



Inspector's K.I.S.S.* Manual



* *Keep It Simple Stupid* is the core of many inspection manuals rolled into one. The fundamentals outlined here are intrinsic to all compliance inspections or investigations.

CONDUCTING COMPLIANCE INSPECTIONS

"AN ABBREVIATED MANUAL"

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What is a Government inspector?

The inspector is often the personification of the entire agency he/she represents. It is the inspector who knocks at the door and is often the only image many will ever have of that portion of their Government. Polite diplomacy is therefore a mandatory skill. Aggressiveness should show itself in thorough work rather than the inspectors demeanor. Inspectors are the agency's five senses to the real world. How accurately those senses will record that world is the subject of this document.

Every inspection must be conducted as if it would go to court and be hotly contested. The inspector should imagine themselves on the stand, under cross examination by highly skilled counsel for the defense. Every shred of evidence and documentation supporting that evidence may be contested as inaccurate, misinterpreted or compromised. It becomes obvious that the agency's entire case often hinges upon the expertise of and professionalism of the *inspector as the witness of fact*.

What does professional mean? You are an agent of the government representing the very people you must regulate. Fairness and equity are cornerstones of your position. It is not uncommon for some individuals to become obsessive in the authority and power given to them. That "... Power corrupts..." must not be allowed to apply here. We are all equal citizens subject to the same rules and social responsibilities. A veteran inspector once related the following story.

The topic was photo documentation. The speaker bragged that he had conducted more than 500 inspections in his 18 year career. He said that photography was a vital part of documentation but in his opinion, it was often dangerously over used. As an example of this over use, he showed half a dozen slides taken at an alleged hazardous waste site. The photographs clearly showed the Government's site manager in street clothes, on their knees, scooping a sample with their bare hands. The instructor said that the photographs should not have been taken or should have been destroyed because they eventually hurt the agency's case by making the site appear less hazardous.

Improper protocol and cover up is neither professional or ethical. The error was not following the proper sampling procedure, not the photography. It is implicit that the inspector set the example for the implementation of proper procedure. Those procedures must routinely be better implemented than those performed by the regulated community. Comparisons between the agency's work and that of a facility are often issues in court. Agents of the Government should never feel justified in hiding their own impropriety in order to enforce against those they regulate. To use a metaphor, a little tarnish can rapidly lead to decay if unattended.

How would you like to be treated by a Government inspector? Apply the "Golden Rule" to your work. As an agent of the Government you must constantly strive to maintain the highest standards of ethical conduct, quality assurance and quality control, and continuous training and retraining so that you can set an unimpeachable example to those whose laws you enforce.

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PRE-INSPECTION PREPARATION: Half the fun is getting there

IN THE OFFICE AND OFF SITE:

About 50% of your time should be spent planning and preparing for your inspection. This will prevent classic oversights; like being on the road and realizing that you haven't a clue on how to get to your facility, or walking right past the operation which received a Notice of Violation (NOV) in five previous inspections.

HISTORY AND LIAISON WORK: Your first objective should be to check with the program staff and files to gain all the knowledge you can about the site. There may be personnel assigned to the specific facility you are to inspect. Other considerations are permits, litigation, or special agreements. There may be other inspectors who have experience with the facility.

There may be other agencies or programs which have been involved or should be involved. Not informing an entity that feels territorial about a facility can cause serious backlash. Showing up at a facility used to seeing a particular individual or Agency will usually alarm the facility. If that individual or Agency doesn't support your being there, life can be difficult. Make sure your immediate chain of command is familiar with your objectives and schedule. New inspectors often complain that there is little supervisory support for their field work. This is usually because supervisory staff was not fully informed and prepared before you did the work.

RECONNAISSANCE: Drive by and have a look before you leap into the inspection. Have a cup of coffee at the local diner to consider the possibilities and organize your approach. Use the time to review your kit and checklist. The facility is never what you anticipated in the office. Just when you begin to think you can dance around any contingency, one comes up and nails you. Consider the site layout, safety considerations, places and operations you want to include in your tour, and what is "going on" before they know you are there and the "going on" stops.

PREPARE YOUR KIT FOR ACTION: Load your camera. Fill out your paperwork as much as you can before entering the site. It is a nuisance when you end up hurriedly doing it in front of an impatient plant manager who has taken time off from a union negotiation and a critical break down just to deal with you. Exchanging business cards is a good way to introduce yourself and get information about your site contacts without lengthy and redundant questioning. You may even want to write a few reminders in your notebook to make sure you cover a topic or see an operation before you leave. One recommended item is the "post it®" that can be used to mark things you want to copy, or to identify things in photographs, etc., etc.

SAMPLING: Are you prepared to sample? Do you have a sample plan? Have you notified the laboratory of your intentions?

Plan ahead by researching your site thoroughly prior to departure.

Touch bases with the Program Office/s. Make sure all interested parties know of your activities.

Perform a pre-inspection reconnaissance.

Prepare your kit before entering the plant or facility.

Sampling requires considerable preparation: sample Plan, laboratory notification, sample equipment, sample team.

ENTRY: Easy and Otherwise

When have you been denied entry?

When they say you are denied and when you think you are denied are both good reasons. However, you must do all the following first before making that decision:

ENTRY DENIAL TEST NUMBER (1): ✓

1. Did you identify yourself (Credentials) to a person-in-charge?
2. Did you explain the legal basis for your inspection?
3. Did you explain the scope of your inspection?
4. Did you visit the facility at a reasonable hour? (i.e. regular business hours, operating hours, or hours when the issues of compliance are best observed?)
5. Did you enter through the main gate or office?
6. Did you locate the *person-in-charge* as soon as you arrived?
7. If applicable, did you present the necessary written notices?

ENTRY DENIAL TEST NUMBER (2): ✓

1. Were you denied consent upon entry? (Consent is the intentional foregoing of the right of privacy that has not resulted from fear, ignorance, or trickery.)
2. Were unreasonable delays required by the *person-in-charge*? What the inspector considers unreasonable must be communicated to the *person-in-charge* prior to starting the clock. (e.g. "I have been waiting 45 minutes. My time is limited and I can wait only another half hour. If I can not begin by then, I will have to consider that I have been denied entry to conduct the inspection.")
3. Were conditions, which were clearly understood in the opening conference, altered by the company or person-in-charge, to the extent that it compromised your ability to conduct or document your inspection?
4. Was your safety deliberately threatened in any way? That includes verbal threats or suggestions that harm might come to you which is not accidental (refusing to secure a guard dog is an example of entry denial by not removing a threat to your personal safety.) Failure to shut down a routine plant operation is not denial, even if the operation

The four commandments:

- (1) Be Nice. If that fails,
- (2) Be Kind. If that Fails,
- (3) Be Fair. If that fails,
- (4) Seek Further Control.

