

THE HANDLING OF EXHIBITS

36420

THE HANDLING OF EXHIBITS

This booklet was produced under a grant conceived by Judge F. J. de Larios of the Northern District Municipal Court of San Mateo County, California. The project was financially assisted through a federal grant from the Law Enforcement Assistance Administration and the California Office of Criminal Justice Planning. Opinions, findings and conclusions in this publication are those of the project staff and not necessarily those of LEAA, COCJP or assisting agencies.

Court Support Personnel Project
Skyline College
San Bruno, CA 94066
Douglas C. Oliver,
Project Director

NCJP

SEP 14 1976

ACQUISITIONS

Booklet

Researcher/Writer: Jo Ann E. Hendrickson

Editor: Theani Louskos

Graphics: Jan Kirkpatrick

Manuscript Typing: Donna Hughes

CONTENTS

	PAGE
INTRODUCTION	1
OBJECTIVES	2
COMMENTARY	4
The Chain of Responsibility	4
<i>LAW ENFORCEMENT OFFICER (4)</i>	
<i>EXHIBITS CUSTODIAN (7)</i>	
<i>THE BAILIFF (7)</i>	
<i>THE COURTROOM CLERK (8)</i>	
Linking the Chain of Responsibility	9
<i>MOVEMENT OF EXHIBITS THROUGH THE COURT</i>	
<i>PROCESS (9)</i>	
<i>CUSTODY AND STORAGE OF EXHIBITS (10)</i>	
<i>DISPOSAL OF EXHIBITS (12)</i>	
CONCLUSION	14
FOOTNOTES	15
SELF-REVIEW TEST	16
GLOSSARY	18
SUGGESTED READING	19

INTRODUCTION

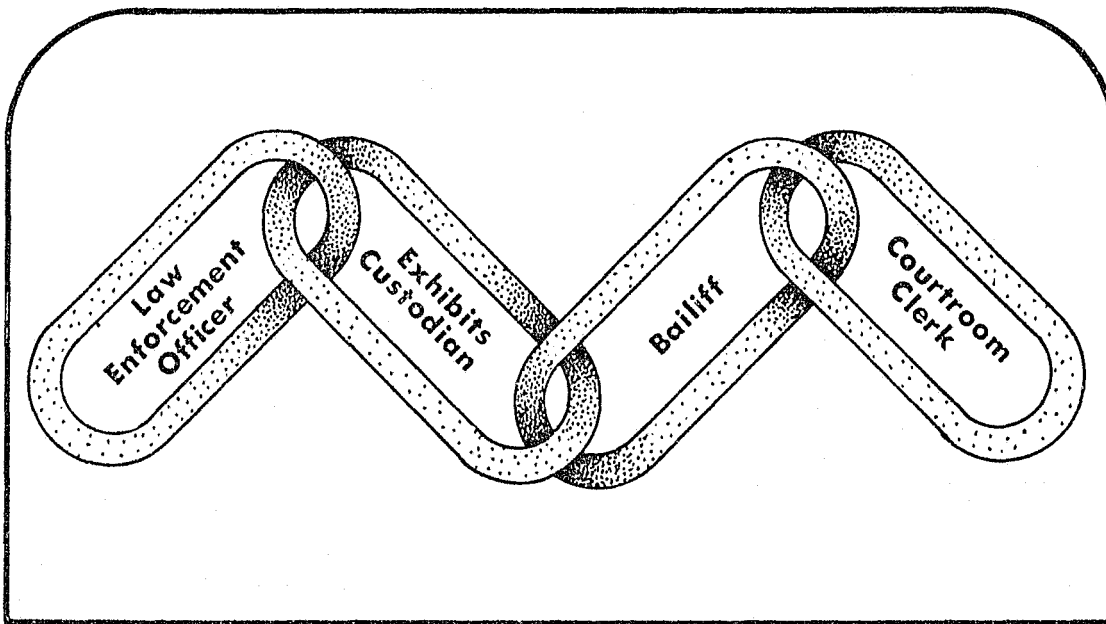
An exhibit used as evidence in a trial often can be the crucial hinge upon which a jury bases its decision of guilt or innocence. Consider, for example, the trinket which has been described as perhaps the most important piece of evidence against Patricia Hearst in her bank robbery trial. A small stone Mexican figurine, given to her by SLA member William Wolfe, was first listed as a "rock" on the FBI's inventory of her purse when she was taken into custody. During the trial, Ms. Hearst testified that Wolfe had raped her and that she "couldn't stand him." However, a similar object had been found on Wolfe's body. U.S. Attorney James Browning read about Ms. Hearst's possession of the figurine in a New Times magazine article, published during the trial, and he examined the "rock" closely. This became the last piece of evidence the prosecutor introduced at the trial. In his argument, he used the figurine in an attack upon Ms. Hearst's credibility:

