feature
Reviewing & Comprehending Autopsy Reports Part 2

field notes
Modern Day Slavery

spotlight
Deputy Chief Brendan Wells, Public Defender Service, District of Columbia

special report
2010 SWGDAM DNA Mixture Interpretation Guidelines
inside

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from the editor

In this issue, you will find the second part of a two-part series about “Reviewing & Comprehending Autopsy Reports” by Dean A. Beers, CLI, CCDI. As we train to be better investigators, it is extremely important that our understanding of all aspects of the autopsy, such as anatomy, physics, toxicology, and DNA analysis, grows. Mr. Beers’ article will certainly take you to a higher level of understanding.

The special article for this month is by Suzanna Ryan, MS, of Ryan Forensic DNA Consulting, Inc. In it, she discusses the 2010 SWGDAM DNA Mixture Interpretation Guidelines, the purpose of which is to provide guidance when interpreting blood mixtures and applying statistics to those mixtures. Ms. Ryan, in her more than 13 years of experience, has worked for numerous public and private companies, including the Florida Department of Law Enforcement and the Charlotte-Mecklenburg Police Department Crime Laboratory, thus she is more than qualified to address this topic.

This month you will read about one of the key team members of the website redesign program—Brendan Wells. In this edition of “Spotlight,” you will learn about how Brendan is no stranger to investigation, and, in fact, an exemplary Chief Deputy Investigator, who has helped to change the way the Washington DC judicial system looks at criminal defense investigators for the indigent.

Pattie Gallo’s “Field Notes” article looks at her investigation into a high profile sex trafficking ring. Patti’s article gives us insight into this form of criminal activity and how she approached the investigation of it. Finally, you will read about regional news, learn more about the upcoming 2012 National Conference, and have an opportunity to view the newest members of the NDIA. So with that in mind, you best begin perusing the newsletter.

Happy Reading!

James B. Tarter, Sr., Editor

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The opinions & comments made throughout this newsletter are not necessarily those of the NDIA.
from the president

Optimists enrich the present, enhance the future, challenge the improbable, and attain the impossible.

— William Arthur Ward

Greetings NDIA Members, and welcome to our March 2012 Newsletter! The events planned for the year are designed to motivate, educate and keep NDIA members abreast of the latest news. We will kick off the year with our national conference in Atlanta. It is my hope that you have marked your calendars for the conference dates of April 19-20, 2012. The theme for the conference is “Seeing is Believing - Or is it? Challenging Assumptions to Better Defend Our Clients.” Our presentations will encompass a vast array of topics and will be led by a phenomenal group of featured speakers. This enriched event will be an exciting opportunity for each of you to learn and spend valuable time with your colleagues. The agenda is posted on the website and within this edition of the newsletter.

I am truly honored to serve the NDIA as your President. Along the way, I have had the opportunity to meet and work with a number of professional individuals in our field. Our mission remains strong and firm. We are committed to providing premier training and professional development in the field of criminal defense work, which will bring value to the organization. I would like each of you to know that your Board of Directors and Conference Committee are dedicated and committed to promoting quality training and professional development.

While the Board and I are still developing our specific goals for the year, I want to share some initial thoughts with you which are noted below.

**Points of Action**
1. Continue to provide quality training.
2. Increase NDIA membership.
3. Enhance and expand the website as an interactive learning tool.
4. Create a blueprint for the organization that will help guide organizational decision making in moving forward to continue to thrive.

Our areas of focus involve expanding our training, membership, and website structure.

As you can see, this will be a challenging year! I will continue to work hard to accomplish these goals on behalf of this remarkable organization. We are indeed very proud of our achievements.

I welcome your thoughts, feedback, and involvement as we work to advance the mission of NDIA throughout the coming year. The vision is to bridge the gap and see more involvement in the association from our members.

I would like to thank all of the loyal members who have remained with NDIA throughout the years. The association is for members overall (and those that are interested in what we do), not only for presidents, board members, and committee members. My hope is that as members, you will honor this message by spreading the word to colleagues regarding the value of training and membership.

The Board and committees are working on a number of projects this year. One of those projects includes website enhancement. We have employed the services of Taoti, a website design company, to redesign our website. Let’s give kudos to members Brendan Wells and James Tarter for facilitating this demanding task.

The NDIA is an outstanding organization. There are many opportunities for learning and development which can and will assist you in your work, and, ultimately, help the organization to ascend to newer heights.

I hope that you will join us at the upcoming conference in April. It will be a significant investment to make in yourself and your organization.

Hope to see you in Atlanta!

Warmest Regards,

Teri Moore, President
Reviewing & Comprehending Autopsy Reports

What to Look For

With the basics of the general autopsy report covered, it is time to look at the specifics. What you look for in an autopsy report will depend on the type of case you are investigating. Often an autopsy report is reviewed with the anticipation of it stating what you want it to. This is the wrong approach. Look at what report is telling you and what it is not. Does it support the other ancillary evidence you have from other reports, photographs, and records? What is contradictory within the report (very rare), or what contradicts the report? How does the autopsy report relate to your investigative findings? We know what is in the report—but what is missing? These issues are addressed within each report. Your case will provide the focus when reviewing the autopsy report.

In addition to determining the cause, manner, and mechanism of death, autopsies and the final report can also clarify a cause of action for both civil and criminal cases. The amount of alcohol and other drugs used by a surviving driver, which may exceed therapeutic levels of prescription medications or, alternatively, involve the non-compliant use of therapeutic medication, may form the basis for a medical malpractice suit and other often-overlooked, actionable negligence. An example is an epileptic who did not take their seizure medication, which resulted in a seizure and a vehicular collision, thereby causing serious bodily injury or death to themselves and/or others. A forensic autopsy is available at any time following embalming or burial, even at private request, regardless...
of the interim period of time. Cremation is an obvious exception, if no previous physical examination of the body was made nor toxicological samples were collected. In all other cases, circumstances will have a bearing on the results of the private, delayed, or second-opinion autopsy.

**Gunshot Wounds**

Gunshot wounds to the head are commonly ruled a suicide in an autopsy. With the recommended reports and records in hand, consider the toxicology and condition of the organs. Drug abuse affects the heart and other organs and can support a history of illicit drug use. Although not directly associated with the act of suicide, it is relevant to the history of suicidal ideation. Could the decedent have been too intoxicated to cause a self-inflicted gunshot wound? Instead, could the decedent have been assisted by another person? Such a finding would result in a ruling of homicide. A ruling of suicide is based upon evidence supporting the suicide, and the absence of evidence supporting the possibility of an accident or homicide. If there was evidence suggesting the possibility of another finding, it should instead be ruled undetermined. The first question to ask is what factors contributed to suicidal ideation.

Let us consider a suicide due to a terminal disease process. In the investigation, prescription medications would be expected, and toxicology levels must be considered. Next, we look at the terminal disease process, which affects the weight and condition of specific organs. The forensic pathologist will take into account how the body was found and what wounds, if any, were present. With regard to the latter, they will consider the distance and angle of the gun in question. For example, was the gun in contact with the victim or was it fired from a greater distance? Is the angle at which the gun was fired appropriate and consistent with other report findings? At autopsy the weapon is also...
examined for “blowback.” If the gun made contact with the scalp, is there a muzzle imprint? The specifics of the wound are also examined and reported—projectile entrance and exit points, pathway, trajectory, and the presence of any projectile(s). Notations will be made of muzzle imprints, discharge tattooing, stellate/non-stellate wounds to the scalp, and beveling of the skull at the entrance and exit sites. Measurements and trajectory information will be detailed in the report. This information is compared to the ancillary reports, records, and scene investigation to reach a conclusion. Similar examinations are considered in ligature strangulations, stabbings, motor vehicle accidents, etc. Each type of gunshot wound has specific criteria which must be present before the wound is identified. These criteria might include burns, tattooing, stippling, stellate/non-stellate patterns, angle, trajectory, etc. It is important to know which criteria to expect, and then confirm the existence of these criteria during classification. The absence of an expected result, e.g. the absence of stellate patterns reported in a contact wound, would be a contradictory finding. Such results are cause to closely investigate the case.

Motor Vehicle Incidents

Not all motor vehicle ‘accidents’ are such—they are collisions, which may have been accidental or deliberate. An example of a deliberate collision would be a staged accident for insurance fraud, which ended in the death of the perpetrator(s) and/or others. The dynamics of a motor vehicle collision on the vehicle, occupants, items in the vehicle, and the scene are complex and vary depending upon the totality of the circumstances. For our purposes there are criteria to look for in the autopsy report. One area is the trauma to the internal organs, such as lacerations, maceration, transection, etc. Multiple occupants, surviving and deceased, will have different injuries depending upon where they were in the vehicle relative to the point of impact, speed, and/or if they were restrained or hit by other objects. A common task is to verify who was driving. Often complicating this aspect of the investigation is the ejection and/or absence of any or all of the occupants of the vehicle(s). Another consideration involves multiple impacts, which can be determined by the location and types of injuries to the decedent(s). Which

We are professional Legal Investigators—impartial gatherers of facts and information to better prepare our clients for judicial adversarial battle. To be effective we need as much complete information as possible.
impact(s) and/or resulting injury or injuries caused death?

Multiple blunt force injuries, which are detailed in the autopsy report, are the most common injury classification summarized on the death certificate. What elements help determine who the driver was, if the occupants were restrained, and other contributing factors? Was this accident staged or a suicide? A single decedent (or injured person) at the scene of a collision is not prima facie evidence of that person being the driver. People routinely walk away from such scenes, both deliberately or due to a semi-conscious state. People intentionally drive off roadways or into solid, stationary obstacles. Alternatively, a medical condition may contribute to the collision and should be considered. In the latter cases, one should ask the question, “did the collision cause the death or was the death caused by the natural event?” For example, in one case, a person exited the interstate, and then shot herself in the head with a small caliber pistol, which was ejected from her rolled vehicle. This appeared to be an accident, but was easily determined at autopsy to be a suicide. The time of death can be important for hereditary and insurance purposes of survivorship, as well as civil or criminal action.

The ruling of a natural death will include examination of the organs and toxicological findings; whereas the ruling of a suicide will be primarily dependent on the investigation as a whole. As most motor vehicle-related deaths are ruled an accident, the primary issues become the drivers and passengers, time of death, and nature of the injuries. Sudden impact and its associated forces cause the body to continue in its original direction of travel, or, if stationary, with the direction of impact. Sudden deceleration can cause both internal and external injuries. An example of an external injury to look for includes the presence or absence of dicing from windshield or side window impact(s). The presence of dicing indicates unrestrained occupants. For front seat occupants, left side injuries indicate that the person was the driver, while right side injuries indicate the person was a passenger. Additional pattern injuries include impressions from the seatbelt across the chest—left shoulder to right abdomen indicates driver, and right shoulder to left abdomen indicates passenger.

Evidence collected at the scene may include hair from the windshield or airbag fibers from the decedent’s face and clothing. Shoe impressions from an occupant can be matched to the brake, clutch, or gas pedals, and are indicative of a driver as well as what actions were taken proximate to and during impact. Other injuries will correspond to the type of collision, occupant position, and type(s) and model(s) of vehicle(s).

**Pedestrian Accidents**

When a pedestrian (including a bicyclist) is struck and killed by a motorist, it is often classified as motor vehicle-pedestrian accident. The assumption is often that fault lies with the driver, but circumstances of the investigation might indicate otherwise.
An example of a pedestrian-at-fault accident might be an intoxicated or wheelchair-bound pedestrian, who attempted to cross the street at a major thoroughfare, outside of the crosswalk, without the aid of reflectors or street lighting, and was struck by a vehicle. However, sometimes the circumstances of a pedestrian accident may be much more complicated. An example of such a situation would be a pedestrian, who crossed a dark street while obeying all crossing laws, but has an acute cardiac event, collapses, and is struck by a vehicle. Was that death a result of the heart attack or the impact of the vehicle? Let us complicate the matter further by asserting that the driver was intoxicated. The question then becomes, absent the subsequent impact by the vehicle, would the decedent have died of the cardiac event at the scene? In all of these examples it is the autopsy which determines the events causing death, while the underlying investigation determines fault. This is a classic example of how an incident may take on two separate, yet cooperative investigations—one regarding the surviving driver (law enforcement) and the other regarding the deceased pedestrian (medical examiner’s office).