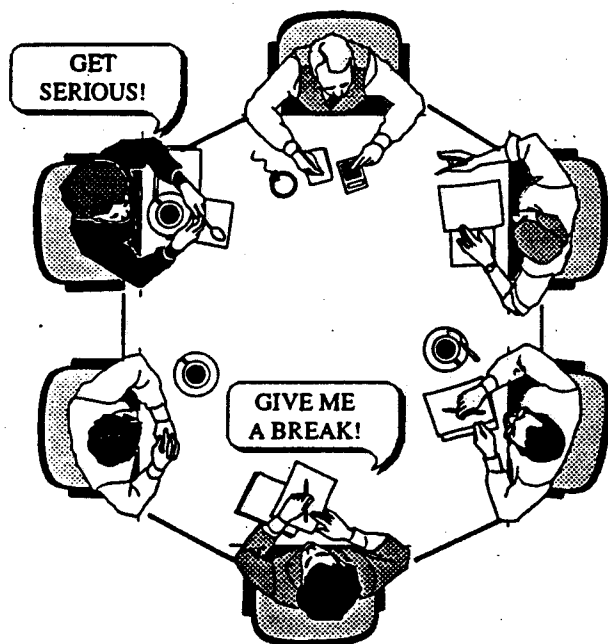
**FRIENDLY, PATIENT,
PROFESSIONAL**

**MAKE SEVERAL
EFFORTS**

**SATISFY ALL ENTRY
REQUIREMENTS
FIRST!**

NOTE: Expressed consent is not necessary. Absence of expressed denial constitutes consent to proceed. Provided the two tests of entry have been thoroughly covered first.

YOU ARE THE GOVERNMENT: You are looking for something which will probably make life more difficult for the facility. Remember, you are a professional and represent the *awesome power* and *authority* of the Government. Think how you would feel if a tax auditor walked up to your front door unannounced. Use your authority with diplomacy and a professional demeanor.



Let management know you are there: Let the facility know who you are and what you plant to do. Only your *official credentials* identify you as an agent of the Government. Business cards are NOT official. A goal of the opening conference is the opportunity to *explain the scope of your activities*. Let the highest plant official (Person-in-charge) know you are there to conduct official Government business. However, if you have been placed in contact with a manager who does not feel you need to let the CEO or Person-in-charge know you are present, don't argue. The manager has taken that responsibility.

The opening conference is an opportunity to *learn more about the facility operation*, plant layout, management authorities, who does what, plant safety and other information relative to your visit. Let management know how long you expect the inspection to take so that they can assist you with the least interruption of their regular schedule.

Safety requirements may not be the same for you and you may not be obligated to follow plant guidelines, but it is usually prudent if you do. A facility representative should accompany you.

ENTRY: Continued



Show **CREDENTIALS** and explain **SCOPE**.

Learn facility's **OPERATION**.

Let facility adjust to your visit.

IDENTIFY RECORDS

ENTRY: Continued

CORDIAL DOES NOT MEAN TIMID!

Express your purpose clearly and assertively. Respect their position and expect that they respect yours. You are simply doing your job. Do it well.

Identify the records you will want to review and discuss how copies can be obtained. If you perform the field portion of the inspection first, that will give the clerical staff time to gather records for you. However, it also gives them time to improve their record situation through loss of incriminating information, or the addition of omitted data.

Explain how you plan on documenting your inspection by making copies of records, drawing diagrams, taking samples, talking to employees, taking notes on paper or tape recorder, and especially taking photographs or using video. It is important to understand that the *denial of these commonly accepted documentation tools may be considered a denial of entry.*

If you believe that you must give prior inspection notification to the facility, try to give the least forewarning possible.



*If in danger or doubt,
leave and call your
attorney immediately!*



NOTE: The secret to gaining entry is to be cordial, direct, assertive, and professional. So what is professional? That means that within the bounds of your job you adapt to the situation in such a way that you produce the necessary result. "People tend to get out of the way for someone who knows where they are going."

CORDIAL,
PROFESSIONAL,
AND TO THE POINT.



HELLO, I'M HERE TO
CONDUCT AN INSPECTION.
PLEASE NOTIFY WHO EVER
IS IN CHARGE.



**IDENTIFY METHODS
AND GET
ACCEPTANCE**

**DO NOT GIVE UP
ABILITY TO
DOCUMENT
THOROUGHLY**

**ESTABLISH
SAMPLING NEEDS**

INTERVIEWS: A major tool in conducting an investigation

Interviewing is one of the more significant tools authorized for conducting an inspection or investigation. This information should be recorded in your notebook;

- * Who were you talking to?
- * What did you ask them?
- * What did they answer?

HOW DO YOU ASK A QUESTION?

How you ask a question can be more important than the question itself. Try to never give a possible answer when asking a question. For example, these are awful ways to phrase a question if you want to get information.

"You don't have any toxic materials around here, do you?"

"There aren't any buried drums on your property, are there?"

"You have all the necessary records, don't you?"

"Your SPCC plan is up to date, isn't it?"

The following questions are better:

"What kinds of material do you handle?"

"Have there been any materials buried on your property?"

"Where do you keep the _____ records?"

"May I see your SPCC plan?" (then ask an employee about the procedure mentioned in it to verify its application.)

The last conclusive question and follow up is often overlooked and taken for granted, however, it is the meat of the inquiry. Without the affirmation of a direct answer to the question at issue, the previous questions were of little value.

THE 5 W's AND A HOW: "Just the facts, Maa'm."

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



THE INTERVIEW IS AN
EFFECTIVE TOOL IN
INVESTIGATIONS.

ASK SIMPLE DIRECT
QUESTIONS THEN
LISTEN

CORROBORATE
INFORMATION

INTERVIEW FOR THE
5-W'S

INTERVIEWS: (continued)

Shut up and listen.

Experience teaches you when to hold the subject to specifics and when to let them expound. There are a few key guidelines to remember when first interviewing someone. They are:

- * Establishing a rapport (friendly and down to business) is also a matter of experience.
- * Don't emphasize your note taking. It can be intimidating.
- * Give them time to answer and listen.
- * Don't make promises of confidentiality or protection. Stress honesty.
- * Try to have privacy for the interview.
- * Obtain their name, position, and how you could get in touch with them at a later time.
- * Enforcement should not be mentioned.
- * Avoid leading questions.
- * Avoid double negatives and other complex phrases.
- * Avoid multiple subjects in your question.

WORK FROM THE GENERAL TO THE SPECIFIC

The following shows a line of questioning which leads from the general to the specific:

- Q. Who do you work for?
A. Acme Polluters.
- Q. How long have you worked for them?
A. About 6 years.
- Q. What do you do?
A. I open bungs on drums from Mega Chemical Corp. Then I pump them dry.
- Q. What happens to the contents?
A. It is pumped into a tanker truck.
- Q. What happens after that?
A. The truck takes it to the land fill.
- Q. Which land fill?
A. Love Canal mostly.
- Q. Where else?
A. The old quarry near the water tower.
- Q. What is in these drums?
A. Usually solvents like trichlor, collected from print shops.
- Q. Are there labels on these drums?
A. Sometimes.
- Q. For example?
A. There are DOT Hazardous Waste labels and sometimes there are company labels that say what the stuff is.

