The background of the cover features a close-up of evidence tags and a yellow box. A prominent red tag with the text "SECURITY SEAL DO NOT TAMPER" is angled across the middle. Other tags in white and yellow are visible, with some text like "SEALED" and "PERSONNEL" partially legible. A yellow box is in the top left corner.

Principles of Investigative Documentation

Second Edition

Philip Becnel

Scott J. Krischke

Alexandra K. Becnel

PRINCIPLES OF INVESTIGATIVE DOCUMENTATION

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Second Edition

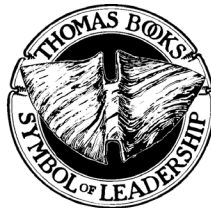
PRINCIPLES OF INVESTIGATIVE DOCUMENTATION

By

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*This book is dedicated to Philip V, Ava, Wyatt,
Grant, and to future investigators everywhere.*

PREFACE

I testified as an expert witness against a private investigator sued in a civil action by his former client, who alleged fraud, breach of contract, and unjust enrichment. The case involved the unsolved murder of the client's husband, Jungkook G.¹ Pledging to solve the murder, this investigator enticed the victim's widow to pay for two trips to Korea, where he allegedly procured a notarized confession from one of the killer's accomplices. The investigator then induced his client to pay several large, cash bribes, which he claimed were to lure the accomplice back to the United States. A U.S. police detective deemed the confession a forgery. The private investigator, who maintained his innocence, was indicted by a grand jury for multiple counts of obtaining money under false pretenses and for obstruction of justice.

In addition to the criminal case, the investigator's client sued him in civil court. The widow's attorney hired me to evaluate how this private investigator had documented his case so I could determine whether his actions fit the prevailing standards of how an investigator should conduct a homicide investigation under similar circumstances. This point was germane to the issue of the confession's authenticity.

Upon reviewing the investigator's documents, I found he breached the prevailing standards in two broad aspects. First, his actions did not comport with the stated goal of solving a homicide and bringing those responsible to justice. Second, I found the way he documented this case woefully inadequate for any investigation and particularly for a case purportedly aimed at solving a homicide.

My first finding is beyond the scope of this book. But the second finding, which proved instrumental in this case, illustrates precisely why this book is so important. Here are two redacted passages from my report that was introduced at the civil trial:

¹ I changed most of the proper names in this book, even though the examples are either public or we were given permission to use them.

Handwritten notes, some written in Korean, reportedly collected as part of a search of [the investigator's] home support my opinion that his documentation was extremely lacking. His notes, some of which contain apparent references to the instant case, demonstrate a general awareness of the need to document an investigation. For example, he indicates mileage and time spent on various tasks in the margins. However, his case notes are written on pages that include non-case related notations, which indicates . . . he had no expectation they would ever be needed in court.

And the second passage:

For a homicide investigation—particularly given the amount he billed to [the client]—the lack of documentation is shocking. For example, there are no reports or statements detailing his interviews of [a key witness] or [the alleged accomplice], just his verbal accounts given to the client and the one-page statement from [the accomplice], which is in dispute. Any reasonable private investigator, upon learning of a person's involvement in the murder they are investigating, would have immediately considered ways to document that evidence so that it would later hold up in court. This might have included recording conversations with the witnesses, for example. At the very least it would have included writing detailed reports about specifically what they said.

As a result of my testimony and other evidence, the investigator was found guilty on the civil fraud count and his former client was awarded a sizable judgment. He was later acquitted at his criminal trial, where I did not testify and where there is a higher evidentiary standard. The above passages demonstrate two ways not to document an investigation, errors we strictly warned investigators against when we wrote the first edition of *Principles of Investigative Documentation*. There were other documentary sins in this matter, but you get the point: Ignoring this book's advice is an invitation to have someone like me eviscerate your case.

In the years since this book's initial publication, my co-author, Scott Kriskke, and I have continued to build upon the principles outlined in the first edition. Scott worked as a staff attorney for the Legal Aid Society of New York City and is presently at the Federal Public Defender for the Eastern District of Missouri in St. Louis, where he represents defendants facing serious federal criminal charges. For the second edition, we tapped my wife, Alexandra Becnel, to co-write some of the new sections. Before becoming a

partner at my firm and attending the University of Baltimore School of Law, where she was the Editor-in-Chief of the *University of Baltimore Law Review* and a Maryland State Bar Business Law Fellow, Alexandra worked as a mitigation investigator for the Northern Virginia Capital Defender Office. At our firm, she focused largely on post-conviction criminal investigations.

I remain the managing partner of Dinolt Becnel & Wells Investigative Group LLC in Washington, D.C., where I am in the enviable position of choosing my own cases and working with some of the most talented investigators in the country. A sizable portion of my personal caseload includes insurance claims and civil litigation, but I maintain a strong interest in criminal defense, particularly murders, sexual assaults, and other serious felonies.

Our common denominator is a passion for criminal defense. Our career trajectories have all veered toward high-stakes cases that require meticulous documentation, and (particularly for Scott and Alexandra) public service and representing underdogs. Doing this work, we have all witnessed horrifying instances of wrongful convictions, invariably brought about by a missed or hidden piece of evidence, or a mischaracterization by the prosecution that the defense was unable to debunk until it was too late. These experiences lead us to conclude that proper documentation matters most in criminal cases, and that a book about documenting investigations would serve the greatest good by focusing on the rights of those accused of crimes. Failing to properly document any investigation might get you sued or indicted, as demonstrated by the wayward private investigator who coaxed his client to send him on boondoggles to Korea. But botching the documentation in a criminal defense investigation could put an innocent person in prison, or worse—death row.