Of primary concern to the professional legal investigator is the nature of the injuries. Common injuries include hyperextension of the torso, broken long bones, soft tissue and head injuries, abrasions, lacerations, and various injuries to the extremities. These injuries help determine such things as the orientation of the decedent when struck by the vehicle (were they facing or turned away from the vehicle), whether they were walking or pedaling a bicycle, if they were crouching or lying down, etc. These injuries will also be able to tell us if the vehicle braked, accelerated, or decelerated prior to, at the time of, or after the impact. Although these deaths are predominantly ruled an accident, criminal charges of vehicular homicide or a civil action for wrongful death can very well depend upon the autopsy findings.

**Workplace Accidents**

Accidents occurring in the workplace take on a new aspect of investigation, similar to aircraft and amusement park deaths. Every aspect of litigation could be involved, and as with all civil claims, contributing negligence is always a factor. The autopsy may determine the mechanism of death, such as exsanguination as a result of a fan blade separating from the shaft and impaling the
Reviewing & Comprehending Autopsy Reports, continued

decedent. The investigation and autopsy reveals this death was an accident—but it does not specifically address the incident and related underlying causation—the blade and shaft separation. Also consider a construction worker who falls and is impaled on a pile of metal debris or building material. Several questions, answerable at autopsy, come to mind. These include the possibility of a natural event, such as an acute cardiac event causing him to fall—was he deceased before or after the fall? Was death caused by the impalement? The issue of appropriate harnessing, restraint, and material storage, although very relevant and part of the death investigation, may not be relevant at autopsy.

Wrongful Death

The issue of a wrongful death claim, including criminal homicide, can depend on many factors often addressed at the time of the autopsy. These include intoxication of the decedent, health history (acute event or chronic history), debilitating or restrictive factors (aforementioned epileptic driver who was non-compliant with their medications), and activity at death, e.g. leaving the danger zone, acting in self-defense, being the victim of a surprise attack, participating in mutual combat, etc. These types of deaths can be supported by a separate law enforcement investigation, while all cause and manner of death rulings are supported by the autopsy findings. The nature of the injuries, contributing natural disease processes, levels of intoxication, proper restraint, etc., are all issues which should be noted for both support of the wrongful death claim (plaintiff) or comparative negligence (both plaintiff and defendant). All wrongful death claims originate from the more specific event causing the underlying incident. It is important to look at the specifics of the autopsy and supporting investigation.

Negligence and Personal Injury

Most causes of death can be the foundation of a civil action claim, which are covered in more detail in the appropriate subcategories of this paper. The most common, and obvious, purpose of the autopsy report is a wrongful death action; a subsequent purpose is the foundation of negligence or personal injury actions. The latter should be conducted in the same manner as a death investigation, sans the death and benefit of an autopsy. If you are familiar with death investigation and autopsy protocol, a personal injury or negligence investigation will seem very familiar. Autopsy reports will have detailed and important information requiring further investigation and documentation to support your claim. An example of this might be an intoxicated, negligent decedent who paralyzed a pedestrian, but was killed in the resulting collision.

Drug And Alcohol Overdoses

Overdoses, depending upon the circumstances and levels of intoxication, can be ruled any manner of death, except natural. Examples include intentional poisoning of another (homicide), acetaminophen overdose (suicide), acute ethanol poison-
Reviewing & Comprehending Autopsy Reports, continued

Two important factors to consider in these cases are the underlying investigation and toxicology results. With the autopsy report should be a reference to the therapeutic level or non-fatal level of any positive results (marijuana is not quantified). One important consideration is the combination of alcohol and/or drugs involved, i.e. alcohol and prescription medication, alcohol and illicit drugs, mixed illicit drugs, and illicit drugs mixed with prescription medications. Drug and alcohol-related deaths may have non-fatal levels of individual drugs, which, when combined, become toxic. This is especially true when mixtures of narcotics are involved. This information is often recorded on the death certificate as “multi-drug toxicity,” with the manner of death determined by the circumstances and investigation of death. The autopsy may also reveal if the person was deceased at the scene, moved prior to and/or after death, or died during transport to a hospital. The first concerns are the time of death and the related circumstances. It is important to consult with a forensic toxicologist to formulate a timeline and the effects of the drug(s) to the body during the perimortem period.

Special Circumstances

An example of a death due to special circumstances is the demise of an unborn fetus, which may be actionable as a wrongful death. Autopsies of a fetus are dependent upon statute. In Colorado a hospital fetal demise of under 20 weeks gestation is considered nonviable, and, therefore, regardless of most circumstances, will not be autopsied in most jurisdictions; hence the use of “fetal demise” versus “death” certificates. An exception to this would be if the death occurred outside of the hospital, such as the death or injury of the mother due to homicide, suicide, motor vehicle collision, arson, drug overdose, or other fatal mishap. In other cases, the death of the mother and/
or fetus may be attributable to medical malpractice. In all cases the gestation of the fetus, also the cause and manner of death, will be paramount to your case. In most cases, such as a motor vehicle collision, if the fetal demise was proximate to the death of the mother or due to a placental abruption due to an abdominal impact, e.g. fall, attack, or motor vehicle collision, the autopsy findings will also be significant to your case.

A second example is the death of a newborn or infant without a specific known cause, i.e. child abuse or congenital defect. Infant deaths of approximately under one year of age and without determination of cause and manner of death are now referred to as SUIDS (Sudden Unexplained Infant Death Syndrome), formerly known as SIDS (Sudden Infant Death Syndrome). Only after a complete review of the investigation, external and internal examinations, toxicology results, microscopy findings, review of the medical history, and no remaining definitive answer as to the cause of the infant’s death, will this be ruled a SUIDS death. Any death, especially that of an infant or child, is traumatizing for the family. To hear ‘we don’t know’ is neither easy to convey nor hear. Infant and child deaths require special investigation all unto their own, and will be addressed in a future article. In all other circumstances, the investigation and resulting autopsy report will provide the information necessary to determine if prenatal or pediatric care could have prevented the death.

**Investigative Considerations**

We are professional legal investigators—impartial gatherers of facts and information to better prepare our clients for adversarial judicial battle. To be effective, we need as much complete information as possible. I have been contacted by attorneys to review autopsy reports, sometimes accompanied by a police report or two. Rarely is any additional information provided, often because they have not received full discovery. Although I commend these attorneys for trying to jumpstart their legal strategy, complete information is the foundation of a detailed investigation. Death investigation is nothing more than a fatal, personal injury investigation. Fractions of an inch can separate life and death, just as the death or personal injury incident is nothing more than the consequence of a perfect series of events. The job of the professional legal investigator is to find and analyze these events. To do so requires as much information as possible.

Medical records are not public information, while autopsy reports, in most jurisdictions, are. You may be able to sit and review various case files, while talking to the case investigator(s) and forensic pathologist(s). You can also request copies of public police reports and photographs of historical cases, as well as review the public court case file to begin the learning process. Combine this information with a review of the public court case file to begin this unique learning process. Many things can be learned from these records -injuries and causation, medical intervention, investigative techniques, investigative blunders, and legal strategies. Being prepared
Reviewing & Comprehending Autopsy Reports, continued

to investigate a serious bodily injury or death case begins with learning the causation of injury and death.

As professional legal investigators we spend a great deal of time learning how to manage caseloads, witnesses, evidence, and reports. Most civil and personal injury and death cases are similar to criminal defense assault and homicide cases. In both cases, serious bodily injuries are sustained, death may occur, and a lawsuit and/or criminal charges may be filed. Understanding and reviewing death cases of all types has given me the knowledge to expand my investigative skills in areas which are unique, allowing me to standout from other investigators. We may look into a violation of a person’s rights, ensure that procedures and protocols have been followed, check to see if the incident happened as reported, and conduct a complete, proper investigation. But, ultimately, you must ask the question, how skilled am I at reviewing an injury or death report, and the photographs supporting investigation associated with it? Am I able to assist my client in determining if the incident happened as reported—and why? Could it have happened in a different manner? Or, most importantly, could it have happened at all when considering the evidence, reports, etc.? Knowing how to investigate is not synonymous with knowing what to investigate.

Conclusion

Many investigators have a talent for conducting informative interviews, discovering the nuances of a bad law enforcement investigation, and gathering the factual information necessary to support their client in the adversarial arena of the courtroom. The autopsy report is a valuable learning and investigative tool that many investigators discover when they are assigned their first wrongful death case. I have found that understanding the value of the autopsy report and the information accompanying it, e.g. photographs, medical records, toxicology reports, and body diagrams, are valuable assets to all professional legal investigators. Just as the final report to the client is a detailed overview of the case investigation, so too is an autopsy report. Understanding what an autopsy report tells us about an incident will better prepare the professional legal investigator for any personal injury, death, negligence, or criminal defense case. Death is the result of a series of events which cause a fatal injury or injuries. Understanding what is in the autopsy report will give the professional legal investigator more insight and resources to rely upon in their own investigation, making them more valuable to their client.
Reviewing & Comprehending Autopsy Reports, continued

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APPENDIX A: Documents to Request
Supporting Information from the Medical Examiner’s Office:

• Autopsy reports*
• Body diagrams**
• Complete toxicology reports*
• Autopsy attendance logs**
• Investigative reports**
• Autopsy and scene photographs**
• Morgue identification photographs and methodology**
• Laboratory and imaging reports (with imaging)**
• Medication logs**
• Evidence logs**
• Death certificate (including original pending death certificate if issued)**
• Correspondence, including with family, friends and witnesses**

* Often restricted by statute and/or requiring HIPAA releases, subpoena, or court order
** Often public record

NOTE: Hospital physicians including hospitalists, surgeons, specialists, radiologists, etc. maintain separate records. Request this information.

• Laboratory and imaging reports (including images)
• Referrals and correspondence between physicians
• Prescription history from all area pharmacies (including hospitals - often separate)

Supporting Information from the Law Enforcement and the Prosecutor’s Office:

• All specific case reports and subject history - patrol, investigative, crime scene and evidence laboratories
• Scene and autopsy photographs
• Evidence logs
• Correspondence with family, friends, and witnesses

APPENDIX B: Definitions

FORENSIC PATHOLOGIST - A forensic pathologist is a sub-specialist in pathology whose area of special competence is the examination of persons who die sudden, unexpected, or violent deaths. The forensic pathologist is an expert in determining cause and manner of death. They are specially trained to perform autopsies to determine the presence or absence of disease, injury, or poisoning; evaluate historical and law-enforcement investigative information relating to manner of death; collect medical evidence, such as trace evidence and secretions; document sexual assault; and reconstruct how a person received their injuries. Forensic pathologists are trained in multiple non-medical sciences as well as traditional medicine. Other areas of science that the forensic pathologist must have a working knowledge of include toxicology, firearms examination (wound ballistics), trace evidence, forensic serology, and DNA technology. The forensic pathologist acts as the case coordinator for the medical and forensic/scientific assessment of a given death, making sure that the appropriate procedures and evidence collection techniques are applied to the examination of the body. When they are employed as death investigators, forensic pathologists bring their expertise to bear upon the interpretation of the scene of death, in the assessment of the consistency of witnesses’ statements with injuries, and the interpretation of injury patterns or patterned injuries. In jurisdictions where there are medical examiner systems, forensic pathologists are usually employed to perform autopsies to determine cause of death.

FORENSIC AUTOPSY - is a postmortem examination of a body performed with the intent of determining the cause and manner of a death in question. It may require evaluation of evidence attached to the body and/or found at the scene.

