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MEMORANDUM FOR FILE
J. Thornton
2/12/08

NOTES IN PREPARATION FOR PM TELEPHONE DISCUSSION WITH NEIL PUCKETT

Wuterich is charged with House 2 (8 people) and White Car (5 people). What is the defense perspective concerning the white car / roadside incident? (Wuterich concedes shooting).

Why is the prosecution attempting to introduce photographs of House 1?

Roadside

At some point, the NCIS believed that Dela Cruz was the first to shoot, and shot Victim # 16 prior to Wuterich firing. This appears in the roadside animation (attributed to Brady in Discovery), where Victim #16, mostly obscured from Wuterich view by the white car, drops before Wuterich assumes a kneeling position. The animation was constructed from what information was being supplied to the animation people at the time.

Much of the Brady roadside reconstruction consists of a description of the bloodstains, positions of bodies, lividity, etc., which clearly documents that the position of the bodies had been moved. There are no clear, unambiguous trajectories.

What the photographs unambiguously is that there are 5 dead people. Beyond that, Interpretation is treacherous in proportion to the clarity or lack thereof.

The roadside photographs are not crime scene photographs; they are snapshots. Brady uses them, however, as the basis for a crime scene reconstruction.

The Brady reconstruction does not sequence the victims; the Maloney reconstruction of House 2 does.

With exception of Victim # 19, the trajectories described by Brady for the roadside victims does not take into account the possible motion of the victims, or the twisting of the bodies upon collapse, or the rotation of their heads. The work of Col. Martin Fackler may be relevant here.

House 2

Victim # 7 (Yunis Salim Rasif) was shot by Mendoza. The charge to Wuterich is that he ordered Mendoza to shoot the victim, but there really isn't a physical evidence here that is relevant to that charge.

With respect to the House 2 bedroom (Room 4), the bottom line is that there is nothing with respect to the physical evidence that argues for two shooters instead of one. The reconstruction with three separate shooting positions is no more plausible than one shooter moving from the doorway to the end of the bed. There may be witness statements in support of multiple shooters, but the physical evidence, taking blood spatter, wounds, and trajectories into consideration, does not mandate more than one shooter.

There is a great deal of discrepancy between the AFIP determination of wounds (Dr. Rouse) and the descriptions given by the Iraqi nurse who viewed the bodies.

The stippling seen by Dr. Rouse on Victim # 12 (Aishea Salim Yunis) isn't stippling. It is spattered blood. Any realistic estimation of range is well outside the expected range of gunpowder stippling. The NCIS reconstruction mentioned the AFIF determination of stippling, but didn't incorporate it into the substantive portions of their report.

The NCIS report (ROI 16 Nov 06 pg 4) indicates an expended pistol cartridge case. Other than grenades, Wuterich was armed only with an M16A4.

The Brady notes (Discovery of 21 June 07 00368 pg 13) describes a 7.62mm cartridge case "end of hallway and room to left". From these notes, it is unclear whether he was given that information by Sgt. Laughner. Again, Wuterich was armed only with an M16A4.

Maloney

At one point, Maloney was quite candid concerning the physical evidence. Discovery of 3 December (presumably 2007), 005, Maloney Discovery Disk, A. Powerpoint Briefs, Haditha HQ Brief, has Maloney saying the following in a PowerPoint presentation.

Forensic Laboratory Analysis All significant Laboratory Results are four (sic) House #4

In a typical investigation, we would process the scene for forensic evidence. This would provide a series of "snapshots" of what had happened at a static point in time.

In a typical investigation we would then use bloodstain pattern analysis, scene indicators, laboratory results and wound dynamics/mechanism of injury to place the "snapshots" in a logical sequence.

In this investigation thorough processing of a preserved death scene was not possible. Subsequently, the number of evidentiary "snapshots" to place in order was greatly reduced.

Think of removing half of the puzzle pieces from a jigsaw puzzle.

I am not informed of the date of the "Haditha HQ Brief", but it is apparently subsequent to some laboratory testing.

Maloney and Brady

Maloney and Brady had drawn up a detailed plan of what they hoped to achieve during their scene view of 29 March 2006. For various reasons, they were unable to execute much of this plan. Brady's notes indicate that they were able to spend only 7 minutes in House # 2. It is unclear how they were able to take detailed measurements of the scene and perform the perfunctory examination of Room 4 that they did in an interval of 7 minutes.

If Maloney and Brady testify at pre-trial motions, I would urge the following be developed in their testimony:

That they are forensic scientists.

That before anyone can be a forensic scientist, that person must first be a scientist.

