struggle.

Careful examination and analysis of the victim's wounds and clothing will reveal whether or not the soldier is telling the truth. The presence or absence of powder marks on the victim's clothing or skin at the

wound itself may reliably indicate the distance from which the gun was fired. This evidence would either corroborate or contradict the soldier's account.

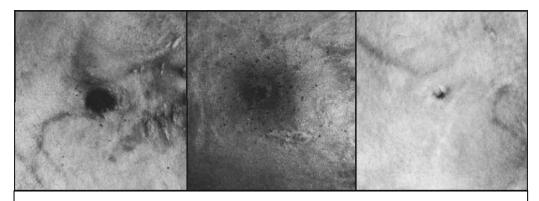
At the start of an investigation it is impossible to know what account a suspect may give in the future. The investigator should therefore document any evidence that may allow a ballistics expert to determine how far a gun was from a victim when it was fired. Such evidence will help to reconstruct the event and provide compelling physical evidence to test the credibility and reliability of witnesses and suspects.

Determining the distance between the gun and the victim is also important in cases where the victim has multiple wounds. Consider another example:



The above picture demonstrates how the distance between the end of a gun barrel and the victim affects the appearance of the area around the injury. At close range there may be evidence of unburned gunpowder, smoke and flame. As the distance increases there will be less evidence of each of these. The actual distance at which these factors affect the appearance of the injury depend upon the gun and the ammunition used. In most cases there will be no evidence of any of these at distances greater than



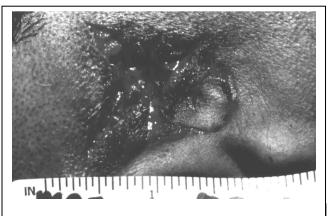


These photographs show gunshot wounds caused by the same revolver at different distances. The picture on the left shows a tight dense ring of unburned gunpowder around the injury and indicates that the gun was fired in close proximity to the victim. The middle picture shows a ring of unburned gunpowder that is larger and less dense than the picture on the left. This indicates that the gun was still close, but not as close. In the picture on the right there is no evidence of powder around the wound. This indicates that this injury was inflicted from further away than the first two. In most cases, a gun will not leave evidence of unburned gunpowder on the victim or on his or her clothes, if the gun is fired from more than one meter away.

A man is found dead with three entry wounds. Two of the wounds are minor flesh wounds in the back of the legs and bear no evidence that the gun was fired at close range. The third wound is at the base of his neck and appears to be a contact wound.

This array of injuries would indicate that the man was probably first shot at a distance as he tried to flee his attacker and that after he was injured and unable to flee, his attacker fired a fatal shot by holding

the gun to the base of his neck.



Contact wounds in which the barrel of the gun is held tightly against the head will result in a star-shaped injury. The rapidly expanding gases from the gun tear the skin.

(Photo courtesy of the Office of the Chief Medical Examiner of New York)

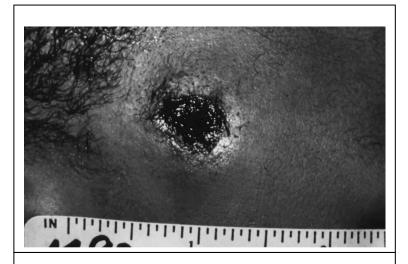
Whenever a gun is fired at a person, and the end of its barrel is more than 45-60 cm from the person, there will ordinarily be no evidence of unburned gunpowder or hot gases having contacted the wound. A gunshot wound received at a distance of greater than this will have all of the characteristics of a common entry wound (round, abrasion ring, wipe ring). If a careful examination of the clothes and skin of the victim reveals no evidence of gunpowder or tattooing, you can reasonably conclude that the end of the gun's barrel was more than 60 cm from the victim. It is not possible to determine precisely how far away the gun was, but you may conclude that it was further than this.

When conducting your examination, be aware that an assailant may have used a plastic



bottle, pillow, or a piece of bulky cloth to try and muffle the sound of the gunshot. If there was some object placed between the gun and the entry wound, then it is possible that this object absorbed the blast and there may be no evidence of gunpowder, soot, smoke, or flame. However, the use of such objects is uncommon, and when it does occur the object used is usually left at the scene.

When a gun is fired at a person and the end of the barrel is less than 45 - 60 cm from the person, there will ordinarily be some evidence of unburned gunpowder on the victim's clothes or skin. This gunpowder



The above injury is a contact wound to the head in which barrel of the gun was not held tightly against the skin. This "loose" contact permits the expanding gases to escape and hence there is no star-shaped tearing of the skin. Note the burnt appearance and soot deposits inside the wound. The absence of stippling also indicates that the gun was fired too close for unburned particles of gunpowder to disperse and impact the skin separately.

(Photo courtesy of the Office of the Chief Medical Examiner of New York)

will appear as a circular pattern of blackened grains of powder. These grains are similar in texture and size to sand or finely ground salt. Sometimes these grains are deposited on the skin and clothes without actually damaging either. At other times they may penetrate and embed actually themselves in the skin. Whether or not they become embedded in the skin depends upon the distance between the gun and the wound, and upon the type of ammunition used. In some cases the particles become embedded causing minute "pinpoint" bleeding, giving the area around the wound a slight reddish appearance.

When examining a wound containing particles of gunpowder, measure the diameter of the pattern and photograph the injury with a ruler or the *Evidence Photo Board* next to the wound. If the gunpowder mark is on the victim's clothes, you should

measure the circumference of the pattern, photograph it, then collect, and preserve the clothes as evidence. To preserve the mark on the clothing, place it in a clean dry paper envelope and then tape the envelope to a stiff piece of cardboard or wood board to prevent any bending in transit.

If there is evidence of gunpowder on the victim's clothes, the gun barrel was probably closer than 45 cm from the victim. You cannot tell the precise distance without testing the actual gun used. In this case, photograph the unburned gunpowder pattern with a ruler, measure the diameter of the gunpowder residue, and document that on the *Wound Chart*. The gunpowder pattern will continue to become smaller and denser as the gun is fired closer to the victim. At approximately 10 mm it is no longer possible to distinguish the individual grains of gunpowder.<sup>19</sup>

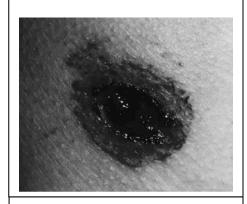
The shape of this pattern can also help a forensic scientist determine the angle from which the gun was fired. Circular patterns indicate that the gun was held perpendicular to the victim and elongated patterns indicate that the gun was fired from an angle. Good photographs of the pattern will assist forensic scientists in a final determination.



When a gun is fired at a person and its barrel is very close, you may see, in addition to unburned gunpowder, evidence of smoke, soot, hot gases and flame on the wound. The presence of any of these indicates that the gun was probably fired quite close to the victim. The exact distance depends upon the gun and ammunition used at the time. Soot and smoke residues appear as black or grey grime on the skin or clothes of the victim. This grime cannot embed itself and can be easily wiped from the skin with a piece of cloth. On dark clothing, it can be difficult to see.

The flame and hot gases leaving the barrel of a gun do not travel very far. They dissipate into the air within a short distance of the end of the barrel. The flame or hot gases may burn the victim's clothes or skin. The skin acquires a brownish-yellow hue and any hair present may appear singed. It looks like a minor burn from a match or candle flame. The area burned is usually quite small and confined to the edges of the entrance wound. If the victim is shot through clothing, the cloth around the entry hole may appear singed and darkened.

Contact wounds are very different from all other entry wounds at the various distances described above and occur when the end of the gun barrel is held against the skin and fired. These wounds will vary depending upon where

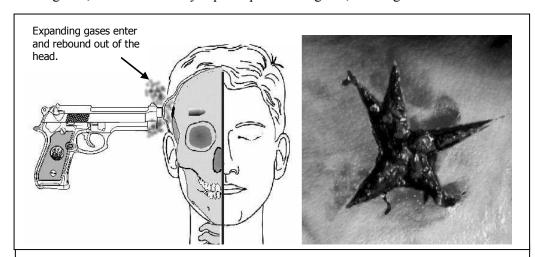


A contusion corresponding to the shape of the gun may be found when a pistol is held in tight contact with the victim's body. This is a result of the slide slamming forcefully into the body after ejecting the spent cartridge.

> (Photo courtesy of the Office of the Chief Medical Examiner of New York)

on the body the barrel is held.

The best way to understand why contact wounds are so different is to consider the following example. Many of us growing up have placed firecrackers under a tin can and have lit the fuse. As the gunpowder in the firecracker ignites, it causes the very rapid expansion of gases, creating the loud sound and sending the



Contact wounds over bony surfaces result in catastrophic injuries unlike other entrance wounds. When a gun is held in contact with the head as shown in the diagram above, the rapidly expanding gases from the burning gunpowder enter the wound. They then rebound back out of the wound tearing the skin to form a star-shaped injury much larger than the size of the bullet itself.



tin can several feet into the air. These gases cannot be contained and must escape somewhere. As they escape, they damage the tin can and push it skyward.

ESTIMATING DISTANCE				
Characteristic	Closer than 1 meter			Greater than
	CONTACT	VERY CLOSE	CLOSE	1 meter
Circular entry wound	(in areas able to accommodate expanding gas i.e. abdomen)	X	X	X
Irregular star-shaped entry wound	(in areas unable to accommodate expanding gas i.e. the head)	(no)	(no)	(no)
Abrasion ring	(possibly)	X	X	X
Wipe ring (oil and dirt that is wiped from the bullet)	(possibly)	(possibly)	(possibly)	(possibly)
Stippling/Tattoo (particles of unburned gunpowder on or embedded in skin around wound)	X	X Tight, dense pattern	X wide sparse pattern	(no)
Evidence of Burning	X	(possibly)	(unlikely)	(no)
Soot within the depth of the wound	X	(possibly)	(unlikely)	(no)
Fouling (Smokey soot around wound)	(possibly)	X	(unlikely)	(no)
Abrasion ring Wipe ring Soot Seared burnt edges Stippling: tight dense pattern Stippling: wider dispersed pattern	<ul><li>○</li><li>★</li></ul>	0	0	

When a gun is fired while pressed against the skin of the body, much of the rapidly expanding gas enters the body. Depending upon the volume of this gas and where it enters, the body may not have sufficient volume and space to be able to accommodate it and the gas will seek to escape the body through the easiest path. Most often the easiest path back out of the body is through the entrance wound itself. The



force of this escaping gas may in some cases tear the skin leaving a large irregular wound where the bullet entered. These contact wounds can be larger than the exit wounds and may bleed profusely.

A contact wound to the abdomen will ordinarily look different from a contact wound to the



# nformation

LIGATURE

A ligature is any flexible object that can be used to strangle or hang a person around the neck. It can be a rope, a cord, a piece of electric wire, or a piece of clothing. Many common household objects can be used as ligatures to strangle a victim.

head. The abdomen is larger, softer, and more pliable than the head and has a greater capacity to absorb the shock of the expanding gases. A contact wound to the abdomen will therefore not appear as catastrophic as a contact wound to the head. However there will often be an abrasion corresponding to the muzzle of the gun. This is caused when the gases inside the body press the skin outward against the muzzle causing abrasions in the shape of the gun's muzzle.<sup>21</sup>

A contact wound to the head may be marked by a large, torn and often star-shaped injury that bleeds profusely. It can be mistaken for an exit wound by inexperienced investigators. Upon careful examination of the wound there will be evidence that hot gases burned the skin; an exit wound will not have any evidence of burning. There should also be evidence of abrasion on the entry wound. In addition, contact wounds will have gunpowder and soot deposited in the wound; exit wounds would not have this. Small caliber guns or ammunition having a small load of gunpowder may not be powerful enough to generate this phenomenon.<sup>22</sup>

The amount of damage caused by this "blow-back" effect depends upon the type of gun used, the ammunition in the gun, where on the body the gun was held, and the size of the victim. The effect of this blow-back of gases can range from no obvious external damage to the wound, to catastrophic tissue damage around the wound. In all contact wounds, pathologists should find evidence of soot and unburned propellant inside the wound itself.<sup>23</sup> If a pathologist is not available, careful, well-lit, close-up photographs may reveal the presence or absence of such materials in the wound.

### Section 6.6 Asphyxiation Injuries

Death by asphyxiation occurs when a victim's blood becomes depleted of oxygen. This can be due to environmental conditions which result in a lack of oxygen in the air a victim breathes or by mechanical means, in which case the victim's ability to breath is interrupted. The loss of oxygen quickly causes unconsciousness and eventual death. The most common deaths by asphyxiation are:

#### Mechanical

1. <u>Hanging</u> – Death is cause by a rope or other ligature tied around the neck that cuts off circulation/breathing when the body's weight is suspended. In most cases there will be some evidence of petechiae and swelling of the head. Hanging deaths are usually suicides or executions. Hanging is seldom a means of ordinary homicide because of the difficulty of overcoming the victim's resistance.



- 2. **Strangulation with a ligature** Death is caused by a rope or other ligature that is manually tightened around the neck to cut off circulation/breathing. In most cases there will be some evidence of petechiae, injuries to the skin and soft tissues of the neck, and swelling of the head. Strangulation with a ligature is always a homicide.
- 3. <u>Manual strangulation</u> Death is caused by using the hand or the arms (choke-hold) to cut off circulation/breathing. In most cases there will be some evidence of petechiae, injuries to the skin and soft tissues of the neck, and swelling of the head. Manual strangulation is always a homicide.
- 4. <u>Strangulation with a blunt instrument</u> Death is caused by exerting extreme pressure on the neck, with a hard object, to cut off circulation/breathing. Likely objects include sticks and police batons. In most cases there will be some evidence of petechiae, injuries to the skin and soft tissues of the neck, and swelling of the head. Strangulation with a hard object is always a homicide.
- 5. Asphyxiation by obstructed airway (choking) Death is caused when a foreign object becomes lodged in the victim's airway thereby cutting off breathing. There will probably not be any petechiae or swelling in these deaths. These deaths are most often accidental.
- 6. <u>Suffocation</u> Death is caused by using the hands, a pillow, plastic bag, tape, or some other object to seal off a person's nose and mouth thereby cutting off their breathing. There may be evidence of petechiae only if there is a struggle during the suffocation. These deaths can be accidental, homicidal, or suicidal.
- 7. <u>Chest compression</u> Death is caused when the chest cavity is compressed preventing it from expanding normally to inhale. There is usually evidence of petechiae, swelling and discoloration of the head. Death by traumatic asphyxiation may be a homicide or an accident.

#### **Environmental**

8. Asphyxiation by a poisonous gas - Death is caused by breathing a poisonous gas such as carbon monoxide or by breathing air that is devoid of oxygen. There is usually no evidence of petechiae although in the case of carbon monoxide the skin acquires a characteristic pinkish color.<sup>24</sup> Death by poisonous gas may be a homicide, suicide, or an accidental death.

All of the above modes of death are caused by impeding the brain's supply of oxygenated blood. One way for the brain to lose its source of oxygen is an interruption of the body's ability to take in oxygen. This can occur when an object becomes lodged in the windpipe, when the nose and mouth are covered, the chest is compressed continually, or there is no oxygen in the surrounding air to breathe. Even if there is oxygenated blood in the body a sudden interruption of blood flow to and from the brain can cause death. Pressure on the neck can cause blockage of the jugular veins under the skin, which carry blood from the



head. Greater pressure on the neck can also obstruct the flow of blood into the head by compressing the carotid arteries deeper in the neck.<sup>25</sup> This force is exerted as a result of pressure applied by a ligature, or strangulation. 26 This distinction is largely academic as pressure applied to the neck most often interrupts both normal respiration and the flow of blood to and from the brain.

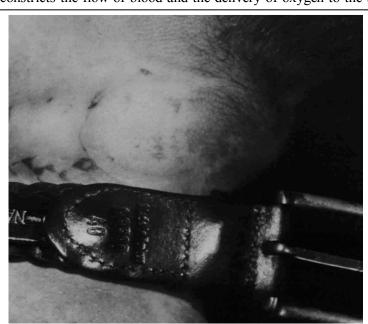
#### Hanging (mechanical asphyxiation)

Hanging deaths are most often the result of a suicide. Unless the victim is found with hands and feet bound, or there are signs of struggle, the person most probably committed suicide. It would be very difficult for a killer to murder a victim by hanging and leave no other evidence of struggle on the body.

Hanging victims can be found in a number of

positions and do not necessarily have to be suspended with their feet off the floor. All that is required is that sufficient pressure be placed on the neck to compress the vessels in the neck. Hanging victims can be found

sitting on the floor with a rope or other ligature tied to a doorknob. In these cases minimal pressure constricts the flow of blood and the delivery of oxygen to the brain, causing a loss of consciousness. This



In cases where the victim is strangled with a ligature the item used may leave a corresponding impression on the victim's skin.

(Photo courtesy of the Office of the Chief Medical Examiner of New York)



Hanging victims typically bear a ligature mark that is angled upward toward the back of the neck. This is a result of the body's weight pulling down on the ligature.

(Photo courtesy of the Office of the Chief Medical

interruption of circulation will eventually cause death even if the rope is not sufficiently tight to prevent respiration.

In most hanging cases, the rope, or ligature used around the neck will leave an imprint or indentation in the skin. This mark remains on the skin and resembles the ligature used. The mark left by the rope ordinarily runs from the front of the neck in an upward direction under the jaw toward the back of the neck. The mark left by the rope is not continuous around the neck and is usually absent under the knot or wherever the upward pull of the rope lifts the ligature off the neck's surface.

When the entire body is suspended from the ligature, there may be more than one mark left by the ligature. The first mark is created when the rope initially digs into the neck as the hanging begins. This mark can be several inches



below the jaw on the neck. In the course of the rope fully tightening or a change in body position, it can slide up under the jawbone where it remains, leaving another distinctive ligature mark.

It is very important in any case of hanging that the ligature be preserved for future examination. If there is a pathologist available to examine the body, the ligature should not be removed. **The ligature should be cut at a place as far away from the neck as possible and left on the victim's neck.** The body with the ligature should be transported to where the postmortem examination will take place. The pathologist will remove it and preserve it as evidence.

If the person is to be buried or cremated without a postmortem examination, the investigator should remove the ligature from the neck by cutting it in a place that will not damage or loosen the knot. The ligature, as well as the knot, may provide important clues about the death. The investigation may uncover evidence that proves a particular person had sole possession of that ligature or that the victim did not know how to tie such a knot. Careful examination of the knots by the neck and the opposite end where it is tied to something can sometimes reveal that the assailant was right or left-handed or that it is likely that he or she worked in a particular profession such as fishing or sailing. The ligature should be preserved as physical evidence.

#### Strangulation with a Ligature (mechanical asphyxiation)

Homicides by strangulation can result from blocking off the flow of air and blood with the assailant's hands, a rope (ligature), or a hard object. A ligature is any flexible object that can be tightened around the neck of a victim to cause strangulation. When a ligature is used to strangle a victim, it leaves a mark like that found on a hanging victim. The ligature leaves an indentation in the skin that remains after death occurs and sometimes damages the skin causing bruising or minor bleeding.<sup>27</sup> Careful examination of this mark may reveal some characteristic of the ligature. For example a braided hemp rope will leave an impression that mirrors the contours of the rope.

The ligature mark left by strangulation is different from that left by hanging. The differences, though subtle, are visible to a trained investigator. The ligature mark left by strangulation is not consistently found directly under the jawbone like that resulting from a hanging. It can be anywhere along the length of the neck. The mark left in a hanging is up by the jaw because the weight of the body forces the rope into that

#### INDENTATIONS ON THE SKIN

#### Try this demonstration:

While holding a pen in your hand, place your thumb on the back of the pen and press hard for about 5 seconds. Remove your thumb and look at it. You should see the impression of the pen on the skin of your thumb. As you watch, the pen's imprint will fade and disappear completely in about 10 seconds. The imprint disappears because of the skin's elasticity and the heart's pumping action which forces blood into the vessels of your thumb restoring its normal shape.

When a person dies, imprints and indentations often remain visible on the body. Because the heart has ceased pumping there is no blood pressure to restore tissue back to its normal shape. This phenomenon is important when examining asphyxiation deaths. Imprints left by the assailant's hands, a ligature, or other instrument may be left on the skin. Careful examination and documentation of these indentations can help identify the assailant and the weapon used.



position. Another difference is that the mark left by strangulation usually follows a horizontal path around the neck unlike the upward path of the mark left by a hanging.<sup>28</sup> In some cases of strangulation, ligature marks may not be readily apparent. This may be due to the type of ligature used. If the ligature is broad and soft it may not leave an obvious mark like those left by ligatures such as a rope or electrical cord.<sup>29</sup> Except in very rare cases victims who die from strangulation with a ligature are most often homicide victims. In most of these cases there should be some evidence of petechiae and perhaps some swelling of the face



## Manual Strangulation (mechanical asphyxiation)

Manual strangulation refers to a homicide in which the murderer does not use a ligature to strangle the victim. In cases where the assailant uses his hands to strangle the victim, there will be clear evidence of

In cases involving manual strangulation careful examination and documentation of the victim's neck may reveal small crescent-shaped cuts left by either the attacker's hands or the victim's.

(Photo courtesy of the Office of the Chief Medical Examiner of New York)

victim's neck. Careful examination of the entire neck area will reveal marks left by the assailant's hands. Very often the killer's nails cut into the skin of the victim's neck leaving small, crescent-shaped cuts or scratches. In many cases

on

this

the

victims will also leave scratches on their own necks as they struggle to remove their assailan.'s hands. In most cases there will be some evidence of petechiae and swelling of the face and head. In some cases a trained pathologist may be able to draw conclusions about the killer from the marks left on the victim's neck. The investigator should take clear photographs of the neck.

#### Strangulation With a Blunt Instrument (mechanical asphyxiation)

In some cases an assailant will use a hard object like a rod, a piece of stick or a police baton to apply pressure to the neck of a victim. In these cases there will ordinarily be some mark left by the instrument on the neck. This mark will usually be found along the front of the neck. It may appear as a bruise, an indentation, an abrasion, or all of these. If you see any such marks, photograph them after placing a ruler or *photograph board* next to the injury. Examine the scene and collect any object that could have been used to kill the victim. A pathologist may be able to determine which, if any, of the objects is the murder





#### **PETECHIAE**

Petechiae are caused when small delicate blood vessels burst as a result of abnormally increased blood pressure. Small capillaries in the eyes, the inside of the throat and the skin may burst creating pinpoint hemorrhages. Petechiae are often an indication that the person was killed by applying pressure to the neck. This pressure to the neck obstructs the flow of blood out of the head through the jugular vein causing the blood pressure in the head to increase thereby bursting capillaries.

Petechiae are most readily observed in the white portion of the victim's eyes. Any time a body is to be buried before an autopsy can be performed, the investigator should examine the eyes and skin for the presence or absence of petechiae. Good clear photographs should be taken of the eyes and the face to help a forensic expert in determining the cause of death at a later

weapon. Consider getting these objects examined for latent prints. In such deaths there should always be some evidence of petechiae.

#### Foreign Object in Airway (mechanical asphyxiation)

Although rare, murder by asphyxiation can be accomplished by intentionally placing an object in the victim's airway. There have been cases in which victims have been found with objects forced down their throats. These foreign objects block the airway and cause the victim to suffocate. Any foreign object lodged in the throat of a victim is of significant evidentiary value. The forensic pathologist who performs the postmortem exam should carefully remove the objects, and they should be preserved as evidence. If the body is to be buried or cremated without a post mortem exam, you should try to carefully remove the objects and preserve them as evidence. Later analysis of the objects may provide information about where the person was killed. In some cases the objects may even give some indication as to the motive behind the killing.

#### Pillow or Plastic Bag (mechanical asphyxiation)

Other objects used to cause death by asphyxiation are pillows and plastic bags. These work by preventing air from entering the nose or mouth. Although neither a pillow nor a plastic bag is likely to leave any distinct marks on the body of the victim, there should be some *signs of struggle* such as bruising or scratches on the victim's body. Examine the lips and mouth for any evidence of bruising or bleeding.

Plastic bags can also be used to commit suicide. The best way to distinguish between a suicide and a murder is to carefully examine the scene for the presence or absence of a struggle. If the death is a homicide the perpetrator must have overcome the victim in some manner. Look for evidence of a violent physical struggle, the use of restraints (keep in mind they could have been removed after death), and the use of drugs. Unless the person was drugged at the time of suffocation he or she would certainly have engaged in a violent struggle for life, and the body and surrounding scene would bear some indication of that struggle.



### CAUTION

### Problems and Procedures

#### **Drawing Conclusions Regarding Injuries**

#### Problems:

Human rights investigators typically do not have extensive training in the identification of injuries. The accurate identification and analysis of a victim's injuries is beyond the scope of the investigator and should be left to a forensic pathologist. Mistaken conclusions regarding injuries can not only throw an investigation off track but can also undermine the credibility and reliability of the investigator should a trained pathologist offer a contradictory opinion at a later date.

Having said this it is important to realize that a forensic pathologist may not have the same opportunity as the investigator to view the body. To assist the pathologist the investigator should complete at a minimum the following tasks:

#### Procedures:

<u>Detailed observations</u> – Examine the body carefully and thoroughly. Document and describe in detail all visible injuries. Avoid drawing definitive conclusions. Instead look for significant features that may help a pathologist draw conclusions about the injury.

<u>Clear photographs</u> – Take a sufficient number of clear well-lit photographs to allow a pathologist to examine every external feature of the injury.

<u>Medical Records</u> – If possible and with the victim's permission obtain a copy of any medical records that document the victim's injuries.

<u>Witness Interviews</u> – Conduct detailed interviews of witnesses (including medical personnel) who had an opportunity to observe the victim's injuries. This is especially important if the investigator enters the case after the victim has received medical treatment.

#### Chest Compression (mechanical asphyxiation)

Traumatic asphyxiation is the term given to asphyxiation deaths where the victim is prevented from breathing by significant and uniform pressure placed against the chest. This pressure prevents the normal expansion and contraction of the chest cavity that is necessary for breathing. This may occur when too many people are forced into a closed area such as a jail cell or can occur during police action when one or more officers sit or stand on a person lying on the ground to restrain him or her. If the weight is sufficient to prevent the chest wall from expanding, traumatic asphyxiation can occur. In such cases there should be prominent petechiae, swelling and discoloration of the head and neck.<sup>30</sup>

#### Asphyxiation - Poison Gas (environmental asphyxiation)

Suffocation by inhaling a poison gas is rarely a method of murder. Such deaths are almost always suicidal. The most common gas used is carbon monoxide, which is found in the exhaust gases of cars. People who die by breathing carbon monoxide often have a reddish hue to their skin, which is the result of the absorption of the gas into their blood.<sup>31</sup>



When investigating a case where the person may have died from inhaling poison gas, examine the body for signs of struggle or restraint. You should also examine the *investigative scene* to determine whether the person was locked in the room or the car where the poisoning occurred, or was somehow prevented from escaping the gas. If the victim was locked in the room there should be some indication of this or the victim's attempt to get out.

#### Section 6.7 Drowning

Drowning occurs when a person inhales a liquid, usually water, instead of air. A person can be drowned in water that is only a few centimeters deep. If the water is deep enough to cover the nose and mouth, then the victim can drown in it. A person can be drowned in a bucket of water, a bathtub, or even a puddle. Drowning victims may have a frothy mucous coming from their noses and mouths.<sup>32</sup> This mucous is created during the struggle to breathe and resembles the froth of beaten egg whites. It is, however, not present in a large number of drowning cases.

Drowning is one of the most difficult deaths to diagnose.<sup>33</sup> Even after a complete autopsy, a

**CAUTION** 

### **Problems and Procedures**

#### Is it Murder or Suicide?

#### Problems:

Very often an investigator will be called upon to investigate an apparent suicide. These cases are particularly significant if the alleged suicide occurred while the person was in police custody. Even in cases where the person is not in custody, families are often shocked and reluctant to belief that the person could have killed himself or herself. They may be adamant in their believe that the person was murdered. Careful examination and documentation of the body and the surrounding scene can greatly assist forensic experts in making this final determination.

#### Procedures:

**Signs of struggle** are an extremely important factor in distinguishing between murder and suicide. Your examination of any body or any *investigative scene* should include a careful survey for such *signs of struggle*.

There are three areas you should carefully examine:

<u>Victim's body</u> – Examine the body for any recent injuries such as scratches, bruises, bite marks or lacerations. Examine the hands and fingernails for foreign materials such as the hair or skin of an assailant.

<u>Victim's clothes</u> – Examine the clothes of the victim for new tears, missing buttons or ripped seams. Consult a family member to establish the condition of the clothing before death.

<u>Investigative Scene</u> -- Examine the *investigative scene* carefully for signs that a struggle took place. Look for objects which are broken, turned over, or out of place. Look for fragile objects close to the body. If they are not broken, this may indicate that no struggle took place.

<u>Suspect's body and clothes</u> – If possible, examine any suspects for signs of struggle. They are likely to bear some fresh injury or tear in clothing from a violent struggle.



pathologist may be unable to determine with certainty whether or not a person died from drowning. Suspected drowning deaths are made even more uncertain by the fact that bodies of water are often used to dispose of bodies killed by other means.

When a person drowns, there is often a question of whether or not that person was murdered or died accidentally. Again, the answer to this question can come from a careful examination of the body for signs of struggle or restraint. A conscious person, forcibly held under water, would fight hard for his or her life. Similarly, a person facing the prospect of being thrown into water in which he or she cannot swim will also struggle for life. Such struggles will ordinarily leave some mark on the body of the victim. Keep in mind that bodies found in water, particularly warm water, will deteriorate quickly and may be subject to feeding by water animals and fish. It may be difficult to conclude with certainty which wounds are the result of a struggle and which wounds are the result of scavengers. Take good photographs of all the injuries you observe and seek the assistance of a forensic scientist.

#### Section 6.8 Is it Murder or Suicide?

The family of a suicide victim is usually surprised by the death and, having had no prior indication that the person was suicidal, may feel strongly that the victim was murdered. The investigator may be called upon to investigate such cases. In the case of hanging, it is important to look at the physical evidence very carefully. The rope or ligature used should be carefully preserved, and attempts should be made to identify its source. Was it owned by the victim? Is it a type commonly used by people in a certain profession (i.e., angler, cattle farmer etc.)?

If possible, look through the personal property of the deceased person. Do any letters indicate suicidal intent or a persistent depression? Interview family members regarding the deceased's recent activities. People planning to commit suicide may try to put their affairs in order before killing themselves. Did the deceased set aside money for children or give away cherished possessions? Sometimes the most compelling evidence a death was the result of a suicide is from witnesses and not from observations of the corpse.

### Section 6.9 The Process of Decomposition

As an investigator examines a corpse, the processes of decomposition are already underway. The appearance of the body and any wounds will be affected by how advanced decomposition is. Learning about these processes will help the investigator evaluate and examine a corpse that has begun to decompose. Decomposition actually involves several independently observable processes each contributing and interacting to the overall process. How long each individual process takes or how long the entire process takes varies greatly and depends upon environmental factors. Familiarity with the several processes involved will assist the investigator in making accurate observations about a corpse that will later help forensic scientists.

Upon death, as the body systems cease to function, a number of observable phenomenon can occur which, although it should be noted, in and of themselves cannot be the basis of any conclusions regarding the death. These include vomiting into the mouth, relaxation of the body's muscles causing the bladder and colon to empty, and the contraction or twitching of muscles when touched.<sup>34</sup> Careful observation of these phenomenona may help the pathologist determine important facts regarding the death.



#### **Livor Mortis**

While a person is alive the heart pumps the blood through the body under pressure. The action of the heart keeps the blood circulating and counteracts gravity's downward pull on the blood. As long as the person is alive this pressure is maintained and blood is circulated throughout all tissues of the body. Medical personnel can measure this force as blood pressure by placing an inflatable rubber cuff around a person's arm. Once a person's heart ceases to beat, blood begins to move by the force of gravity toward the ground. After death, when the heart no longer maintains the blood under pressure, it begins to migrate and collect in the body tissues closest to the ground.

#### ESTIMATING THE TIME OF DEATH

Estimating the time of death is one of the most difficult and important determinations a trained forensic pathologist must make. It is so difficult because many factors can affect the decomposition process. It is beyond the capacity of the human rights investigator to accurately estimate the time of death. Although you cannot make this determination, your thorough observations and work at the investigative scene will greatly assist a forensic pathologist to estimate the time of death.

Take detailed notes about what you observe about the condition of the body and photograph it thoroughly. Include in your report the temperature and weather conditions of the day you make your observations as well as the days since the person was last seen alive.

Depending upon the position of the body and the amount of blood remaining in the body after the attack, this settling of blood is usually visible. After several hours the blood begins to thicken and clot and is no longer able to move readily within the body. Once this settling and clotting of the blood has occurred, it will not move or resettle again even if the body is moved or turned over. In temperate climates this migration and fixing process is usually visible within 2 - 3 hours although the surrounding temperature may significantly

affect it.<sup>35</sup> In tropical climates this process is accelerated and in colder climates it will be retarded.

Livor mortis appears as a discoloration of the skin and is often accompanied by the swelling of the tissues lowest to the ground due to increased fluid in these tissues. The skin takes on a pink or purple color in people with a light complexion and appears as a darkening of the skin in people with darker complexions. In some cases it manifests itself as red, blotchy petechiae on the surface of the skin; these are called *Tardieu spots*. This discoloration of the skin can be misinterpreted by inexperienced investigators and untrained witnesses as bruising. It is different from bruising in that it is most significant along the areas closest to the ground and is more even in tone than bruising. This discoloration may not be visible in portions of the body in direct contact with the ground or another hard object if the pressure exerted by the body's weight is sufficient to keep blood from entering the tissue in that area. For example, a body is lying on its back may show a conspicuous absence of livor mortis in the buttocks area and upper back. In this position, the body exerts enough pressure on these two areas to prevent the blood from settling in those areas.

It is important to learn to distinguish the difference between bruising and livor mortis. The following is a case where such a distinction proved important. The story also illustrates the importance of taking good photographs as soon as possible.

A man died in police custody. The police alleged that the man died suddenly and inexplicably after being charged with a crime. A doctor did a post-mortem examination





The process of rigor mortis causes a noticeable "freezing" of the body's joints. This is most apparent when the deceased is moved. In the above picture, when the deceased was turned over his head and neck remained fixed in the position they were in at death and did not respond to gravity.

of the body and the body was released to the family 24 hours after his death. The doctor found that the man died of a heart attack. Several members of the family as well as the undertaker who prepared the body for burial reported significant and widespread bruising all over the body. They concluded that the police had beaten the man to death and had reported it to a local human rights group. They had not taken any pictures of these bruises but were credible witnesses.

Good photographs taken at the post-mortem show that there was no bruising on the body two hours after the man's death. In the hours after the man died the body was moved several times. This movement during the course of the livor mortis process caused discoloration of skin in numerous sites on the body. The witnesses mistook this discoloration as evidence that the police had beaten the man to death.

Livor mortis, by itself, does not yield very reliable information about how or when a person died and the investigator should not draw conclusions without the assistance of a pathologist. Because livor mortis becomes 'fixed' its appearance in those parts of the body not touching the ground usually indicates that the body was moved several hours after death.

Any livor mortis in the head and neck area should be noted because the increased pressure of blood settling in the head may cause a special type of *petechiae* called *Tardieu spots* which may be erroneously attributed to some type of asphyxiation injury. Noting the position of the body and the presence of livor mortis in the head will help a pathologist correctly interpret any *petechiae* which are found.<sup>37</sup>



#### **Rigor Mortis**

Rigor mortis is the process whereby the joints in the body begin to stiffen until they can no longer be moved without great difficulty. It is most obvious when the investigator moves a body and the limbs do not hang limp but remain in a fixed position. This stiffening of the body is the result of chemical changes in the muscle and connective tissue of the body, which cause the muscles to stiffen. In a temperate climate, rigor mortis is first noticeable approximately 2 - 4 hours after death, and the body becomes increasingly stiff over the course of 6 -12 hours, although this can vary significantly.<sup>38</sup> Rigor mortis dissipates as the processes of decomposition progress. In temperate climates it disappears in 36 hours; in hot climates it can disappear within 24 hours.<sup>39</sup>

Rigor mortis is a poor indicator of when a person died because it varies greatly depending upon environmental factors. People who die soon after physical exertion may show signs of rigor mortis more rapidly. Like livor mortis, the only reliable conclusion that a human rights investigator can draw from the rigor mortis itself is whether a body was moved after death. When documenting the rigor mortis note the degree of stiffness, the warmth or lack of warmth of the body and the approximate air temperature where the body was found.

<sup>&</sup>lt;sup>1</sup> Bernard Knight, Legal Aspects of Medical Practice 4<sup>th</sup> edition (Edinburgh: Churchill Livingstone, 1987) 162.

<sup>&</sup>lt;sup>2</sup> Knight, <u>Legal Aspects of Medical Practice</u> 162.

<sup>&</sup>lt;sup>3</sup> Bernard Knight, <u>Simpson's Forensic Medicine</u> (New York: Oxford University Press, 1997) 51.

<sup>&</sup>lt;sup>4</sup> DiMaio, Forensic Pathology 174.

<sup>&</sup>lt;sup>5</sup> This information was provided by Doctor Yvonne Milewski, Deputy Chief Medical Examiner of the City of New York during a consultation on March 10, 2000.

<sup>&</sup>lt;sup>6</sup> DiMaio, Forensic Pathology 192.

<sup>&</sup>lt;sup>7</sup> Knight, Simpson's Forensic Medicine 53.

<sup>&</sup>lt;sup>8</sup> Knight, Simpson's Forensic Medicine 53.

<sup>&</sup>lt;sup>9</sup> DiMaio, Forensic Pathology 204.

<sup>&</sup>lt;sup>10</sup> Vincent J. DiMaio, <u>Gunshot Wounds – Practical Aspects of Firearms</u>, <u>Ballistics</u>, and <u>Forensic Techniques</u> (Boca Raton: CRC Press, 1993) 39.

<sup>&</sup>lt;sup>11</sup> DiMaio, Gunshot Wounds 37.

<sup>&</sup>lt;sup>12</sup> DiMaio, Gunshot Wounds 137.

<sup>&</sup>lt;sup>13</sup> DiMaio, <u>Gunshot Wounds</u> 154. Note that some high velocity weapons may produce some sign of powder tattooing at approximately one meter depending upon the type of powder used in the rifle cartridge.

<sup>&</sup>lt;sup>14</sup> DiMaio, Gunshot Wounds 39.

<sup>&</sup>lt;sup>15</sup> DiMaio, Gunshot Wounds 64.

<sup>&</sup>lt;sup>16</sup> DiMaio, Gunshot Wounds 193.



<sup>17</sup> DiMaio, Gunshot Wounds 73.

- <sup>19</sup> DiMaio, Gunshot Wounds 57.
- <sup>20</sup> DiMaio. Gunshot Wounds 58.
- <sup>21</sup> DiMaio, Gunshot Wounds 107.
- <sup>22</sup> DiMaio, <u>Gunshot Wounds</u> 104.
- <sup>23</sup> DiMaio, Gunshot Wounds 54.
- <sup>24</sup> Knight, Simpson's Forensic Medicine 200.
- <sup>25</sup> Knight, Simpson's Forensic Medicine 96.
- <sup>26</sup> Knight, Simpson's Forensic Medicine 91.
- <sup>27</sup> DiMaio, Forensic Pathology 88.
- <sup>28</sup> DiMaio. Forensic Pathology 234.
- <sup>29</sup> This information was provided by Doctor Yvonne Milewski, Deputy Chief Medical Examiner of the City of New York during a consultation on March 10, 2000.
- <sup>30</sup> Knight, Simpson's Forensic Medicine 94.
- <sup>31</sup> Knight, Simpson's Forensic Medicine 200.
- <sup>32</sup> DiMaio, Forensic Pathology 360.
- <sup>33</sup> Knight, Simpson's Forensic Medicine 98.
- <sup>34</sup> Knight, Simpson's Forensic Medicine 20.
- 35 Knight, Simpson's Forensic Medicine 22.
- <sup>36</sup> DiMaio, Forensic Pathology 24.
- <sup>37</sup> Knight, Simpson's Forensic Medicine 22.
- <sup>38</sup> DiMaio, Forensic Pathology 26.
- <sup>39</sup> DiMaio, Forensic Pathology 26.
- <sup>40</sup> Knight, Simpson's Forensic Medicine 21.

<sup>&</sup>lt;sup>18</sup> Note that in cases in which the victim's skin is supported or "shored up" when the bullet leaves the body an atypical exit wound may result. Support of the area surrounding the exit wound by a wall or belt may minimize the outward tearing of skin and cause the exit wound to appear similar to an entrance wound. See: Knight, <u>Legal Aspects of Medical Practice</u>, page 172. This is often referred to as a "shored" exit wound.



#### **Injury Charts**

#### **Identification, Examination, and Documentation of Sharp Force Injuries**

#### **Pathologist Available**

- Photograph the injury as found using a ruler or a photograph board.
- Examine the wound noting its size, shape, and the edges of the wound.
- Record location of and characteristics of all visible wounds on Wound Chart.
- Preserve any of victim's clothing removed by others prior to your arrival. Do not remove any additional clothing.
- 5. Place body in a clean sheet and remove to location where pathologist will examine the body.
- Record the findings of the pathologist and request a copy of pathology report.

#### Pathologist Not Available

- Photograph the injury as found using a ruler or a photograph board.
- 2. Examine the wound noting size, shape, wound edges and depth if possible.
- 3. Wipe off blood, re-examine and re-photograph wound.
- 4. Record observations and wound location on Wound Chart.
- 5. Remove and preserve all of victim's clothing.
- 6. Re-photograph the body.

#### **Investigative Scene**

- Examine Investigative Scene to find knives or implements that could have caused the wounds.
- Collect and preserve as evidence and process for fingerprints if possible.

#### Photograph

#### lograpii

### Characteristics Incised (slash) injury

- The length of the injury is greater than its depth.
- Bleeds profusely.
- Generally both sides of the wound are symmetrical.
- Depending upon where on the body, the wound may open into a "fish-mouth" shape.
- Generally edges of wound are smooth.
- No relationship between the size of the wound and the size of the knife.
- Multiple slash wounds will be different lengths.

#### [Victims may receive both slash and stab wounds]



#### Stab wound (knives)

- The depth of the injury is greater than its length.
- Generally do not bleed as much as slash wounds
- If victim sustained more than one stab wound they will be similar in size and shape.
- Can cause severe internal bleeding.
- There is a relationship between wound & knife size.

#### [Victims may receive both slash and stab wounds]



#### Stab wound (other implements)

- Inflicted by stabbing victim with some pointed implement other than a knife.
- Similar to stab wounds.
- Caused by some sharp or pointed object.
- Generally do not bleed as much as slash wounds.
- Can cause severe internal bleeding.
- Some implements will leave a characteristic mark.



#### Identification, Examination, and Documentation of Blunt Force Injury

#### Pathologist Available

- Photograph the injury as is using a ruler or a photograph board.
- Examine the wound noting size, shape, wound edges and depth if possible. Look for unique impressions or tool marks.
- 3. Record observations and wound location on Wound Chart.
- 4. Preserve any of victim's clothing removed by others prior to your arrival. Do not remove any additional clothing.
- Examine investigative scene for blunt objects or tools that could have caused the injury. Examine them for blood, hair or other trace evidence. Preserve as evidence if object could have been the weapon.
- Place body in a clean sheet and remove to location where pathologist will examine the body.
- Record the findings of the pathologist and request a copy of pathology report.

#### Pathologist Not Available

- Photograph the injury as is using a ruler or a photograph board.
- 2. Examine the wound noting size, shape, wound edges and depth if possible. Look for unique impressions or tool marks.
- Wipe off blood, re-examine and re-photograph wound. Collect any splinters or foreign material which you can see in or on the wound.
- 4. Record observations and wound location on Wound Chart.
- 5. Remove and preserve all of victim's clothing.
- 6. Re-photograph the body.

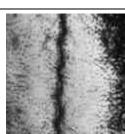
#### **Investigative Scene**

- Examine Investigative Scene to find implements that could have caused the wounds.
- Collect and preserve as evidence and process for fingerprints if possible.

#### Photograph

### Characteristics Blunt Force Injury

- Not all wounds will result in lacerations. May be serious internal injuries.
- Will often leave visible abrasions and bruises on the skin.
- Lacerations are torn, burst areas of skin that are irregular in shape. Different injuries from the same object will not ordinarily create wounds that look alike.
- Lacerations usually bleed a great deal.



### Blunt Force Injury Blunt object left distinguishing mark

- Same as above.
- Some wounds will have a unique mark left by something protruding from the blunt object or tool.
   For example, a claw hammer, a club with a protruding nail.



#### **Identification, Examination, and Documentation of Gunshot Wounds**

#### Pathologist Available

- Photograph the injury as found using a ruler or a photograph board
- Examine the clothing over the wound for unburned gunpowder and signs of burning.
- Examine the wound noting size, shape, wound edges, presence of unburned gunpowder, evidence of burning or tattooing, presence of abrasion and wipe ring.
- 4. Record observations and wound location on Wound Chart.
- 5. Preserve any of victim's clothing removed by others prior to your arrival. Do not remove any additional clothing.
- Place body in a clean sheet and remove to location where pathologist will examine the body.
- Record the findings of the pathologist and request a copy of pathology report.

#### Pathologist Not Available

- Photograph the injury as found using a ruler or a photograph board
- Examine the clothing over the wound for unburned gunpowder and signs of burning.
- Examine the wound noting size, shape, wound edges, presence of unburned gunpowder, evidence of burning or tattooing, presence of abrasion and wipe ring.
- 4. Wipe off blood, re-examine and re-photograph wound.
- 5. Record observations and wound location on Wound Chart.
- 6. Remove and preserve all of victim's clothing.
- 7. Re-photograph the body

#### **Identification, Examination, and Documentation of Gunshot Wounds**

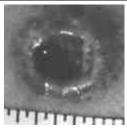
#### Photograph

#### Characteristics



#### Entry Wound: rifle or hand gun (not shotgun)

- Bullet hole is generally round and symmetrical.
- Bullet hole is surrounded by a reddish ring caused by friction of entering bullet (abrasion ring).
- Entry wounds generally bleed less than exit wounds.
- Entry wounds generally have a "wipe ring" on the wound or clothing covering the wound. Dirt from bullet is wiped off of bullet as it passes through the body.
- The picture on the left would be classified as an entry wound from a distant range.



#### Entry Wound/Range: distant (more than 60 cm)

- Characteristics of common entry described above.
- Will not have evidence of unburned gunpowder on wound or clothing.
- Will not have evidence of fouling from soot and smoke on wound or clothing.



#### Entry Wound/Range: Intermediate (18 - 60 cm)

- Characteristics of common entry described above.
- Generally will have some evidence of unburned gunpowder on wound or clothes covering injury.
- The closer the gun was fired to the victim the smaller and denser the pattern of unburned gunpowder will be. An exact measurement is possible if weapon used is recovered and tested.
- Unburned gunpowder may become embedded in the skin and cause small injuries. (stippling).

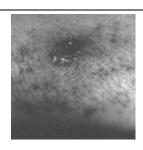
There is no evidence of soot or smoke on the wound.



#### **Identification, Examination, and Documentation of Gunshot Wounds**

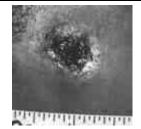
Photograph

Characteristics



#### Entry Wound/Range: Very Close (less than 18 cm)

- Characteristics of common entry described above.
- May have some evidence of unburned gunpowder on wound or clothes covering injury.
- The unburned gunpowder pattern will be a small densely packed circle around the injury.
- Unburned gunpowder may become embedded in the skin and cause small injuries (stippling).
- Hot gases may burn the flesh around wound.
- Should be evidence of fouling from soot and smoke.



#### Entry Wound/Range: Loose Contact

- Gun is held in contact with the victim's skin but not tight enough to trap combustion gases.
- Generally no evidence of unburned gunpowder on the external skin of the body. Unburned gunpowder forced into the body.
- Hot gases of the gun may burn the flesh inside the wound.



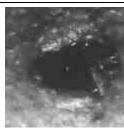
#### Entry Wound/Range: Hard Contact wound in soft tissue

- Gun is held tightly against the victim's body in areas such as the chest or abdomen.
- Generally no evidence of unburned gunpowder on the external skin of the body. Unburned gunpowder forced into the body.
- Hot gases of the gun may burn the flesh inside the wound.
- The skin surrounding the injury does not tear because the body is able to absorb the expanding gases.
- May see an impression or bruise in the shape of the gun.



#### Entry Wound/Range: hard contact wound over bony surface (i.e. head)

- Does not look like a common entry wound.
- Hot gases of the burning gunpowder enter the head and then "blow-back" out to cause extensive damage to the layers of skin covering the skull and possibly the skull itself.
- Unburned gunpowder should be deposited deep inside the injury.
- Skin and tissue within the wound is usually unburned from the hot gases.
- These wound bleeds profusely.



#### Common exit wound

- Hole is generally larger than entry wound.
- Hole is circular but not perfectly round.
- May be some tearing of the skin in an outward direction.
- Generally bleeds more than an entry wound.
- There will be no abrasion ring or wipe ring.



### **Identification, Examination, and Documentation of Asphyxiation Deaths**

#### Pathologist Available

- Photograph any visible injuries or unique features as found using a ruler or a photograph board.
- Examine any wounds noting size, shape, wound edges and depth if possible. Look for: fresh bruises indicating a struggle, angle and position of ligature marks, indentations in skin left by hands or instrumentality of death.
- 3. Examine eyes for petechial hemorrhages.
- 4. Examine mouth and tongue.
- 5. Record observations and wound location on Wound Chart.
- Preserve any of victim's clothing removed by others prior to your arrival. Do not remove any additional clothing.
- Place body in a clean sheet and remove to location where pathologist will examine the body.
- Record the findings of the pathologist and request a copy of pathology report.

### Pathologist Not Available

- Photograph the injuries or unique features as found using a ruler or a photograph board.
- Examine the wound noting size, shape, wound edges and depth if possible. Look for: petichial hemorrhages, fresh bruises indicating a struggle, angle and position of ligature marks, indentations in skin left by hands or instrumentality of death.
- 3. Examine eyes for petichial hemorrhages.
- 4. Examine mouth and tongue.
- 5. Wipe off blood, re-examine and re-photograph any wounds.
- 6. Record observations and wound location on Wound Chart.
- 7. Remove and preserve all of victim's clothing.
- 8. Re-photograph the body.

### Photograph

### Characteristics

#### Hanging

- Ligature mark will be angled upward toward the back of the head or the knot in the ligature.
- There may be one or more ligature mark.
- Ligature mark is usually up underneath the jaw.
- May be multiple marks because the rope slipped.
- Tongue may appear swollen.
- The body does not have to be fully suspended for death to occur.
- Usually suicide but can cover-up a homicide.

### Strangulation with a Ligature

- Ligature mark will be more level around the neck.
   Not angled upward like a hanging victim.
- There may be one or more ligature mark.
- Ligature mark can be anywhere on the neck.
- Usually only one ligature mark.
- Tongue may appear swollen.
- Homicide.



### Manual Strangulation

- Will often be indentations of the hand prints of the assailant.
- May be scratches or nail marks on the neck of the victim left by both the assailant and the victim.
- Tongue may appear swollen.
- Hand indentations may yield important information about assailant.
- Homicide.



### Identification, Examination, and Documentation of Asphyxiation Deaths

### Strangulation with a hard object

- Hard object will leave most often leave some visible bruise or injury on the neck
- Tongue may appear swollen.
- Hard object may leave impression in neck which can identify the object.
- Homicide.

### Asphyxiation with a pillow or plastic bag

- May be no other visible sign of injury.
- Sometimes there will be a self-inflicted injury to the tongue.
- May be accompanied by other injuries indicating a struggle.
- Homicide, Suicide (plastic bag) or Accidental Death(children with plastic bag).

#### Asphyxiation with a poison gas

- If poison gas was carbon monoxide there will be a reddish hue to the skin caused by absorption of the gas by the body.
- May be no other visible sign of injury.
- May be accompanied by other injuries indicating a struggle.
- Homicide, Suicide or Accidental Death.

### Asphyxiation by Obstructed Airway

- Foreign objects lodge in throat and cut off breathing.
- May be no other visible injuries.
- Sometimes there will be a self-inflicted injury to the tongue.
- Tongue may appear swollen.
- May be accompanied by other injuries indicating a struggle.
- Foreign objects are important in the investigation of the case. Will help differentiate between homicide and accidental death.
- Homicide or Accidental Death.

#### Drowning

- Mouth may be filled with a frothy substance similar to beaten egg whites. A combination of mucus and water. (Frequently not present)
- Water may be present in the lungs and stomach.
   Need pathologists to examine these organs to determine with certainty the cause of death.
- May have other injuries consistent with feeding by animals.
- May be accompanied by other injuries indicating a struggle.
- Homicide, Suicide or Accidental Death.



#### Examination and Documentation of Petechiae and Defensive Wounds

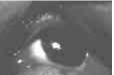
### **Petechiae**

- Draw back both upper and lower eyelids.
- Look for red blotchy blood on the whites of the eyes and the inside of the eyelids
- 3. Photograph eyes with eyelids held back.
- In cases of suspected asphyxiation photograph even if 4. petichial hemorrhages are not readily visible.
- Take clear, close-up photographs of victim's face.

### **Defensive Wounds**

- Photograph the injuries or unique features as is using a ruler or a photograph board.
- Examine palms and backs of hands for injuries.
- Examine arms and the fronts of the legs for evidence of sharp or blunt force injuries.
- Examine the wound noting size, shape, wound edges and depth if possible.
- Wipe off blood, re-examine and re-photograph any wounds. (if pathologist not available)
- Record observations and wound location on Wound Chart.

### Photograph

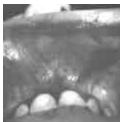




### Petechiae

### Characteristics

- Appear as small pinpoint bleeding on the inner surface of the eyelids and on the whites of the eye.
- May also be visible in the mouth and throat of the
- May also be visible on the face of people with fair complexions; appears as small red spots.







### **Defensive Wounds**

- Appear as sharp or blunt force injuries.
- Appear on the victim's palms, back of hands, along forearms and on the outer surfaces of the legs.



### Chapter 7

### INTERVIEWING WITNESSES

In almost every case, most of the investigator's time will be spent locating and interviewing witnesses. For many reasons witnesses are the most critical part of any case. No matter how much physical evidence is gathered, without witnesses to explain its relevance, it is unlikely that there could ever be a successful prosecution. The most challenging task an investigator faces is to interview witnesses well. If done well, these interviews will yield compelling, truthful testimony about an event. If done poorly, it may compromise the truth in a way likely to undermine the entire investigation.

Physical evidence, unlike witness testimony, contributes information about an event that is unaffected by human perception or deception. The investigator's job is to identify it, preserve it, and then draw logical conclusions from it. Physical evidence speaks clearly, untainted by human shortcomings. Witness statements, by virtue of human imperfection, are rarely entirely complete or accurate. All witnesses, most unintentionally, are affected by the frailties of their own perception. The investigator must be cognizant of these imperfections in order to gather all the accurate information a witness may have regarding an incident. The investigator must then take all this information and test it to determine if it is truthful, reliable and accurate. A witness's statement must be evaluated in light of other witnesses and physical evidence. Only by a skillful deliberate process can an investigator get the most from the witnesses in a case.

This chapter will explore different ways to gather witness statements; it will discuss techniques for drawing the most from a witness's recollection and describe how to test a statement to determine its reliability and credibility. The methods and procedures described in this chapter are not meant as rigid rules but rather a frank discussion of the strengths and weaknesses of witness testimony accompanied by suggestions. Learn the techniques described in this chapter and adapt them for use in your own culture.

In most cases, the investigator will get information from a witness through a direct one-on-one interview. Although the investigator may sometimes read a statement given to police or published in a newspaper, the investigator will want to personally interview each witness to make his or her own judgment of the witness's credibility and reliability. In most cases the investigator must personally locate and interview each witness.

There are two basic types of witness interviews. Which interview is appropriate depends upon the circumstances surrounding the interview. In most cases you will interview each witness at least twice using each method. The two types of interviews are: 1) the *preliminary interview*, and 2) the *comprehensive interview*. The *preliminary interview* is the first interview with a witness. This is a short interview designed to obtain important information the investigator needs quickly during the early stages of an investigation. The *comprehensive interview* is a complete interview in a safe, comfortable environment. This interview is designed to obtain everything a witness knows about an event; to learn of additional evidence; to gather sufficient information to help assess the truthfulness and accuracy of the witness's statement; and to get enough background information to locate the witness in the future.



### **Overview of the Interview Process**

### **Preliminary Interview**

A preliminary interview is a brief interview usually at the scene of the incident designed to help orient the investigator and gather basic information from the witnesses.

**First Goal**: Obtain basic information about the case.

**Second Goal**: Obtain information that will help identify other witnesses or evidence.

**Third Goal:** Schedule a comprehensive interview and obtain enough information to contact the witness.

### **Comprehensive Interview**

The comprehensive interview is a complete, thorough interview in a safe comfortable environment separated by time and space from the incident.

**First Goal**: Find out everything the witness knows about the case.

Phase one: use open-ended questions to encourage the witness to talk freely.