MANNER OF DEATH - “how” the person died; a one word description of intentions and circumstances which led to the stated medical cause of death. There are five:

• Natural is a death caused solely by disease or the aging process.
• Accident is a death caused by an unexpected or unplanned event.
• Suicide is a death solely by an intentional act of the decedent, knowing that the act may cause death and without regard to the intent to cause death.

Supporting Information from the Medical Community*:

• EMS and fire response trip sheets and reports
• Hospital records from all area hospital (including regional trauma and children’s hospitals)
• Complete medical history and records (never accept a summary report)
• **Homicide** is the killing of a human being by another human being. The legal definition includes intentional and unintentional acts. A state execution and killing in self-defense are examples of medical and legal homicides, whereas a death from a motor vehicle accident is a medical accident, but could result in a charge of legal vehicular homicide.

• **Undetermined** is used when the information pointing to one manner of death is no more compelling than one or more other competing manners of death in thorough consideration of all available information. For example, a gunshot wound without determining intent to inflict the wound would be “Undetermined - Suicide versus Accident.”

Undetermined is also used in cause of death, such as a SUIDS death in which the event(s) causing the death are undetermined. If the cause of death is undetermined, then the manner of death must also be listed as undetermined.

• **Pending** - A temporary manner of death used until further laboratory tests determine the actual cause of death. This allows for the disposition of the remains until the final autopsy report is available and the final certification of death made. There is no manner of death noted or necessary.

**CAUSE OF DEATH** - The underlying disease or injury that is the specific and immediate medical reason for death. This area of the death certificate has two components:

• Part One: Beginning with the immediate cause of death (e.g., cirrhosis), followed by conditions resulting in the immediate cause of death (e.g., chronic ethanol abuse).

• Part Two: Significant, but non-contributing medical conditions (e.g., chronic tobacco smoker). This manner of death would be ruled natural.

An “acute cardiac event” is specific and immediate; “cardiopulmonary arrest” is not. All deaths are the result of the ceased function of the heart, lungs, and brain. This will be followed by the contributing factor to the immediate reason, such as hypertension. Reading “backwards” then, the interpretation would read: a history of hypertension (high blood pressure) caused by an acute cardiac event (heart attack).

**HIPAA - HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT**

**Judicial and Administrative Proceedings:** Covered entities may disclose protected health information in a judicial or administrative proceeding if the request for the information is made through an order from a court or administrative tribunal. Such information may also be disclosed in response to a subpoena or other lawful process if certain assurances regarding notice to the individual or a protective order are provided.

**Law Enforcement Purposes:** Covered entities may disclose protected health information to law enforcement officials for law enforcement purposes under the following six circumstances, and subject to specified conditions: (1) as required by law (including court orders, court-ordered warrants, subpoenas) and administrative requests; (2) to identify or locate a suspect, fugitive, material witness, or missing person; (3) in response to a law enforcement official’s request for information about a victim or suspected victim of a crime; (4) to alert law enforcement of a person’s death, if the covered entity suspects that criminal activity caused the death; (5) when a covered entity believes that protected health information is evidence of a crime that occurred on its premises; and (6) by a covered health care provider in a medical emergency not occurring on its premises, when necessary to inform law enforcement about the commission and nature of a crime, the location of the crime or crime victims, and the perpetrator of the crime.

**Decedents:** Covered entities may disclose protected health information to funeral directors as needed. It may also be disclosed to coroners or medical examiners to identify a deceased person, determine the cause of death, and perform other functions authorized by law.

**Workers’ Compensation:** Covered entities may disclose protected health information as authorized by, and to comply with, workers’ compensation laws and other similar programs providing benefits for work-related injuries or illnesses.

*Published in the March 2010 edition of the National Association of Legal Investigators’ (NALI’s) magazine, The Legal Investigator, where it won 2nd Place in the Editor-Publisher Award.*

*This article has been reprinted with permission by: www.PursuitMag.com.*

*This peer reviewed white paper has been utilized as a chapter in Practical Methods for Legal Investigations: Concepts and Protocols in Civil and Criminal Cases released in February of 2011, by CRC Press.*

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Correction

Fellow investigators, paralegals, and attorneys:

Shortly after the first part of this article was published, it was brought to my attention that there was, what I would consider, a serious error. This error will also appear in this second part. The error concerns the definition and example of “Mechanism of Death,” as it appears on the death certificate. This area is rarely used, as there are more appropriate parts of the death certificate. The intent of the two examples was to demonstrate that the mechanism of death is a consequence, not an action.

Louis Akin, LPI, CMI, of Akin Investigations in Austin, TX, is also a death investigator (Certified Medicolegal Investigator) and experienced forensic autopsy assistant. He correctly and accurately pointed out, “In describing cause, manner, and mechanism of death, the author defined the cause and manner correctly, but not the mechanism. This is a frequently misunderstood part of the autopsy. The cause of death is the proximal cause, that is, the trip wire that began the physiological death sequence. A stab wound is an example of a cause of death, but not of the mechanism of death. The mechanism of death in a stabbing is exsanguination (bleeding to death) as a result of the stab wound. A person can be stabbed and live. Or they could die as a result of blood loss. Low blood volume, the blood loss, was the actual mechanism of death. Some might carry that further to say that the mechanism was ultimately cardiac insufficiency, but that is not the custom.”

The first reference was: “The Mechanism of Death, or the instrument or action causing death, is often overlooked. This notation may include stab wounds, gunshot wounds, ligature strangulation, drug overdose, etc.”

This should read, “The Mechanism of Death, or consequence of the instrument or action causing death, such as exsanguination, is often overlooked. This notation may include consequences of stab wounds, gunshot wounds, ligature strangulation, drug overdose, etc.”

The second reference was: “The autopsy may determine the mechanism of death, such as a fan blade separating from the shaft and impaling the decedent. The investigation and autopsy reveals this death was an accident – but it does not specifically address the incident and related causation – the blade and shaft separation.”

This should read: “The autopsy may determine the mechanism of death, such as exsanguination as a result of a fan blade separating from the shaft and impaling the decedent. The investigation and autopsy reveals this death was an accident – but it does not specifically address the incident and related underlying causation – the blade and shaft separation.”

My apologies for these errors and any misunderstanding they may have caused. For me, this further emphasizes the importance of careful report writing, proofing, and editing.

Respectfully,
Dean A. Beers, CLI, CCDI
Associates in Forensic Investigations, LLC
We are excited to announce the agenda for the 2012 National Defender Investigator (NDIA) National Conference which is being held at The Grand Hyatt in Atlanta, GA from April 19-20, 2012. The NDIA conference’s theme this year is “Seeing Is Believing—Or Is It? Challenging Assumptions to Better Defend Our Clients.” We will examine how assumptions affect our work, regardless of whether it is the prosecution, witnesses, or we, ourselves, making those assumptions.

A prominent example of assumptions in the criminal justice system is eyewitness identification. It is among the most common and compelling evidence brought against criminal defendants, and it comes into play in all jurisdictions. Misleading lineup methods have been used for decades. Today, eyewitness identification is the most common element in all wrongful convictions later overturned by DNA evidence. For the first time in 34 years, the US Supreme Court heard arguments on eyewitness identification evidence (Perry v. New Hampshire), and last year the New Jersey Supreme Court issued new rules to make it easier for defendants to challenge such evidence. This year we have two speakers, Jennifer Dysart and James M. Doyle, who will discuss this critical issue.
Jennifer Dysart is an Associate Professor at John Jay College of Criminal Justice in New York City. An experimental forensic psychologist, Professor Dysart conducts research on eyewitness accuracy, the use of show-ups and mug shot searching on identification accuracy, false confessions, interrogator suggestibility, double-blind administration, and cross-race identification. Professor Dysart will discuss how specific eyewitness identification procedures can lead to an increased rate of false identification of innocent suspects and safeguards that may be implemented to reduce identification errors.

James M. Doyle is a criminal defense attorney from Boston, Massachusetts. He is a leading legal authority on eyewitness testimony, the author of True Witness: Cops, Courts, Science, and the Battle against Misidentification, and coauthor, with Elizabeth Loftus, of the influential Eyewitness Testimony: Civil and Criminal. Mr. Doyle will discuss eyewitness identification from the legal perspective. He will explain how mistaken eyewitness identifications are much more common than people (including jurors and judges) think, and that standard safeguards (such as cross examination) can be ineffective in protecting against mistaken identifications.

The keynote speakers for this year will be Henderson Hill, the recently appointed Executive Director of the Federal Defenders of Western North Carolina, Inc., and Jake Sussman, a partner at the law firm of Tin, Fulton, Walker & Owen. Henderson Hill and Jake Sussman (along with attorneys Penny Marshall, Robert McGlasson and Josh Moore and private investigators Watani Tyemba and Nancy Smith) represented Brian Nichols, who was capitally charged for the murder of a judge, court reporter, and deputy sheriff during an escape from an Atlanta courthouse, and killing a federal agent and kidnapping a young mother before his arrest. In spite of remarkably difficult facts, their work allowed Mr. Nichols to be spared the death penalty. Their presentation, entitled “(Re)Active Investigation: How Not To Be A Potted Plant,” will discuss how to plan and successfully execute a defense investigation while reacting to the prosecution’s on-going investigation.

Besides these offerings, there will be concurrent sessions on topics such as on-line investigations; sentencing advocacy; investigating and preparing cases with immigration consequences; cellular telephone forensics, triangulation, and investigation; computer forensics; lessons learned from innocence cases (including examples of why seeing is not necessarily believing); ethical issues and investigative best practices; international investigation; pathology and homicide investigations; ethics and strategies involved with interviewing child witnesses; obtaining social history records; habeas investigation and organization; hands-on introduction to firearms; and new technology and mobile computing. The faculty, composed of a mix of experts and practitioners, bring a wealth of experience that is directly relevant to investigators’ and paralegals’ day-to-day work.

As the only national organization whose constituency is dedicated solely to the investigative arm of indigent defense, the NDIA is committed more than ever to providing timely, relevant, continuing education to criminal defense personnel. If you have any questions about the NDIA’s National Conference in Atlanta, Georgia, or accessing the detailed conference agenda, please view the NDIA website at www.ndia.net. Questions may be directed to Executive Secretary Beverly Davidson at (860) 635-5533.

For federal employees, the Federal Judicial Center will hold its training the day prior (Wednesday, April 18) at the same location. It is anticipated that an agenda for that day’s training will be announced shortly.

See you in Atlanta!