Things to keep in mind:

- * Rapport
- * Listen
- * No promises
- * Keep it simple
- * Private

WORK FROM THE GENERAL TO THE SPECIFIC

TAKE NOTES BUT
DON'T LET IT
DETRACT FROM THE
INTERVIEW.

INTERVIEWING: (Continued)

KEEP YOUR TIME SEQUENCING CONSISTENT;

Work backward or forward in time, but don't mix it up.

WORK FROM THE KNOWN TO THE UNKNOWN.

USE STANDARD KNOWN REFERENCES: The following is an example of using known references.

- Q. What was the liquid contained in?
A. A big tank kind of thing.
Q. How big was it?
A. Pretty big.
Q. Was it larger than a 55 gallon drum?
A. Oh, yeah. It sure was.
Q. Was it more like a home oil tank?
A. Uh huh, but bigger.
Q. Was it larger than a car?
A. Yup.
Q. Was it as large as a rail road tank car?
A. Yeah, that's what it was.

HOW DO YOU DOCUMENT AN INTERVIEW?

As accurately as possible. The following are presented in order of preference from least supportable to best.

- 4th Your written narrative of the interview with questions and answers.
3rd. Legally obtained tape or video recording (video is best).
2nd. You write an exact transcription and let them read, sign and date it.
1st. Let them write, sign and date the statement. Video documentation is becoming as acceptable as a written statement.

WHAT IS HEARSAY? If it isn't a confession by the one performing the act or a statement by a direct witness made in court, it is probably hearsay.

"I saw Bob dump it in the creek," is hearsay if the statement was made to you during the inspection. It may be evidence if the witness says it in court.

"I dumped it," is not hearsay because the witness is available. It may even be admissible if the person making the admission is dead or no longer available for trial, if it was properly documented for F.A.R. and had additional witnesses.

Don't mix past, present, and future when interviewing.

Work from the known to the unknown when interviewing.

Use standard references for time, distance, size, etc.

Signed statements made by the interviewee are best.

Beware of evidence which may be hearsay.

THE INTERVIEW: A few trade secrets

Ask questions as a friendly demand rather than as a request:



"Please, tell me who you work for?"

Rather than, "Would you tell me who you work for?" The latter is actually two questions. The first is, "Would you tell me. . .," and the second is the actual information you want. Keep it simple and straight forward.

THE TEAM APPROACH:

- * Good guy/bad guy:
One person is more aggressive and the other more friendly.
- * One asks the questions and the other takes notes.
- * One leads the questioning and the other injects questions only when they see a line of questioning that needs follow up.



Don't invade the personal space of the individual being questioned?

- * Make them feel comfortable.
- * Emphasize that you are there to find the complete truth and that you do not have a hidden agenda to harm them personally.



Establish a rapport!

- * Be friendly
- * Don't be overbearing
- * Find an honest common interest that is off the subject to defuse the intensity of the experience. (e.g. compliment the decor, or share an anecdote on a common interest hobby, etc.)



NOTE:

Make it a point to show that you are recording their positive statements as well as those which may be at issue.

**BE FLEXIBLE TO
THE SITUATION
AND PERSONALITY
OF INTERVIEWEE**

**GOOD GUY/BAD
GUY APPROACH
OFFERS FRIENDLY
EAR UNDER
PRESSURE**

**DO NOT INVADE
THEIR PERSONAL
SPACE**

**USE THE TEAM
APPROACH**

**ESTABLISH
RAPPORT AND
KEEP IT GOING**

**EMPHASIZE THAT
YOU WANT THE
FULL TRUTH NOT
JUST THE BAD
STUFF**

BE FLEXIBLE

BE FLEXIBLE

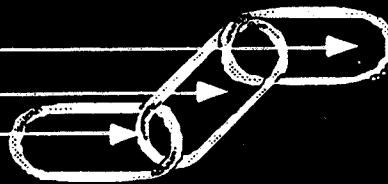
BE FLEXIBLE

BE FLEXIBLE

EVIDENCE THEORY AND PRACTICE

FOUNDATION AUTHENTICITY RELEVANCE

As you document evidence always think how the defense would attack these three evidentiary criteria.



All three must be present to establish a "fact" of evidence. Like the links in a chain, a weakness in one and the whole chain is useless. Foundation (F), Authenticity (A), and Relevance (R) are supported by the 5-W's previously discussed. If your case is developed properly it will go F.A.R.

FOUNDATION: *This is the argument that one piece of information leads to the next in a logical sequence.* It may be thought of as a pyramid of information. One piece building upon the other. For example, John Doe works at ACME Dumping. Mr. Doe operates the outflow valves at the discharge pipe. Mr. Doe stated that on the 3rd of March he was at his duty station when the valve sprang a leak and discharged untreated waste into the storm drain. Samples taken on the 4th of March indicated that high levels of the same material produced in the waste stream of ACME Dumping was in the storm drain.

AUTHENTICITY: *Means that the evidence must be demonstrated to be what it is claimed to be.* For example; is this really a representative sample taken from the settling pond at ACME Dumping?

RELEVANCE: *The evidence must pertain to the fact in question, tending to make the existence of the fact either more or less probable than would be the case without the evidence.*

Evidence and documentation are not the same thing. Documentation helps establish the who, what, where, when, why, and how of evidence, but it is not the evidence itself. Documentation helps establish the Foundation, Authenticity, and Relevance.

Who determines when Evidence is valid? The judge has final say regarding the admissibility of evidence. Under most circumstances the case reviewer will determine if there is enough evidence to proceed with case development and assess a penalty, but they can be overturned by the judge hearing the case.

