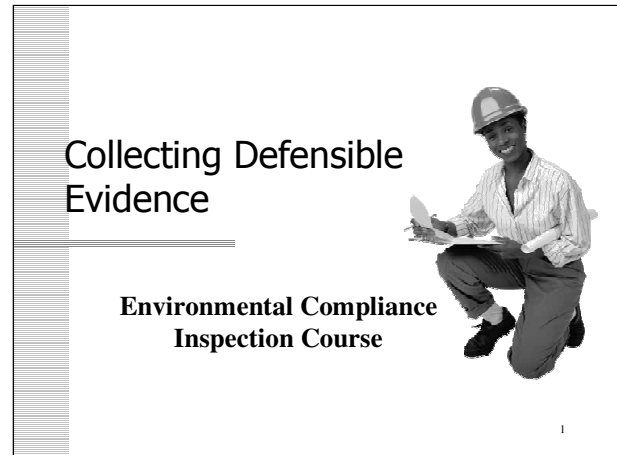


Session 7:	Collecting Defensible Evidence
Time:	1 hour 30 minutes
Equipment:	Projector for slides
Preparation:	Study Notes Read "Waste Woes" or present another local article or situation.
Handouts:	Handout A-7, "Waste Woes" (In student Manual)



*This session will introduce the rules of evidence and their relevance to the activities of the inspector. While the session is written in a general way, there may be significant variations on the rules of evidence for a particular country. If possible, have a local authority present this session, or at least be present to identify and respond to information that is not consistent with host country practices. Begin the session with an obvious example of a murder – call someone to the front to be the murder victim, then “kill” them. As they lie there, dead, ask:*

What just happened here? You come upon the scene and find a dead person. What do you need to determine if a crime occurred? Evidence What specific evidence?

- Is the victim dead? (medical evaluation)
- Did anyone see what happened? (witness)
- Who is this person? (documents of identification)
- How were they killed? (gunshot wound?)
- Is there a murder weapon? Bullets? (sample or real evidence)

Why are these questions important? They establish the facts of what happened – the proof we need to determine the truth.

Collecting and documenting evidence is a core activity during an inspection; that supports case development and helps an inspector prepare for testimony. Understanding the rules of admissibility of evidence and the kinds of testimony an inspector might be required to provide helps explain the need to adhere routinely to proper procedures for collecting and handling evidence.

This session will:

- Guidance you on documenting evidence to ensure its admissibility in a court proceeding.
- Present procedures for recording and documenting observations.
- Present tips for improving techniques.

*Make sure to remember to bring the murder victim back to life and thank him/her.*

## What Is Evidence?

- Any information or proof which clarifies or helps establish the truth.



2


Evidence is the facts, items, and documentation we use to prove our case. It is any information or proof that helps establish the truth of a point.

Our dead person may have killed themselves, so we need to look at situation in an unbiased, impartial way and determine what happened – the facts of the situation.

Not all evidence is admissible, but evidence that is not admissible still can be useful as you develop your case. Remember, most cases are settled before trial, and all evidence may be helpful during negotiations.

### Why Collect Evidence?

- To prove a case.
- Demonstrate the facts to others.
- To refresh the inspector's memory.



3

*The title of this slide will come up alone. Ask the question, “Why do you collect evidence?” and spend a few minutes discussing some of the different reasons people collect evidence. Some possible responses are listed below:*

Why would you collect evidence as part of your inspection?

- Demonstrate your observations to others

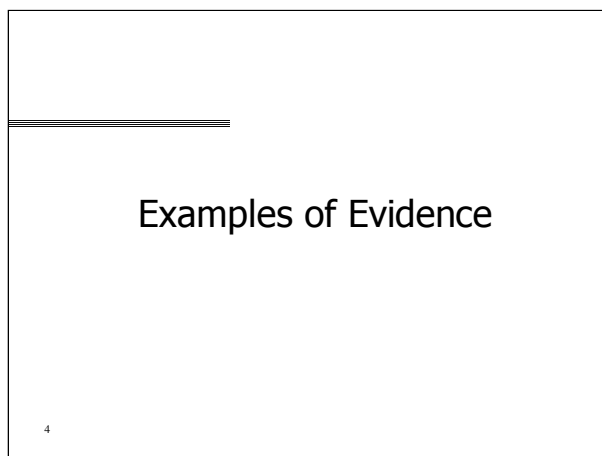
You were the only one that can see things through your eyes. However, you must relate what you saw and observed to people that were not there. Evidence will help you share your experience in such a way that others can “be there” through you.