Mark Neer and Sean Broderick, NDIA Conference Committee Co-Chairs
2012 NDIA Conference Agenda

April 19, 2012 (Thursday)

8:30 am - 9:00 pm
Plenary Session

NDIA Welcome and Opening Remarks
Local Defender and NDIA Conference Committee

9:00 am - 10:15 am
Plenary Session

Eyewitness Identification: A Psychological Perspective
Jennifer Dysart, Associate Professor, John Jay College of Criminal Justice, New York, NY

10:30 am - 11:45 am
Concurrent Sessions

1. GPS, New Technology and Issues of Search and Seizure, Justin Murphy, Attorney, Crowell & Moring, Washington, DC and James Strupp, Investigator, Federal Public Defender, District of Oregon, Portland, OR


3. Computer Forensics, Jim Persinger, Owner and Chief Executive Officer, PM Investigations, Atlanta, GA

1:15 pm - 2:30 pm
Concurrent Sessions

1. Freeing the Innocent: Real Life Examples of Why Seeing Is Not Necessarily Believing, Aimee Maxwell, Executive Director, Georgia Innocence Project, Decatur, GA


2:45 pm - 4:00 pm
Concurrent Sessions

1. International Investigations, Susy Johnson, Mitigation Specialist, Investigator; Attorney Alba S. Johnson, Esq. Mitigation Services, Ithaca, NY; and Herbert Duzant, Investigator, Federal Public Defender, District of Nevada, Las Vegas, NV
2012 NDIA Conference Agenda

2. Hands-on Introduction to Firearms, Philip Crumbacker, Certified Firearms Instructor, Reisterstown, MD


4:15 pm - 5:15 pm
General Business Meeting
NDIA Board of Directors

6:00 pm - 9:00 pm
President’s Reception

April 20, 2012 (Friday)

8:30 am - 10:00 am
Plenary

(Re)Active Investigation: How Not To Be A Potted Plant
Henderson Hill, Executive Director, Federal Defenders of Western North Carolina, Inc, Charlotte, NC, and Jack Sussman, Partner, Tin, Fulton, Walker & Owen, Charlotte, NC

10:15 am - 11:45 am
Concurrent Sessions

1. Ethics and Strategies for Interviewing Child Witnesses, Craig Hickein, Staff Attorney, Public Defender Service, Washington, DC


3. Pathology and Homicide Investigations, Dr. Darinka Miluesnic-Polchan, The University of Tennessee Graduate School of Medicine, Department of Pathology, Knoxville, TN

4. Sentencing Advocacy, TBA

1:15 pm - 2:30 pm
Concurrent Sessions

1. Internet Sleuthing, Jonathan Lyon, Private Investigator, Chicago, IL

2. Hands-on Introduction to Firearms, Philip Crumbacker, Certified Firearms Instructor, Reisterstown, MD


2:45 pm - 4:15 pm
Plenary
Eyewitness Identification: A Legal Perspective, James M. Doyle, Attorney at Law, Carney & Bassil, Boston, MA

4:15 pm - 4:30 pm
NDIA Closing Remarks
NDIA Conference Co-Chairs
2012 NDIA NATIONAL CONFERENCE AT A GLANCE
April 18 - 20, 2012

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2012 NDIA National Conference
April 19-20, 2012
(April 18, 2012 Federal Day Training)

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NEW LOWER ROOM RATE: $133
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Reservations:
404-237-1234
(Refer to NDIA Group Meeting.)

Check-In: 4:00 pm
Check-Out: 11:00 am

Cut-off date for hotel reservations: April 4, 2012.

Parking:
Guest Self-Parking: $20.00 per day. Valet Parking with In/Out Privileges: $30.00 per day. NDIA attendees will be given a 25% discount on overnight self & valet parking.

Transportation:
AIRPORT: Hatsfield/Jackson Atlanta, 18 miles from hotel.

SHUTTLE SERVICE: From Hatsfield/Jackson Atlanta Airport, hotel shuttle service is available on the Purple Aisle outside the Ground Transportation Center, located at the west end of the building (west curb). The west curb is outside between the North & South Terminals. Courtesy phones are also available at baggage claim areas for both North & South Terminals. The Grand Hyatt does not provide a courtesy shuttle to or from the airport.

The shuttle service which goes to the Hyatt (Buckhead-area of Atlanta) is The Atlanta Airport Shuttle Service, 404-941-3440, or you can make a reservation online at www.taass.net. Roundtrip charge is $37.00.

TAXI: Located in the Yellow Bus Aisle at the airport. $40 one way from the airport to the Grand Hyatt in Buckhead.

OTHER: For car rental, bus, train, or MARTA information go to the airport website www.atlanta-airport.com

Hotel:
The Grand Hyatt Atlanta is situated in the heart of Buckhead, Atlanta’s most prestigious neighborhood. This luxury hotel offers an ideal location, with convenient access to MARTA rapid transit and some of the city’s most renowned dining and entertainment venues. Just a short walk from the hotel are the Phipps Plaza and Lenox Square shopping malls with department stores, restaurants, and movie theaters.

STANDARD GUEST AMENITIES:
• Access to fitness center, pool, and business center
• Newspapers delivered to room daily
• Complimentary high speed internet access in room
• Complimentary chauffeured car service within a 2 mile radius of the hotel
• Hairdryer, bathrobes, coffee maker with complimentary coffee, iron, bath amenities
• In-room safe

Local attractions include the Georgia Aquarium, Atlanta History Museum, Centennial Olympic Park, Underground Atlanta, Coca-Cola Museum, CNN Center, Historic Midtown Atlanta, and Atlanta Braves baseball.

We look forward to seeing you at the 2012 National Conference!

NDIA CONFERENCE COMMITTEE
Mark Neer, Sean Broderick, Co-Chairs
Karen Jackson
Drew Davis
Walter Ott
Herbert Duzant
Colleen Flanagan
Beverly Davidson
The 2012 Annual Business Meeting of the National Defender Investigator Association will be held on Thursday, April 19, 2012 at 5:00 pm in the Grand Hyatt Atlanta (Buckhead) Hotel, Grand Ballroom, located at 3300 Peachtree Road, Atlanta, Georgia.

The meeting will take place during the 2012 NDIA National Conference. The NDIA Annual Business Meeting is open to all members in good standing. Any such member may vote on NDIA business agenda items and bring matters not listed on the agenda up for discussion.

David Young, Secretary/Treasurer
national conference: atlanta
national conference: atlanta
Calling All Vendors

Just prior to the 2009 National Conference in Daytona Beach, Teri Moore decided to take the evening of the President’s banquet to a new level. She wanted to make the event more fun by showcasing area businesses, restaurants and entertainment available to the attendees and their families. The Daytona Chamber of Commerce embraced the idea, and the evening was a huge success. A lot of money was raised for charity by auctioning off gift certificates donated by businesses.

This year our NDIA President has offered up a new challenge, promoting businesses from within. Teri Moore recently told me that she is astounded by the talent and entrepreneurship that exist within our membership. Many of our fellow investigators/paralegals or their family members are artists, musicians, authors, and business owners. It’s time to showcase our own. We can auction off our own accomplishments for charity.

For the first time in NDIA history, the President is issuing an invitation to members who have published music or books, created art, or own a business to showcase at the upcoming Atlanta National Conference. Tables will be set up to display and sell merchandise but are limited in number. Be sure to let the conference staffs know as soon as possible if you are interested. To get more information or sign up, contact Patti Gallo at (352) 373-5823, or by email at patti_gallo@fd.org, pgallo.florida@gmail.com.

2012 NATIONAL CONFERENCE
Exhibitor Registration Form

Company: _____________________________________________________________
Contact Person: _______________________________________________________
Address: _____________________________________________________________
City: ___________________ State: _________ Zip: ______________
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- Lanyard Sponsor (website link & logo on NDIA website, 550 lanyards with company logo, display table Wednesday April 18, 6-8pm through Friday April 20), $1,200 SOLD
- Registration Bag Sponsor (website link & logo on NDIA website, 550 bags with your company logo, and display table evening of April 18, all day April 19 & 20), $1,200 SOLD
- Presidential Sponsor At President’s Reception April 19, company will be sole sponsor for the evenings event including awards, reception and introduction, 6-8 pm. Banner will be displayed in the reception ballroom (also included website link & logo on NDIA web site, & display table April 17-20), $2,500 SOLD
- NDIA CONFERENCE SPONSOR Sole Sponsor April 18, 6-8pm (to include introduction at the opening of the conference April 19; website link & logo on NDIA web site opening page; table tents with co. logo, display table April 18-20; company name, logo on cover of cd program handouts), $5,000 SOLD

EXHIBITOR PACKAGES
(Exhibitor responsible for electrical hookup and internet charges directly through the hotel.)

- Table Top (One 8’x36”x32”(H) table; two tablecloths; two chairs; one trashcan - April 18-20, web site link & logo on NDIA web site) $1,000
- Additional Tables (includes tablecloths, etc. listed above) $200

Exhibitor Names:
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3. __________________________________________________________________________
4. __________________________________________________________________________

Exhibitor assumes responsibility and agrees to indemnify and defend the Organization and the Hotel and their respective employees and agents against any claims or expenses arising out of the use of the exhibition premises. Exhibitors are responsible for internet and any other additional equipment not included in NDIA sponsorship packages via the hotel’s on site Audio/Visual Company, Presentation Services, 404-237-1234. The exhibitor understands that neither the Organization nor the Hotel maintain insurance covering the Exhibitor’s property, and it is the sole responsibility of the Exhibitor to obtain such insurance.

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Pre-Registration BEFORE 4/4: Registration AFTER 4/4:

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- $300 Non-member
- $340 Non-member

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NDIA, Beverly Davidson
460 Smith Street, Ste. B3
Middletown, CT 06457

NDIA Tax ID# 85-043-5581

Contact Beverly Davidson for more information:
Phone: 860-635-5533 Fax: 866-668-9858
Email: nationaldefender@gmail.com

**CONFIDENTIALITY PLEDGE:**

This pledge MUST be read and signed before NDIA will be able to process your registration!

I hereby acknowledge that materials and information provided in this packet, at this seminar, and on the CD Rom are confidential information and may not be disclosed except to other defense practitioners. This information reflects thoughts, opinions, impressions, and strategies with regard to previous and ongoing cases, and, as such, is protected under the attorney-client privilege and work product doctrine. The materials provided at the seminar and on this CD Rom are licensed to participants for use in defense of criminal cases only, and any other use or distribution is a violation of copyright laws and the attorney’s ethical obligation. By signing this pledge, I agree to abide by this understanding and to keep all information privileged. My signature also indicates that I am involved in the defense of persons accused in criminal cases.

Signature: ___________________________ Date: __________
The NDIA will be awarding scholarships to the 2012 Regional Conference in San Antonio, Texas. There will be two scholarships offered per region—Northeast (Sean Williams), Southeast (Shawn Tobin), Midwest (Tom Hinton), and West (Larry Carlson.) The two scholarships for each region will cover the conference registration fee. Recipients will be responsible for their own rooms and travel. Interested applicants must be members in good standing of NDIA and should contact their Area Director or Beverly Davidson at NDIA to apply. The deadline to apply for the Regional Conference scholarship is August 1, 2012. Any questions concerning the scholarships should be directed to Beverly Davidson at the NDIA office, 860-635-5533 or nationaldefender@gmail.net.

Beverly Davidson
Melissa Kupferberg NDIA Scholarship

Melissa Kupferberg was a nationally recognized investigator with the Tampa, Florida Federal Public Defender’s Office when she passed away. Only 32 years old, she was a skilled investigator, capital mitigation specialist, and sentencing advocate who had a wonderful ability to relate to and work on behalf of her clients. Her Master’s Degree in Social Work and considerable experience, in both capital and non-capital cases, gave her great expertise in understanding and addressing mental health issues. This expertise helped her to develop a rapport with all types of clients, even those with significant mental illnesses or intellectual disabilities.

First and foremost, Melissa was dedicated to her clients. She was a fierce advocate, always seeking the most persuasive way to demonstrate a client’s humanity to judge or jury, whether it be a mentally ill death row prisoner or a defendant facing child pornography charges. Melissa worked tirelessly to ensure thorough investigation of her clients’ cases. Innocent or guilty, Melissa helped clients open up about their pasts, including painful details they would not reveal to others, so that information could be developed that might eventually persuade a judge or jury to give a lighter sentence than they would otherwise receive. Most importantly, she respected them and appreciated their humanity.

To honor Melissa, her family has created the Melissa Kupferberg NDIA Scholarship. The goal of the scholarship is to recognize those NDIA members who have followed in Melissa’s footsteps through their client-centered approach to indigent criminal defense, by providing them with funding to attend the NDIA’s national conferences.

Selection Criteria

The scholarship recipient must be a member of NDIA. He or she must have demonstrated a commitment to indigent clients and a client-centered approach to indigent criminal defense. Preference may be given to applicants who can demonstrate this commitment in one or more of the following areas:

- Sentencing advocacy, a.k.a. sentencing mitigation work on behalf of indigent criminal defendants.
- Alternative sentencing on behalf of indigent clients, including pre-trial release programs, alternatives to incarceration, mental health assistance, substance abuse assistance, and any other program that can impact a client’s incarceration.
- Working with clients who have mental health or intellectual disabilities.
- Capital mitigation work.

Application

To apply for the scholarship, please fill out the application form, and certify that the information you have provided is true and accurate.

Provide a personal statement (1,000 words) describing how: (1) you are dedicated to improving the lives of your clients, and (2) attending the training will improve your ability to do so.