*"...there is the little stone face that can't say anything, but I submit to you, can tell us a lot."*¹

Indeed, silent exhibits often do speak louder than oral testimony. As this incident from the Hearst trial dramatizes, exhibits can have considerable weight and influence in a court proceeding. As a result, they should be a major concern of law enforcement and court personnel. In this booklet, we will discuss the importance of exhibits in the judicial

- c) Cash, credit cards, securities.
 - d) Narcotics, jewelry.
 - e) Furs, perishables.
7. Identify the three rules that apply when exhibits are temporarily withdrawn from storage for examination.
 8. Describe the general requirements for the disposal of:
 - a) Civil exhibits.
 - b) Criminal exhibits.
 - c) Criminal exhibits in a death penalty case.
 9. Write a paragraph describing possible consequences when the "chain of responsibility" for the custody and security of exhibits breaks down.

COMMENTARY



THE CHAIN OF RESPONSIBILITY

Unlike oral testimony, exhibits cannot lie. However, they can be lost or stolen or mislaid, and therefore the court officers in charge of the handling of exhibits have a serious responsibility to protect the integrity of the exhibits. Remember the old saying that a chain is only as strong as its weakest link? The handling of exhibits involves a chain of responsibility and accountability in which all links must be kept as secure and error-free as humanly possible.

LAW ENFORCEMENT OFFICER

The first link in our chain is the law enforcement officer who obtains the exhibit, either by a search conducted under warrant or by serving a subpoena duces tecum. The search warrant specifies the premises,

A bizarre mishandling of evidence occurred in the Tate-La Bianca murders investigation. In early September, 1969, the Los Angeles Police Department sent out approximately 300 confidential "flyers" to law enforcement agencies in the U.S. and Canada, describing the missing Tate murder weapon. By some mistake, however, the notice was not sent to the L.A. Police Department's Valley Services Division in Van Nuys. A few days before the flyers went out, ten-year-old Steven Weiss found a gun lying next to the sprinkler he was fixing. Since Steven had often watched "Dragnet" on TV, he knew how to handle a gun; he picked it up very carefully by the tip of the barrel, so as not to disturb the fingerprints. Steven then took the gun back to his house, and showed it to his father, who called the police.

In testimony at the trial more than a year later, Steven would describe how the patrolman on duty, Officer Michael Watson, received the gun:

Q. "How did he (Watson) touch it?"

A. "With both hands, all over the gun."

Apparently the officer was not a "Dragnet" watcher.

After booking the shells and revolver as "Found Evidence," Officer Watson turned them over to the Property Section of Valley Services, where they were filed away into obscurity while the L.A. Police Department Homicide Division searched futilely for the missing gun. Finally Steven Weiss' father made a series of phone calls which resulted in the finding of the murder weapon, safely lodged in the Van Nuys Branch. There were more than a few red faces in the L.A. Police Department. To add to the embarrassment, that same week a TV crew found the bloody clothes the

persons and things the officer may search, and requires the officer to account for what he has seized. Similarly, a subpoena duces tecum specifies that a person must appear in court with certain papers, books, records or documents.

