



Jurisprudence Section - 2015

F28 Lost and Gone Forever — Jeopardized Prosecutions and Denial of Due Process

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The goal of this presentation is to make attendees aware of the importance of early scientific involvement at crime scenes.

This presentation will impact the forensic science community by pointing out the value of having experienced scientists (criminalists) involved in crime scene investigations from the outset.

Events leave physical traces which form a physical evidence record of the event. Humans may be concerned about such physical evidence records extending over extremely vast timescales. Depending on the time frame, some past events may be the subject of investigations by cosmologists, astrophysicists, geophysicists, geologists, paleontologists, or archaeologists. The record is created by processes that are subject to physical laws. Cleland has characterized these investigative endeavors as “historical science.”¹ All are centered on developing a scientific understanding of the physical evidence record. Myriad physical evidence records are being created continuously. Some are the result of human activity. The vast majority of more recent events may be inconsequential; however, some small fraction of much more recent events can be of great concern in accident or criminal investigations.

To some extent, this record is written over the records of preceding events at the same location. In addition, this record will be overwritten by the record resulting from events that follow. This statement has important implications. A crime scene may contain hundreds, if not thousands, of items. Many of the most relevant and significant items will not be obvious. How can the remnants of antecedent events be accounted for and separated from the traces of the event of interest? What can be done to minimize the addition of traces from post-event activities?

Most well-read laypersons would be appalled to see reports of non-scientifically trained persons excavating some site of a past civilization with a power-driven excavator and loading the excavated material into barrels for shipment to an archaeologist at some university or other research center. Why doesn't the same concern seem to extend to the practice of the collection of evidence by non-scientist police officers at crime scenes?

Lay critics of crime scene work in specific cases tend to think in terms of errors or omissions made at the crime scene. This is overly simplistic conceptualization. Every crime scene is different. Each presents challenging scientific problems. Unfortunately, most crime scenes are not the subject of a scientific investigation. Most are treated with a “bag-and-tag” mentality. Evidence that is not recognized at a crime scene is lost and gone forever. This loss may allow the guilty party to go free or it may have been something that provided evidence that would have been effective in clearing an innocent person who is subsequently accused. In most jurisdictions internationally, law enforcement has the responsibility of the crime scene investigation. What are the implications for the defense in a criminal case? What rights does the defendant have? What control can the defendant have over the crime scene examination and investigation? In present practice, none at all. Can a defendant be irreparably harmed by the premature release of a crime scene? What remedies exist or can be envisioned?

Reference:

1. Cleland, Carol, “Methodological and Epistemic Differences Between Historical Science and Experimental Science,” *Philosophy of Science* 69 (2002), pp. 474-496.

Scientific Investigation, Crime Scene Investigation, Due Process