Provide at least one letter of support from a professional colleague (e.g., current or former boss or co-worker), describing in what ways your indigent criminal defense work is client-centered, and why you are deserving of this scholarship. Reference to your work in a specific case is optional, but may be helpful.

Applications must be received by AUGUST 10, 2012 for the Regional Conference in San Antonio, September 5-7, 2012.
In April of 2010, the Scientific Working Group on DNA Analysis Methods (SWGDAM) published a report entitled “Interpretation Guidelines for Autosomal STR Typing by DNA Testing Laboratories.” This document updates and supersedes the previous SWGDAM Interpretation document released ten years earlier in 2000 and is now being used as guidance in crime labs across the nation.

For anyone in the legal or forensic DNA profession, it is extremely important to be aware of the changes, especially in DNA mixture interpretation that have come about because of this document. These changes are having a direct impact on current DNA cases, and, although not intended to apply retroactively, the new guidelines may also play a role in cases involving mixtures from years past that have not yet gone to trial.

DNA mixture interpretation has been a highly contentious subject for many years. Some noted authorities in the DNA field have commented that if you give 10 analysts a mixture to interpret, you will end up with 10 different answers. With the increase in the number of “touch” or trace DNA samples, the mixtures that DNA analysts are being asked to interpret have grown even more complex. Instead of simply dealing with the typical two-person mixtures inherent with sexual assault cases, analysts are now seeing mixtures involving three, four, and five persons obtained from items as diverse as knife handles, screwdrivers, steering wheel swabs, and clothing items. In addition, the DNA obtained from these touch items may be of low quantity and quality—both of which make mixture interpretations all the more difficult.

Why new guidelines?

The purpose of the 2010 SWGDAM document is to provide guidance when interpreting mixtures and applying statistics to those mixtures. The guidelines were designed to help with consistency among laboratories and individual analysts within a single laboratory.

What are the new guidelines, and what effect are they having? One new guideline explicitly states that the mixture must be interpreted prior to comparison with known standards. This was (and is) not always common practice in some laboratories. The goal of this guideline is to help eliminate potential bias on the part of the analyst as it has been noted that it is possible for an analyst, who will often work closely with police and prosecutors, to have some form of “observer bias”—defined as “interpreting data in a manner consistent with one’s expectations.” Other new guidelines include the establishment by the lab of an analytical threshold, (defined as the minimum height requirement at and above which detected peaks can be reliably distinguished from background noise) and the stochastic threshold, “the peak height value above which it is reasonable to assume that, at a given locus, allelic dropout of a sister allele has not occurred.” These thresholds are very important.
when determining which loci can be used in the statistical calculation and which cannot. For example, guideline 4.6.3 states that “loci with alleles below the stochastic threshold may not be used for statistical purposes to support an inclusion.” And, standard 5.1 dictates that:

A statistical calculation meant to represent all possible contributors to a mixture (such as CPI/CPE) should not be performed at a locus when there is a reasonable possibility that allele dropout could have led to the loss of an entire genotype.

For some labs, these guidelines won’t affect their conclusions as they have always been doing things this way. For many other labs, however, following the new guidelines will have a major impact on their statistical conclusions. For example, one recent case I reviewed reported a combined probability of inclusion (CPI) statistic of 1 in 1.5 million for the Caucasian population. During the time period between when the case was completed, and when the case went to trial, the laboratory’s mixture interpretation guidelines had been updated to come into line with the SWGDAM guidelines. When the statistic was recalculated (by the same laboratory, at the request of the prosecution) the conclusion for the Caucasian population was vastly different—the probability was now determined to be 1 in 1,400!

The 2010 SWGDAM guidelines also state that labs must perform statistics in “support of any inclusion that is determined to be relevant in the context of the case.” This may seem like a no-brainer, but some labs have not routinely reported statistics on samples with very low-level data present, or with only a few alleles present. They would, however, make a statement to the effect that the suspect “could not be excluded from” the evidence item. The new guidelines ensure that if a lab is including a person as a contributor (which is the same thing laboratory, at the request of the prosecution) the conclusion for the Caucasian population was vastly different—the probability was now determined to be 1 in 1,400!

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Stats Required for Inclusions

SWGDAM INTERPRETATION GUIDELINE 4.1:

“The laboratory must perform statistical analysis in support of any inclusion that is determined to be relevant in the context of a case, irrespective of the number of alleles detected and the quantitative value of the statistical analysis.”


as stating that one “cannot be excluded”), they must give weight to that inclusion by reporting a statistic—even if the stat is nearly meaningless.

Possible Brady Implications and/or Admissibility Issues

The SWGDAM guidelines are not considered standards and laboratories will not be audited against the document nor are they even required to follow it. However, most laboratories will likely change, or have changed, their mixture interpretation procedures to fall in line with the SWGDAM document. In addition, the document is not intended to apply retroactively. However, some attorneys who have examined this issue have come to the conclusion that this is not enforceable. For example, Jules Epstein, Associate Professor of Law at Widener University School of Law gave a presentation to attendees at the National Forensic Science Technology Center (NFSTC) Mixture Interpretation Workshop held in March 2011 entitled, “The Law, Ethics, and DNA Interpretation.” He brought up several interesting points in his presentation including the fact that considering that these are new guidelines, does that mean that the old way of doing things was not good enough? Upon his questioning, at least one attendee at the meeting (the vast majority of whom were practicing forensic scientists) commented that, “This is the way the community should have been handling mixtures all along.”

The bottom line is that labs may have been over-estimating the rarity of certain DNA
profiles when following the old SWGDAM guidelines which offered very little guidance on the topic of mixture interpretations to begin with. Epstein stated that there may be possible Brady implications to this issue. Some laboratories are trying to address the Brady implications by notifying all the prosecutors they serve of the updated mixture interpretation guidelines and even offering to recalculate mixture statistics on older cases using the new guidelines. The possibility of admissibility hearings regarding the new guidelines and the new methods to calculate and report mixture statistics were also raised.

What does this mean for your DNA cases?

With the advent of the new guidelines, it is likely that more “nconclusive” results will be reported instead of “cannot be excluded.” In addition, the statistical results for many of the mixtures obtained by DNA labs will likely be less rare, i.e. it will be more likely to find another individual who could also have been a contributor. Overall, the guidelines should make the statistical conclusions more conservative. However, it is highly likely that cases reported in the past will not undergo any re-calculation of statistical results as the attorneys involved may not even be aware of the changes addressed under the new SWGDAM guidelines or their implications.
Deputy Chief Brendan Wells, Public Defender Service, District of Columbia

In 1955, the Bar Association of the District of Columbia promoted the creation of a legal entity to provide assistance that would be an inspiring example for other communities. They issued the “Report of the Commission on Legal Aid of the Bar Association of the District of Columbia” in 1958. Judge E. Barrett Prettyman of the US Court of Appeals took the report and led a group of lawyers to the US Congress. They advocated for the establishment of an office that would focus on criminal, delinquency, and mental health cases. Their efforts resulted in the creation of the Legal Aid Agency (LAA), an entirely government-funded organization completely independent from the executive and judicial branches of government.

In 1963, *Gideon v. Wainwright* forced a US Supreme Court decision that recognized the right for counsel when people were unable to afford their own attorney. In 1970, the leadership of LAA helped establish the Public Defender Service for the District of Columbia (PDS) and expanded services available for clients. As an apolitical organization, PDS remained the same as its predecessor. They are completely funded by the federal government, independent, and governed by an eleven-member Board of Trustees. The office represents up to 60% of all people determined to be financially unable to hire counsel. The other 40% are assigned to private attorneys compensated by the Criminal Justice Act (CJA).

PDS generally handles the more serious or time-intensive cases. If a case makes the nightly news, chances are the PDS is involved. The services available to the public over the last 30 years have expanded and evolved, but remain a client-driven entity and offers a beacon of hope to their clients. The office offers assistance with investigations, paralegals, translation, and library services. Forensic social workers in the Office of Rehabilitation and Development (ORD) provide mitigation assistance, and Defender Service Offices (DSO) coordinates the appointment of lawyers to eligible clients.

The Investigative Unit of PDS is led by Chief Investigator Karen Jackson, a member of the NDIA and a familiar face at our conferences. Her Deputy Chief, Brendan Wells, helps supervise a fluctuating group of 26-32 investigators in their division. The District of Columbia is one of the few places in the country that has closed discovery laws. Nothing is given by the prosecution. When they are able to obtain a police report, the witness and victim information is missing. The criminal procedures are often referred to as “trial by ambush.” The investigators and paralegals become a pivotal part of the defense. Some of the top attorneys in our county are practicing in the DC area, and defense work is extremely adversarial.

Brendan Wells joined the office of PDS at the end of 1996, but he was no stranger to criminal defense work. At the age of 18 and still attending high school, Brendan was recruited by his uncle, a criminal defense attorney in the District of Columbia area, to conduct investigations. Wells continued to work with various law firms investigating cases while attending college. He became
acquainted with the complex federal system and the closed discovery policy while working with CJA panel attorneys.

After joining PDS, it did not take long for Wells to realize there was no unified training available to investigators appointed by the court. There were no guides, manuals, or certification policies in place, and a general lack of trust existed in the legal community toward the men and women who were investigating cases. In 2000, he wrote a proposal to the District of Columbia Superior Court calling for all investigators to be trained, certified, and cleared through a criminal background check.

The court was receptive to Wells’ proposal and requested that he research potential CJA programs in place around the country, CJA investigator certification standards, and rates of pay. He called or emailed every jurisdiction in the country and learned that there were no other CJA investigator certification programs in existence, but learned quite a bit about each jurisdiction’s process for hiring and paying CJA investigators. He discovered a huge disparity among the investigators and how much they were paid by the courts. Hourly rates varied from as low as $10.00 per hour up to $80.00 per hour. He was able to establish a national average somewhere in between.

After receiving Wells final report, the Supreme Court of DC mandated that all investigators submit an application for criminal case work, clear a nationwide criminal background check, and complete a required two week training course taught by Wells before they could receive their certification. Wells created the program that is now the standard for investigator certification. As a result, he has been asked to speak and teach across the country.

In addition to the classes mandated by the court, PDS also provides continuing education credits for attorneys and investigators. He specifically designed a session for PDS’s Summer Series attorney training that helps CJA attorneys learn how to utilize their investigator. Most attorneys he spoke to assumed that their investigator would know, with little or no direction, what to do on the assigned case. While many investigators know how to create their own investigative plan, Wells believed the attorney should take the responsibility to direct the investigation as it related to his/her particular case. Wells taught them that hiring someone to assist with a case is only the start of the attorney/investigator relationship. Wells instructed the attorneys on the importance of mapping out a defense strategy and documenting an investigative plan at the very beginning so that everyone would be on the same page. He recognized that some personalities clash and are simply not suited to working together. Moreover, he also noted that there are some private investigators that are better working one type of crime over another. Therefore, he taught that it was up to the attorney to determine who will be the best fit for each individual case.

Our online world of social networking sites, such as Twitter and Facebook, as well as Internet sleuthing websites, is ever changing. Wells feels that it is very important that an investigator work hard to stay current with each changing trend. Computer work and subpoenaing records can be a true challenge, and it is even more challenging because these social sites are resistant to subpoenas issued for records. Law enforcement has bypassed the complicated laws governing the Internet by having search warrants issued instead. Because of this problem, there is interesting litigation going on across the country. The Internet outgrew the laws governing the web; thus the laws are now antiquated. This issue is certain to be an area that will change dramatically in the near future. To encourage net-savvy investigation, Wells founded a proactive sub-unit of investigators, dedicated to primarily work Internet, video, and technology cases.

Chief Karen Jackson recently told me the reason PDS works so well is their acknowledgment of shortcomings and what they can do to change. “Having a partner like Brendan is wonderful. He embraces a challenge. When he doesn’t know how to do something, he investigates it until he does. His commitment to our mission gives me the ability to attend the manager meetings and to fight for money and staff knowing our unit is in good hands.” Unfortunately, the average life span of an investigator with PDS is about three years. Jackson said they manage to maintain a core group, but the burn out rate is high. “Having someone like Brendan with our organization so committed to training newcomers is critical to our operation.”