- Convince a judge/jury that your conclusions are correct

We have to convince others that your interpretation of the situation is correct. Evidence can help do that by proving the facts exist as you describe them.

- Refresh your own memory for later use

As time passes, we tend to forget the details of the things we observe. Evidence can help us bring those issues back into our memory.

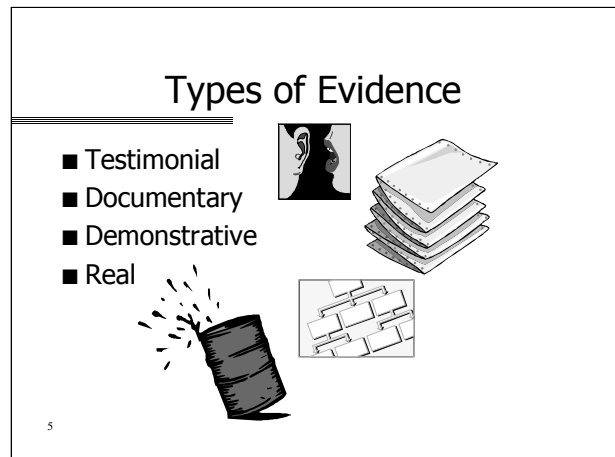


Let's list some examples of evidence you might collect to document an environmental crime:

*Appoint a recorder and develop list of examples from audience. Leave some space on the margin for later classification. Don't discuss each in detail – you will do that later, just list ideas. Later in the session, you will refer back to this list to decide what type of evidence each is – Testimonial, Documentary, Demonstrative, or Real. Also, you will assess the strength of each example* Examples:

- Witness that saw what happened.
- Sample of waste stream
- Letter authorizing discharge
- Process information – flow diagrams
- Sketches of area
- Photographs

We will discuss a few of these in greater detail throughout the course, but I want to go through evidence in general and the legal importance of evidence as you try to make your case.



These are four general types of evidence. I will discuss each in detail.

- Testimonial
- Documentary
- Demonstrative
- Real

## Testimonial Evidence

- Reported sense impressions and opinions
  - “I smelled”, “I saw”, “I heard”
- Interview
  - “Mr. Honest said...”
- Witness testimony



6


Testimonial evidence is spoken evidence by a witness. It includes the inspector's testimony to what he or she saw, smelled, heard, or felt, but may also include other people's testimony.

The validity or value of the testimony depends on the truthfulness of the person talking, their expertise, and their believability.

### Documentary Evidence

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- Field notes
- Documents
  - Messages/letters
  - Accounting ledgers
  - Computer printouts/files
  - Manuals/SOPs
- Inspection Reports
- Sample Results



7

Documentary evidence is anything written that describes the facts in question. It may document activities, events, or conditions important to your investigation of findings. Examples include:

Your field notes

Documents from the company such as

Messages/letters

Accounting ledgers

Computer printouts/files

Manuals/SOPs

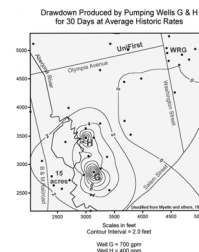
Inspection Reports

Sample Results

## Demonstrative Evidence

■ Other evidence presented to clarify or explain:

- Photographs
- Maps
- Flow charts
- Diagrams



8

Demonstrative evidence demonstrates or helps to clarify or explain the facts or the point you are trying to make. Alone, it is usually insufficient for proof, but can help explain or demonstrate other evidence or help the judge or jury understand the situation better. Examples include:

Photographs (*Session 13 covers types for good documentary photography*)



Maps

Flow charts

Diagrams

### Real Evidence

- Samples
- Container or label
- Object or item




9

Real evidence is an actual item or material. In the case of our murder, a piece of real evidence would be gun and bullets used to commit the crime. A sample of contaminated dirt would be real evidence, but would be of limited use without some documentary evidence, such as the sample results that show that it is contaminated and, possibly, a picture of the sample where it was collected and a diagram showing where the contamination is located. This could also be presented along with your testimonial evidence as you describe to the judge how you collected the sample.

This is a good example of how different types of evidence should support each other. One type or piece of evidence is not worth much without additional evidence to help it prove the point.