Phase two: Use specific questions to explore every aspect of the witness's testimony.

**Second Goal:** Gather information to evaluate the witness's credibility and reliability.

**Third Goal**: Inquire about additional witnesses or physical evidence the witness knows of.

**Fourth Goal:** Gather sufficient background information to locate the witness in the future.

If the investigator has come into the case some time after the incident, many of the circumstances which make the *preliminary interview* necessary no longer exist and a single *comprehensive interview* may be sufficient.

### Section 7.1 General Principles

Some general principles apply to both *preliminary* and *comprehensive interviews*. These principles apply whenever an investigator is dealing with a witness and may help avoid some of the possible



### A HEALTHY SUSPICION

Experienced investigators should always maintain a "healthy suspicion" when interviewing witnesses. Many investigators have learnt this the hard way from a bad experience relying on a witness he or she was "sure" of, only to discover later that the witness had lied. The interviewer should always be aware that a witness could be mistaken or lying for reasons that the interviewer is unaware of. Maintaining a healthy suspicion reminds the investigator to examine carefully everything the witness says.

Given this healthy suspicion, an investigator follows up questions in a way in which people do not do ordinarily. Consider the following example:

In ordinary life, when you ask a stranger for the time, you believe he or she has told you the truth and that the time is in fact what he or she said it was.

When an investigator asks a witness what time the occurrence took place he or she should not automatically accept the witness's answer as truthful and accurate. The investigator should ask the witness how the witness knows what time it was. Did the witness have a watch? Is the witness guessing? The investigator might also consider whether the witness may have motivation to lie about the time.

The investigator should always maintain a healthy suspicion about everything that he or she is told and examine every statement carefully.

pitfalls. Some principles, such as interviewing witnesses separately, are so important that they must be followed under any circumstances, even in the inevitable chaos of a crime scene.

Consideration should be given on how witnesses should be approached for interviews. This initial interaction with a witness is critical and will set the tone for the remainder of the case. A witness's early perception of the investigator will determine his or her willingness to cooperate fully and truthfully with the investigation.

If you are an investigator with a well-established human rights organization that has a good reputation, this task of approaching a witness may be somewhat easier. Witnesses may be more receptive to your inquiry. If you are new to the community or your organization is not well known, you must be careful how you approach people for an interview. Witnesses may be very uncomfortable even being seen publicly talking to a human rights investigator.

Approach witnesses at a time and in a place that will not cause them to fear retribution for speaking with you. Avoid showing up unannounced at their workplace and be careful before going to their home. Seek local guidance on when and where it is best to approach a particular witness. If possible, have a local assistant who will not be obvious visit the witness's home to request an interview.

Many witnesses need encouragement and some assurances before they will agree to be interviewed. Keep this in mind when choosing a time and place to approach a witness. Choose a place where you can speak with relative privacy and choose a time when the witness will not be rushing somewhere. It may take several minutes to simply convince a witness to give you his or her attention for long enough to explain the importance of cooperating. Begin by identifying yourself and your organization. Tell the witness what you



are investigating and that it is important that you speak with him or her regarding the case. The witness is likely to have questions concerning his or her cooperation. Answer these questions honestly and completely.

Be careful when telling a witness what you are investigating. Do not divulge specific details about the case. The witness should not learn anything from the investigator about the case that he or she did not already know. For example, in an investigation of a shooting death by police, it is a mistake to say, "I am investigating how the police beat and shot Juan Pablo to death in front of the church two days ago." This statement provides information about the case that may be parroted back, leading investigators to mistakenly believe the witness knows more than he or she actually does. The investigator should simply say, "I am investigating the death of Juan Pablo and would like to talk to you about it."

An investigator may have some idea about what the witness knows from other witnesses. In fact, the investigator may have learned about the witness from other witnesses. When speaking with this witness it is better to avoid repeating what others have said about him or her. Instead of saying "I believe you heard Juan Pablo cry out, 'stop' before they shot him," say, "I believe you may have some information about what happened and I would like to speak with you about it." A witness may embellish his or her account in the presence of friends. When speaking to an investigator the witness may realize the importance of the truth and want to be completely candid with the investigator. Do not thwart this effort at truthfulness by volunteering details of a possibly exaggerated account. Once the witness knows the investigator has already heard this embellished account he or she may continue the lie in order to avoid embarrassment. Give the witness the opportunity to start anew and be truthful.

### **Location of Witness Interviews**

Where the investigator interviews a witness will depend largely on the particular situation. Depending on the circumstances, the investigator's choice of where to interview a witness may be limited. In all cases it is important to find a place where there will be relative privacy. Privacy is perhaps the paramount concern when interviewing witnesses. The only people present during an interview should be the investigator(s), the witness, and a trusted translator if necessary. The interview should not be in a place where it will be easily overheard by passersbys. This can be difficult, especially in the chaos following a violent incident. As difficult as it may be, it is rarely impossible, and the investigator must employ whatever means necessary to talk to each witness separately in a relatively private place.

It is absolutely essential that witnesses never be interviewed in the presence of other witnesses. The testimony of a witness may be affected by hearing the account of other witnesses. Even honest witnesses can be unconsciously influenced after listening to another witness's account. The investigator must take whatever steps are necessary to ensure that this does not happen. If possible, the witness should be interviewed in a place where he or she will feel comfortable and secure. This may be in the investigator's office or perhaps a private room in the witness's home.

In some situations, particularly in the case of foreign fact-finding missions, government authorities may seek to be present during interviews or at least maintain an obvious presence in the vicinity of such interviews. The presence of security forces in the area where interviews are to be conducted can be very intimidating to witnesses.

### Do Not Teach the Witness About the Case

An experienced investigator realizes that an interview is not only an opportunity for the investigator to learn about the witness's account, but it is also an opportunity for the witness to learn about the case. It is





### SUGGESTIBILITY OF WITNESSES

Some witnesses are very susceptible to suggestion. The investigator must never do anything that may cause a witness to change or embellish his or her account. The investigator must be vigilant for other ways that a witness's testimony might be influenced.

- 1. An investigator must never divulge what other witnesses have said unless there is a compelling reason to do so. Even when it is necessary, only the smallest amount of information should be disclosed.
- 2. An investigator should discourage witnesses from talking to each other about the case. The investigator should ask each witness, whom they have discussed the case with and whether or not there was a substantial conversation about the facts of the case. If there was, the investigator must assess whether it is necessary to explore the matter further to ensure that each witness's account is his or her own.
- 3. An investigator must never show a witness physical evidence or photos in the case unless (a) there is a compelling reason for doing so, and (b) the investigator has first questioned the witness exhaustively to learn everything he or she knows about evidence depicted in the photograph first.
- 4. A witness must never be allowed to look at the Investigation Folder.
- 5. An investigator should ask each witness if they have seen media accounts of the incident and assess the impact of that on the witness's recollection.
- 6. An investigator must never share his or her opinion or "hunches" about a case with witnesses in that case. Do not "make" the witness part of the investigative team.

very easy for an investigator to unintentionally teach a witness a great deal about the case during the course of an interview. Investigators can unwittingly reveal facts previously unknown to the witness, which are then repeated back to the same or different investigators. This creates the false impression that a witness knows more than he or she actually does and introduces a serious flaw into the investigation. Witnesses will inevitably learn something about the case by the questions the investigator asks and any physical evidence they are shown. An investigator should try to minimize this transfer of information as much as possible.

One of the ways investigators inadvertently teach witnesses is by wording questions in a way that provides more information than is necessary to phrase the question. For example, "Did you hear three shots by the church around one o'clock?" reveals three important facts to the witness. It tells the witness that: 1) there were three shots fired, 2) they were fired around the church, and 3) the incident occurred around one o'clock. A better way ask whether the witness heard the three shots other witnesses heard is to simply ask "Did you hear anything?" Do not ask a witness if he saw an AK47 rifle. A witness who did not see a gun or could not identify the gun he saw may be anxious to adopt this piece of information and affirm that he did see an AK47 when, in fact, he did not.

Another way in which investigators divulge important information about a case is by showing a witness physical evidence or photographs of *investigative scenes* too early in the interview. Witnesses who see physical evidence from a case learn much about it and can incorporate it into their account. The



### CAUTION

### **Problems and Procedures**

### **Recording Witness Statements**

### Problems:

Witnesses may claim sometime after an interview that they did not say what the investigator claims. There are many reasons why a witness may recant or claim the investigator misunderstood him or her. The investigator must always avoid situations where his or her credibility may be placed into question by a witness. The most effective way of doing this is to record the statements of all witnesses.

### Procedures:

The following are the different ways to record witness statements. These are in the order of preference, that is, the first method is the most preferred.

- 1. With the witness's consent, record the entire interview on video tape without turning the camera off.
- 2. With the witness's consent, record the entire interview with a dictaphone without turning the tape recorder off.
- 3. **Ask the witness to write out his or her statement.** Have the witness sign it in front of someone who is not the interviewing investigator.
- 4. **Ask the witness to read the interview notes taken by the investigator** and acknowledge their accuracy by signing and dating each page.
- 5. The investigator should take detailed notes.

When recording statements, as with all investigative activities, it is important to consider the safety of witnesses and investigative personnel. This is important, Not only at the time of the recording, but afterward as well. A carelessly copied or circulated record of interview can seriously endanger the lifes of witnesses.

ability to describe physical evidence in great detail (after having been shown it by an investigator) makes an untruthful witness a very convincing one. Do not allow witnesses to see photographs or other physical evidence about the case until you are convinced you have exhausted their recollection, and in that case, only show those photos which are absolutely necessary to clarify a point. Once a witness has seen a photograph, the investigator can never be sure whether the witness is testifying from his or her own recollection or from what was seen in the photograph.

Investigators can also inadvertently teach a witness about a case by referring to the testimony of other witnesses during the interview. No two witnesses will perceive an event in exactly the same way. There will always be discrepancies between the accounts of different witnesses. The interviewer should not point out these differences to the witness or casually divulge what other witnesses have said. Comments like: "You say you saw the suspect wearing a blue shirt, other witnesses were sure it was black" should never be used. Even seemingly innocent questions like "Witness A saw the suspect run into the school. Did you?" should be avoided. Witnesses may be eager to give a "correct" account and be quick to conform their testimony to "improve" its accuracy. Even well intentioned, honest witnesses may be unconsciously influenced by



hearing the contradictory testimony of others. A better question would be "Did you see the suspect run into the school at any time?" Any reference to another witness's statement is likely to make a witness wonder whether the investigator will discuss his or her testimony with others and possibly reconsider their cooperation.

### Discussing a Witness's Concerns

Most witnesses have at least a few questions for the investigator regarding what they should expect after cooperating with an investigation. They will want to know how you intend to use their information, what the likelihood of retaliation might be, and what the investigator's organization can do if they are threatened. Answering these questions is difficult. The key to your success - and critical to your reputation as a human rights investigator - is your honesty. Be certain that everything you tell a witness is truthful. Be sure that you are able and committed to fulfill any promise you make to a witness. Do not promise a witness that you will relocate him or her if threatened unless that is something you can do. Do not commit your organization to taking protective measures before discussing the matter with someone who has the authority to make that decision. Witnesses, despite the unpleasant nature of the truth, will respect and appreciate your honesty. Resist any temptation to gain a witness's cooperation by minimizing the risks involved in cooperating or exaggerating your ability to help them. Such a ploy may work once or twice, but as soon as the community becomes aware of this practice your effectiveness as an investigator will be severely hindered.

Witnesses may often be curious about what will happen with the information they provide. Again candor and honesty are key. If the investigator knows at the time of the interview how the information will be used, he or she should be frank with the witness. If the intention, at the outset, is to issue a public report then the investigator should be honest about that with the witnesses.

### The Use of Props

Props can be useful tools when interviewing witnesses. They can help a witness convey a clearer account of what they observed, and provide a more detailed description. For example, a witness may have clear memory of a suspect's uniform and its various insignias but finds it difficult to describe them. Photographs of all the uniforms and insignias in use in your country can be a valuable aid in helping identify the suspect's rank and unit. Such props may include:

- 1. Photographs of firearms to help the witness identify different guns commonly used in the region.
- Photographs of various uniforms to help the witness identify military divisions and ranks.
- 3. Photographs of different vehicles, both military and civilian, that are commonly used in the region.
- 4. Anatomically correct dolls for young children to describe sexual crimes.
- 5. Maps and surveyed drawings of the local area for witnesses to use in order to indicate where different events happened.



These props must be part of a general collection compiled by your organization. Be careful that such collections and props only assist the witness in describing some aspect of the case and do not unduly suggest some information that the witness does not already know.

### Section 7.2 The Preliminary Interview

If the investigator arrives at the scene soon after the incident, important witnesses will probably still be present. The investigator's initial contact with these witnesses will affect their truthfulness and willingness to cooperate throughout the investigation. It is important that the investigator impress them as being a competent, trained professional. The investigator's conduct at the scene must be professional and appropriate to the situation at hand. Any personal reaction to what may be a horrible sight should not be shared with bystanders or witnesses.

Witnesses usually react in one of two ways after a violent incident. Some witnesses become very fearful. The event, still vivid in their minds, makes them acutely aware of the danger they may place themselves in by cooperating with a human rights investigator. These witnesses may not identify themselves as witnesses and may leave when the investigator arrives. Other witnesses are outraged and disturbed by what they have just seen and are anxious to discuss it. It is important to identify and speak with both of these witnesses as soon as possible. The investigator must actively seek out witnesses who may have already left the scene. They are no less important than the witnesses who rush to meet the investigator upon his or her arrival.

The scene of a violent incident is never a good place to conduct a thorough interview. Witnesses are often distraught and unable to talk calmly about what they saw. There may not be a private place to speak candidly with witnesses. The investigator, at this point, does not know enough about the case to ask all the thoughtful, probing questions that are necessary to properly debrief the witness. The investigator also has many other important tasks to do such as securing the *investigative scene* and collecting physical evidence.

An experienced investigator realizes the futility of trying to conduct a thorough interview under these circumstances and adopts the better practice which is to interview each witness twice: first, in a short *preliminary interview*, and second, in a longer more thorough interview in a less tension-filled setting - a *comprehensive interview*. By setting limited, realistic goals for the initial *preliminary interview*, the investigator can get the critical information needed to begin the investigation. The investigator recognizes that each witness must be *comprehensively interviewed* at a later time and at this initial meeting conducts an interview with a limited scope and objectives. It is better to speak with every witness briefly than to speak at length with one witness and risk losing the others. Setting realistic goals for these shorter interviews helps the investigator balance the competing concerns of identifying all of the witnesses and collecting physical evidence.

### There are three goals to a preliminary interview:

- 1. Obtain a basic understanding about what a particular witness knows and whether he or she is likely to be a good witness.
- 2. Obtain information that will help identify other witnesses and physical evidence.





# OPEN-ENDED VS. SPECIFIC VS. LEADING QUESTIONS

Nearly all questions can be categorized into three types: open-ended questions, specific questions, and leading questions. Knowing the difference between these forms of questions and when to use each is important. Open-ended questions are short vague questions designed to encourage the witness to volunteer information without directing him or her to any particular aspect of the case. Open-ended questions let the witness know that you are listening and that he or she should continue. Specific questions are different in that they focus the witness's attention on a particular aspect of his or her account. Specific questions are the opposite of open-ended questions. Leading questions are different from both in that they suggest a particular answer and ask the witness to agree or disagree with the investigator's statement. The following is a query about what a witness observed when he arrived at the scene of an attack. It is phrased in each of the three forms.

**Open-ended** "What did you see when you arrived at the scene?"

**Specific** "When you arrived, where exactly did you stand?"

**Leading** "You saw the suspect by the car when you arrived, didn't you?"

Generally, an investigator will begin with open-ended questions to identify all the areas that the witness believes are important. After establishing the boundaries of what the witness knows, the investigator focuses on particular aspects with specific questions to get the most from the witness's memory. Leading questions should not be used extensively during the interview of a witness. Overuse of leading questions gives the appearance that the investigator is trying to tell the witness what to say. An appropriate use of leading questions would be for the investigator to recap what he or she believes the witness has said and to give the witness the opportunity to confirm or correct it. For example: "You are telling me, that when you arrived, you saw the suspect standing by the car. Is that correct?"

# 3. Schedule an appointment for a comprehensive interview and obtain sufficient information about the witness to contact him or her in the next few days.

Every *preliminary interview*, no matter how urgent, should be conducted so that other witnesses will not be able to hear it. Just as physical evidence must be placed in a clean envelope to prevent contamination by other evidence, witnesses must be interviewed individually to prevent "cross-contamination" between witnesses. Perhaps the greatest source of witness contamination is the sharing of information among them. Most often this occurs innocently and not from any attempt to deceive. The investigator must make every attempt to interview each witness individually and, if possible, in a private place.

Despite how difficult this may seem at a crowded, confused scene, the interviewer must find an adjacent room, a doorway or tree that is apart from the crowd. The interviewer can usually gain the crowd's cooperation by explaining the importance of speaking with witnesses individually. If the witness was traumatized by the event and insists on having someone present for support, choose someone who is not a witness.



If there is no obvious place to interview witnesses privately, consider using the rope from the *Investigative Kit* to secure an area larger than the actual *investigative scene* into which you can invite witnesses individually for *preliminary interviews*.

It is important to document the *preliminary interview*. The investigator is usually limited in the way in which these interviews can be documented. Most investigators will simply take notes on a small pad. Other investigators use a digital dictaphone to record the interview. If you record the interview it is important to obtain the witness's consent prior to recording his or her statement.

### First Goal: Obtain Basic Information About the Case

In most cases an investigator will know very little about a case when he or she first arrives at the scene. It is a time of confusion and may also be one of danger. The investigation cannot begin until the investigator learns enough about the case to form, at least, a tentative *investigative plan*. The investigator must orient himself or herself by learning the identities of victims, witnesses and possible suspects, as well as the locations of possible *investigative scenes*.

Upon arrival, the investigator must identify those witnesses who can best orient him or her to the case. These witnesses will be those who saw enough of the event to help the investigator understand basically what happened. In most cases, this will be the victim. If the victim has died or is unconscious, identify the witness who saw most of the incident. These witnesses may make themselves known to you. If possible find a mature adult who appears calm and able to communicate clearly. If it is unclear when you arrive who



### **Video-Recording Witness Statements**

Recording an interview with video-tape is the best way to document the statement of a witness. It records everything that occurs and that is said with complete objectivity.

The following are some suggestions on how to conduct such an interview.

- 1. Set up the room in such a way that no person's back is to the video camera.
- 2. The room should be well-lit, quiet, and private. Choose a place where there will be no interference or interruptions during the interview.
- 3. Place an analog (dial) clock so that is visible in the background at all times. Video-taping the clock during the interview ensures that the tape cannot be altered later.
- 4. Check the microphone and tape to ensure that they are working properly and are able to pick-up normal conversation in the room. Have the person furthest from the camera count to ten in a normal voice and playback the tape to check audibility.
- 5. Begin the video-tape interview by stating the date, location, and case number. Then ask all of the people in the room to state their name.

It is helpful to designate a camera operator to allow the interviewer to concentrate on the interview.



these witnesses are, ask to see the victim, the person who discovered the body, the person who last saw the victim alive, or the person who contacted your office. Finding a good reliable witness early in the case is a great asset.

Interview as many witnesses as are necessary to sufficiently orient yourself and to enable you to make decisions on how to proceed. Some witnesses may have only a limited amount of information about one particular aspect of the case. Others may be redundant and offer nothing new. Continue to interview witnesses until you are reasonably confident that you have identified the victim, the relevant *investigative scenes*, and where other witnesses might be found. Once you feel sufficiently oriented, it may be unnecessary to interview each witness in detail about his or her particular observations. It may be sufficient to ask a few questions regarding which parts of the event he or she saw and simply obtain enough information to contact them in the next few days.

Even after becoming oriented to the case, it is important to speak with every witness who is present, even if only briefly. Early in the investigation the investigator will have to make decisions about which witnesses are reliable, which are not, and which witnesses may be unavailable in the future. One purpose of the *preliminary interview* is to learn how each witness contributes to the overall case. The investigator is not interested in exhaustively questioning each witness but in discovering the boundaries of each witness's knowledge and his or her respective value to the overall case.

When interviewing witnesses, try to ask open-ended questions. This may be difficult given the exigencies of the situation, but make every attempt to use open-ended questions when you interview the witness. If the witness begins to go into areas which you think are not necessary at the time, redirect the witness by telling him or her that you can talk about that information later and direct them to the portion of the event you are interested in. Avoid asking questions like "Did you see him stab him with the knife?" Rather than suggest what happened, simply ask the witness, "What did you see happen next?"

It is also important during the *preliminary interview* to make an early assessment of the witness's credibility and reliability. As the case develops the investigator will want to rely more on witnesses who have proven themselves to be reliable and credible and be cautious with witnesses who may have a reason to lie or appear to be unreliable. Assessing each witness will also help in scheduling *comprehensive interviews*. The investigator may want to schedule his or her appointments so that the most reliable witnesses are interviewed first.

For example, an investigator, while conducting *preliminary interviews* learns that one of three witnesses was drunk and another was passing by the scene in a moving car. Knowing this, the investigator will probably rely more on the account of the third witness who was present during the entire incident and who appears reliable. The investigator will probably want to schedule a *comprehensive interview* with this witness before the other two.

### Second Goal: Obtain Information About Other Witnesses and Physical Evidence

In addition to providing information about what they saw, witnesses can provide valuable leads that can help locate additional witnesses or evidence. At this early stage the investigator is trying to "cast as large a net" as possible to identify physical evidence and witnesses. While obtaining information about other evidence will also be a significant focus during the *comprehensive interview*, the investigator should make some inquiries during the *preliminary interview* to help identify all the evidence as soon as possible. Each witness should be asked to identify or describe all the people present at the scene (including children). Witnesses should be asked if they saw anyone take anything from the scene, or if they saw suspects discard anything as they left the scene.



### Third Goal: Schedule a Comprehensive Interview

Every witness should be *comprehensively interviewed*. Even witnesses who initially appear unreliable or seem to contribute little new information should be interviewed again. Only after a full *comprehensive interview* and careful evaluation of a witness's testimony in light of the entire case, should a decision be made to discount the witness's testimony. With this in mind, it is helpful to schedule a time and place to interview each witness during the *preliminary interview*. I recommend that you initially set aside two days for *comprehensive interviews*. Reserve the first day for the most significant witnesses and the second day for those who offer redundant accounts or seem less reliable. Schedule at least one hour for each interview (schedule two hours if the interview will be conducted through a translator).

Before the *preliminary interview* is concluded, the investigator should make an appointment with each witness for a *comprehensive interview*. Assure the witnesses that their testimony is important and that you need to speak with them again in order to learn everything they know about the case. The witness may ask the investigator questions about cooperating and the risks involved. If possible defer a discussion of these concerns until the *comprehensive interview*. The scene of an incident is not the appropriate place to have this important discussion. If during the *preliminary interview* you discover that the witness is likely to die or is leaving the area soon, try to conduct as comprehensive an interview as possible, given your other important duties in the case.

### Section 7.3 The Comprehensive Interview

Conducting a good thorough interview is a difficult task, and it takes years of experience to master the many skills involved. A good interviewer is adept at formulating probing questions, has good intuition about people, is an active listener, and maintains a healthy suspicion about everything that he or she is told. A good interviewer can encourage reticent witnesses to speak candidly about uncomfortable topics. What makes a good interviewer will vary somewhat among cultures. What is conducive to a good interview in one culture may not be in another. Local investigators often have a distinct advantage over foreign investigators for this reason. But what all good interviewers share, in every culture, is the ability to elicit detailed, accurate, and truthful information from the people they interview.

The interview techniques described in this section are for use in a thorough interview, in a relaxed context, removed in time and space from the initial chaos of the event. I call this interview a *comprehensive interview*. Every *comprehensive interview* has four primary goals; these goals define the four essential tasks that must be accomplished during an interview. They are:

- 1. Find out everything the witness knows about the case.
- 2. Gather sufficient information to evaluate a witness's reliability and credibility.
- 3. Discover any additional witnesses or physical evidence the witness may know of.
- 4. Obtain enough background information to enable the witness to be contacted in the future.

### First Goal: Find Out Everything the Witness Knows About the Case

The first goal is to completely exhaust the witness's recollection and find out everything he or she knows about a particular event. Sometimes the human brain is likened to a sponge with an incredible ability to absorb whatever happens around it. Using the same analogy, the investigator must squeeze that sponge



dry and obtain every droplet of information relevant to the investigation. While this goal appears obvious, it is a difficult one to achieve. Uncovering everything a witness knows and recording it in the *Investigation Folder* is a challenging and time-consuming task. Inevitably there will always be something that a witness forgot to say or a question that the interviewer overlooked. While the investigator can never be certain that he or she has obtained every bit of information, there are ways to maximize the amount of information that can be gathered in an interview.

Before beginning the interview, the investigator should check to see that the witness is reasonably comfortable, that the room is private and that there will be no interruptions. Offer the witness a glass of water and engage him or her in some brief pleasant conversation about work, the local news, or the weather. Try to make the situation as comfortable as possible given the seriousness of the topic you will be discussing. Begin the interview by drawing the witness's attention to the event being investigated in the most vague manner possible. If possible, simply draw the witness's attention to the date and ask "Did you see something unusual that day?"

It is important to be aware of how the witness perceives you. Most witnesses will not see you as their peer but as someone with greater standing in the community. This is particularly true if you are a foreigner or represent a large international organization like the United Nations. This perception will likely make the witness nervous and reticent. This unease can be compounded by a fear of speaking about a serious violent event to a stranger.

Because of this, witnesses will usually not volunteer information. They will wait for the investigator's questions and respond to each one specifically and curtly. They will rely on cues from the investigator to tell them what is important and what is not. They will omit those parts of their account that the investigator fails to specifically question them about.

An experienced investigator recognizes this phenomenon and takes steps to counteract it. One way to counteract this is to try to put the witness at ease. Being interviewed for an investigation is always an unsettling experience. By taking the time to explain the process and answer the witnesses concerns or questions, the investigator can do a great deal to calm witnesses. Investigators should start by explaining

who they are and for whom they work. Tell the witness that you are responsible for

Helpfu Hint

### Witness Demonstrations

In many cases it may be unclear how an event took place simply by listening to a witness describe it. It can be difficult to follow the movements of everyone involved.

In such a case consider having the witness demonstrate what happened for you. After you have done a complete *comprehensive interview*, ask the witness to act out where different people were and what they did. Ask the witness to assign someone to play each participant. The interviewer could play the victim and the witness, the role of the suspect. Have the witness instruct all the participants in how they should move to re-enact the event.

Video record the demonstration if possible. If that is not possible, the interviewer should make detailed notes, including a diagram, to capture as much of the witness's description as possible.

investigating the case and would like to know everything the witness knows about the case. Assure the witness that there is no time limit, and that he or she should relax and take his or her time.

If the statements are going to be recorded with audio or videotape, the investigator should discuss that with the witness before the actual interview and seek the witness's permission. One of the surest ways to alienate witnesses is to record them without their knowledge. Once witnesses discover that they have been secretly recorded, they may lose any trust they had in the investigator. In addition, in some locales, the recording of another's conversation without their



consent is a violation of the law. If you are candid about the reasons why you are recording the statement, where the recording will be kept, and how it will be used, most witnesses will agree to it.

While it is not necessary to record your introductory remarks about you and your organization it is a good practice to record the witness's consent. If the witness consents to being recorded, turn on the tape and ask them again. Consider using the following model introduction when beginning a recorded interview:

- 1. Good morning, my name is Investigator \_\_\_\_\_ working with \_\_\_\_\_ (organization.) It is Monday, April 2<sup>nd</sup>, 2011 at 10:08 in the morning. I am at \_\_\_\_\_ (location of interview). I am about to conduct an interview in connection with the investigation into the \_\_\_\_\_ (subject of investigation, i.e. death of Felipe Camacho.)
- 2. Before beginning the interview, I am going to ask everyone in the room to state their name (all investigators, the witness, and any others, including translators, or family members of the witness should identify themselves).
- 3. (Mr./Mrs./Ms.) (witness), on the table in front of you is a recorder. I would like to record this interview to be sure that I do not miss anything you say or misinterpret anything you say. Do you consent to my recording this interview?
- 4. (If witness consents) I will not turn the recorder off at any time during this interview. Are you ready to proceed with the interview?

Once the interview begins in earnest, it is time to begin learning all that the witness knows. Every

### CAUTION

### **Problems and Procedures**

### **Witnesses and Estimating Time**

### Problem:

One of the most difficult things for a witness to do is accurately estimate an interval of time. Several witnesses observing a beating might each estimate the time differently. Some witnesses will perceive the time as much shorter than it actually was and others as much longer.

### Procedure:

If a time interval is important in a case, the following procedure will probably yield the most accurate estimate of that time. At the end of the interview, after the investigator has asked both *open-ended* and *specific questions*, he or she should do the following:

- 1. Explain to the witness that you want to get a clearer idea of the length of the attack.
- 2. Ask the witness to close his or her eyes and watch in his or her mind's eye the attack again, being careful not to speed it up or omit any part of it. Ask the witness to indicate for you when it starts with a handclap, and when it ends with another clap.
- 3. Using a watch with a second hand, time the interval between the handclaps.
- 4. Before telling the witness how long a period elapsed between the claps ask whether the length of time seemed to be close to that of the attack.
- 5. The interviewer should record on the *Witness Interview Sheet* the witness's time estimate as well as the result of this procedure.



investigator develops his or her own style of asking questions. Some do extensive preparation before an interview. Some approach the interview very informally and conduct the interview as if they were talking to a friend. I am going to suggest that you follow a two-stage approach to find out everything a witness knows, at least until you are experienced enough to conduct it in a way that works better for you. This two-part approach to accomplish the first goal of the interview is a good general method for uncovering everything a witness may know about a case.

The first phase of the approach uses open-ended questions to encourage the witness to volunteer and discuss everything about the case that the witness thinks is important. Even though the investigator may ultimately decide that certain portions of the witness's statement are not relevant, allowing the witness to describe everything he or she thinks is important during this part of the interview helps the investigator learn the boundaries of what the witness knows. Begin the interview by drawing the witness's attention to a time and place and asking him or her to tell you what he or she knows about the event. When the witness pauses, ask an *open-ended question*. These questions simply encourage the witness to talk freely about whatever aspects of the event struck him or her as important. Questions like "What happened next?" or "What did you see then?" Perhaps repeat a portion of what the witness has just said to show that you are listening carefully. For example, "You just said that you saw three soldiers arrive in a jeep. What happened after they arrived?"

Guide the witness through the entire event at his or her pace with *open-ended questions*. Allow the witness to talk about what he or she thinks is important and relevant. Resist the urge to ask *specific questions* at this point. You will undoubtedly think of questions as the witness speaks, and you will be tempted to interrupt and ask these questions as they occur to you. You may want to ask for more details or ask the witness to describe someone. I encourage you to refrain from doing this, instead, make a note of the question on your note-pad and ask it during the second phase. Once you begin to ask *specific questions*, the witness will stop talking freely and will wait to respond to your questions. You want to avoid this until the witness has at least touched upon all the aspects of the case he or she has knowledge of. If the interview moves too quickly to a specific question and answer format, you risk missing key information which the witness cannot volunteer and for which you failed to ask a sufficiently specific question. The objective



### **DYING DECLARATIONS**

An investigator may not be able to testify about what a witness told him or her before some courts. One of the few limited exceptions to this rule is a statement made at a time when the witness feared his or her own impending death. The admissibility of this hearsay statement is premised on the belief that people at "death's door" are unlikely to lie and therefore the statement is sufficiently reliable. Unfortunately, this legal requirement requires the investigator to ask the victim the unpleasant question: "Are you aware that your injuries appear life-threatening and that you will probably die?" A victim's affirmative answer to this question would make his or her statement admissible in most courts. Use good judgment before asking such a question. One way to minimize the need to ask this question is to interview the victim without asking it. After the interview, monitor the victim's condition carefully. When it appears likely that the victim will die ask the above question and then ask "Is everything you told me in your statement the truth?" In this way you do not appear unnecessarily callous.



during this first phase of the questioning is to gain a clear idea of all the different subject areas the witness may know about. This is best achieved by simply encouraging the witness to volunteer information with *open-ended questions*.

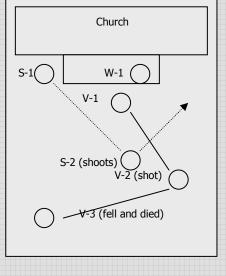
In some situations there may be parts of the event, that are particularly difficult or stressful for a witness to talk about. For example, in sexual assault cases, a witness may be able to calmly describe the events leading up to the assault but find it difficult to discuss the assault itself. The investigator should be patient and offer additional encouragement. Reassure the witness that you realize this may be difficult, but that it is necessary and that he or she should take whatever time needed before proceeding. It is important that the interviewer not allow the awkwardness of the situation or compassion for the victim to compromise the necessity of gathering detailed information about what happened. If the investigator is professional throughout the interview, most witnesses are able to talk about traumatic and personal topics. I often find it helpful to tell the victim in advance at what point in the interview the actual assault will be discussed and allow for a break immediately after that part of the interview. Knowing that the actual assault will not be discussed during the first hour of the interview can reduce the victim's anxiety. Advise the witness when you are about to begin discussing the actual assault, estimate how long that will take and offer him or her an opportunity to take a break before commencing this portion of the interview.

There may be times when a witness begins to talk about matters clearly not connected with the case. When this happens, use a general open-ended question to return to that portion of the narrative from where he or she departed. For example, "A few minutes ago you were describing what the soldier did after the attack. Would you please describe again what you saw him do."

After the witnesses complete their entire account in this first phase, thank them and tell them that you have some specific questions about what they saw. Take the witness back to the beginning of their account and ask them to describe once again what they saw. This time as the witness goes through the account, ask



witness communicate the movements of the different participants in an event. Consider using one any time it is unclear how the victim, suspect or witness moved during an incident. Ask the witness to draw the general area and to label a landmark to clearly indicate where events happened. Then ask the witness to use initials of the people involved or a simple "V" for victim and "S" for suspect to indicate their relative positions. If the participants moved, have the witness indicate that by writing the person's initials again with a number (i.e. "-2") to indicate it is the next place the person was. The diagram should be annexed to the statement and be referred to within the body





the *specific questions* you wrote down. Feel freer to interject more specific questions. Consider repeating your understanding of what the witness has said and ask him or her to confirm or correct it.

A good interviewer will now explore the crevices of the witness's recollection, being sure to draw out every detail about what he or she saw, heard, smelt, touched, etc.. Very often a witness will make assumptions or have impressions about something. For example, a witness may say that the victim was frightened of the assailant. This statement is of limited use because it is difficult for a witness to know what the victim was thinking. In most courts, a judge would not let a witness testify about what another person may have been thinking or feeling. However, an experienced investigator knows to ask the question: "You said that the victim appeared frightened. What did you see that made you think that?" In response to this question the witness may describe how the person trembled, how his speech faltered and how he looked around the room and walked toward the door. Although assumptions themselves are not useful, a proper excavation of them can lead to important factual observations. The investigator should identify and explore every assumption of the witness.

Many times a witness's assumptions are not obvious. A witness may make a statement which does not sound like an assumption but is. Very often these assumptions go unnoticed by the interviewer. The interviewer must be vigilant and check the witness's basis for every statement that he or she makes. The best way to do this is to continually ask, "How do you know that?" The repeated use of this question checks the underlying basis for every assertion the witness makes. For example, a witness states: "He had a gun on him." Many people would assume from this statement that the witness saw the person with a gun.



### CREDIBILITY VS. RELIABILITY

Credibility and Reliability are two concepts which are important in evaluating witness testimony. Credibility is a measure of the truthfulness of a witness's testimony. Is the witness telling the truth as he or she honestly believes it? Reliability is whether or not the "truth" as told by a witness actually happened. Even if the witness honestly believes the information to be true, is it what actually happened? This distinction between honesty and accuracy is an important one.

Consider the following story:

There is a small island off the coast of Cambodia called Koh Kong. Although it is part of Cambodia, it lies a few miles from Thailand. Many aspects of its local culture are clearly Thai. The common currency is the Thai Baht and not the Cambodian Riel. Many products for sale in the marketplace come from Thailand. Most television programs are in Thai and not Khmer, the language of Cambodians.

Now assume a traveler is going around the world in a small yacht and docks in Koh Kong. Upon walking around the town he sees the Thai money, the Thai products in the market and the Thai programs on his hotel television. When writing a postcard to his wife he tells her that he is in Thailand. He is not lying to his wife; he is telling her the truth, as he believes it, as honestly as he can, but he has made an honest mistake.

The most dangerous witness you are likely to encounter is the witness who is honestly mistaken. These witnesses, wholly convinced of the accuracy of their own account, are certain and unshakable and can be quite convincing to an investigator. But unfortunately, for some reason, they are wrong; they are honestly mistaken, but mistaken all the same. An investigator must always be vigilant for these witnesses and test the reliability of even "honest" witnesses.



Asking, "How do you know this?" could yield a plethora of answers, some seemingly reliable and some not. The witness may say, "I saw it.", or may say "I saw a bulge under his coat, it must have been a gun.", or "I've heard people say that he always carries a gun." In this case the first answer is obviously more reliable than the last. Explore the basis of all the witness's assertions to ferret out erroneous or unbelievable ones.

In certain cases such as sexual assaults there are particular questions which the investigator must ask. It is during this second phase that those questions should be asked. Refer to Chapter 10, *Special Cases* for some of the *specific questions* that should be asked when interviewing witnesses in particular cases. If for example, the investigator is investigating an unlawful detention he or she needs to ask specific questions about the detention such as: What made the victim believe he or she was not free to leave? What precisely was said to the victim? Did the victim request a lawyer?

After the investigator has gone through the entire account a second time and asked all the specific questions he or she can think of, he or she should consider the use of other techniques to clarify what the witness has said. It may be useful to ask the witness to draw a small diagram of the area involved, indicating the position of the people present and labeling important objects. Consider asking the witness to "act out" the event by placing you in the victim's position and having the witness play the role of the suspect demonstrating what the suspect did. Perhaps you may want to show the witness some of the photographs to clear up a question in your mind. Before moving on to the second goal of the comprehensive interview, use some of these devices to draw more information from the witness.

The investigator should also consider whether or not there is any benefit in going to the crime scene with a witness so that the witness can show where different things occurred. It is often very helpful to have a witness "walk" through the incident at the actual scene. If you decide to do this, continue with the remainder of the interview and then arrange to go to the crime scene with the witness.

## Second Goal: Gather Information to Evaluate the Witness's Credibility and Reliability

After the investigator has thoroughly exhausted the witness's recollection and is satisfied that he or she correctly understands all the information the witness has provided, the investigator should move to the next goal of the *comprehensive interview*. The next goal is to obtain sufficient information to help the investigator, someone reviewing the case, or a judge, to evaluate the witness's credibility and reliability.

When doing this, it is important to understand the difference between credibility and reliability. The credibility of the witness is whether they have told the truth as they believe it. Have they told the investigator an account that they honestly believe is true? Reliability refers to a completely different concept. An inquiry into the reliability of a witness asks the question, "Assuming the witness has told the truth as he or she believes it, is it factually accurate?"

For example, a credible but unreliable witness honestly states that he saw Mr. Jones running from the building. But the fact that he was drunk at the time and that it was dark outside would cause the investigator to question his reliability. Likewise, a witness to the same event who was reliable but not credible would have gotten a good look as Mr. Brown running from the building, but because Mr. Brown is his brother-in-law he tells the investigator that he too saw Mr. Jones. Obviously, the investigator needs witnesses who are both credible and reliable, and must gather the necessary information to evaluate each witness for both.



### Evaluating a witness's credibility

Determining the credibility of a witness involves, in part, an exploration into whether or not he or she has possible motives to lie. Few witnesses, if any, will tell you they have lied or even be candid about possible reasons for lying. The investigator must inquire into the possible reasons for a witness to lie. Depending upon the witness's answers, the investigator may need to further investigate the underlying motives of the witness.

The two most common reasons why witnesses lie are bias and fear. Many witnesses may have a particular bias in a case or some interest in the ultimate outcome of the case. This

An investigator should attempt to corroborate every witness's account. This includes the victim and witness which may appear to be very credible and reliable. Some good questions to ask are:

Who else did you see there?

(Check with those people to see if they saw the witness.)

How do you know this?

(Check out the witness's sources of information.)

Who did you speak to regarding this?

(Check out what the witness said to that person.)

Where were you before and where did you go afterward?

(Check out whether people at those locations remember seeing the witness.)

bias may be the result of prejudice, affiliation with the victim or suspect or any number of possible connections to the case. A witness who harbors a strong dislike for a suspect may see nothing wrong with fabricating testimony about the suspect. The outcome of some cases may result in either a positive or negative consequence for a witness. This fact certainly raises the possibility that a witness may have a motive to lie in the case.

Fear also causes witnesses to lie. The fear may be in cooperating against a powerful suspect or it may be of some likely consequence of the case. Fear very often causes witnesses to claim that they did not see an event at all. It is more difficult to identify this lie of "silence" then to spot fabricated facts.

When assessing the credibility of witnesses it is important to realize that a witness may be quite truthful regarding most of his or her testimony and only lie with respect to one or two facts. The classic example is the witness who accurately describes an entire attack but falsely maintains that he or she did not get a "good look" at the suspect. These witnesses believe that by failing to describe or identify the suspect they have helped the investigation and yet insulated themselves from harm.

The following table contains some of the general areas of inquiry the investigator should consider when exploring the witness's credibility. The actual questions will vary depending upon the particular circumstances of each case.



### EVALUATING CREDIBILITY: DOES THE WITNESS HAVE A MOTIVE TO LIE?

### Lovalty/Bias

Is the witness related in some way to any person involved in the case (either victim or suspect)?

Is the witness a member of the same group as the victim or suspect? Are the suspect and the witness both police officers? Do they work in the same job?

Are they members of the same political party? Church?

Does the local culture disapprove of people who cooperate and speak out about another's wrongdoing (informer)?

#### Greed

Is the witness receiving some benefit from the investigation that could cause him or her to color testimony? Is he or she being relocated or receiving living expenses? Is he or she receiving notoriety?

Is the attention paid by the investigator to the witness fulfilling some need of the witness? Loneliness? Self-esteem?

Does the witness gain any benefit whatsoever depending upon the outcome of the investigation? Life insurance? Reward money? A better job?

Is there a related civil case or contract dispute that will be favorably influenced in the witness's favor by a particular outcome in the case?

Does a friend or relative of the witness benefit in any way from the outcome of the case?

Does cooperation with the investigation enable the witness to special benefits administered by a different organization such as the Red Cross or does it entitle him or her to special immigration status?

Is the witness in such desperate circumstances that the small amount of money he or she receives for travel expenses is an enticement to say what he or she thinks you want to hear?

#### Fear

Is the witness afraid of cooperating?

Does the witness live or work in a place where the suspect could easily find him or her?

Is the suspect in the case so powerful that witnesses will be afraid to tell the truth about what they know?

If your organization is unable to offer protection could this affect a witness's ability to be completely honest?

### **Apathy**

Have previous investigations resulted in no visible positive change in the people's lives? Do they feel that cooperating with investigators is pointless and an unnecessary risk?

Is the witness the type of person who simply doesn't want to be bothered with being a witness and minimizes what he or she saw?

### Other

Could the witness be involved in the case in some way that has not yet been discovered?

Is it possible that the witness believes the target of the investigation to be such an evil person that lying about him or her is desirable and honorable?



In some cases a witness may have an inherent credibility problem. In those cases even though the investigator is satisfied that the witness is telling the truth, the nature of the witness's job or the witness's past history will make it difficult for a judge to accept what witness says on its face. Perhaps the witness is a prostitute, or a convicted criminal. In these cases the investigator must gather evidence which corroborates the witness's account. Consider the following example:

A well-known prostitute in a remote town has alleged that last Friday night a group of soldiers abducted her as she walked home with her ten-year old daughter who stays with a family near the brothel when she works. She claims that five soldiers forced her into a jeep and drove her to her home where they dropped off her daughter. The soldiers then drove her back to town, and in a corner of the closed market took turns raping her. They tore off her clothes and punched her several times. When the first one finished, he left for a few minutes, returned with a bottle of whiskey, and shared it with the others. She saw them go back into the bar across the street, and as they were walking she heard one of them say he had to get up early to catch the ferryboat into town.

The investigator is convinced that this woman is telling the truth, even though in an interview with one of the soldiers he claimed that the sex was consensual and that she was lying because she wanted more money. The investigator recognizes the inherent credibility problem and seeks to find whatever evidence exists which can corroborate any part of her account. The investigator does this and discovers the following:

- 1. He preserves her torn clothes as evidence.
- 2. He takes pictures of her facial injuries.
- 3. He interviews the family near the brothel who say that she picked up her daughter around 1:00 a.m. They say that she was not injured and that her clothes were not torn. They saw her walk away in the direction of her home.
- 4. He interviews her daughter, who tells him how the suspects picked her and her mother up and then dropped her off at the house.
- 5. He interviews her neighbors, two of whom were awakened by the soldiers' jeep. When they looked out their windows they saw the woman in the jeep and the little girl going inside. The woman was crying and two soldiers were holding her by the arms.
- 6. He interviews the bar owner, who remembers one soldier coming in around 1:50 a.m. to buy a bottle of whiskey. He didn't pay for the whiskey at that time but came back with four or five other soldiers and drank until around 3:00 a.m.
- 7. He interviews a number of people who live on the road between the market and the woman's house. One person says that after using the toilet he looked out of the window and saw a woman who was partially naked walking hunched over down the road. She was sobbing and was covering herself with some torn clothes.
- 8. He interviews the ferry operator and a soldier matching the



description of one of the soldiers who attacked the woman took the ferry to town the day after the rape.

Even though there were no witnesses to the rape other than the victim, who, because of her work and the type of case may have credibility problems in court, good investigative work turns up compelling evidence that corroborates most of her account. Given this evidence, a judge is far more likely to credit the woman's testimony.

In other cases a witness may have inherent credibility. A good example of this are witnesses whose testimony may potentially cause them harm. For example, a soldier who admits to wrongdoing during the course of his testimony, or a witness who faces the real possibility of retribution for speaking with you. It may sometimes be important to question witnesses about what they perceive as the likely consequence of their testimony. This information will assist a court in assessing the witness's credibility as well.

There are also ways in which to test the credibility of the witness within the interview itself. Witnesses who are testifying about a fabricated event usually have difficulty in "bouncing around" in the story. While they may be convincing telling the story in a chronological fashion, the story becomes confused when the interviewer takes them back to particular portions of the story out of chronological order. The witness may begin to forget important aspects of the story or mix-up the time line of what happened. Truthful witnesses will usually not have a problem doing this. If you suspect that a witness is fabricating his or her account, take them back to specific portions of the event, out of chronological order, to help assess his or her credibility.

It is important to realize the limitations of this technique. While it works well in situations where a witness's account is completely fabricated, it may not when a witness is fabricating only a few critical aspects of his or her testimony. It is relatively rare for a witness to completely fabricate a story. In most cases the witness adapts a real event by changing material facts to suit his or her purpose. In such cases this technique will not reliably expose the lie.

Some investigators look to the "body-language" of witnesses to assess their credibility. Although the investigator should not ignore common sense or impressions of witnesses in an interview, be careful about giving them more weight than they deserve. This is especially true in the case of foreign investigators. Body language such as eye contact varies greatly between cultures. Be careful not to attribute too much meaning to body language which may be considered suspicious in your culture but appropriate in the witness's.

### REFERRING TO OTHER WITNESSES

Investigators often erroneously believe that it is all right to use the names of witnesses when interviewing other witnesses. They assume that all of the witnesses, by virtue of their involvement in the case, share a mutual bond and will not divulge any information about each other. The investigator should assume that everything he or she says in front of a witness, including the names of other witnesses, will be repeated to others who should not have access to that information. Investigators should never refer to other witnesses by name when interviewing a witness. Disclosing the names of other witnesses to a witness needlessly endangers them, invites interaction between them that can taint their testimony, and destroys any confidence the witness might have that the investigator will keep his or her identity secret.



Consult with your interpreter for guidance in this area.

### Evaluating a witness's reliability

The question of reliability considers whether a witness might be honestly mistaken. Because of the frailties of human perception, nearly all witnesses will be mistaken about some detail in their account. The investigator must evaluate whether or not the witness might have erred in any material respect. Rigorously evaluating witnesses for reliability, by ferreting out mistakes early, can prevent an investigation from moving in an erroneous direction. If all witnesses are evaluated for reliability, the investigator will quickly see which witnesses have provided accurate accounts and which have not. The investigator can rely on the testimony of reliable witnesses when making decisions regarding how to proceed with the investigation.

Witnesses who are honestly mistaken can be hazardous to an investigation. reliance on their testimony can result in the innocent being wrongly accused and the guilty escaping justice. Below are some suggestions for exploring the reliability of witnesses. The particular questions that an investigator can ask will vary depending upon the nature of each investigation.

### EVALUATING RELIABILITY: COULD THE WITNESS BE MISTAKEN?

### **Physical Condition of the Witness**

Does the witness usually wear glasses or a hearing aid? Was the witness wearing them at the time he or she witnessed the event?

Did the witness drink alcohol before the incident? Is the witness on any medications or taking any drugs that could affect his or her perception?

Was the witness awake before the event took place or did it awaken him or her?

### Intellectual/Mental State of the Witness

Has the witness ever suffered from a mental illness? (Particularly delusions or hallucinations.)

What was the witness's emotional state at the time?

Was the witness so traumatized by the event that it has affected accuracy of his or her perception?

### Conditions Under Which the Witness Made the Observations

What were the lighting conditions?

How close was the witness to the event? Did anything obstruct his or her view?

Was the area around the incident crowded? Was the witness standing still during the event or running away?

Was the witness doing something else at the time such as driving a car, which prevented him or her from fully focusing on the event?

Were all those involved in the incident dressed so similarly that it would be hard to tell who did what?

### Is Witness Contradicted by Other Evidence?

Does the witness's account agree with the accounts of other witnesses? Is any material part of the witness's account contradicted by other witnesses? Is there a reasonable explanation for this?

Does the witness's account agree with the physical evidence in the case? Is there anything about the evidence that contradicts the witness's account? ? Is there a reasonable explanation for this?



The witness's answers to these questions may suggest a basis for doing additional investigation to either corroborate or disprove the witness's account. Once the witness's reliability is called into question the investigator is obliged to do whatever additional inquiry is necessary to resolve the issue. In some cases additional investigation may not definitively resolve the questions of the witness's reliability. In these cases the witness's reliability must be candidly discussed in the report and all relevant evidence on the matter presented.

If the witness has not seen the *investigative scene photos*, the investigator can use them to check the witness's reliability. The investigator should examine the photographs carefully and then ask the witness detailed questions about the *investigative scene*. This exercise will show just how accurate a witness is. Keep in mind that even credible, reliable witnesses will not be able to recount every detail about the crime scene, but the degree to which the witness can accurately recall details will demonstrate his or her reliability as a witness. An investigator should be wary of a witness who is mistaken on even the most obvious details of the *investigative scene*.

### Third Goal: Inquire About Other Witnesses and Physical Evidence

The third goal of the *comprehensive interview* is relatively easy and is the same as one of the goals of the *preliminary interview*. The investigator should ask the witness about any other witnesses or evidence he or she may know about. The investigator should ask the witness to identify all the people (including children) who were present at the scene. If the witness does not know them by name, get a good description of them and any information the witness knows regarding where they live or work. The witness may be able to say that the person walks with a limp, that he lives down by the river and sells vegetables in the market. Any information at all, will help investigators identify and locate that witness. Even if the witness has mentioned other people earlier in the interview, the investigator should conduct this final check for additional witnesses.

The investigator should also inquire about any physical evidence the witness may have seen. Did the witness see any suspects throw anything away as they fled? Maybe he heard people saying that the body was floating in the river. Anything the witness knows about physical evidence can lead to its discovery. Depending upon how credible and reliable the witness seems to be, the investigator will determine what follow-up is necessary.

### Fourth goal: Gather Sufficient Information to Locate Witness Again

At the beginning of an investigation, witnesses may be very cooperative and accessible to the investigators because they live in the community. In today's modern world, however, they are more likely to move. It is quite probable that a year or two after an incident several important witnesses will have moved away for reasons related to work or family. The investigator must prepare for this eventuality by obtaining enough information about each witness so that he or she can be located in the future. Unfortunately, human rights cases rarely move quickly, therefore the investigator must take steps to ensure that witnesses can be located in the future when necessary.

Unfortunately, it is also true that witnesses often become less cooperative as time passes. When the initial sense of urgency has dissipated, witnesses begin to reconsider their cooperation. Many witnesses are less enthusiastic about cooperating out of fear or simply because there are other more immediate concerns in their life. These witnesses may try to avoid being contacted by the human rights investigator and perhaps



			WITNESS INT	ERVIEW SHEET		
Information	ABOU	T THE INTERV	TEW			
Name Of Interviewer				Interviewer's Organization		
Date Of				Organization		
Interview			Location			
<ul> <li>Interpreter</li> </ul>	Used	Name Of Interpreter				
All People Pre	sent D	uring Intervie	w:			
Interview Documented E	y: 🗆	Video-Tape ( Audio-Tape ( Statement W		) Inter	oreter & Sig	en By Interviewer or gned By Witness tes
SECTION 7 – W	ITNES			ication Number		Passport Number
Date of Bildi			National Identification Number			r assport Humber
Home Address & phone		Workplace & phone		If Refugee – do you know where you are going?		
Spouse's Name (include Maiden name)		Name of Children		Name of Parents		
Witness's Education and Professional Training		Types of Employment Witness has had		If Witness does not return home when would he or she go?		
			ent contacts to the come ecause they own prope			close friends who are unli
	course		ONTACT # 1 CONTACT		2	CONTACT # 3
	ACCUUSC.	C	JITTACT # 1			
to leave the area t	ACCION.	Co	MIACI # 1			
to leave the area b	, course	C	MIRCI W 1			
	- Court	Co	7 TACI # 2			

Forms like the one shown above can help investigators record important background information about witnesses to help locate them in the future.

even move away in order to make the task of contacting them more difficult. Because of these reasons the investigator must obtain sufficient information about witnesses in order to locate them in the future.

The Witness Information File should contain detailed background information about each witness. It should include information about a witness's skills, employment, and whether or not they have any future plans to move. The investigator should ask for the names of close relatives and friends with whom the witness is likely to remain in contact should they move. Most people who move will have one or two people with whom they remain in contact. Most witnesses will provide this information if the investigator explains the purpose for collecting it and assures them that it will be kept in strict confidence. In some countries it is common for rural inhabitants to migrate to the larger cities. If this is a possibility, ask the witness whether they have any such plans and obtain the name and address of a relative they would be likely to stay with in the city.

This background information should be recorded on a *Witness Information Sheet*. Create a *Witness Information Sheet* for each witness and keep it in this

special file. The actual information recorded on the *Witness Information Sheet* may vary depending upon the culture. The goal is not to seek exhaustive intimate details about the witness's life but to obtain sufficient information about the witness and at least three permanent contacts to the community that can be used to find him or her in the future.

Information regarding the witness should include:

- 1. Name
- 2. Address
- 3. Telephone number
- 4. Date of birth
- 5. Place of employment and his or her job skills
- 6. Any national identification number
- 7. Copy of driver's license, passport or national identification card
- 8. Photograph of witness if it does not unreasonably jeopardize his safety.
- 9. The names of at least three significant permanent contacts to the community.



Information concerning the witness's community connections should identify at least three people who are likely to know where the witness is should he or she move from the community. These people should be relatives or friends who do not live in the same household. They should be permanent residents of the community with significant ties to the community such as owning property or a business. Older people are often more settled and less likely to move. Try to obtain the name of at least one older person in the community with whom the witness is likely to remain in contact with.

## CAUTION

### Problems and Procedures

### **Follow-up Interviews**

### Problem:

Even after the comprehensive interview it may become necessary to interview witnesses again. This is especially true in the case of key witnesses to an incident. As the investigator learns more about the case he or she may realize that there are additional important questions to ask a witness.

In some instances new evidence may appear to contradict something a witness has told the investigator. In such cases it is important for the investigator to further question the witness to determine if the witness's testimony should still be believed in light of the apparent contradiction.

### Procedures:

The precise procedure that an investigator uses to conduct a follow-up interview will vary depending upon the circumstances of the individual case. In some cases the investigator may have only a single question to ask a witness and may do it over the telephone. In all cases, the investigator should make detailed notes regarding the follow-up interview noting the time, place and the questions that were asked. If the interview is more than clarifying one or two points the interview should be in person and recorded in the same manner as the *comprehensive interview*.

If the investigator intends to confront a witness with evidence that contradicts the witness's earlier testimony he or she should video the interview or have another investigator present.

### Section 7.4 Witnesses Requiring a Special Approach

Some witnesses require special consideration. Although the above discussion still applies to these witnesses, special vigilance and attention to particular aspects of the interview are required. The two types of special witnesses discussed below are children and suspects. Both of these present different challenges to the interviewer.



