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Ethics, Technology and Communication

Ethical Use of Social Media

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FORENSIC FOCUS | p.8

Learn how building a team that includes experts who use the ACE-V analytical process of Analyze, Compare, Evaluate and Verify on all of the evidence is important in achieving a just outcome.

CIVIL FOCUS | p.12

Making these Five Principles of Investigative Documentation part of your firm's standard investigative protocol assures that you are ready to testify at a later date about every action taken during an investigation.

PRACTICE TIPS | p.16

A file of complete and thorough notes are gold when preparing to give testimony, or even clearing up a billing dispute. See these practical tips on what to include and how to follow up on your notes.



by Dean A. Beers
CLI, CCDI



Defense theory and strategy, legal and investigative, should adapt the ACE-V process of Analyze, Compare, Evaluate and Verify to the prosecution's evidence and theory, as well as their own.

Building a team that includes experts who use that analytical process on all of the evidence is important to achieve a just outcome."

An Expert Consultation May

A graphic featuring a large red speech bubble in the center containing the text "Save the Day". Surrounding it are several smaller grey speech bubbles. Below the speech bubbles is a silhouette of a crowd of people, with one person in the center highlighted in red.

Save
the
Day

On February 24, 2014, the United States Supreme Court issued a per curiam reversal in the case of Alabama death row inmate Anthony Ray Hinton. Applying "a straightforward application of [its] ineffective-assistance-of-counsel precedents," the Court held that "it was unreasonable for Hinton's lawyer to fail to seek additional funds to hire [a forensic] expert where that failure was based not on any strategic choice but on a mistaken belief that available funding was capped at \$1,000."

Clearly, consulting with a forensic expert in a criminal case could be the difference between justice and injustice, both for the defendant and the victim.

Members of NALI have extensive experience in a variety of areas in legal investigations. This is seen daily on the listserv, the annual

conferences and this journal. The use of resources available is a key part of that success, just as legal investigators are a key component of success to the attorneys. But having these resources available is of no use if they are not used.

It's time to call in an expert when you start hearing theories of the case that begin with "I feel..." or "On CSI..." or something similar. They become unfounded theories. How injuries are, or are not, caused is how our agency often hears these. Several factors are involved in injury causation – assailant, instrument, positions, environment, energy, velocity, size, and so on. These errors are made on the part of both law enforcement and legal investigators. Careful and knowledgeable analysis using a multi-disciplinary team approach can address these errors.

Injuries

Recently we had a consultation in which the arresting law enforcement officer told the suspect that he was drunk and had stabbed his friend in the cheek with a knife, causing a five-inch laceration. Reviewing the medical records of both parties, and viewing the two questioned weapons, we learned that the defendant had no alcohol in his system, but the victim (his friend) was hospitalized in detox for three days. Also, the laceration was an incised wound measuring 5mm with two stitches, and only one of the two weapons could have caused the injury – and it was not the weapon law enforcement insisted during interrogation of the defendant. These were all false assumptions on the part of law enforcement, which led to the arrest and charging of the wrong person. This was corrected by the prosecution, through the dismissal of charges; but only after the expenses of attorneys and experts. Their own flawed investigation also prevented them from charging the ‘victim’, who was actually the assailant.

Injury causation also requires a medical opinion, and perhaps an engineer or biomechanics. One area involves the injuries to infants. Infants are very resilient as they grow. We often hear of fatal internal abdominal injuries to an infant that the investigator feels, erroneously, that such injuries were caused by an insignificant fall and are consistent with information from a potential suspect. There are many circumstances to consider – height of fall and surface condition being the foremost. An infant falling from a couch onto a flat surface, typically carpeted, is common. Although injuries happen, these falls do not cause fatal organ damage – such as lacerated spleen, liver or other. Medical research shows that these fatal injuries are most often caused by direct strikes, such as punches and knees.

When facing a prosecutor and strong evidence, it is best to have the appropriate expert opinions. In one of our cases we provided this information, together with a consulting forensic pathologist independently corroborating the same. However, we were also able to determine through review of the official investigation, and additional independent investigation, that only the infant’s mother was in the house when the injuries were inflicted – not the father, defendant.