Good Evidence Can Answer:

- Who
- What
- Where
- When
- Why
- How



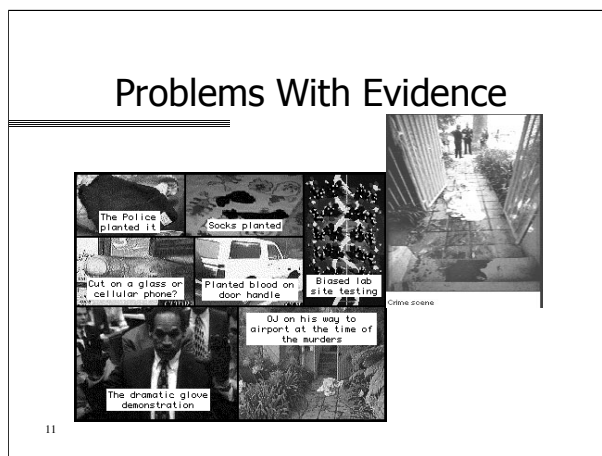
10

Good evidence will answer the key questions that establish the truth of the situation.

*Now you can use the list of examples of evidence to illustrate the different types of evidence. Go through the list and mark whether the example is Testimonial {T}, Documentary {Doc}, Demonstrative {Dem} or Real {R}. If there are not examples of each type, ask the group to fill in the gaps.*

Now, let's go back to our list of examples and classify them into one of these four types.

- Witness that saw what happened. {T}
- Sample of waste stream {R}
- Letter authorizing discharge {Doc}
- Process information – flow diagrams {Dem}
- Sketches of area {Dem}
- Photographs {Dem}




“How many of you have heard of O.J. Simpson? One of the reasons he was not convicted for the criminal act of murder was that the prosecution could not prove the evidence collected in the investigation had not been tampered with. Blood stains found at the crime scene were tested to determine blood type and to provide DNA samples. Blood stains were found in O.J. Simpson's white Bronco, on a pair of socks in his bedroom, on the pair of gloves, at the crime scene, in O.J. Simpson's driveway and in his house. The prosecution states that the blood evidence proves that O.J. Simpson is the murderer, while the defense contends that the blood was contaminated and/or planted. Because some of the blood samples were out of the control of the police and were not always handled according to procedure, the defense was able to raise enough questions about the collection and analysis done to give the jury “reasonable doubt”.

## Proper Handling of Evidence

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- Identification
- Chain-of-Custody



12

*The slide title will come up alone, ask the question:*

What are some key things you need to do as you collect evidence?

*Talk through the responses, but make sure these two are mentioned, then click to advance the bullets to discuss. Only mention Chain-of-custody here, since we'll cover in more depth later.*

The two most important things you have to show about evidence is that it is what you say it is, and that it has not been altered.

You must identify the evidence:

What are some ways to identify a piece of evidence?

*A label*

*A photograph showing the evidence at the site*

*An original signature*

*Your testimony to support it*

*Following standards methods to collect the evidence*

*Click here for next bullet*

You must also show that the chain-of-custody has not been broken. What is "Chain-of-custody"?

*Listen to responses then click to definition on next slide.*

## Connecting the Chain of Custody

- The meticulous process of showing the succession of persons who handled or had access to the evidence



13

Chain-of-custody is “The meticulous process of showing the succession of persons who handled or had access to the evidence”

It is imperative that we be able to demonstrate that a piece of evidence, such as a sample, was never tampered with. Otherwise, we can not prove that the evidence is what we describe. It could have been altered or changed between the time it was collected and the time it is presented in court.

For example, lets say an inspector collects a few samples to document an illegal discharge of solvents into a river. He carefully takes the samples, then leaves them in the facility manager's office while he finishes his inspection. Later, the sample results come up very high in ammonia, and he reports the violation. In trial, how is he going to prove that the results are from the discharge when the defense attorney asks about the cleaning lady that accidentally poured cleaning solution into the jars.

### Evidence Is in "Custody" If...

- It is in the actual possession, control, and presence of the inspector
- It is in the inspector's view
- It is in a storage place to which only the inspector or identified others have access

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The secret to maintaining a chain of custody is to show that it is under your control from the time you collect the evidence until you place it under the control of someone else that can testify about its disposition. To demonstrate that control, you must be able to show that it is in your possession, control, and presence, or it is in your view, or in a restricted storage area. Sitting in your car with the windows open while you are in a restaurant eating lunch would not qualify, but being locked in the trunk of a car to which you have the only keys would be under your control.