Since the items the officer collects will be offered as evidence of the defendant's guilt or innocence, the exhibits are often marked with the initials of the officer. This begins the chain of responsibility for items which will be offered as proof. The process of accounting for and securing exhibits begins with proper identification, reception, and storage, and only ends when the items are finally disposed of.

It is important that the officer give all the necessary information for complete identification of the article itself and of the time, place, and conditions surrounding its seizure.

In the Warren Commission's investigation of Lee Harvey Oswald's role in the assassination of John F. Kennedy, one of the important exhibits was "a handmade paper sack" in which Oswald allegedly carried his murder weapon, an Italian-made rifle. A Dallas police technician, Lieutenant J. C. Day, recorded the location of each item of evidence on the sixth floor of the Texas Book Depository. At the time he found the bag, he wrote on it: "Found next to the sixth floor window gun fired from. May have been used to carry gun. Lt. J. C. Day." Note that he gives his name to identify the finder of the bag. However, since Lt. Day did not indicate the exact time he found the bag, this omission has caused some critics of the Warren Report to question the sack's reliability as evidence.²

The point to remember here is that a complete description of the exhibit at all stages of its handling is vital to insure its authenticity as a piece of evidence in a legal case.

A bizarre mishandling of evidence occurred in the Tate-La Bianca murders investigation. In early September, 1969, the Los Angeles Police Department sent out approximately 300 confidential "flyers" to law enforcement agencies in the U.S. and Canada, describing the missing Tate murder weapon. By some mistake, however, the notice was not sent to the L.A. Police Department's Valley Services Division in Van Nuys. A few days before the flyers went out, ten-year-old Steven Weiss found a gun lying next to the sprinkler he was fixing. Since Steven had often watched "Dragnet" on TV, he knew how to handle a gun; he picked it up very carefully by the tip of the barrel, so as not to disturb the fingerprints. Steven then took the gun back to his house, and showed it to his father, who called the police.

In testimony at the trial more than a year later, Steven would describe how the patrolman on duty, Officer Michael Watson, received the gun:

Q. "How did he (Watson) touch it?"

A. "With both hands, all over the gun."

Apparently the officer was not a "Dragnet" watcher.

After booking the shells and revolver as "Found Evidence," Officer Watson turned them over to the Property Section of Valley Services, where they were filed away into obscurity while the L.A. Police Department Homicide Division searched futilely for the missing gun. Finally Steven Weiss' father made a series of phone calls which resulted in the finding of the murder weapon, safely lodged in the Van Nuys Branch. There were more than a few red faces in the L.A. Police Department. To add to the embarrassment, that same week a TV crew found the bloody clothes the

Manson gang had shed after the Tate murders and had tossed over a steep embankment. No extraordinary investigative skills were used by the TV crew. The clothing lay in plain view of the road.

EXHIBITS CUSTODIAN

The second link in our chain is the exhibits custodian, who holds a full-time position in larger courts, underscoring the seriousness of the task of maintaining exhibits as part of the trial record. During and after trial, exhibits will be stored in ways appropriate to their value, their importance, and their preservation. Local policy determines the exact means the custodian will utilize. Sometimes court orders will supplant local policy, especially in regard to so-called "hot cases." The custodian will use special handling for items of great value, for negotiable items such as cash, bonds, and deeds, and for perishable items.

THE BAILIFF

The third link in our chain is the bailiff, the court officer in charge of the jury. He or she can be either a deputy sheriff, deputy marshal, or constable. The bailiff may transmit exhibits from the witness stand to the clerk, or offer items to the jury for inspection during the trial, or furnish exhibits to the jury during their deliberation proceedings, taking care that depositions and identification items are not included. The bailiff will assist the courtroom clerk in sensitive areas, such as the handling of weapons and narcotics.