That they construe themselves as scientists.

The purpose of having them commit to being scientists is that if what they are doing is scientific, then it must involve the scientific method. In their reconstructions, they have not properly applied the scientific method. I'll elaborate on this at another time.

What they would have done if they had been on the scene within a hour of the conclusion of the incident. I would draw them out in as much detail as possible. The purpose of this questioning is to pinion them as to what should have been done to "process the scene" as the term is understood by forensic personnel. At some later point you may wish to compare and contrast the real with the ideal, and you may be able to use their testimony at the motion hearing to advantage.

US v Wuterich

MEMORANDUM RE TOM BRADY

He is a "forensic consultant". He has a "Master of Forensic Science" Degree from George Washington University.

Presumably he is indeed a forensic scientist. Then what are the implications?

What is his understanding of what constitutes a "science."

Where does the word come from? From the Latin "scire" - to know.

Does a forensic scientist utilize science? Of course.

What is a science? An orderly body of knowledge with principles that can be clearly enunciated.

Some people might say that a science involves making very careful observations. The FBI seems to hold to that definition. But by that definition, a vulture would be a scientist.

To qualify as a science, the scientific method must be applied.

What is the basis of the scientific method? The construction of hypotheses, and the testing of those hypotheses.

Not every utterance, not every opinion voiced by a forensic scientist is a scientific opinion. It is only a scientific opinion if the scientific method is invoked.

If there is no science, there can be no forensic science.

To apply science to forensic problems, there must be the application of the scientific method. That will require the formulation of hypotheses, and the testing of those hypotheses.

The formulation of hypotheses is only the first part of the scientific method. This phase may be known by other names ... surmise, assumption, statement or opinion not backed by proof.

If a surmise (hypothesis) cannot be feasibly tested, then the scientific method has not been properly applied.

In the Brady / Maloney reconstructions, opinions are dressed up as scientific conclusions. But they are untested hypotheses. The testing of those hypotheses has not been carried out. In fairness to them, in many instances it may not have been possible to test the assumptions that lead to their opinions. An example of such a constraint is the inability to examine the bodies of the victims. But in other instances they chose not to test their assumptions. They assume that the defects in the wall of the bedroom in House 2 are bullet strikes. They could have tested these areas with rubanic acid for the presence of copper from the FMJ 5.56 bullets. They did not, but they then assume that the defects are in fact bullet strikes and incorporate that assumption as a proven fact when doing their reconstructions.

Second Edition

Crime Scene Investigation & Reconstruction



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Robert R. Ogle, Jr.

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Appendix 2-A CRIME SCENE PROCESSING GUIDELINES

ACTIONS TO BE TAKEN BY THE FIRST RESPONDER

- Determine the need for life-saving procedures and emergency personnel.
- Remove and detain witnesses and suspects from the scene.
- Secure the scene, and establish the crime scene perimeter.
- Compile scene data.
- Make an initial survey of the crime scene.
 - Establish pathway for subsequent personnel.
 - Take notes regarding observations at the scene.
- Take steps to preserve any fragile evidence at the scene.

ACTIONS TO BE TAKEN BY THE CRIME SCENE INVESTIGATOR

- Record pertinent data immediately.
 - Record the time called to scene and by whom called.
 - Record the time arrived at scene.
 - List the actions taken to secure the crime scene. If this step has not been done, secure the scene immediately!
 - Record persons at scene/were present on arrival/left scene prior to arrival/arrived after your arrival (persons/times).
 - Record all case file data for all departments involved.
 - Record names of all victim(s) and suspect(s) known at the time.
- Contact the first officer at the scene.
 - Obtain overview of circumstances known and observations made by the responding officer.
 - Determine areas that can be crossed without destroying potential evidence.
- Establish a command center for the operation.
- Establish a plan for processing the scene.
- Record data to be compiled before collection process.
 - Unusual odors present.
 - Presence and condition of bloodstains.
 - Signs of struggle.
 - Point(s) of entry and exit.
 - Condition of windows and doors (locked, unlocked, open, closed).
 - Condition of trash containers (especially layer sequence).
 - Condition and contents of ashtrays.
 - Evidence of drinking and/or drug use.
 - Evidence disturbed or collected prior to arrival, and person(s) who are responsible for this evidence.
 - Condition of light switches.