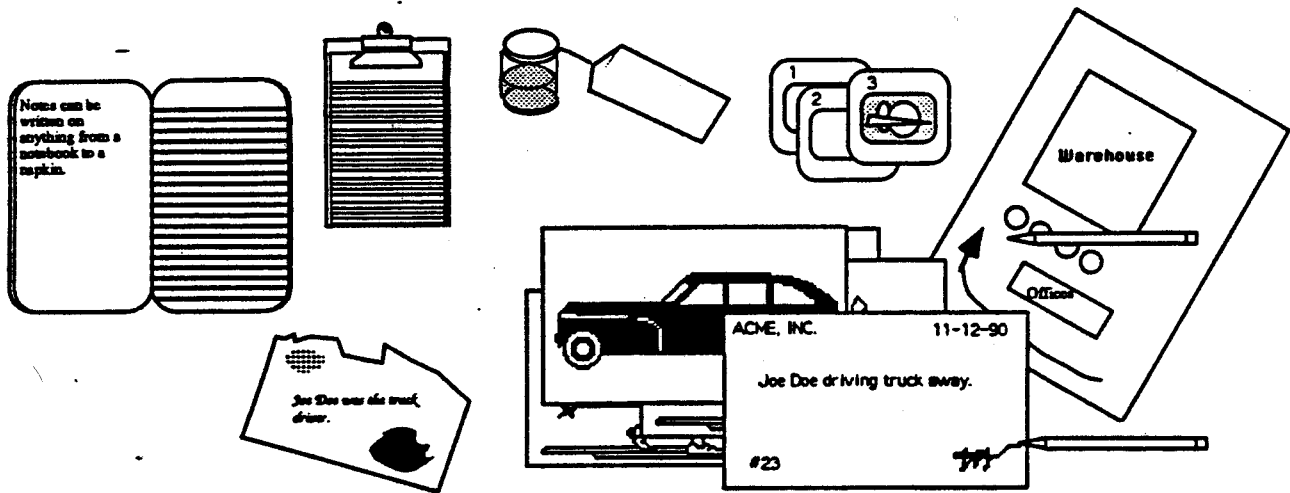
FOUNDATION,
AUTHENTICITY, AND
RELEVANCE (F.A.R.)
MUST BE PRESENT TO
ESTABLISH EVIDENCE.

DOCUMENTATION
HELPS ESTABLISH
GROUNDS FOR
ACCEPTING EVIDENCE

THE CASE REVIEWER
DECIDES TO BEGIN
ENFORCEMENT.

A JUDGE
DETERMINES
ADMISSIBILITY OF
EVIDENCE

DOCUMENTATION: The facts or what helps establish a fact.



Documentation is anything which helps establish the foundation, authenticity or relevance of evidence. It may also be the evidence itself. Photos, notes, samples are all examples.

It is the inspector's responsibility to keep track of all notes which contribute to their inspection report. Inspection *reports must be written "Near in time" to the inspection* but the report might not have all of the information which was recorded in contemporaneous notes. The notes must therefore be available for reference to support the report. It is not advised that notes be destroyed as long as litigation is possible. Imagine being a witness when the counsel for the defense asks you this question. *"Does the file contain all your notes or records related to the inspection?"* You would have to answer, *"No."* Now, how do you prove that there was nothing beneficial to the defense which you might have destroyed? If it was included, all it did was show how thorough and professional you were. *The report is documentation. If it is not written near the time of the inspection it will lose authenticity and therefore credibility as evidence.*

Chain of custody is imperative for all evidence, and documentation of that evidence. Notes, photographs, diagrams, sketches, samples, and copies of documents all require unbroken custody to insure that they have not been compromised. The inspector is usually responsible for the security of the original case documentation. It is likely that parts of the original file will become separated as other parties become involved with the case. For this reason the inspector should consider maintaining custody of all originals and only forwarding copies of those originals with the case file until the case approaches final resolution. A secure place for evidence should be provided for the inspector.

REPORTS MUST BE WRITTEN 'NEAR IN TIME' TO THE INSPECTION.

CUSTODY OF THE DOCUMENTATION IS AS IMPORTANT AS THE EVIDENCE.

NOTES SHOULD BE KEPT UNTIL THE CASE IS RESOLVED.

THE INSPECTOR IS RESPONSIBLE FOR THE ORIGINAL COMPLETE CASE FILE.

PHOTOGRAPHIC DOCUMENTATION: One of your most valuable tools

Is this photograph a true and accurate representation of what you saw on that date?

The above question is usually the only test given a photograph for a judge to determine its admissibility as evidence. That means that photography is one of the least challenged tools used to document any aspect of case development.

Photography is one of the best yet most poorly utilized tools in documentation. Some common problems are:

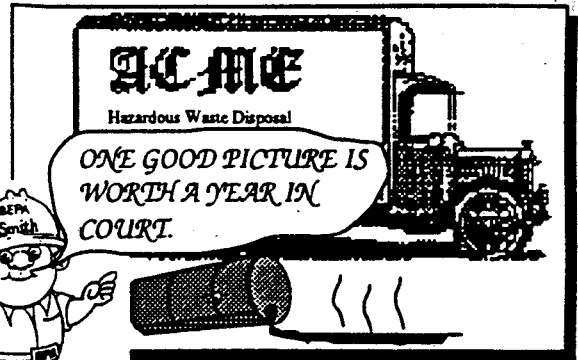
- * *Too few photographs*
- * *Poor quality photographs*
- * *Lack of identification of the subject/s in photographs.*

Common misconceptions are:

- * *Each photograph must have many burdensome kinds of detailed information about film, camera, lens, photographer, weather information attached to it.*
- * *The facility has the right to process the film.*
- * *The facility has the right to a copy of each photograph before releasing them to the agency.*
- * *A facility can deny the use of necessary photography without it being a denial of entry.*

SLIDES-PRINTS-POLAROID-VIDEO: They all have their place.

A sharp, clearly lit photograph is often only second to the inspectors personal observation of the subject when it comes to case winning evidence. An inspector/investigator is expected to be able to use photography skillfully and professionally. Carefully select your equipment and become proficient in its use. Each medium has its advantages and disadvantages. Polaroids can be messy and time consuming. Readily available Polaroid films do not provide a negative for future prints. Prints can be processed quickly at many one hour processing facilities, but printing the negative requires second party manipulation and subjective altering of the image to the eye of the print processor. Prints are easy to view when reviewing the report. Prints are difficult to make into slides and care must be taken to keep the prints and negatives under control. Prints must be enlarged if they are to be shown to large numbers of people, and prints are expensive. Slides are easy to store in a small area. Slides can be made into prints. Slides offer the finest grain for detailed enlargements. Slides can easily be shown to large numbers of people at a time. Kodachrome slides require special processing which can take up to a week. Ektachrome, Fujichrome, and Agfa films can be processed within 24 hours at local labs.



"Is this photograph a true and accurate representation of what you saw on the specified date?" This is the major test a photograph must satisfy to be entered into evidence.

Photographs are
excellent physical
evidence.

Take as many photographs as are needed to document every aspect of the potential compliance issue.

It is the constant complaint of attorneys that there were not enough photographs.

The inspector/investigator is obligated to become as proficient with a camera as they are sampling or using monitoring equipment.



Video photography is rapidly gaining popularity in enforcement documentation. It is instant, color, has real time high fidelity sound and is easily viewed. Hi-8 cameras presently weigh as little as 1.7 lbs. with features like tilting; super close-up, low light sensitivity; and zoom lenses in ranges from wide angle to 8X. The cost of the camera will range from twice to five times the cost of a mid-level 35 mm camera and lens, but 2 hours of video tape costs only half what 36 exposure print film costs for processing. Used alone or in conjunction with conventional still photography, video has a wide range of potential for compliance documentation.