You can document control by using a form that notes whenever control is passed from one person to another. The form requires that each person sign, date, and note the time when they accept the evidence and when they pass the evidence on to someone else. This form can then be used to show that the evidence was always under someone's control.

## Habit; Routine Practice

- Regularly doing things the same way increases strength of evidence
- Establish habits and standard operating procedures
- Inspectors should always follow protocols (or explain why not)

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One thing that will help you establish the credibility of your activities, and thus the credibility of the evidence you collect is that you always act the same way. You should regularly do things the same way, and establish good working habits so that you can say you did things the way you always do it.

Your testimony can be supported this way:

Q. When you talked to this employee, did they know who you were?

- Yes, I told him my name and that I was conducting an inspection.

Q. But, there is nothing in your notes that says you told him who you were.

- No, but I always tell people who I am before I talk to them and give them my card.

Q. Do you distinctly remember telling him you are an inspector?

A. No, but our agency's standard operating procedures and training states that inspectors should always identify themselves before conducting an interview. I have conducted 230 inspections following that protocol, so I'm sure I did the same thing this time, too. It is a habit to identify myself and present a business card when I'm done with the interview.

This line of questioning would apply whether you are discussing an interview or any other common activity done as part of your inspection. As you will see, this is especially important when we discuss sampling protocols.

As a government inspector, the evidence you collect will be given a higher regard in the courts merely because of your position with the government. However, if you deviate from your agency's standard protocols or do things differently than usual, it can call your results into question.

This is not to say you should never deviate from the SOP, but when you do, that becomes something out of the ordinary that should be documented. If you don't follow the protocol, explain why in your notes, report, and any testimony.

## "Waste Woes"

- Read the article
- Break into Four Groups
  - A. Documentary
  - B. Demonstrative
  - C. Testimonial
  - D. Real
- Each group list evidence in their category they would collect

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*Now you will conduct an exercise where the students determine what type of evidence, and some specific items they should collect, to support their findings in a situation. Hand out the article "Waste Woes" or another article or case study from the host country. Split the class into four groups, Testimonial, Documentary, Demonstrative, and Real. Have each group list several different items they would collect as evidence for the situation in the article. Give the group five-ten minutes then have each group present their list.*

The Star, Kuala Lumpur, Malaysia Tuesday, July 10, 2001 (thestar.com.my/news)

### **Waste Woes at Sungai Masi**

**By Shahar Yaacob**

PASIR GUDANG: After a recent toxic spill from a sunken tanker, hundreds of fishermen in Pasir Puteh here are being plagued by chemical dumping.

They found more dead fishes and other marine life in Sungai Masai Monday.

The fishermen claimed that the Pasir Gudang municipality garbage disposal site located close to the river was contributing to the problem.

Yassin Montel, 66, said factory owners here had been taking advantage of Sundays and public holidays to dump chemical and other toxic waste at the site.

Another fisherman, Mustaffa Khalil, 44, whose house is among those on stilts by the waterfront, said dead fishes were trapped under the houses,

Mustaffa said he saw a cat dragging a dead fish from the water but walked away without eating it.

MP for Tebrau Datuk Mohd Ali Hassan, who visited the fishermen, said the dumping of toxic waste at garbage disposal sites should be stopped.

"The Department of Environment must identify the toxic waste and trace the relevant factories producing them," he added.

According to Ali, the government had acquired a new area as disposal site to replace the present one and called on the relevant agencies to expedite work on it.

*These are just a few examples. The discussion should center around their suggestions, whether they are appropriate, and how they would discover and collect the evidence.*

Group A, what are some examples of documentary evidence would you present?

- *Documents from owner of tanker describing contents of tanker prior to sinking*
- *Maintenance reports from landfill showing possible releases*
- *Records from surrounding factories describing schedule of activities*
- *Production records from factories to identify waste streams*
- *Sample results from water, biota, fish, effluent, etc.*

Group B, what are some examples of Demonstrative Evidence you would present?

- *Photographs from the site*
- *Map showing location of factories and disposal site related to river*
- *Map showing where dead fish were found*

Group C, what about Testimonial Evidence?

- *Interviews with fishermen*
- *Interviews with factory owners and employees.*
- *Your own testimony describing your observations*
- *Expert witness testimony linking chemicals to sources*

Group D, what about Real Evidence?

- *The dead fish*
- *Water samples, effluent samples (results would be documentary)*
- *The cat*