Jackson said their office is inundated with emails and calls from other investigators wanting to know how to do something. “I always ask my staff what they would do if the computer was unplugged for one day. Would they know how to do their job? Investigating a case is a skill, not an Internet search. It is up to each one of us to develop our skills and know what to do when there is no one around to ask.”

Wells is passionate about the field of investigative work. He often forges ahead, paving the road for others to follow. He believes that it is better to be a problem solver than to expect someone to do the work for you. His best advice to other investigators is to “do what you were hired to do, utilize your training and resources, [and] try to find out the answers yourself before you turn to someone else. After you have exhausted all of your avenues, then give me a call, but be prepared to tell me the steps you’ve taken first.”

Karen Jackson recognizes Wells’ reticence to talk about himself. “He is just not going to do it, and those who know him best are sure to tell you that…He is a truly remarkable person. He is a husband, a father, and an asset to the criminal defense team.”
Brandon Perron Publishes New Book

*Forensic Testimonial Evidence Recovery – The FTER Method*

In 1998, CDITC (Criminal Defense Investigation Training Council) Director and Founder Brandon Perron published his first book, *Uncovering Reasonable Doubt: The Component Method*. The book and Component Method have become the standard in criminal defense investigation. In his newest book, Brandon applies his ability to simplify the methodical process of investigation to the discipline of Forensic Interviewing. He has added to the process with a new Forensic Interviewing book and methodology. *Forensic Testimonial Evidence Recovery—The FTER Method* was developed by Brandon as a supplement to the Component Method of criminal defense investigation. FTER is intended to enhance the investigative interview process by elevating the investigator’s understanding of testimonial evidence as it relates to analysis, evaluation, recovery, and documentation. Testimonial evidence often becomes the primary focus in pursuit of the truth and the development of a sound defense theory. Therefore, the CDI as a professional criminal investigator must understand the evolutionary process of testimonial evidence and the manner in which it becomes fact, and, ultimately, introduced as evidence. This is a must read for the professional criminal defense investigator.

Contents—Introduction; The Truth Seeker and Agent of Counsel; The Component Method of Criminal Investigation; History of Interviewing / Ethical Considerations, Interviewing: Art of Science?; FTER: Forensic Testimonial Evidence Recovery; Strategic Applications; Critical Thinking & The Nature of Truth; The Anatomy of a Lie; The Elements of Testimonial Evidence, Preparation & Planning; Conducting the Interview; Advanced Interviewing Techniques; The Defendant Interview.

Special Advanced Purchase: Limited Quantity—Paperback, 98 pages, copyright Brandon Perron 2011, Morris Publishing Press. Call 1-800-465-5233 or email Amy@BrandonPerronPI.com to order a personalized, autographed copy. Purchase Price: $30.00 plus $5.00 shipping & handling. MasterCard and Visa accepted.
Modern Day Slavery

Never assume you know what happened. There are always things that will be revealed along the way.

On July 7th, 2009, Cabioche Bontemps, his sister Carline Ceneus, and Willie Paul Edouard, a family friend, were indicted by a Federal Grand Jury in the Northern District of Florida. They were charged with human trafficking and visa fraud. The list of criminal acts included mandating excessive work hours, withholding passports, collecting recruitment fees, restricting freedom of movement, isolation, threatening physical violence and deportation, withholding earnings, exposing victims to toxic chemicals, charging for substandard and overcrowded housing, and starvation. Bontemps was charged with two counts of rape. In layman’s terms, the defendants were charged with modern day slavery.

As more information started to trickle in, we learned the victims had been recruited under the Federal H2-A program. Farm worker advocates had been firing away at the program for years claiming the system was ripe with abuse. For us to understand the scope of the conspiracy to commit human trafficking, we had to know more about this program and other cases of this nature that been successfully defended. Our office began to research all the material we could find. We had many things going against us in the beginning. We couldn’t speak Creole, the case was over a year old, and the majority of our potential witnesses had disappeared to avoid deportation.

The lead prosecutor on the case was assigned to the Department of Justice’s Civil Rights’ Criminal Division out of Washington, DC. She and her team had a reputation for being tenacious and difficult. They had aggressively prosecuted trafficking cases around the United States and the American Samoas. She was also prosecuting a trafficking case in the District of Hawaii that mirrored ours in many ways. We began to monitor US v. Sou. The Hawaii case was headed for trial during a time frame that paralleled ours and would prove to be a pivotal piece of our defense. Assistant Federal Public Defender Darren Johnson was appointed to defendant Bontemps.

By the time this case ended when the US Government filed a motion to dismiss, our office had logged over 21,000 pieces of document discovery and numerous audio recordings. That did not include documents or photographs obtained by the defense. The majority of the following information was pieced together from the extensive discovery and interviews with numerous witnesses and H2-A workers who never claimed to be victimized by the defendants. Because this case was dismissed, sensitive information that could used by the defense should this case be reopened was omitted.

The Federal H2-A Immigration and Nationality Act was pushed through Congress in 1952. Immigration officials believed it was
the proper way to deal with the estimated 59,000 illegal farm workers already living within our borders. The program was designed to offer a legal way for the companies, particularly those in the agricultural and forestry industries, to bring alien workers into our country when there would be an anticipated shortage in the local workforce. When an employer had exhausted all possible means to recruit US citizens, they could use H2-A to bring in foreign workers. Applications had to be completed 45 days before the workers were needed and could only be for a period of 364 days. The Department of State issued 110 visas for workers entering from Haiti in 2008. One hundred and nine of those visas were issued to workers involved with this case.

Most of the farmers we interviewed told us applying for the H2-A program was beyond the scope of their understanding. They simply didn’t have the time or the inclination to comply with the mountain of federal regulations. Multiple agencies are involved in the long and arduous process of getting governmental approval. Many of the farmers chose to rely on Carline Hot Pickers, Inc., owned by Carline Ceneus and Puroul Picking, owned by Willie Paul Edouard, to supply the workers and take the responsibility for paying them. The farmers had little or no direct contact with the crews, who seldom spoke English. The person hired by Ceneus to oversee the work being done at Steven Davis Farms was her brother, Cabioche Bontemps.

Many of the victims later claimed that Ceneus collected large recruitment fees ranging from $3,000 to $4,500. The workers reported they had to borrow money from “loan sharks” who required excessive interest rates and often collateral in the form of houses and land. In Haiti, borrowing money from a loan shark and not repaying the debt can result in beatings, mutilation, and sometimes death. There is little or no protection from law enforcement officials who often refuse to intervene. The debts owed to loan sharks were later used as a prevailing reason that the workers should be allowed to stay in the United States. The Government never located the money they accused Carline of collecting.

The first group of H2-A workers arrived in Miami on May 17th, 2008. The next afternoon, Bontemps picked up approximately 18 workers and transported them to Lacrosse, FL. The second group of workers arrived from Haiti escorted by Ceneus on May 21st. Some of the workers disappeared as soon as they arrived in Miami. It was clear that they never had any intention of working at Steven Davis Farms.

For the first few weeks, everything seemed to be going fine. The opening of a fully functioning packing shed and the arrival of H2-A workers was a boost to the economy and drew the attention of a local newspaper. The June 12th, 2008 edition of the Alachua County Today printed a picture of a smiling Steven Davis and Haitian women processing the shelled peas from the harvest. Things began to unravel toward the end of June when a paralegal from Florida Rural Legal Services (FRLS) showed up with flyers printed in Creole and spoke with the workers.

Emails embedded within the discovery documents suggest that a relationship existed between FRLS and the US Department of Labor prior to the H2-A workers’ arrival in Lacrosse. Contrary to the paralegal’s statement to immigration agents, he seemed to know exactly where to locate the workers and where they were being housed. He claimed that his purpose for going to the farm was to make sure the rights of the workers were not being violated. When confronted by Ceneus who wanted to know what he was telling her workers, he left, but the damage had been done.

We later learned the paralegal told the workers that he would be able to provide free housing, food, and the ability to remain in the United States if their rights were being violated. He claimed that if they did not leave the farm and go with him, they would face certain deportation when their visas expired.

The Trafficking Victims Protection Act of 2000 (22 USC 7101-7110) gives a foreign worker the right to apply for T-Visa status and remain in the US permanently. In addition to the worker, provisions are also in place for family members to be issued immigration visas. We estimated by the conclusion of this case over 100 men, women, and children related to the alleged victims were brought to the US. Their plane tickets,
Modern Day Slavery, continued

By the end of June 2008, many of the workers had left the job site and never returned. The crew of H2-A workers had dwindled to less than 25. By the beginning of July 2008, most of the H2-As had left Lacrosse. Ceneus knew the workers had violated the terms of their employment agreement by failing to show for work and absconding from the farm. Documents were located in the discovery material that showed she contacted the Agency for Workforce Innovation and reported the missing workers. The agency suspended the work order at the end of June 2008 for Steven Davis Farms. They referred her to US Immigration and Customs Enforcement (ICE) to document the official list of absconded Haitians.

In 2008, Canada was actively recruiting workers with the offer of permanent residency visas to anyone who applied for farm work. Interviews suggested many of the workers crossed the American/Canadian border shortly after their arrival in the United States.

In mid July, Ceneus approached Bontemps about helping a family friend who was applying for H2-A certification. The friend was Willie Paul Edouard and his company was Puroul Picking. Edouard, a Haitian businessman from Miami, FL, was planning to work in the fields. Some of the Haitians were taking advantage of the system. They knew they would get paid regardless of how hard or how much work they did.

In September 2008, approximately four weeks before the H2-A visas were set to expire, the Alachua County Sheriff’s Department was notified by FRLS that H2-A workers were living at Steven Davis Farms and suffering from starvation and substandard housing conditions. Along with ICE, the Sheriff’s Office started the investigation. Seven H2-A workers were located at Timber Village Mobile Home Park and transported to a Gainesville, FL safe house. One of the seven was the woman who claimed she had been raped twice by Bontemps.

If the Government had investigated further, they would have discovered as we did, Western Union records showed that months before the young woman arrived in the United States, she was receiving money from the “stranger from the bus stop” when she was still living in Haiti.

In late October 2008, just weeks after the first group of workers arrived at Puroul Picking, North Central Florida had an early frost. The freezing temperatures caused crop failure across the state. There was little available work. The majority of the 59 Puroul workers disappeared within days of arrival. One young woman claimed she arrived in Lacrosse only to find no work and no where to stay. She returned to Miami. While sitting at a bus stop, contemplating what to do, she was approached by a “stranger” who offered to help her. The stranger provided her with a place to stay and with food. She eventually married him. If the prosecution had investigated further, they would have discovered as we did, Western Union records showed that months before the young woman arrived in the US, she was receiving money from the “stranger from the bus stop” when she was still living in Haiti.

By the end of 2008, the victimized workers were being represented by FRLS based in Ft. Lauderdale, FL. This turned out to be a double edged sword. FRLS filed a civil complaint against Steven Davis Farms. We were unable to make contact with any of the alleged victims but the civil case provided us with transcripts from depositions. The statements given during civil proceedings were compared to statements given to law enforcement. As the number of discrepancies grew, we saw huge holes forming in the prosecution’s case which inevitably weakened it.
Modern Day Slavery, continued

Thirty six workers from Puroul Picking and Carline Hot Pickers would apply for protection under the Trafficking Victims Protection Act, all assisted by attorneys from FRLS. It took months of arguing and motions to compel discovery before the defense was provided copies of the T-Visa applications. At least two of the applications contained a detailed check list of violations that read like a script from the interviews given to law enforcement. The checklist suggested the victim statements had been coached.