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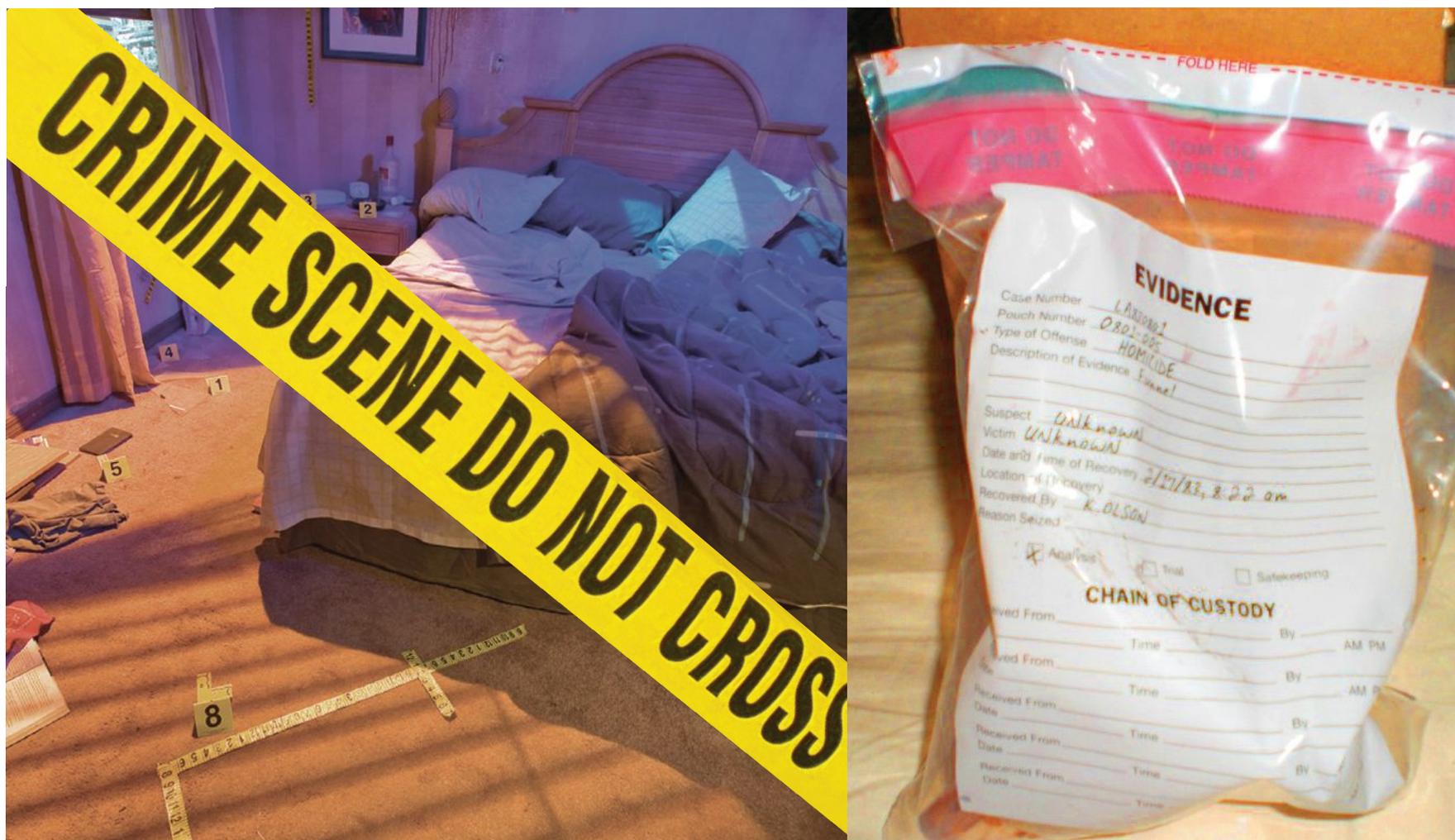


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Scene Investigations

Incidents often involve multiple persons, and indirectly may involve several more – who become witnesses. The core issue remains the same – persons, instruments and scene must all be connected; witnesses are circumstantial and subjective. In one incident, at a bar, witnesses described an assailant approaching another person, and a second assailant also approaching from behind and pulling a shirt over the person’s head. The first assailant stabbed the person multiple times and fled – dropping the knife. Police recovered the knife at the scene, and also arrested the first assailant nearby, but no accomplice was identified or found; however, it did not deter the prosecution from seeking the death penalty. It was determined the knife recovered was consistent with being able to cause the injuries to the decedent. Scene, weapon and persons are all connected. However, it was also determined that both the under and outer shirts both had defects corresponding to the decedent’s knife wounds. It was determined that the shirt was worn in the usual fashion and could not have been pulled over the head of the victim. This factually contradicted the witnesses who were friends of the victim.