THE COURTROOM CLERK

The fourth link in our chain is the courtroom clerk, who assumes responsibility for court exhibits: their movement into court; their marking; their entry into the Minutes; and their delivery to storage. Occasionally, the exhibits in a case will run into hundreds of items. Particularly in a case where there are no direct witnesses to a crime, physical evidence becomes doubly important. In California, exhibits must be legally obtained, relevant to the issue at trial, and supported by testimony in order to qualify as evidence. For example, in People vs. Frazier, a 1970 mass murder case, the prosecution presented over 150 physical items. These included everything from aerial photographs to bags of earth. More recently, the Patricia Hearst bank robbery trial included 807 pieces of physical evidence. Each item had to pass the above legal testing in order to move from the status of item of identification to the status of item of evidence.

The task of stamping or tagging all these items can be mind-boggling. Exhibits introduced by the plaintiff are numbered, while those presented by the defendant are assigned letters of the alphabet. For more than 26 items, the series is continued, AA, BB, etc.

The labeling process can be challenging. Except for wills, paper documents may be stamped if doing so will not deface them. Other items may be tagged. The rule to remember here is that the tags must be secure, give complete information, and should not harm or alter the item. The information on the tag in a criminal case should include: type of hearing; case number; party introducing it; number of letter designated; date; and signature of courtroom clerk (on evidence label only). Tags in a civil

case should include: case number; exhibit number; date filed; name of courtroom clerk; and whether item is for identification or evidence.

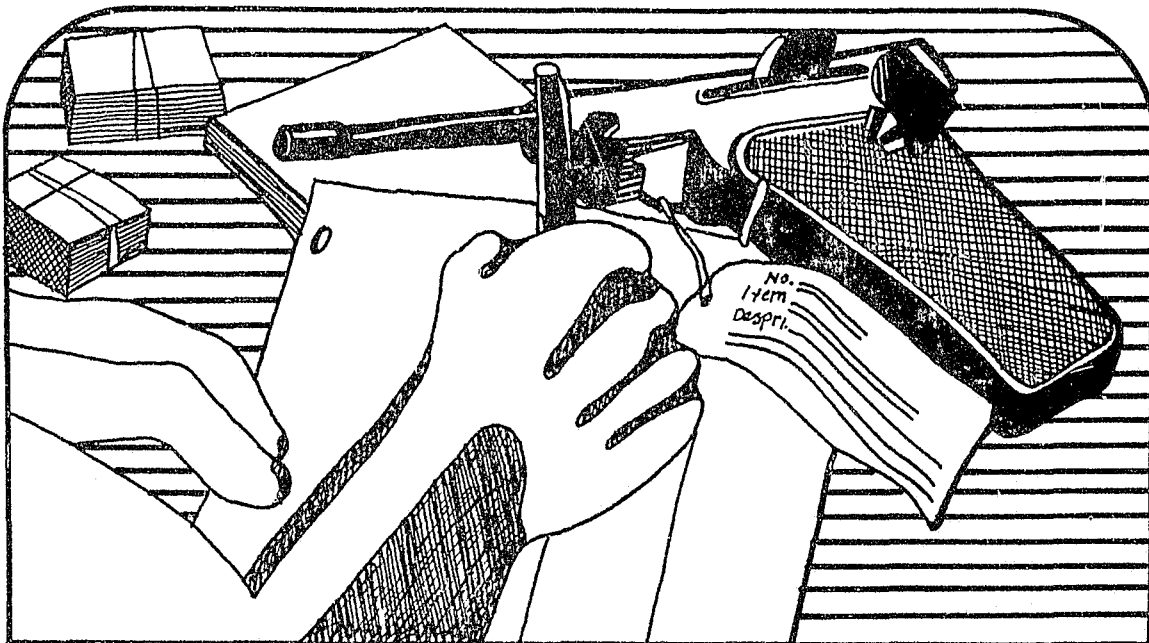
An object produced by either the plaintiff or the defendant should be entered on the exhibit list with the number or letter assigned to it, along with a complete description of the object in the Minutes. During the course of testimony, descriptions may change and a precise listing by the clerk may be the only means of sorting out the record. For example, a shift in the Minutes from a notation of "six ounces of a white powdery substance" to a labeling of "heroin" must be noted.