On January 12, 2010, the country of Haiti was devastated by earthquakes. President Obama issued a proclamation that any Haitian citizen inside our country’s boarder, regardless of their visa status, could apply for temporary protective status (TPS). Many of the H2-A workers in hiding to avoid deportation could now legally apply for work. Some of the workers who claimed they had been victimized no longer cooperated with the prosecution, or they changed their statements dramatically.

On August 5th, 2011, we were stunned to learn that a motion for dismissal on all charges was filed in US v. Sou. The prosecution stated they declined to proceed in the interests of justice. We later learned the lead prosecutor in the case had informed the Hawaii grand jury that the Sou brothers illegally collected recruitment fees from potential workers. The Sou brothers had maintained all along they had nothing to do with collecting the fees. The grand jury in Hawaii handed down the indictment based in part on the testimony they heard. But there was just one small problem. In 2008, collecting recruitment fees was not a crime. The law did not go into effect until the end of November 2008, which was outside the scope of the time frame charged in our indictment.

On August 25th, the defense filed a motion compelling the US Government to produce the grand jury transcripts. On August 26th, the US Government filed a motion removing the lead prosecutor from the case for “medical reasons.”

The prosecutor appointed to take her place stood by earlier decisions and refused to turn over the grand jury transcripts and the T-Visa applications citing concerns for victim safety. The District Court Judge assigned to our case issued a protective order for all 36 victims. We were not allowed to contact any of them or give out information on their whereabouts. He then ordered the US Government to produce the documents. The transcripts revealed that the lead prosecutor had erroneously cited a law that was not in effect when she spoke to members of the Gainesville grand jury. Motions were filed to dismiss charges based on the prosecution’s actions.

Toward the end of 2011, it was obvious to the defense teams that the US Government’s case was falling apart. There were numerous inconsistencies in statements given by victims in the case. The newly appointed lead prosecutor re-interviewed eight of the victims. The rape victim admitted she had lied. One of the victims had applied for T-Visa status for her young son to enter the US, but later admitted that the child was not her’s. Out of the 36 victimized workers, we caught at least 15-20 workers telling outright lies—that much impeachment material was unprecedented. We could prove they were lying and we suspected the US Government was beginning to realize their case was in jeopardy.
Modern Day Slavery, continued

The word was out in the Haitian community, the defense attorney was on his way. People were standing in line to talk to them when they arrived.

The government continued to produce discovery just weeks away from the February 13th, 2012 trial date. The lead Assistant US Attorney (AUSA) notified the defense attorneys that she intended to seek a superseding indictment to “streamline” the charges in January. She had decided to drop the trafficking charge, but go forward with visa fraud. To support the new charges, the US Government produced loan documents from Haiti that proved money had been borrowed by some of the victimized workers. The crudely prepared documents were suspicious.

On January 19th, 2012, Assistant Federal Defender Darren Johnson decided he and I would conduct interviews with witnesses we had painstakingly located in Miami. It was perfect timing. Most of the witnesses had traveled to Miami to spend time with relatives during the winter.

Office space was secured for the meetings at a non-profit organization located in the middle of Miami’s “Little Haiti” neighborhood. As soon as they arrived urgent phone calls from Bontemps started to come in. Agents were in Miami serving subpoenas for the grand jury scheduled for Monday, January 23rd. One of the subpoenas was issued to the half sister of Ceneus and Bontemps.

The word was out in the Haitian community—the defense attorney was on his way. People were standing in line to talk to them when they arrived. There was not enough room in the small building to house everyone. A group of people stood outside in the heat and patiently waited for their turn to speak. One women dressed in her finest attire out of respect. We were moved by the sweet spirit of the Haitian people. They had come forward willing to speak the truth and tell their side of the story.

Most of the people interviewed said they had never been contacted by anyone throughout the prosecution of the case. They had been eagerly waiting to give statements. After the 2010 earthquakes, all of the Haitians we interviewed told us they had applied for the temporary protection status. ICE had known where they were all along, so their statements could have been taken at any time.

We interviewed 16 people in less than 24 hours. Everyone we spoke with said the victims were lying. They had not borrowed money from loan sharks, they were not the victims of abuse, they were well fed, and the housing was just fine.

The following Monday morning, Johnson and I reviewed our notes from the interviews. We called our client’s half sister to see if she could meet with us after her appearance before the grand jury. To our surprise, she had received a text late Friday—the night we left Miami—telling her the hearing had been canceled. Johnson immediately got on the phone. The US Attorney’s Office had put up a wall of silence; no communication could be established. On Tuesday, January 25, the AUSA assigned to the case notified the defense attorneys that the US Government was filing a motion for dismissal. After carefully reviewing the evidence with her team, she did not feel they could get a conviction.

After the motion was filed, Johnson and I drove to Steven Davis Farms. Bontemps had been restricted to living within the bound-
Northeast News

Delaware Governor Spares Death Row Inmate Facing Execution

Robert A. Gattis, 49, who was convicted for the May 1990 murder of his girlfriend Shirley Slay, was set to die by lethal injection early January. But, the Delaware Board of Pardons recommended by a 4-1 vote that Gattis’ sentence be commuted to life in prison without the possibility of parole. Gov. Jack Markell was considering at the time whether or not to execute Gattis.

Delaware has had the death penalty since 1902. Since then until 1946, 25 people were executed by hanging. The penalty then went largely unused from 1946 until it was abolished in 1954. It was reinstated in 1961, but all inmates on Delaware’s death row, and across the country, were effectively granted a reprieve by a US Supreme Court ruling in 1976 that required states to update their capital punishment statutes and trial procedures.

Even after those changes, few were sentenced to death—perhaps partly because Delaware law required a unanimous vote of a jury to impose death. The state did not execute a death row inmate between 1976 and 1990, but all of this changed in 1991.

US Deputy Attorney General Paul R. Wallace said the 1991 change did not result in more death sentences, nor was it responsible for the increase in executions. He said nearly all of those executed, particularly in the following 10 years, had been convicted and sentenced under pre-1991 rules and laws. A sharp increase in crime in Delaware during the 1990’s played as much of a role in increased death sentences after 1991 as the change in the law.

The pace of executions slowed considerably after 2001; only two executions have been carried out since. Most of that slowdown was due to a hold on all executions in 2002, when Delaware had to change its laws to comply with another US Supreme Court ruling. Then, in May 2006, a years-long delay ensued because of a federal civil rights lawsuit alleging lethal injection amounted to cruel and unusual punishment.

In 2008, the US Supreme Court ruled that lethal injection passed constitutional review. But the lawsuit filed in Delaware, making specific allegations about the way Delaware carried out its executions, was not resolved until 2010.

Since 1991, Delaware has put 15 men to death, while, currently 17 await the death sentence. Gattis’ attorneys argued at his clemency hearing before the pardons board last week that the way death penalty cases have been defended has evolved significantly over the past 20 years.

In 1992, the year the new law went into effect, 11 men were eligible for the death penalty after their convictions, and this time three were sentenced to death. One of those three was Robert Gattis. Gattis’ attorney Karl Schwarts of the Federal Public Defender’s Office’s CHU Unit said that Gattis’ trial was delayed, but had it gone forward as scheduled in 1991, he would have been tried under the old system. Under that system, the split vote on death the jury delivered in his case would have meant a life sentence. The same year, Delaware carried out its first execution in nearly 50 years.

The most recent individual died by lethal injection last year.

On Sunday, the Board of Pardons indicated that proportionality was a significant factor in recommending clemency when it stated, “The sentencing disparity in these cases has become too great and offends a moral sense of proportionality.” The Board also noted that its members were troubled by the fact Gattis’ jury – in its 10-2 vote – was not unanimous in recommending death.

Gov. Jack Markell’s office released a statement in regards to the commutation of Gattis’ death sentence, “Pursuant to my authority under Article VII Section 1 of the Delaware Constitution, I have decided to commute the sentence of Robert Gattis to life in prison without the possibility of parole, subject to the conditions set forth below.”

Gov. Markell continued to say in reaching this conclusion:

“I give great weight to the decision of the Board of Pardons. In the exercise of its constitutional duties, the Board thoroughly reviewed Mr. Gattis’s application for clemency and the State’s response. The Board studied the entire historical record of this case, carefully listened to the statements made by parties on both sides, and had the opportunity to look Mr. Gattis in the eyes and question him. Having done so, the Board took the unusual and perhaps historic step of recommending, by a 4-1 margin, that Mr. Gattis’s death sentence be commuted to life without parole. I take the Board’s considered decision seriously. While I have supported the imposition of the death penalty in the past, and I consider Mr. Gattis’s crimes to be heinous, I am not prepared to move forward with imposition of the sentence in this case.
Gov. Markell further elaborated that:

This commutation in no way relieves Mr. Gattis of his moral or legal guilt, and I am mindful of the fact that an innocent victim lost her life on the night of May 9, 1990. That is why I have conditioned Mr. Gattis’s commutation on the following: (1) Mr. Gattis shall forever drop all legal challenges to his conviction to his conviction and sentence, as commuted; (2) Mr. Gattis shall forever waive any right to present a future commutation or pardon request and agree to live out his natural life in the custody of the Department of Correction; (3) Mr. Gattis will be housed in the Maximum Security Unit of the James Vaughn Correction Center for the remainder of his natural life, unless constitutionally required medical care is necessary, and (4) Mr. Gattis, after consultation with counsel, shall knowingly, willingly, and voluntarily accept these conditions, as determined by the Superior Court. With these conditions, Ms. Slay’s loved ones can at least know that they will never have to go through the painful process again of trials, hearings, or requests for release.

In closing, Gov. Markell said:

My decision is among the most difficult I have had to make in all my years in public service. But in light of the Board’s unprecedented decision and the reasons set forth above, I believe it is the correct one under the circumstances. My thoughts and prayers are with the loved ones of Shirley Slay during this difficult time.

West Coast News

I trust that each of you enjoyed the Holidays and had a happy and safe New Year celebration. We on the western side of the USA have experienced unseasonal spring/summer weather during our winter months. I can’t complain even though we are in dire need of the runoff water from our annual snowpack in California’s Sierra Nevada Mountains.

The year started off with the sad and disheartening news of the passing of a former, recently-retired co-worker in the Alameda County Public Defender’s Office in Oakland, CA. Retired Public Defender Investigator Jennifer Rose-Pope passed away on Saturday, January 21, 2012, after a very brief illness. I had the honor and pleasure of working with Jennifer for more than 20 years. Jennifer was a dedicated public servant and a good friend. Her wonderful smile and her service to the office and the client’s we serve will surely be missed.

Business is as usual here in the Pacific Rim of the USA. With limited resources to conduct our work and tight fiscal budgets, we tirelessly conduct our investigative assignments. This should not dissuade us from performing our duty as public servants in the defense of the indigent clients that depend on us. I commend each of you for the honorable work that you do each day. I approach my work each day by viewing it as a new challenge—not simply as a task or chore. We must always be mindful of this every time we undertake an investigation assignment.

In closing, I look forward seeing and meeting each of you at future NDIA conferences. Thank you for your inspiration and tireless hard work in this honorable and noble profession.

Hector Botello Investigator II
NDIA West Region Editor
Southeast News

Assistant Federal Public Defender Charles Lammers is a happy man these days, but it was a long and arduous process to get there. Four years ago, Lammers was spending 50 hours plus a month traveling between Tallahassee, FL, and Panama City, FL, for court appearances and work on his growing caseload.

“I was spending more time on the road than in the office,” Lammers explained. “It was common to travel as far as Dothan, AL, just to meet with clients and witnesses.”

As his case load increased, Lammers threw down a gauntlet for Federal Defender Randy Murrell. “You get me an office in Panama City, and I will move there. We have the numbers, now all we needed was [sic] to get the space.”

Murrell accepted the challenge and petitioned Washington, DC, to open a new branch office in Panama City. Washington, DC, granted his petition, assigning GSA the task of locating an appropriate space near the Federal Court House, which would fit within their tight budgetary constraints. Over a year and a half went by. Lammers continued to drive two and a half hours from Tallahassee to Panama City almost every day. During that time, the GSA was unable to find Lammers an office. He grew road-weary and discouraged.