BASIC PHOTO-DOCUMENTATION KIT

FOR 35 mm:

1. Camera (in good proven working order)
2. Extra battery for camera
3. Stroboscopic flash
4. Extra batteries for flash
5. Extra film (Outdoor and high speed indoor)
6. Post-its ® to identify the subject in the photograph
7. Notebook and pen

Extra equipment might include a wide angle or zoom lens which ranges from wide angle to telephoto. Enhancement is less of a problem than most people think, but you will need to understand the distortions caused by enhancing lenses. *Wide angle* lenses make things look farther apart. *Telephotos* compress distances and make things look closer together.

One commonly asked question is, "If photography is so important to documentation shouldn't a professional photographer be along?" The answer is a loud "yes". However, that professional should be you. You are expected to use sampling equipment, operate a vehicle, calibrate monitoring devices, and use many other things in a professional manner to document and report your findings. Photography is also a required skill with the same professional expectation.

Photography helps you remember:

A year or more after a site visit you may be asked to recall details about what you saw or did at a facility. Nothing will refresh your memory better than having numerous good photographs documenting your activities and the issues in question. At the same time, few forms of documentation convey information as convincingly as photography does.



On Jan. 10th, 1990, I saw an ACME Polluting truck loaded with 55 gallon drums stop at 1234 5th Ave. Goodbarva, WA. The driver got out of the truck and removed a drum. He removed the bung and dumped the contents onto the ground.

Good photo-documentation is an excellent way to stimulate your memory months or even years after a site visit.

Denial of the use of photography is grounds for denial of entry for the inspection.

The single greatest problems with photo-documentation is that there is not enough of it. Inspectors often try to describe an event verbally when a photograph would be far more accurate.

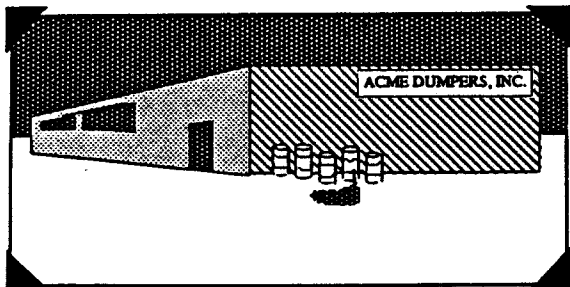
Video photography is a viable alternative to film photography.

Video offers color, sound, compactness and instant replay.

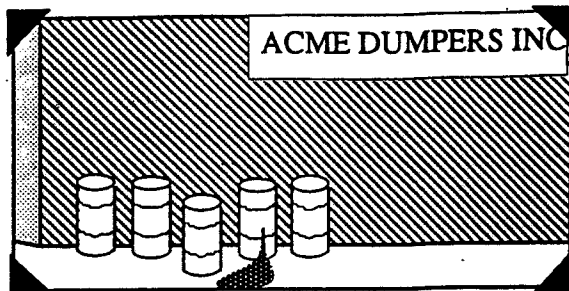
PHOTOGRAPHIC DOCUMENTATION: (Continued)



Photographic documentation should tell the story with as little need for narrative as possible. This is done by shooting series of **establishing shots** followed by **subject** and then **tight** or close-up photographs. The proper terms are the "establishing" or broad perspective shot; the "medium" or subject shot; and the "tight" or close up shot.

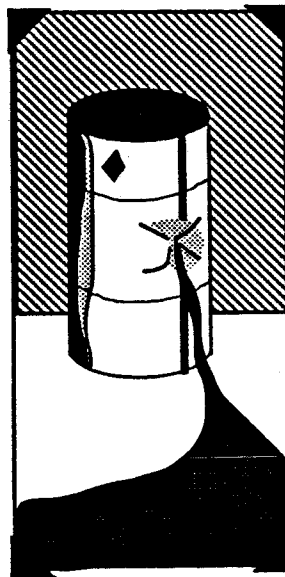


The "establishing shot" is a photograph taken from a distance which shows not only the subject but one or several permanent landmarks which can be used for reference in establishing the exact location.

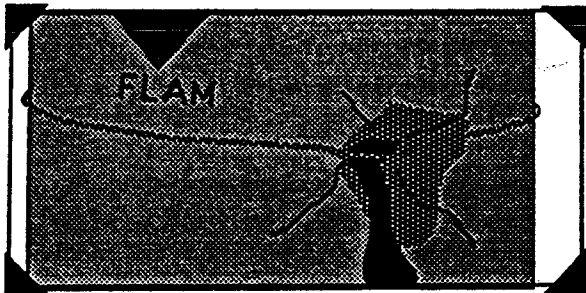


"Establishing shots" should show an identifiable landmark. It may also be important to show the compass orientation of the subject. (i.e. the drums were on the south side of the building.)

The "medium or subject shot" will emphasize a specific object or event. Sometimes it will be shot in series to view all sides. "Post-its" may be used to identify the item in the photograph. Numbers or identifiers on the "Post-its" can be recorded in the field log for reference and easy identification when writing the narrative report.



"Tight or Detail shots" should show the issue under review and/or enough information to identify the specific item or event in question.



Show the subject from as many angles as possible. Arguments will often be raised about what is not shown in the photographs.



RECORDS: Understand, find, copy, log, take

THE ZEN OF RECORDS REVIEW:

Inspecting records is an art.

The idea is to see if (1) the records required are present and maintained, (2) to substantiate compliance or non-compliance, and (3) to see if they are readily retrievable.

There are many kinds of records that are useful in a compliance inspection. The following is only a partial list:

Annual Reports	Production Records
Shipping records	Manifests
Inventory records	Sales Records
Process records	(invoices, records, etc.)
Quality control records	Permits (state, local, Federal)
Labels and literature	Exemptions
Disposal records	Operation records
Correspondence	Corporation
Self-monitoring records	Logs
Licenses	
Machine logs and data	

Primary records are the best evidence. These are the original records that are the source of other subsequent records. (For example monitoring data, logs, daily records, work logs, etc.)

As a minimum you should look for the following characteristics in the records you review:

- * Compare current with past reports for possible discrepancies or false reports. For example, is the ink still wet on a report dated 5 years ago?
- * Check for completeness and accuracy of required records and reports.
- * Ascertain compliance with record retention requirements.
- * Compare information contained in the records with firsthand observations: compare information in computer files or printouts with other handwritten documents.

ALL RECORDS OBSERVED THAT ARE RELATED TO COMPLIANCE SHOULD BE DOCUMENTED.

This should include who is responsible for keeping the records; where the records were located; and if the records were computerized; where the originals were located.

It is possible that you could end up in cross examination years later, trying to remember where you found the records that are the crux of an enforcement action.