### Interviewing Children

In every investigation be sure to identify and interview any children who may have witnessed the event. Investigators sometimes overlook children as witnesses assuming that adults are better witnesses. Although children below the age of six or seven sometimes have trouble separating fact from fantasy, children above the age of six or seven ordinarily make very good witnesses. Children are often able to recall an incident with greater detail and more accuracy than adults. A child's perception of an incident may very well be a purer version, unadulterated by some of the many assumptions and conclusions that commonly taint an adult's perception.

An investigator must identify and interview every child that witnessed an event. When asking adult witnesses about other people present at the scene be sure to specify that you are also interested in the children who were present. Adults may omit the names of children when asked about other witnesses.

Depending upon the culture, it may or may not be important to obtain the permission of a child's parents before talking to him or her. In some countries it may be considered entirely appropriate for an investigator to speak to a child without parental permission. In other countries it might be considered very improper and may invite a strong negative reaction on the part of the parents. The best practice for a human rights investigator is to seek parental permission whenever possible before interviewing anyone under the age of 18. If the parents are not witnesses in the case, they should be invited to sit with the child during the interview. The parent's presence may help the child relax and result in a more productive interview. Seeking permission also shows respect for the parents and will make them more likely to cooperate in the future. If a parent is not available, seek out an adult relative or the person who appears to be caring for the child.

It is not necessary that the permission be written. In fact, asking the parents to sign a permission form might raise undue suspicion. However, the investigator should make a note on the Witness Interview Form that he or she sought and received permission from the child's parents. The note should include the parents' names and the date they gave permission. Another investigator, in the future, should be able to identify and locate whoever gave permission should it become necessary.

It may be advisable to ask a parent to sit in on the interview if the child is young. Young children may be traumatized both by what they witnessed and by talking about it with a stranger. The presence of a parent may facilitate the interview by setting the child at ease. Before parents sit in on an interview, be sure that they themselves are not witnesses in the case. If they are witnesses, try to identify another adult who can sit in on the interview and comfort the child. The *Witness Interview Sheet* should include the name and address of any adults who are present during the interview.

The investigator should give some thought as to where he or she will interview children. Find a place where the child will be comfortable and not feel threatened by the surroundings. If you interview the child in your office, be sure there are no gruesome photographs or weapons lying around. Try to make the interview environment comfortable for the child. Most investigators avoid sitting behind a desk and find that a simple arrangement of chairs works best with children.

It is important to avoid any conduct that may create a possible motive to lie or simply create the appearance of such. While a soda or piece of candy is certainly appropriate, avoid giving money or any gifts to the child. Children in the community will soon learn that there was something to be gained by providing "information" to the human rights investigator, something that can harm future investigations.



Foreign investigators must be particularly vigilant about giving gifts, which might seem insignificant to the investigator but have some real value to the witness.

Before the interview actually begins, the investigator should be sure that the child understands who the investigator is and what his or her organization does. Consider asking the child to explain his or her understanding of who you are and what you are doing to ensure he or she understands.

Once the child understands who the investigator is and the purpose of the interview, the interviewer should conduct the questioning in the same way as he or she would interview an adult. If the interview is a *comprehensive interview*, the interviewer should guide the child through his or her account two times. The first time, use *open-ended questions* to encourage the child to speak freely. Avoid interrupting the child to ask *specific questions*. The child, even more so than the adult, will stop volunteering information once the interviewer begins asking *specific questions*. During the second phase, focus on particular facts and observations by asking detailed questions. When questioning children be mindful of what vocabulary they are likely to have. While the interviewer should never talk to a child using "baby-talk," he or she should avoid using words that may confuse the child being interviewed.

Depending upon the type of case, the child's lack of an adult vocabulary may present a problem in the interview. The child may lack the vocabulary necessary to describe his or her observations. If the child is unable to articulate something, the interviewer should never suggest words to the child. A child may willingly adopt a suggested word or concept without fully understanding what he or she is saying. The interviewer must seek other ways to help the child communicate this information.

In cases involving sexual assault, it may be necessary to obtain anatomically correct dolls or show pictures of a naked person and ask children to point to those parts of the body they may not know the words for. In cases where weapons were used, consider showing the child a picture book of weapons and having him or her point to similar-looking weapons. The interviewer should never bridge the vocabulary gap by offering words a child is unfamiliar with. Instead, look for other ways of phrasing a question or other means of communication to help the child to convey what they witnessed.

Children may have difficulty with directions (north, south) and distances. If a child is an important witness in the case, the investigator should consider taking him or her to the scene of the incident. At the scene ask the child to indicate where different people were at different times as well as where items of evidence may have been. The interviewer should draw a diagram of the scene and mark those locations indicated by the witness. If people moved around the scene during the course of the incident, ask the child to retrace the paths taken by different people and indicate these on the diagram. It is usually easier for a child to describe an event when he or she can point to different objects and re-enact what happened.

### Potential problems of interviewing children

One of the shortcomings of child witnesses is that children are very susceptible to suggestion. Generally speaking, children are more likely to change their account to conform to the accounts of other witnesses. A child's recollection may actually be altered if he or she hears a different account by an adult or one is suggested to him or her. Ordinarily, children do not believe that their observations can be correct in the face of an adult's contradicting account. The child is apt to assume that he or she is incorrect and adapt his or her account accordingly. It is therefore critically important that children never be interviewed in the presence of other witnesses or be permitted to be present during the interview of other witnesses. This can be a problem if both a child and his or her parents are witnesses in the case. Take a few minutes to explain the need to interview each witness separately and then interview the parents first. Hopefully their



experience of the interview will set them at ease about the child being interviewed alone. Children should always be insulated from overhearing what other witnesses are saying.

A good illustration of this problem occurred once when I was asked to observe some investigators conducting an actual investigation into a robbery and homicide:

The case involved two soldiers who allegedly robbed and killed a man. One of the first witnesses the investigators spoke to was a small boy who had heard the attack while tending his family's cattle. Although he did not see the attack he was able to show where the attack took place and described hearing three gunshots. While being interviewed, another witness approached the investigators, told them about his observations, and described hearing two shots. He said this in front of the boy. When the boy was brought to the office for a more thorough interview he changed his account to conform to the older man's; he now stated that he heard only two shots. When asked about his earlier statement claiming to have heard three shots he said that he did not mean to say three and reaffirmed that he only heard two shots. The investigators were now convinced that only two shots were fired.

An autopsy of the deceased revealed three gunshot wounds.

Although the number of shots in this case was not critical, it does illustrate how easily a child's recollections can be affected or even altered. The boy honestly believed that he had made a mistake and had only heard two shots. If the older man had been interviewed first, it is unlikely that anyone would have realized that the boy's recollection on this point, or perhaps another more important one, had been affected by hearing another witness.

### Child witnesses who are also victims

When a child is a victim as well as a witness, the investigator should assess the child's and the family's ability to cope with the trauma. While it is not the role of the investigator to provide medical or mental health services to the child, the investigator may be in the best position to direct the family to the services they need. Children, and very often adults, are unlikely to be aware of the full affect a traumatic incident may have on them until some time later. They may also be unaware of whatever services are available. The investigator should become familiar with whatever services are available locally and direct the family to them. In some cases, it may be necessary to contact (with the parent's permission) a doctor or social worker to help facilitate treatment.

### Interviewing Suspects

Interviewing a suspect in a case is one of the most challenging interviews an investigator can do. If you have the opportunity to speak with a suspect, avail yourself of it. Although you may have no legal authority to compel a suspect to talk with you, he or she may be motivated to talk in an attempt to ward off suspicion or to try to throw you off track. Even if this is the suspect's motivation and you believe he or she will lie, it is still very important to listen to and document that account.

If the investigator has the opportunity to interview a suspect, it <u>must be video or audio recorded</u>. If the investigation ultimately leads to a prosecution, the interview and the credibility of the investigator will invariably be attacked. The interview must be recorded so that the trial never becomes a contest between the credibility of the suspect and the investigator. An audio or video record will speak for itself regarding what happened during the interview. And as with all witnesses the recording should only be done with the



### INTERVIEWING PRISONERS

Human rights workers are often called upon to interview prisoners. It is important that the human rights investigator be aware of all the rights a prisoner has while in custody and respects them.

Prisoners fall into two categories: First, are those individuals who stand accused of a crime and are awaiting trial (pretrial detainees). Under international law these people are to be presumed innocent. The second group is comprised of sentenced prisoners who have been convicted after some judicial process and are now serving a sentence. When interviewing pretrial detainees or convicts with cases being appealed, be careful that your work does not impinge upon their rights or jeopardize their defense.

All communication between an accused and his or her lawyer is privileged. That means that no government authority can compel the accused or his or her attorney to divulge their conversations. In most jurisdictions the accused can prevent a lawyer from testifying about their conversations should the lawyer volunteer to do so.

Conversations between human rights workers and inmates are not privileged, and therefore the investigator can be subpoenaed and compelled to testify about any conversations with a detainee. In order that you do not jeopardize an inmate's defense, do not question an inmate about the facts of his or her pending case. If the inmate insists on discussing the case with you, you must first warn him or her that your conversations are not privileged and that you could be compelled to testify about what you are told. If possible consult with the prisoner's attorney.

Your meticulous observation of prisoners' rights will earn you their respect and trust and prevent you from being caught in a compromising situation.

suspect's consent. If the suspect wants to talk without being recorded the investigator should insist on recording the interview. If the suspect is adamant, the investigator should think carefully before proceeding without a recording. It is probably wiser to decline the opportunity, than to proceed off the record.

### Is it necessary to advise a suspect of an accused's rights?

How an interview is conducted will differ depending upon whether or not the suspect is in custody. If the suspect is being detained by government authorities, the suspect must be informed of a *suspect's rights*. This may occur when domestic police detain a soldier for human rights abuses or visa versa.

If the human rights investigator is working with some governmental authority on the case, and the suspect is in custody, the investigator (or police) must advise the suspect of his or her *suspect's rights* prior to the interview. The rights he has may vary depending upon the local laws in the country. At a minimum a suspect has the rights described below. Keep in mind that if local and international laws are different, the local law can confer additional rights to the suspect but cannot abrogate international rights. The suspect's statement must be made voluntarily and if the suspect is detained the suspect must knowingly and voluntarily waive the *suspect's rights* after being informed of them. See the *Problems and Procedures* box on "Advising Suspects of Their Rights."



It is important to remember that no matter how horrible the act being investigated or how compelling the evidence you have already obtained, the suspect is presumed innocent and according to international law must be treated as an innocent person. The investigator must ensure that the interview is fair to the suspect and that he or she is being interviewed voluntarily. Even if the investigator is working with some governmental authority on the case, the investigator must assume the responsibility for the fairness and voluntariness of the suspect's statement. The suspect should be fed and have had an opportunity to rest. The suspect should not have been physically abused and psychological coercion such as threats should not have been used. If the interview situation is patently unfair to the suspect and the investigator is powerless to change that, the investigator should withdraw his or her participation in the proceeding. One of the true tests of a human rights investigator's integrity is how he or she treats a person suspected of committing a horrible crime.

### CAUTION

### **Problems and Procedures**

### **Advising Suspects of Their Rights**

### Problem:

If the human rights investigator interviews a suspect who is being detained by the police or other government agency, the investigator must advise the suspect of a *suspect's rights* before asking the suspect any questions about the case.

### Procedure:

When administering the rights you say the following:

"I am ... from ... and I am investigating an incident which occurred... I am interested in hearing what you know about it. Are you willing to speak with me about it?"

(If the suspect says yes, proceed. This should be recorded on either audio or video tape.)

- "Before I can speak with you, the law requires that I tell you about the different rights that you have. I am going to do that now.
- 1. You have the right to remain silent and to refuse to answer any questions. Do you understand this right?
- 2. What you say here might be used against you in a court in the future. Do you understand?
- 3. You have the right to speak with a lawyer before you speak to me or have an attorney present when you speak to me. Do you understand this right?
- 4. If you cannot afford an attorney, a judge will assign one for you without cost if you wish. Do you understand this right?
- 5. Now that I have advised you of your rights, are you willing to speak with me?"

If the suspect has answered "Yes" to all of these questions, the investigator should proceed with the interview.



### The actual interview

There are many books one can read and courses one can take which describe a variety of interview techniques. Some purport to be scientific systems in which body movements will indicate whether someone is lying. The ultimate goal of many of these techniques is to eventually get the suspect to say, "I did it!" These techniques are largely an unproven science and certainly beyond the scope of this book. What I will describe here is a simple method for making the most out of an opportunity to interview a suspect in a case. This system is not necessarily designed to get a guilty suspect to say, "I did it!" but is premised on the following principle:

The investigator should obtain a suspect's voluntary account of what happened in very precise detail. If the account is true it will "fit together" with the other evidence in the case like a piece of a jigsaw puzzle. If the suspect is lying, then the statement will be contradicted by other evidence in the case thereby pointing a clear finger of guilt at the suspect.

The key to the success of this method is the amount of detail the investigator obtains. The investigator should conduct the interview with the same two-stage approach used in a *comprehensive interview* - first *open-ended questions* and then *specific questions*. When asking specific questions of a suspect, the investigator wants to commit the suspect to as much detail as possible. The investigator should take the suspect through the event step by step; pinning down details about where the suspect and victim were at all times. If the suspect denies being involved or offers an alibi, the investigator should go into great detail regarding every aspect of the alibi. The investigator should ask the name of every person present with the suspect as well as everything that they did. If the suspect says he or she was watching the television, ask what show and what happened in the show. Ask questions about every conceivable fact, which you can later confirm or contradict with independent evidence. The suspect's statement should be so detailed that once the investigator discovers evidence, which contradicts it, there is no room for the suspect to avoid the clear import of his statement. Consider the following example.

A soldier is accused of robbing and killing a man at the outskirts of town. The soldier claims that he left his barracks and went to a bar in town. A direct path between the barracks and the bar would not have taken him near the scene of the crime. After the interview the investigator finds a witness who saw the soldier in the area where the man was killed. When confronted with this at trial, the soldier states that on the way to the bar he went to see a girlfriend who lives in the area and that the investigator never asked if he went straight to the bar. The suspect is able to change and accommodate his account so that it is not directly contradicted by the independent evidence. In this case the investigator should have asked, "Did you go directly to the bar or did you go somewhere on the way to the bar?"

The interviewer must account for every minute and every movement of the suspect's movements to prevent him or her from altering the account once the additional evidence in the case becomes public.

In some interview situations, the suspect may say something that the investigator realizes is contradicted by physical evidence. The investigator is sure that the suspect is lying. The investigator may want to confront the suspect with his or her fingerprints or other piece of compelling evidence. Before doing this, the investigator should allow the suspect to fully commit himself to the lie. If for some reason the interview is not being recorded, the investigator should ask the suspect to write down his or her account



before proceeding. Once the lie is recorded in a signed statement, the interviewer can confront the suspect with the contradictory evidence. If the suspect changes his or her story, the interviewer should have the suspect once again commit this new contradictory account to writing. This can conceivably happen several times. The suspect thereby being committed to a number of apparently false and contradictory stories. Numerous false or misleading stories are strong evidence of a suspect's guilty state of mind.



## Suspect's Statements and

**Trace Evidence** 

In any case in which there may be latent prints or trace evidence recovered from an *investigative scene* the investigator should "pin down" whether the suspect was ever at that scene.

Without divulging the possible existence of trace evidence the investigator should ask the suspect:

Whether he or she was ever at an investigative scene (including before and after the incident).

The number of times and the dates when the suspect was there.

and

What the suspect did when he or she was there.

If the suspect denies ever being present at the place where a crime occurred the investigator should record a clear statement of that denial that is either recorded or written out by the suspect. Such a denial in the face of trace evidence conclusively connecting the suspect to the scene of a crime is compelling evidence of guilt. A clear, unequivocal statement denying ever being present at the scene also precludes the suspect from lying after the trace evidence becomes public knowledge (i.e. claiming self-defence).



### CHAPTER 7 SUMMARY

Credibility and Reliability are two concepts that are important in evaluating witness testimony. Credibility is the truthfulness of the witness. Reliability is the accuracy of the witness. A credible honest witness can be unreliable or mistaken. An investigator must check that a witness is both credible and reliable. The most dangerous witness an investigator is likely to encounter is the witness who is honestly mistaken.

## RECORDING WITNESS STATEMENTS

THE INVESTIGATOR SHOULD ALWAYS RECORD THE STATEMENTS OF WITNESSES. THE FIVE WAYS TO RECORD STATEMENTS ARE LISTED BELOW IN THE ORDER OF PREFERENCE.

- RECORD THE ENTIRE INTERVIEW ON VIDEOTAPE WITH THE WITNESS'S CONSENT.
- RECORD THE ENTIRE INTERVIEW ON AUDIO TAPE WITH THE WITNESS'S CONSENT.
- Have the witness write out his or her statement.
- 4. HAVE THE WITNESS READ AND SIGN THE INVESTIGATOR'S DETAILED INTERVIEW NOTES.
  - THE INVESTIGATOR SHOULD TAKE DETAILED NOTES.

#### Preliminary Interview

A preliminary interview is the first interview with a witness, usually at the scene of the incident being investigated. It is a short interview designed to obtain important information the investigator needs quickly during the early stages of the interview.

### There are three goals to a *preliminary interview:*

- 1. Obtain a basic understanding about what a particular witness knows and whether he or she is likely to be a good witness.
- 2. Obtain information that will help identify other witnesses and physical evidence.
- 3. Schedule an appointment for a *comprehensive interview* and obtain sufficient information about the witness to contact him or her in the next few days.

#### **Comprehensive Interview**

A comprehensive interview is a thorough interview in a safe, comfortable environment. It is designed to obtain as much information from a witness as possible.

#### There are four goals to a *comprehensive interview:*

- 1. Find out everything a witness knows about the case.
- 2. Gather sufficient information to evaluate a witness's reliability and credibility.
- 3. Discover any additional witnesses or physical evidence the witness may know of.
- 4. Obtain enough background information to enable the witness to be contacted in the future.



#### Chapter 8

#### IDENTIFYING SUSPECTS

In every case, the investigator must gather evidence which not only shows <u>what</u> happened but <u>who</u> is responsible. While this may appear obvious, inexperienced investigators may not realize that a court of law requires that both criminal conduct and identity be proven with credible evidence beyond a reasonable doubt. Unfortunately, investigators often do not give the issue of identification the priority it requires. They compile ample evidence of what happened and neglect to sufficiently document the evidence implicating those individuals who are responsible. In cases where the victim and/or witnesses know the suspect from prior dealings the issue of identification is simplified. The eyewitness testimony and some independent corroboration, if possible, may prove sufficient on the issue of identification. In most cases, however, the victims and witnesses will not have seen the suspect before the day of the incident. In these cases, proving who did it beyond a reasonable doubt may be even more difficult than proving what happened.

It is helpful to examine the issue of identification separately to ensure that any accusations against individuals are properly supported with sufficient credible evidence of identification and that innocent people are not unjustly accused. The investigator should evaluate each piece of evidence that connects a suspect(s) to the crime and assess if together they prove identification beyond a reasonable doubt.

Consider the following example:

On June 1, 1999 two soldiers entered Bun Seng's house. When they entered, one of them hit Bun Seng with the butt of his gun. The other soldier then grabbed one of his children and held an AK59 pistol to his head. He threatened to kill the child if Bun Seng did not hand over 100 dollars. When Bun Seng's wife pleaded with them, the first soldier also hit her with the butt of his gun.

When the human rights investigator spoke to neighbors several reported seeing a soldier standing on the road directly in front of Bun Seng's house looking up and down the street. They noticed this because it seemed so unusual for a soldier to be standing there.

In this case the investigator must look for evidence that identifies the three soldiers who robbed Bun Seng and his family. In the absence of any physical or documentary evidence connecting the suspects to the scene, identification of them depends upon whether or not the witnesses are able to recognize these soldiers again. In the vast majority of cases the identification of suspects will rely on the witnesses' ability to identify the suspects at a later time.

This chapter will explore how an investigator should handle the problem of proving identification. It will describe how to use eyewitness identification testimony, identification procedures, physical evidence, documentary evidence, and suspect's statements to prove identification in the case.



#### Section 8.1 Eyewitness Identification Testimony

In most cases eyewitness identification testimony will be the primary source of identification evidence. Typically, there will be witnesses who saw the perpetrators and who are able to describe them and recognize them again. The key question in eyewitness testimony is whether or not a witness already knows the suspect they are describing. The investigator's approach is very different depending upon whether or not the witness already knows the suspect. It some cases the answer to this question is very clear. The witness is able to provide the name of the suspect as well as a great deal of information about where the suspect lives and works. The witness may know the suspect for several years and perhaps they may have gone to school with or lived close to each other. In such cases a prior relationship between the suspect and the victim may be sufficient to prove identification if the witness is credible and reliable.

In some cases the witness may know the suspect even though the witness cannot give the suspect's name or other information about him or her. Consider the following example:

The victim states that a soldier beat him. The victim sells beer down by the market, and this particular soldier has bought beer from him at least ten times. He has also heard other soldiers call him "Chi-Chi" (a nickname).

Hint Hint

#### **Multiple Suspects**

The task of getting a good description of what a suspect looks like and did is more difficult when more than one suspect is involved. Witnesses tend to "jump" between different suspects making it difficult to accurately record their testimony. In these cases the investigator should begin by determining the total number of people involved and "labeling" them so that both the investigator and the witness are clear about which person they are referring to.

After establishing the total number of people involved in the incident, ask the witness to describe the most obvious characteristic of each person. For example, the witness may say that one was bald, another had a long black coat, and the third was wearing glasses. Using these characteristics, refer to each of the suspects as: the bald one, the one with a black coat, and the one with glasses. If the investigator simply asks the victim to describe the suspects, the witness will probably jump from suspect to suspect and back again. The witness may say, "the bald one had black pants, the one with the black coat had green pants, the bald one had a green jacket and the one with glasses had brown pants." This can become very confusing and can lead to jumbled and worthless descriptions. Tell the witness, "I want to concentrate on the bald man and ask you everything you remember about what he looked like. We will not talk about the others now until we are sure you have told me everything you recall about what the bald man looked like." Work with the witness to exhaust his or her recollection of each perpetrator before moving to the next.

Similarly, use the labels when asking the witness what each suspect did. Using these labels makes it easier for witnesses to convey what they saw and reduces the risk that the investigator may misunderstand them.

In this case the victim recognized the suspect from having sold him beer on at least ten previous occasions. These previous dealings with the suspect make the identification of him reliable proof. The victim's knowledge of the suspect's nickname is an important piece of corroborating information. It can be used to test the accuracy of the identification. If the investigator can find independent proof that the suspect is in fact called "Chi-Chi" by his friends then this proves the accuracy of the victim's identification.

Whether or not the witness already knows the suspect is important because it determines how investigator must approach question of identification. If a victim says, "My brother-in-law did it," then there is no need to get a detailed physical description of the brother-inlaw because identification will not be an issue. In any case where there is no previous dealings between the witness and the suspect or in cases where the dealings were minimal, then



identification will be a central issue and the investigator must obtain a detailed physical description. A good general rule is:

Identification will be an issue in the case whenever the witness does not know the name of the suspect.

#### Getting a Suspect's Description

If the witness does not know the suspect from a prior relationship, the first step for an investigator is to get a good description of the suspect. The amount of detail that witnesses can provide about suspects will vary greatly. Some witnesses will have a very clear and detailed memory of what the suspect looked like and what the suspect was wearing. Other witnesses, for various reasons, will find it difficult to describe the suspect with any specificity. The investigator's job is to get as much detail as possible from a particular witness without having him or her simply guess what the suspect looked like. Getting a good description from a witness is an art that takes years of experience to develop. A good investigator is able to bridge much of the gap that exists between the mind's ability to recognize a person and its ability to describe that person.

Describing a suspect is a skill which people do with varying competency. Some people are quite good at capturing a mental image of someone and putting it into words. Others (quite possibly, most of us) find it difficult to articulate in words how someone appeared even though we may have a clear picture of them in our minds. When obtaining descriptions it is important that you do not encourage or "force" witnesses to commit to descriptions that they are unsure of. If a witness states that he or she is unable to describe a suspect's height in feet or meters then he or she should not be required to commit to a specific number. If the best the witness can do is give an approximation then the investigator should record that approximation.

Some investigators use forms when gathering information about a suspect. These forms will have boxes for detailed information about different aspects of the suspect's appearance. These investigators feel compelled to fill out every box whether or not the witness can provide the information with any degree of certainty. This is not a good practice. While any information the witness can confidently supply should be recorded, requiring the witness to guess about traits that they are unsure of can harm the case at a later date. If the witness eventually positively identifies the suspect in a lineup, these earlier "guesses" about height and weight, if incorrect, shed doubt on the lineup identification. These errors may be interpreted by a tribunal as evidence that the witness's positive identification of the suspect is mistaken. In such cases a tribunal would be entitled to find, even after a positive identification and physical evidence connecting the suspect to the crime, that the initial incorrect description raises a reasonable doubt. Avoid pinning witnesses down to specific numbers and details if doing so will amount to simple guesses. There are more effective ways of obtaining descriptive information about the suspect.

#### Height and weight

One of the skills that distinguishes an experienced interviewer is knowing ways to help a witness describe a suspect accurately. There are some ways of describing suspects that are usually not very accurate and others that are. Knowing the difference is helpful in obtaining the most accurate description possible.

Witnesses are not usually very accurate when asked to specify the height and weight of a perpetrator. If asked to tell how tall or heavy a person was, they will "pick" a number they believe is correct, but in



reality they are guessing and can often be wrong. To test this, think of a person you see frequently and whose height and weight you do not know. Guess both, and then measure and weigh him or her. You will probably be wrong. If you are wrong in a non-stressful situation with a person you know, think of how difficult it is for a witness to a traumatic event to accurately describe a suspect's height and weight.



# DESCRIPTION VS. RECOGNITION

It is important, when investigating a case where the identity of the suspect is a critical question, to realize the difference between **recognition** and **description**. They are two completely different skills. **Recognition** is the "startle" or strong reaction we have when we see someone we know. It is our mind's ability to instantly compare a person we see with all of the visual images of people we have stored in our memories. It is a skill that infants learn soon after birth in order to recognize their parents. **Description** is our ability to describe in words the various characteristics of a person's image stored in our memories. They are completely different skills and we employ them with different capacities. Children are able to recognize their mothers long before they can describe what their mothers look like.

Consider the painting of <u>Mona Lisa</u> by Leonardo Da Vinci or some other famous painting in your culture. Can you describe the color of her eyes? Can you recall whether her teeth are visible in her famous smile? Is she wearing jewelry? How long is her hair? These are difficult questions and if you do the exercise you will certainly be wrong about several of them. Yet, when you see the painting you immediately recognize it as the <u>Mona Lisa</u>. Similarly, think of a public figure you see in the media. How accurately could you describe his or her height, weight, eye color, birthmarks, etc. **Yet you recognize him or her instantly.** 

The distinction between recognition and description is a very important one that the experienced investigator should always be conscious of. Even witnesses who can only give a poor, sparsely detailed description of a suspect are often able to recognize the suspect if they see the suspect again.

One way of obtaining information about a suspect's height and weight is to ask the witness to show you a person of similar height and weight and then measure that person. It may be you or a member of your staff or someone the witness knows. A witness will usually have less difficulty in identifying a person who is similar in height and weight than picking a number. Ask the person whom the witness thinks is similar his or her height and weight and note his or her name in the file.

If the witness was close to the perpetrator, ask the witness to compare the suspect to himself or herself. Ask: "When you looked at the suspect were your eyes even with his? How did he compare to your height?" If the witness does not know his or her own height measure him or her and then estimate the difference. The witness may also have a vivid recollection of how the suspect's height compared to something at the *crime scene*. Perhaps the suspect's head was even with a picture hanging on a wall or with a floor lamp. Perhaps the suspect had to stoop to leave through a door. The witness may be able to fix the height of the suspect by comparing him or her to an object at the scene. The most important thing for the investigator is to avoid pinning the witness down to a number that the witness is not confident of. Neither should the investigator suggest a possible height or weight – a witness may be eager to adopt the investigator's suggestion believing it to be accurate.



#### Physical description

In addition to height and weight a good detailed physical description of a suspect is very important. The investigator must try to glean from the witness everything he or she remembers about the suspect. Some witnesses find it easier to describe a suspect if they close their eyes and picture the perpetrator in their mind's eye. The investigator can ask them to close their eyes, picture the suspect, and then calmly and carefully describe what they see.

Allow the witness to describe what he or she remembers before asking any specific questions. Use open-ended questions such as, "Do you remember anything else about him?" to encourage the witness to continue to describe the suspect. Be sure that the witness has volunteered everything he or she thinks is important regarding the suspect's description before asking specific questions.

After asking witnesses to describe the suspect, go through the *sample identification questions* at the end of this section to probe their memory. Ask him or her to concentrate on the face of the person. Did the person have any scars? What did his or her eyes look like? Do you remember anything about the person's teeth? Did he or she have any gold teeth? Any missing teeth? Did the suspect have any birthmarks or moles, any jewelry?

#### Clothing description

In every case the investigator should get a detailed description of the clothes a suspect was wearing. Its importance to the case will vary depending upon the case. If the suspect was wearing a uniform, an accurate description of that uniform and its various markings may be important in identifying him or her later. If you are trying to identify a suspect wearing ordinary clothes soon after the incident (on the same day) then an accurate clothing description may be helpful. If the incident occurred more than a day ago, then a detailed clothing description is probably not that helpful in establishing the identity of a suspect. Chances are the suspect has changed his or her clothes by that time. The investigator certainly wants to avoid any witness identifying someone based solely on the clothes he or she was wearing. Although a witness may think the suspect's clothes were unique; nearly all clothes are mass-produced in factories. A witness's identification of a suspect based primarily on clothing is inherently unreliable unless there is something unique about the suspect's clothes such as a tear, a stain or some marking the suspect may have placed on them. Once a witness identifies a suspect, the fact that the suspect may own clothing matching the witness's description may be important corroboration. In some cases, the clothes a suspect wore during the crime may contain trace evidence; a good description will also help locate them.

#### **Description of Vehicle**

It is also important to obtain a detailed description of any vehicle the suspect came or left the scene in. In addition to the license plate number the investigator should ask the witness to describe the vehicle in detail. Any details the witness can give about the model, color, year, damage, and any stickers or markings on the vehicle will be helpful in identifying it in the future.



#### Sample Questions for Eyewitnesses

#### SAMPLE QUESTIONS IDENTIFICATION EVIDENCE

#### **Getting a Good Description of the Suspect**

The first step is to get as thorough a description of the suspect as possible.

(Height) Can you estimate how tall he/she was? If you want, compare his/her height to yours or someone who is here.

(Weight) Can you estimate his/her weight? Would you consider him/her thin? Average? Heavy? Can you compare him/her to yourself?

Describe his/her face for me.

Do you remember what color his/her eyes were?

What do you remember about his/her hair? (the style of cut, color, any balding?)

Did the suspect have any facial hair? Describe.

What do you remember about his/her nose? Anything unusual about it?

What do you remember about his/her mouth? Any missing or gold teeth?

Do you remember seeing any moles, scars or birthmarks?

What do you remember about his/her ears? Any earrings?

Do you remember anything about his/her hands? Left or right-handed? Any scars? Any rings?

Do you remember his/her neck? Was he/she wearing a neck chain? Describe it.

The following questions concern the suspect's clothing. Their value will vary depending upon the case. They will be important if the suspect was wearing a uniform or you hope to find him the same day as the event.

Do you remember what the suspect was wearing?

Describe his/her shirt, pants, jacket, shoes, etc.?

Did you notice any obvious stains or tears in his/her clothes?

Did the clothes fit him/her well, or were they too big or too small?

Describe his/her uniform. Did you see any markings that indicated his/her unit or rank?

Did you see a badge? Was there a number or name on it?

Show the witness photographs of uniforms used by the local authorities and ask whether he or she recognize any.

Do you remember if the uniform included a pistol holster or knife sheath?

Get information that indicates whether or not the witness had a good opportunity to see the suspect.

How close were you to the suspect's face?

Did the suspect have anything covering his/her face?

What were the lighting conditions like?

Were you able to see his/her face clearly?

How long would you estimate you were close enough to see his/her face?

If you wear glasses, were you wearing them at the time?

Did you see the suspect before the attack? What first drew your attention to him/her?

As the suspect was running away did you look at him/her?

If the suspect had a weapon, do you remember if you were looking at the weapon, his/her face, or both?

Is it possible that you were so upset at the time that you did not get a good look at his/her face?



### SAMPLE QUESTIONS IDENTIFICATION EVIDENCE

#### **Prior Relationship Between Witness and Suspect**

If the suspect is not a relative or someone with whom the witness was clearly acquainted establish the strength of the prior relationship with the following questions.

Have you ever seen the suspect before?

him/her? (limp, left-handed, etc.)

How many times have you seen the suspect before?

### Go through every time the witness saw the suspect before and ask the following questions.

Where did you see the suspect? How close were you to the suspect? Was it day or night? If it was night, were there any lights in the area or the How long were you close enough to the suspect to see When you saw him/her this time did you recognize him/her as someone you had seen before? him/her? Is there anything about the suspect's appearance that Is there anything about the suspect's voice that helps helps you to recognize him/her? (scars, tattoos, etc.) you to recognize him/her? Is there anything about the way the suspect walks or Is there anything about the way the suspect dresses uses his/her hands that helps you to recognize that helps you to recognize him/her? (unusual jewelry

or clothes)

#### **Section 8.2 Identification Procedures**

There can often be a long period of time between the time a crime is committed and the time the accused is placed on trial. During this long period of time a witness's memory may fade and his or her ability to recognize a suspect may diminish. The suspect may gain or lose weight, change his or her hairstyle or do something that alters his or her appearance. Such changes make it more difficult for witnesses to recognize the suspect at a trial. It therefore becomes necessary to test the witness's ability to recognize a suspect at a point closer in time to the incident. A witness's positive identification of a suspect the day after an incident is more reliable than his or her identification of a suspect a year or more later. Any procedure in which an investigator facilitates a witness seeing a suspect after the incident is called an *identification procedure*.

An *identification procedure* is a controlled procedure in which a witness is given the opportunity to see a suspect in a case. Testimony regarding the *identification procedure* is admissible in a trial of the suspect if it was fair and did not improperly influence the witness's choice. Even if a witness cannot identify a suspect at trial because a great deal of time has passed or the suspect's appearance has changed, evidence of the *identification procedure* may be introduced to prove that the witness did positively identify the suspect soon after the event in question.

If the witness does not recognize the suspect in an *identification procedure* then the investigator must carefully examine the other evidence in the case. Have other witnesses identified the suspect in an *identification procedure*? Is there other physical documentary evidence that connects the suspect to the commission of the crime? A witness's inability to identify a suspect in an *identification procedure* is evidence that the suspect is innocent. Unless there is other compelling evidence proving that the suspect



committed the crime and some explanation of why the witness could not identify the suspect, the investigator should consider whether or not he or she has focused on the wrong suspect.

There are 5 different types of identification procedures. Which one you should use will depend upon the circumstances of the individual case. The different identification procedures are:

Confirmatory	
identification	

A *confirmatory identification* is a procedure that is only used when the witness has had prior dealings with a suspect. The witness is given an opportunity to see a suspect or a suspect's photograph alone, without "fill-ins." The witness confirms the suspect's identity to the investigator.

Show-up

A *show-up* is a rarely used *identification procedure* in which a suspect is apprehended minutes after an incident. A witness is given an opportunity to see the suspect alone and make an identification. Because it is a highly suggestive procedure it is only used within minutes of an incident and when the witness's memory is very fresh.

Lineup

A *lineup* is an *identification procedure* in which a suspect is asked to stand in a line along with 5 to 6 other people bearing a similar appearance. Witnesses are given an opportunity to view the *lineup* and indicate whether or not they recognize anyone.

Impromptu lineup

An *impromptu lineup* is an accidental *identification procedure* in which a witness happens to see the suspect again in a public place and provides this information to the investigator. The witness, in a public area sees a number of people there and identifies the suspect.

Photo array

A *photo array* is an *identification procedure* in which a photograph of a suspect is placed alongside the photographs of 5 to 6 other people with a similar appearance. Witnesses are given an opportunity to view the *photo array* and indicate whether or not they recognize anyone.

The use of fill-ins is one way identification procedures avoid suggesting any particular suspect to a witness. These fill-ins must have the same basic physical traits and appearance as the suspect. They must have the same race, general build, hair color, and facial hair. The fill-ins must be similar enough to the suspect that when the suspect is viewed along side them there is nothing that draws attention to the suspect. For example, the suspect cannot be the only person with a beard, a bloody shirt, or handcuffs. The fill-ins must test the witness's ability to identify the suspect.

The most important aspect of any *identification procedure* is that it be fair to the suspect. Conducting an unfair procedure that improperly suggests which person a witness should pick runs the risk that an innocent person may be incorrectly identified. Conducting a tainted lineup procedure may also permanently harm the reputation of the investigator and his or her organization. A truly fair *identification* 



**procedure** assures the court that the witness has identified a suspect because he or she remembers the suspect from the incident itself and not because they were unfairly influenced by an investigator.

The procedure's design and the investigator conducting the procedure must ensure that nothing influences a witness to pick a particular suspect. The witness cannot be prompted toward making a particular choice in any way. This is why an investigator must never show a witness a single photograph and say to a witness, "Is this him?" Conduct such as this will certainly result in many false identifications. Witnesses may believe that the investigator has shown them only one photograph because the investigator is sure he or she has the right person. The witness may believe that the investigator has additional evidence that he or she does not know about.

#### **Confirmatory Identification**

The simplest identification procedure is a confirmatory identification. This is a simple procedure that an investigator can use when the witness knew the suspect before the incident. In some cases the witness will have had some prior relationship or knowledge of the suspect before seeing him or her during the incident. In these cases a witness may or may not know the suspect's name but has seen him or her on enough prior occasions that they "know" the suspect.

The purpose of the confirmatory identification procedure is to document the identity of a suspect in cases where the witness knows the suspect but not his or her name. In this procedure the witness simply identifies the suspect in person or in a photograph in the presence of the investigator. If the investigator has a photograph of the suspect he or she can show the witness the photograph and confirm whether or not the suspect is in fact the person the witness is talking about. If there is no photograph available the witness and investigator can go to where the suspect is and the witness can point him or her out to the investigator. Whether a witness has a sufficient prior relationship with the perpetrator for any subsequent identification to be properly characterized as confirmatory can be a difficult question in many cases. Witness who have had limited prior contact with the person they believe to be the perpetrator or such contact is remote in time should be handled with caution. If there is any doubt about whether the prior relationship is sufficiently significant for the witness to have recognized the perpetrator you should proceed by conducting a proper non-suggestive identification procedure. If you do not and it is later determined that an identification procedure is necessary it will probably not be possible because the confirmatory identification procedure was improperly suggestive.

Like any other *identification procedure* the investigator should document this procedure carefully. The investigator should record the time and place where the identification procedure was conducted. If a photograph was used the investigator must save that photograph and should have the witness write in his or her own handwriting "I recognize this person as the person who..." and sign it.

#### Show-Up

A show-up is a rarely used identification procedure. It is unlikely that a human rights investigator will ever have a reason to conduct this procedure. One of the reasons it is so rarely used is that it is an inherently suggestive procedure. Typically, a show-up occurs when a witness reports a crime to the police and gives them a detailed description of a suspect. Within minutes the police locate someone who matches the description provided by the witness. The police bring the witness to where the suspect is and allow the witness to see him or her. Seeing a single individual (probably in handcuffs) is a very suggestive procedure and should be avoided. It is allowed in some circumstances because it is believed that the close proximity in



time takes advantage of the witness's fresh memory. It is also believed that it is better for the suspect in that if the witness cannot identify the suspect, he or she will be released immediately rather than be held until a lineup procedure can be organized.

#### Lineup Procedure

A *lineup* is an identification procedure where the actual suspect stands in a row with five or six other people who are similar in appearance. Witnesses are each given an opportunity to view the suspect along with the other fill-ins and are asked whether or not they recognize anyone in the lineup.

It is unlikely that a human rights investigator will ever have the opportunity to conduct a *lineup*. Human rights investigators lack the authority to compel a person to stand in a lineup and few people will do it voluntarily. In some situations a human rights investigator may be working with local police or some other organization empowered to conduct compulsory lineups. In these cases a human rights worker may cooperate with the police on an investigation of human rights abuses by the military. The human rights investigator should only participate in such a procedure if it is conducted properly and fairly. The following is a description of a fair lineup.

The investigator should prepare for the lineup by getting five or six people who are similar in appearance to the suspect. They must be of the same race and sex, and have the same hair color and facial hair. If possible try to find fill-ins with the same approximate height and weight. It is not necessary to find "look-a-likes" but people who are similar enough in appearance that the suspect does not stand out among them. If it is impossible to find fill-ins who are the same approximate height as that of the suspect the



FILL-INS

Fill-ins are used in some *identification procedures* to ensure that the procedure is fair to the suspect. In a lineup, fill-ins are other people, who are similar in appearance to the suspect. The suspect stands in a line with the fill-ins and a witness is given an opportunity to see the entire group. The fill-ins ensure that the witness does not identify the suspect based on general traits but can recognize particular details about the suspect. Sometimes the fill-ins for a lineup are also called "stand-ins."

In a photo array, fill-ins are photographs of other people who are similar in appearance to the suspect. A witness is shown the suspect's photograph along side the photographs of the fill-ins to test his or her ability to recognize the suspect.

When choosing fill-ins the investigator must be certain that the fill-ins do not have any connection to the crime. It is also very important that the witness does not know any of the fill-ins. Obviously the *identification procedure* is not fair if the witness only picks the suspect after eliminating the fill-ins he or she knows.

Sometimes a witness will pick one of the fill-ins as the person who committed the crime. In these cases the investigator must seriously question the credibility and reliability of that particular witness. Such an error should put an investigator on notice that everything the witness said should be examined carefully.



investigator can conduct a fair lineup by having the suspect and the fill-ins sit down on chairs. Differences in height are greatly diminished when people sit. Having everyone sit during the lineup reduces the chance that a witness identifies a person simply because he or she was the shortest or tallest person in the lineup. It is also important that none of the fill-ins know any of the witnesses. This may prove difficult in a small town. Obviously if the witness knows the fill-ins he or she can eliminate them right away.

There should be nothing about the suspect that might improperly suggest him or her to the witnesses. Handcuffs should be removed. Bloody clothing should be changed. If the suspect is dirty from the capture, he or she should be allowed to wash. If the suspect has a tattoo, the investigator should conceal it with a piece of unobtrusive clothing. Some suspects may have gold or missing teeth; ask the suspect to keep his or her mouth closed during the procedure. It is not necessary to conceal every distinguishing feature of the suspect, but in the interest of fairness any features that are so obvious that they are likely to induce a witness to identify the suspect on that feature alone should be concealed if reasonably possible. Ideally, witnesses should examine the entire body of the suspect before identifying him or her. The investigator wants to discourage identifications where a witness immediately focuses on an obvious trait and ignores the entire person. If the witness does identify the suspect, the tattoo or other trait that was concealed can become powerful corroboration of the witness's reliability.

When you have both the suspect and the fill-ins ready they should be assembled together in the same room. If witnesses are nearby great care must be taken that they do not see the fill-ins or the suspect prior to the actual lineup. They should also be in a place where they cannot hear any discussion about the setting up of the lineup. The room where the lineup is to be conducted should be well lit; no one in the lineup should be placed so that a shadow crosses them. The fill-ins should be asked to line up against a wall. The suspect should then be asked to choose where among the fill-ins he or she wants to stand. Some suspects will choose an end position and others will want to stand in the middle.

Prior to the lineup the investigator should prepare six boards with the numbers 1 through 6 painted in large clear letters on them. After the suspect has chosen a place ask him or her to select a number. The suspect should be allowed to choose any number he or she wants. Permitting suspects to select their own position and number in the lineup is another way of insuring that the lineup is fair. The other numbers should be shuffled, and with them held face down, each of the fill-ins should select a number. Once the lineup is set up as the witnesses will see it the investigator should take a clear photograph of the line-up from where the witnesses will view the line-up. This photograph will help a court assess the fairness of the line-up.

Everyone in the lineup should be instructed to remain silent and to look straight ahead during the lineup. Advise them that you may ask them to turn sideways or say a short phrase when the witness is present. Explain to the suspect that every attempt has been made to ensure that nothing in the lineup will influence the witness to identify the suspect and that speaking or acting in an intimidating manner can only draw attention to himself or herself.

Witnesses are often afraid of seeing the suspect again in person. If this is the case the investigator needs to prepare a separate viewing area. Some lineup facilities make use of two-way mirrors, which allow a witness to look through a mirror at the suspect without being seen by him or her. The same effect can be accomplished by boring a small hole (not much bigger than the eye) in a door or wall and have the witness look through that hole. If this is not possible, consider disguising the witness before showing him or her the lineup. A simple bag with cutouts for the eyes should be sufficient.



One of the most important aspects of the lineup is that only one witness can see the lineup at a time. At the time a witness is viewing the lineup the other witnesses must be out of earshot. Great care must be taken that they do not hear what the others say in the lineup room. This separation must also be maintained after a witness views the lineup. Witnesses who have seen the lineup must not be allowed to congregate where witnesses who have not yet seen it are located. Obviously if they start talking about what number they picked the lineup is no longer fair. Consider sending witnesses who have seen the lineup out of the building until all the witnesses have viewed it.

#### SAMPLE QUESTIONS IDENTIFICATION PROCEDURES

#### **Identification Procedures**

Sometimes it may be necessary to conduct an identification procedure; either a line-up or a photo array. See the text for how this should be done. When each witness (alone) sees the identification procedure, ask the following questions using the exact words

#### Line-up

- Take a careful look at all of the people in front of you. After looking at all of them tell me whether or not you recognize anyone.
- 2. What number is the person holding?
- 3. From where do you recognize that person?
- 4. Are you sure this is the same person?
- 5. Is there anything that appears different about the person you have picked from the one who was involved in the incident?

#### Photo Array

- Take a careful look at all of the photos in front of you. After looking at all of them tell me whether or not you recognize anyone in them.
- 2. Which photo do you recognize?
- 3. From where do you recognize that person?
- 4. Are you sure this is the same person?
- 5. Is there anything that appears different about the person in the photo you have picked from the one who was involved in the incident?

It is very important that if an identification procedure is being conducted for more than one witness that the witnesses do not have an opportunity to talk to each other until every one has completed the interview. Allowing this to happen creates the risk that the first witness will say "He was number 2."

To ensure that uniformity and fairness prevails the investigator should follow the procedure below with each witness.

I am going to ask you to look at several people whom you may or may not recognize. I ask you to look at each of them carefully. Even if you think you recognize one right away please examine all of them before answering my questions.

After taking a careful look at all of the people in front of you is there anyone whom you recognize?

(If yes) What number is that person holding?



From where do you recognize that person?

Are you sure that this is the same person?

Is there anything that appears different about the person you have picked from the person who was involved in the incident?

The investigator should write down the exact words of the witness, using a separate sheet of paper for each witness. It is possible that the witness may ask to see each person turn side-ways or say something. If the witness requests this, the investigator should instruct each person in the lineup to turn or say something. After each person in the lineup has complied the investigator should once again repeat the same questions to the witness. If someone is videotaping the lineup the camera should focus on the witness when they are asked these questions.

Peculiar things can occur during lineups including suspects, who call out, "It's not me - don't pick me." There is not much an investigator can do if a suspect does something to spoil his or her own lineup. If such things occur the investigator should admonish the witness to ignore what they heard and simply concentrate on the physical appearance of each person in the lineup.

#### Impromptu Lineup

An impromptu lineup is an identification procedure that can be very useful to the human rights investigator. In an impromptu lineup a witness identifies the suspect from a crowd of people. It is a "lineup" in the sense that the suspect is among a large random group of people at the time he or she is identified by the witness. The witness has not intentionally sought out the suspect but simply makes the identification after a chance encounter. The witness's ability to pick the suspect out of the crowd is in itself some measure of the reliability of the identification. Typically the investigator is not present and learns of the identification at a later time. After being notified about such an identification try to get as much information as possible to help learn the name and other key information about the suspect.

#### **Photo Arrays**

It is more likely that a human rights investigator will have the opportunity to conduct a **photo array** instead of a lineup. A **photo array** is an extremely effective tool for establishing the identification of a suspect and is a relatively easy and inexpensive procedure to conduct. In many ways a photo array is very much like a lineup with the exception that the investigator is using photographs instead of actual people.

Once an investigator has developed a list of suspects it is very helpful to prepare photo arrays for those suspects in advance of any *comprehensive interviews* with witnesses. Having them readily available can help identify and eliminate suspects during the interview of witnesses.

To prepare an array the investigator must first obtain a recent clear photograph of the suspect. Identification photos or driver's license photographs are suitable. An enlargement of a picture taken at a distance may also be suitable. The criterion for suitability is that the picture be clear and that it does not depict the suspect in such a way that suggests guilt. For example, pictures that show the suspect in shackles or in a prison cell are not suitable. Pictures that show a nameplate or army uniform are not suitable if the other pictures that will be used will be dissimilar. If you have a suitable picture but the suspect is wearing handcuffs consider using a piece of paper to cover everything but the suspect's neck and head. Keep in



mind that masking only the suspect's photo may itself be suggestive. If you mask some part of the suspect's photo you should also mask the same area on the other "fill-in" photos.

Select five or six photographs of other people to use as fill-ins in the array. When choosing the other pictures use the same criteria as choosing fill-ins for the lineup. The other people depicted in the photographs must each be similar in appearance to the suspect. Although considerations like height and weight are not as important for photo arrays care should be taken that they are similar enough to the suspect's photo that they do not cause the suspect to stand out apart from the others.

Once you have pictures of the suspect and the fill-ins shuffle them up and then number them one through six. They can be numbered either on the front or back. You should also make a photocopy of all the pictures so that they all appear on one sheet. Make enough photocopies so that you have a separate sheet for each witness you intend on showing the photographs to.

If more than one witness is going to be shown the photographs be sure to take steps to ensure that they are separated and cannot hear the identification procedure. Place the photographs in front of the witness and say:

I am showing you a number of photographs. Please take a look at each one carefully. If you recognize any particular picture immediately please examine the others carefully before answering my questions.

Do you recognize any of the people in the photographs?

What number photograph do you recognize?

From where do you recognize that person?

Are you sure that this is the same person?

Is there anything that appears different about the person in the photo you have picked from the person you saw during the incident?

The investigator should write down the exact words of the witness as he or she answers each question. Show the witness a photocopy of the different pictures. Even though photographs may not photocopy well, the witness should be able to distinguish which photo they selected on the photocopy. Ask the witness to circle this photo and then sign and date the photocopy. This will document which picture they selected without marking up the original photographs. The original should be maintained with the other evidence in the case. A judge reviewing the case will want to examine all the photos that a witness was shown during any identification procedure. This is true even if witnesses fail to identify any photographs they are shown.

#### Section 8.3 Physical Evidence

In addition to eyewitness identification testimony, physical evidence can also tie a suspect to a crime. While fingerprints are the most obvious example there are many other ways in which physical evidence can provide a tangible link between a suspect and his or her crime. In some cases, particularly murder cases, there may be no eyewitness testimony to connect the suspect to the crime and the investigator will have to



rely entirely on physical evidence to make the connection. In every case, regardless of whether or not there are eyewitnesses, the investigator should pay careful attention to the physical evidence in the case.

Physical evidence can connect a suspect to a crime in one of two ways. First, something unique about the evidence connects the suspect and the crime. Second, scientific testing and analysis is able to draw conclusions about a piece of evidence that then connects the suspect to the crime.

Anytime a suspect leaves something at a crime scene or takes something away the possibility exists that the object may be unique enough to establish a connection between the suspect and the scene. In many cases a perpetrator may take property from the victim. This property may include jewelry, money, documents, or a variety of other items. In these cases the investigator should, as soon as possible, gather as much information about the items that were taken. If documents are taken the investigator should try to obtain photocopies if they exist. If there is no other copy the investigator should get detailed information about the document that will help identify it as belonging to the victim.

In the case of jewelry, the investigator should try to obtain a picture of the jewelry. Even though few people take a photograph of their jewelry many people will have photographs from some family occasion in which they are wearing their jewelry. Obtain a clear picture of the jewelry for comparison in the event it turns up somewhere. Similarly, with other pieces of property try to obtain pictures of them from the victim. Ask them to look through their family pictures for photos that depict the property that was taken.

If the property taken was a mass-produced item such as a television set, ask the victim if there was anything unique about the item. Perhaps the item was scratched or had a repair tag from a local repairman. Ask the witness how he or she would recognize it again if the witness saw it. Any unique markings or stains may be helpful in identifying the item in the future. If a suspect is in possession of an item that the victim can positively identify as his or hers then a firm connection with the crime has been established.

Ask the victim if he or she has a receipt or repair tag for the item that was taken. It is possible that the merchant may have recorded the serial number on the receipt. Even if the victim has no record from the purchase or repair of the item it is possible that the merchant may have recorded the serial number and the owner's name in his or her own records.

Except in rare cases, it is difficult to connect stolen money to a crime. Individual notes or coins ordinarily do not have any unique markings that might connect a suspect to a crime. However, an investigator should ask the victim whether or not there was anything unique about the money in the event that there was. Sometimes there will be handwriting on bank notes that the victim put there or remembers. Perhaps the money was received as a gift and the giver wrote a note to the victim. If the suspect is taken into custody a short time after the incident the amount of money may be significant. Perhaps the victim has states prior to a suspect's apprehension that \$12.63 was stolen from him and describes the denominations of the money. Discovering \$12.63 in the suspect's pocket in addition to money kept in his wallet is persuasive corroborative evidence that the victim's identification of the suspect is accurate.

Suspects can also leave objects behind at the scene that will identify them. Sometimes during the course of a struggle some of the suspect's clothes might be torn or something may fall out of his or her pockets which could identify him or her in the future. Any weapons should be evaluated carefully to determine what they indicate about the identity of the perpetrator. Knives, tools, and other implements may also establish a connection between the suspect and the *investigative scene*. A witness may recognize the object as something he or she saw in the possession of the suspect before the incident.



#### Forensic Identification Evidence

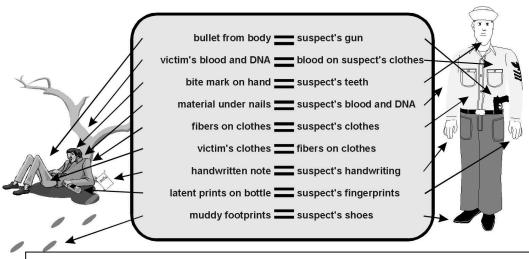
One of the most reliable ways to connect a suspect to a crime scene is through scientific technology. Without realizing it we leave traces of ourselves wherever we go. We leave our trace on everything we touch. We leave our DNA on cigarettes we smoke or combs we use in our hair. As we walk we leave our shoe prints in soft earth. Scientists and forensic experts can garner a great deal of information from an *investigative scene* or evidence properly recovered and preserved from an *investigative scene*. Even if forensic testing is not immediately available the investigator should process evidence so that it can be tested. If properly preserved most evidence can be tested at a later date.

Many pieces of evidence can connect a suspect to an investigative scene including bite marks, latent prints, blood, DNA material, footprints, tire tracks, handwriting, recorded voice samples, and many others. In any case where there is not a firm identification by an eyewitness the investigator must evaluate the physical evidence carefully to determine whether or not any of the items collected can connect the suspect to the crime.

#### Section 8.4 Documentary Evidence

In some cases documentary evidence may connect a suspect to an incident. Documents kept during the regular operation of a business or institution may establish a connection between a suspect and a crime. Documents that do this typically prove that a suspect was at a particular place at a particular time relevant to the case. Perhaps records kept in a prison indicate that the victim was in the suspect's custody at the time he died. Perhaps work records may disprove a suspect's claim that he or she was at work at the time the victim was killed. Relevant documents can include: work logs, travel logs, checkpoint logs, time cards, receipts, bank records, phone records and even parking tickets.

An investigator must think creatively, imagine what types of documents could be relevant to the case, and then set out to see if such documents exist. If possible, an investigator should become familiar with all the paperwork police and prison officials ordinarily fill out. Try to obtain a blank copy of these documents in advance of any investigation. Create a reference file containing these blank forms. By creating such a file the investigator knows what documents to ask for should they become relevant to an investigation.



There are many different types of physical evidence that can prove the identification of the suspect.



#### Section 8.5 Admissions by a Suspect

In some cases admissions by a suspect may establish a link between the suspect and a crime. A suspect may inadvertently place himself or herself at the scene of a crime without necessarily admitting to having done anything wrong. Suspects often admit to being present at a scene and offer an entirely different version of what happened from the victim or other witnesses. Even if the suspect is lying about every aspect of the case the fact that he or she admits being present is very significant. It establishes a clear link between the suspect and the incident and prevents the suspect from later denying involvement. Whenever possible, the investigator should preserve these admissions in video recording or in the suspect's own handwriting.

#### Section 8.6 Identifying Culpable Suspects

In most cases the human rights investigator will seek to determine who actually committed the act constituting an alleged violation. This person or persons, who are physically present and commit the alleged violation are considered the principals. Most of this chapter has dealt with methods of identifying the principals involved in the case.