LINKING THE CHAIN OF RESPONSIBILITY

THE MOVEMENT OF EXHIBITS THROUGH THE COURT PROCESS

In a criminal case, potential exhibits may be gathered as soon as a criminal intent is formed: the items which show intent or prove an act may be procured by search warrant or confiscated during arrest. After being noted in the arrest report, items usually will travel to the property room of the arresting agency. Here, listed and tagged, they will await being called for by the prosecution or defense.

In civil cases a subpoena can be used to force the appearance of civil evidence, just as a search warrant brings in items required for a criminal prosecution. Usually the civil case documents are brought to court by the parties involved in the action. Again, these documents



must be receipted, properly listed, and securely stored. For example, if a motion is granted to move certain items into evidence, the minutes must show this change of status. Similarly, if a facsimile or copy is approved for evidence, the record must indicate this.

CUSTODY AND STORAGE OF EXHIBITS

We have seen that during trial the exhibits are the responsibility of the courtroom clerk. The bailiff may assist in the security and care of exhibits, particularly firearms, narcotics, and valuables. These custodians should know the location of the exhibits at all times, and should secure them during recess or overnight. Even during short recesses, exhibits should be stored in a locked closet or secure area.

It is good practice, especially in civil matters, for the clerk to have all parties sign a stipulation for release of exhibits so that, whenever possible, the court's responsibility for the items may end after trial. However, in some proceedings there is a chance that a case may be appealed to a higher court. In this situation the court personnel will

continue their custody of the exhibits. Holding procedures will vary from court to court, but the following general rules will apply everywhere in California. Papers and small documents entered in civil cases will ordinarily remain in the case file. The Exhibits Custodian will separate more bulky objects according to classification and store them. When exhibits have been used in cases resulting in a default judgment, the exhibit must be marked with a stamp of the court, showing the parties at action, the judgment entered, and the signature of the clerk. This marking insures that the action will not be renewed by accident or intent in another court.

Exhibits generally go into a secured area or vault. However, special categories of exhibits will receive additional attention. Small pilferable items such as cameras, pistols and appliances will go into locked cabinets, while valuable documents such as credit cards and deeds are secured in the safe. A safe can be used to store cash, securities, narcotics and jewelry. Bonded storage may be required for furs, perishables, or bulky items.

During the time that exhibits are stored, there may be requests for examination or temporary withdrawal. Three rules pertain here:

- 1) personally observe the examination or use whenever possible,
- 2) confirm the credentials or order of persons who appear with such requests, and
- 3) obtain a receipt for any withdrawals or removals of exhibits.

These procedures should be adhered to whatever the circumstances, even in cases where a subpoena or court order is involved.

An example of faulty recordkeeping is the 1972 loss of 81 pounds of high-grade heroin which had been seized ten years previously in the celebrated "French Connection" case. The heroin was believed to have been stolen from the New York City Police Department's storage vault in 1970, but the loss was not discovered until two years later, during an audit by the department's property clerk. The heroin was first signed into custody in 1962; since that time it was signed out four times, and returned on three occasions.³

DISPOSAL OF EXHIBITS

Good housekeeping demands periodic review of exhibits on hand, and a process of disposal. Narcotics are turned over to the Attorney General's Office for destruction, along with raw materials, processing equipment, and records. Present law provides for the destruction of firearms unless they are needed by the local crime lab. San Francisco, for example, has a program which turns guns into manhole covers.

Current requirements for the disposal of civil exhibits after the appeals period has ended are:

- 1) After three years, exhibits may be destroyed upon court order if notice is given to parties and no objections are received.
- 2) After five years, exhibits may be destroyed without notice, but upon a court order.

Criminal evidence must be retained for two years after the end of the appeal period, except in death penalty cases, where the evidence must be retained until the sentence is carried out. Sixty days of public notice

must be given before exhibits can be destroyed, and the district attorney must prepare and sign an order directing the disposal. Destruction of criminal exhibits must be witnessed and a certificate placed in the case file.