The following is an example of an inspector under cross examination by an industry attorney:

"Where did you say you got those documents? They aren't ours. Ours are these nice legal ones kept in the regular operations file."

See the problem? If you could document that you took the document in question from the operations file things would look better. You should record the following information in your notes:

1. On each document:

- * Inspector's initials, code (such as "Attachment E"), and the date.

2. In the inspectors notebook or in the report:

- * What the document is.
- * Source of the document.
- * Physical location of the original document.

WHAT EVER METHOD YOU USE TO SELECT AND REVIEW THE AVAILABLE RECORDS, MAKE SURE YOU MAKE A NOTE OF WHAT THAT METHOD WAS.

1. Random sample
2. Judgement sample
3. Other method
4. Took copies of all

Would a company cheat on its records?

That depends. There are motives which some individuals may feel justify it. Some CEO's have gone to jail as well as received personal penalty judgements as a result of compliance inspections. There are numerous case histories where documents have been lost or altered to avoid compliance violations. You are to gather information showing the complete and accurate conditions. Make no assumptions.

RECORDS: Are fundamental to most compliance issues

1. Gain an understanding of the record generating system at the facility:
 - A. Why do they generate the records?
 - B. What do they do with the records?
 - C. Where do they keep the records?
 - D. Is their record keeping method accurate?
2. Use a system of checks and cross checks to verify authenticity:
 - A. Go to the site of record generation for some fraction of the record sample.
 - B. Go to the site of storage for some fraction of each of the records reviewed. (If you ever have to seek a warrant you may have to state where the records are kept.)
 - C. If you cannot review all the records you should choose a method which gives you the best chance of getting a representative sample. (e.g. random, judgemental targeting, total inventory review, etc.)
3. Copy all important records: Photocopies are usually available at even the smallest businesses. If that is not available you may choose one of the following methods:
 - A. Photograph the document with your camera.
Remember that white paper usually requires one full stop of overexposure to register accurately on film.
 - B. Make accurate notes on the nature of the document, its location, and then copy the document as accurately as time will allow. If the document is ever destroyed your notes become the most accurate remaining record of the document and may still be admissible in court.
4. Take copies of related records, such as:
 - A. There are records that are generated from other records. It is usually better to collect copies of the entire chain of information from its original generation to its final form. For example; a stack monitor may record data continuously. That data may be recorded on a monthly and then yearly log. The annual log may be the issue for compliance but the data that generated it is possibly even more important.
 - B. Some records relate to other records in different ways. For example manifests indicate that something was shipped. If there were no records that something was generated, why is there a manifest that something was shipped? Another example might be purchasing records. If production output was "X" amount in January and "Y" amount in February but the purchasing of constituent products was the same, why was there a difference and where did that difference go?

**LEARN THE
COMPANY'S
RECORD KEEPING
SYSTEM**

**VERIFY RECORDS
WITH CHECKS AND
CROSS CHECKS**

**TAKE COPIES OF
ALL DOCUMENTS
IMPORTANT TO THE
CASE**

**NOTE LOCATION OF
DOCUMENT
STORAGE**

**REVIEW RECORDS
USING AN
APPROPRIATE
SYSTEM**

SAMPLING: When, why, how

If you can't maintain Quality Assurance (QA) and Quality Control (QC) you shouldn't take the samples at all. Each sample must be supported with documentation providing the 5-W's and that key word How. Without that documentation it will be impossible to establish the three criteria (FAR) for evidence admissibility.

When or why should I take samples? The first call on that is the lead person in the field. . . you!

- * **When** to sample is determined by the best chance to obtain a representative sample.
- * **Why** a sample is taken is more subjective. It is initiated if there is a lack of confidence in available data or because of incomplete data at the facility or home office.

Sample documentation centers around three prime issues: representativeness, tracking and methodology:

- * Was the sample representative of what you needed to evaluate for compliance? Does it represent a specific waste stream, site, event or activity?
- * Can you prove where it came from, where it went, what was done to it, and that there was not an opportunity to compromise the sample along the way through your tracking documentation?
- * Was the correct methodology followed to insure that your sample was (1) taken properly for the substance in question, and (2) the proper analytical method was used to make an accurate evaluation of its presence.

What are some of the tools used to accomplish thorough tracking?

- FIELD LOG OR NOTEBOOK
- FIELD PHOTOGRAPHY
- FIELD LAB DATA SHEET
- SAMPLE NUMBER
- SAMPLE LABELS
- ANALYSIS REQUEST
- QAPJP
- SAMPLE PLAN
- CHECK LISTS
- FIELD GENERATED DIAGRAMS AND MAPS
- CHAIN OF CUSTODY
- LAB SAMPLE TRAFFIC REPORT

THE QAPJP IS SIMPLY THE RECIPE THAT EXPLAINS HOW THESE TOOLS WILL BE USED.



If you can't assure QA/QC you shouldn't sample.

Documentation must prove QA/QC existed so that F.A.R. criteria are established and the sample may be entered as evidence.

The lead compliance inspector has the call on when and why a sample should be taken.

The three areas of sample documentation are:

- * Representativeness
- * Tracking
- * Methodology

Sample when it will be the most representative.

Sample because you don't trust the data or there isn't enough data.

SAMPLING: When, Why, How (Continued)

WHAT AND WHY YOU ARE SAMPLING WILL DETERMINE THE METHOD YOU SHOULD USE

Your QAPJP and Sample Plan are the ties to these important criteria.



How to sample is firmly established by Agency protocols and traceable to National and International standards.

Deviation from those protocols may mean inadmissible sample evidence and a waste of time and effort.

The QAQC (Quality Assurance Quality Control) program office will help you put these plans together.

There are many confusing terms used in the various programs which relate to the same general issues. It is the inspector/investigator's responsibility to keep track of his/her own objectives and translate those objectives into the jargon of each media. Help is available from the QA office.

Precision and Accuracy are terms which have enormous impact upon QAQC, the lab, media programs, and enforcement; however, they tend to take on a broader relevance outside of the inspection itself. The inspector knows that for a particular substance 1,000 ppm is the action point for enforcement, yet the methodologies may address data in + or - percentiles, and accuracy is often in parts per trillion, or billion increments.

The Quality Assurance Project Plan (QAPJP) is the overall recipe for legally supportable activity with subsets that can be made to cause data translation to the language required for enforcement and eventual referral to the Office of Regional Counsel (ORC). Even the best and most experienced field investigators have trouble with these translations from time to time. A major function of the QAQC program office is to assist the project manager (i.e. inspector) in assigning tasks and setting all sample parameters and language for reporting data. They can help you select appropriate methodologies and practices.