There are situations however, in which, a person may be culpable for the criminal actions of another. Under international law and generally accepted principles of criminal law there are four general theories of culpability under which a person may be legally responsible. These theories not only hold those who commit illegal acts responsible but may also hold others responsible even though they themselves did not commit the harmful act itself.

Article 7 of the Statute of the International Criminal Tribunal for the Former Yugoslavia states:

- 1. A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in articles 2 to 5 of the present Statute, shall be individually responsible for the crime.
- 2. The official position of any accused person, whether as Head of State or Government or as a responsible Government official, shall not relieve such person of criminal responsibility nor mitigate punishment.
- 3. The fact that any of the acts referred to in articles 2 to 5 of the present Statute was committed by a subordinate does not relieve his superior of criminal responsibility if he knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.
- 4. The fact that an accused person acted pursuant to an order of a Government or of a superior shall not relieve him of criminal responsibility, but may be considered in mitigation of punishment if the International Tribunal determines that justice so requires.

Under Article 7 above a person may be legally responsible for acts described in articles 2 to 5.

<sup>•</sup> These include: grave breaches of the Geneva Conventions, violations of the laws or customs of war, the crime of



#### Culpability as a Principal

In most cases a person is considered a "principal" in the commission of an unlawful act if he or she has intentional, voluntary, and direct participation in it.

Generally there must be evidence that:

- 1. The principal was a primary actor in causing the harm or requested, paid or ordered another to act on his or her behalf;
- 2. The principal intended to cause the harm; and
- 3. The principal knowingly and voluntarily caused the harm. The fact that the principal was ordered to commit the act by a superior does not relieve the principal of culpability although it may mitigate his or her punishment.

So a person is considered a principal in the death of a victim if he or she intended to kill that person and took some action reasonably calculated to cause the victim's death such as firing a gun or stabbing the victim in the abdomen. The requirement of intent prevents people who meet in unfortunate accidents from facing the penalties of murder. So in a car accident in which no one intended to cause harm, a survivor would not be charged with murder because another person died.

Any person who actively participates in the commission of some wrongdoing could be considered a principal. It is possible that there may be several suspects who are legally culpable as principals for the same incident. In addition, any person who requests, agrees to pay or orders another to commit some wrongdoing on his or her behalf would also be considered a principal. A person cannot avoid culpability as a principal by having another person actually commit the wrongdoing. International law recognizes principal perpetrators as those who plan, instigate, order or commit criminal acts constituting international crimes.

#### Culpability as an accessory

A person may be legally responsible for wrongdoing committed by another if he or she aids that person in the preparation or execution of the act. Even though the accessory's involvement may not be as direct as the principal's, the accessory is legally responsible if such involvement rendered practical assistance, encouragement or moral support to the principal perpetrator. This assistance can be given at any stage of the crime's planning, preparation or actual commission. Mere presence during a crime is usually insufficient to establish accessorial liability.

Generally there must be evidence that:

- 1. The accessory provided substantial assistance to the principal in his or her commission of the crime;
- 2. In some jurisdictions the accessory must have the same intention as the principals to cause the criminal harm, international criminal courts have generally found it sufficient if the aider simply intended to assist a direct perpetrator commit a crime;
- 3. The accessory knew his or her actions would substantially assist the principals; and
- 4. The accessory's participation was voluntary.



The fact that the accessory's actions alone would not have caused harm does not alleviate legal responsibility for the harm caused. For example, driving the principal to and from the scene of a crime makes the driver an accessory even though driving a car or giving someone a ride is not in itself an unlawful act.

#### Culpability as a Conspirator

A person can be legally culpable for simply planning and agreeing with others to commit an unlawful act. The fact that their plan is thwarted by some factor out of their control does not alleviate them from legal responsibility. For example, several soldiers agree to disrupt a political rally. They agree on a plan to throw two grenades into the crowd as the rally's organizer gives a speech. Fortunately on the day of the rally it rains heavily and the rally is canceled. Even though these soldiers caused no harm their agreement to do so is in itself an unlawful act. It is also possible for several conspirators to agree that only some of them will actually carry out the plan.

For someone to be culpable as a conspirator there must be evidence that:

- 1. Each conspirator must agree with one or more people to cause some illegal harm;
- 2. Each conspirator intends to cause the same harm; and
- 3. Some words, a writing, or some deed must manifest the agreement.

#### Culpability as a Member of a Joint Criminal Enterprise

Joint criminal enterprise is theory of liability that has primarily evolved in the jurisprudence of the two ad hoc Tribunals. The theory holds members of a group who have agreed to engage in international crimes liable for the crimes which result from that agreement whether or not a particular member participated or even had knowledge of a specific underlying crime. While it is a theory of liability that aptly reflects large-scale crimes committed by senior officials who agree to commit crimes, set the wheels in motion but avoid close involvement in the direct perpetration of those crimes. Three variations of this theory have been articulated. The first category or "basic form" is very similar to your common bank robbery: three participants agree to rob a bank and divide the work. The first robber enters the bank with a gun and demands money; the second acts as a lookout outside the bank and the third drives the get-away car. If the robbery succeeds all three men are criminally liable for the crime of robbery, including the driver despite the fact that his simple act of driving away from the scene is not criminal in and of itself.

The second category or "systemic form" reflects the fact that some large criminal enterprises are the result of the collective actions of many people. A concentration camp in which people are unlawfully detained and killed is a good example of such an enterprise. In the case of such a camp, those people who work in the camp knowing that their efforts materially contribute to the overall criminal enterprise are legally responsible for the crimes committed in the camp. The accountant who issues the payment for supplies necessary for the operation of the camp, in the knowledge of what is taking place there, may be equally responsible for the crimes committed there.

The final category or "extended form" of joint criminal enterprise theory extends criminally liability to the members of the criminal group for crimes that although were not specifically planned were a foreseeable result of the original criminal plan. In the case of the bank robbery above, if the armed perpetrator shoots and kills the bank guard when the guard attempts to stop the robbery his accomplices are also legally responsible for the murder. Even though the driver of the car did not intend to kill the guard it



was reasonably foreseeable that entering a bank with a gun to commit a robbery could result in the death of someone.

Article 25 of the International Criminal Court's statute includes a variation of this criminal form of liability. Subsection 3(d) of Article 25 states:

3. In accordance with this Statute, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person:

•••

- (d)In any other way contributes to the commission or attempted commission of such a crime by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either:
- (i) Be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of a crime within the jurisdiction of the Court; or
- (ii) Be made in the knowledge of the intention of the group to commit the crime...

#### Culpability as a Superior

In some cases a superior may be responsible for the illegal actions of his or her subordinates. This culpability is based on the principle that the superior's authority over his or her subordinates imposes upon the superior a duty to monitor and supervise the activities of those subordinates. It also imposes upon the superior an affirmative duty to intercede and prevent his or her subordinates from engaging in illegal acts. If the superior knew or had reason to know that the subordinate was about to do something illegal (and fails to act) the superior is legally responsible even though he or she was not a principal, an accessory, or a conspirator.

Even if the superior did not know about the wrongdoing before it occurred, and there is no reason to believe he or she could have reasonably known, the superior is still culpable if he or she learns of the illegal acts afterward and fails to hold his or her subordinates accountable. A superior is charged with the duty of investigating alleged wrongdoing by his or her subordinates and of taking appropriate corrective or punitive measures.

#### Investigations into the Conduct of Senior Officials

The International Criminal Court as well as the international and internationalized domestic courts that proceeded it seek to focus their resources on holding those individuals most responsible for violations of international criminal law. These individuals are most often senior political, military and police officials engaged in acts designed to perpetrate some of the most serious crimes on a large scale. Their acts although knowing and intentional are most often remote in time and place from where the crime actually takes place. These individuals are unlikely to have direct contact with victims although their contribution to the crime is tangible and intentional.

These senior officials often misuse state institutions, domestic legislation and national resources with criminal intent to achieve a criminal purpose. The mechanisms employed in the commission of a crime are at least as complex and intricate as the workings of the state's government. International investigators must consider and develop investigative strategies that are reasonably directed toward gathering evidence of this criminal use of otherwise legitimate legal institutions.



The investigation of a senior official for international crimes will always involve a multi-level approach. The number of levels will largely depend upon how far the suspect is removed from the physical perpetration of the crime and the complexity of the structures and institutions employed by the perpetrator. At the very least, a clear distinction can be made between the primary level of direct physical perpetration and other levels which concern conduct that despite being remote and indirect nonetheless amounts to a significant contribution to the of the crime.

The investigation of the primary level involves the investigation of the direct physical perpetration of the crime. In many ways, this investigation will mirror the type of comprehensive investigation undertaken by skilled law enforcement personnel in their own jurisdictions. To the extent that surrounding conditions and circumstances permit, the investigation should collect all available evidence of a crime as soon as possible after the crime has been discovered.

Remember the importance of detailed and comprehensive investigative work at this stage. The fact that the suspects in an investigation are senior-level officials does not diminish the importance of competent work at the primary level. Compelling evidence connecting a senior official to a crime will not be sufficient to assign criminal liability if evidence of the crime itself was not gathered properly at the primary level. The importance of this first vital link in the chain of all those responsible for the commission of a crime cannot be overstated. Every investigative avenue which may yield information regarding this initial link must be thoroughly explored and documented.

#### Different people involved in the commission of complex international crimes

It is important in an investigation to identify the different categories of people involved in the complex chain required for such crimes. Some of these people will be knowing participants in the crime while others will be unknowing instruments co-opted by perpetrators to assist in the commission of a crime.

The first category of perpetrator is the direct perpetrator – the person or persons who engage the victim and physically perpetrate a crime against that person. This group also includes the immediate superiors of the direct perpetrators if they were directly involved in the planning, ordering, inciting or commission of the crime. The second category of perpetrators consists of the intermediate perpetrators. This group includes those remote perpetrators that are not part of the highest level of perpetrators yet knowingly participate in the commission of crimes by the direct perpetrators. If the direct perpetrators are soldiers, these intermediate perpetrators are those superiors who are aware of the criminal conduct and who may support the crimes logistically or by failing to prevent or punish the criminal conduct. In the case of direct perpetrators who are not members of the military these intermediate perpetrators may be any upper level police or civilian authority who has abused his or her authority or participated in the commission of a crime in some other way.

The last category consists of senior members of military, police and political institutions who exercise their authority to initiate and participate in the crimes committed by the direct perpetrators. Their participation is often through complex institutional channels under their control. These are the people characterized as those "most responsible". While these senior-level remote perpetrators may initiate and participate in the crimes committed by the direct perpetrators and are aware of the types of crimes that are being committed as well as the types of people that are being victimized they themselves may not be aware of the specific crimes or victims ultimately selected as victims by the direct perpetrators.

The last group of people that may be involved in the complex operational chain that results in serious international crimes are those people who, in fulfilling their ordinary legal duties, unwittingly form some



link in the chain necessary for the commission of a crime. These people are used as instruments by the perpetrators of the crime. A simple example of such a person would be a military truck driver who in the course of making routine deliveries delivers weapons and ammunition that has been designated for direct perpetrators to use in a campaign of ethnic cleansing. As long as the truck driver has no knowledge regarding how the weapons and ammunition is being used and delivers such in the ordinary course of his or her daily work the driver is not a perpetrator but is an "instrument" being used by those seeking to perpetrate a crime.

#### Different Theories of Culpability in the Same Case

When an investigator is attempting to identify suspects in a case he or she should examine the evidence in light of the various theories of culpability. It is possible that in any given case there may be several suspects who are each culpable in a different way. Consider the following example.

A group of women working in a local factory decide to unionize and advocate for better working conditions. The owner of the factory, Mr. Gomez, is also the local mayor and he is vehemently opposed to any unionization of his workers. Mr. Gomez went to a local bar where he knew he could find Sergeant Lopez, an old friend of his. After buying Sergeant Lopez dinner and drinks he began to tell him about his problem with his workers. They discussed a number of alternatives and decided that the best solution was to kidnap and beat Maria Espinosa, one of the more vocal women in the factory. They both agreed that this would frighten the other women into abandoning their unionization efforts. Mr. Gomez told Sergeant Lopez that Mrs. Espinosa usually left the factory after the other workers — at around 6 p.m.

During the next week Sergeant Lopez spoke several times to his squad of ten soldiers and asked for volunteers to carry out the attack. When no one volunteered he spoke to Sergeant Ramirez and asked for his help in recruiting someone from his unit. Sergeant Ramirez thought the plan was a bad one and refused to ask any of the soldiers in his squad to volunteer. Soon word spread around the base about Sergeant Lopez's plan. Captain Maldonado, Lopez's superior would have known about the plan just like everyone else on the base although he may not have had detailed information about the identity of the victim or the timing of the attack. Because no one volunteered, Sergeant Lopez ordered Private Sanchez to kidnap and beat Mrs. Espinosa.

On the day of the planned attack Private Sanchez went to the army storehouse and asked Private Munoz, the soldier in charge of the stores, for some rope. He told Private Munoz that he needed rope to tie down boxes on his jeep. He then went to Private Gutteriez and asked him to drive the jeep to the factory. Gutteriez said he wanted no part in beating a woman. Private Sanchez got him to agree to drive the jeep by promising him that all he would have to do is drive; Sanchez would do the rest.

On the day of the planned attack Sanchez and Gutteriez left the base around 5:30 p.m. On the way to the factory Sanchez saw Private Camacho who knew of about their plan. Sanchez called out to Camacho and asked him what time it was. After looking at his watch Camacho told Sanchez that it was five minutes to six. They pulled up outside the factory door and at 6:00 p.m. Mrs. Espinosa came out of the factory. Sanchez grabbed



her off the street, tied her up and Sanchez drove to a secluded road. Sanchez then beat Mrs. Espinosa severely. She later died from her injuries.

THEORIES OF LEGAL CULPABILITY							
	Principal	Accessory	Conspirator	Superior			
Mr. Gomez	X		X		Mr. Gomez is culpable as a principal because he asked Sgt. Lopez to harm the victim. He is also culpable as a conspirator by discussing, agreeing to, and planning the attack with Sgt. Lopez.		
Sgt. Lopez	X		X	X	Sgt. Lopez is culpable as the principal by ordering Pvt. Sanchez to kidnap and beat the victim. He is also culpable as a conspirator for planning the attack with Mr. Gomez. He is also culpable as Private Sanchez's superior.		
Private Munoz					Even though Pvt. Munoz helped Sgt. Lopez by providing him with rope to tie Mrs. Espinosa he is not culpable because he did not intend to harm the victim and did not know how his assistance was being used.		
Private Sanchez	X				Pvt. Sanchez is culpable as a principal because he intended to harm the victim and did in fact harm her. The fact that he was ordered to do so by Sgt. Lopez does not relieve him of his culpability.		
Private Gutteriez		X			Pvt. Gutteriez is culpable as an accessory even though he did not tie up or beat the victim. He rendered assistance to Pvt. Sanchez knowing what he intended to do.		
Sgt. Ramirez				X	Sgt. Ramirez is culpable because he knew of what Pvt. Sanchez was about to do and as Sanchez's superior officer, failed to take reasonable steps to prevent it.		
Captain Maldonado				X	Capt. Maldonado is culpable even though he did not know about the specific plans to attack Mrs. Espinosa he had sufficient information that he had an obligation to conduct an reasonable inquiries.		
Private Camacho					Pvt. Camacho is not culpable as an accessory because even though he knew of their plans. His assistance (telling them the time) was not necessary or material to the attack.		

It is important for the investigator to examine all possible suspects and all possible theories of culpability when evaluating the evidence in a case. The investigator should consider whether or not evidence implicates other suspects besides those who were actually present during that incident being investigated. Under every theory (except the culpability of superiors) it is important to identify evidence which shows that each suspect possessed criminal intent similar to the principals. Carefully examine what each witness said and did, before, during, and after the incident. Use the table below to develop avenues of investigation to explore the culpability of each suspect.

## 9

#### **CRIMINAL CULPABILITY**

#### Culpability as a Principal

Did the suspect actually participate in the wrongdoing?

What evidence is there that the suspect's actions were intentional? Could the harm have been caused unintentionally or by accident?

Did the suspect order a subordinate to commit the wrongdoing?

What was the order? Was it a clearly unlawful order?

If suspect was ordered to commit an act he or she knew was illegal what recourse did he or she have to challenge the order? What would have been the consequences of failing to obey the order?

Did the suspect request or pay another to commit the wrongdoing?

What evidence is there that the suspect participated in the planning and execution of the wrongdoing?

#### Culpability as an Accessory

What evidence is there that the accessory had the same unlawful intent as the principals?

What evidence is there that the accessory had this unlawful intent at the time he or she rendered assistance to the principal?

Was the accessory's assistance necessary and material to the commission of the wrongdoing?

Was the accessory's assistance rendered before, during or after the commission of the wrongdoing?

Was the accessory acting pursuant to a superior's orders?

What recourse did the accessory have to challenge the order?

#### Culpability as a Conspirator

What evidence is there that the suspect participated in the planning of the wrongdoing?

What evidence is there that the conspirator had the same unlawful intent as the principals?

What evidence is there that the conspirators agreed to commit some wrongdoing? What was said? What was written or documented? What actions evidence this agreement?

What evidence is there that conspirator was not "joking" or merely speculating about harm to the victim?

What evidence is there that some definitive step was taken in furtherance of the conspiracy?

Is there evidence indicating that suspect changed his or her mind and attempted to withdraw from the conspiracy?

#### Culpability as a Superior

What is the relationship between the superior and the principals?

Did the superior have authority over the principals?

Is there evidence that the superior ordered his or her subordinates to commit wrongdoing? Is the superior a principal in the crime?

What evidence is there that the superior actually knew that the principals intended to commit wrongdoing?

What evidence is there that the superior should have known that the principals intended to commit wrongdoing?

How many superiors up the "chain of command" knew or should have known about the principal's wrongdoing?

What evidence is there that the superior had actual knowledge of the principals' actions after the crime?

What evidence is there regarding what action the superior took in response to learning about the crime? Were the principals rewarded? Were they punished?

Did superior punish principals according to an objective standard? Does an unreasonably light punishment indicate superior's intent to acquiesce in the wrongdoing?

#### Other

Is a particular suspect legally culpable under more than one theory? Does the evidence indicate that the suspect is culpable as both a superior and a principal? A superior and an accessory?



## CHAPTER 8 SUMMARY

### THE IMPORTANCE OF IDENTIFICATION EVIDENCE

Identification evidence proves who is responsible. The investigator must carefully examine the evidence in a case and determine whether or not it proves beyond a reasonable doubt – who did it.

#### The Five Different Identification Procedures

Confirmatory A **confirmatory identification** is a procedure that is only used when identification the witness has had prior dealings with a suspect. The witness is given an

opportunity to see a suspect or a suspect's photograph alone. The witness

confirms the suspect's identity to the investigator.

Show-up A **show-up** is a rarely used **identification procedure** in which a suspect is apprehended minutes after an incident. A witness is given an

suspect is apprehended minutes after an incident. A witness is given an opportunity to see the suspect alone and make an identification.

opportunity to see the suspect alone and make an identification.

Lineup A *lineup* is an *identification procedure* in which a suspect is asked to stand in a line along with 5 to 6 other people bearing a similar

appearance.

Impromptu An *impromptu lineup* is an *identification procedure* in which a lineup witness and the investigator either stand or drive through a crowded area

they believe the suspect may frequent. The witness looks at the many

people present and identifies the suspect if he or she is present.

Photo array is an *identification procedure* in which a photograph

of a suspect is placed alongside the photographs of 5 to 6 other people

bearing a similar appearance.

#### **Physical Evidence Proving Identification**

There is often physical evidence in a case which can prove the identify of the suspect. Among the most common are:

Objects belonging to the suspect which were left behind at an investigative scene.

Objects belonging to the victim which the suspect has in his or her possession after the incident.

#### **Forensic Physical Evidence**

BulletsBite marksVictim's DNAClothing fibersWeaponsTire tracksSuspect's DNAHandwritingLigaturesShoe imprintsLatent printsRecorded Voice





#### Chapter 9

#### INVESTIGATIVE ANALYSIS

Up until now this book has focused primarily on gathering evidence. While gathering evidence is the investigator's paramount task, he or she must also organize and analyze the evidence in order to reveal the truth about the event being investigated. The investigator must sift out irrelevant evidence, dissect apparent inconsistencies, and assemble the many individual and disparate pieces of evidence into a cohesive understanding of the truth as revealed by the evidence. Returning to the puzzle analogy, gathering evidence is akin to collecting the puzzle pieces. Investigative analysis is akin to studying those pieces and putting the puzzle together. How difficult investigative analysis is depends on the complexity of the individual case. The analysis of evidence may be easy in cases where only a few witnesses see an entire event. In cases that have many witnesses and fragmented pieces of circumstantial evidence, it may be quite difficult to organize and analyze all the evidence.

Analyzing evidence is something that everyone does every day of one's life. We all make decisions of varying importance based upon our assessment of evidence we have before us. Whether it is a decision at work, a decision to make a purchase, or a decision regarding what is best for our children, we all examine and analyze the relevant information before making our best decision.

Similarly, the investigator must also analyze the evidence and make reasonable conclusions about it. During the course of the investigation, the investigator must assess the evidence and decide what investigative actions to take next. When the investigator is satisfied that all relevant evidence has been gathered, he or she must draw conclusions based on the evidence and draft the *investigation report*. The greatest tool at the investigator's disposal for the careful examination and analysis of evidence is the same tool we use in our daily lives: common sense. Common sense that is developed through years of experience and dozens of decisions each day. We use common sense every day of our lives to assess the information before us and to make the best decisions we can in our professional and personal lives.

Consider, for example, the simple act of buying something from a merchant. Even as we ask the merchant about the item we want to purchase we look at him or her and wonder if he or she is telling us the truth. We examine the goods to see how they compare to those of other merchants. We negotiate the lowest price possible and then compare it with the prices of other merchants. After doing this, we evaluate all the information we have gathered about the merchant's honesty, the quality of his or her wares, as well as the price and consider it in light of our past experience of buying things. After doing all of this we make our best decision whether or not to purchase the item. Throughout this entire process we use our common sense to identify reliable information and to sort out irrelevant or unreliable information.

This chapter will explore ways in which experience and common sense can be applied to help locate evidence, analyze the evidence gathered, and how to draw common sense conclusions from the evidence. Investigators who are just beginning may find it helpful to follow these procedures closely; experienced investigators may realize that they already use variations of these processes. For them this will be a review.

It is important to recognize that the analysis and evaluation of information begins as soon as the investigator visits the first *investigative scene* or interviews the first witness. From the very beginning of the case the investigator is continually sorting and evaluating information from many different sources. As



the investigator struggles to identify physical evidence or phrase the first question to a witness, he or she is looking around and analyzing everything in sight. At every step of the investigation the investigator is continually evaluating and assessing evidence in order to make the best decisions about how to proceed.

## Section 9.1 Principles that Apply Throughout the Investigative Process

In Chapter Two, I briefly described the four phases of an investigation. These four phases are differentiated from each other by shifts in the investigator's focus and goals. Phase one ("casting the net") is at one end of the spectrum and adopts a broad focus in an attempt to gather as much evidence as possible. As the investigation progresses through each phase, the focus sharpens on particular theories and suspects. Unreliable and irrelevant evidence is set aside, and accurate, probative evidence begins to clearly reveal what happened, what people are responsible, and what it is they did.

Although the particular focus and analysis of a case changes during the course of the investigation, there are several fundamental principles that apply throughout and deserve discussion at the outset. These principles dictate how an investigator evaluates and analyzes evidence at all stages of the case.

#### Keeping an Open Mind - No "Horse Blinders"

One of the most important general principles is the necessity of keeping an open mind throughout an investigation. The truth about what actually happened is rarely apparent at the outset – the facts are rarely as they first might appear. One of the worst mistakes an investigator can make is to allow early impressions of a case to narrow the scope of his or her inquiry. This "tunneling" of vision can result in the investigator failing to see facts that would have been obvious to a more objective observer.

Very often when a horse is used for work, its bridle or headgear is equipped with a set of blinders. These blinders limit the horse's field of vision and prevent the horse from being distracted by other horses or things happening around it. The farmer can get the horse to work more efficiently and safely by temporarily and partially "blinding" the horse to the activity not directly in front of it.

What is good for horses is not good for human rights investigators. It is easy to inadvertently and unconsciously put on "blinders" early in the investigation and allow them to limit the investigation's scope and to color one's perception of the evidence. An investigator puts on blinders whenever he or she draws conclusions too early in the case or allows his or her initial assumptions to dictate decisions about where to look for evidence.

#### Consider the following case:

A human rights investigator goes to a murder scene in a remote rural village. At the scene he discovers the body of the victim lying in a pool of blood at the rear of the house. It is obvious that the house has been ransacked. The investigator interviews the neighbor who discovered the body. The neighbor reports hearing loud noises during the night and upon going over, finds his friend dead. The neighbor points out that his friend had a gold necklace and a watch, which appear to have been taken. The neighbor tells the investigator that recently, there have been a number of robberies in the area and that it is a shame that the robbers killed the victim, especially since he had only recently moved to the area. The neighbor also reports that the gang committing the robberies crosses the nearby border from the adjoining country to commit the robberies.



The investigator takes a few photographs and writes down the witness's account for his report. Because the case was a simple robbery by a band of foreign thieves the investigator does not pursue the case or investigate it further as a human rights violation.

In this case the investigator allowed the first witness he interviewed to place "blinders" on him. The investigator adopted the neighbor's assertion that the murder was the work of foreign robbers who had crossed the border. Had the investigator kept an open mind and reserved making conclusions until all the evidence had been gathered and the case fully explored he would have discovered:

- 1. The victim was a reporter for a prominent paper who had been threatened in the capital. He had recently fled and was hiding in the remote village because he feared for his life.
- 2. A neighbor a few houses down saw an army jeep parked in front of his house for about one hour the night of the murder.
- 3. The victim's notebooks, which he brought with him, had been taken along with his necklace and watch.
- 4. The neighbor who discovered the body was given the victim's jewelry and watch by the soldiers in exchange for lying about what happened to the victim.

This case is an example of just how dangerous it is for an investigator to allow early witnesses and evidence to improperly limit the scope of the investigation thereby drawing false conclusions about what happened. In this case the investigator unconsciously put on "blinders" and could only see the case as a common robbery. He was blind to the truth of what happened. The above case involved intentional deceit by the neighbor. A witness's inadvertent mistake can just as easily mislead an investigator if he or she is inclined to allow early information about a case to prejudice his or her view of it.

Keeping an open mind in an investigation is a difficult and deliberate task. The investigator must constantly remind himself or herself to consider a wide variety of possibilities other than those that are most readily apparent. The investigator must continually contemplate what other scenarios are possible and whether or not witnesses are lying or are mistaken. The investigator must remain open at all times to the possibility that what he or she believes to be the truth may be shattered upon the discovery of more reliable and accurate evidence. Throughout the investigation the investigator must be engaged in a continual search



# nformation

#### **EXCULPATORY EVIDENCE**

Exculpatory evidence is any evidence or information that tends to prove the innocence of a suspect. This evidence can either be direct proof that a suspect could not have committed the alleged act or evidence tending to raise serious doubt regarding the credibility or reliability of an important witness. An investigator is obliged to investigate any exculpatory evidence that he or she becomes aware of during an investigation and detail it in the investigation report.



for the most reliable and accurate evidence which will either confirm the investigator's theory of the case or point the investigation in a new direction.

Keeping an open mind does not mean that the investigator should not form theories about what happened. The formulation and testing of theories is a necessary part of any investigation and helps the investigator discover new evidence about an event. This admonition about keeping an open mind is instead a caution to never allow a particular "theory" to limit the consideration of other possibilities. **The evidence should limit the theories; a particular theory should never limit the evidence.** In the example above, the investigator should have identified the neighbor's account as one **possible** theory and should have thoroughly investigated the case reserving a final decision until all the evidence had been gathered.

#### **Exculpatory Information**

One of the most grievous mistakes an investigator can make is not to diligently pursue leads that might prove the suspect's innocence. No matter how confident an investigator may be in his or her case, failure to investigate leads that might uncover exculpatory evidence is extremely unprofessional and can lead to a severe miscarriage of justice. Accusing the wrong person of a serious human rights violation compounds the harm caused by the violation and helps the real perpetrator of the act to avoid justice. Consider the following example:

There is abundant compelling evidence that Sergeant Bun Seng, a tall heavy man, whom local villagers know as "Bigga," has committed a murder. There is one apparently credible witness who says that she saw "Bigga" in her bar during the time that the murder was committed. This is clearly a troubling piece of evidence that must be thoroughly investigated before Sergeant Bun Seng is accused of wrongdoing. During the investigative meeting one investigator believes it is possible that perhaps there is another man who has the same nickname "Bigga" as Bun Seng. Another investigator suggests that they show the woman a photo array that includes Bun Seng's picture and ask her if she sees the man she knows as "Bigga" the man she saw in her bar. The investigators agree that this is a good idea. After viewing the photos in the **photo array** the woman says that she does not recognize anyone in the photos and does not see "Bigga's" photo among them. Although the investigators feel confident that their suspect was not in her bar at the time of the murder, one of them goes to the bar and meets the other man known as "Bigga" to be sure.

It is important that the investigator remains vigilant at all times for evidence that may prove the innocence of a suspect and diligently pursues any investigative leads likely to yield such evidence. Article 54 of the Rome Statute of the ICC imposes upon the Prosecutor the affirmative duty to investigate incriminating and exonerating circumstances equally. While it remains to be seen how the Prosecutor can or will establish that this provision has been complied with it is clear that at least with respect to the ICC there will some accounting for efforts made to identify and gather exculpatory evidence.

#### **Confidential Information**

Both the ICTY and the ICTR have special provisions to protect the confidentiality of persons or states who provide evidence confidentially. The ICC in Article 69(5) also has such a provision and imposes an obligation on the Court to "respect and observe privileges on confidentiality as provided for in the Rules of Procedure and Evidence." Investigators must exercise extreme caution when agreeing to accept evidence



confidentially. Any decision to accept evidence confidentially should be in writing and should reflect a uniform policy established by those ultimately responsible for the investigation. Serious problems are created when witnesses are given vague oral assurances of confidentiality regarding a particular item of evidence which then becomes an essential part of a prosecution or after review is determined to contain exculpatory information regarding an accused. Any undertaken given a provider of evidence must be done with consultation at the highest levels prior to investigators receiving the evidence.

#### Section 9.2 Evaluating the Evidence

Within minutes of arriving at the *investigative scene* the investigator will begin evaluating the evidence he or she finds there. Typically, the evaluation at the scene is quick and limited to helping the investigator process the *investigative scene* and interview witnesses. As soon as some evidence is gathered and time permits, the investigator will begin a more careful evaluation of evidence. In evaluating evidence the investigator closely examines each piece of evidence or statement individually and determines what weight it should be given relative to the other evidence in the case. For example, in evaluating the testimony of two witnesses, the investigator considers that one of the witnesses has impressed her as reliable and truthful while the other was drunk during his observations and has a motive to lie. The investigator after evaluating both witnesses decides to place greater weight on the witness he or she found credible and reliable. Although all evidence is evaluated in light of the investigator's experience and common sense there are some special considerations for evaluating each specific type of evidence. The following sections discuss the special considerations for physical evidence, testimonial evidence, and documentary evidence.

#### **Evaluating Physical Evidence**

Chapter Four began by extolling the value of physical evidence and its inherent reliability. Nevertheless, before an investigator relies on a piece of physical evidence he or she must examine and assess its reliability. Before relying on a piece of physical evidence the investigator must evaluate the evidence in light of the entire investigation.

The first consideration is whether or not the physical evidence is relevant to the case. Are there some strong connections between the investigation and this piece of evidence? Physical objects recovered from the *investigative scenes* may or may not be relevant to the case. In Chapter Four, I pointed out that it is impossible to determine which objects are relevant to a case at the time a scene is processed and I encouraged you to collect any object that <u>might</u> be relevant to the case. When evaluating physical evidence the investigator must now separate those objects that are relevant and those that are not – distinguish between what truly is evidence and what is not.

Consider the following example:

A man is found shot to death. He is lying next to a table. When the investigator arrives she observes a knife on top of the table and preserves it as evidence. Later, when interviewing witnesses, the investigator learns that a neighbor attempted to save the seriously injured victim and took a knife from the victim's kitchen in order to cut the victim's clothes open.



In this case the investigator correctly preserved the knife as evidence in the case. But in evaluating the knife in light of the witness's statement she realizes that the evidence is not relevant to the murder. It is a piece of evidence that was introduced into the *investigative scene* after the shooting.

A closely related concept is that of *probative value*. Probative value describes how much information a piece of physical evidence can provide; how helpful is it? How probative a piece of physical evidence is often depends upon the other circumstances of the case. Consider the following example:

The body of a victim is found shot to death in a remote corner of an army base. When the body is moved the investigator discovers 3 shell casings underneath it on the ground.

Initially these shell casings appear both relevant and probative. Perhaps forensic analysis may eventually be able to match the hammer and ejector markings on them to the murderer's gun.

The investigator, after looking around, soon discovers that there are hundreds and hundreds of shell casings around the area and learns from a reliable source that the area where the body was found was commonly used as a firing range for target practice by soldiers.

In this case, the shell casings would have enormous probative value if they were the only shells found by the body. The fact that they were among hundreds scattered around a firing range reduces their **probative value**.

Fingerprint evidence is another good example of how the *probative value* of evidence can change depending upon the circumstances of a case. Fingerprints that are recovered from a murder scene and then matched to a suspect are usually considered very probative. This is because no two people have the same fingerprints. If however, there is credible evidence that the suspect frequented the location where the murder occurred many times in the past on legitimate business, the *probative value* of the fingerprints is reduced dramatically. Fingerprints cannot tell precisely when a suspect touched something, only that he or she did. If the suspect was at the scene at another time unrelated to the murder, the fingerprints may have little probative value (unless of course, they are recovered from the murder weapon).

When evaluating physical evidence, the investigator must also evaluate each object's *chain of custody*. As described in Chapter Four, *chain of custody* is used to refer to all those people who had possession of a piece of physical evidence after it was recovered. When evaluating the *chain of custody*, the investigator must assess whether or not there was an opportunity for someone to tamper with the evidence. This consideration is simple if the investigator is the person who recovered the item and the only person to possess it after it was recovered. Analyzing the *chain of custody* becomes more complicated if many people handled or had access to the evidence. In this case the investigator must evaluate how the likelihood that the evidence was tampered with affects its reliability.

Placing evidence in tamper-proof envelopes as suggested in Chapter Four is one way to simplify the evaluation of an object's *chain of custody*. A careful examination of the envelope for signs of tampering is usually sufficient to rule out that the evidence was tampered with.

**Chain of custody** is particularly important in any case where a piece of evidence is being examined for **latent prints** or **trace evidence**. Anyone who has come into contact with physical evidence before it was protected from contamination may have left his or her own **trace evidence** on it. Whenever a piece of



evidence it going to be scientifically examined for *trace evidence* the investigator must evaluate the possibility that it was inadvertently contaminated after being removed from the *investigative scene*.

Another related consideration is whether or not physical evidence is in substantially the same condition as when it was first taken into custody. It is important to determine if the evidence has been damaged or has deteriorated in such a way that it can no longer be considered reliable. For example, if the clothes of a murder victim are not properly stored (allowed to dry and placed in a tamper-proof paper envelope) they may deteriorate over time. Wet clothes stored in a plastic bag will rot and disintegrate over time. The investigator can no longer draw conclusions based on the appearance of the clothes or submit them for forensic testing. Blood stains and gunpowder residue will all be affected by the rotting of the clothes.

The final question for the investigator evaluating physical evidence is whether or not the investigator has gleaned all the information the evidence can provide. In many situations, the investigator can learn more about a case by asking forensic scientists or witnesses to examine the evidence. When evaluating each piece of evidence the investigator must consider the merits of submitting the evidence for scientific analysis or showing it to witnesses.

Review the chart on *Forensic Analysis* when considering whether or not to have evidence tested. This chart gives a brief overview of what tests are possible and what is required to conduct these tests. Use the chart as a checklist when evaluating evidence and consider whether or not you have gathered what is needed for a particular test and if such analysis will be *probative* in the case. In situations where resources are scarce, the investigator will have to make decisions whether or not to have evidence tested. These choices should be based upon what the results will contribute to an understanding of the case. While fingerprint comparison may be very probative when a victim is killed in his or her home, it may not be when a victim is killed in a public place. The investigator must try to identify those pieces of evidence and those scientific tests that will reveal significant and compelling information about a case. A scientific test can unquestionably exonerate a suspect or provide incontrovertible evidence of his or her guilt. If there is a strong likelihood that a scientific test will yield such key results, every attempt should be made to secure that testing. In the event that resources or circumstances do not permit important tests the investigator believes are critical he or she should make a note of this in the *Investigation Folder* and in the *investigation report*. Many forensic tests are accurate even when performed years later. If circumstances change in the future, another investigator may read your note and be able to have the evidence tested.

Sometimes a witness can help the investigator learn more about a case by looking at evidence. A witness's familiarity with the scene, the victim, or the evidence itself may place him or her in the unique position of better appreciating the significance of the evidence. However, showing witnesses evidence and photographs does involve risks as described in earlier chapters. A witness who wants to deceive an investigator can do so easily after having seen evidence. Identify a witness who is clearly not a suspect and, if possible, is not critical to the case. A family member or close friend (who was not an eyewitness) is often a good choice.

These witnesses can be very helpful in determining what objects were taken from or left at the *investigative scene*. Ordinary objects, that appear insignificant, take on great importance if a witness states that the object was not there before the attack. Similarly, it is difficult to know what was taken from the victim or the victim's home without the help of witnesses familiar with the scene. Objects that were taken very often indicate the assailant's motives; knowing this can help identify possible suspects.



#### Improperly gathered evidence

Most courts including the ICC have provisions dealing with evidence that is tainted by the way in which it was collected. These provisions are intended to protect the proceedings from being impugned by evidence that is so unreliable or was obtained illegally or in such a manner that admitting it would jeopardise the integrity of the trial itself. Article 69 (7) states:

Evidence obtained by means of a violation of this Statute or internationally recognised human rights shall not be admissible if:

- (a) The violation casts substantial doubt on the reliability of the evidence; or
- (b) The admission of the evidence would be antithetical to and would seriously damage the integrity of the proceedings.

This provision vests the court with substantial authority to exclude evidence that falls within Article 69(7). Investigators should be mindful of this and ensure that their conduct as well as the conduct of their subordinates or others acting on their behalf conforms to all applicable laws and internationally recognised norms. Be careful about relying on evidence of dubious origin.

#### **Evaluating Testimonial Evidence**

In every case the investigator must decide how much reliance to place on the statement of each witness. The testimony of each witness must be carefully evaluated to determine if it is credible and reliable and what significance it should be given in light of other testimony. Chapter Seven dealt extensively with witness testimony and described the important distinction between *credibility* and *reliability*. *Credibility* being whether or not the witness is honestly telling the investigator what he or she believes to be true. And *reliability* being whether or not a truthful witness's statement is factually accurate or is mistaken. If you have followed the suggestions described in Chapter Seven there should be enough information to study the witnesses' statements and make some well reasoned assessment of their credibility and reliability.

The investigator must now use this information to evaluate the credibility and reliability of each witness. It is important that <u>every</u> witness be evaluated. Assuming a particular witness is credible and reliable, and failing to critically evaluate his or her account, is one way of putting on the "blinders" that were discussed earlier. Assuming a witness is credible simply because he or she is a public official, a religious figure, or respected community member is a mistake. Similarly, summarily dismissing the accounts of convicts, the mentally handicapped, or people with apparent credibility problems without first evaluating their credibility and reliability is also a mistake. Every witness, despite his or her standing in life, should be subjected to the same scrutiny as all others. Even though most witness will earnestly try to tell the truth, the problems caused by the few who do not are so serious that testing every witness is essential to the integrity of the investigation.

When evaluating witness testimony the investigator should examine the witness's answers to the questions asked during the *comprehensive interview* that focused on credibility and reliability. Is the witness credible and reliable – can the investigator rely on the information he or she provided? The best tool for evaluating the credibility and reliability of a witness is the experience and common sense of the investigator. Use your life-long experience in dealing with and assessing people to help evaluate each



witness. Did the witness appear candid and truthful? Did the witness give evasive answers during the interview? Did the witness avoid key aspects of his or her testimony? Is there evidence that the witness has lied about matters not directly related to the case? Did the witness appear reasonably intelligent and perceptive? Did the witness appear unsure of some of the information he or she provided?

In addition to reviewing the answers a witness gave to the questions on credibility and reliability, there are several tests that the investigator can use to help ferret out unreliable or dishonest witnesses. These tests examine what the witness has said about the incident itself.

#### Direct or hearsay?

One key element in evaluating a witness is identifying the source of the witness's information. Is the information provided by the witness from his or her own observations or is it second-hand information? Hearsay testimony is second-hand information. Whenever the person providing the information is not the same person who personally witnessed it, that information is hearsay. To people unfamiliar with investigations or courtroom procedure, relying on hearsay information does not seem like a bad thing. In fact, we all rely on hearsay information everyday. Each of us gets most of our information from hearsay sources and we depend upon it quite successfully. The television news is hearsay. The newspaper is hearsay. What our children tell us about what happened in school is hearsay.

In a human rights investigation hearsay evidence has a limited role. It has this limited role for two reasons. First, hearsay evidence in many instances is not allowed in courts following a strictly adversarial system of adjudication. For all but a few exceptions, none of the hearsay evidence gathered in an investigation may ever be seriously considered by a tribunal hearing the case. While hearsay is admissible in civil law tribunals and before international courts there is always a preference for the more reliable direct evidence particularly with respect to material issues in the case. Second, hearsay evidence is never as reliable as evidence based upon a witness's personal knowledge. A professional, ethical journalist has a duty to investigate and report the news based on non-hearsay sources, from people with personal knowledge of the event being reported. If the journalist does this consistently, along with the other reporters on his or her newspaper, then the newspaper earns a reputation for reliability and people trust the information they read. Similarly, it is the duty of the investigator to seek out and gather information from those people with personal knowledge of an event. The information eyewitnesses provide is always more reliable than that provided by a hearsay source.

Another way of looking at the problem of hearsay evidence is to consider the effect of these "additional witnesses" coming between the investigator and the eyewitness. In the case of hearsay, the investigator must not only assess the credibility and reliability of the eyewitness, but also the person whom the eyewitness spoke to. The investigator must now assess just how accurately this second witness is reporting the eyewitness's account. Additionally, the investigator must assess the credibility and reliability of the eyewitness without ever meeting him or her. The human rights investigator should, whenever possible, avoid relying on hearsay witnesses and should be reluctant to base any material conclusions or accusations solely on hearsay evidence.

<sup>•</sup> There are some situations where the gravity of the human rights situation and the unavailability of eyewitnesses may justify reliance on hearsay testimony. In these cases hearsay evidence should only be relied on after all reasonable means to obtain eyewitness testimony have failed. Any hearsay account should be corroborated with any other independent physical, testimonial, and documentary evidence that exists. An exhaustive search must be



Having said this, there is a role for hearsay evidence in an investigation. Hearsay information can lead to eyewitnesses and physical evidence. Very often the first people an investigator will come into contact with are not eyewitnesses but people who spoke to the eyewitnesses. This hearsay information is valuable because it helps to identify possible eyewitnesses and gives the investigator some idea about what they know.

There are two exceptions to the ban on hearsay evidence that the investigator should be aware of. The first is the case of a dying witness. The rationale behind permitting someone to testify about what a dying witness said is the belief that a person facing death is unlikely to tell a lie. Since the person reporting what the dying witness said is available for questioning the court can determine that person's credibility and reliability.

The second exception is made for the statements of suspects. Hearsay statements of suspects are permitted because a suspect will be present at any trial and have an opportunity to refute statements attributed to him or her. The court will be able to assess the credibility of the suspect as well as that of the witness testifying about something the suspect said.

Recognizing hearsay evidence is not always easy. If the investigator did a good job interviewing a witness he or she will have repeatedly asked each witness, "How do you know that?" This simple question should reveal whether or not the witness has personal knowledge about that part of his or her testimony or if he or she is reporting something that someone else told them. When evaluating a witness's statement it is important to know what portions of the statement are based on personal knowledge and what portions are based on hearsay evidence.

#### Is the witness's statement consistent within itself?

When examining a witness's statement the investigator should consider whether or not the statement is consistent within itself. A truthful, accurate statement should not contradict itself. A fabricated statement will often have clues that it is fabricated in the statement itself. The investigator should consider whether or not the witness could have seen what he or she claims to have seen. Could all that the witness claims to have seen have occurred within the time he or she was there? Did the witness correct himself or herself during the statement upon realizing that some of the testimony was improbable? It is important to use common sense when evaluating a witness's testimony. Every day we make decisions based upon whether or not we find someone's account persuasive and truthful. Does the witness's statement have that common sense "ring of truth" or does it raise suspicion?

Experienced interviewers will often ask witnesses to jump back and forth to different portions of their testimony, sometimes returning to key aspects several times during the course of an interview. This technique operates on the principle that a truthful witness can jump to different parts of an event without getting confused while a dishonest witness cannot without great difficulty. A truthful witness simply cues up his or her visual memory of the event and describes what he or she sees in the mind's eye. An untruthful witness has no visual record of the event and must therefore construct his or her answer by recalling and ordering all the fabricated details of the account. This technique is especially effective if the investigator, while "bouncing" around, asks questions about details that change throughout the event. For example, return a witness to the point where the suspect arrived and ask him or her to describe where everyone was

conducted to gather sufficient additional evidence for a tribunal to properly evaluate the hearsay evidence. Any report relying on hearsay evidence should clearly identify those portions of the report based on hearsay evidence.



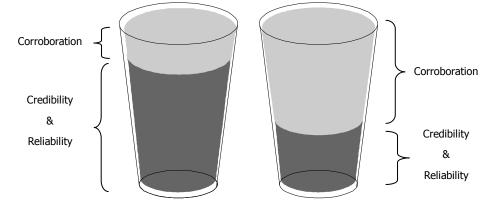
physically located at the time. Then "bounce" to the time when the suspect fled and ask the same question. A witness who has no visual memory of the event will find it difficult to describe where everyone moved to. It is very difficult for someone who was not present to keep track of the many details that make up a fabricated account. Even if the witness is able to respond quickly to your questions, careful study of them will often reveal contradictions indicating a fabricated story. The investigator should compare what the witness said each time he or she spoke about that part of the event.

Similarly the investigator should compare the witness's *comprehensive interview* with his or her *preliminary interview* for inconsistencies. The investigator should also monitor any media coverage in the event witnesses give a different version to reporters. A truthful reliable witness will give a consistent account each time they discuss an event. Any differences between accounts should be examined closely.

## The Relationship between Credibility and Corroboration

When evaluating a witness's testimony it is important to understand the inverse relationship between credibility (and reliability) and corroboration. One way to think of this relationship is to look at a witness's testimony like an empty glass. In order for the testimony to be believed by an investigator or tribunal, the glass must be full. A full glass equals testimony that can be believed. Now picture the glass as being filled with two liquids. The first liquid is a mix of credibility and reliability. Some very credible and reliable witnesses may nearly fill the entire glass they are so credible and reliable. Others may hardly fill it at all. The second liquid is corroboration; those independent facts which prove that the witness told the truth and is not mistaken.

For those witnesses who are very credible and reliable, their glass may be almost full and just a small amount of corroboration will fill their glass to make them believable. Other witnesses, like convicts, drug abusers, people with a motive to lie, or people who have lied in the past may have serious credibility problems. These witnesses may barely fill the glass with credibility and reliability. In order for these witnesses to be believed, the investigator has to fill the remainder of the glass with corroboration; independent evidence which proves the truth of as many aspects of the witness's account as possible. The less credible or reliable the witness is, the more corroboration the investigator should seek to test and prove the truthfulness and accuracy of his or her testimony.





Are they insignificant discrepancies or evidence of exaggeration, poor memory, or dishonesty?

#### Is the witness's statement consistent with other witnesses?

The statement of every witness should be compared with the statements of the other witnesses. A good interviewer will have asked each witness what other witnesses were present and where they were. Compare the different accounts of the witnesses. The statements of truthful, accurate witnesses should be similar in detail. They should fit together like the pieces of a puzzle. Witnesses may differ on minor details regarding descriptions of suspects and the length of time an incident took. Experience will teach you those differences that should be cause for alarm. Certainly any material contradiction about a case should be examined and investigated until resolved.

## Consider the following case:

I once investigated a case where six people accused a man of raping someone. Each was a witness to the incident and described in convincing detail how the man grabbed his victim, tore her clothes off and raped her. During the course of each individual's **comprehensive interview**, I asked many detailed questions regarding the rape itself as well as the circumstances surrounding each witness's observations of it. It soon became apparent that although the witnesses were in complete agreement about where the incident occurred and most material aspects of the incident, there were troubling discrepancies about almost every other detail. Some witnesses claimed it happened just past noon, others at dusk, and some after dark. When I asked each witness to reenact the movements of the suspect each portrayed a dramatically different scenario. Little details that each had included began to get shuffled in their respective recollections resulting in almost comic re-enactments of the incident. I also made a crude sketch of the crime scene showing the placement of different buildings and trees. I gave each witness a clean photocopy of the diagram and asked them to indicate where all the participants were located and also trace their path onto the crime scene and away from it after the rape. A quick comparison of the different sketches revealed that many if not all of the witnesses were lying.

I made arrangements for each witness to meet me (separately) at the crime scene and show me from where he made his observations. It soon became clear that at least the majority of these witnesses were lying. Two witnesses claimed that they did not see other witnesses during the rape – both of them pointed to the same branch on a tree as the place where they were when they witnessed it!

Although I knew some of the witnesses were lying I could not be sure if the entire event had been fabricated or whether or not some of these "witnesses" were just joining in to bolster the case against the man. I eventually confronted each witness separately about the obvious flaws in his account. All eventually admitted to getting together to fabricate the story about the man. They claimed they did it because they heard the man had in fact raped a woman who refused to go to the police. They did not want him to get away with it and therefore collaborated to concoct a story against him.

This story reveals an important lesson in evaluating witness testimony. In cases where witnesses are lying, they most often forget to discuss the "less important" facts in the case. While they will spend time



insuring that they are in agreement regarding the critical facts like the crime itself, they usually forget to discuss all of the incidental details. The experienced investigator knows this and uses it to expose deception. This technique requires the investigator to ask very detailed questions during the *comprehensive interview*; questions that involve the minute details of the incident. In the above case I asked questions like: Who was the first person you told about the rape? Some witnesses named each other as the person they told, yet that person denied ever speaking to them. While there will always be minor inconsistencies between the accounts of different witnesses, some will be so material or so odd that the investigator has a clear obligation to investigate further.

## Is the witness's statement consistent with the physical evidence?

The inherent credibility and reliability of physical evidence makes it a good touchstone with which to test witnesses' accounts. A witness (who has not seen the photos or physical evidence) who can give a detailed description of the *investigative scene* is likely to be a good witness. The witness's ability to accurately recall specific details about the scene are a good indication that what they say about what happened is also accurate.

Accurate truthful testimony should also correspond and "fit" with the physical evidence in the case. Does the witness's account seem plausible when considered in light of the physical evidence in the case? If a witness claims to have been brutally attacked does he or she have the injuries or scars which would be expected from the attack described? If the witness describes a violent struggle are there *signs of struggle* at the scene? Did the victim suffer *defensive wounds*?



# FOREIGN INVESTIGATORS AND EVALUATING WITNESS CREDIBILITY

Foreign investigators should be careful about reading too much into the body language and mannerisms of witnesses. Body language that may be considered inappropriate and an indication of deception in your culture may be entirely appropriate in the culture in which you are working.

For example, a foreign investigator is suspicious of a witness's candor because the witness never makes eye contact with the investigator. In the investigator's culture a person would ordinarily look the interviewer in the eye when answering a question and failure to do so is usually taken as a sign of discomfort and deceit. However in the witness's culture it may be considered impolite to look into the eyes of someone like an investigator. The witness's polite deference to the foreign investigator is incorrectly perceived as deceit on the part of the investigator.

It is very helpful to ask your interpreter for his or her impressions of witnesses after an interview and record them in the file. The interpreter's comments and impressions may be helpful when evaluating the witness's testimony.



#### The role of corroboration

What all of the above tests have in common is that they compare and contrast each witness's account with the other evidence in the case. By doing so the account is either corroborated or contradicted. Returning to the puzzle analogy, the witness's account either fits in with the other pieces of the puzzle or is clearly unable to. When evaluating the credibility and reliability of witnesses, it is helpful to identify and examine at least two independent facts that can corroborate the witness's truthfulness and accuracy. Very often these independent facts may be found in the evidence already gathered in the case, sometimes the investigator must seek them out.

For example, if a witness states that he or she saw the attack on the way home from work and you know the attack occurred at 6:35 p.m. try to verify what time he or she left work by talking to other employees. The investigator should be able to identify at least two independent facts that corroborate the witness's account. The existence of any fact that materially contradicts the witness's account must be taken very seriously and investigated until the investigator obtains a satisfactory explanation or dismisses the witness's account as unreliable.

#### Statements that are against self-interest

Another powerful test of credibility is whether or not a witness's statement is against his or her own self interest. The fact that a witness knowingly and voluntarily exposes himself or herself to a substantial risk can demonstrate the truthfulness of the statement. Statements against self-interest fall into two categories. The first category would be those cases in which the statement itself incriminates the witness and exposes him or her to possible criminal prosecution. A witness who is willing to risk criminal prosecution by talking candidly about an event is likely to be telling the truth.

Consider the following example:

Private Ramirez goes to a human rights investigator's office and volunteers to provide information about the death of Jose Gonzalez. Private Ramirez states that he and three other soldiers were ordered to abduct Mr. Gonzalez and beat him severely for his attempt to unionize local factory workers. He describes in detail the beating that he participated in and states that when it was over they left Mr. Gonzalez at the side of river. Ramirez claims that he did not intend to kill Gonzalez and only beat him because he was ordered to do so. Since discovering that Mr. Gonzalez has died he has felt very guilty and remorseful for his participation in the beating.

In this case Private Ramirez has implicated himself in a very serious crime. His voluntary admission of such a serious act can be considered compelling evidence of the truth of his statement. Such statements have inherent reliability because of the jeopardy they place the witness in. However, investigators should be careful to examine a statement like the one above to ensure that the witness has not minimized his or her involvement in the crime. There are situations in which it may be in the suspect's self-interest to come forward voluntarily with a damaging, but not completely truthful account. A suspect who fears eventual capture may seek to place himself or herself in a better position by coming forward with an account that minimizes his or her involvement in a case.

The other category of statements made against self-interest involve those witness's who place themselves and their families in jeopardy by virtue of their cooperation. Very often witnesses will voluntarily place themselves in harm's way because they believe strongly in the importance of holding a



human rights violator accountable for his or her actions. The fact that a witness places himself or herself in serious jeopardy by cooperating with investigators is a good indication of the witness's credibility.

It is important to keep in mind that statements against self-interest only support a witness's credibility and not his or her reliability. An investigator should always remember that **even a truthful witness can be mistaken**. The statements of these inherently credible witnesses must still be carefully and critically examined to ensure that they are also reliable.

## **Evaluating Documentary Evidence**

Documentary evidence, like physical and testimonial evidence, must also be evaluated before it can be relied on. Reliable, accurate documents provide compelling information to a case while false or misinterpreted ones can be misleading. The investigator must critically examine and assess all documentary evidence to ensure that it passes the test of reliability before relying on it.

The first question in evaluating a document is whether or not it is authentic. Is the document in the possession of investigators the original document? Is it a certified copy? What guarantees are there that the document was not forged or altered before it was given to the investigator. Just as with any other piece of physical evidence, the investigator must examine the *chain of custody* of the document. He or she must account for everyone who has had possession of the document and assess the likelihood that it may have been altered from its original state. With modern photocopiers, scanners, and computers it has become easier to create forged documents. The investigator must examine and evaluate the document to ensure that it is not a forged or altered document.

Another consideration when evaluating documentary evidence is the credibility and reliability of the document's author. The document is only as reliable or credible as the person who filled it out. The most reliable documents are those documents, which are filled out in the regular course of a business or organization. These records are routinely filled out by workers who usually have no connection to the case. Sometimes they have been filled out before the incident and therefore before any motive to falsify existed. One important question to ask is: was the document filled out at the time of the observation? Documents and logs filled out days or weeks after the events recorded in them should be looked upon with caution. The lapse of time increases the likelihood that the observations recorded there are mistaken or have been influenced in a way that makes them unreliable.

For example, logs of prisoner transfers are routinely kept by prison personnel. These logs may accurately track the movements of prisoners and which prison officials had custody of them. If a prisoner is mistreated these logs can be helpful in identifying those responsible. If copies of these logs are obtained before anyone alters them, they can provide information that helps solve the case.

The final consideration when evaluating a document is to consider the limits of the information the document provides. An investigator must be careful not to assume there is more information in a document than its original author intended to include. Do not read more into a document than it actually says. A document is only probative if the information gleaned from it is the same as the author intended to record.