Photographs used as evidence are destroyed according to the usual guidelines, but an interesting exception is the case of the so-called "Acid Doctor," Geza de Kaplany, who went to prison in 1963 for killing his bride by pouring acid into her bodily orifices. Photographs of her acid-scorched body were included in his case file jacket, so that the Adult Authority Board, which determines paroles, would see the nature of the crime committed.⁴

CONCLUSION

We have seen that the solution to a crime or the fate of the verdict may hinge upon a commonplace object, which becomes evidence and is used as an exhibit. A dramatic example of the importance of physical evidence is the "almost perfect crime" of the Clutter family murder in 1959. The killers made only two mistakes. They left a witness, and they left footprints. In an emotionally-charged pre-trial interrogation, the chief detective showed the evidence to the prisoner, Dick Hickock. "'This (photo) is a one-to-one reproduction of certain footprints found near Mr. Clutter's body. And here...are the boots that made them. Your boots, Dick.'" Hickock looked, and looked away."⁵

The requirements for the handling of exhibits are stringent because the responsibility for their handling is great. If your job involves a link in this chain of responsibility, you know that the chain must be kept as secure and error-free as possible, because the outcome of a trial may depend upon how well you do your job.

FOOTNOTES

1. Steven Cook, "How Harrises Helped Convict Patty,"
San Francisco Examiner, 3/24/76.
(For New Times article, "Twenty Months with Patty/Tania," see
March 5, 1976 edition.)
2. Leo Sauvage, The Oswald Affair (Cleveland: The World Publishing
Company, 1966) p. 129.
3. The New York Times, 12/15/72.
4. Guy Wright, "De Kaplany and a Foolproof Life Term," San Francisco
Examiner, 3/14/76.
5. Truman Capote, In Cold Blood (New York: New American Library,
1965) p. 259.

SELF-REVIEW TEST

1. Describe the importance of exhibits to a court proceeding.
2. Explain what is meant by "the chain of responsibility" for exhibits.
3. List the four key law enforcement and court personnel that are part of the chain of responsibility.
4. Describe the general duties of each of the four key personnel for the custody and security of exhibits.
5. Describe the specific recordkeeping duties of the courtroom clerk for:
 - a) Labeling and tagging exhibits.
 - b) Preparing and maintaining an exhibit list.
 - c) Maintaining records of exhibits in the court minutes of a proceeding.

6. List the type of "holding facility" that should be used for the secure storage of:
 - a) Papers and documents.
 - b) Cameras, weapons.
 - c) Cash, credit cards, securities.
 - d) Narcotics, jewelry.
 - e) Furs, perishables.
7. Identify the three rules that apply when exhibits are temporarily withdrawn from storage for examination.
8. Describe the general requirements for the disposal of:
 - a) Civil exhibits.
 - b) Criminal exhibits.
 - c) Criminal exhibits in a death penalty case.
9. Write a paragraph describing possible consequences when the "chain of responsibility" for the custody and security of exhibits breaks down.

GLOSSARY

- Subpoena: A court order directing a person to appear and testify in a legal proceeding or action.
- Subpoena Duces Tecum: A subpoena requiring the production of papers or documents.
- Warrant: A writ or precept from a competent authority in pursuance of law, directing the doing of an act, and addressed to an officer or person competent to do the act, and affording him protection from damage if he does it.
- Search Warrant: A written order issued by the appropriate court for the search of a particular premise.

SUGGESTED READING

Bugliosi, Vincent. Helter Skelter. New York: Bantam Books, 1975.

Capote, Truman. In Cold Blood. New York: New American Library, 1965.

Moore, Robin. The French Connection: The World's Most Crucial
Narcotics Investigation. New York: Bantam Books, 1970.

Sauvage, Leo. The Oswald Affair. Cleveland: The World Publishing
Company, 1966.

END

7/26/53/1000