Is there a bottom line to all this? There sure is. **The Project Manager (i.e. inspector) is responsible for generating a viable package for referral.** That means you are the client. QAQC, ORC, and the media program office should support you in the field and assist in helping you to generate the most supportable data package possible. **Take and keep control. Manage the referral package development until you pass it on.** Never boiler plate something you don't understand. Ask questions and request answers from the specialists with information relevant to your goals. **It will be your signature on the QAPJP and you on the stand should the case go to trial.**

The Project Manager (PM) is responsible for QAQC. The PM is accountable for the technical accuracy and legal supportability of the entire referral package.

The QAPJP is the recipe for all technical activities. It must be technically accurate and legally supportable through ties to policy and established standards acceptable to a Judge.

What and why you are sampling will determine the method you should use. It is the PM's responsibility to assure that the correct methods are selected and documented satisfactorily.

The QAQC office should be able and willing to assist the PM in developing the best methodologies to insure appropriate and technically supportable data.

The PM's name is on the bottom line. They will have to take the stand in court to defend all activities. Take charge and know what you are doing.

THE CLOSING CONFERENCE

CONFIRM YOUR OBSERVATIONS:

Part of your job may be to inform the regulated community as well as make observations related to compliance. Before you can make suggestions you should make sure there is a full understanding of the subject matter. Review what your observations were and request any clarification that might offer a more complete or accurate picture of the event or subject. Refer to the regulations and your opinion without making judgements. The fact that you made this request now, will be important if new material is provided by the facility in settlement at a later time. It is not uncommon to hear statements by the opposing counsel like: "The inspector did not indicate that this was a problem or my client would have provided this information"; or "If the inspector would only have been more thorough he/she would have seen that we were in compliance."

It is as important that you document the thoroughness of your procedures as it is to document the thoroughness of their's.

IT IS NOT THE INSPECTORS ROLE TO MAKE COMPLIANCE DETERMINATIONS TO THE FACILITY.

There are two primary reasons for this: *The first reason* is based on ethics. The inspector is the "witness of fact" and not the "program compliance case reviewer." Making compliance determinations does two things; it places the inspector in the position of being the cop and the judge, and it opens a wide door for emotional or personal prejudice which a system of division of rolls can easily correct.

The second reason is practical. Either the program or counsel may determine that there is inadequate documentation for a case referral. In this instance you may have caused unjust expense to the facility who responded to your statements. Your notification to the facility may also be overturned. Your unilateral decision in the field may limit the decisions available to the agency. If you told the facility "There were no problems" and the agency determines that there were, the agency might have to mitigate their decision considerably based on your statements.

Remember, it is the inspectors role to be the "witness of fact." If you wear another hat and also determine compliance, make sure you take the inspector's hat off first. It is very easy for feelings to sneak into the job. Wherever possible we must reinforce total objectivity with different roles and different jobs.



It is almost never a good idea to say 'This is a violation' or 'There were no violations.'

**REVIEW AND
CONFIRM YOUR
OBSERVATIONS:**

**REFER TO THE
REGULATIONS BUT
AVOID DRAWING
CONCLUSIONS:**

**IDENTIFY ANY
MISSING
INFORMATION:**

**STATE HOW LONG THE
FACILITY HAS TO GET
INFORMATION TO
YOU:**

**IDENTIFY WHO
SHOULD PROVIDE THE
INFORMATION AND
WHO THEY SHOULD
PROVIDE IT TO:**

REPORT CONTENT AND STYLE

Write the report as you did the inspection.

- 1. I did this...**
- 2. I asked Joe Dokes...**
- 3. I sampled the...**
- 4. Mary Dokes said...**

Style is often interpreted as discretionary by various program offices. In the court room style is strictly "first person singular." If your office insists upon passive tense such as "it was determined" rather than the active "I determined," they should consult appropriate experienced counsel. The less translation between the report and testimony, the better.

Good reports are not great prose. Good reports are a narrative of what happened during a specific event in time. Clarity is far more important than sounding academic.

Avoid unnecessary or "cop talk" jargon. Say "Joe Dokes got out of the GMC truck," rather than, "The perpetrator exited the vehicle."

Avoid drawing conclusions. Write the facts in such clarity that the reader can draw their own conclusion. "Joe was very hostile," is a conclusion. "Joe began swearing and punching holes in the wall," is a statement of events from which the reader can draw their own conclusions.

Avoid making assumptions. "I determined that the records were acceptable after a review of several examples." The most you can say is that in your opinion, the specific records reviewed appeared acceptable to you. In most cases you should take example copies of those records and also allow the program to review them and make a determination.

Write the report as you did the inspection.

Writing the report in "First Person Singular" prevents explaining in court.

Good reports are accurate narratives of events and not intended to be great prose.

Avoid drawing conclusions in your report.

Avoid making assumptions.

REPORT CONTENTS: The 5-W's

The following outline has been generally accepted throughout the program offices of EPA Region 10 and the Office of Regional Counsel.

HEADING: This would include the type of inspection, site name, and date of the inspection.)

FACILITY ADDRESS: Corporate or head office address.

SITE ADDRESS: Exact location of site inspected.

INSPECTION TEAM: Leader and all members of the inspection team. Name, position or title, and telephone number.

SITE CONTACTS: Name, position or title, and telephone number.

INSPECTION PURPOSE: Compliance inspection, audit, sampling, etc. and the authority for the inspection.

HISTORY: This includes compliance history, and the history of the facility or site.

INSPECTION TIMES: The hour, day and year for the inspection. (e.g. 2-19-1991 @ 0800 hours)

OPENING CONFERENCE: Who was shown your inspection credentials; all persons present; titles or positions; what was discussed (i.e. scope and timing of inspection events); specific arrangements; if entry was granted or denied.

FIELD INSPECTION: Narrative of field inspection and observations. Where did you go or not go if it was relevant. What did you see. Documentation.

RECORDS INSPECTION: What was reviewed, copied and taken. Where were the records and who was in charge.

CLOSING CONFERENCE: Who was there? What was discussed? What was agreed to?

SAMPLES: Were samples taken? Of what? Where there splits?

COMPLIANCE CONCERNS: Stated as your opinion only. Regulations should not be cited in the report but may be suggested in an "enforcement confidential" memo to the program chief or attorney. Some attorneys have strong feelings against the inspector drawing any enforcement conclusions at all because it may complicate Agency's discretion.

ATTACHMENTS: List and identify all notes, documents, photos, notices, and documentation.

SIGNATURE: It's your report so sign it.

WHAT IS IT?

WHERE DID YOU DO WHAT?

DID YOU PROPERLY IDENTIFY YOURSELF?

WHO LET YOU DO IT AND WHO DID YOU DO IT WITH?

WHAT EXACTLY DID YOU DO AND SEE?

WHAT RECORDS WERE REVIEWED, COPIED, OR TAKEN?

DID YOU REVIEW YOUR FINDINGS WITH THE FACILITY AND LET THEM RESPOND?

WHAT IS ATTACHED TO PROVE WHAT YOU DID OR SAW?

SIGN IT!