Consider the following example:

A local prison uses a prisoner admission sheet each time a new prisoner is brought to the prison. An investigator has obtained a copy of the victim's admission sheet and is interested in what it says about the prisoner's physical condition at the time he was admitted to the prison. The prison official, who filled it out, left the section marked



"Prisoner's Condition" blank. This section is the only one left blank on the form. The investigator interprets this blank to mean that the prisoner was not injured at the time of his admission. Further investigation would have revealed that this section used to be filled out by the prison nurse but since the prison no longer had a nurse that section was left blank for every prisoner.

Additional investigation into who generated the document and the circumstances under which it was created is often necessary before a document's true worth can be assessed.

## Section 9.3 The Investigative Process

As with all professional pursuits, an investigation into an alleged human rights violation benefits from an organized and well thought-out approach. A systematic approach is an important part of the investigation and ensures that it achieves its primary objective of uncovering evidence of the truth. A systematic approach to the investigation is something that should be given consideration before the investigation begins. If more than one investigator is to work on the investigation all the investigators must agree on how to approach it.

The bulk of this book has dealt with systematic approaches to the various tasks facing the investigator. Earlier chapters have dealt with systematic approaches to the collection of physical evidence, the documentation of injuries and the interviewing of witnesses. This section will discuss how to apply a systematic approach to the overall investigation. There are ways in which to integrate the various tasks, procedures, and decisions of an investigation to ensure that the entire investigative process proceeds in a professional and organized manner.

Just as each of the earlier chapters divided the complex tasks into smaller steps, this section will discuss each of the four phases of the investigative process. You were first introduced to these four phases in Chapter Two. In this section I will discuss them in greater detail and suggest ways of getting the most out of each phase. At the outset it is important to mention that the division between phases is never a clear one. It is entirely probable that during an investigation the investigator will engage in activities from more than one phase at a time and even return to tasks I describe as belonging to phase one. These divisions are not meant as steps or markers on a one way path. Instead they are "mind-sets" or paradigms the investigator can use to maximize his or her efforts at a particular stage of the case. It is entirely proper to fluctuate between these phases in response to the particular circumstances of each investigation.

Throughout this discussion I will continuously refer to an *investigative plan*. An *investigative plan* is simply a statement of the goals and tasks that are necessary to further the investigation. An *investigative plan* is not a complex document but rather a plan of how the investigation should proceed and what investigative steps should be taken. For investigators working alone I suggest that a plan be drawn up during phase one and revised at the conclusion of the first, second, and third phase. If an investigative team is working together on a case I suggest that a plan be drafted soon after the investigation begins and be updated and amended each time the team has a meeting. The *investigative plan* should develop throughout the course of the investigation to respond to evidence that has been gathered and obstacles that have been encountered. The *investigative plan* is not something to constrict the investigator's efforts but to integrate them into the overall goals and direction of the investigation.

It is very important for investigative teams to have regular meetings. Meetings are very important to coordinate the efforts of several investigators. Meetings also serve to combine the experience, intuition, and common sense of the investigators into a powerful investigative tool. Having the entire group of



investigators evaluate the evidence gathered to date as well as brainstorming about how to proceed is an enormous asset to the investigation and always results in a better *investigative plan* than one devised by the lead investigator alone.

I suggest two types of meetings: a daily meeting and a weekly meeting. The daily meeting should last no more than 10 minutes. It should be a brief concise meeting in which each investigator states what tasks he or she will undertake that day and what obstacles he or she expects to encounter. Each investigator must be aware of what the others are doing and this short meeting ensures that they do. Investigators who can help or have suggestions about how to overcome the obstacles mentioned are encouraged to briefly describe their suggestions. At the meeting the next day each investigator should summarize the result of his or her previous day's work before describing his or her plans for the day.

It is important that the meeting take no longer than ten minutes and that it is always viewed by the investigators as a useful productive tool. The meeting can never be an impediment to "getting to work" but should facilitate accomplishing the work of the day. I suggest that the meeting be held standing up. I find that once people settle into chairs it is difficult to confine the meeting to ten minutes. Standing around in a circle keeps everyone focused on the brevity and succinct purpose of the meeting. This "huddle" serves as a continual reminder to all present that the limited purpose of the meeting is to accomplish the immediate tasks for the day in much the same way as the players of American football gather for a few seconds before each play to discuss what each player must do.

The second meeting is the weekly meeting. The purpose of this meeting is broader than that of the "huddle." The purpose of this meeting is to encourage team collaboration in solving the case or the significant impediments in an investigation. The particular focus of these meetings will shift depending upon the phase of the investigation. In essence these meetings seek collaboration on four things:

- ♦ What evidence do we have so far?
- What does the evidence we have tell us about what happened?
- ♦ What investigative steps should be taken next?
- What are the obstacles to a complete comprehensive investigation?

The following sections will describe in greater detail each investigative phase. It will discuss the concerns and goals of each and make suggestions for the team meetings and investigative plans.

These meetings can also be effective training tools for the investigators. Inexperienced members of the team can see and model the thought processes of experienced investigators and even experienced investigators will learn from time to time from the fresh perspective of a new trainee.

## Phase One: "Casting the Net"

The first phase of the investigation is the easiest to describe and the hardest to implement. At the initial stage of an investigation the simple goal of the investigation is to gather as much relevant evidence as possible. This first phase can be likened to a fisherman casting a net to catch as many fish as possible. A fisherman fishing for a particular type of fish must decide where and how to cast his net in order to maximize the number of fish he catches. Once he makes the decision where to cast the net he does so in a way that makes the most out of his net. He stretches the net out to its capacity to achieve this goal.



Once an investigation begins, the investigator must try to capture as much evidence as possible. Like the fisherman, the investigator must decide where to look for evidence and then cast his or her investigative net as broadly as possible to gather the most evidence. The investigative "net" is made up of the different investigators and the resources at their disposal. Just as the fisherman would not throw a net into the sea while it is still rolled up, the lead investigator should not assign several investigators to do the work of one when there is other evidence to be gathered. Assigning two investigators to interview a witness is foolish if other witnesses will leave the scene in the interim. The paramount concerns during the first phase of the investigation are time and evidence. Soon after an incident, evidence of what happened begins to deteriorate and disappear. This includes both physical and testimonial evidence. Once the investigation has begun, every effort must be made to expeditiously identify and "catch" evidence that is likely to be lost over time.

Soon after becoming involved in the case, the lead investigator must make decisions regarding what evidence will be collected first. The investigator must make a quick assessment of the entire case and prioritize the tasks of the investigative team to maximize their efforts. Decisions will have to be made as to which *investigative scenes* to process first. The lead investigator will have to decide whether or not witnesses should be interviewed before *investigative scenes* are processed.

This phase of the investigation can last several days depending upon the case. Very often, when an investigation begins, there is an awful lot of ground to be covered. The amount of potential evidence can be overwhelming and it can take several days to gather all the evidence that is apparent at this stage of the investigation. This phase begins to draw to a close when it appears that all of the evidence available has been gathered or if it is inaccessible to the investigator, that it has been identified.

During this phase, it is important that the investigators meet on a daily basis for a "huddle." The first huddle should occur soon after the investigation commences during which the lead investigator divides up the most important tasks to be completed immediately. These "huddles" should continue each day before the investigators set out to accomplish their respective tasks.

During this phase the weekly meeting is a time during which the team should take stock of what has been gathered so far and collaborate to identify additional sources of evidence. The concern during phase one is not to spend a great deal of time evaluating evidence. The simple concern at this stage is: does a piece of evidence point to more evidence? Is there an evidence trail, which must be followed? There will be time later to discuss the strengths and weaknesses of individual items of evidence. The focal point at this time is, does this evidence point to more evidence which must be found? Do witnesses lead to other witnesses or physical evidence? Does physical evidence reveal the existence of additional witnesses or physical evidence?

Recall the example from Chapter Four, in which a press identification card was recovered from the scene of the assault at a public rally. While the identification card itself did not say much about what happened, it did lead to a reporter who was an eyewitness, and in turn to a television crew who recorded the assault on video. This investigator followed the evidence trail until it eventually led to a video of the attack. Viewing the video probably opened up new evidence trails leading to additional witnesses and evidence.

These meetings should be used to expand the coverage of the "net" to capture as much evidence as possible in the early days of the investigation. Very often a group discussion of the evidence with a view toward spotting new leads and potential sources of evidence will result in ideas and plans which would not have been thought of if individuals worked alone.



## Phase Two: "Discovering the Case"

Once it appears that all possible evidence has been gathered, the investigation will begin to move into its second phase. The time pressures on capturing evidence have subsided somewhat and the team is reasonably confident that they have identified most of the evidence in the case. It might be that the team couldn't gain access to all the evidence. Perhaps some is in the control of the government, but they have at least identified most of the evidence.

At this point the mind-set of the investigation shifts from "casting the net" to "discovering the case." I use the word discover here to remind the investigator to make the conscious and deliberate effort not to adopt the "horse blinders" mentioned earlier in this chapter. The investigator should "discover" the case and not "invent" it. An investigator "discovers" a case when he or she objectively examines the evidence and allows <u>it</u> to reveal the truth about what happened. An investigator "invents" a case when he or she examines the evidence with preconceptions about what happened and tailors the "truth" with a biased assessment or manipulation of the evidence to fulfill what he or she believes the "truth" to be. The investigator must examine the evidence without using strained and contorted reasoning to arrive at the conclusion the investigator hoped for. At the start of an investigation an investigator may have strong beliefs regarding who is responsible for the crime. It is easy for the investigator to unconsciously view the evidence and be blind to facts that point to other suspects. It is not enough to remain alert for these biases because they are most often unconscious. The investigator must maintain a continual and deliberate vigil to ensure that evidence and the evidence alone determines the investigation's reconstruction of the event.

In this second phase the investigator begins to evaluate all the evidence in the case. The investigator should do a preliminary assessment of each witness and identify those witnesses who appear most reliable and credible, and those who seem the least. Begin the process of evaluating each witness's testimony against itself and comparing it to the statements of other witnesses and the physical evidence in the case. At this stage, it is too early to completely dismiss or rely solely on a particular witness's testimony. Form tentative opinions to help design the next course of action and reserve an ultimate decision as to each witness's value until the next phase of the investigation. Do some witnesses seem unduly nervous? Is there something about the behavior of the victim or witness that should cause the investigator to be concerned? Each piece of physical or documentary evidence should also be reviewed. Investigators should evaluate its relevance, authenticity, and probative value, before considering what it contributes to the case.

During this review of the physical, testimonial and documentary evidence in the case, the investigators should question whether or not they have acquired all the evidence. It is very likely that the investigators did not ask the initial witnesses who were interviewed important questions because the investigators did not know enough about the case themselves. The investigators should consider re-interviewing witnesses in order to glean as much information as possible from them. These *follow-up interviews* can be brief and may consist of only a few questions. They are important because they may gather important information from the witness that was not obtained during the *preliminary* or *comprehensive interviews*.

This second phase of the investigation marks the beginning of a preliminary assessment of the evidence gathered so far and the beginning of a search for patterns, directions, and indications of what the evidence reveals. In doing this preliminary assessment, some facts should begin to emerge as more likely than others. A vague picture may begin to develop regarding who might be involved as well as what they might have done. One of the tasks during phase two of the investigation is to identify all of the possible theories of the case. In most cases, at this early stage in the investigation, the evidence may appear to point to a single version of the events and a single suspect. If the investigator remains truly objective, he or she will be able to identify several different scenarios that are consistent with the facts. At this early stage the



investigator must be careful not to latch on to any one theory of the case too soon. Instead, the investigator should carefully identify all possible theories of the case which are consistent with the evidence so far. Consider the following example:

A victim is found dead in his house. He has a rope around his neck that has been tied to a beam in the house. There are no signs of struggle except for a broken glass next to a table. The victim's wife informs the investigator that for several months now a soldier had been trying to extort money from her husband and that he refused. Her husband had become increasingly fearful of the soldier. On the day of his death she went to the market to sell vegetables and when she returned she found her husband dead.

In this particular case there is evidence that a soldier had a motive to harm the victim and possibly made threats in the past. This particular theory may be the most appealing to the investigator. However, the facts above are also consistent with the victim having committed suicide. At this early stage of the investigation the investigator should not decide between these two possible theories but identify them both and assess their relative strengths.

The investigative meetings during phase two should develop theories of the case. Investigators should be encouraged to volunteer their theories of the case as well as a list of possible suspects. Once all the theories are out on the table, the investigators should then go through each one and discuss what evidence supports the theory, what evidence contradicts the theory and what additional avenues of investigation should be considered in order to test the theory. These avenues of investigation are designed to uncover facts that will either support or eliminate the theory.

The investigators should collaborate in creating a list of all possible suspects. I recommend placing the names of the suspects on a blackboard and then listing all of the evidence that points to each suspect under his or her name. The investigators should then brainstorm about what additional evidence might exist that would confirm or eliminate each suspect from the case. What evidence might there be of a motive? Is there evidence that the suspect had an opportunity to commit the act? What identification evidence is there? Is there a photo of the suspect available for use in a photo array? How do the physical characteristics of each suspect compare with the physical descriptions provided by the witnesses? Is there a way of confirming witnesses' descriptions that would include left or right-handedness, scars, or gold teeth?

During this phase the investigator should also consider whether or not any *exculpatory evidence* exists that might exonerate any of the suspects. If the investigator becomes aware of any evidence tending to exonerate or prove that a suspect is innocent he or she has a duty to document it and fully investigate it.

## Phase Three: "Exploring the Case"

The third phase of the case is marked by a return to the careful search for evidence. Once the investigator has identified all possible theories and suspects in the case, he or she must set out to gather evidence that either supports or eliminates each theory and suspect. During this phase of the investigation the investigator should engage in a more thorough and careful evaluation of each witness. The investigator must examine each witness's statement carefully and do a complete assessment of each witness's credibility and reliability. At this stage of the investigation all of the investigators should be very familiar with the evidence gathered so far. The investigators as a group should discuss each witness. Discuss the credibility and reliability of each witness. Discuss their testimony. Attempt to come to some group consensus regarding the witness and his or her testimony. Do most investigators believe what the witness has said? Are there parts of the account that most agree are credible and reliable and parts that are not?



Any doubts about a witness's account should be resolved at this stage. Sometimes during the course of an investigation it will become apparent that initially a witness was not completely honest or candid about something. During this phase the investigator should re-interview the witness in a follow-up interview and confront him or her regarding the problems in his or her testimony. It is during this phase that the investigator begins to classify witnesses as either reliable or unreliable.

## Evaluate each piece of physical evidence

During the third phase of the investigation the investigator must also take a closer look at all the physical evidence gathered up to the present. Now is the time to resolve any problems involving evidence. The investigator should evaluate each piece of evidence with a view toward forensic testing. Given limited resources the investigator will not be able to have every test performed on every piece of evidence. The investigator should make decisions about which tests are the most important and which will be the most probative in the case.

## Identify any gaps in the case

One of the most important tasks during this phase of the investigation is to identify any gaps that exist in the case. Gaps are missing "pieces" to the puzzle. Perhaps the murder weapon has not yet been found. Perhaps there is evidence that more than one suspect was involved but you have not been able to determine how many or who they were. Perhaps you still cannot account for where the victim was in the hours before the attack. During this phase of the investigation the investigator must identify these gaps and develop strategies for finding evidence that will fill in these missing pieces.

In some cases there will be gaps in the case because the evidence or information is not readily accessible to the investigator. In many of these cases it will be in the possession of the government. During this phase the investigators must carefully consider if the material is in fact unavailable and satisfy themselves that there are no reasonable means of obtaining the information. If this is true the investigators should consider if there are other ways to gather the same information.

## Phase Four: "Building the Case"

At this point in the investigation the investigator should have a clear picture of what occurred and who is responsible. During phase three the investigator should have done further investigation to prove or disprove each of the theories of the case. At this point there should be clear and convincing evidence implicating one or more suspects as well as a relatively clear picture of what happened in the case.

The primary focus at this stage of the investigation is to examine the facts of the case in light of the applicable law. At this point in the investigation the investigative team should have a clear idea about what violations of local and international law the suspects have committed. Each of those laws must be examined and the evidence must be examined in light of each law.

A thorough discussion of criminal and human rights law is beyond the scope of this book. The investigator will need to seek additional information or work with a human rights lawyer on this phase of the investigation. In essence, each crime is broken down into individual elements. An investigator must be sure that there is sufficient evidence on each element to prove the suspect's guilt.

For example consider that the crime of murder ordinarily has at least two elements

1) The suspect had the intent to cause the death of someone, and



2) The suspect did in fact cause the death of someone.

In the case of murder, there must be credible and reliable evidence that proves beyond a reasonable doubt that the suspect not only killed the victim but that he or she **intended** to kill the victim. An evaluation of the case may reveal that there is ample evidence that the suspect caused the death of the victim but little or no evidence that the suspect intended to kill the victim.

Consider the following example:

A victim is run over and killed by the suspect driving his army jeep. Interviews with the family reveal that the suspect had repeatedly threatened the victim in the past and harassed him for his work with an opposition party. The investigation has obtained a great deal of evidence about the killing itself. There are many witnesses to the death as well as forensic evidence connecting the suspect's jeep to the body of the victim. Other than the testimony of the family concerning the past threats, there is no other evidence that the suspect intentionally ran the victim over. If there is insufficient evidence then it is likely that a court would find that this was not a murder but a tragic accident.

During this final phase of the investigation the investigator should identify this shortfall in the evidence and develop strategies to determine if evidence of intent does exist and how to obtain it. Perhaps the suspect made statements either before or after the "accident," that indicated his intent to kill the victim. Perhaps witnesses saw the suspect parked waiting for the victim to cross the street before he sped up to strike him down. It is important that the investigators resist any temptation to color or embellish the evidence to meet legal standards governing the crime. The evidence is the evidence and must be allowed to speak for itself whether or not a crime or violation was committed.

## Explore all exculpative evidence carefully

In this final phase of the investigation the investigator must be sure that every reasonable effort has been made to explore any information that might exculpate the suspect. If the suspect has given an alibi it must be checked out. If there is reason to believe that the suspect was somewhere else at the time of the crime, that possibility must be explored fully.

#### Review paperwork in the Case Folder

Before concluding the investigation, the lead investigator should review all of the paperwork created during the investigation for any omissions or problems. Each document created by investigators should be complete, legible and should clearly identify which investigator is responsible for its content. Omissions, that are easy to correct while the investigation is still fresh in the investigators' minds, become difficult to correct as time passes. A careful examination to ensure that the investigation paperwork is in order should be conducted before closing the investigation.



## CHAPTER 9 SUMMARY

## **Questions for Evaluating Evidence**

The following questions will assist you when evaluating different types of evidence.

#### **Physical Evidence**

- 1. Is the evidence relevant? (What is its connection to the case?)
- 2. Is the evidence probative? (Does it provide useful information about the facts?)
- 3. Is the chain of custody good? (Could someone have tampered with the evidence?)
- 4. Is the tamper-proof seal intact? (Did someone tamper with the evidence?)
- 5. Could trace evidence have been contaminated?
- 6. Will forensic tests determine key facts in the case?
- 7. Should witnesses be shown the evidence? (Can they provide additional information?)

## **Testimonial Evidence**

(Evaluate everyone's credibility and reliability)

- 1. Is the witness providing eyewitness testimony or hearsay testimony?
- 2. Is the witness's statement consistent with itself? With the preliminary interview?
- 3. Is the witness's statement consistent with other witnesses?
- 4. Is the witness's statement consistent with the physical evidence?

#### **Documentary Evidence**

- 1. Is the chain of custody good? (Could someone have tampered with the document?)
- 2. Is the document authentic? (Could someone have forged or altered the document?)
- 3. Was the document kept in the regular course of a business or an organization?
- 4. Did the person fill out the document at the time he or she made the observation?
- 5. What is the credibility and reliability of the document's author?
- 6. Does the document really say all that you think it does?

## The Four Investigative Phases

- 1. Casting the Net The main objective is to gather as much of the physical, testimonial, and documentary evidence before it is lost or destroyed. Does each new piece of evidence lead to more evidence?
- 2. Discovering the Case The main objective is to study the evidence, develop theories of the case, and identify possible suspects
- 3. Exploring the Case The main objective is to test the theories. Search for additional evidence that will either prove or disprove each theory.
- 4. Building the Case The main objective is to examine the facts as revealed by the credible and reliable evidence in light of local and international law. Identify all the gaps in the case and search for missing evidence.





## Chapter 10

## THE INVESTIGATION REPORT

At the conclusion of the investigation it is important to draft an *investigation report*. The report is a summary of the investigation, the evidence gathered, and the investigator's conclusions. A report should be drafted even if the investigators never intend to make it public. The report is equally important in cases where the allegations that were investigated are determined to be meritless. In every case, the report serves to memorialize the investigator's efforts and the results of those efforts.

The following section will describe what information should be contained in the report. Depending upon the nature of the investigation, some changes to this format may be appropriate. The format of this report is **not** in the form of a model communication for the Human Rights Council or any other international body that receives complaints regarding alleged human rights abuses. The format is a general all-purpose format that contains all the essential information about the investigation. Once the report is completed it can become the basis for drafting correspondence with the various international human rights bodies and organizations.

For security purposes it is important to maintain the same anonymity for the witnesses that was maintained for the rest of the *Investigation Folder*. Any witnesses referred to in the report should be referenced by using pronouns or by their code number. Even if the report is not intended for public circulation at the time of its creation, protecting the identity of the witnesses will help ensure against an accidental disclosure of this information in the future.

It is important to use clear unequivocal language in the report. The investigator must use great care in drafting the report to minimize any chance of misinterpretation. The report must be clearly written in such a way that people reading it will not be misled about its conclusions or the strength of the evidence described in it. Investigators should be careful not to leave themselves open to charges of exaggeration or embellishment. The report must be patently objective and devoid of any bias or unfounded opinions regarding the case.

The following paragraphs will describe each of the sections that should be in the report as well as providing a sample of what a report should look like. The samples will be based upon the following fictitious case described below.

Roberto Suarez is a local factory supervisor who, seven years ago founded a small worker's publication called The <u>Worker's Friend</u>. The paper has traditionally dealt with issues of interest to factory and farm workers in his region. The paper is read by most of the literate workers in the area and a local radio program reads excerpts from it every Saturday afternoon.

In Roberto's area it is common for local businessmen to maintain close ties with military commanders. The commanders receive regular payments from the businessmen in exchange for

—

<sup>•</sup> The fictitious sample report in this chapter will refer to all witnesses by name in order to facilitate a clear understanding of report writing.



night-time security at their plantations and factories. It is also rumored that commanders help the businessmen avoid regulations and taxes governing the import and export of goods by helping the businessmen smuggle goods back and forth across the border.

Several months ago it came to Roberto's attention that some local plantation owners went to one of the commanders seeking help with a problem. The plantation owners complained that they were losing a great deal of crops to petty theft. They believed that local people were sneaking onto the plantations at night and stealing bananas, oranges, and coconuts from the plantation. The owners complained that these losses were great and immediate action was necessary. They also complained that they were unsatisfied with attempts by the local police and courts to solve this problem.

In response to the plantation owners' concerns Captain Maldonado began posting soldiers in the plantations to hide and catch these petty thieves. He established a make-shift prison in an old army barracks. Anyone caught taking crops was brought back to the make shift prison where the commander assessed "fines and restitution" on them. Their families were then notified that they would be held until the "fine and restitution" were paid. Most people held in this way were also given a moderate beating by the soldiers guarding them. Although the prisoner's families were allowed to bring them food, most of the prisoners suffered from hunger and poor treatment while held in the barracks. Most of the people were detained between one and two weeks until their families could raise the money demanded by the commander.

Although Roberto had avoided controversial issues in the past, he took a strong position on this practice after his brother-in-law was held for three weeks in the barracks. He began to publish a series of highly critical reports on the practice in his paper, which caught the attention of the captain. One day, he was picked up by several soldiers and escorted to Captain Maldonado's office where the captain offered him coffee and discussed the merits of the make-shift prison. He explained his rationale for it and described how the plantation owners had commended him for reducing the amount of crops stolen from their fields. He asked Roberto to cease publishing stories critical of the practice and told him, "I cannot allow you to bring unrest to my district or undo the progress I have made combating the theft of crops." Roberto was then driven home by some soldiers.

In his next paper, Roberto not only continued to criticize the local commander but described in detail how he was picked up, escorted to the captain's office and admonished to cease printing these articles. This infuriated the captain. Two days later, Roberto, while walking home, was stopped by two men in ordinary civilian clothes. Each one grabbed one of his arms and escorted him into a thicket of bushes where they severely beat him. Although he did not see what they used he is sure that they used a pipe or bar to beat him around the head and legs. He suffered blunt trauma injuries to his head, his forearms, and his knees. He was able to see both of their faces and was sure that they were soldiers because of their military haircuts and the boots they were wearing. He knew one of the men as Jose Rodriguez because he had come to Roberto the previous year and asked him to publish an obituary for his father. Roberto believes the name of the other man was Jorge Gonzalez but was unsure because he only knew Gonzalez from watching a volleyball match between the soldiers and police last Independence Day.

Roberto went directly to the hospital where he was treated for his injuries and then went home. His wife convinced him to go to the local office of <u>Justice for All</u> a private human rights organization. There he met Maribel Espinosa, the investigator on duty that day. After telling her the above account, she went with Roberto to the scene of the attack. Investigator Espinosa took photographs of the scene as well as Roberto's injuries. The only notable feature of the attack at the scene was a series of fresh boot-prints left in the mud. She took several photographs of these with a ruler placed next to them in the photograph. In the bushes approximately 100 meters from where



the attack took place the investigator found a tire-iron that appeared to have blood on it. She preserved this as evidence. Investigator Espinosa asked Roberto for the clothes he was wearing at the time of the attack.

In addition to Roberto, the investigator interviewed Miguel Sanchez who saw the two men accost Roberto but did not see the actual beating. Miguel knew Roberto to have large gambling debts, and thought the men were there to get their money from Roberto. The investigator also talked to the nurse and doctor who treated Roberto and recorded their observations of his injuries. She also obtained a copy of his medical records.

The investigator sent the tire-iron for forensic testing which determined that there was blood on it consistent with Roberto's blood type. Scientist were unable to recover usable latent prints from the tire-iron.

Although the captain did respond to the investigator's request to be interviewed he denied that he or his men had anything to do with Roberto's beating. He said that both Jose Rodriguez and Jorge Gonzalez could not have been involved because they were in a remote village on maneuvers. He volunteered that Roberto's recent articles had angered many and he was not surprised at the attack.

## Section 10.1 Summary

The report should begin with a summary. The summary should be a short description of the investigation and its findings and be no longer than two pages. The summary should include at a minimum:

- 1. The allegation that was investigated.
- 2. The scope and limitations of the investigation.
- 3. A summary of the physical, testimonial and documentary evidence gathered.
- 4. A short statement of the facts as supported by credible and reliable evidence.
- 5. A short statement of the government's position if applicable.
- 6. A list of the local and international laws the investigator believes were violated in the case.

Although this is the first section of the report, it is typically written after all of the other sections have been completed. It is important that this section be concise and yet include every significant aspect of the investigation. Great care should be taken in writing this section because in the event the report is made public, journalist will likely quote excerpts from this summary.

## Hint Hint

## "Complainant" vs. "Victim"

When referring to the victim in the investigation report use his or her code number or the word "complainant." Using the word "complainant" recognizes that some "victims" file false complaints. Using the word "complainant" indicates the investigator is aware of this and has remained objective throughout the investigation process.

## Sample summary

The investigation described below is into the allegations of Mr. Roberto Suarez that on April 9, 2001 two soldiers attempted to kill him on Street # 5 in Puerto Biscano in the country of West Equaduros. This investigation discovered credible and reliable evidence of the following:

Mr. Suarez is a factory supervisor



in Puerto Biscano. Mr. Suarez also publishes a small weekly newspaper called <u>The Worker's Friend.</u> At the end of February 2001, Mr. Suarez published a series of articles critical of Captain Maldonado, head of the army unit stationed in Puerto Biscano. These articles accused the captain of establishing an illegal jail for petty thieves in the town (this investigation did not investigate these allegations). On April 2, 2001, Mr. Suarez was taken to Captain Maldonado's office by four soldiers. Although the soldiers never used any force and Mr. Suarez never attempted to walk away from them he believed he would have been forced to go with them had he tried to refuse. At the office, Captain Maldonado asked him to stop publishing the articles and warned him that he could not allow him to cause unrest in the captain's district or upset the progress the captain had made reducing the theft of crops. He was then released unharmed.

Mr. Suarez continued his criticism of the captain in his next issue and described the encounter in the captain's office. On April 9, 2001, two days after the paper was published, Mr. Suarez was stopped by two men in civilian clothes on Street # 5. Mr. Suarez was on his way home from work. Each of the men grabbed one of Mr. Suarez's arms and escorted him into the thicket of bushes at the side of the road. Once inside the bushes, the men severely beat him with a tire-iron. He had numerous blunt force lacerations on his head and body that required medical treatment. Mr. Suarez is able to positively identify one of his attackers as Jose Rodriguez, a soldier under the command of Captain Maldonado.

Mr. Suarez is the only eyewitness to the attack although another witness saw the two attackers force Mr. Suarez into an area hidden by thick bush. Mr. Suarez's claim that he was severely beaten with a tire iron is corroborated by medical evidence which reveals that he had 13 lacerations, 5 subcutaneous haematomas and a fractured right arm. A tire-iron was recovered close by and forensic testing matched the blood on the tire-iron to that of Mr. Suarez.

The government's position as stated by Captain Maldonado is a complete denial of any involvement in the beating. Captain Maldonado asserted that he believed the attack was related to the complainant's gambling debts. He also offered an alibi for the two soldiers Mr. Suarez identified. Additional investigation indicated that while that alibi was correct for one of the soldiers it was incorrect for the other. Mr. Suarez's identification of the other soldier was based on a previous business exchange that Mr. Suarez had with him.

There is credible and reliable evidence to indicate that Mr. Suarez was violently assaulted in an attempt to thwart him from exercising his right to freely express his views as guaranteed by the Constitution of West Equaduros and Article 19 of the *International Covenant on Civil and Political Rights*.

## Section 10.2 Scope of the Inquiry

This section of the report should clearly describe the parameters of the investigation. It should begin with a complete description of how the investigators came to investigate this particular case. It should define the boundaries of the investigation. In this case the report should clearly state that the investigation only concerns the alleged assault of Mr. Suarez. The report should also clearly state the subject of the investigation so that it is not misunderstood. An equivocal statement of the inquiry's scope leaves the report open to misuse by those who might want to use it to condemn conduct not covered in the investigation.

## Sample report

On April 9, 2001, Roberto Suarez made a complaint to Maribel Espinosa, an investigator with <u>Justice for All</u>. In that complaint he alleged that an attempt was made on his life for exposing a practice of illegally detaining people alleged to have stolen crops in circumvention of local and



international laws. The scope of this investigation is limited to the alleged beating of Mr. Suarez by government soldiers on April 9, 2001. The other allegations made by Mr. Suarez regarding the unlawful imprisonment of people is beyond the scope of this particular inquiry.

## Section 10.3 Background Information

If it is pertinent to the investigation, the report should include a brief description of the political and social climate surrounding the investigation. It may be necessary to describe the context in which the incident as well as the investigation occurred for the reader of the report to fully comprehend the investigation's findings. Avoid long detailed descriptions; once the context has been brought to the reader's attention he or she can seek out additional background information if necessary.

## Sample report

Since a military coup in 1998 and the installation of Jorge Camacho as president, the military has enjoyed a period of unaccountability and impunity. Despite relative peace since the coup, there are regular reports of soldiers and military commanders engaging in corruption and acts of impunity. Although there is a well functioning police department and court system, both of these are intimidated by the military and cases involving soldiers are routinely dismissed or ignored. In the last three years there have been reports of close ties between the military and local organized crime. It has been alleged that military commanders offer "protection" to businessmen and organized crime leaders engaged in illegal logging, drug production, and smuggling. It is unlikely that there could be any effective prosecution of a military figure in the local courts at this time.

## Section 10.4 Investigative Team

The next section should describe the investigative team who investigated the case. It should list each member of the team, describe his or her role in the investigation and give a brief summary of the investigator's training and background. If any of the investigators has prior dealings with any victim, witness, or suspect, that should be clearly stated along with any precautions which were taken to ensure impartiality (such as having another investigator interview those witnesses who knew someone on the

## THE INVESTIGATION'S MANDATE

The decision about what to investigate can at times be a political decision. The individual investigator may not have much control over the scope of his or her mandate. The investigator's report should clearly define the mandate of investigation. It may be helpful to spell out the investigation's mandate in both positive and negative terms, spelling out both what was examined and what was not. Any credible evidence that is uncovered as a result of the investigation, although not directly within the mandate, should be noted in the report.

For example, an investigation is limited to the activities of a local police battalion. In pursuing that investigation, investigators find evidence of violations by a military unit and a group of insurgents. Even though these additional findings are beyond the mandate of the original investigation, they should be noted in the investigation report because they were discovered during the investigation.



## investigative team.)

The report should indicate whether or not the suspect in this case has been investigated in the past by the organization and describe what if anything resulted from that investigation. Similarly, the report should also indicate if there are pending investigations of any suspect, victim, or witness in the present case.

## Sample report

<u>Justice for All</u> is a small non-governmental organization that monitors human rights in several South American countries. Maribel Espinosa was the investigator responsible for the investigation of Roberto Suarez's allegations. Ms. Espinosa has been a human rights investigator for 4 years. She participated in several regional training workshops where she learned the rudiments of criminal investigation, the identification and preservation of evidence, and interviewing witnesses. Ms. Espinosa has had no prior dealings with either the victim, the witnesses or the suspects in this case. <u>Justice for All</u> has never investigated Captain Maldonado or his unit before but is currently looking into allegations that he has established an illegal jail in an old army barracks where accused thieves are unlawfully held.

## Section 10.5 Methodology and Limitations

## Chronology of the investigation

This section should describe the chronology of the investigation. It does not need to be an exacting diary of the investigative team's work but it should permit readers to learn when significant events in the investigation occurred. The dates and locations that *investigative scenes* were processed should be included as well as the dates and circumstances of significant witness interviews.

This section should also include any significant events of the investigation itself. If the investigation was suspended for a period of time, that should be detailed. If the investigators worked in cooperation with other agencies for some part of the investigation that also should be described.

## How were witnesses located?

There should be a description of how witnesses were located and interviewed. If witnesses were "provided" by government officials or an interested party there should be some mention of that. The report should indicate that investigators located witnesses on their own if that is the case.

## What investigative scenes could not be examined?

This section should describe any evidence that the investigators learned about but could not gain access to. There may have been several investigative scenes that could not be processed for various reasons. Each investigative scene should be mentioned and the anticipated evidence described as well as the reason why that investigative scene was not processed.



## Sample report

<u>Justice for All</u> first learned of the allegations on April 9, 2001 when the complainant, Roberto Suarez came to the office to complain that two soldiers attempted to kill him. He was very upset and was briefly interviewed at that time. He described the location where he was attacked and, at the request of the investigator, he took her to the scene. The scene of the attack was photographed and processed for evidence.

The investigation was limited in that some evidence, in control of the local army commander, was not available to the investigator. The investigator requested: a copy of the duty roster for the two soldiers the complainant alleged attacked him (Jose Rodriguez and Jorge Gonzalez); photographs of the two men, to use in an identification procedure and an opportunity to interview them. These requests were denied. Captain Maldonado did give a statement to the investigator.

The day after the attack the investigator visited the public hospital where the complainant was treated and interviewed the nurse and doctor who were primarily responsible for his care. The investigator also obtained the medical records of his treatment.

In an attempt to find additional witnesses, the investigator questioned approximately 20 people with homes in the area of the attack. One of these people was Miguel Sanchez who was a witness to part of the incident. All other people claimed that they did not hear or see anything related to the matter being investigated.

Contact was made with <u>Forensic Scientists for Human Rights</u> and the tire-iron, believed to be the weapon used, was submitted for forensic analysis. That testing took 4 months.

## Section 10.6 Procedural History

If the investigation included monitoring a trial or court proceeding, it is helpful to write a paragraph or two describing the procedural history of the case. Note the date of each court proceeding and summarize what occurred on that day. It is important to include the names of all those present at the proceeding, especially the accused and the accused's lawyer.

## Section 10.7 Summary of the Physical Evidence

In this section describe each piece of physical evidence that was documented or preserved as evidence in the case. This section should describe the condition of the object, where it was found, and who found it.

There may be several items of evidence that investigators recovered and later determined to be irrelevant to the inquiry. Although it may not be necessary to fully describe these objects, each should be briefly mentioned. Every item taken into custody by the investigative team should be included somewhere in this section.

When discussing the evidence it may be appropriate to comment on its relevance to the case and certain conclusions which were drawn from it. Describe an object's relevance to the case if this is not obvious. While a "bullet recovered from the deceased" may be self-explanatory and require little explanation, a "handwritten note containing threats" may require some explanation about its import to the case.

If possible a copy of the *investigative scene* photographs as well as any other photos of significant evidence should be included with the report.



## Chain of custody

The report should account for the present location of all physical evidence as well as a complete *chain of custody*. If the evidence was moved to several locations, each one must be described and those people who had control over the evidence must be named. The report should include the present location of the evidence as well as its availability for future examination.

## Forensic testing.

This section on forensic testing should describe any test performed on any of the physical evidence. If forensic tests were performed on evidence, the report should describe the test, indicate the name of the person performing the test, and summarize their conclusions. A copy of all forensic reports must be attached to the Final Investigation Report.

## Sample report

The following is a summary of all physical evidence in the case

#### Tire-iron

This item of evidence was recovered 100 meters from the place where the complainant indicated he was attacked by the two men. The tire-iron appeared to have blood on it. The item was photographed, collected, and preserved in order to preserve trace evidence on it. It was submitted for forensic testing. Forensic testing determined that the tire-iron did in fact have blood which was consistent with the blood of the complainant. Forensic scientists were unable to obtain any usable latent prints from the tire-iron.

The tire-iron was recovered by the investigator and placed in a tamper-resistant evidence envelope. She maintained it in a safe within her sole control until June 9, 2001 when it was placed in a sealed pouch and sent to <u>Forensic Scientists for Human Rights</u>. The evidence was returned to the investigator on October 28, 2001 in the same sealed pouch with an endorsement by Samuel Johnson, the scientist who conducted the test. Since its return the evidence has remained in the exclusive control of the investigator.

## Victim's clothes

On the same day of the alleged incident the investigator requested and received from the complainant the clothes he was wearing at the time of the attack. The clothes consisted of:

- 1. a gray short-sleeved tee shirt, which appeared to be mostly covered with blood;
- 2. a pair of black jeans having what appeared to be blood spatters (there also appeared to be mud and dirt on the jeans); and
- 3. a pair of old athletic shoes which appeared to have spatters of blood on them

All of the above were photographed, collected, and stored in order to preserve trace evidence. At the time of this report no forensic testing had been performed on these items.

The above evidence was placed in a safe at <u>Justice for All</u> and was under the exclusive control of the investigator. It has remained there since the day it was taken into custody.



## Duty roster

From previous investigations the investigator was aware that the military maintains a *Duty Roster* every day indicating where each soldier is assigned for the day. The investigator believes the *Duty Roster* for April 9, 2001 would indicate where both soldiers (Jose Rodriguez and Jorge Gonzalez) were assigned that day. Verbal and written requests were submitted to Captain Maldonado for a copy of the *Duty Roster*. The requests were denied.

## Section 10.8 Summary of the Documentary Evidence

In this section describe each piece of documentary evidence that was obtained during the course of the investigation. A description of each document should contain an assessment of its authenticity and the credibility and reliability of the person who filled it out.

## Sample report

The following is a summary of all documentary evidence in the case

Complai	nant's
Medical	Records

The investigator obtained a copy of the complainant's medical records on April 10, 2001, the day after he was treated at San Cristoba hospital. With the complainant's authorization, the entire medical record was turned over to the investigator who photocopied them herself. Those records indicated that the complainant received 13 lacerations and one minor fracture of the forearm, which were consistent with being beaten with a blunt object. These records were filled out by Doctor Martinez and Nurse Escobar. Please refer to the *Summary of Testimonial Evidence* section for an assessment of their credibility.

## Copies of <u>The</u> Worker's Friend

Investigator collected six copies of <u>The Worker's Friend</u>, the newspaper published by the complainant. The six copies were published in the three months preceding the alleged attack and include six articles critical of Commander Velasquez. The investigator obtained these copies from the local library and there is no reason to believe that they are not the actual papers.

## Section 10.9 Summary of the Testimonial Evidence

The next section of the report should summarize the testimony of all of the witnesses. Although the summary should not be a verbatim account of the witnesses' statements, all significant aspects of the testimony should be summarized. The summary should only contain biographical information that is absolutely necessary to an understanding of the witness's account. The summary should include a description of how the statement was preserved (audiotape, handwritten statement, etc.)

The summary should also contain the investigator's assessment of the witness's credibility and reliability. Briefly describe any facts that are relevant to the witness's credibility and reliability so that anyone reviewing the report can weigh the statements accordingly.



## Sample report

The statement of all the witnesses below was digitally recorded by Investigator Espinosa

#### Roberto Suarez

Mr. Sanchez is an educated and respected member of the local community. He was born in the area and was one of the few afforded an opportunity to attend university where he obtained a degree in journalism. He returned to the village to take care of his aging parents and in time settled here to raise a family. He is a supervisor in the Uni-Year rubber factory where he has worked for 18 years. Mr. Sanchez has a long history of community service and has run a local literacy program for over 10 years. Seven years ago he established The Worker's Friend, a small (usually 10 pages) weekly newspaper which contains summaries of national and international news as well as articles of interest to the local community of mostly factory and farm workers. The paper rarely includes controversial topics although on occasion it has dealt with subjects of a personal interest to Mr. Sanchez.

Mr. Sanchez alleges that several months before the attack he began to write about a practice whereby the local military commander detained people caught stealing crops from local plantation owners and held them until their families paid a ransom for their release. He continued to update the community on the status of the illegal prison in every edition of his paper. He alleges that the local military commander had him abducted and brought to his office where he threatened him if he did not cease printing the articles. He was held there for about one hour before being released.

In the next edition of his paper he recounted his experience with the commander. Within a few days he was again abducted, this time by soldiers dressed in civilian clothes. He was dragged into the bushes where they tried to kill him by repeatedly striking him with a bar.

He recognized both of the soldiers and can identify them by name. One of the soldiers was Jose Rodriguez. Mr. Suarez knows him because last year Mr. Rodriguez came to his home to ask him to print an obituary for his father. Mr. Suarez recognizes the other man as Jorge Gonzalez whom he knows from viewing a volleyball match that Mr. Gonzalez played in. Mr. Suarez drew a diagram of the attack. A copy of the diagram is attached to this report.

Credibility and Reliability - Mr. Suarez was confronted with the assertion by two witnesses that the attack might have been related to large gambling debts of his. Mr. Suarez was candid about his gambling problem and the money he owes. He expressed certainty that the attack had nothing to do with his gambling debts. He offered to put the investigator in contact with the people to whom he owes money so that it might be investigated further. The investigator also observed that Mr. Suarez was wearing a heavy gold chain around his neck at the time of his interview and other witnesses confirmed that he always wore this necklace. Common sense would suggest that if the attack was related to money that he owed others, his attackers would have taken the gold necklace as partial payment. Mr. Suarez has a reputation in the community as a credible and reliable journalist and is respected as a non-biased reporter of local events.

#### Miguel Sanchez

Mr. Sanchez is a local farmer who lives approximately 1 kilometer from where the attack took place. He recalls that on April 9, 2001 at approximately 1:00 in the afternoon he had just herded his sheep and was bringing them home along the road. He saw Mr. Suarez walking along the road by himself (Mr. Sanchez said that everyone in the village knows Mr. Suarez). Very quickly, two men he had never seen before came up behind Mr. Suarez and each grabbed one of his arms. They forced him into some thick bushes along the side of the road. He heard Mr. Suarez cry out for help and heard several deep "thuds." He kept moving toward



his home because he was afraid his sheep might be scattered. Mr. Sanchez further stated that Mr. Suarez had a reputation of being a big gambler who lost a great deal of money and Mr. Sanchez assumed these men were people who were owed money by Mr. Suarez. He did not see anything after that and did not try to intercede. He never notified the police or tried to get help because in his experience "it is best not to get involved." He claims that he had never seen the two men before and could not recognize them again if he saw them.

**Credibility and Reliability –** Mr. Sanchez has no apparent motive to lie or falsify his testimony. He, like many local people, is very afraid of the soldiers stationed in the village. It is difficult to say whether that fear would prevent him from telling everything he knows. There is a possibility that he may have recognized the two assailants and is afraid to identify them. He was confronted with this possibility but maintained that he did not know the two men.

## Captain Maldonado

Captain Maldonado has been in charge of the local battalion ever since the coup of 1998. He is a distant cousin of the president and is originally from another part of the country.

The captain refused the investigator's request to interview the two suspected soldiers, to provide logs which would confirm their activities on April 9, 2001 or to provide photographs of them for use in an identification procedure. He denied that his soldiers were involved and suggested that the attackers were people who were owed gambling money by Mr. Suarez. Captain Maldonado also denied having any knowledge of Mr. Suarez's recent articles criticizing him and denied having Mr. Suarez brought to his office on April 2, 2001.

Credibility and Reliability – When considering Captain Maldonado's credibility it is necessary to recognize that as one of the primary suspects he has a motive to falsify or cover-up information and his refusal to cooperate with the investigator is some evidence that he has. While his claim that the suspects were out of town on military maneuvers was verified regarding Gonzalez, it appears to be false in the case of Rodriguez. His claim that he was unaware of any published articles criticizing him seems to be patently incredible. The paper is widely circulated, is read on the only radio station in the town, and has been widely discussed among the local population.

#### **Doctor Gabriel Martinez**

Doctor Gabrial Martinez was interviewed on April 11, 2001 at St. Cristoba Hospital where he works. He has a clear memory of treating Mr. Suarez. Mr. Suarez presented with 13 irregular lacerations to his body and at least 5 contusions (bleeding under the skin). Four of the lacerations were on the head, three were on the dorsal surface of the left forearm, five were on the dorsal surface of the right forearm, and two were on the upper back. All lacerations measured between 3 and 6 inches in length and appeared to be caused by a straight hard object. Mr. Suarez required 25 stitches to close the most severe of these lacerations and the remainder were bandaged. He also discovered a hairline fracture in Mr. Suarez's right forearm that was consistent with being struck with a blunt object. Neurological tests were normal and Doctor Martinez believes that Mr. Suarez will make a full recovery.

Mr. Suarez told Doctor Martinez substantially the same account he told the investigators.

**Credibility and Reliability –** Doctor Martinez has no connection with the case whatsoever and his assessment of Mr. Suarez's injuries was professional an unbiased.

#### Nurse Maria Escobar

Nurse Escobar was interviewed on April 11, 2001 at her home. She vividly recalls Mr. Suarez entering the hospital on April 10, 2001 covered in blood. He was very excited and she did her best to calm him down. He kept repeating to her, "I don't know who would want to do this to me?" and "Why would anyone want to do this to me?" She was not present during the doctor's



examination and had no other contact with Mr. Suarez except when she gave him some medications pursuant to the Doctor's instructions.

**Credibility and Reliability –** Nurse Escobar has no obvious connection with the case. Although she was professional at all times it did appear that she harbored some dislike for Mr. Suarez. When questioned about this she denied disliking him but did express the view that she approved of Captain Maldonado's handling of the thieves and disapproved of Mr. Suarez's criticism of the captain.

#### **Manuel Torres**

Manuel Torres is the operator of the only ferryboat in and out of Puerto Biscano. He states that he knows the two soldiers by the name of Jorge Gonzalez and Jose Rodriguez because he has seen them both on patrol in the port on numerous occasions. On April 6, 2001, he took a group of soldiers down the river to a small village and was instructed to return for them in one week. Jorge Gonzalez was one of the soldiers he took down the river; Jose Rodriguez was not. On April 13, 2001 he returned for them and brought all of them, including Jorge Gonzalez back to Puerto Biscano. Although he is not certain, he said, "I am ninety percent sure I saw Jose Rodriguez last Friday morning (April 9, 2001) on patrol by the river."

Credibility and Reliability – Mr. Torres impressed the investigator as a very credible and reliable witness. He is a former harbor pilot for the navy and for the last 10 years has been operating a local ferry service. He expressed concern over cooperating with the investigation. He feared the possibility of retribution from soldiers. He also stated that a great deal of his business comes from the army and that if they found out he gave information, which incriminated them, they might stop using his ferry. He said however, that he has become saddened at the thought of soldiers committing crime and would cooperate in any way necessary.

## Section 10.10 Findings of Fact

This section is a detailed description of the facts as the investigative team believes them to exist based upon credible and reliable evidence. This section must clearly set out the evidence upon which facts are based, what logical conclusions were derived from this evidence. Speculation should be avoided.

## Sample report

The credible and reliable evidence gathered in the investigation of the above matter indicates that the following occurred:

The complainant, Roberto Suarez, is a local factory supervisor who also publishes a paper called <u>The Worker's Friend</u>. In the two months preceding the assault Mr. Suarez was highly critical of the local army commander regarding allegations that petty thieves were being held for ransom in an illegal jail on the army compound. On April 2<sup>nd</sup> 2001, he was picked up by several soldiers and escorted to Captain Maldonado's office where he was warned to cease publishing the critical articles. In his next paper Mr. Suarez described the "kidnapping" and "threats" and continued his criticism of the captain. Two days after the paper was published, Mr. Suarez was accosted by two men who forcibly took him into bushes at the side of the road and severely beat him with a tire-iron. These injuries consisted of 13 lacerations, 5 subcutaneous haematomas which required medical treatment and a minor fracture of his right forearm.

Credible evidence further indicates that one of the attackers was a soldier by the name of Jose Rodriguez whom Mr. Suarez recognized because of a previous dealing in which Mr. Rodriguez had something published in Mr. Suarez's newspaper. Mr. Suarez identified the other attacker



as someone he had once seen play a volleyball game. Independent credible evidence indicates that the second person identified by Mr. Suarez was somewhere else at the time of the attack.

## Section 10.11 Unresolved Matters

This section should detail any "gaps" in the evidence that cannot be accounted for. If there is any significant aspect of the case that remains unresolved at the time of the report the investigator should discuss it candidly in this section. If the matter might be resolved in the future the investigator should discuss this in the report.

## Sample report

The investigation has not been able to find any credible and reliable evidence regarding the identity of the second person who attacked Mr. Suarez. Mr. Suarez's belief that is was Jorge Gonzalez was proved incorrect by independent credible evidence indicating that Mr. Gonzalez was in another village on military maneuvers at the time of the attack. At this point, in light of Mr. Suarez's mistaken identification and the lack of other witnesses to the attack, it appears unlikely that the identity of the second assailant can ever be proven.

## Section 10.12 Government Position

Wherever appropriate and safe, the government should be given an opportunity to comment on the incident being investigated. In the interest of fairness and balance, the investigators should devote a section to the government's position on the event investigated. This opportunity does not necessarily mean that the government is given access to the report or the underlying evidence. It is simply an opportunity to present whatever facts or statement it would like to be included in your organization's report. In order to prevent you from being accused of misquoting the government's position you should request that any such statement be made in writing. A summary of the statement should be included in this section and a copy should be attached to the report.

## Sample report

Captain Maldonado made a general denial of Mr. Suarez's allegations. He stated that both Jose Rodriguez and Jorge Gonzalez were out of town at the time of the attack on Mr. Suarez. He denies being angry at Mr. Suarez and denied knowing anything about the articles which criticized him.

## Section 10.13 Conclusions of Law

The format of this section should be a separate sub-section for each crime or human rights violation the investigator believes was committed. The investigator should set out the text of the provision and then summarize the evidence that supports the charge.

## Sample report

Credible evidence indicates that Mr. Suarez was assaulted on April 10, 2001 by two men at least one of whom was a soldier under the command of Captain Maldonado. There is credible



evidence that the assault was an attempt to get Mr. Suarez to stop printing newspaper articles critical of the captain. Such actions were in violation of the Article Six of the Constitution of West Equaduros which states:

"The government may pass no law or take any action which interferes with free written and verbal expression."

These actions were also in violation of The International Covenant on Civil and Political Rights (1976) Article 19(1) & (2) which West Equaduros ratified in 1978 which states:

- 1. Everyone shall have the right to hold opinions without interference.
- 2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

## Section 10.14 Verify and Sign

The report should be verified and signed by the lead investigator.

## Sample report

I, Maribel Espinosa, do swear and affirm under the penalties of perjury that the above report is an accurate account of my investigation into the allegations described above.

## Maribel Espinosa November 10, 2011.

Maribel Espinosa

Justice for All

The report should be kept in the Case Folder. In the event that the case is presented to a human rights commission all the information necessary to create a "model communication" is readily available.



## CHAPTER 10 SUMMARY

## Writing an Investigation Report

In every case the investigative team should draft an Investigation Report which memorializes the methods, efforts and findings of the investigative team. This report is equally important whether or not a case is referred to an international monitoring body. It is also equally important even in the event the investigative team determines that the allegations are unfounded.

The report should include the following sections:

- 1. **Summary** The summary is a short description of the investigation and its findings.
- 2. Scope of the Investigation This section clearly describes the parameters of the investigation.
- 3. **Background Information** If relevant, the report should include a short summary of political context surrounding the event being investigated.
- Investigative Team This section should briefly identify each investigator and describe his or her qualifications.
- Methodology The methodology section describes in chronological order what investigative methods and efforts were employed during the course of the investigation.
- 6. **Physical Evidence** This section should describe each piece of physical evidence gathered in an investigation, an evaluation of the evidence as well as its import to the case. If forensic tests were performed they should be described here.
- Testimonial Evidence This section should summarize the testimony of witnesses and an analysis of each witness's credibility and reliability.
- 8. **Documentary Evidence** This section should summarize any documents gathered in the case and an analysis of what each contributes to the case.
- Findings of Fact This section is a description of what the investigative team believes to be the truth about the event based upon evidence it determined was credible and reliable.
- Conclusion This section describes what laws the investigative team believes were probably violated based upon their findings of fact.

## The Importance of Clear Precise Language

It is important to use clear unequivocal language when drafting the Investigation Report. The investigator must use great care in writing the report to minimize the chance of misinterpretation. The report must be clear and precise so that people reading the report are not misled about its conclusions or the strength of the evidence underlying its findings. Investigators should be careful not to leave themselves open to charges of exaggeration or embellishment. The report must be clearly unbiased and objective.





## Chapter 11

## SPECIAL CASES

The final chapter in this book offers some suggestions regarding a few of the special types of cases an investigator is likely to encounter. All of the techniques, procedures and considerations up to this point apply equally to the cases discussed in this chapter. However, because of factors unique to these cases, special discussion is warranted. The suggestions and cautions contained herein are not meant to be a complete or comprehensive list of everything an investigator should do when investigating one of these cases. Instead, they are intended to be used in conjunction with the remainder of the book to assist investigators in developing investigative strategies and plans. Use them as a guide to alert you to the evidentiary issues common in these cases.

The questions listed in the "Testimonial Evidence" sections are <u>not</u> intended as questions to be read to a witness during an interview. The investigator should review these questions when preparing to interview a witness. Use them as an aid in developing thoughtful specific questions designed to gather all the information a witness may possess. Consider each of the issues raised by the questions in the "Testimonial Evidence" sections in light of the case you are investigating.

Every investigator should endeavor to develop his or her own "Special Case Checklists." As you become more experienced you will learn that different cases require different approaches. You will learn which questions and strategies are the most effective given the type of case you are investigating. Learn from this experience by committing what you have learned to writing in the form of case checklists. Using these special case checklists as a guide, develop your own which are effective in the context of your culture and your available resources.

Checklists not only increase the effectiveness of the investigation but help ensure against mistakes. Very often investigators are called to work in the middle of the night and in some cases must work for several days without sleep. Under such difficult circumstances, following a checklist can help an investigator be sure that no important step or consideration is missed.

Human rights investigators are often called to investigate cases where people have been taken into police custody or have died in police custody. These can be very difficult cases to investigate. One way to improve the effectiveness of the investigation is to become familiar with police procedures before being called to investigate such a case. Investigators should work together to learn as much as possible about the specific police and prison procedures in your area. Identify all the places where prisoners are customarily held. Identify all the vehicles that are customarily used to move prisoners. Obtain copies of any forms or other paperwork that are ordinarily filled out when a person is arrested. After becoming familiar with the procedures and forms used in your area develop a checklist to use in the investigation of this type of case. The checklist should contain specific questions and requests designed to uncover the truth. An informed investigator armed with knowledge about local police procedure is far more effective in these types of cases than an investigator who is not.



## Section 11.1 Assault

## Definition

Assault occurs when someone causes intentional injury to another person. It does not include accidental injuries or injuries inflicted in self-defense.

#### Goals and Concerns

- · Does victim need emergency medical care?
- What was the motive and intent of the attack assault or murder?
- Does witness need protection?
- Is there a risk that victim will die from injuries. Should a dying declaration be taken?

