



## **FORENSIC CASE REVIEW & ANALYSIS Criminal Defense Cases**

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A comprehensive examination of the prosecution’s evidence can reveal the flaws of inconsistencies, errors, and omissions. An attack upon the very foundation of their case can topple the inverted pyramid supporting the theory of prosecution. It is important to remember that the documents provided via the discovery process are in fact evidence and not mere reading material for informational purposes only. The police reports and all supporting documentation are in fact the very core of the prosecution’s case. Therefore, every report, statement, photograph, and document is “evidence” and should be treated as such. A line-by-line, page-by-page, forensic examination should be conducted in order to question the veracity of the evidence. The prosecution’s case should be examined internally. In other words, the Case Review & Analysis must focus upon the prosecution’s case without reference to external information or evidence. First, the conflicts found within their own case must be exposed in order to reveal flaws that may internal to their theory and the foundation of the case. Subsequently, the investigator may compare the prosecution’s facts to those found during the course of the due process investigation that follows.

### **Methodical Note**

The process defined hereafter, facilitates the process of identifying inconsistencies, discrepancies, errors, omissions, and leads to be pursued during the process of investigation.

### **Phase 1 - Preparation & Planning Process**

1. Recover a copy of the discovery file from defense counsel. Documents should include all that reflect the law enforcement investigation and all evidence recovered during the course of the effort.
2. During the initial meeting, ask counsel to define their objectives. In other words, “What questions do they want answered through the process of investigation?” This will allow the investigator to establish a minimum standard for success. However, the objectives should not necessarily limit the effort to such a narrow focus.
3. Organize the discovery file. Re; Police reports, arrest affidavits, statements, evidence lists, etc.

## COMPONENT 1 SUPPLEMENT

4. Assemble all documents to ensure reports are complete.
  - a. Staple all pages of a document or organize digitally in folders.
  - b. Arrange reports in chronological order by date of report. This will allow the investigator to review the law enforcement investigation in the order in which it was conducted and reported.
5. Prepare an Inventory Report of all documents provided via the discovery process.
6. Apply an internal tracking system. Create a numerical/alphabetical system that is separate and distinct from the existing page numbers found on the documents. This tracking system will be used to reference information and points of interest and provide quick reference throughout the investigation process. The system can also be used by counsel to prepare for trial.
7. Research the statute(s) in question and identify the elements of the crime that must be proven by the prosecution in order to gain a conviction.
8. Compare the elements to the allegations, facts, and evidence presented within the reports. A comparative study may reveal that the prosecution has failed to prove the elements of the crime.

### **Phase 2 - Lead Development & Classification Process**

Note: Use a highlighter System of varied colors to tag information of specific interest. An app or program such as FACTDRIVE™ may also be used to expedite the process. The use of a color-coding system provides an effective means to identify information of interest. The color-coding system will allow ease of access and the ability to extract the data from the narrative and classify under a variety of categories. This process facilitates the identification crucial facts, cross-contamination, inconsistencies, errors, omission, investigative leads and alternative theories that tend to be buried and lost within the details of a narrative reporting style.

#### Tag Information with a Highlighter System

Review and analyze using a line-by-line and page-by-page application.

1. Identify leads and develop a lead tracking system. A lead is defined as information of interest that may result in a question or investigative task. The leads can be developed into questions and investigative tasks to be classified within the component of investigation that is best suited to facilitate an answer to the question.

## COMPONENT 1 SUPPLEMENT

2. Identify Compelling Facts and Evidence. The fact and evidence classification should provide for the identification and organization of "crucial" or "key" facts. Furthermore, they should be classified into at least two categories being "incriminating facts" and "exculpatory facts". Also, "elements of the crime facts" should be identified. Such facts can be classified as those that support the elements and those that are in conflict.
3. Identify and extract for reference and classify facts as either "mitigators" and/or "aggravators". Each should have linking capability to witnesses, evidence, documents, etc. fundamentally, it would provide for easy access to the very core facts of the case.
4. Identify time line data such as times and dates and reference to times and dates. Use such facts to construct a time line of events. This reorganization of the prosecution's facts will allow the investigator to follow the facts in the order in which the incident unfolded. This is important to note, as law enforcement tends to report the facts in the order that they were encountered during the course of investigation. The two are not always simpatico. Facts are often selected and organized to facilitate a specific narrative. A time line can change the narrative.
5. Generate a cast of characters and witness summary report. Identify all the names of persons involved and noted within the law enforcement investigation and create a cast of characters. This process will educate the investigator relative to the names of witnesses and the extent of their involvement. The identification of witnesses and potential witnesses should not be limited to those that are named. For example, a reference to "someone standing on the corner" is a potential witness. The list can also be used to compare to the prosecution's witness list. The omission of certain witnesses to be used in trial may provide additional leads and interview opportunities. Note the identifiers such as a date of birth and contact information and provide a bullet format summary of the facts that may present during testimony.
6. Issues and topics of special interest should be identified and classified. Make note of special interest items and issues that may require additional attention in the form of research and further investigation.
7. Prioritize special projects and research that demands immediate attention due to order of importance or time deadlines such as future hearings and court dates.

The Forensic Case Review & Analysis represents Component One of the Component Method of Criminal Defense Investigation©. It is the first step in an aggressive impartial and objective investigation necessary to defend the 6<sup>th</sup> Amendment's right to a fair trial. The pursuit of Truth and Justice demands no less.