Evidence

Evidence is any information, item, report, or record, which tends to, or assists, in proving or disproving an assertion, allegation, or event. It is a set of facts specific to the case that must be scrutinized in the course of the investigation. It must have been collected - whether it is a fingerprint or witness statement.

The purpose of evidence is to prove information as a relevant fact. That is to confirm or refute information which has been provided by witnesses, and consequently in discovery, or developed in the investigative process. The examination of evidence also becomes supporting or impeachable information; and to obtain information to further refine, or redefine, legal strategies and potentially affirmative defenses, as well as further plea negotiation efforts and trial preparation. Moreover, evidence may aid in determining other suspects and establish their guilt – proving another person committed the crime, while establishing innocence or mitigating circumstances of the defendant.

It is important to consider the prosecutor’s evidence but it is an error to rely solely on their evidence. You have

to look for evidence that has not been examined by law enforcement even if the relevant value is unknown. If evidence is not examined, or identified to be examined, there is no way to determine its value as incriminating or exculpatory. This value includes supporting or refuting the statements of witnesses, potentially new evidence, and the identification of other potential suspects.

The collection of evidence has no benefit unless the evidence is evaluated for submission to multi-disciplinary forensic investigation and examination. Failing to do so can have several negative consequences to the defendant and victims of crimes. Alternate light source examination and related photography are examples of underused, readily available, resources.

Often there is a desire to focus only on DNA evidence, and not other trace evidence, which may limit the scope and value of the evidence. Additional trace evidence, such as hair and fibers, may identify other persons and evidence. This collection and analysis of DNA or other trace evidence may provide or identify the defendant or other suspects. The reliance on the uncertainty of eye-witness statements and testimony often presents conflicting identification of suspects. Moreover, the collection of DNA trace evidence has been demonstrated to have significant impact in wrongful convictions that relied heavily on eyewitness statements and identification of the perpetrators and events.

The purpose and value of evidence, and multi-disciplinary forensic investigation and examination, is predominantly noticed in wrongful conviction cases – 10, 20, 30 years or post-execution. Many such cases are due to advances in multi-disciplinary forensic investigation and examination. Not every item of evidence can be examined, as there are considerations of evidentiary value, time and resources. However, the defense team should be provided the list of all evidence collected and evidence screened for these considerations in relation to evidentiary value, time and resources. This process begins with law enforcement, and continues to prosecution and defense.

Locard's Principle

Edmund Locard, who developed Locard's Principle of Exchange, which states, "...with contact between two

items, there will be an exchange." This theory applies to the evidentiary triangle of person to scene, scene to evidence, and evidence to person. The lack of multi-disciplinary forensic investigation and examination, by both law enforcement and prosecution, deprives the defendant of the ability to identify other components of this evidentiary triangle. This is exacerbated when the defense fails to use a process similar to the scientific method in the evaluation of the evidence, and instead relying solely on the prosecution's evidence absent their own investigation. Defense theory and strategy, legal and investigative, should adapt the ACE-V process of Analyze, Compare, Evaluate and Verify to the prosecution's evidence and theory, as well as their own.

Building a team that includes experts who use that analytical process on all of the evidence is important to achieve a just outcome.

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Dean A. Beers, CLI, CCDI is an expert in criminal defense homicide and civil equivocal death investigations. He is certified in Medicolegal Death Investigations and is a Colorado POST-certified instructor, and has served as a forensic autopsy assistant. He has lectured extensively and authored multiple articles, peer-reviewed white papers, and provided expert testimony on Protocols of Private Investigation, and Forensic Investigation of Injury Pattern Analysis, as well as consulted as a subject matter expert in Equivocal Death Analysis, Injury Causation, Time of Death, Crime Scene Analysis, Investigative Protocol, Evidence Protocol, and Forensic Photography.

He is the author of Practical Methods for Legal Investigations: Concepts and Protocols in Civil and Criminal Cases, released by CRC Press in February 2011, and previously Professional Investigations: Individual Locates, Backgrounds and Assets & Liabilities.

He founded his agency in 1987 and operates it with his wife Karen S. Beers, BSW, CCDI, with whom he co-developed Death Investigation for Private Investigators online continuing education for 14 states.