Investigative Scenes	Physical Evidence Possible Evidence	Possible Forensics
Scene of the attack  Victim's body	<ul> <li>Collect any object found at the scene that could have been used as a weapon.</li> <li>Document signs of struggle or lack of struggle.</li> <li>Collect items indicating a possible motive.</li> <li>Photograph and document victim's injuries.</li> <li>Document presence or absence of defensive</li> </ul>	<ul> <li>Latent prints on weapon.</li> <li>Victim's blood on suspect's clothing.</li> <li>Suspect's blood on victim's clothing.</li> <li>Match wounds with the weapon that caused them.</li> <li>Match bullets with gun.</li> </ul>
	<ul> <li>wounds.</li> <li>Document signs of struggle on victim – torn clothes, scratches, etc.</li> </ul>	Is there trace evidence that could connect suspect to attack? (DNA, latent prints, footprints, handwriting.)
Where victim went after the attack and path from scene	<ul><li>Victim.</li><li>Victim's clothes.</li><li>Photograph victim's injuries.</li></ul>	
Where suspect went after attack and path from scene.	<ul> <li>Look for and collect possible weapons.</li> <li>Look for discarded clothing of suspect or items used to clean up after the attack.</li> </ul>	
Hospital	<ul> <li>Victim.</li> <li>Victim's clothes.</li> <li>Photograph victim's injuries.</li> <li>Recovered bullets.</li> </ul>	
Testimonial Evidence Witnesses Areas to Explore Corroboration		
Victim	<ul> <li>Attack and events preceding and following it.</li> <li>Any past history with suspect.</li> <li>Possible motives for attack.</li> <li>Everything suspect said before, during and after attack.</li> <li>Who else witnessed the attack?</li> <li>Eyewitness identification testimony (Chapter 8).</li> <li>Extent of injury, severity, does it impair or disable the victim?</li> </ul>	Independent witnesses to corroborate the following:  Prior history between victim and suspect. What happened during the attack? Who initiated the altercation? What did attacker and victim say before, during and after attack? Was victim armed with a weapon? Was force used reasonable under the
Recent Outcry witness (First person victim spoke to after attack)	<ul> <li>What did victim say?</li> <li>What did witness observe about victim's physical condition and clothes?</li> </ul>	circumstances?  • Did victim suffer any physical impairment?
Medical Personnel	<ul> <li>Observations and conclusions about victim's injuries.</li> <li>Will victim have long-term affects from injuries?</li> <li>Can doctor determine what weapon was used?</li> <li>What did victim tell medical personnel regarding the incident?</li> </ul>	
Other Witnesses	Was victim armed or unarmed? What did victim say during attack? What did suspect say during attack? Did friends of the suspect hear suspect talk about event?	
Suspect	<ul> <li>Commit suspect to a detailed voluntary account of the incident.</li> <li>If suspect is not claiming self-defense commit that to writing</li> </ul>	

that to writing.

### **Documentary Evidence**

- Medical records.
- Any documents relevant to prior history between victim and suspect.
- Police reports.
- Suspect's work logs or time cards.
- Media coverage of event.

#### Investigative Analysis

- Is there proof beyond a reasonable doubt of each suspects' participation in the crime?
- What proof is there that the suspect was not defending himself or herself from the victim?
- What proof is there that the suspect was acting intentionally? Could it have been an accident?

## International Law and Norms

The crime of assault can occur as part of a number of other humanitarian crimes and human rights violations. It can be part of Genocide, Summary Execution, Torture, Arbitrary Detention, and Ethnic Cleansing.

International Criminal Court Statute (2002) Articles 7 & 8.

Assault covers a broad spectrum of violent conduct. In most cases it involves the infliction of an injury by someone who had the intent to cause such an injury. In these cases it is important to determine how the injury was caused (Was a weapon used?) and how serious is the injury?

When examining an *investigative scene* for weapons keep in mind that any object can be a weapon. In addition to guns and knives, just about any object can be used to cause physical injury to a victim. Examine the injury for any unique features left by the weapon and then search the scene for any object that <u>might</u> have caused it. Keep in mind that movable objects like a car or hard, fixed objects like the side of a building or a roadway can also be used as a weapon.

It is also important to determine how serious the victim's injuries are. If the injuries are so serious that they are life threatening the investigator should take a "dying declaration" statement (See page 187). Medical personnel are the best witnesses to help an investigator assess the seriousness of the injuries. Some relatively minor head injuries bleed profusely and some life-threatening internal injuries present no outward signs. In some situations it may difficult to obtain medical information without the consent of the victim or a member of his or her family.

Physical injury is usually defined as any wound that causes some impairment to the victim, even if that impairment is only temporary. Serious physical injury is usually defined as an injury that causes serious permanent impairment, dismemberment of a body part or threatens the life of the victim. The investigator should seek the assistance of medical personnel in determining the seriousness of the victim's injury.

## Section 11.2 Extra-Legal Execution (non-derogable)

#### Definition

Murder is the intentional killing of another person. It is considered an extra-legal execution when it is done by the state and it is not the result of a duly imposed sentence after a criminal conviction at a fair and just trial. Extra-legal execution is also known as summary execution and arbitrary execution.

#### Goals and Concerns

- Document the condition of the deceased's body before burial or decomposition.
- Was the victim a member of some group that has been targeted for execution?
- Given the serious nature of the crime do witnesses need protection?



Investigative Scenes	Physical Evidence Possible Evidence	Possible Forensics
Scene of the attack	<ul> <li>Collect any object found at the scene that could have been used as a weapon.</li> <li>Document signs of struggle or lack of struggle.</li> <li>Document means of restraint.</li> <li>Document presence of dried blood.</li> <li>Collect items indicating a possible motive.</li> </ul>	Latent prints on weapon.     Victim's blood on suspect's clothing.     Suspect's blood on victim's clothing.     Match wounds with the weapon that caused them.     Is there trace evidence that could connect
Victim's body	<ul> <li>Photograph and document victim's injuries.</li> <li>Look for defensive wounds and petechiae.</li> <li>Document signs of struggle on victim – torn clothes, scratches, etc.</li> </ul>	suspect to attack? (DNA, latent prints, footprints, handwriting.)
If death not immediate wherever victim went after the attack and path from scene.	<ul><li>Victim.</li><li>Victim's clothes.</li></ul>	
Where suspect went after attack and path from scene.	<ul> <li>Look for and collect possible weapons.</li> <li>Look for discarded clothing of suspect or items used to clean up after the attack.</li> <li>Collect any articles that could have been used for restraining a victim.</li> <li>Look for items belonging to victim that suspect may have taken from scene.</li> </ul>	
Hospital	Victim. Victim's clothes. Photograph victim's injuries. Bullets from body.	
Witnesses	Testimonial Evidenc Areas to Explore	e Corroboration
Victim	Did victim give a dying declaration to anyone before dying? Family, medical personnel, bystander?	Independent witnesses to corroborate the following:  Prior history between victim and suspect.
Medical Personnel And/or Pathologist	<ul> <li>Observations and conclusions about victim's injuries.</li> <li>What was the cause of death?</li> <li>Can doctor determine what weapon was used?</li> <li>Any defensive wounds? (Chapters 5 &amp; 6)</li> <li>Any petechiae? (Chapter 6)</li> <li>What did victim tell medical personnel regarding the incident?</li> </ul>	What happened during the attack? Who initiated the altercation? What did attacker and victim say before, during and after attack? Was victim armed with a weapon? Was force used reasonable under the circumstances? Evidence from mass grave.
Other Witnesses	<ul> <li>Was victim armed or unarmed?</li> <li>What did victim say during attack?</li> <li>What did suspect say during attack?</li> <li>Is this part of a pattern?</li> <li>Is it retribution for something?</li> <li>Did friends of the suspect hear suspect talk about event?</li> </ul>	
Suspect	Commit suspect to a detailed voluntary account of the incident. Eliminate self-defense and intoxication if possible. What was the suspect's intent? What were the suspect's orders?	

#### **Documentary Evidence**

- Medical records.
- Pathology reports.
- Any documents relevant to prior history between victim and suspect.
- Police reports.
- Suspect's work logs or time cards.
- Media coverage of event.

## Investigative Analysis

- Is there proof beyond a reasonable doubt of each suspects' participation in the crime?
- What proof is there that the suspect was not defending himself or herself from the victim?
- What proof is there that the suspect was acting intentionally?
- What proof is there that it was not an accident?
- If execution was part of a genocide, what proof is there of genocidal intent?

#### International Law and Norms

Summary or extra-legal execution is a violation of the right to life as guaranteed by the following instruments:

International Criminal Court Statute (2002) Articles 7 & 8.

Universal Declaration of Human Rights (1948) Article 3

European Convention on Human Rights (1950) Article 2(1)

International Covenant on Civil and Political Rights (1966) Article 6(1)

American Convention on Human Rights (1969) Article 4(1)

African Charter on Human and People's Rights (1981) Article 4 & 20(1)

Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (1989)

One of the primary rights conveyed to every person who is born is the right to life. This right is by virtue of the inherent dignity of each human person.

Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

International Covenant on Civil and Political Rights (1966) Article 6(1).

## Section 11.3 Genocide (non-derogable)

## Definition

Genocide is the name given to five categories of acts that are committed with intent to destroy or reduce the number of a national, ethnical, racial, or religious group. The five genocidal acts are:

- (1) Killing members of the group,
- (2) Causing serious bodily or mental harm to members of the group,
- (3) Inflicting conditions of life designed to bring about its destruction,
- (4) Imposing measures to prevent births, and
- (5) Forcibly transferring children of the group to another group.

For acts falling into the first and second categories refer to the sections on Assault, Extra-legal Execution, Torture, and Arbitrary Detention.

#### Goals and Concerns

- Look for evidence of a pattern of systematic abuse of a specific group.
- Compare injuries between victims.
- Compare *modus operandi* of the attacks.
- Does victim need emergency medical or psychiatric care?
  - Is there a risk that victim will die from injuries. Should a dying declaration be taken?



	Physical Evidence
Investigative Scenes	Possible Evidence
At any location relevant to	Evidence of racist or genocidal markings.
the crimes	<ul> <li>Was victim subjected to other hate crimes before the murder? Vandalism of house? Racially</li> </ul>
	motivated assaults?
	Anything used to identify a victim's ethnic background.
Any location where the	Collect any object found at the scene that indicates sources of food and water have been destroyed
victims are forced to	or never existed.
inhabit.	What about living conditions are they calculated to bring about physical destruction? Are food and
	water available?
	Document with photographs the shelter, as well as cooking and toilet facilities.
	<ul> <li>Document any evidence of fences, guards or other methods used to prevent people from leaving.</li> </ul>
	<ul> <li>Photograph and document any injuries or obvious diseases that have resulted from the living</li> </ul>
	conditions.
	Is everyone confined to that area of the same ethnic background?
Any place used in a	If this is achieved through rape refer to Sex Crimes section.
deliberate method to	<ul> <li>If this is achieved through forced sterilization or birth control document and photograph all the</li> </ul>
prevent births	locations and implements used to achieve this.
	If drugs are used, obtain samples.
Any place used in the	<ul> <li>Document and photograph any place where children who are forcibly transferred are held.</li> </ul>
forcible transfer of	<ul> <li>Document any means of transportation used to move the children.</li> </ul>
children	Document any means of restraint employed.
	Testimonial Evidence
Witnesses	Areas to Explore
Victims	The crime and events preceding and following it.
	Any past history with suspects.
	Victim's nationality.
	<ul> <li>Have men, women and children been treated differently from each other?</li> </ul>
	Are there possible non-genocidal motives for the attack?
	Everything suspect said before, during and after attack.
	Who else witnessed the attack?
Suspect	Commit suspect to a detailed voluntary account of the incident.
•	What is suspect's explanation for the attack?
	What is suspect's ethnic background? Is suspect aware of victim's ethnic background?
	What is suspect's understanding of his or her orders?
Medical Personnel	Observations and conclusions about victim's condition and injuries.
	Will victim have long-term affects from injuries?
	Is the victim's condition the result of poor living conditions?
	What did the victim tell medical personnel regarding the incident?
	Has doctor seen similar cases? (get names of other victims)
	Do injuries corroborate witness and victim accounts?
	, ,
	Testimonial Evidence
Witnesses	Areas to Explore
Other Witnesses	Did friends of the suspect hear suspect express genocidal intent or propaganda?
	<ul> <li>What are the suspect's ordinary duties? Was this event a departure from his or her ordinary area of</li> </ul>
	patrol or time of patrol?
	Documentary Evidence
<ul> <li>Medical records.</li> </ul>	Official documents ordering the detention or transfer of ethnically
<ul> <li>Documents, orders, o</li> </ul>	r propaganda indicating a general similar people.
	Transport manifests abouting identity of vistims

- Documents, orders, or propaganda indicating a general genocidal intent.
- Transport manifests showing identity of victims.

### Investigative Analysis

- Is there proof beyond a reasonable doubt of each suspects' participation in the crime?
- What proof is there that the suspect was acting intentionally?
- What proof is there that there was intent to destroy a national, ethnical, racial or religious group?
- Have all possible "non-genocidal" explanations for the conduct been examined and dismissed as improbable?
- Is there any evidence of another motivation which is not genocidal? Robbery? Old dispute?
- What proof is there of motive?
- What proof is there of a pattern? (modus operandi)

### International Law and Norms

Convention on the Prevention and Punishment of the Crime of Genocide (1948) International Criminal Court Statute (2002) Article 6.

The creation of the prohibition against genocide was in direct response to the Nazi holocaust in World War II. This international crime prohibits the targeting of specific groups for reduction or annihilation.

In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.

Convention on the Prevention and Punishment of the Crime of Genocide (1948) Article II.

The law of genocide is different from other international human rights law in that there is no requirement that the government was involved or acquiesced to the crime. Private individuals, acting on their own accord, as well as government leaders can both be found guilty of genocide. If an individual commits the prescribed acts with genocidal intent that person is subject to prosecution for genocide.

In addition to the actual commission of genocide, attempts to commit genocide, conspiracy to commit genocide, public incitement to commit genocide, complicity in the crime of genocide are also punishable crimes <sup>2</sup>



#### Section 11.4 Torture (non-derogable)

### Definition

Torture is defined as the intentional infliction of severe physical or mental suffering to either discriminate against a group or to coerce the victim or another to do something. In order to prove that an individual committed torture there must be evidence that the torture occurred at the instruction of or with the acquiescence of a government official

### Goals and Concerns

- Does victim need emergency medical care?
- What was the motive and intent of the attack?
- Does witness need protection?

Recent Outcry witness

to after attack)

(First person victim spoke

- Is there a risk that victim will die from injuries.
- Should a dying declaration be taken?
- Was information coerced from the victim that now jeopardizes

<ul> <li>Document the condition burial or decomposition</li> </ul>	on of the deceased's body before other people?	, ,
Investigative Scenes	Physical Evidence Possible Evidence	Possible Forensics
Scene of the torture	<ul> <li>Collect any object found at the scene that could have been used as an implement of torture.</li> <li>Document signs of struggle or lack of struggle.</li> <li>Document means of restraint.</li> <li>Document blood stains or other evidence of past violence at the location.</li> <li>Obtain dried blood samples.</li> </ul>	Latent prints on implement of torture.     Victim's blood on suspect's clothing.     Match wounds with the implement that caused them.     Determine whether wounds are consistent with known modes of torture.     Is there trace evidence that could connect.
Victim's body	<ul> <li>Photograph and document victim's injuries. Look for signs of torture (page 126).</li> <li>Photograph any indication that arms and legs were restrained.</li> </ul>	suspect to attack? (DNA, latent prints, footprints, handwriting)  Does blood typing indicate dried blood at scene is from many people?
Where victim went after the torture.	<ul><li>Victim.</li><li>Victim's clothes.</li><li>Photograph victim's injuries.</li></ul>	
Where suspect went after attack and path from scene.	<ul> <li>Look for and collect possible instruments of torture.</li> <li>Look for discarded clothing of suspect or items used to clean up after the torture.</li> <li>Look for documents signed by victim such as a coerced statement.</li> </ul>	
Hospital	<ul> <li>Victim.</li> <li>Victim's clothes.</li> <li>Photograph victim's injuries.</li> </ul>	
Witnesses	Testimonial Evideno Areas to Explore	Corroboration
Victim	Detailed account of everything that was said and everything that happened.     Names of all persons present and what was said among them.     If victim died did he or she give a dying declaration to anyone before dying? Family, medical personnel, bystander?	Independent evidence to corroborate the following:  Victim was held involuntarily. What happened during the torture? A history of torturous activity at scene of attack. What did attacker and victim say before,
Medical Personnel And/or Pathologist	Observations and conclusions about victim's injuries.     Can doctor determine what implement was used in the torture?     Has doctor seen similar cases in the past?     What did victim tell medical personnel regarding the incident?	during and after the torture?
	and moratic	4

What did victim say?

condition?

What did witness observe about victim's



Other Witnesses	<ul> <li>Circumstances under which victim was taken into custody.</li> <li>What did victim say during torture?</li> <li>What did suspect say during torture?</li> <li>Is this part of a pattern?</li> <li>Did friends of the suspect hear suspect talk about event?</li> </ul>
Suspect	<ul> <li>Commit suspect to a detailed voluntary account of the incident.</li> <li>What were the suspect's orders?</li> <li>If torture was to extract information, who was that information given to?</li> </ul>

### **Documentary Evidence**

- Medical records.
- Pathology reports.
- Any documents relevant to prior history between victim and suspect.
- Police reports.
- Suspect's work logs or time cards.
- Audio or video tapes of torture session

- Any documents signed by the victim during the torture.
- Transcript of any relevant court proceedings if coerced statement was introduced as evidence.
- Photographs taken of victim before the attack.
- Media coverage of event.

### Investigative Analysis

- Is there proof beyond a reasonable doubt of each suspects' participation in the crime?
- What proof is there that the suspect was acting intentionally?
- · What proof is there of motive?
- What proof is there of a pattern?
- How do you prove that victim was not injured prior to torture or that injuries are not the result of an accident?

### International Law and Norms

Torture is prohibited by the following instruments:

Universal Declaration of Human Rights (1948) Article 5

European Convention on Human Rights (1950) Article 3

International Covenant on Civil and Political Rights (1966) Article 7

American Convention on Human Rights (1978) Article 5(2)

Code of Conduct for Law Enforcement Officials (1979) Article 5

African Charter on Human and People's Rights (1981) Article 5

Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)

Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment (1988) principles 6, 21

Convention on the Rights of the Child (1989) Article 37

International Criminal Court Statute (2002) Articles 7 & 8.

One of the earliest prohibitions enacted by the international community was the prohibition against torture. Torture is defined as the intentional infliction of severe physical or mental suffering to either discriminate against a group or to coerce the victim or another to do something. In order to prove that an individual committed torture there must be evidence that the torture occurred at the instruction of or with the acquiescence of a government official.\*

"...Torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or

<sup>\*</sup> The *International Covenant on Civil and Political Rights* (1966) includes medical and scientific experimentation without a person's consent in its definition of torture.



coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions."

Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) Article 1.

No circumstances can ever justify a torturous act. Someone accused of torture cannot legally claim that the torturous act was necessary in order to save other lives or was justified because of war or public emergency.<sup>3</sup> Nor can a soldier excuse his torturous act by claiming that he was simply following orders.<sup>4</sup> In such a case both the soldier, other soldiers present and their superiors could all be found guilty of violating the ban on torture.

The prohibition against torture also prevents a country from extraditing a person who is likely to be subjected to torture upon his return. *The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* places the burden on the country seeking to expel the person to examine the human rights record of the country requesting extradition prior to complying with the extradition request.<sup>5</sup>

No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) Article 3(1).

The prohibition of torture also obliges each state to impartially and promptly investigate any allegation of torture and to compensate any person who has suffered torture.

Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.

Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) Article 12.

### Section 11.5 Crimes of Sexual Violence

### Sex Crimes

A Sex crime is the commission of a sexual act or touching through the use of force, threats or coercion. It sometimes occurs as part of genocide, torture and ethnic cleansing.

### Goals and Concerns

- Has victim received emergency medical care?
- Have measures been taken to protect the privacy of the victim?
- All Victims of Sex Crimes Must See a Doctor!
- Does the victim need psychiatric counseling?

	Physical Evidence	
Investigative Scenes	Possible Evidence	Possible Forensics
Scene of the attack	<ul> <li>Collect any object found at the scene that could have been used as a weapon.</li> <li>Document signs of struggle or lack of struggle.</li> <li>Collect any item that may have been used as a restraint.</li> <li>Collect condoms or condom wrappers at scene of attack.</li> </ul>	Latent prints on weapon.     Victim's blood on suspect's clothing.
Victim's body	<ul> <li>Collect bed clothes where attack took place.</li> <li>Photograph and document victim's injuries.</li> <li>Note presence or absence of defensive wounds.</li> <li>Document signs of struggle on victim – torn clothes, scratches, etc.</li> <li>Have doctor perform a genital exam and complete a "rape-kit" if available.</li> <li>Collect trace evidence from underneath victim's nails.</li> </ul>	Suspect's blood or body fluids on victim's clothing.     Match wounds with the weapon that caused them.
Where victim went after the attack and path from scene.	<ul> <li>Victim.</li> <li>Victim's clothes.</li> <li>Towels or items victim used to clean up.</li> <li>Photograph victim's injuries.</li> </ul>	Is there trace evidence that could connect suspect to attack? (DNA, latent prints, footprints, handwriting.)
Where suspect went after attack and path from scene.	<ul> <li>Look for and collect possible weapons.</li> <li>Look for discarded clothing of suspect or items used to clean up after the attack.</li> </ul>	
Hospital	<ul><li>Victim.</li><li>Victim's clothes.</li><li>Photograph victim's injuries.</li></ul>	
	Testimonial Evidenc	e
Witnesses	Areas to Explore	Corroboration
Victim	<ul> <li>Attack and events preceding and following it.</li> <li>Any past history with suspect.</li> <li>Possible motives for attack.</li> <li>Everything suspect said before, during and after attack.</li> <li>Did suspect penetrate? Ejaculate? Use condom?</li> <li>Who else witnessed the attack?</li> <li>Eyewitness identification testimony (Chapter 8).</li> <li>Extent of injury, severity, does it impair or disable the victim?</li> </ul>	Independent Evidence to corroborate the following:  • Prior history between victim and suspect.

<sup>\*</sup> A rape kit is a pre-packaged evidence collection kit that a medical doctor uses to collect important evidence from the victim's body during the course of the medical exam. It is available in many hospitals. Investigator should ask the doctor to use one if available in the hospital where the victim is treated.



Recent Outcry witness (First person victim spoke to after attack)	<ul> <li>What did victim say?</li> <li>If victim was visibly upset, describe the victim's appearance and actions that indicated that?</li> <li>Did witness assist the victim in any way?</li> <li>What did witness observe about victim's physical condition and clothes?</li> </ul>	What happened during the attack?     Medical evidence of sexual contact.
Medical Personnel	<ul> <li>Observations and conclusions about victim's injuries.</li> <li>Will victim have long-term affects from injuries?</li> <li>What did victim tell medical personnel regarding the incident?</li> <li>Was a rape kit done?</li> </ul>	What attacker and victim said before, during, and after attack?
Other Witnesses	<ul> <li>Was victim armed or unarmed?</li> <li>What did victim say during attack?</li> <li>What did suspect say during attack?</li> <li>Did friends of the suspect hear suspect talk about event?</li> </ul>	Whether victim suffered any physical impairment after attack.
Suspect	<ul> <li>Commit suspect to a detailed voluntary account of the incident.</li> <li>Many sex offenders will admit sex but claim it was consensual. Does this suspect admit to consensual sex?</li> </ul>	

### **Documentary Evidence**

- Medical records.
- Police reports.

- Suspect's work logs or time cards.
- Media coverage of event.

### Investigative Analysis

- Is there proof beyond a reasonable doubt of each suspects' participation in the crime?
- What proof is there that the sex was not consensual?

### International Law and Norms

Sexual assaults can occur as part of a number of other humanitarian crimes and human rights violations. It can be part of Genocide, Torture, Arbitrary Detention, and Ethnic Cleansing. See those sections for a list of the applicable laws.

International Criminal Court Statute (2002) Articles 7 & 8.

There are a number of special concerns in sex crime cases. Should the investigator be the same sex as the victim? Most victims are comfortable being interviewed by investigators of either sex if the investigator is professional and demonstrates respect for the emotional state of the victim. If the victim expresses a preference for a male or female investigator, and such a request can be accommodated, it should be. The more important concern is reducing the number of times a victim must retell an account of the incident. Careful thought should be given to reducing the number of people the witness has to speak with. If possible, the first investigator who interviews the witness should remain with the case throughout and handle all interaction with the victim.

Extra steps should be taken to respect the privacy of the victim. The interview room should be private and only essential people should be present. If the victim is a minor or is extremely distraught ask a family member or close friend (who is not a witness) to sit with him or her during the course of the interview.

If the victim is a child or naïve regarding sex, do not suggest words or use leading questions. Do not teach the child words or actions he or she did not already know. If child cannot articulate what happened provide the child with anatomically correct dolls or diagrams to help describe what occurred.

If the sexual assault occurred in the distant past, a medical exam might not reveal any physical evidence of it. The victim, however, should still have a medical exam to determine whether the victim contracted any diseases from the attack.



### COUNSELING FOR

### VICTIMS OF SEX CRIMES

It is absolutely critical that the victim of a sex crime receives medical treatment and counseling if it is available. Depending upon the culture, the victim may have strong reservations about seeking medical help. There are many reasons why the victim should. The possibility of injury is great, as is the chance of contracting a sexually transmitted disease. In addition, the medical personnel examining the victim will document any injuries the victim may have sustained during the attack.

A sexual attack is one of the most traumatic experiences a person can live through. Most victims will suffer significant emotional trauma from the attack. Some victims suffer this trauma immediately while others appear composed after the attack and the trauma does not affect them until a later time. If possible, assist the victim in talking with a professional or para-professional experienced in counseling victims of sexual violence. If that is not possible, identify a person in the community who can talk with the victim and assist him or her with the aftermath of such an attack. Very often, simply talking about the attack and her feelings with a wise and compassionate member of the community can be a tremendous benefit in the recovery process.

### Section 11.6 Arbitrary Detention and Enforced Disappearance

(Enforced Disappearance is non-derogable)

### Definition

"Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law." International Covenant on Civil and Political Rights (1966) Article 9(1).

### Goals and Concerns

- Locate and secure the release of the victim.
- Identify any pattern or motive behind the apprehension.
   Are other people in danger?
- Does victim need medical and psychiatric attention?
- Was apprehension a warning of greater harm to come? Does the victim need protection?

Investigative Scenes	Physical Evidence Possible Evidence	Possible Forensics
Illegal detention center	<ul> <li>Collect any object found at the scene that could have been used as an implement of torture.</li> <li>Document signs of struggle or lack of struggle.</li> <li>Document means of restraint.</li> <li>Document blood stains or other evidence of past violence at the location.</li> <li>Obtain dried blood samples.</li> <li>Document living conditions.</li> </ul>	Match blood samples at detention center to victim's DNA.     Match victim's DNA to corpse or skeletal remains.
Location of Apprehension	<ul> <li>Signs of a struggle.</li> <li>Property belonging to the victim.</li> <li>Tire tracks.</li> <li>Shoe imprints.</li> </ul>	
Victim's home	Samples of victim's DNA such as hair from a hair brush, saliva from a tooth brush, skin and hair from a shaving razor. Such samples may help identify the victim's body if found dead.	
Witnesses	Testimonial Evidenc	Corroboration



Victim	<ul> <li>Detailed description of apprehension and detention.</li> <li>Did victim request an opportunity to leave or request a lawyer?</li> <li>Why did the victim think that he or she was not free to leave?</li> </ul>	Independent Evidence to corroborate the following:  Prior history between victim and suspect. Background history of victim indicating the improbability of going away without telling friends and family.
Family of Victim	What attempts has the family made to secure the victim's release or get information about the victim's detention? Has the family used a lawyer? Have any of the requests for release or information been in writing or through court petition.	Evidence of future commitments victim made before disappearance.
Suspect	<ul> <li>Where is the victim?</li> <li>What charges, if any, is the victim being held on?</li> <li>Has the victim been brought before a court?</li> <li>Has the family of the victim contacted you?</li> </ul>	
Medical Personnel	<ul> <li>What is the victim's physical condition?</li> <li>Are there indications that the victim was restrained, tortured or abused?</li> <li>Is the victim malnourished?</li> <li>Any indication of scabies, tuberculosis or other diseases common in poor living conditions?</li> </ul>	
Other Witnesses	<ul><li>Who was the last person to see the victim?</li><li>What did victim say?</li><li>Did victim state where he or she was going?</li></ul>	

### **Documentary Evidence**

- Victim's travel documents to show that disappearance was not voluntary.
- Bank statements to show that victim did not withdraw money before disappearance and has not withdrawn money since.
- Police and prison records ordinarily filled out to document the arrest and transfer of a prisoner.
- Documents indicating victim's future intention to be somewhere else. Appointment book, tickets to an event, etc.
- Phone bills of victim's family to show no long distance phone correspondence with victim.

### International Law and Norms

Universal Declaration of Human Rights (1948) Articles 3, 9(1) & 12(1)

European Convention on Human Rights (1950) Article 5

American Convention on Human Rights (1978) Article 7

African Charter on Human and People's Rights (1981) Articles 4 & 6

Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment (1988) principles 4, 9 & 37

Convention on the Rights of the Child (1989) Article 37(b)

Declaration on the Protection of All Persons From Enforced Disappearance (1992)

International Criminal Court Statute (2002) Articles 7 & 8.

This right recognizes the inherent right to liberty for all people. It guarantees that no person shall be detained except pursuant to the law and the legal protections accorded those within the criminal justice system. Encompassed in this protection is the right to petition an impartial judicial authority in the event of arbitrary detention.<sup>7</sup>

Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

International Covenant on Civil and Political Rights (1966) Article 9(1).

The question of detaining mentally ill people has always been a difficult one. The prevailing view is that it can only be done after a determination that the person presents an imminent threat of serious physical harm to himself or others as determined by mental health professionals. In most cases this



determination must be subject to some form of judicial review, either in every case or upon special petition.<sup>8</sup>

### **Enforced Disappearance**

Enforced Disappearance is a particularly egregious form of arbitrary detention. An enforced disappearance is an arbitrary detention with a complete suspension of rights, where the detainees are completely cut off from friends and family who are denied any information about the location or condition of the detainees. Many of these enforced disappearances result in extra-judicial killings of the victim.

The Declaration on the Protection of All Persons from Enforced Disappearance (1992) prohibits a person committing this violation from claiming that he or she was following a superior's orders (Article 6). Article 7 of the Declaration makes enforced disappearance a non-derogable crime. A country seeking to expel a foreign national may not extradite him or her to a country where it is likely that they may be subject to enforced disappearance (Article 8).



<sup>&</sup>lt;sup>1</sup> Convention on the Prevention and Punishment of the Crime of Genocide (1948) Article IV.

<sup>&</sup>lt;sup>2</sup> Convention on the Prevention and Punishment of the Crime of Genocide (1948) Article III.

<sup>&</sup>lt;sup>3</sup> See Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) Article 2(2).

<sup>&</sup>lt;sup>4</sup> See Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) Article 2(3).

<sup>&</sup>lt;sup>5</sup> See: Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) Article 3(2). See also Declaration on the Protection of All Persons From Enforced Disappearance (1992) Article 8.

<sup>&</sup>lt;sup>6</sup> Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) Article 14.

<sup>&</sup>lt;sup>7</sup> "The Human Rights Committee has stated that the term "arbitrary", as used in the Covenant on Civil and Political Rights, is applied broadly. It "is not to be equated with 'against the law,' but must be interpreted more broadly to include elements of inappropriateness, injustice and lack of predictability." [Citing *Hugo van Alphen v. Netherlands* (305/1988) (23 July 1990), *Official Records of the General Assembly, Forty-fifth Session,* Supplement No. 40 (A/45/40), vol. II, annex IX, sect. M, para. 5.8.] It includes, for example, the situation of detainees who are kept in detention after their release has been ordered by a judicial or other authority and those arrested with no criminal charge against them. *Human Rights and Pre-Trial Detention,* United Nations Centre for Human Rights, Geneva, 1994.

<sup>&</sup>lt;sup>8</sup> See the *Principles on Protection of the Mentally Ill*, Principle 16. See also, Geneva Convention Relative to the Protection of Civilian Persons in Time of War (1949) Article 43 which states:

<sup>&</sup>quot;Any protected person who has been interned or placed in an assigned residence shall be entitled is maintained, the court or administrative board shall periodically, and at least twice yearly, give consideration to his or her case with a view to the favourable amendment of the initial decision, if circumstances to have such action reconsidered as soon as possible by an appropriate court or administrative board designated by the Detaining Power for that purpose. If the internment or placing in assigned residence permit. ..."



### APPENDIX A

### **HUMAN RIGHTS INVESTIGATION FORMS**

Appendix A contains some commonly used investigative forms. They have been adapted to compliment the methods described in this book. You can photocopy them or use them as models to create your own with a word processing program.

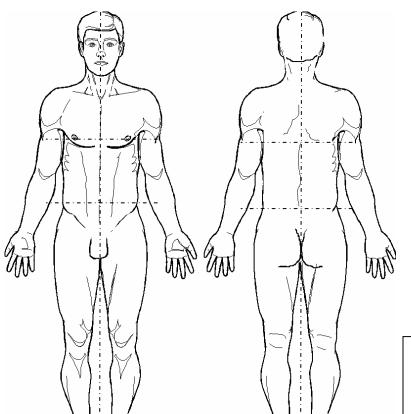
Some of these forms must only be filled out by properly trained professionals. You must not engage in any activity which you are not trained or licensed to engage in. You also must not interfere with the efforts of local law enforcement and professional international investigators conducting official investigations.

The author retains the copyright of these materials but authorizes human rights organizations to make copies of these documents for the use of their organization. The reproduction of these forms or their content for resale is prohibited.

WOUND CHARTS	Page
BODY CHART	290
HEAD CHART	291
HANDS CHART	292
FEET CHART	293
UNIDENTIFIED CORPSE	
MASTER SHEET	294
RECOVERY SITE SKETCH	295
DENTAL CHART	296
FINGERPRINT CARD	297
WITNESS FORMS	
WITNESS INTAKE SHEET	298
WITNESS CODE SHEET	299
WITNESS INTERVIEW LOG	300
Logs	
WEEKLY ACTIVITY LOG	301
CORRESPONDENCE LOG	302
PHOTGRAPH LOG	303
PHYSICAL EVIDENCE LOG	304
SKETCH LOG	305
EVIDENCE STOREROOM LOG	306
EVIDENCE COLLECTION	
EVIDENCE ENVELOPE	307
ORIGINAL RECORDS ENVELOPE	308
INVESTIGATIVE SCENE SKETCH	309

© 2011 Dermot Groome

WOUND CHART: BODY



Name:		
Male	Female	
Approximat	e Age:	
Approximate Hgth:		
Approximate Wght:		
living	deceased	

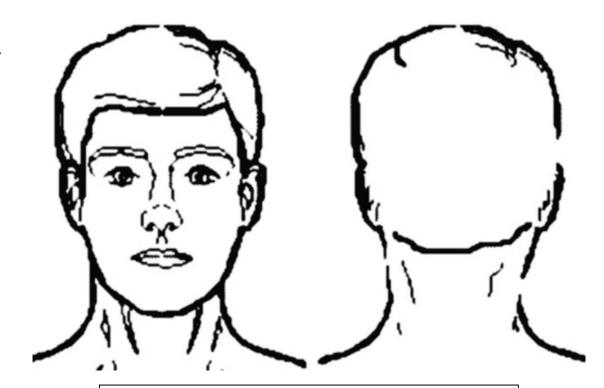
### **INSTRUCTIONS**

- 1. Draw each wound on the body.
- 2. Number the wound.
- 3. Measure the distance of the wound from the imaginary mid-line of the body and one of the perpendicular reference lines.
- 4. Describe the injury below

### Handbook Of Human Rights Investigation

© 2011 Dermot Groome

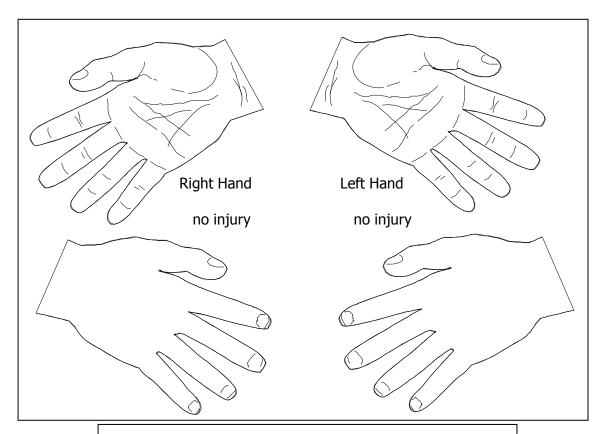
WOUND CHART: HEAD



INSTRUCTIONS
1. Draw each wound on the head. 2. Number the wound. 3. Describe the injury below

Name:	

© 2011 Dermot Groome WOUND CHART: HANDS



### **INSTRUCTIONS**

1. Draw each wound on the head. 2. Number the wound. 3. Describe the injury below

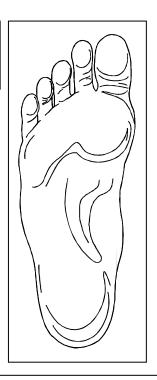
Name:

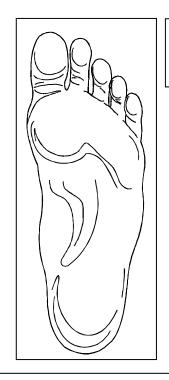
### Handbook Of Human Rights Investigation

© 2011 Dermot Groome

WOUND CHART: FEET

Right Foot no injury





Left Foot no injury

### INSTRUCTIONS

1. Draw each wound on the head. 2. Number the wound. 3. Describe the injury below

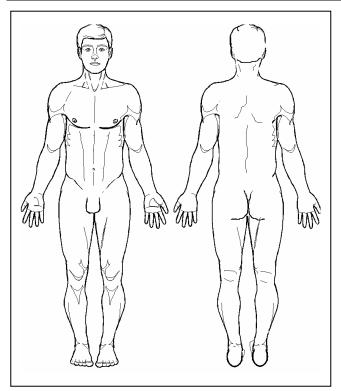
Name:	

### Handbook Of Human Rights Investigation

### © 2011 Dermot Groome

### UNIDENTIFIED CORPSE: MASTER SHEET

Physical Characteri	s Corpse ID No.	
Race:	Measurements	
Sex:	Heel to head:	
Hair Color:	Heel to toe:	
Hair Style:	Approx. Wght:	
Eye Color:	Approx. Age:	



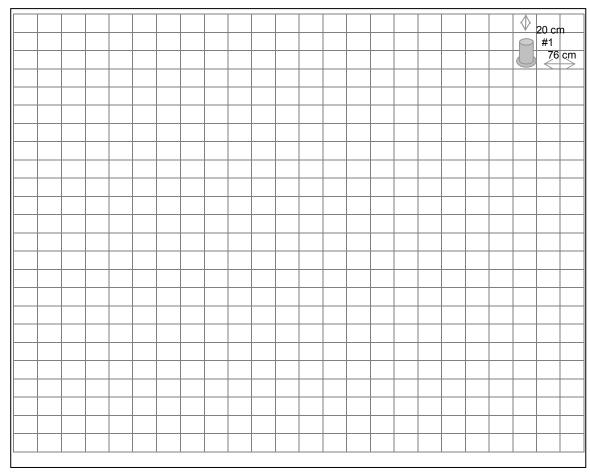
### INSTRUCTIONS

- 1. Draw & Photograph: Scars, Moles, Tattoos, Birthmarks, Missing fingers or other unique feature of the corpse.
- 2. Number each feature and describe below.
- 3. Describe any moustache or other facial hair and draw in above.
- 4. Describe and indicate location of any recent injuries.
- 5. Fill out remaining sections and dental chart.6. Fill out wound chart to thoroughly document injuries

	Property
	Record detailed description of clothes
	and property found on the body
	Jewelry
	Watch
Describe what was done with the corpse after it was found.	Clothing
If buried include detailed description of where and GPS information	Clothing size
	Shoes
	Shoe size

© 2011 Dermot Groome

### UNIDENTIFIED CORPSE: RECOVERY SITE SKETCH

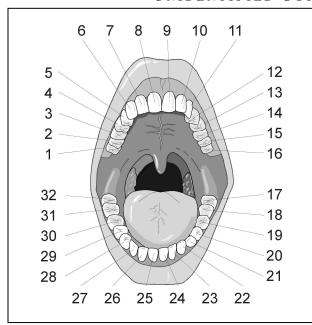


### **Description of Where Corpse Found**

Address	City/Town		Country	 
GPS latitude		GPS longitude		
Comments:				
Describe circumstances under which	body was found.			
				_
				-
Possible Identities	Source of Information	1		
1				
2				-

© 2011 Dermot Groome

### UNIDENTIFIED CORPSE: DENTAL CHART



Corpse ID No. \_\_\_\_\_

	Top Teeth				
		Cavity(C)/Filing (F)			
N	lissing	Tongue	Тор	Cheek	
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					
11					
12					
13					
14					
15					
16					

One of the most precise ways to determine the identity of an unidentified corpse is to compare the condition of the teeth with dental records and information provided by families of missing people.

Carefully examine the deceased's teeth and record your findings below.

	ı	Bottom T	eeth	
		Cavity(C)/Filing (F)		
ı	lissing	Tongue	Тор	Cheek
17				
18				
19				
20				
21				
22				
23				
24				
25				
26				
27				
28				
29				
30				
31				
32				

© 2011 Dermot Groome

UNIDENTIFIED CORPSE: FINGERPRINT CARD

### **Instructions For Fingerprinting Deceased**

Depending upon the stage of decomposition it may be possible to obtain fingerprints from the corpse. These fingerprints can then be compared with fingerprints of missing people which may be on file elsewhere. To obtain fingerprints follow these steps:

- Using rubber gloves, take the pinky on the deceased's left hand and roll it lightly on an inked pad.
- Using a single steady movement roll the tip of the finger in the appropriate box.
- 3. Examine the print to insure that ridges of the skin leave a clean impression on the card.
- 4. If the print appears smudged, roll the finger again underneath the first impression without re-inking the finger.
- 5. Repeat for all fingers.

## Attach a clear picture of the deceased's face here.

(Take additional photographs of the body, tattoos, unusual marks, clothing, and any property recovered with the body.)

Additional Notes:		

•		
una	ble to	fingerprint
	Pinky	
p	Ring	
Right Hand	Middle	
	Index	
	Thumb	
	Thumb	
	Index	
Left Hand	Middle	
	Ring	
	Pinky	

Corpse ID No.

## Handbook Of Human Rights Investigation © 2011 Dermot Groome

### WITNESS INTAKE SHEET

### !! WARNING!!

Case No.

[] female

[] persecuted group (specify)

Do not keep this sheet in case folder; store separately in secure place.

#### Section 1 . Witness Name

Section 1 - witness r	vame				
First name (given)	name (given)  Last name (family)				
Section 2 – Summary of Allegation (remember to obtain names of other witnesses)					
Section 3 – Witness I	nforma	tion			
Witness is:	[] Witne	ess knows perpetrator's nam	e		
[] Victim		ss if confident that he or she		perpetrator again.	
[] Eye-witness	[] Witne	ess is unsure of ability to reco	ognize perpetrato	r again.	
[] Hearsay witness	[] Witne	ss does not believe he or sh	e could recognize	e perpetrator.	
Date of Birth		National ID #		Passport #	
Home Address & Phon	ie	Workplace & Pho	one If	Refugee – "Do you know where you are going?	
Spouse Name (include unm name)	narried	Name of Childre	en	Name and address of Parents	
Contact Person Name and A	ddress	Witmess long term plans regarding residency			
Section 4 - Classifica	ition of	Allegation			
Geographical Classifica	ation		Classificati	ion of Allegation	
Town/Region of Incide	ent	[] Property Damage		[] Murder	
Date of Incident				[] Kidnapping	
Victim Classification	l	[] Theft		[] Torture	
[] child		[] Other		[] Sexual Violence	
[] male		[] Other		[] Imprisonment	
[] female		[] Othor		[] Ethnic Cleansing	

[] Other

## HANDBOOK OF HUMAN RIGHTS INVESTIGATION © 2011 Dermot Groome

WITNESS CODE SHEET

### !! WARNING!!

Do not keep this sheet in case folder; store separately in secure place.

#	Date Info	Witnesses Name	Witness Code #	Comments
"	Sheet Completed	The state of the s		Sommente
1	10/11/11	Jose San Miguel	99-1134	Witness is brother-in-law of victim.
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				

# HANDBOOK OF HUMAN RIGHTS INVESTIGATION © 2011 Dermot Groome WITNESS INTERVIEW LOG

#	Date	Investigator's Initials	Witness Code #	Summary of Significance of Witness
1				Preliminary Interview Comprehensive Interview
2				Preliminary Interview Comprehensive Interview
3				Preliminary Interview Comprehensive Interview
4				Preliminary Interview Comprehensive Interview
5				Preliminary Interview Comprehensive Interview
6				Preliminary Interview Comprehensive Interview
7				Preliminary Interview Comprehensive Interview
8				Preliminary Interview Comprehensive Interview
9				Preliminary Interview Comprehensive Interview
10				Preliminary Interview Comprehensive Interview
11				Preliminary Interview Comprehensive Interview
12				Preliminary Interview Comprehensive Interview
13				Preliminary Interview Comprehensive Interview

# HANDBOOK OF HUMAN RIGHTS INVESTIGATION © 2011 Dermot Groome WEEKLY ACTIVITY LOG

Investigator: From: To: Case no.

Number	Date	Activity
1	Nov. 20 2011 8:00 –9:15	Visited prison to sketch of cell areas.
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		

### © 2011 Dermot Groome CORRESPONDENCE LOG

Case No. From: To: Sheet of

Case	110.	From:	10.	Sheet of
#	Date	Investiagtor's Intials	Name of Person Communicated With	Substance of Communication
1				letter/e-mail telephone in person
2				letter/e-mail telephone in person
3				letter/e-mail telephone in person
4				letter/e-mail telephone in person
5				letter/e-mail telephone in person
6				letter/e-mail telephone in person
7				letter/e-mail telephone in person
8				letter/e-mail telephone in person
9				letter/e-mail telephone in person
10				letter/e-mail telephone in person

# HANDBOOK OF HUMAN RIGHTS INVESTIGATION © 2011 Dermot Groome PHOTOGRAPH LOG

Case No. Sheet of

#	Date	Name of Photographer	File name	Description of Photograph
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				

## HANDBOOK OF HUMAN RIGHTS INVESTIGATION © 2011 Dermot Groome

### PHYSICAL EVIDENCE LOG

Case No. Sheet of

Envelope #	Date	Collector's Name	Preserver's Name	Description of Evidence
				conduct forensic tests
				conduct forensic tests
				conduct forensic tests
				conduct forensic tests
				conduct forensic tests
				conduct forensic tests
				conduct forensic tests
				conduct forensic tests
				conduct forensic tests

# HANDBOOK OF HUMAN RIGHTS INVESTIGATION © 2011 Dermot Groome SKETCH LOG

Case No. Sheet of

#	Date Sketch Made	Name of Person Sketching	File/Sketch Name	Description of Sketch
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				

## HANDBOOK OF HUMAN RIGHTS INVESTIGATION © 2011 Dermot Groome

### EVIDENCE STOREROOM LOG

Fron		To:						Sheet	of
#	Data	Namo	Caso	Envolono	In	Out	Signaturo	Description	of Evidono

#	Date	Name	Case No.	Envelope #	ln	Out	Signature	Description of Evidence and Reason for Moving Evidence
1								
2								
3								
4								
5								
6								
7								
8								
9								
10								
11								
12								
13								
14								
15								

# HANDBOOK OF HUMAN RIGHTS INVESTIGATION © 2011 Dermot Groome EVIDENCE ENVELOPE

CASE NO.	
ENVELOPE NO.	
DATE	
NAME OF	
Person Who	
FOUND	
EVIDENCE	
LOCATION	
WHERE FOUND	
DESCRIPTION	
OF EVIDENCE	

FIREARM

KNIFE
POSSIBLE POISON
POSSIBLE DRUGS

LATENT PRINTS
FORENSIC TESTING

### INSTRUCTIONS

- 1. Mark the evidence itself with your initials and the date of collection. If that is not possible attach a small tag with the same information directly on the evidence.
- 2. Label this envelope.
- 3. Place evidence in the envelope and seal with a tamper-proof seal.
- 4. Store evidence in a secure place protected from theft and natural elements.

Object	How to Collect				
Wet or bloody clothes	Allow to air dry in a clean secure place indoors.				
Firearms	Unload the weapon safely. If it is to be processed for prints handle with rubber gloves.				
Knives,	Collect using rubber gloves.				
weapons	Do not clean the item.				
or any object	Allow blood to air-dry.				
with					
blood					
Bullets or bullet fragments	Remove bullet carefully taking steps to insure that the instrument you use does not mark or scratch bullet.				
	If the bullet is lodged in a piece of wood cut out the portion of wood surrounding the bullet and preserve the wood and bullet for experts to remove.				
Ligature	Pathologist should remove from victim.				
(hanging)	Preserve the knot; cut ligature away from knot.				

Object	How to Collect
Ligature	Pathologist should remove from victim.
(hanging)	Preserve the knot; cut ligature away from knot.
Poison or Unknown Liquid	Place in a sterile glass jar or clean, empty water bottle.
Hard objects with possible latent prints	Use gloves. Pick up by an area unlikely to have been touched. Pick up a glass by bottom edge; knife by its blade not handle.
Hair sample or unknown fibers	Use a small amount of cellophane tape to attach hairs to a clean piece of paper.
Teeth or pieces of bone	Allow to dry in a clean secure place indoors.
Docmnts and letters	If document is wet allow to air-dry in a clean secure place indoors.

## HANDBOOK OF HUMAN RIGHTS INVESTIGATION © 2011 Dermot Groome ORIGINAL DOCUMENTS ENVELOPE

CASE NO.	
LEAD INVESTIGATOR	
DATE CASE OPENED	
DATE CASE CLOSED	
COMMENTS	

DOCUMENTS
PHOTOGRAPHS
WITNESS STATEMENTS
SKETCHES
CONFIDENTIAL WITNESS
RECORDS
OTHER

### © 2011 Dermot Groome

### INVESTIGATIVE SCENE SKETCH



	Indoor Investigative Scene		Outside Investigative Scene
1.	Draw a box or lines to represent the walls of the room.	1.	Lay two pieces of rope at the outside perimeter of the scene
2.	Measure the length of two walls which intersect in a corner.		so that they intersect at 90 degrees and create "walls."
3.	Indicate all doors and windows on sketch.	2.	Draw two permanent objects such as a tree or building
4.	Draw & number each object. Include bodies.		corner.
5.	In the space below describe each object.	3.	Measure the distance between these objects and each of
6.	Record distance from each object to both walls.		the rope "walls" and record.
		4.	Draw & number each object. Include bodies.
		5.	In the space below describe each object.
		6.	Record distance from each object to both rope "walls."
L			



### APPENDIX B

### UNIVERSAL DECLARATION OF HUMAN RIGHTS

(Adopted by UN General Assembly Resolution 217A (III) of 10 December 1948)

### UN document no. A/Res/217A (III)

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

**Preamble** 

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in cooperation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

Now, therefore,

The General Assembly

Proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

### Article 1

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

### Article 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any

kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or

territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

### Article 3

Everyone has the right to life, liberty and security of person.

### Article 4

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

### Article 5

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

#### Article 6

Everyone has the right to recognition everywhere as a person before the law.

#### Article 7

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of the Declaration and against any incitement to such discrimination.

### **Article 8**

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

### Article 9

No one shall be subjected to arbitrary arrest, detention or exile.

### Article 10

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

### Article 11

- 1. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.
- 2. No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

### Article 12

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.



### Article 13

- 1. Everyone has the right to freedom of movement and residence within the borders of each state.
- 2. Everyone has the right to leave any country, including his own, and to return to his country.

#### Article 14

- 1. Everyone has the right to seek and to enjoy in other countries asylum from persecution.
- 2. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

### Article 15

- 1. Everyone has the right to a nationality.
- 2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

### Article 16

- 1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
- 2. Marriage shall be entered into only with the free and full consent of the intending spouses.
- 3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

#### Article 17

- 1. Everyone has the right to own property alone as well as in association with others.
  - 2. No one shall be arbitrarily deprived of his property.

### Article 18

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

### Article 19

Everyone has the right to freedom of opinion and expression: this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

### Article 20

- $1. \, {\rm Everyone}$  has the right to freedom of peaceful assembly and association.
- 2. No one may be compelled to belong to an association.

### Article 21

- 1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
- 2. Everyone has the right of equal access to public service in his country.
- 3. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

### Article 22

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co- operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

#### Article 23

- 1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
- 2. Everyone, without any discrimination, has the right to equal pay for equal work.
- 3. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
- 4. Everyone has the right to form and to join trade unions for the protection of his interests.

### Article 24

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

### Article 25

- 1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
- 2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

### Article 26

- 1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.
- 2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.
- 3. Parents have a prior right to choose the kind of education that shall be given to their children.

### Article 27

- 1. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.
- 2. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

### Article 28

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.



### Article 29

- 1. Everyone has duties to the community in which alone the free and full development of his personality is possible.
- 2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of mortality, public order and the general welfare in a democratic society.
- 3. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

### Article 30

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

### PRINCIPLES ON THE EFFECTIVE PREVENTION AND INVESTIGATION OF EXTRA-LEGAL, ARBITRARY AND SUMMARY EXECUTIONS

(Adopted by Economic and Social Council, Resolution 1989/65 of 24 May 1989)

UN document no. E/RES/1989/65

- 1. Governments shall prohibit by law all extralegal, arbitrary and summary executions and shall ensure that any such executions are recognized as offences under their criminal laws, and are punishable by appropriate penalties which take into account the seriousness of such offences. Exceptional circumstances including a state of war or threat of war, internal political instability or any other public emergency may not be invoked as a justification of such executions. Such executions shall not be carried out under any circumstances including, but not limited to, situations of internal armed conflict, excessive or illegal use of force by a public official or other person acting in an official capacity or by a person acting at the instigation, or with the consent or acquiescence of such person, and situations in which deaths occur in custody. This prohibition shall prevail over decrees issued by governmental authority.
- 2. In order to prevent extra-legal, arbitrary and summary executions, Governments shall ensure strict control, including a clear chain of command over all officials responsible for apprehension, arrest, detention, custody and imprisonment, as well as those officials authorized by law to use force and firearms.
- 3. Governments shall prohibit orders from superior officers or public authorities authorizing or inciting other persons to carry out any such extralegal, arbitrary or summary executions. All persons shall have the right and the duty to defy such orders. Training of law enforcement officials shall emphasize the above provisions.
- 4. Effective protection through judicial or other means shall be guaranteed to individuals and groups who are in danger of extralegal, arbitrary or summary executions, including those who receive death threats.
- 5. No one shall be involuntarily returned or extradited to a country where there are substantial grounds for believing that he or she may become a victim of extralegal, arbitrary or summary execution in that country.
- 6. Governments shall ensure that persons deprived of their liberty are held in officially recognized places of custody, and that accurate information on their custody and whereabouts, including transfers, is made promptly available to their relatives and lawyer or other persons of confidence.
- 7. Qualified inspectors, including medical personnel, or an equivalent independent authority, shall conduct inspections in places of custody on a regular basis, and be empowered to undertake unannounced inspections on their own initiative, with full guarantees of independence in the exercise of this function. The inspectors shall have unrestricted access to all persons in such places of custody, as well as to all their records.
- 8. Governments shall make every effort to prevent extra-legal, arbitrary and summary executions through measures such as diplomatic intercession, improved access of complainants to

intergovernmental and judicial bodies, and public denunciation. Intergovernmental mechanisms shall be used to investigate reports of any such executions and to take effective action against such practices. Governments, including those of countries where extralegal, arbitrary and summary executions are reasonably suspected to occur, shall cooperate fully in international investigations on the subject.

### Investigation

- 9. There shall be thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances. Governments shall maintain investigative offices and procedures to undertake such inquiries. The purpose of the investigation shall be to determine the cause, manner and time of death, the person responsible, and any pattern or practice which may have brought about that death. It shall include an adequate autopsy, collection and analysis of all physical and documentary evidence and statements from witnesses. The investigation shall distinguish between natural death, accidental death, suicide and homicide.
- 10. The investigative authority shall have the power to obtain all the information necessary to the inquiry. Those persons conducting the investigation shall have at their disposal all the necessary budgetary and technical resources for effective investigation. They shall also have the authority to oblige officials allegedly involved in any such executions to appear and testify. The same shall apply to any witness. To this end, they shall be entitled to issue summonses to witnesses, including the officials allegedly involved and to demand the production of evidence.
- 11. In cases in which the established investigative procedures are inadequate because of lack of expertise or impartiality, because of the importance of the matter or because of the apparent existence of a pattern of abuse, and in cases where there are complaints from the family of the victim about these inadequacies or other substantial reasons, Governments shall pursue investigations through an independent commission of inquiry or similar procedure. Members of such a commission shall be chosen for their recognized impartiality, competence and independence as individuals. In particular, they shall be independent of any institution, agency or person that may be the subject of the inquiry. The commission shall have the authority to obtain all information necessary to the inquiry and shall conduct the inquiry as provided for under these Principles.
- 12. The body of the deceased person shall not be disposed of until an adequate autopsy is conducted by a physician, who shall, if possible, be an expert in forensic pathology. Those conducting the autopsy shall have the right of access to all investigative data, to the place where the body was discovered, and to the place where the



death is thought to have occurred. If the body has been buried and it later appears that an investigation is required, the body shall be promptly and competently exhumed for an autopsy. If skeletal remains are discovered, they should be carefully exhumed and studied according to systematic anthropological techniques.