CRIME SCENE SEARCH

- Prepare adequate notes of actions taken at the scene.
- Take photographs of the scene *before it is disturbed*.
 - Overview (layout) photographs.
 - General photographs to illustrate the condition of the scene.
 - Photographs from the point of view of all witnesses.
 - Midrange photographs to illustrate location of all pertinent objects and evidence items.
 - Photographs of the evidence items.
- Make sketches of the scene to document any evidence present.
 - Layout (overview) sketches.
 - Detailed sketches of pertinent areas.
 - Large-scale ("blowup") sketches.
 1. Bloodstain patterns.
 2. Bullet entry and exit holes.
 3. Location and orientation of impression evidence.
- 4. Areas having a large number of small evidence items.
- Search scene with systematic method.
 - Strip method for outdoor scenes.
 - Grid (double-strip) method for outdoor scenes.
 - Zone method for indoor or outdoor scenes.
 - Spiral method for large objects in large outdoor scenes.
- Prepare record of evidence.
 - Make sure that each item is photographed and located on the sketch(s) before collection.
 - Process for fingerprints at the time the item is collected whenever feasible.
 - Mark and record each item on the evidence list at the time of its collection.
 - Package each item of evidence securely, so that any trace evidence present is not disturbed, lost, or contaminated.

CRIME SCENE SEARCH PRINCIPLES

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- Make sure that evidence items containing biological stains are dried thoroughly before packaging in paper bags or envelopes.
- Establish separate areas/collectors.
 - Code each separate area with Roman numeral or letter.
- Assign a team or an individual to process each separate area; ensure that all evidence items collected are coded with scene code in item number.

FINISHING THE CRIME SCENE SEARCH: DEBRIEFING

- Have all areas been documented and searched?
- Have witness statements developed information that indicates further search is necessary—additional areas, other evidence?
- Have all parties completed their assignments?
- Is all evidence collected, properly packaged, and accounted for?
- Is a re-search of the scene(s) needed?
- Should the scene remain preserved/secured?
- Initiate any action(s) identified in the debriefing required to complete the crime scene investigation.
- Discuss potential forensic testing and the sequence of tests to be performed.
- Brief person(s) in charge upon completion of assigned crime scene tasks.
- Establish postscene responsibilities for law enforcement personnel and other responders.
- Perform final survey of the crime scene.

Appendix 2-B CUSTOMIZED CRIME SCENE SEARCH KITS

LEVEL OF CRIME SCENE SEARCH KIT NEEDED

The level of sophistication in the crime scene kit ranges from a simple kit in a toolbox or a fishing tackle box tailored to an individual officer's needs up to a large van containing an extensive array of equipment used as a mobile crime scene processing unit and laboratory. In this appendix, four levels of crime scene kits are described: (1) a personal kit for the individual officer; (2) a kit for first responders (usually the patrol officer assigned to the beat), which is kept in the patrol vehicle from shift to shift or in the sergeant's vehicle; (3) a kit for the crime scene investigator or evidence technician; and (4) specialty kits for the collection of specific types of evidence.⁸

A. Personal Crime Scene Kit for the Patrol Officer (see Figure 2-6)

1. Packaging materials

- Manila envelopes (4×6 ; $2 \times 3\frac{1}{2}$)
- Evidence tags
- Property forms
- Paper towels
- Property bags (medium to large)
- Small boxes (pillbox type)

2. Writing supplies

- Extra ink pen, pencil
- Indelible ink pens
- Lumber crayon (yellow)
- Yellow chalk
- Straight-edge for sketches
- Clipboard for sketches

B. Fingerprinting supplies

- Fiberglass brushes
- Magnetic brush kit
- Fingerprint powder containers
- Ample supply of latent lift cards (3×5)
- Fingerprint tape—several rolls
- Surgical gloves
- Magnifying glass

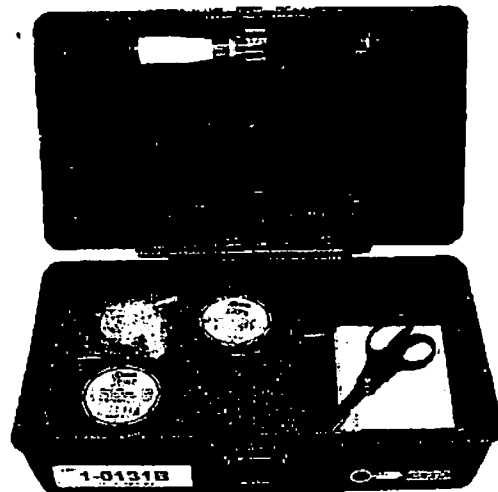


FIGURE 2-6 Basic Latent Print Kit
Courtesy of Lightning Powder Company, an Armor Holdings Product Division.