Then, in January of 2011, they finally caught a break. A Florida Congressman defeated in the November 2010 elections announced he would be vacating his offices in the Panama City Government Building. When Lammers heard the news, he pursued the opportunity. The space was small, but perfect in every other way. The GSA agreed with Lammers, and they leased the congressman’s offices. The cost of the space came in way under budget, so Lammers soon had a place to call home. He had his office, now all he needed was staff. With the help of Randy Murrell, interviews for a new paralegal position were soon under way.

“The choice was an easy one for me,” Lammers told me. “When Sean Desmond, the President of the Florida Bar Young Lawyers Division, told me that if he could only have one employee he would choose Alison Rivera, I knew she was the one for our office.”

Apparently Desmond wasn’t the only one who held a high opinion of Rivera. She came to the Northern District of Florida armed with a prestigious background: former trial investigator for Office of Solicitor General of Georgia, paralegal for a number of private law firms, and previous employment with the State Attorney’s Office in Tallahassee. Lammers needed someone with a diverse background to handle the community’s hodge-podge of Federal cases. Rivera fit the bill in every way.
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<td>Alison Horn</td>
<td>Public Defender Service, DC</td>
<td>Washington, DC</td>
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<tr>
<td>Barry Hosoiyer</td>
<td>Luzerne County Public Defender</td>
<td>Wilkes-Barre, PA</td>
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<tr>
<td>Ronald “Ron” Ito</td>
<td>Los Angeles County Public Defender</td>
<td>Los Angeles, CA</td>
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<tr>
<td>Wendy Jacobson</td>
<td>Balch Springs, TX</td>
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<tr>
<td>April LaBrecque</td>
<td>Snohomish County Public Defender Association</td>
<td>Everett, WA</td>
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<tr>
<td>James “Dan” Lowe</td>
<td>Los Angeles County Public Defender</td>
<td>Los Angeles, CA</td>
</tr>
<tr>
<td>Mark MacDaniel</td>
<td>Connecticut Investigative Services</td>
<td>Shelton, CT</td>
</tr>
<tr>
<td>Mark Manley</td>
<td>Snohomish County Public Defender Association</td>
<td>Everett, WA</td>
</tr>
<tr>
<td>Joel Martin</td>
<td>Snohomish County Public Defender</td>
<td>Everett, WA</td>
</tr>
<tr>
<td>Welcome new members</td>
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</tr>
</tbody>
</table>
welcome new members

Carlene McGowan
Central NY Investigation Bureau, Inc
Syracuse, NY

Randy D. Miller
North Carolina Investigative Services, Inc
Raleigh, NC

Eric Mills
Bedford Public Defender Office
Bedford, VA

Gerald V. Montgomery
East Coast Protective Service
Winter Garden, FL

Christal Nelsen
Federal Defender Office
Anchorage, AK

Shannon Parrish
Dekalb Public Defender's Office
Atlanta, GA

Chris Pipe
Public Defender Service, DC
Washington, DC

William Ratcliff
Cape Fear Investigative Services
Wilmington, NC

Bruce Reddock
Luzerne County Public Defender
Wilkes-Barre, PA

Stuart Robinson
S. Robinson & Associates
Investigative Services
Twin Falls, ID

Ralph Ruiz
Law Offices of the Mohave
County Public Defender
Kingman, AZ

Francisco Salazar
Investigative Solutions, LLC
Aurora, CO

Norman R. Shepherd
Central Piedmont Community College
Charlotte, NC

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County Public Defender
Kingman, AZ

Trish Slater
Public Defender Service, DC
Washington, DC

Doug Smith
Law Offices of the Mohave
County Public Defender
Kingman, AZ

Steven K. Smith
VA Defense Commission
Winchester, VA

Joseph Spadafore
Central NY Investigation Bureau, Inc
Syracuse, NY

Carley Stenberg
Snohomish County Public Defender Association
Everett, WA

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Attorney at Law
San Clemente, CA

Gregory “Gregg” Stone
Los Angeles County Public Defender
Los Angeles, CA

Amy J. Stone
State Public Defender’s Office
Marshalltown, IA

James Taggart III
Tuscaloosa County Public Defender
Tuscaloosa, AL

Paul Turkevich
Public Defender Service, DC
Washington, DC

Dawn Wilson
Navajo County Public Defender
Holbrook, AZ

Andrea K. Wright
Hall, Wright, Allen & Associates
Seat Pleasant, MD

Justin Yentes
Arizona Investigative Associates, PLLC
Gilbert, AZ

Jay Zager
US Investigative Agency
Parkland, FL
## FOR 2012 NEW MEMBERS & RENEWALS

NDIA Student Member: The National Defender Investigator Association dues for 2011 are up for renewal. Dues must be paid prior to the National Conference if you plan on attending and in order to receive the member discount. Please remit a check, money order, or credit card to NDIA with this form. Make any necessary changes directly on the form. MEMBERSHIP IS BASED ON THE CALENDAR YEAR July 1 to June 30 (of the following year). Dues are non-refundable.

### Check One:
- **Renewal** (Enter Member #)
- **New Student Applicant**

#### Type of Membership:
- **$20** (1 Calendar Year)
- **$30** (2 Calendar Years)
- **$40** (3 Calendar Years)

#### Amount Enclosed: __________

#### Credit Card:
- **MC**
- **Visa**
- **AMEX**
- **Discover**

**Card #: ___________________________**

**Expiration: ________________________**

**Signature: _________________________**

### TYPE OF MEMBERSHIP:

- **Student Member**: Any person over the age of 18 years of age, attending a college with a major in Criminal Justice, Sociology, or related field, or, alternatively, an ABA-approved Paralegal Studies program. Student members shall not be entitled to vote or hold office.

#### I am presently a student in one of the following programs:
- **Criminal Justice**
- **Paralegal Studies**
- **Sociology**
- **Law**
- **Other**

#### I am presently interning with: (check only one)
- **Public Defender Office**
- **Legal Aid Society**
- **Community Defender Association**
- **Other**

#### I certify that I have accurately represented my membership status listed above. I will notify NDIA of any changes.

**Signature: ___________________________**

**Date: ___________________________**

### PLEASE MAIL FORM TO:

Beverly Davidson, NDIA, 460 Smith Street, Suite B3, Middletown, CT 06457

Phone: 860-635-5533 • Fax: (866) 668-9858 • nationaldefender@gmail.com • www.ndia.net
FEATURED STAFF

WANDA RIVERA, COPY EDITOR
Wanda graduated from the State University of NY at Potsdam College with majors in Sociology and Elementary Education, and a minor in Criminal Justice. Upon graduating from college, she assisted in opening up the first bilingual day care center in Albany, NY. In 1995, Rivera began a career in the field of criminal defense work for indigent defendants at the New York State Capital Defender Office in Albany, assisting mitigation specialists. In 1997, she was promoted to mitigation specialist. In 1999, the first Federal Public Defender Office for the Northern District of New York was established. Her background in mitigation and her fluency in Spanish enabled her to garner a position in this office as an investigator. Wanda is an integral part of a nine attorney office that is the largest geographic district of New York State.

FEATURED WRITERS

PATTI GALLO
Patti graduated from the Police Academy in 1976 at the age of nineteen. She became the first female member of the SWAT team where she was trained as a hostage negotiator. She was promoted to detective in 1986; she retired 15 years later. She worked the serial killer Danny Rolling’s case for one more year. Shortly thereafter, she returned to work as an investigator for the Federal Public Defender’s Office in Gainesville, FL. This is her 16th year with the office. She also owns an online store, www.marjannas.com.

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Investigative Manual
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NDIA newsletter, Eagle’s Eye, is emailed to members of the Association throughout the United States, on a quarterly basis. It is also posted on the NDIA “Members Only Section” of the NDIA website. NDIA membership consists of over 1,200 members, including investigators, paralegals, mitigation specialists, and attorneys.

The NDIA is the only national organization to represent a constituency dedicated solely to the investigative arm of indigent defense. The NDIA’s purpose is to provide leadership, training, and education for criminal defense investigators. Each member receives a copy of our annual directory upon payment of their annual dues via the “Members Only” section of the NDIA website.

All advertising is due and payable with insertion order. There is a 20% discount for nonprofit organizations. All advertising is subject to approval. Ads can be sent as hard copies or graphic files (InDesign or PDF files are accepted). Material cannot be returned. If you have any questions regarding how to send your ad or deadlines, you can contact Beverly Davidson at the NDIA office at 860-635-5533 or nationaldefender@gmail.com. Thank you for your support of the NDIA.

The NDIA is the only national organization to represent a constituency dedicated solely to the investigative arm of indigent defense.

Please contact Beverly Davidson at the NDIA office if you are interested in joining one of the following NDIA Committees: Certification, Membership, Conference, Continuing Education, Newsletter, Resolution, Investigative Manual, or Ad Hoc.

**NDIA Member Benefits**

- subscription to the NDIA newsletter
- members only reduced fees to all training conferences
- opportunity to obtain NDIA’s professional certification
- continuing education credit hours and support
- an annual membership directory
- access to the “Members Only” area of our website

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**Advertise!**

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<th>Per Issue Rate</th>
<th>Back Page Rate</th>
<th>Annual (4 Issues) Rate</th>
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<th>Annual &amp; Directory Rate</th>
<th>Online Directory Back Cover Page</th>
<th>Directory Inside Front or Back Cover</th>
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FOR 2012 NEW MEMBERS & RENEWALS

NDIA Member: Your National Defender Investigator Association dues are now due for 2012. Please remit a check, money order, or credit card information to NDIA with this form. Make any necessary changes in address, etc. on the form. MEMBERSHIP IS BASED ON THE CALENDAR YEAR July - June (of the following year). Dues will expires June 30, 2013.

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<th>Check One:</th>
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<td>Cell Phone: ( )__________________________________________________________________</td>
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<td>$65 (2 Calendar Years)</td>
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<thead>
<tr>
<th>Type of Membership:</th>
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</thead>
<tbody>
<tr>
<td>Regular Member - Any person who is employed as an Investigator by any Federal, State, County, or Municipal agency or organization whose primary purpose is court-appointed criminal defense, including court-appointed civil litigation associated with criminal cases (i.e. Habeas, Appellate, etc.), or in any Federal, State, County, or Municipal agency or organization whose primary purpose is a combination of court-appointed criminal defense and civil litigation.</td>
</tr>
<tr>
<td>Associate Member - Persons actively engaged in criminal defense work on a part-time basis (mandatory) or a full-time basis.</td>
</tr>
<tr>
<td>Reclassified Regular Member - Any Associate Member who has been a member in good standing for 5 consecutive years, and is employed by any Federal, State, County or Municipal agency or organization whose primary purpose is court-appointed criminal defense, including court-appointed civil litigation associated with criminal cases (i.e. Habeas, Appellate, etc.), or in any Federal, State, County, or Municipal agency or organization whose primary purpose is a combination of court-appointed criminal defense and civil litigation, may apply to the Board of Directors for re-classification as a regular member.</td>
</tr>
</tbody>
</table>

I am presently employed as: (check one only)  
- Investigator  - Paralegal - Mitigation Specialist - Attorney - Other

I am presently employed with: (check only one)  
- Public Defender Office - Legal Aid Society - Community Defender Association - Other

I certify that I have accurately represented my membership status listed above. I will notify NDIA of any changes.

Signature: ____________________________________________________________________________ Date: _______________________

PLEASE MAIL FORM TO: Beverly Davidson, NDIA, 460 Smith Street, Suite B3, Middletown, CT 06457  
Phone: 860-635-5533 • Fax: (866) 668-9858 • nationaldefender@gmail.com • www.ndia.net
“Human progress is neither automatic nor inevitable... Every step toward the goal of justice requires sacrifice, suffering, and struggle; the tireless exertions and passionate concern of dedicated individuals.”

— Martin Luther King, Jr.