- 13. The body of the deceased shall be available to those conducting the autopsy for a sufficient amount of time to enable a thorough investigation to be carried out. The autopsy shall, at a minimum, attempt to establish the identity of the deceased and the cause and manner of death. The time and place of death shall also be determined to the extent possible. Detailed colour photographs of the deceased shall be included in the autopsy report in order to document and support the findings of the investigation. The autopsy report must describe any and all injuries to the deceased including any evidence of torture.
- 14. In order to ensure objective results, those conducting the autopsy must be able to function impartially and independently of any potentially implicated persons or organizations or entities.
- 15. Complainants, witnesses, those conducting the investigation and their families shall be protected from violence, threats of violence or any other form of intimidation. Those potentially implicated in extra-legal, arbitrary or summary executions shall be removed from any position of control or power, whether direct or indirect over complainants, witnesses and their families, as well as over those conducting investigations.
- 16. Families of the deceased and their legal representatives shall be informed of, and have access to. any hearing as well as to all information relevant to the investigation, and shall be entitled to present other evidence. The family of the deceased shall have the right to insist that a medical or other qualified representative be present at the autopsy. When the identity of a deceased person has been determined, a notification of death shall be posted, and the family or relatives of the deceased shall be informed immediately.

The body of the deceased shall be returned to them upon completion of the investigation.

17. A written report shall be made within a reasonable period of time on the methods and findings of such investigations. The report shall be made public immediately and shall include the scope of the inquiry, procedures and methods used to evaluate evidence as well as conclusions and recommendations based on findings of fact and on applicable law. The report shall also describe in detail specific events that were found to have occurred and the evidence upon which such findings were based, and list the names of witnesses who testified, with the exception of those whose identities have been withheld for their own protection. The Government shall, within a reasonable period of time, either reply to the report of the investigation, or indicate the steps to be taken in response to it.

#### Legal proceedings

- 18. Governments shall ensure that persons identified by the investigation as having participated in extra-legal, arbitrary or summary executions in any territory under their jurisdiction are brought to justice. Governments shall either bring such persons to justice or cooperate to extradite any such persons to other countries wishing to exercise jurisdiction. This principle shall apply irrespective of who and where the perpetrators or the victims are, their nationalities or where the offence was committed.
- 19. Without prejudice to principle 3 above, an order from a superior officer or a public authority may not be invoked as a justification for extra-legal, arbitrary or summary executions. Superiors, officers or other public officials may be held responsible for acts committed by officials under their authority if they had a reasonable opportunity to prevent such acts. In no circumstances, including a state of war, siege or other public emergency, shall blanket immunity from prosecution be granted to any person allegedly involved in extra-legal, arbitrary or summary executions.

# DECLARATION OF THE BASIC PRINCIPLES OF JUSTICE FOR

VICTIMS OF CRIME AND ABUSE OF POWER

(Adopted by UN General Assembly Resolution 34 of 29 November 1985)

#### A/RES/40/34, 29 November 1985

# A. Victims of crime

- 1. "Victims" means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power.
- 2. A person may be considered a victim, under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim. The term "victim" also includes, where appropriate, the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.
- 3. The provisions contained herein shall be applicable to all, without distinction of any kind, such as race, colour, sex, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin, and disability.

## Access to justice and fair treatment

- 4. Victims should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered.
- 5. Judicial and administrative mechanisms should be established and strengthened where necessary to enable victims to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible. Victims should be informed of their rights in seeking redress though such mechanisms.
- 6. The responsiveness of judicial and administrative processes to the needs of victims should be facilitated by:
- (a) Informing victims of their role and the scope, timing and progress of the proceedings and of the disposition of their cases, especially where serious crimes are involved and where they have requested such information;



- (b) Allowing the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected,
- without prejudice to the accused and consistent with the relevant national criminal justice system;
- (c) Providing proper assistance to victims throughout the legal process;
- (d) Taking measures to minimize inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation:
- (e) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting awards to victims.
- 7. Informal mechanisms for the resolution of disputes, including mediation, arbitration and customary justice or indigenous practices, should be utilized where appropriate to facilitate conciliation and redress for victims.

#### Restitution

- 8. Offenders or third parties responsible for their behaviour should, where appropriate, make fair restitution to victims their families or dependants. Such restitution should include the return of property or payment for the harm or loss suffered, reimbursement of expenses incurred as a result of the victimization, the provision of services and the restoration of rights.
- Governments should review their practices, regulations and laws to consider restitution as an available sentencing option in criminal cases, in addition to other criminal sanctions.
- 10. In cases of substantial harm to the environment, restitution if ordered, should include, as far as possible, restoration of the environment, reconstruction of the infrastructure, replacement of community facilities arid reimbursement of the expenses of relocation, whenever such harm results in the dislocation of a community.
- 11. Where public officials or other agents acting in an official or quasi-official capacity have violated national criminal laws, the victims should receive restitution from the State whose officials or agents were responsible for the harm inflicted. In cases where the Government under whose authority the victimizing act or omission occurred is no longer in existence, the State or Government successor in title should provide restitution to the victims.

# Compensation

- 12. When compensation is not fully available from the offender or other sources, States should endeavour to provide financial compensation to:
- (a) Victims who have sustained significant bodily injury or impairment of physical or mental health as a result of serious crimes;

- (b) The family, in particular dependants of persons who have died or become physically or mentally incapacitated as a result of such victimization
- 13. The establishment, strengthening and expansion of national funds for compensation to victims should be encouraged. Where appropriate, other funds may also be established for this purpose, including in those cases where the State of which the victim is a national is not in a position to compensate the victim for the harm.

#### Assistance

- 14. Victims should receive the necessary material, medical, psychological and social assistance through governmental, voluntary, community-based and indigenous means.
- 15. Victims should be informed of the availability of health and social services and other relevant assistance and be readily afforded access to them.
- 16. Police, justice, health, social service and other personnel concerned should receive training to sensitize them to the needs of victims, and guidelines to ensure proper and prompt aid.
- 17. In providing services and assistance to victims, attention should be given to those who have special needs because of the nature of the harm inflicted or because of factors such as those mentioned in paragraph 3 above.

#### B. Victims of abuse of power

- 18. "Victims" means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that do not yet constitute violations of national criminal laws but of internationally recognized norms relating to human rights.
- 19. States should consider incorporating into the national law norms proscribing abuses of power and providing remedies to victims of such abuses. In particular, such remedies should include restitution and/or compensation, and necessary material, medical, psychological and social assistance and support.
- 20. States should consider negotiating multilateral international treaties relating to victims, as defined in paragraph 18.
- 21. States should periodically review existing legislation and practices to ensure their responsiveness to changing circumstances, should enact and enforce, if necessary, legislation proscribing acts that constitute serious abuses of political or economic power, as well as promoting policies and mechanisms for the prevention of such acts, and should develop and make readily available appropriate rights and remedies for victims of such acts.

# GUIDELINES FOR THE CONDUCT OF UNITED NATIONS INQUIRES INTO ALLEGATIONS OF MASSACRES

Reprinted with permission from Guidelines for the Conduct of United Nations Inquiries into Allegations of Massacres (New York: Office of Legal Affairs, United Nations, 1995).

## Introduction

1. On 9 June 1993, the President of the Security Council made a statement on behalf of the Council, in which he, *inter alia*, condemned a massacre of civilians which had occurred on 6 June 1993 near Harbel, Liberia, and requested the Secretary-General to undertake a thorough and full investigation and to report to the

Council as soon as possible. By a letter dated 4 August 1993, the Secretary-General informed the President of the Security Council that he had appointed a three-member panel of inquiry with the following mandate: (a) to establish the facts and circumstances relating to the incident at Harbel; (b) to examine allegations regarding responsibility for the massacre; and (c) to make appropriate recommendations.



- 2. The panel of inquiry submitted to the Secretary-General an executive summary of its report, dated 10 September 1993. Among its conclusions, the panel stated that "There was no procedure in place to systematically collect and preserve readily available information concerning the massacre which could have served as a basis for future investigations" (paragraph 108). Furthermore, the panel recommended, *inter alia*, that "The UN should develop practical guidelines and procedures for rapid, methodical collection and preservation of evidence and interviews of eyewitnesses, for use wherever such tragedies may occur" (paragraph 112).
- 3. The Secretary-General on 17 September 1993 informed the members of the Council of the findings of the Panel of Inquiry, and indicated that he would carefully study the recommendations contained in its report in order to determine what further actions would be appropriate on the part of the United Nations. In a letter dated 17 November 1993 to the President of the Security Council, the Secretary-General spelled out a number of recommendations and decisions, among which was that he had asked the Legal Counsel of the United Nations, in cooperation with other relevant departments of the United Nations, to undertake the preparation of guidelines and procedures for the conduct of inquiries by the United Nations into allegations of massacres.
- 4. The guidelines and procedures mentioned in the preceding paragraph are set out below.
- Since massacres or other atrocities have been investigated in the past by the United Nations, through ad hoc missions or assignments, the guidelines set out below do not purport to replace or overlap with existing missions or assignments. They rather provide a frame of reference and guidance for ad hoc investigations for which there are no or few specific guidelines or rules already in place. However, certain provisions of the guidelines may not be appropriate in all cases. The guidelines must be tailored to the mandate of each particular inquiry, as well as to its object and purpose. It should also be noted that the Special Rapporteur of the Commission on Human Rights on Extrajudicial, Summary or Arbitrary Executions (hereafter "Special Rapporteur") has been entrusted by the Commission with a standing mandate to investigate allegations of massacres and other violations of the right to life. The present guidelines are without prejudice to the mandate of the Special Rapporteur, and to the possible participation of the Special Rapporteur in commissions of inquiry established under the present guidelines.
- 6. The term "massacre" is used to indicate the extrajudicial killing of a number of persons. While these guidelines do not indicate a precise number of victims to qualify the killings as a "massacre", it should be noted that, according to the Special Rapporteur, the term "massacre" should refer to the extrajudicial, summary or arbitrary killing of at least three persons.
- Under international law, States are obliged to carry out impartial and exhaustive investigations into all allegations of massacres and other extrajudicial, summary or arbitrary killings, with a view to clarifying the circumstances, identifying those responsible, bringing them to justice, compensating the victims or their families and taking all necessary action to prevent the recurrence of similar acts in the future. The results of such investigations must be made public. An inquiry by a United Nations organ cannot absolve Governments from their obligation under international law to investigate violations of the right to life. The obligations of States in this respect have been spelled out, inter alia, in the "Principles on the Effective Prevention and Investigation of Extralegal, Arbitrary and Summary Execution's annexed to Economic and Social Council resolution 1989/65 (attached as Annex 1 [ in the original document and reprinted in this Appendix] ). The task of the United Nations may consist in the gathering of the

available evidence and a *prima facie* assessment of the evidence received as well as the situation surrounding the investigation, but it may also consist of a thorough in-depth investigation or in the monitoring and supervision of investigations undertaken by the competent authorities. These guidelines should be applied by the United Nations in any such inquiry, irrespective of procedures provided for in the legislation in force in the area concerned.

### I. Mandate for the conduct of an inquiry

- 8. The guidelines are based on the assumption that an appropriate mandate has been given to the Secretary-General for the conduct of an inquiry by an intergovernmental organ of the United Nations. It is also assumed that the Government or the authorities exercising jurisdiction or control over the area, persons and information concerned, will cooperate with the United Nations and grant it full access to all places, persons and information deemed relevant for the investigation. The intergovernmental organ requesting or authorizing the Secretary-General to carry out the inquiry should call upon the State or States concerned, and any other authority in control of the area concerned, to fully cooperate with the United Nations in the discharge of its mandate.
- 9. The Secretary-General should establish terms of reference for any inquiry requested, subject to such terms as may be provided by the requesting or authorizing organ. The terms of reference of an inquiry should include the following:
  - (a) To determine whether a massacre has been committed;
  - (b) To collect evidence related to the massacre;
- (c) To obtain statements and testimony concerning the massacre:
- (d) To determine the cause, manner, location and time of the massacre;
- (e) To identify, as far as possible, the victims;
- (f) To identify the persons involved in committing the massacre:
- (g) To make recommendations to the Secretary-General or to other appropriate United Nations organs or officials, and to the State or States concerned.

#### II. Preliminary Assessment

- 10. On the basis of the appropriate mandate requesting or authorizing the Secretary-General to carry out an inquiry, and if circumstances so require (e.g. if a commission of inquiry cannot be established promptly or travel to the area and there is a risk that evidence may be lost) the Secretary-General may request or invite personnel of UN offices or agencies present in the area or in the country concerned, to gain access to the place of the alleged event.
- The Secretary-General shall seek the express consent of the relevant authorities to this course of action. If such consent is given, UN personnel should, together with the competent authorities, make a preliminary on-site assessment; establish a photographic record; establish what steps have been taken to investigate the facts and determine responsibilities; and verify what remedial action has been taken. The Secretariat of the United Nations should disseminate as widely as possible to UN bodies and agencies normally having a presence in the field (e.g. UNDP, UNICEF~ UNHCR, WFP, peacekeeping operations, and specialized agencies) a form to facilitate and standardize this preliminary collection of information. Reference could be made for this purpose to the Database Incident Form developed by the Commission of Experts established by Security Council resolution 780 (1992), which is attached to these guidelines as Annex II [ in the original document and reprinted in this Appendix].



- 12. UN personnel involved should also, if feasible, compile a list of witnesses or other persons who may provide relevant information. These persons should be fully identified, including their address and telephone number, with a view to contacting them in the future. They should be encouraged to inform the United Nations if they move to a different locality. Even at this stage, however, persons identified and contacted as possible witnesses should be encouraged to give written declarations, should it not be possible to contact them in the future and in order to assess what kind of security measures may be needed for their protection.
- 13. The competent authorities in the area must provide continuous surveillance and security of the scene of the massacre, in order to prevent and deter destruction of, or tampering with, material evidence. With the consent of the competent authorities, such security should be complemented by the presence of United Nations personnel.
- 14. UN personnel should report their preliminary findings as soon as possible to the Secretary-General, who in turn should submit a report on such findings to any commission of inquiry subsequently established (see below).
- 15. It should be noted that the Secretary-General may not need to request a preliminary assessment if, pursuant to the relevant mandate, a commission of inquiry can be appointed and travel to the area promptly and if there is little risk that evidence might be tampered with or be lost.

#### III. Commission of inquiry

- 16. Having received a request or authorization from a competent intergovernmental organ to conduct an inquiry, the Secretary-General should appoint a commission of inquiry as soon as possible to assist him in conducting the inquiry, unless he concludes, on the basis of the preliminary assessment carried out, that there is no basis to continue the inquiry. Members of the commission should be selected on the basis of their impartiality, competence and independence. The commission should consist of at least three members and include individuals with expertise in medicine, forensic science, crime investigation, criminal law and other specialized fields, as appropriate. The Secretary-General may arrange assistance to the commission in carrying out its tasks. United Nations personnel should in any case participate and assist in the investigation. The commission should travel to the area concerned as soon as possible.
- 17. Even in the variety of concrete situations that a commission of inquiry might face, it should monitor activities undertaken by Government or other authorities in control of the area in the following fields:
- (a) Preliminary investigations, if necessary, to locate the burial site:
- (b) Processing of the crime scene and on-site investigation, including exhumations;
- (c) Autopsies and other laboratory analyses;
- (d) Interviews and gathering of testimonies;
- (e) Examination of governmental records and documents, and monitoring of governmental or judicial activities in connection with the alleged massacre.
- 18. If necessary and appropriate, the commission itself may undertake the above activities. If the mandate of the commission consists wholly or partly of the gathering of evidence for future prosecution, the commission should bear in mind the rules and conditions for the admissibility of evidence by the authorities which will carry out the prosecution.
- 19. The commission shall utilize to the maximum extent feasible technical documents prepared by the United Nations to assist

in investigations of extrajudicial killings, in particular the protocols contained in the Manual on the Effective Prevention and Investigation of Extralegal, Arbitrary and Summary Executions (hereafter "the Manual"). Particular attention should be paid to the Model Protocol for a Legal Investigation of Extralegal, Arbitrary and Summary Executions ("Minnesota Protocol"), attached to these guidelines as Annex III [ in the original document and reprinted in this Appendix].

# IV. Right of access and cooperation of the competent authorities

- 20. The commission, on the basis of the authority provided for in its mandate, should receive assurances from the relevant authorities that its members and accompanying UN staff will enjoy the following:
- Freedom of movement and facilitation of transport.
- Freedom of inquiry, in particular (a) access to prisons, detention centres and places of interrogation; (b) contacts with central and local authorities through the establishment of clear lines of communication, including the appointment of one or more contact persons; (c) contacts with representatives of NGOs, other private institutions and the media; (d) contacts with witnesses and other persons considered necessary for the fulfillment of the mandate; (e) full access to all documentary material relevant to the mandate.
- Appropriate security arrangements, without restricting the freedom of movement and inquiry.
- The written material and records of the commission, including all written, audio and video records of interviews, as well as all other material evidence gathered by the commission during the inquiry, shall constitute property and archives of the United Nations and shall enjoy the treatment granted to such property and archives under Article II of the Convention on the Privileges and Immunities of the United Nations.
- 21. The conclusion of an agreement or arrangements on the privileges and immunities of the members and the secretariat of the commission may be necessary. The agreement should, as a minimum, contain the provisions indicated in the previous paragraph.

#### V. Collection and preservation of material evidence

#### (a) Location of burial sites

- 22. If the location of a burial site is unclear, the commission shall conduct interviews (see section VI below), review documents and make on-site investigations to ascertain the location of the burial sites. The commission should interview survivors, witnesses to the event, people living in the locality of the possible burial site, individuals who may have information about the use of a certain area as a burial site. The commission should also try to gather antemortem records of the persons believed to be buried in a specific site, e.g. through interviews with relatives.
- 23. To locate the burial site within an approximate area, the commission should use the services of a forensic archaeologist. The commission should photograph and sketch the area before any excavation or other activity is commenced.

### (b) On-site investigation and disinterment

24. The processing of the crime scene may entail different activities, according to whether the site has already been wholly or partly excavated or has been otherwise disturbed; whether the bodies have been removed; whether the area has already undergone a thorough analysis and search for possible remains and other evidence. In any case, the commission should have among its members or



technical experts experienced crime investigators and forensic experts, possibly including archaeologists and anthropologists.

- 25. If the site has not been excavated, the commission should either undertake the excavation and disinterment, or should monitor and supervise a disinterment undertaken by the relevant authorities. In the latter case, if the authorities so request, the commission may give advice and guidance on the technical aspects of the disinterment. The dates, location, starting and finishing time of the disinterment, and the name of all workers should be recorded. During the disinterment process, the work area should be photographed from the same perspective before work begins and after it ends every day to document any extraneous disturbance.
- 26. Any material evidence gathered in the course of the disinterment should be recorded, photographed, numbered and packaged. Their custody, in the course of their analysis and processing, should be entrusted to the commission or to a clearly designated authority accessible by the commission.
- 27. The disinterment should be carried out following the archeological and anthropological criteria and procedures provided for in the *Model Protocol for Disinterment and Analysis of Skeletal Remains*, contained in Chapter V of the Manual. This should also be used, as relevant, in case the burial site has already been excavated and the bodies or skeletal remains removed. The Model Protocol is attached to these guidelines as  $Annex\ V$  [ in the original document and reprinted in this Appendix].
- 28. It is possible, especially in the case of investigations taking place some time after the alleged massacre, that bodies have been removed from the place of the massacre. In such cases, the commission should also conduct on-site investigations, using as much as possible the criteria and procedures set out above, in order to collect any relevant evidence with a view to reconstructing the sequence of events concerning the massacre.

#### (c) Autopsy and laboratory analysis

- 29. Bodies and human remains should, if circumstances so warrant, be subject to laboratory analysis either by the commission of inquiry or by the competent authorities under the monitoring of the commission of inquiry. It is particularly important that appropriate laboratory analyses are performed when the cause, manner or time of death are disputed or difficult to ascertain. The commission of inquiry should request adequate facilities from the relevant authorities for the performance of the necessary analyses, including autopsy rooms, X-ray equipment and adequately trained personnel; the bodies to be subject to analysis should be put at the disposal of the commission for a minimum of 12 hours. Since investigations of cases of multiple killings frequently involve analysis of both soft and hard tissues, the commission should comprise, or use the services of, both a prosector and a forensic anthropologist.
- 30. A record should be established of which autopsy specimens have been saved. The specimens should be labelled with the name of the deceased, an autopsy number, the date of collection and the contents. The specimens should be left in the custody of a clearly identified authority with competence for such custody. Access to the specimens should be limited to as few persons as possible. The chain of custody and the authority to order release should be clarified and fully disclosed to the commission; the specimens should be made promptly available to the commission upon request for possible further examination.
- 31. Autopsies carried out should follow the procedures and principles provided for in the *Model Autopsy Protocol* set out in Chapter IV of the Manual and attached to these guidelines as Annex IV [ in the original document and reprinted in this Appendix].

#### (d) Analysis of skeletal remains

32. In the event of laboratory analysis of skeletal remains, the commission of inquiry should follow the procedures set out in the *Model Protocol for Disinterment and analysis of Skeletal Remains*, set out in Chapter V of the Manual and attached to these guidelines as *Annex V* [ in the original document and reprinted in this *Appendix*]. It is particularly important that skeletal remains which are retained for possible further analysis be placed in the custody of the competent authorities under the arrangements described in paragraph 32 above.

#### VI. Interviews and testimonies

#### (a) General

- 33. Gathering of evidence through interviews is an essential part of the inquiry. The kind of information to be sought, the persons to be interviewed and the objective of the interviews may differ according to the mandate of the commission (e.g. determine whether a massacre has taken place; ascertain the facts; determine responsibilities; assess the actions taken by the competent authorities; prepare evidence for possible prosecution; make recommendations for follow-up actions, etc., as well as any combination of the foregoing).
- 34. The persons to be interviewed would normally fall within one or more of the following categories: survivors; alleged perpetrators; officials or authorities involved at some stage in the event or with knowledge of it; friends and relatives of the victims; direct witnesses or persons with indirect knowledge of the event (e.g. by hearsay); persons with a specific knowledge of the event for particular reasons (e.g. staff of international organizations, members of the press, etc.). All information received by the commission of inquiry, especially if provided by political parties and other groups which might attempt to use the inquiry as an instrument for their own ends, should be evaluated with caution.
- 35. The commission should be flexible as to the manner of conducting its interviews and adapt it to the circumstances of the case and the individual interviewees, in order to gather an optimal amount of evidence from its interviews. At the same time, it should ensure consistency in its methodology and approach, so as to facilitate comparisons between interviews and any necessary follow-up.
- 36. Survivors, eyewitnesses and alleged perpetrators should be interviewed by persons with a specific background such as lawyers or trained military or police investigators. This is particularly important in case the information gathered by the commission could serve for future prosecution. In case of interviews with alleged perpetrators, the commission should advise them as to the possible consequences of their statements and that they may, should they so wish, be assisted by counsel. The commission of inquiry, however, is itself an investigative body, not a judicial organ, and this should be made clear to persons being interviewed. If the commission deems it desirable, in the light of the circumstances, that a formal interrogation or hearing be conducted by the competent authorities, the commission should be satisfied that the interviewees will have a right to their own counsel and enjoy other guarantees of a fair hearing.
- 37. The commission should protect, as appropriate, the identity of the interviewee and the confidentiality of the information provided by him or her. To this end, and to avoid intimidation, the commission should seek from the outset clear assurances as to its right to conduct interviews independently and in private. The commission should limit in principle participation of Government officials or other authorities in the interviews. This should only be



allowed on a case by case basis and with the explicit consent of the interviewee

# (b) Conduct of interviews <sup>2</sup>

- 38. **Pre-interview.** A background interview should be conducted before having the interviewees give their statement for the record. This will typically consist of several preliminary, but important, questions: name, address, date of birth, other personal information, and some informal questions to help the interviewee feel more at ease. The interviewer can use the background interview to identify any bias, motive, or inconsistencies in the interviewee 's statement.
- 39. The interviewer must clearly identify the interviewee as a victim, witness or alleged perpetrator as this will determine the method and line of questioning.
- 40. The interviews must be freely and voluntarily provided. The interviewer should establish this as part of the record of the interview by asking specific questions as to whether the interviewee's statement is being given voluntarily. In the case of an alleged perpetrator, a photograph of the interviewee before the statement and another thereafter should be made part of the record to demonstrate that the interviewee was not physically abused during the statement.
- 41. There should always be at least two persons present during the interview, with the addition of a professional interpreter if necessary. One person prepares the interview and asks the questions, and the other takes notes and ensures that a complete record of the interview is made. Whenever possible a trained professional of the same sex as the interviewe should conduct the interview. A high level of sensitivity must be used in case of interviews with survivors and traumatized witnesses.
- 42. The interviews should preferably be conducted in a private room with only the interviewee, the interviewers and the interpreter present. In certain cases the person interviewed may wish or need someone else to be present for support or counsel. This person's role should be limited to support or counsel the interviewee in case of need.
- 43. *Method of recording.* The interview should be recorded if the person being interviewed consents.
- (1) **Video taping.** If the interviewee does not wish to be identified, the interviewer should assure him or her that measures can be employed to conceal his or her identity (e.g. electronic alteration or obscuring facial features). The video recorder should be unobtrusive, run continuously throughout the interview and display the date and time of the interview. All videotaped interviews should be transcribed.
- (2) **Audio taping.** The audio recorder should run continuously throughout the interview. Documents, photographs or other objects utilized or referred to in the statement should be described for the record. Physical gestures and indicators of demeanor should also be described. All audiotaped interviews should be transcribed.
- (3) Written record. Comprehensive notes must be taken by the person assisting the interviewer. Documents, photographs or other objects utilized or referred to in the statement should be described for the record. Physical gestures and indicators of demeanor should also be described.
- 44. *Interpreters.* Interpreters must understand that everything the interviewer and interviewee say must be interpreted. It is not sufficient to summarize. They cannot fill in missing information from their own knowledge, nor "improve" the words of the interviewees so that they sound more coherent, credible or educated. The interpreter must allow interviewer and interviewee to

- ask for clarification whenever necessary. Any names must be clearly spelled out. There must be clear agreement between the interpreter and the interviewer on the spelling of certain words in the language in which the interview is being conducted as well as the alphabet to be used.
- 45. **Conducting the interview.** Each interview should begin with the establishment, in writing or other means, for the record, of the conditions under which the interview was conducted. This should include:
- (a) an introduction of all those present and an explanation of their role, to be repeated at the beginning of each new audio or video tape if the interview requires more than one;
- (b) a statement from the interviewee that the interview is being given freely and voluntarily. In the case of an alleged perpetrator, the statement should also include a full reading of all applicable rights, including the right to counsel;
- (c) the agreement from the interviewee on the method of recording;
  - (d) any confidentiality restriction;
- (e) a full identification of the interviewee and how he or she can be contacted;
- (f) a statement from the interviewee that he or she understands the interpreter and is satisfied with the interpretation.
- 46. The interviewer should guide the conversation to keep the interviewee from rambling and corroborate information collected from other sources. The interviewer should employ the following techniques: (a) ask one question at a time; (b) avoid leading questions; (c) keep the questions simple; (d) ask questions that encourage a narrative response and avoid questions that lead to "yes" and "no" answers; (e) frame questions in a positive manner.
- 47. Any documents, records, recording, statements or other items obtained during the interview should be handled as potential evidence. These items should be kept under the custody of the commission. A record should be kept of all those who have access to this material so that a chain of custody can be established.
- 48. At the end of the interview, the interviewee should have the opportunity of adding further statements, orally or in writing, before any final initialing or signing of notes or statements.
- Verifying statement. The interviewee should verify his or her statement. It is preferable to obtain the interviewee's statement in writing, to be initialed on every page and signed at the end by the interviewee, the interviewer and the interpreter. If a written statement cannot be obtained from the interviewee, it should be prepared for him or her, preferably under his or her dictation, and should be initialed and signed by him or her. If this cannot be obtained, the interviewee should read, initial and sign the notes taken by the person recording the interview. In the absence of any written record or notes, the interviewee should listen to or view, and confirm in writing, the audio- or videotaped recording of the interview. In case the interviewee is illiterate, his/her statement should be read out to him/her, if needed with the help of an interpreter. It should be mentioned at the end of the written statement that the interviewee has fully understood the statement and agrees with its contents; this clause should be certified by the interviewer and the interpreter through their signature, and by the interviewee with his/her fingerprint.

#### VIII. Report of the Secretary-General

50. The inquiry conducted by the commission should lead to a detailed report of its findings. The contents and format of the report, however, will depend on the mandate and the terms of reference of



the commission (e.g. determine whether a massacre has taken place; ascertain the facts; determine responsibilities; assess the actions taken by the competent authorities; prepare evidence for possible prosecution; make recommendations for follow-up actions, etc., as well as any combination of the foregoing), thus it is not possible to give exhaustive indications in these guidelines as to how a report should be structured and what it should contain.

- 51. The commission should decide at the outset of its inquiry whether, in case of a decision by majority vote, the minority commissioner(s) may file a dissenting opinion.
- 52. The final report of a commission of inquiry should contain as a minimum the following elements:
- (a) The scope of inquiry and terms of reference, the composition of the commission and a chronological description of its activities;
- (b) The background to the inquiry such as relevant social, political and economic conditions;
- (c) Evaluation of the evidence, and description of the procedures and methods used in such evaluation;
- (d) A list of all persons who have testified, except for those whose identities are withheld for protection, and a list of the exhibits received in evidence during the interviews;
- (e) An analytical description of the on-site investigations, laboratory analysis and other activities carried out by the commission, together with a list of items gathered in this connection and an indication of the arrangements made for their custody;
- (f) A description of the events as reconstructed by the commission and the evidence upon which such findings are based;
  - (g) If applicable, the law upon which the commission relied;
- (h) The commission's conclusions based upon findings of fact and, if relevant, the applicable law;
- (i) If in line with the mandate of the commission, recommendations based upon its findings.

- 53. The commission should prepare an executive summary of its report as well as a full version. The executive summary should be submitted as soon as possible to the Secretary-General after the conclusion of the inquiry, especially in case the preparation of the full report may take longer. The executive summary should contain the elements mentioned in the previous paragraph under (a), (b), (c), (1), (g), (h) and (i).
- 54. The commission shall not disclose the outcome of its investigations.
- 55. The Secretary-General shall include the report of the commission of inquiry in any report he submits to the intergovernmental organ which requested or authorized the inquiry. The Secretary-General should, in principle, make his report available to the Special Rapporteur as well as to the public, subject to any decisions taken by the intergovernmental organ concerned. However, the report, or parts thereof, shall not be made public in cases in which the Secretary-General concludes that disclosure would lead to the destruction of evidence, put persons involved in the investigation at risk, or place in jeopardy the success of any future prosecutions.
- <sup>1</sup> If the Secretary-General retains the services of organizations or entities outside the United Nations system to assist the commission, an agreement should be concluded for this purpose. The agreement should indicate the requirements and conditions applicable, including in particular, a commitment by the organization to keep their findings strictly confidential and to transmit the results of its work solely to the Secretary-General.
- <sup>2</sup> The following section is excerpted from the document *Guidelines* for the Gathering of Information and the Conduct of Interviews, prepared by the Secretariat of the Commission of Experts Established Pursuant to Security Council resolution 780 (1992).

# BELGRADE MINIMAL RULES OF PROCEDURE FOR

#### INTERNATIONAL HUMAN RIGHTS FACT-FINDING MISSIONS

Reprinted with permission from International Law Association, 75 Am. J. Intl. L. 163, 163-165 (1981)

#### I. Terms Of Reference (Mandate)

- 1. The organ of an organization establishing a fact finding mission should set forth objective terms of reference which do not prejudge the issues to be investigated. These terms should accord with the instrument establishing the organization.
- 2. The resolution authorizing the mission should not prejudge the mission's work and findings.
- 3. While terms of reference should not unduly restrict the mission in the Investigation of the subject and its context, they should be so specific as to indicate the nature of the subject to be investigated.

#### II. Selection Of Fact Finders

- 4. The fact finding mission should be composed of persons who are respected for their integrity, impartiality, competence and objectivity and who are serving in their personal capacities.
- 5. Where the mandate of the mission concerns one or several specific states, in order to facilitate the task of the mission, the government or governments concerned, whenever possible, should be consulted in regard to the composition of the mission.

- 6. Any person appointed a member of the fact finding mission should not be removed from membership except for reasons of incapacity or gross misbehaviour.
- 7. The chairman and the rapporteur of the fact finding mission should not be replaced during the term of the mission except for reasons of incapacity or gross misbehaviour.
- 8. Once a fact finding mission has been established arid its chairman and members appointed, no persons should be added to the mission as members except to fill vacancies in the mission.

#### III. Collection Of Evidence

- 9. At the commencement of the mission, all material relevant to the purpose of the mission should be made available to it, with the assistance of the organization concerned.
- 10. Fact finding missions should operate with staff sufficient to permit the independent collection of data and should be assisted by such independent experts as the mission may deem necessary.
- 11. Fact finding missions may invite the submission of evidence that is in writing and contains specific statements of fact that are in their nature verifiable.



- 12. The state concerned should have an opportunity to comment in writing on data referred to in paragraph 10 and statements referred to in paragraph 11.
- 13. Both the petitioners, such as states, non-governmental organizations, or groups of individuals, and the states concerned may present lists of witnesses to the fact finding mission. The fact finding mission should make its own determination as to which witnesses it will hear.
- 14. Petitioners ought ordinarily to be heard by the fact finding mission in public session with an opportunity for questioning by the states concerned.
- 15. The fact finding mission shall in advance require the state concerned to provide adequate guarantee of non-retaliation against individual petitioners, witnesses and their relatives.
- 16. In case a guarantee, as referred to in paragraph 15, is provided to the satisfaction of the fact finding mission, the latter should, on hearing witnesses, either provide an opportunity for the state concerned to be present and to question witnesses, or make available to the state concerned a record of the witnesses' testimony for comment.
- 17. The fact finding mission may withhold information which, in its judgment, may jeopardize the safety or well-being of those giving testimony, or of third parties, or which in its opinion is likely to reveal sources

18. On the basis of data generated by its staff, written statements, and testimony of witnesses, the fact finding mission should make its own determination as to whether it needs to conduct an on-site inspection.

#### IV. The On-Site Investigation

- 19. The fact finding mission should draw up its programme of work, including the list of witnesses it wishes to interview at the site of the investigation, places it wishes to visit, and the sequence, timing and location of its activities on the site.
- 20. The fact finding mission may operate as a whole or in smaller groups assigned to conduct specific parts of the investigation.
- 21. The fact finding mission should insist on interviewing any persons it deems necessary, even if incarcerated.

#### V. Final Stage

22. After conclusion of the on-site investigation, members of the fact finding mission should draw up a set of preliminary findings and submit these, together with supplementary questions where appropriate, to the state concerned, giving it an opportunity, within a reasonable time, to present comments and/or to rectify the matter investigated.

# MODEL PROTOCOL FOR A LEGAL INVESTIGATION OF EXTRALEGAL, ARBITRARY AND SUMMARY EXECUTIONS "MINNESOTA PROTOCOL"

Reprinted with permission from Manual on the Effective Prevention and Investigation of Extra-Legal Arbitrary and Summary Executions (New York: United Nations, 1991)

#### A. Introduction

Suspected extralegal, arbitrary and summary executions can be investigated under established national or local laws and can lead to criminal proceedings. In some cases, however, investigative procedures may be inadequate because of the lack of resources and expertise or because the agency assigned to conduct the investigation may be partial. Hence, such criminal proceedings are less likely to be brought to a successful outcome.

The following comments may enable those conducting investigations, and other parties, as appropriate, to obtain some indepth guidance for conducting investigations. Such guidance in a general way, has been set out in the Principles on the Effective Prevention and Investigation of Extralegal, Arbitrary and Summary Executions (see Annex I [ in the original document and reprinted in this *Appendix*] paragraphs 9-17). The guidelines set forth in this proposed model protocol for a legal investigation of extralegal, arbitrary and summary executions are not binding. Instead, the model protocol is meant to be illustrative of methods for carrying out the standards enumerated in the Principles.

By definition, this model protocol cannot be exhaustive as the variety of legal and political arrangements escapes its application. Also, investigative techniques vary from country to country and these cannot be standardized in the form of internationally adopted principles. Consequently, additional comments may be relevant for the practical implementation of the Principles.

Sections B and C of this model protocol contain guidelines for the investigation of all violent, sudden, unexpected or suspicious deaths,

including suspected extralegal, arbitrary and summary executions. These guidelines apply to investigations conducted by law enforcement personnel and by members of an independent commission of inquiry.

Section D provides guidelines for establishing a special independent commission of inquiry. These guidelines are based on the experiences of several countries that have established independent commissions to investigate alleged arbitrary executions.

Several considerations should be taken into account when a Government decides to establish an independent commission of inquiry. First, persons subject to an inquiry should be guaranteed the minimum procedural safeguards protected by international law <sup>1</sup> at all stages of the investigation. Secondly, investigators should have the support of adequate technical and administrative personnel, as well as access to objective, impartial legal advice to ensure that the investigation will produce admissible evidence for later criminal proceedings. Thirdly, investigators should receive the full scope of the Government's resources and powers. Finally, investigators should have the power to seek help from the international community of experts in law, medicine and forensic sciences.

The fundamental principles of any viable investigation into the causes of death are competence, thoroughness, promptness and impartiality of the investigation, which flow from paragraphs 9 and 11 of the Principles. These elements can be adapted to any legal system and should guide all investigations of alleged extralegal, arbitrary and summary executions.



#### B. Purposes of an inquiry

As set out in paragraph 9 of the Principles, the broad purpose of an inquiry is to discover the truth about the events leading to the suspicious death of a victim. To fulfill this purpose, those conducting the inquiry shall, at a minimum, seek:

- (a) To identify the victim;
- (b) To recover and preserve evidentiary material related to the death to aid in any potential prosecution of those responsible;
- (c) To identify possible witnesses and obtain statements from them concerning the death;
- (d) To determine the cause, manner, location and time of death, as well as any pattern or practice that may have brought about the death:
- (e) To distinguish between natural death, accidental death, suicide and homicide;
- (f) To identify and apprehend the person(s) involved in the death:

To bring the suspected perpetrator(s) before a competent court established by law.

#### C. Procedures of an inquiry

One of the most important aspects of a thorough and impartial investigation of an extralegal, arbitrary and summary execution is the collection and analysis of evidence. It is essential to recover and preserve physical evidence, and to interview potential witnesses so that the circumstances surrounding a suspicious death can be clarified.

#### 1. Processing of the crime scene

Law enforcement personnel and other non-medical investigators should coordinate their efforts in processing the scene with those of medical personnel. Persons conducting an investigation should have access to the scene where the body was discovered and to the scene where the death may have occurred:

- (a) The area around the body should be closed off. Only investigators and their staff should be allowed entry into the area;
- (b) Colour photographs of the victim should be taken as these, in comparison with black and white photographs, may reveal in more detail the nature and circumstances of the victim's death.
- (c) Photographs should be taken of the scene (interior and exterior) and of any other physical evidence;
- (d) A record should be made of the body position and condition of the clothing;
- (e) The following factors may be helpful in estimating the time of death:
  - (i) Temperature of the body (warm, cool, cold);
  - (ii) Location and degree of fixation of lividity;
  - (iii) Rigidity of the body;
  - (iv) Stage of its decomposition;
- (f) Examination of the scene for blood should take place. Any samples of blood, hair, fibres and threads should be collected and preserved;
- (g) If the victim appears to have been sexually assaulted, this fact should be recorded;
- (h) A record should be made of any vehicles found in the area:

- Castings should be made and preserved of pry marks, tyre or shoe impressions, or any other impressions of an evidentiary nature;
- (j) Any evidence of weapons, such as guns, projectiles, bullets and cartridge cases, should be taken and preserved. When applicable, tests for gunshot residue and trace metal detection should be performed;
- (k) Any fingerprints should be located, developed, lifted and preserved;
- (l) A sketch of the crime scene to scale should be made showing all relevant details of the crime, such as the location of weapons, furniture, vehicles, surrounding terrain, including the position, height and width of items, and their relationship to each other:
- (m) A record of the identity of all persons at the scene should be made, including complete names, addresses and telephone numbers;
- (n) Information should be obtained from scene witnesses, including those who last saw the decedent alive, when, where and under what circumstances;
- (o) Any relevant papers, records or documents should be saved for evidentiary use and handwriting analysis.

#### 2. Processing of the evidence

- (a) The body must be identified by reliable witnesses and other objective methods;
- (b) A report should be made detailing any observations at the scene, actions of investigators and disposition of all evidence recovered:
  - (c) Property forms listing all evidence should be completed;
- (d) Evidence must be properly collected, handled, packaged, labelled and placed in safe-keeping to prevent contamination and loss of evidence.

#### 3. Avenues to investigation

- (a) What evidence is there, if any, that the death was premeditated and intentional, rather than accidental? Is there any evidence of torture?
  - (b) What weapon or means was used and in what manner?
  - (c) How many persons were involved in the death?
- (d) What other crime, if any, and the exact details thereof, was committed, during or associated with the death?
- (e) What was the relationship between the suspected perpetrator(s) and the victim prior to the death?
- (f) Was the victim a member of any political, religious, ethnic or social group(s), and could this have been a motive for the death?

#### 4. Personal Testimony

- (a) Investigators should identify and interview all potential witnesses to the crime, including:
  - (i) Suspects;
  - (ii) Relatives and friends of the victim
  - (iii) Persons who knew the victim;
  - (iv) Individuals residing or located in the area of the crime;
  - (v) Persons who knew or had knowledge of the suspects;
  - (vi) Persons who may have observed either the crime, the scene, the victim or the suspects in the week prior to the execution;

- (vii) Persons having knowledge of possible motives;
- (b) Interviews should take place as soon as possible and should be written and/or taped. All tapes should he transcribed and maintained;
- (c) Witnesses should be interviewed individually, and assurance should be given that any possible means of protecting their safety before, during and after the proceedings will be used, if necessary.

#### D. Commission of inquiry

In cases where government involvement is suspected, an objective and impartial investigation may not be possible unless a special commission of inquiry is established. A commission of inquiry may also be necessary where the expertise of the investigators is called into question. This section sets out factors that give rise to a presumption of government complicity, partiality or insufficient expertise on the part of those conducting the investigation. Any one of these presumptions should trigger the creation of a special commission of inquiry. It then sets out procedures that can be used as a model for the creation and function of commissions of inquiry. The procedures were derived from the experience of major inquiries that have been mounted to investigate executions or similarly grievous cases of human rights violations. Establishing a commission of inquiry entails defining the scope of the inquiry, appointing commission members and staff, determining the type of proceedings to be followed and selecting procedures governing those proceedings, and authorizing the commission to report on its findings and make recommendations. Each of these areas will be covered separately.

#### 1. Factors triggering a special investigation

Factors that support a belief that the Government was involved in the execution, and that should trigger the creation of a special impartial investigation commission, include:

- (a) Where the political views, religious or ethnic affiliation, or social status of the victim give rise to a suspicion of government involvement or complicity in the death because of any one or combination of the following factors:
- (i) Where the victim was last seen alive in police custody or detention;
- (ii) Where the *modus operandi* is recognizably attributable to government-sponsored death squads;
- (iii) Where persons in the Government or associated with the Government have attempted to obstruct or delay the investigation of the execution:
- (iv) Where the physical or testimonial evidence essential to the investigation becomes unavailable.
- (b) As set out in paragraph 11 of the Principles, an independent commission of inquiry or similar procedure should also be established where a routine investigation is inadequate for the following reasons:
- (i) The lack of expertise; or
- (ii) The lack of impartiality; or
- (iii) The importance of the matter; or
- (iv) The apparent existence of a pattern of abuse; or
- (v) Complaints from the family of the victim about the above inadequacies or other substantial reasons.

## 2. Defining the scope of the inquiry

Governments and organizations establishing commissions of inquiry need to define the scope of the inquiry by including terms of reference in their authorization. Defining the commission's terms of

- reference can greatly increase its success by giving legitimacy to the proceedings, assisting commission members in reaching a consensus on the scope of inquiry and providing a measure by which the commission's final report can be judged. Recommendations for defining terms of reference are as follows:
- (a) They should be neutrally framed so that they do not suggest a predetermined outcome. To be neutral, terms of reference must not limit investigations in areas that might uncover government responsibility for extralegal, arbitrary and summary executions;
- (b) They should state precisely which events and issues are to be investigated and addressed in the commission's final report;
- (c) They should provide flexibility in the scope of inquiry to ensure that thorough investigation by the commission is not hampered by overly restrictive or overly broad terms of reference. The necessary flexibility may be accomplished, for example by permitting the commission to amend its terms of reference as necessary. It is important, however, that the commission keep the public informed of any amendments to its charge.

#### 3. Power of the commission

The Principles set out in a general manner the powers of the commission. More specifically such a commission would need the following:

- (a) To have the authority to obtain all information necessary to the inquiry, for example, for determining the cause, manner and time of death, including the authority to compel testimony under legal sanction, to order the production of documents including government and medical records, and to protect witnesses, families of the victim and other sources;
  - (b) To have the authority to issue a public report;
- (c) To have the authority to prevent the burial or other disposal of the body until an adequate post-mortem examination has been performed;
- (d) To have the authority to conduct on-site visits, both at the scene where the body was discovered and at the scene where the death may have occurred:
- (e) To have the authority to receive evidence from witnesses and organizations located outside the country.

### 4. Membership qualifications

Commission members should be chosen for their recognized impartiality, competence and independence as individuals:

#### **Impartiality**

Commission members should not be closely associated with any individual, government entity, political party or other organization potentially implicated in the execution or disappearance, or an organization or group associated with the victim, as this may damage the commission's credibility.

# Competence

Commission members must be capable of evaluating and weighing evidence, and exercising sound judgement. If possible, commissions of inquiry should include individuals with expertise in law, medicine, forensic science and other specialized fields, as appropriate.

#### Independence

Members of the commission should have a reputation in their community for honesty and fairness.

#### 5. Number of commissioners

The Principles do not contain a provision on the number of members of the commission, but it would not be unreasonable to note



that objectivity of the investigation and commission's findings may, among other things, depend on whether it has three or more members rather than one or two. Investigations into extralegal, arbitrary and summary executions should, in general, not be conducted by a single commissioner. A single, isolated commissioner will generally be limited in the depth of investigation he or she can conduct alone. In addition, a single commissioner will have to make controversial and important decisions without debate, and will be particularly vulnerable to governmental and other outside pressure.

#### 6. Choosing a commission counsel

Commissions of inquiry should have impartial, expert counsel. Where the commission is investigating allegations of governmental misconduct, it would be advisable to appoint counsel outside the Ministry of Justice. The chief counsel to the commission should be insulated from political influence, as through civil service tenure, or status as a wholly independent member of the bar.

#### 7. Choosing expert advisers

The investigation will often require expert advisers. Technical expertise in such areas as pathology, forensic science and ballistics should be available to the commission.

#### 8. Choosing investigators

To conduct a completely impartial and thorough investigation, the commission will almost always need its own investigators to pursue leads and to develop evidence. The credibility of an inquiry will be significantly enhanced to the extent that the commission can rely on its own investigators.

#### 9. Protection of witnesses

- (a) The Government shall protect complainants, witnesses, those conducting the investigation, and their families from violence, threats of violence or any other form of intimidation;
- (b) If the commission concludes that there is a reasonable fear of persecution, harassment, or harm to any witness or prospective witness, the commission may find it advisable:
  - (i) To hear the evidence in camera;
  - (ii) To keep the identity of the informant or witness confidential:
  - (iii) To use only such evidence as will not present a risk of identifying the witness;
    - (iv) To take any other appropriate measures.

#### 10. Proceedings

It follows from general principles of criminal procedure that hearings should be conducted in public, unless in camera proceedings are necessary to protect the safety of a witness. In camera proceedings should be recorded and the closed, unpublished record kept in a known location.

Occasionally, complete secrecy may be required to encourage testimony, and the commission will want to hear witnesses privately, informally and without recording testimony.

#### 11. Notice of inquiry

Wide notice of the establishment of a commission and the subject of the inquiry should be given. The notice should also include an invitation to submit relevant information and/or written statements to the commission, and instructions to persons wishing to testify. Notice can be disseminated through newspapers, magazines, radio, television, leaflets and posters.

#### 12. Receipt of evidence

#### Power to compel evidence

As emphasized in Principle 10, commissions of inquiry should have the power to compel testimony and production of documents: in this context, Principle 10 refers to "the authority to oblige officials" allegedly involved in extralegal, arbitrary and summary executions. Practically, this authority may involve the power to impose fines or sentences if the Government or individuals refuse to comply.

#### Use of witness statements

Commissions of inquiry should invite persons to testify or submit written statements as a first step in gathering evidence. Written statements may become an important source of evidence if their authors become afraid to testify, cannot travel to proceedings, or are otherwise unavailable.

### Use of evidence from other proceedings

Commissions of inquiry should review other proceedings that could provide relevant information. For example, the commission should obtain the findings from an inquest into cause of death, conducted by a coroner or medical examiner Such inquests generally rely on post-mortem or autopsy examinations. A commission of inquiry should review the inquest and the results of the autopsy presented to the inquest to determine if they were conducted thoroughly and impartially. If the inquest and autopsy were so conducted, the coroner's findings are entitled to be given great weight.

#### 13. Rights of parties

As mentioned in Principle 16, families of the deceased and their legal representatives shall be informed of, and have access to, any hearing and to all information relevant to the investigation, and shall be entitled to present evidence. This particular emphasis on the role of the family as a party to the proceedings implies the specially important role the family's interests play in the conduct of the investigation. However, all other interested parties should also have the opportunity at being heard. As mentioned in Principle 10, the investigative body shall be entitled to issue summons to witnesses, including the officials allegedly involved and to demand the production of evidence. All these witnesses should be permitted legal counsel if they are likely to be harmed by the inquiry, for example, when their testimony could expose them to criminal charges or civil liability. Witnesses may not be compelled to testify against themselves regarding matters unrelated to the scope of inquiry.

There should be an opportunity for the effective questioning of witnesses by the commission. Parties to the inquiry should be allowed to submit written questions to the commission.

#### 14. Evaluation of evidence

The commission shall assess all information and evidence it receives to determine its relevance, veracity, reliability and probity. The commission should evaluate oral testimony based upon the demeanour and overall credibility of the witness. Corroboration of evidence from several sources will increase the probative value of such evidence. The reliability of hearsay evidence from several sources will increase the probative value of such evidence. The reliability of hearsay evidence must be considered carefully before the commission should accept it as fact. Testimony not tested by cross-examination must also be viewed with caution. In camera testimony preserved in a closed record or not recorded at all is often not subjected to cross-examination and therefore may be given less weight.

#### 15. The report of the commission

As stated in Principle 17, the commission should issue a public report within a reasonable period of time. It may be added that where the commission is not unanimous in its findings, the minority commissioner(s) should file a dissenting opinion.

From the practical experience gathered, commission of inquiry reports should contain the following information:

- (a) The scope of inquiry and terms of reference;
- (b) The procedures and methods of evaluating evidence;
- (c) A list of all witnesses who have testified, except for those whose identities are withheld for protection and who have testified in camera, and exhibits received in evidence;
- (d) The time and place of each sitting (this might be annexed to the report);
- (e) The background to the inquiry such as relevant social, political and economic conditions;

- (f) The specific events that occurred and the evidence upon which such findings are based;
  - (g) The law upon which the commission relied;
- (h) The commission's conclusions based upon applicable law and findings of fact;
- Recommendations based upon the findings of the commission.

#### 16. Response of the Government

The Government should either reply publicly to the commission's report or should indicate what steps it intends to take in response to the report.

<sup>1</sup> In particular, all persons must be guaranteed the due process rights set forth in article 14 of the International Covenant on Civil and Political Rights.

#### MODEL AUTOPSY PROTOCOL

Reprinted with permission from Manual on the Effective Prevention and Investigation of Extra-Legal Arbitrary and Summary Executions (New York: United Nations, 1991)

#### A. Introduction

Difficult or sensitive cases should ideally be the responsibility of an objective, experienced, well-equipped and well-trained prosector (the person performing the autopsy and preparing the written report) who is separate from any potentially involved political organization or entity. Unfortunately, this ideal is often unattainable. This proposed model autopsy protocol includes a comprehensive check-list of the steps in a basic forensic post-mortem examination that should be followed to the extent possible given the resources available. Use of this autopsy protocol will permit early and final resolution of potentially controversial cases and will thwart the speculation and innuendo that are fuelled by unanswered, partially answered or poorly answered questions in the investigation of an apparently suspicious death.

This model autopsy protocol is intended to have several applications and may be of value to the following categories of individuals:

- (a) Experienced forensic pathologists may follow this model autopsy protocol to ensure a systematic examination and to facilitate meaningful positive or negative criticism by later observers. While trained pathologists may justifiably abridge certain aspects of the post-mortem examination or written descriptions of their findings in routine cases, abridged examinations or reports are never appropriate in potentially controversial cases. Rather, a systematic and comprehensive examination and report are required to prevent the omission or loss of important details;
- (b) General pathologists or other physicians who have not been trained in forensic pathology but are familiar with basic post-mortem examination techniques may supplement their customary autopsy procedures with this model autopsy protocol. It may also alert them to situations in which they should seek consultation, as written material cannot replace the knowledge gained through experience;
- (c) Independent consultants whose expertise has been requested in observing, performing or reviewing an autopsy may cite this model autopsy protocol and its proposed minimum criteria as a basis for their actions or opinions;

- (d) Governmental authorities, international political organizations, law enforcement agencies, families or friends of decedents, or representatives of potential defendants charged with responsibility for a death may use this model autopsy protocol to establish appropriate procedures for the postmortem examination prior to its performance;
- (e) Historians, journalists, attorneys, judges, other physicians and representatives of the public may also use this model autopsy protocol as a benchmark for evaluating an autopsy and its findings;
- (f) Governments or individuals who are attempting either to establish or upgrade their medico-legal system for investigating deaths may use this model autopsy protocol as a guideline, representing the procedures and goals to be incorporated into an ideal medico-legal system.

While performing any medico-legal death investigation, the prosector should collect information that will establish the identity of the deceased, the time and place of death, the cause of death, and the manner or mode of death (homicide, suicide, accident or natural).

It is of the utmost importance that an autopsy performed following a controversial death be thorough in scope. The documentation and recording of the autopsy findings should be equally thorough so as to permit meaningful use of the autopsy results (see appendix II, below). It is important to have as few omissions or discrepancies as possible, as proponents of different interpretations of a case may take advantage of any perceived shortcomings in the investigation. An autopsy performed in a controversial death should meet certain minimum criteria if the autopsy report is to be proffered as meaningful or conclusive by the prosector, the autopsy's sponsoring agency or governmental unit, or anyone else attempting to make use of such an autopsy's findings or conclusions.

This model autopsy protocol is designed to be used in diverse situations. Resources such as autopsy rooms, X-ray equipment or adequately trained personnel are not available everywhere. Forensic pathologists must operate under widely divergent political systems. In addition, social and religious customs vary widely throughout the world; an autopsy is an expected and routine procedure in some areas, while it is abhorred in others. A prosector, therefore, may not always be able to



follow all of the steps in this protocol when performing autopsies. Variation from this protocol may be inevitable or even preferable in some cases. It is suggested, however, that any major deviations, with the supporting reasons, should be noted.

It is important that the body should be made available to the prosector for a minimum of 12 hours in order to assure an adequate and unhurried examination. Unrealistic limits or conditions are occasionally placed upon the prosector with respect to the length of time permitted for the examination or the circumstances under which an examination is allowed. When conditions are imposed, the prosector should be able to refuse to perform a compromised examination and should prepare a report explaining this position. Such a refusal should not be interpreted as indicating that an examination was unnecessary or inappropriate. If the prosector decides to proceed with the examination notwithstanding difficult conditions or circumstances, he or she should include in the autopsy report an explanation of the limitations or impediments.

Certain steps in this model autopsy protocol have been emphasized by the use of <u>underlined type</u>. These represent the most essential elements of the protocol.

#### B Proposed model autopsy protocol

#### 1. Scene investigation

The prosector(s) and medical investigators should have the right of access to the scene where the body is found. The medical personnel should be notified immediately to assure that no alteration of the body has occurred. If access to the scene was denied, if the body was altered or if information was withheld, this should be stated in the prosector's report.