U.S. v Wuterich

J. THORNTON NOTES 2/4/08

General notes

No recovered firearms evidence – bullet, cartridge cases – come back to Wuterich or any other Marine involved in House #2 or White Car.

M-16A1's collected from a number of Marines for test firing, but Wuterich had rotated his M-16 prior to collection, so no test firings available from his weapon. (At least that what I think at this point; I don't recall seeing a ROI that spells this out precisely. Somewhere, however, there something about a bullet in a closet coming back to Wuterich?)

House 4

Recovered cartridge cases sent to USACIL seem to be weathered and corroded, and none of them come back to involved Marines. Previous firefight at that location?

Considerable discrepancies between AFIP review of wounds and those described by Iraqi nurse.

Discrepancies in measurements of House #2. Brady's outside measurements cannot be reconciled with the inside measurements.

Formal diagram of House #2 does not have windows indicated in Room 4.

Formal diagram of House #2 doesn't have wall inset at Northeast corner.

Brady notes of 5/19/06 has "Photos from Wright provided on CD from DOD CD – Prentice images Mike has that" What are "Prentice" images? I'll e-mail Sgt. Trujillo and ask for help in locating them.

AFIP Dr. Rouse would have the GSW to the head of V #7 from the bottom of the back of the head, steeply upward, and back to front. This would indicate the victim was prone, with his head facing South. Photos of the doorway show 7 shots – mentioned in the NCIS reconstruction – all of which are midway up the door or higher. No shot to the door is low.

Maloney's victim flyarounds

Maloney's computer Victim 13 redux and final have a "probable" GSW to the head. LtCol Rouse says "possible."

Maloney's computer Victim 12 only has the thigh GSW graze indicated; no GSW to the head is shown, no stippling is denoted.

Maloney's computer Victim 9 (modified, there is no final) has no description of wounds.

Maloney's House 2 Reconstruction has Sharatt present; I suspect that is a mistake. The reconstruction has bedroom Room 4 with the bed on the West side of the room; the NCIC diagram has it on the South side. I think West is correct

Wuterich Notes 2/4/08

Maloney's reconstruction has Noor Salim Rasif, Victim # 14, shot when kneeling at the Southeast side of the room. It appears that this is an error. In the photographs, she appears in the Southwest corner of the room.

Maloney's reconstruction does not dwell on blood spatter on the West wall above and on the headboard. Photographic resolution does not justify further interpretation, other than it is in the general direction of expected gunfire from the entrance to the bedroom.

U.S. v Wuterich

J. THORNTON NOTES 2/5/08

Discrepancies between AFIP and Iraqi wound designations . . .

#7 Yunis Salim Rasif

AFIP – Head shot. Entrance low back of head, exit occipital region of skull. Trajectory back to front, steeply upward. Possible GSW right shoulder

Iraqi – Several GSW to chest and abdomen; no mention of head injury

#8 Hida Yasim Ahmed

AFIP – No GSW apparent in photographs

Iraqi – Several GSW in chest

#9 Aida Yasin Ahmed

AFIP – GSW to nose

Iraqi – Several GSW in neck and upper chest

#10 Mohmed Yunis Salim

AFIP – No GSW apparent in photographs

Iraqi – Several GSW in forearm and right hand
[No fatal wounds described?]

#11 Zainab Yunis Salim

AFIP – GSW to head, directionality not apparent; grazing GSW to wrist

Iraqi – Several GSW to chest and stomach

#12 Aisha Yunis Salim

AFIP – GSW to head, entrance above and in front of ear; grazing GSW to right thigh

Iraqi – Several GSW to chest

#13 Sabea Yunis Salim

AFIP – Possible GSW to head at left ear

Iraqi – Several GSW to chest

#14 Noor Yunis Salim

AFIP – Restatement of Iraqi description, no independent opinion expressed

Iraqi – Several shots to head, head/skull destroyed and brain exposed

Discovery of 3 Dec

005

Malware Discovery Disk

A. Powerpoint Briefs

Haditha HQ Brief

Haditha Investigation

Forensic Update

Reconstruction Methodology

- In this investigation thorough processing of a preserved death scene was not possible. Subsequently, the number of evidentiary “snapshots” to place in order was greatly reduced.
- Think of removing half of the puzzle pieces from a jigsaw puzzle.

(2)

house

* All 47's from house 4 *

- Evidence Review ✓

- Weapons to Assad ✓

- Pass out to SA's ✓

- Await initial reports ✓

- Depart ✓

SGT
↑ JA / Landner

* House #2

556 shell casing on floor

7.62 " "

end of hallway in
room to left