REPORT WRITING: Words and Phrases to avoid

So why is it so important to avoid some words and phrases? They are either beyond the knowledge of the inspector, they are ambiguous, or they are not substantiated or supportable by documentation. They can limit the choices open to the agency by seeming to pre-judge the issue by drawing a conclusion. They can also be so vague that they do not answer the who, what, where, why, and how questions your report must address.

1. "ALL," is so absolute that any exception can throw the issue into question. For example don't say you saw all the records. You might be able to say that you saw all the drums in the storage area with more confidence.
2. "Always," again is an absolute term. Always does not allow for an exception, and exceptions usually exist.
3. "Never," is also an absolute term. One exception and you may have trouble.
4. "Violations," as in there were violations, or that was a violation, is reaching a conclusion. Rarely should the inspector also be the one who determines if there is a violation. What if you were wrong. The company could sue you for expenses or damages. You may not have supplied enough credible documentation to substantiate the violation. You would be making an institutional decision without using the system of checks and balances built into the program.
5. "No Violations," is also reaching a conclusion. Changes in interpretations can alter whether action is possible or not. Only the appropriate counsel may know recent court decisions.
6. "It Was Determined," is vague and doesn't say who determined. If you made a judgement call say so. "I determined that the transformer was leaking because dielectric fluid was flowing from a hole in the side." If you reach a conclusion make sure that (1) you are qualified to make that determination, and (2) you document it well enough that others can reach the same conclusion.
7. "They Said," is also vague. Who said? I said. Joe said. The woman in the red dress said. These are far more specific and who said what can be critical to a case.

The report should clarify information. It should also simplify, so that readers less qualified than the writer can reach their own conclusions. Avoid unnecessary high tech language. Judges or attorneys seldom have engineering or chemistry degrees.

AVOID USING THESE WORDS AND PHRASES:

'ALL'

"ALWAYS"

"NEVER"

**"VIOLATIONS"
OR
"NO VIOLATIONS"**

**"IT WAS
DETERMINED"**

"THEY SAID"

THE INSPECTOR AS A WITNESS

INSPECTORS WHO BUILD GOOD CASE FILES TEND NOT TO HAVE TO GO TO COURT.

Those cases with strong *documentation of evidence* tend to be settled without the added expense of a lengthy defense. But being an inspector is a life of exceptions. Some will contest the allegation regardless of your efforts.

Under most circumstances the inspector will be called as a "*fact witness*" to testify about what they have personal knowledge of through their five senses. Your "*foundation*" for having that knowledge will be established prior to your testimony.

The three most common attacks on a witness are *competency, credibility, and impeachment*. The following is a brief discussion of each:

- * Competency is determined by the judge and done on a case by case basis. If you actually take the stand you are probably competent.
- * Credibility refers to your worthiness for belief. Here the defense has a chance to peck at you on the stand. Were you qualified to make the observation? Is there any reason we should not believe what you said actually happened? There are many subtleties here. A lack of composure under fire can tarnish your credibility in the view of a jury or hearing judge. *Do not elaborate beyond your direct knowledge* or you open a Pandora's box for the defense.
- * Impeachment is what happens when the defense detects a flaw in your testimony. The job of the defense is to assault that think in your credibility until it looks like a chasm to the trier of fact (judge). *Stick to what you know.*

Sounds intimidating doesn't it? It should not be. Everyone has their role. Stick to yours. The defense should be aggressive in attacking the evidence or who has obtained it. *There is help, your counsel.*

WELL DOCUMENTED
CASES TEND TO
SETTLE OUT OF
COURT.

THE INSPECTOR WILL
USUALLY BE A "FACT
WITNESS."

THE JUDGE
DETERMINES
COMPETENCY OF THE
WITNESS.

THE DEFENSE IS
SUPPOSED TO ATTACK
THE PROSECUTIONS
CASE.

STICK TO WHAT YOU
KNOW AND DON'T
ELABORATE.

HOW TO BE A GOOD WITNESS: *MAKING THE BEST OF A TRYING SITUATION*

PREPARATION BEFORE GIVING TESTIMONY WILL HELP ESTABLISH ROLES AND COMFORT.

You are always to tell the truth. Your attorney should prepare you for taking the stand or giving a deposition. Your attorney should review the strength and weakness of your knowledge to refresh your memory and also to make you more comfortable with the court proceedings. Your attorney should review the questions they intend to ask and may review your answers as well. In contrast the defense may try to create doubt or insecurity in the witness' mind by asking the question, "*Did you discuss this with your attorney before you came here?*" As if there were something wrong with it. There isn't. You would answer "yes." The defence might then ask you, "*Were you told how to answer?*" Your answer would be, "*I was told to tell the truth.*"

DON'T VOLUNTEER INFORMATION AND KNOW WHEN TO SHUT UP.

The more you say the more chance the defense has to find an area of weakness. **DON'T RAMBLE.** Answer only the question put to you and then shut up. A common problem is to answer a question which is anticipated but has not been asked. You may think you know where the defense is going but they may have another agenda or may not have thought of the issue at all. They may not have thought of the question at all and there you are volunteering an answer. What you may have brought up, may or may not be relevant and can take days and even weeks to deal with.

If you don't understand a question you should **PAUSE AND THINK** about it. You may ask the judge to allow you to refer to your field notes, photographs, inspection report or ask that the question be repeated if you need to. You cannot answer a question you do not fully understand. It is usually permissible for you to ask for rephrasing or that a complicated or compound question be broken up. Some aggressive defense counsels may press you for answers by establishing a rhythm of easy yes or no questions and then abruptly change pace with a complicated question in hopes of getting a poorly considered answer or compromising your composure. Simply pausing before you answer will allow you to reflect and maintain your demeanor. Don't let the defense counsels silence motivate you to ramble. Leading questions, intimidation, assaulting your credibility, or twisting interpretations are all counsel techniques which have ethical boundaries. However, some defense attorneys may tend to test these boundaries if they find that they are working to their clients favor. Don't allow any action by the defense to affect your emotions or behavior. Your attorney is allowed to object to possible breaches of protocol and your calm composure will only reflect your professionalism.

Trials are by nature adversarial, recognize it, stick to what you know, and answer only the question put before you. Not all defense attorneys are as aggressive as just described. Remember you are there only as a **WITNESS OF FACT**. Relate what you did and what you know and always **TELL THE TRUTH**.

TELL THE TRUTH!

**STICK TO WHAT
YOU KNOW.**

**ONLY ANSWER THE
QUESTION THAT WAS
ASKED.**

**KNOW WHEN TO
SHUT UP.**

**YOU MAY REFER TO
YOUR NOTES,
PHOTOS, AND
REPORTS TO REFRESH
YOUR MEMORY.**

**YOUR ATTORNEY CAN
HELP YOUR PREPARE
TO BE A GOOD
WITNESS.**