A system for coordination between the medical and non-medical investigators (e.g. law enforcement agencies) should be established. This should address such issues as how the prosector will be notified and who will be in charge of the scene. Obtaining certain types of evidence is often the role of the non-medical investigators, but the medical investigators who have access to the body at the scene of death should perform the following steps:

- (a) Photograph the body as it is found and after it has been moved;
- (b) <u>Record the body position and condition, including body warmth or coolness, lividity and rigidity;</u>
- (c) Protect the deceased's hands, e.g. with paper bags;
- (d) Note the ambient temperature. In cases where the time of death is an issue, rectal temperature should be recorded and any insects present should be collected for forensic entomological study. Which procedure is applicable will depend on the length of the apparent post-mortem interval;
- (e) Examine the scene for blood, as this may be useful in identifying suspects:
- (f) Record the identities of all persons at the scene;
- (g) Obtain information from scene witnesses, including those who last saw the decedent alive, and when, where and under what circumstances. Interview any emergency medical personnel who may have had contact with the body;
- (h) Obtain identification of the body and other pertinent information from friends or relatives. Obtain the deceased's medical history from his or her physician(s) and hospital charts, including any previous surgery, alcohol or drug use, suicide attempts and habits;
- (i) Place the body in a body pouch or its equivalent. Save this pouch after the body has been removed from it;

- (j) Store the body in a secure refrigerated location so that tampering with the body and its evidence cannot occur;
- (k) Make sure that projectiles, guns, knives and other weapons are available for examination by the responsible medical personnel;
- If the decedent was hospitalized prior to death, obtain admission or blood specimens and any X-rays, and review and summarize hospital records;
- (m) Before beginning the autopsy, become familiar with the types of torture or violence that are prevalent in that country or locale (see Torture box in Chapter 5).

#### 2. Autopsy

The following Protocol should be followed during the autopsy:

- (a) Record the date, starting and finishing times, and place of the <u>autopsy</u> (a complex autopsy may take as long as an entire working day);
- (b) Record the name(s) of the prosector(s). the participating assistant(s), and all other persons present during the autopsy, including the medical and/or scientific degrees and professional, political or administrative affiliation(s) of each. Each person's role in the autopsy should be indicated, and one person should be designated as the principal prosector who will have the authority to direct the performance of the autopsy. Observers and other team members are subject to direction by, and should not interfere with, the principal prosector. The time(s) during the autopsy when each person is present should be included. The use of a "sign-in" sheet is recommended:
- (c) <u>Adequate photographs are crucial</u> for thorough documentation of autopsy findings:
- (i) Photographs should be in colour (transparency or negative/print), in focus, adequately illuminated, and taken by a professional or good quality camera. Each photograph should contain a ruled reference scale, an identifying case name or number, and a sample of standard grey. A description of the camera (including the lens "f-number" and focal length), film and the lighting system must be included in the autopsy report. If more than one camera is utilized, the identifying information should be recorded for each. Photographs should also include information indicating which camera took each picture, if more than one camera is used. The identity of the person taking the photographs should be recorded;
- (ii) <u>Serial photographs reflecting the course of the external</u>
  <u>examination must be included. Photograph the body prior to and</u>
  following undressing, washing or cleaning and shaving;
- (iii) Supplement close-up photographs with distant and/or immediate range photographs to permit orientation and identification of the close-up photographs;
- (iv) Photographs should be comprehensive in scope and must confirm the presence of all demonstrable signs of injury or disease commented upon in the autopsy report;
- (v) Identifying facial features should be portrayed (after washing or cleaning the body) with photographs of a full frontal aspect of the face and right and left profiles of the face with hair in normal position and with hair retracted, if necessary, to reveal the ears;
- (d) <u>Radiograph the body</u> before it is removed from its pouch or wrappings. X-rays should be repeated both before and after undressing the body. Fluoroscopy may also be performed. <u>Photograph all X-ray films</u>;



- (i) <u>Obtain dental X-rays</u>, even if identification has been established in other ways;
- (ii) <u>Document any skeletal system injury by X-ray</u>. Skeletal X-rays may also record anatomic defects or surgical procedures. Check especially for fractures of the fingers, toes and other bones in the hands and feet. Skeletal X-rays may also aid in the identification of the deceased, by detecting identifying characteristics, estimating age and height, and determining sex and race. Frontal sinus films should also be taken, as these can be particularly useful for identification purposes;
- (iii) Take X-rays in gunshot cases to aid in locating the projectile(s). Recover, photograph and save any projectile or major projectile fragment that is seen on an X-ray. Other radio-opaque objects (pacemakers. artificial joints or valves. knife fragments etc.) documented with X-rays should also be removed, photographed and saved;
- (iv) Skeletal X-rays are essential in children to assist in determining age and developmental status;
- (e) Before the clothing is removed, examine the body and the clothing.

  Photograph the clothed body. Record any jewellery present;
- (f) The <u>clothing</u> should be carefully removed over a clean sheet or body pouch. Let the clothing dry if it is bloody or wet. Describe the clothing that is removed and <u>label it in a permanent fashion</u>. <u>Either</u> <u>place the clothes in the custody of a responsible person or keep</u> them, as they may be useful as evidence or for identification;
- (g) The external examination, focusing on a search for external evidence of injury is, in most cases, the most important portion of the autopsy;
  - (i) Photograph all surfaces—100 per cent of the body area. Take good quality, well focused, colour photographs with adequate illumination;
  - (ii) Describe and document the means used to make the identification. Examine the body and record the deceased's apparent age, length, weight, sex, head hair style and length, nutritional status, muscular development and colour of skin, eyes and hair (head, facial and body);
  - (iii) In children, measure also the head circumference, crown-rump length and crown-heel length;
  - (iv) Record the degree, location and fixation of rigor and livor mortis;
  - (v) Note body warmth or coolness and state of preservation; note any decomposition changes. such as skin slippage. Evaluate the general condition of the body and note adipocere formation, maggots. eggs or anything else that suggests the time or place of death;
  - (vi) With all injuries, record the size, shape, pattern, location (related to obvious anatomic landmarks), colour, course, direction, depth and structure involved. Attempt to distinguish injuries resulting from therapeutic measures from those unrelated to medical treatment. In the description of projectile wounds, note the presence or absence of soot, gunpowder, or singeing. If gunshot residue is present, document it photographically and save it for analysis. Attempt to determine whether the gunshot wound is an entry or exit wound. If an entry wound is present and no exit wound is seen, the projectile must be found and saved or accounted for. Excise wound tract tissue samples for microscopic examination. Tape together the edges of knife wounds to assess the blade size and characteristics;

- (vii) Photograph all injuries, taking two colour pictures of each, labelled with the autopsy identification number on a scale that is oriented parallel or perpendicular to the injury. Shave hair where necessary to clarify an injury, and take photographs before and after shaving. Save all hair removed from the site of the injury. Take photographs before and after washing the site of any injury. Wash the body only after any blood or material that may have come from an assailant has been collected and saved;
- (viii) Examine the skin. Note and photograph any scars. areas of keloid formation. tattoos. prominent moles. areas of increased or decreased pigmentation. and anything distinctive or unique such as birthmarks. Note any bruises and incise them for delineation of their extent. Excise them for microscopic examination. The head and genital area should be checked with special care. Note any injection sites or puncture wounds and excise them to use for toxicological evaluation. Note any abrasions and excise them; microscopic sections may be useful for attempting to date the time of injury. Note any bite marks these should be photographed to record the dental pattern, swabbed for saliva testing (before the body is washed) and excised for microscopic examination. Bite marks should also be analysed by a forensic odontologist, if possible. Note any burn marks and attempt to determine the cause (burning rubber, a cigarette, electricity, a blowtorch, acid, hot oil etc.). Excise any suspicious areas for microscopic examination, as it maybe possible to distinguish microscopically between burns caused by electricity and those caused by heat;
- (ix) Identify and label any foreign object that is recovered, including its relation to specific injuries. Do not scratch the sides or tip of any projectiles. Photograph each projectile and large projectile fragment with an identifying label, and then place each in a sealed, padded and labelled container in order to maintain the chain of custody;
- (x) Collect a blood specimen of <u>at least 50 cc from a subclavian or</u> femoral vessel;
- (xi) Examine the head and external scalp, <u>bearing in mind that</u> injuries may be hidden by the hair. Shave hair where necessary. Check for fleas and lice, as these may indicate unsanitary conditions prior to death. Note any alopecia as this may be caused by malnutrition, heavy metals (e.g. thallium), drugs or traction. Pull. do not cut. 20 representative head hairs and save them, as hair may also be useful for detecting some drugs and poisons;
- (xii) Examine the teeth and note their condition. Record any that are absent, loose or damaged, and record all dental work (restorations, fillings etc.), using a dental identification system to identify each tooth. Check the gums for periodontal disease. Photograph dentures, if any, and save them if the decedent's identity is unknown. Remove the mandible and maxilla if necessary for identification. Check the inside of the mouth and note any evidence of trauma. injection sites. needle marks or biting of the lips cheeks or tongue. Note any articles or substances in the mouth. In cases of suspected sexual assault, save oral fluid or get a swab for spermatozoa and acid phosphatase evaluation. (Swabs taken at the tooth-gum junction and samples from between the teeth provide the best specimens for identifying spermatozoa.) Also take swabs from the oral cavity for seminal fluid typing. Dry the swabs quickly with cool, blown air if possible, and preserve them in clean plain paper envelopes. If rigor mortis prevents an adequate examination, the masseter muscles may be cut to permit better exposure;
- (xiii) Examine the face and note if it is cyanotic or if petechiae are



#### present:

- a. Examine the eyes and view the conjunctiva of both the globes and the eyelids. Note any petechiae in the upper or lower eyelids. Note any scleral icterus. Save contact lenses, if any are present. Collect at least 1 ml of vitreous humour from each eye;
- b. Examine the nose and ears and note any evidence of trauma, haemorrhage or other abnormalities. Examine the tympanic membranes:
- (xiv) Examine the neck externally on all aspects and note any contusions, abrasions or petechiae. Describe and document injury patterns to differentiate manual, ligature and hanging strangulation. Examine the neck at the conclusion of the autopsy, when the blood has drained out of the area and the tissues are dry;
- (xv) Examine all surfaces of the extremities; arms. forearms. wrists, hands. legs and feet, and note any "defence" wounds. Dissect and describe any injuries. Note any bruises about the wrists or ankles that may suggest restraints such as handcuffs or suspension. Examine the medial and lateral surfaces of the fingers, the anterior forearms and the backs of the knees for bruises:
- (xvi) Note any broken or missing fingernails. Note any gunpowder residue on the hands, document photographically and save it for analysis. Take fingerprints in all cases. If the decedent's identity is unknown and fingerprints cannot be obtained, remove the "glove" of the skin, if present. Save the fingers if no other means of obtaining fingerprints is possible. Save fingernail clippings and any under-nail tissue (nail scrapings). Examine the fingernail and toenail beds for evidence of objects having been pushed beneath the nails. Nails can be removed by dissecting the lateral margins and proximal base, and then the undersurface of the nails can be inspected. If this is done, the hands must be photographed before and after the nails are removed. Carefully examine the soles of the feet, noting any evidence of beating. Incise the soles to delineate the extent of any injuries. Examine the palms and knees, looking especially for glass shards or lacerations:
- (xvii) Examine the external genitalia and note the presence of any foreign material or semen. Note the size, location and number of any abrasions or contusions. Note any injury to the inner thighs or peri-anal area. Look for peri-anal burns;
- (xviii)In cases of suspected sexual assault, examine all potentially involved orifices. A speculum should be used to examine the vaginal walls. Collect foreign hair by combing the public hair. Pull and save at least 20 of the deceased's own public hairs including roots. Aspirate fluid from the vagina and/or rectum for acid phosphatase blood group and spermatozoa evaluation. Take swabs from the same areas for seminal fluid typing. Dry the swabs quickly with cool. blown air if possible and preserve them in clean plain paper envelopes;
- (xix) The length of the back, the buttocks and extremities including wrists and ankles must be systematically incised to look for deep injuries. The shoulders, elbows, hips and knee joints must also be incised to look for ligamentous injury;
- (h) The internal examination for internal evidence of injury should clarify and augment the external examination:
  - (i) Be systematic in the internal examination. <u>Perform the</u> examination either by body regions or by systems, including the

- cardiovascular, respiratory, biliary gastrointestinal, reticuloendothelial, genito-urinary, endocrine. musculoskeletal. and
  central nervous systems. Record the weight, size, shape, colour
  and consistency of each organ, and note any neoplasia,
  inflammation, anomalies, haemorrhage, schaemia, infarcts,
  surgical procedures or injuries. Take sections of normal and any
  abnormal areas of each organ for microscopic examination.
  Take samples of any fractured bones for radiographic and
  microscopic estimation of the age of the fracture;
- (ii) Examine the chest. Note any abnormalities of the breasts. Record any rib fractures, noting whether cardiopulmonary resuscitation was attempted. Before opening, check for pneumothoraces. Record the thickness of subcutaneous fat. Immediately after opening the chest, evaluate the pleural cavities and the pericardial sac for the presence of blood or other fluid, and describe and quantify any fluid present. Save any fluid present until foreign objects are accounted for. Note the presence of air embolism, characterized by frothy blood within the right atrium and right ventricle. Trace any injuries before removing the organs. If blood is not available at other sites, collect a sample directly from the heart. Examine the heart, noting degree and location of coronary artery disease or other abnormalities. Examine the lungs, noting any abnormalities;
- (iii) Examine the abdomen and record the amount of subcutaneous fat. Retain 50 grams of adipose tissue for toxicological evaluation. Note the interrelationships of the organs. <u>Trace any injuries before removing the organs</u>. Note any fluid or blood present in the peritoneal cavity, and save it until foreign objects are accounted for. <u>Save all urine</u> and bile for toxicologic examination;
- (iv) Remove, examine and record the quantitative information on the liver, spleen, pancreas, kidneys and adrenal glands. Save at least 150 grams each of kidney and liver <u>for toxicological evaluation</u>. Remove the gastrointestinal tract and examine the contents. Note any food present and its degree of digestion. <u>Save the contents of the stomach</u>. If a more detailed toxicological evaluation is desired, the contents of other regions of the gastrointestinal tract may be saved. <u>Examine the rectum and anus</u> for burns, lacerations or other injuries. <u>Locate and retain any foreign bodies present</u>. <u>Examine the aorta, inferior vena cava and iliac vessels</u>;
- (v) Examine the organs in the pelvis, including ovaries, fallopian tubes, uterus, vagina, testes, prostate gland, seminal vesicles, urethra and urinary bladder. Trace any injuries before removing the organs. Remove these organs carefully so as not to injure them artefactually. Note any evidence of previous or current pregnancy, miscarriage or delivery. Save any foreign objects within the cervix, uterus, vagina, urethra or rectum;
- (vi) Palpate the head and examine the external and internal surfaces of the scalp, noting any trauma or haemorrhage. Note any skull fractures. Remove the calvarium carefully and note epidural and subdural haematomas. Quantify, date and save any haematomas that are present. Remove the dura to examine the internal surface of the skull for fractures. Remove the brain and note any abnormalities. Dissect and describe any injuries. Cerebral cortical atrophy, whether focal or generalized, should be specifically commented upon;
- (vii) Evaluate the cerebral vessels. Save at least 150 grams of cerebral tissue for toxicological evaluation. Submerge the brain in fixative prior to examination, if this is indicated;
- (viii) Examine the neck after the heart and brain have been removed and the neck vessels have been drained. Remove the neck



- organs, taking care not to fracture the hyoid bone. Dissect and describe any injuries. Check the mucosa of the larynx, pyriform sinuses and oesophagus, and note any petechiae, oedema or burns caused by corrosive substances. Note any articles or substances within the lumina of these structures. Examine the thyroid gland. Separate and examine the parathyroid glands, if they are readily identifiable;
- (ix) Dissect the neck muscles, noting any haemorrhage. Remove all organs, including the tongue. Dissect the muscles from the bones and note any fractures of the hyoid bone or thyroid or cricoid cartilages;
- (x) Examine the cervical. thoracic and lumbar spine. Examine the vertebrae from their anterior aspects and note any fractures, dislocations, compressions or haemorrhages. Examine the vertebral bodies. Cerebrospinal fluid may be obtained if additional toxicological evaluation is indicated;
- (xi) In cases in which spinal injury is suspected, dissect and describe the spinal cord. Examine the cervical spine anteriorly and note any haemorrhage in the paravertebral muscles. The posterior approach is best for evaluating high cervical injuries. Open the spinal canal and remove the spinal cord. Make transverse sections every 0.5 cm and note any abnormalities;
- After the autopsy has been completed, <u>record which specimens</u>
   <u>have been saved</u>. Label all specimens with the name of the
   deceased, the autopsy identification number, the date and time of
   collection, the name of the pro-sector and the contents. <u>Carefully</u>
   <u>preserve all evidence and record the chain of custody with</u>
   <u>appropriate release forms;</u>
- (i) <u>Perform appropriate toxicologic tests and retain portions of the tested samples to permit retesting:</u>
  - a. *Tissues:* 150 grams of liver and kidney should be saved routinely. Brain, hair and adipose tissue may be saved for additional studies in cases where drugs, poisons or other toxic substances are suspected;
  - b. Fluids: 50 cc (if possible) of blood (spin and save serum in all

- or some of the tubes), all available urine, vitreous humour and stomach contents should be saved routinely. Bile, regional gastrointestinal tract-contents and cerebrospinal fluid should be saved in cases where drugs, poisons or toxic substances are suspected. Oral, vaginal and rectal fluids should be saved in cases of suspected sexual assault;
- (ii) Representative samples of all major organs. including areas of normal and any abnormal tissue. should be processed histologically and stained with haematoxylin and eosin (and other stains as indicated). The slides, wet tissue and paraffin blocks should be kept indefinitely;
- (iii) Evidence that must be saved includes:
  - a. All foreign objects, including projectiles, projectile fragments, pellets, knives and fibres. <u>Projectiles must be subjected to ballistic analysis</u>;
  - b. All clothes and personal effects of the deceased, worn by or in the possession of the deceased at the time of death;
  - c. Fingernails and under-nail scrapings;
  - d. Hair, foreign and pubic, in cases of suspected sexual assault;
  - e. Head hair, in cases where the place of death or location of the body prior to its discovery may be an issue;
- (j) After the autopsy, all unretained organs should be replaced in the body, and the body should be well embalmed to facilitate a second autopsy in case one is desired at some future point;
- (k) The written autopsy report should address those items that are emphasized by <u>underlined type</u> in the protocol. At the end of the autopsy report should be a summary of the findings and the cause of death. This should include the prosector's comments attributing any injuries to external trauma, therapeutic efforts, post-mortem change, or other causes. A full report should be given to the appropriate authorities and to the deceased's family.

#### MODEL PROTOCOL FOR DISINTERMENT AND ANALYSIS OF SKELETAL REMAINS

Reprinted with permission from Manual on the Effective Prevention and Investigation of Extra-Legal Arbitrary and Summary Executions (New York: United Nations, 1991)

### A. Introduction

This proposed model protocol for the disinterment and analysis of skeletal remains includes a comprehensive checklist of the steps in a basic forensic examination. The objectives of an anthropological investigation are the same as those of a medico-legal investigation of a recently deceased person. The anthropologist must collect information that will establish the identity of the deceased, the time and place of death, the cause of death and the manner or mode of death (homicide, suicide, accident or natural). The approach of the anthropologist differs, however, because of the nature of the material to be examined. Typically, a prosector is required to examine a body, whereas an anthropologist is required to examine a skeleton. The prosector focuses on information obtained from soft tissues, whereas the anthropologist focuses on information from hard tissues. Since decomposition is a continuous process, the work of both specialists can overlap. An anthropologist may examine a fresh body when bone is exposed or when bone trauma is a factor. An experienced prosector may be required when mummified tissues are present. In some circumstances,

use of both this protocol and the model autopsy protocol may be necessary to yield the maximum information. The degree of decomposition of the body will dictate the type of investigation and, therefore, the protocol(s) to be followed.

The questions addressed by the anthropologist differ from those pursued in a typical autopsy. The anthropological investigation invests more time and attention to basic questions such as the following:

- (a) Are the remains human?
- (b) Do they represent a single individual or several?
- (c) What was the decedent's sex, race, stature, body weight, handedness and physique?
- (d) Are there any skeletal traits or anomalies that could serve to positively identify the decedent?

The time, cause and manner of death are also addressed by the anthropologist, but the margin of error is usually greater than that which can be achieved by an autopsy shortly after death.



This model protocol may be of use in many diverse situations. Its application may be affected, however, by poor conditions, inadequate financial resources or lack of time. Variation from the protocol may be inevitable or even preferable in some cases. It is suggested, however, that any major deviations, with the supporting reasons, should be noted in the final report.

#### B. Proposed Model Skeletal Analysis Protocol

#### 1. Scene Investigation

A burial recovery should be handled with the same exacting care given to a crime-scene search. Efforts should be coordinated between the principal investigator and the consulting physical anthropologist or archaeologist. Human remains are frequently exhumed by law enforcement officers or cemetery workers unskilled in the techniques of forensic anthropology. Valuable information may be lost in this manner and false information is sometimes generated. Disinterment by untrained persons should be prohibited. The consulting anthropologist should be present to conduct or supervise the disinterment. Specific problems and procedures accompany the excavation of each type of burial. The amount of information obtained from the excavation depends on knowledge of the burial situation and judgement based on experience. The final report should include a rationale for the excavation procedure.

The following procedure should be followed during disinterment:

- (a) Record the date, location, starting and finishing times of the disinterment, and the names of all workers;
- (b) Record the information in narrative form, supplemented by sketches and photographs;
- (c) Photograph the work area from the same perspective before work begins and after it ends every day to document any disturbance not related to the official procedure;
- (d) In some cases, it is necessary to first locate the grave within a given area. There are numerous methods of locating graves, depending on the age of the grave:
- (i) An experienced archaeologist may recognize clues such as changes in surface contour and variation in local vegetation;
- (ii) A metal probe can be used to locate the less compact soil characteristics of grave-fill;
- (iii) The area to be explored can be cleared and the topsoil scraped away with a flat shovel. Graves appear darker than the surrounding ground because the darker topsoil has mixed with the lighter subsoil in the grave-fill. Sometimes a light spraying of the surface with water may enhance a grave's outline;
  - (e) Classify the burial as follows:
- (i) Individual or commingled. A grave may contain the remains of one person buried alone, or it may contain the commingled remains of two or more persons buried either at the same time or over a period of time:
- (ii) Isolated or adjacent. An isolated grave is separate from other graves and can be excavated without concern about encroaching upon another grave. Adjacent graves, such as in a crowded cemetery, require a different excavation technique because the wall of one grave is also the wall of another grave;
- (iii) *Primary or secondary*. A primary grave is the grave in which the deceased is first placed. If the remains are then removed and reburied, the grave is considered to be secondary;
- (iv) *Undisturbed or disturbed*. An undisturbed burial is unchanged (except by natural processes) since the time of primary burial. A disturbed burial is one that has been altered by human intervention after the time of primary burial. All secondary burials are considered to be

- disturbed; archaeological methods can be used to detect a disturbance in a primary burial;
- (f) Assign an unambiguous number to the burial. If an adequate numbering system is not already in effect, the anthropologist should devise a system;
- (g) Establish a datum point, then block and map the burial site using an appropriate-sized grid and standard archaeological techniques. In some cases, it may be adequate simply to measure the depth of the grave from the surface to the skull and from the surface to the feet. Associated material can then be recorded in terms of their position relative to the skeleton:
- (h) Remove the overburden of earth, screening the dirt for associated materials. Record the level (depth) and relative coordinates of any such findings. The type of burial, especially whether primary or secondary, influences the care and attention that needs to be given to this step. Associated materials located at a secondary burial site are unlikely to reveal the circumstances of the primary burial but may provide information on events that have occurred after that burial;
- (i) Search for items such as bullets or jewellery, for which a metal detector can be useful, particularly in the levels immediately above and below the level of the remains;
- (j) Circumscribe the body, when the level of the burial is located, and, when possible, open the burial pit to a minimum of 30 cm on all sides of the body;
- (k) Pedestal the burial by digging on all sides to the lowest level of the body (approximately 30 cm). Also pedestal any associated artifacts;
- (1) Expose the remains with the use of a soft brush or whisk broom. Do not use a brush on fabric, as it may destroy fibre evidence. Examine the soil found around the skull for hair. Place this soil in a bag for laboratory study. Patience is invaluable at this time. The remains may be fragile, and interrelationships of elements are important and may be easily disrupted. Damage can seriously reduce the amount of information available for analysis;
- (m) Photograph and map the remains *in situ*. All photographs should include an identification number, the date, a scale and an indication of magnetic north:
- (i) First photograph the entire burial, then focus on significant details so that their relation to the whole can be easily visualized;
- (ii) Anything that seems unusual or remarkable should be photographed at close range. Careful attention should be given to evidence of trauma or pathological change, either recent or healed;
- (iii) Photograph and map all associated materials (clothes, hair, coffin, artifacts, bullets, casings, etc.). The map should include a rough sketch of the skeleton as well as any associated materials;
  - (n) Before displacing anything, measure the individual:
- (i) Measure the total length of the remains and record the terminal points of the measurement, e.g., apex, to plantar surface of calcaneus (note: this is not a stature measurement);
- (ii) If the skeleton is so fragile that it may break when lifted, measure as much as possible before removing it from the ground;
- (o) Remove all elements and place them in bags or boxes, taking care to avoid damage. Number, date and initial every container;
- (p) Excavate and screen the level of soil immediately under the burial. A level of "sterile" (artifact-free) soil should be located before ceasing excavation and beginning to backfill.

#### 2. Laboratory Analysis of Skeletal Remains

The following protocol should be followed during the laboratory analysis of the skeletal remains:

- (a) Record the date, location, starting and finishing times of the skeletal analysis, and the names of all workers;
  - (b) Radiograph all skeletal elements before any further cleaning:
  - (i) Obtain bite-wing, apical and panoramic dental X-rays, if possible;
- (ii) The entire skeleton should be X-rayed. Special attention should be directed to fractures, developmental anomalies and the effects of surgical procedures. Frontal sinus films should be included for identification purposes;
- (c) Retain some bones in their original state; two lumbar vertebrae should be adequate. Rinse the rest of the bones clean but do not soak or scrub them. Allow the bones to dry;
  - (d) Lay out the entire skeleton in a systematic way:
- (i) Distinguish left from right;
- (ii) Inventory every bone and record on a skeletal chart;
- (iii) Inventory the teeth and record on a dental chart. Note broken, carious, restored and missing teeth;
- (iv) Photograph the entire skeleton in one frame. All photographs should contain an identification number and scale;
- (e) If more than one individual is to be analysed, and especially if there is any chance that comparisons will be made between individuals, number every element with indelible ink before any other work is begun;
- (f) Record the condition of the remains, e.g., fully intact and solid, eroding and friable, charred or cremated;
  - (g) Preliminary identification:
  - (i) Determine age, sex, race and stature;
- (ii) Record the reasons for each conclusion (e.g., sex identity based on skull and femoral head);
  - (iii) Photograph all evidence supporting these conclusions;
  - (h) Individual identification:
- (i) Search for evidence of handedness, pathological change, trauma and developmental anomalies;
- (ii) Record the reasons for each conclusion;
- (iii) Photograph all evidence supporting these conclusions;

- (i) Attempt to distinguish injuries resulting from therapeutic measures from those unrelated to medical treatment. Photograph all injuries:
  - (i) Examine the hyoid bone for cracks or breaks;
- (ii) Examine the thyroid cartilage for damage;
- (iii) Each bone should be examined for evidence of contact with metal. The superior or inferior edges of the ribs require particular scrutiny. A dissecting microscope is useful;
- (j) If the remains are to be reburied before obtaining an identification, retain the following samples for further analysis:
- (i) A mid-shaft cross-section from either femur, 2 cm or more in height;
- (ii) A mid-shaft cross-section from either fibula, 2 cm or more in height;
  - (iii) A 4-cm section from the sternal end of a rib (sixth, if possible);
- (iv) A tooth (preferably a mandibular incisor) that was vital at the time of death;
- (v) Sever molar teeth for possible later deoxyribonucleic-acid fingerprinting for identification;
  - (vi) A cast of the skull for possible facial reconstruction;
- (vii) Record what samples have been saved, and label all samples with the identification number, date and name of the person who removed the sample.

#### 3. Final Report

The following steps should be taken in the preparation of a final report:

- (a) Prepare a full report of all procedures and results;
- (b) Include a short summary of the conclusions;
- (c) Sign and date the report.

#### 4. Repository for Evidence

In cases where the body cannot be identified, the exhumed remains or other evidence should be preserved for a reasonable time. A repository should be established to hold the bodies for 5-10 years in case they can be identified at a later time.

# MODEL COMMUNICATION TO THE OFFICE OF THE HIGH COMMISSIONER OF HUMAN RIGHTS

This model communication should be used for complaints alleging violations of one of the following conventions:

- Optional Protocol to the International Covenant on Civil and Political Rights
- · Convention against Torture, or
- International Convention on the Elimination of Racial Discrimination

Communication to:
Office of the United Nations High Commissioner for Human Rights (OHCHR)
Palais Wilson
52 rue des Pâquis
CH-1201 Geneva, Switzerland

Please indicate which of the above procedures you are invoking:
Date:





I. Information on the complainant:
Name: First name(s):
Nationality: Date and place of birth:
Address for correspondence on this complaint:
Submitting the communication:
on the author's own behalf:
on behalf of another person:
[ If the complaint is being submitted on behalf of another person:]
Please provide the following personal details of that other person
Name: First name(s):
Nationality: Date and place of birth:
Address or current whereabouts:
If you are acting with the knowledge and consent of that person, please provide that person's authorization for you to bring this complaint $\dots$ $Or$
If you are not so authorized, please explain the nature of your relationship with that person:
and detail why you consider it appropriate to bring this complaint on his or her behalf:
II. State concerned/Articles violated
Name of the State that is either a party to the Optional Protocol (in the case of a complaint to the Human
Rights Committee) or has made the relevant declaration (in the case of complaints to the Committee against Torture or the Committee on the Elimination of Racial Discrimination):
Articles of the Covenant or Convention alleged to have been violated:
III. Exhaustion of domestic remedies/Application to other international procedures
Steps taken by or on behalf of the alleged victims to obtain redress within the State concerned for the
alleged violation – detail which procedures have been pursued, including recourse to the courts and other
public authorities, which claims you have made, at which times, and with which outcomes:
If you have not exhausted these remedies on the basis that their application would be unduly
prolonged, that they would not be effective, that they are not available to you, or for any other
reason, please explain your reasons in detail:
Have you submitted the same matter for examination under another procedure of international investigation or settlement (e.g. the Inter-American Commission on Human Rights, the European Court of Human Rights, or the African Commission on Human and Peoples' Rights)?
If so, detail which procedure(s) have been, or are being, pursued, which claims you have made, at
which times, and with which outcomes:
IV. Facts of the complaint
Detail, in chronological order, the facts and circumstances of the alleged violations. Include all matters
which may be relevant to the assessment and consideration of your particular case. Please explain how you consider that the facts and circumstances described violate your rights.
Author's signature:



[The blanks under the various sections of this model communication simply indicate where your responses are required. You should take as much space as you need to set out your responses.]

# V. Checklist of supporting documentation (copies, not originals, to be enclosed with your complaint):

- Written authorization to act (if you are bringing the complaint on behalf of another person and are not otherwise justifying the absence of specific authorization): .......
- Decisions of domestic courts and authorities on your claim (a copy of the relevant national legislation is also helpful): .......
- Complaints to and decisions by any other procedure of international investigation or settlement:......
- Any documentation or other corroborating evidence you possess that substantiates your description in Part IV of the facts of your claim and/or your argument that the facts described amount to a violation of your rights: .......

If you do not enclose this information and it needs to be sought specifically from you, or if accompanying documentation is not provided in the working languages of the Secretariat, the consideration of your complaint may be delayed.

# MODEL FORM FOR SUBMISSION OF COMMUNICATIONS TO THE COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN

ELIMINATION OF DISCRIMINATION AGAINST WOMEN UNDER THE OPTIONAL PROTOCOL OF THE CONVENTION

The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women entered into force on 22 December 2000. It entitles the Committee on the Elimination of Discrimination against Women, a body of 23 independent experts, to receive and consider communications (petitions) from, or on behalf of, individuals or a group of individuals who claim to be victims of violations of the rights protected by the Convention.

To be considered by the Committee, a communication:

- must be in writing;
- may not be anonymous;
- must refer to a State which is a party to both the Convention on the Elimination of All Forms of Discrimination against Women and the Optional Protocol;
- must be submitted by, or on behalf of, an individual or a group of individuals under the jurisdiction of a State which is a party to the Convention and the Optional Protocol. In cases where a communication is submitted on behalf of an individual or a group of individuals, their consent is necessary unless the person submitting the communication can justify acting on their behalf without such consent.

A communication will not normally be considered by the Committee:

- unless all available domestic remedies have been exhausted;
- where the same matter is being or has already been examined by the Committee or another international procedure;
- if it concerns an alleged violation occurring before the entry into force of the Optional Protocol for the State.

In order for a communication to be considered the victim or victims must agree to disclose her/their identity to the State against which the violation is alleged. The communication, if admissible, will be brought confidentially to the attention of the State party concerned.

\* \* \*

If you wish to submit a communication, please follow the guidelines below as closely as possible. Also, please submit any relevant information which becomes available after you have submitted this form.

Further information on the Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol, as well as the rules of procedure of the Committee can be found at: http://www.un.org/womenwatch/daw/cedaw/index.html



#### **Guidelines for submission**

The following questionnaire provides a guideline for those who wish to submit a communication for consideration by the Committee on the Elimination of Discrimination against Women under the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women. Please provide as much information as available in response to the items listed below.

Send your communication to:

Committee on the Elimination of Discrimination against Women c/o Division for the Advancement of Women, Department of Economic and Social Affairs
United Nations Secretariat
2 United Nations Plaza
DC-2/12th Floor
New York, NY 10017
United States of America

Fax: 1-212-963-3463

- 1. Information concerning the author(s) of the communication
  - Family name
  - First name
  - Date and place of birth
  - Nationality/citizenship
  - Passport/identity card number (if available)
  - Sex
  - · Marital status/children
  - Profession
  - Ethnic background, religious affiliation, social group (if relevant)
  - · Present address
  - Mailing address for confidential correspondence (if other than present address)
  - Fax/telephone/e-mail
  - Indicate whether you are submitting the communication as:
  - Alleged victim(s). If there is a group of individuals alleged to be victims, provide basic information about each individual.
  - On behalf of the alleged victim(s). Provide evidence showing the consent of the victim(s), or reasons that justify submitting the communication without such consent.
- 2. Information concerning the alleged victim(s) (if other than the author)
  - Family name
  - First name
  - · Date and place of birth
  - Nationality/citizenship
  - Passport/identity card number (if available)
  - Sex
  - Marital status/children
  - Profession
  - Ethnic background, religious affiliation, social group (if relevant)
  - · Present address
  - Mailing address for confidential correspondence (if other than present address)
  - Fax/telephone/e-mail



- 3. Information on the State party concerned
  - Name of the State party (country)
- 4. Nature of the alleged violation(s)

Provide detailed information to substantiate your claim, including:

- Description of alleged violation(s) and alleged perpetrator(s)
- Date(s)
- Place(s)
- Provisions of the Convention on the Elimination of All Forms of Discrimination against Women that were allegedly violated. If the communication refers to more than one provision, describe each issue separately.
- 5. Steps taken to exhaust domestic remedies Describe the action taken to exhaust domestic remedies; for example, attempts to obtain legal, administrative, legislative, policy or programme remedies, including:
  - Type(s) of remedy sought
  - Date(s)
  - Place(s)
  - Who initiated the action
  - · Which authority or body was addressed
  - Name of court hearing the case (if any)
  - If domestic remedies have not been exhausted, explain why.

Please note: Enclose copies of all relevant documentation.

6. Other international procedures

Has the same matter already been examined or is it being examined under another procedure of international investigation or settlement? If yes, explain:

- Type of procedure(s)
- Date(s)
- Place(s)
- Results (if any)

Please note: Enclose copies of all relevant documentation.

7. Date a	nd signature
	Date/place:
	Signature of author(s) and/or victim(s):
8. List of	documents attached (do not send originals, only copies).





# **GLOSSARY**

**Abrasion Ring** 

An abrasion ring is a small reddish ring, usually found around the entry wound of a bullet. The reddish ring is the result of the bullet abrading the skin as it pierces the body. An abrasion ring does not provide information about the distance between the gun and victim when fired. See also: Wipe Ring.

Accessory

(legal responsibility as an accessory)

A person is considered an accessory if he or she knowingly and voluntarily rendered material assistance to the principal perpetrator of an unlawful act. For a person to be considered an accessory he or she must have shared the same unlawful intent as the principal.

Asphyxiation

Asphyxiation occurs when death is the result of an interruption of breathing. The term is often used when describing deaths by: hanging, strangulation, choking, and suffocation.

**Ballistics** 

Ballistics is the science of firearms and projectiles (bullets). Although it involves a number of sub-specialties it is most often used to describe the science of examining bullets, firearms, and matching bullets to the guns that fired them.

**Blood Typing** 

Blood typing is the classification of blood according to unique proteins. Although blood typing can never positively identify a suspect like fingerprints or DNA evidence can, it can positively eliminate suspects.

**Blunt Force Injury** 

Blunt force injuries are caused when a victim is struck with a solid blunt object such as a gun butt, a stick, a bar, or a stone. Such blows may break the skin causing *lacerations* or may simply cause internal injuries.

**Chain of Custody** 

Chain of custody is the principle that once evidence is removed from an investigative scene or person there must be a record of every person who has possession of it. Each person who has possession of it is considered a link in the entire chain of custody. If every link in the chain is not accounted for, the reliability of the evidence is called into question.

Circumstantial Evidence Circumstantial evidence is evidence which proves a fact indirectly. For example, a sleeping man wakes in the morning to find the ground around his house wet. He did not hear it rain in his sleep, but knows that it did because of the puddles outside. The puddles are circumstantial evidence that it rained. See also: Direct Evidence.

Comprehensive Interview

A comprehensive interview is the second thorough interview of a witness in a relaxed setting, usually the investigator's office. It is designed to: learn everything the witness knows about an event; gather information that can help assess the witness's credibility; learn about additional evidence; and obtain sufficient background information to locate the witness again. See also Follow-up Interview and Preliminary Interview.

**Confirmatory Identification** 

A confirmatory identification is an identification procedure which is used whenever a witness knows a suspect from previous dealings but does not know the suspect's name. The witness is allowed to view the suspect in order to confirm that he or she is the person the witness is referring to. See also: Identification Procedure.

Conspirator

(legal responsibility as a conspirator)

**Contact Wound** 

A person may be legally responsible as a conspirator if he or she plans or agrees with one or more other people to commit an unlawful act and that intent is manifested by some overt act in furtherance of the conspiracy.

A contact wound is caused when a firearm is held against the skin of a victim when it is discharged. A contact wound has unique features that identify it.

**Contusion** 

A contusion is the result of trauma to the soft tissues of the body. It appears as discoloration or bruising of the skin due to ruptured blood vessels.



**Credibility** Credibility, when used to refer to testimonial evidence, refers to whether or not a witness

is truthful. Checking the credibility of a witness is an exploration into whether or not the

witness has a motive to testify falsely. See also: Reliability.

**Crime Scene** A crime scene one of several possible investigative scenes. It is used to describe that

investigative scene where a violent act occurred. See also: Investigative Scene.

Crimes Against Humanity Crimes against humanity is a group of international crimes that describe especially egregious acts that are committed as part of a widespread or systematic attack against

a civilian population. Crimes against humanity include: murder, extermination, enslavement, forcible deportation of a population, sexual crimes, enforced

disappearance, apartheid and genocide. Crimes against humanity can be committed

during both times of war and peace.

**Crimes of War** See War Crimes.

**Death-grip** Death-grip is an extremely rare phenomenon. Prior to rigor mortis setting in, there may

be noticeable stiffening of the hands. It is usually only found in cases where the victim

was grasping something tightly at the time of death. See also: Rigor Mortis.

**Decomposition** Decomposition is the general name for several individual processes that begin after

death and result in the eventual rotting and disintegration of the body. See also: Rigor

Mortis and Livor Mortis.

**Defensive Wounds** Defensive wounds refer to those wounds sustained during a struggle over a knife or

blunt instrument. They are usually found on the hands and forearms of the victim and are a result of the victim trying to protect him or herself from the attacker. These wounds may also be found on the assailant if they struggled over the weapon.

**Derogable Rights** Derogable rights refers to those human rights which may be suspended during a time of

war or national emergency. See also: Non-derogable rights.

**Direct Evidence** Direct evidence is used to refer to any evidence that proves a fact directly. For example,

a man looks outside his window and sees that it is raining. This is direct evidence that it

is raining. See also: Circumstantial Evidence.

**Disinter** Disinter is the act of digging up a body that has been buried. Forensic anthropologists

are trained in disinterring human remains.

**Documentary**Documentary evidence refers to any documents that provide information about an event.

They are ordinarily public records or other records usually kept in the ordinary course of

operation for a business or institution.

**Documentary**Documentary evidence refers to business records, official documents and any physical object that contains the recorded ideas or observations of someone. It is a combination

of physical evidence and testimonial evidence. See also: Physical Evidence and

Testimonial Evidence.

**Dorsal** Dorsal refers to the back surface of the body.

**Dying Declaration** Dying declaration is the term used to describe a particular type of hearsay statement

which is admissible in court. It describes those statements made by a witness who is in

fear of imminent death.

**Evidence Trails** Evidence trails refers to the concept that each additional piece of new evidence most

often leads to more evidence. For example, an object left at an *investigative scene* may lead to a witness, who in turn may lead to more witnesses, who in turn may lead to more

evidence.

**Exculpatory** Exculpatory evidence is any evidence or information which tends to prove the innocence of a suspect. An investigator is obliged to investigate any exculpatory evidence that he

or she becomes aware of during an investigation.



Extralegal Execution

An extralegal execution is any killing committed by the government that is not a legally imposed punishment pursuant to valid law authorizing the death penalty. It is also commonly known as "summary execution" or "extrajudicial execution."

**Eyewitness Testimony** 

Eyewitness testimony is testimony from a witness who was actually present and observed an event. The testimony is based upon the witness's own observations and not upon any information provided from other sources. See also, hearsay.

Fill-ins

Fill-ins are used in identification procedures such as photo arrays and lineups. They are photographs of individuals who are similar in appearance to the suspect. The suspect or the suspect's photograph is placed among the fill-ins to test a witness's ability to identify the suspect.

**Fingerprint** 

See Latent Print in this glossary

**Follow-up Interview** 

A follow-up interview is a relatively short interview that is conducted some time after a comprehensive interview. It is generally limited in scope and is designed to question a witness regarding information or evidence that was discovered after the comprehensive interview. See also: Comprehensive Interview and Preliminary Interview.

**Forensic** Anthropology Forensic anthropology is the study of human skeletal remains. These scientist carefully examine skeletal remains as well as the surrounding burial site for clues regarding how the person died and the circumstances of the burial.

**Forensic Entomology**  Forensic entomology is the study of insect infestation of a corpse to determine the approximate time when a person died.

**Forensic Fiber Analysis** 

Forensic fiber analysis is the microscopic examination of fibers in order to classify them and compare them with other fibers. Evidence that fibers found at an investigative scene are also found on a suspect may be important evidence linking the suspect to the crime.

**Forensic** Handwriting **Analysis** 

Forensic handwriting analysis is the scientific comparison of handwriting from an unknown source with the handwriting from a known source to determine if they are the same person.

Forensic Pathology

Forensic pathology involves the postmortem dissection, examination and analysis of a human body to determine the cause of death and possibly determine important facts regarding how the person died.

**Forensic Science** 

Forensic science is the general name for many different scientific specialties which seek to draw conclusions from physical evidence through scientific testing and analysis.

Forensic speech **Analysis** 

Forensic speech analysis is the scientific comparison of the recorded speech of an unknown source with the voice of a known source to determine if they are the same person.

**Geneva Conventions** 

The Geneva Conventions refer to four treaties signed in Geneva in 1949 which together comprise the main body of international humanitarian law. The original conventions were supplemented in 1977 by two additional protocols.

Genocide

Genocide is the name given to five categories of acts which are committed with intent to destroy or reduce the number of a national, ethnical, racial, or religious group. The five genocidal acts are:

- (1) Killing members of the group.
- (2) Causing serious bodily or mental harm to members of the group, (3) Inflicting conditions of life designed bring about its destruction,
- (4) Imposing measures to prevent births, and
- (5) forcibly transferring children of the group to another group.

#### Hanging

Hanging is a mode of death in which a rope or other ligature is tied around a person's neck and his or her weight is then suspended from that ligature. Hangings may be the



result of suicide or homicide.

**Hearsay** Hearsay is second hand information. Anytime a person reports something another has

told him or her that is hearsay information. Hearsay testimony is never as reliable as

eyewitness testimony. See also Eyewitness testimony.

**Human Rights Law** Human rights law consists of a body of international treaties, agreements and

documents which seek to protect individuals living within a state from abuses by that

state during times of war and peace.

Identification Procedure An identification procedure is any procedure designed to establish the identity of the suspect by giving witnesses an opportunity to see the suspect under conditions which are fair and not unduly suggestive. Identification procedures include: a show-up, a confirmatory identification, a photo array, a lineup, and an impromptu lineup.

Impromptu Lineup An impromptu lineup is an identification "procedure" in which a witness sees the suspect

again in a public place and recognizes him or her. It is not technically a procedure because the investigator is not present and has not arranged the viewing. It is similar to an identification procedure in that it provides an fair and non-suggestive opportunity for

the witness to recognize the suspect.

**Incised Wound**Incised wounds are sharp force injuries in which the length of the wound is greater than its depth. Incised wounds are caused when a knife is drawn across a person's skin in a

its depth. Incised wounds are caused when a knife is drawn across a person's skin in a slashing motion. Ordinarily they are shallow, have smooth edges, and bleed profusely.

Slash wounds do not indicate the size of the knife. See also: Stab Wounds.

International Customary Law Customary law is the principle that gives legal effect to certain practices, prohibitions and customs that are universally recognized and practiced in the absence of any

enforceable treaty.

International Humanitarian Law International humanitarian law describes the laws and customs applicable during times of war which seeks to minimize the destruction and suffering caused by war by limiting its methods and extending certain protections to those affected by the conflict. International humanitarian law only applies to international armed conflicts and some

carefully defined internal conflicts.

Investigation Report

The investigation report is a document created by the investigator at the conclusion of an investigation. The report is a complete account of the investigation, its findings and its limitations. An investigation report should be written at the conclusion of every case whether or not the findings of the investigation will be made public.

**Investigative Plan** 

An investigative plan is a statement drafted by an investigator detailing what avenues of investigation will be pursued in an investigation.

**Investigative Scene** 

An investigative scene is any place where there might be physical evidence related to the incident being investigated. It includes any place the victim or possible suspects were immediately before, during, and immediately after the incident.

Investigative Scene Sketch

An investigative scene sketch is a drawing of investigative scene, not necessarily to scale, in which all the items of evidence are marked and the distance between each object and two reference points is recorded.

Laceration

Lacerations are tears of the skin, mucosa, visceral surfaces or organs produced by blunt force which crushes or stretches these soft tissues beyond their limits of elasticity.

**Latent Prints** 

A latent print is an impression of the fingers, palms or soles of the feet left by oil and moisture excreted by the body. Special powders and chemicals can reveal these prints which are not ordinarily visible to the eye. Since every person's prints are different, finding a latent print and matching it to a suspect's is positive proof that the suspect touched the item at some point in time. Latent prints under most circumstances do not indicate when someone touched something, only that they did.

**Leading Questions** 

Leading questions are questions which suggest a statement to a witness and ask the witness to either confirm or deny the accuracy of the statement. See also: Open-ended



Questions and Specific Questions.

**Ligature**A ligature is any flexible object that can be used to asphyxiate someone. It can be a

rope, a piece of clothing, or a strand of wire. It is used to apply pressure to the neck

area of the victim.

**Line-up** A line-up is an identification procedure in which a suspect is placed along side of four to

five similar looking people. Witnesses are given the opportunity to observe the group

and are asked if they recognize anyone in the line-up.

**Livor Mortis** Livor mortis is part of the decomposition process during which blood and other fluids

settle in those parts of the body closest to the ground due to gravity. As these fluids congeal they 'fix' in these tissues and remain there, even if the body is moved. Livor mortis appears as swelling and is accompanied by a deepening of skin tone due to the

increased presence of blood. See also: Rigor Mortis.

**Modus Operandi** Modus operandi refers to a unique way of doing something. Sometimes human rights

violations are connected by a similar modus operandi. The way in which they are committed is similar. There may be similarities in the words spoken, the weapons used,

and other features of the act.

Non-derogable Non-derogable rights refers to those human rights which are deemed so criticial to life

**Rights**Non-derogable ights refers to those human rights which are deemed so chitcian to life that their violation may never be excused during a time of war or national emergency.

See also: Derogable Rights.

Normative Law See International Customary Law.

**Open-ended Questions**Open-ended questions are vague questions that do not suggest a specific answer. They are used when interviewing witnesses to direct them generally to an area of inquiry and

encourage them to talk. See also: Leading Questions and Specific Questions.

Petechiae Petechiae are caused when small delicate blood vessels burst as a result to abnormally

increased blood pressure. It is usually an indication that a person was strangled. It can be observed in the back of the throat and on the inner eyelids of the victim, although it is

most noticeable in the eyes.

**Photo Array** A photo array is an identification procedure in which a suspect's photograph is placed

alongside four to five photographs of similar-looking people. A witness is given the opportunity to observe the photos, and is asked if he or she recognizes anyone in the

photo array. See also: Identification Procedure.

**Physical Evidence** Physical evidence is any object that can provide information about an event. It may

include any weapons used. The condition of a body, the appearance of the surrounding area, and the clothes of people involved. Physical evidence includes microsopic matter and other substances undetectable to the unaided senses. *See also: Documentary* 

Evidence and Testimonial Evidence.

**Preliminary**A preliminary interview is the first short interview of a witness, often at the scene of the incident being investigated. It is designed to obtain basic information about the case to

help orient the investigator, to assist the investigator in identifying other witnesses and physical evidence, and to get sufficient information to contact the witness for a more thorough or comprehensive interview. See also: Comprehensive Interview and Follow-

up Interview.

(legal responsibility

as a principal)

**Principal**A principal is any primary participant in a wrongful act. Each participant may be

considered a principal if he or she had the intent to cause the harm, acted knowingly and voluntarily, and was either a primary participant in the actual act or requested, paid, or

ordered another to commit the wrongful act.

**Probative** Probative refers to how much information a piece of evidence contributes to the overall

knowledge of the event being investigated. For example, fingerprints found at an investigative scene are always relevant to the case. Fingerprints that are found at an investigative scene, which is in a public place, are not as probative as fingerprints found





in a victim's home. See also: Relevant.

**Putrefaction** Putrefaction is the decomposition of a body.

Recent Outcry Witness A recent outcry witness is the first person or persons to whom the victim spoke to about what happened soon after an attack.

Reference walls

Reference walls are two walls at an investigative scene that intersect in a corner at a 90-degree angle. The measurement between each piece of physical evidence and both walls is recorded on the investigative sketch to document its precise location. At outdoor investigative scenes two ropes are placed at the perimeter of the scene so that they intersect at a 90-degree angle. Measurements are then taken between the evidence and these "reference walls."

Relevant

Relevant refers to any evidence or information which pertains to an incident or the investigation of an incident. See also: Probative.

Reliability

Reliability, when used to refer to testimonial evidence, refers to whether a witness's account is accurate or whether the witness is honestly mistaken. A truthful witness can be incorrect about an assertion that they make. Checking the reliability of a witness is an exploration into the possibility that a truthful witness may be honestly mistaken. See also: Credibility.

**Rifled Firearm** 

A rifled firearm has spiral grooves on the inside surface of the barrel. These grooves impart a spiral to the bullet as it is forced out of the gun when it is fired. This spiral allows the bullet to travel further and with greater accuracy. *See also: Smooth-bore Firearm.* 

Rights of an Accused Any person accused of a crime has certain legal rights conveyed on him or her by both national and international law. These rights include such important rights as the right to be presumed innocent, the right to have the assistance of legal counsel, the right to a public trial, as well as several other important rights.

**Rigor Mortis** 

Rigor mortis the part of the decomposition process during which the once movable joints in the body stiffen until they can no longer be moved. After a period of time the stiffness subsides and the joints can once again be moved. Under some circumstances the degree of rigor mortis can assist pathologists in determining the time of death. See also: Livor Mortis.

**Sharp Force Injury** 

Sharp force injury is the term used to describe any injury sustained by applying force to the body with a sharp instrument. Knives as well as any sharp instrument or tool may be used to cause such injury. These injuries are classified as either incised wounds (injury is longer than it is deep) or stab wounds (the injury is deeper than it is long).

Show-up Identification Procedure A Show-up identification procedure is a rarely used identification procedure where a witness is given an opportunity to see a suspect alone, without fill-ins, to establish the identification of the suspect. It is highly suggestive and is only used under rare circumstances.

Signs of Struggle

Signs of struggle refers to any indication at an investigative scene that there was a struggle between the victim and the assailant. These indications include, broken objects, torn clothing, and scratches on the victim and suspect. The absence of any signs of struggle is equally important evidence about how an incident occurred.

Smooth-bore Firearm A smooth-bore firearm is one in which the interior of the barrel is not machined with a spiral groove. Shotguns are the most common type of smooth-bore firearm. See also: Rifled Firearm.

**Smudging** 

Smudging is the visible grime and soot left on the entry wound of a bullet. It is not embedded in the skin and can be wiped off. Smudging indicates that a gun was fired in close proximity to the victim. See also: Stippling and Tattooing.

**Specific Questions** 

Specific questions are detailed specific questions designed to clarify or explore a particular portion of a witness's account. Open-ended questions are the opposite of

specific questions. See also: Leading Questions and Open-ended Questions.

Stab Wound

Stab wounds are sharp force injuries in which the depth of the wound is greater than its length. Stab wounds are caused when a knife or other sharp instrument is thrust directly into a person's body. These wounds are ordinarily deep, uniform in appearance, and may cause extensive internal damage and bleeding. The size of the stab wound can reliably indicate the approximate width of the knife blade. See also Incised Wound.

Stippling

Stippling occurs when unburned particles of gunpowder become embedded in the skin surrounding the entry wound of a bullet. Unlike smudging, stippling cannot be wiped off of the skin. Stippling indicates that a gun was fired in very close proximity to the victim. See also: Smudging and Tattooing.

Superior (legal responsibility as a superior)

A superior in a military or police chain of command may be responsible for the actions of his or her subordinates. International law imposes upon those with superior authority the duty to monitor and prevent subordinates from committing illegal acts. It also imposes the duty to investigate and hold subordinates accountable for such illegal acts once the superior becomes aware of such acts.

**Suspect's Rights** 

Any person suspected of committing crime has certain legal rights conveyed on him or her by both national and international law. Depending upon the jurisdiction some of these rights only become active when a suspect is detained by the government. These rights include such important rights as the right to be presumed innocent, the right to have the assistance of legal counsel, as well as several other important rights.

**Tardieu Spots** 

Tardieu spots are red blotchy petechiae that appear on the surface of skin affected by of livor mortis.

**Tattooing** 

Tattooing is the darkening or yellowing of the skin surrounding the entry wound of a bullet. It is caused by the flame and hot gases coming out of the end of a gun barrel. Unlike smudging, tattooing cannot be wiped off of the skin. See also: Stippling and Smudging.

Testimonial Evidence

Testimonial Evidence is a broad term that includes the statements of all victims, witnesses, and suspects in a case. See also: Direct Evidence, Documentary Evidence, Hearsay Evidence, and Physical Evidence.

**Torture** 

Torture is any act causing severe physical or mental suffering that is intentionally inflicted on someone for the purpose of: obtaining information, unlawful punishiment, or intimidation when such suffering is inflicted at the instigation of, or with the consent of a person acting in an official capacity.

Trace Evidence

Trace evidence is any physical evidence that is not perceptible by the unaided senses. It includes microscopic materials and chemical substances. Forensic scientists can identify and compare unknown trace evidence with known suspects, victims, or investigative scenes to determine whether a match exists.

**Trachea** 

The trachea is the windpipe or airway through which humans breath.

**War Crimes** 

War crimes comprise the most serious of all violations of international humanitarian law and incur individual criminal responsibility upon perpetrators of them. The **grave breaches** of the Geneva Conventions define the most widely recognized war crimes.

Wipe Ring

Wipe ring is a small grey or black ring found around the entry wound of a bullet. As a bullet enters the body the skin "wipes" off the grease and dirt from the sides of the bullet. If a victim is shot through his or her clothes, the wipe ring will be found on the clothes. A wipe ring does not provide any information about the distance between the gun and the victim when the gun was fired.