This is not to suggest that the second edition deemphasizes the importance of style and the marketability of reports in civil, insurance, or other types of investigations. As I have written repeatedly elsewhere, reports are the primary, tangible work product of an entire case. Distilled to its essence, a private investigator's job is the business of selling investigative reports to clients. Time-tested procedures ensure the accuracy of the information we gather. Professional polish bolsters the credibility of what we convey to our clients. We best demonstrate these qualities through flawless presentation. To put it another way, accuracy and credibility always matter—but they matter most when someone's life is on the line. Although Scott, Alexandra, and I have chosen to refocus the second edition on criminal defense investigations, where proper documentation is most important, the principles herein remain the benchmark of how to document any investigation in the private sector. They are the prevailing standards, the basis by which your own work may someday be evaluated for its efficacy. Take heed.

INTRODUCTION

Documentation is the key to successful investigations. What you do as an investigator is only as good as what it communicates to your clients. The significant skills necessary to do an interview, a background check, or surveillance are alone insufficient to do a competent investigation. Without

proper documentation, the evidence gleaned during an interview remains unactionable and therefore largely useless. You must view every action undertaken during an investigation—every database search, every question, every response, every observation—as something you may have to testify about later. To buttress testimony, you must adhere to the *Principles of Investigative Documentation*. Although I may have coined the title of this book, I did not invent these principles; they emerged from the evolution of private investigations over a century. Because clients and courts do not allow you to hit a restart button when it comes to documentation, once you prepare a report and share it with your

client, it is impossible to take it back. The documents you prepare instantly become inextricably bound with the evidence they purport to describe. Although most of your work as an investigator takes place outside of the courtroom, your effectiveness lives or dies the first time you take the stand.



Investigators, like otherwise normal people, have different skills and deficits. Some are poor communicators, but I believe it is possible to teach almost anyone how to at least appear like an adequate communicator through documentation. You can do this by creating a clear standard, a uniform style, and a common guidebook for generating reports and packaging information. Part of this standard includes templates and reference tools to ensure every report and statement is consistent in style and meets the same standards. Another component is subjecting all investigative reports to editorial review before the client even reads them. But the most important thing to improve the quality of your documentation, and thus fooling everyone into thinking you truly are a good communicator, is to develop daily habits built on a foundation of sound business practices.

Good communication begins with better notetaking in the field and with an almost epistemological self-reflection when you step back from the subjects of your investigation. In this book, I counsel you to take notes about everything and to keep a running resume—a chronological journal about everything that happens in your case. Notetaking and reflection enhance accuracy. Running resumes ensure nothing gets missed. Templates, guidelines, and an editor make your reports consistent and free of grammatical and substantive errors. A report reflects the professionalism of the investigator who prepared it and the quality of the investigation. Clients will trust the content of your reports and statements because their style, format, syntax, grammar, and punctuation are meticulous. Judges and jurors will trust your testimony because you are amply prepared; your documentation covers all conceivable angles of the case.

One impediment to communication is that investigators—like everyone—sometimes get entrenched in their ways. This may be especially true of investigators who learned how to document their cases while working in law enforcement, where the pressure to produce flawless reports is less than in the private sector. I first wrote this book to guide the documentation practices for the investigators at my firm, Dinolt Becnel & Wells Investigative Group LLC. The manuscript blossomed from a quarter-century of experience fretting over the best way to document our cases. Again, I did not invent these principles—but that does not mean they are easy to find codified elsewhere in the hundreds of books written over the years about how to do investigations. While it is true law enforcement agencies train their officers on how to employ their agencies' unique styles and formats, these policies tend not to transfer well into the private sector, because the purpose and many of the rules of law enforcement are not the same as for private investigators.

Law enforcement officers are taught specific language to use to support their actions in each circumstance. In my experience, they often use the same phrases repetitively, no matter the nuances in each case. A police officer will

still have a job, even if they habitually mix up past and present participles, but a private investigator in the United States who does not have a firm grasp of the English language will not succeed for long. In any event, I never had the benefit of law enforcement experience, and nobody ever took me aside at the beginning of my career and showed me the best way to take notes, how to keep a running resume, how to write reports, or how to take a statement from a witness. I learned these things largely by watching how other investigators documented their cases—and I also learned about the perils of sloppy documentation practices the hard way, by having to testify in my cases and explain the outcome of my investigations in minute detail under the terse questioning of opposing counsel.

I recall once having to testify to impeach the key government witness in a murder case I worked for the defense. In this case, I failed to put a period or any other type of delineation between the following phrases, which were written on three separate lines in my notes:

May have been shooter
Unsure
Read entire statement

In an earlier statement, the witness had sworn under oath that the defendant was not the shooter. The prosecutor, given a copy of my notes, seized on the ambiguity of whether the word “unsure” referred to the line above it—whether the witness was unsure the defendant was the shooter (which is what I meant to write and what the witness actually said)—or the line above it, implying I, the note-taker, was unsure whether the witness read the entire statement he had earlier provided to another investigator. I was grilled at length on the issue, essentially the crux of the case, all because I failed to use a period after the second line. Thankfully, the defendant was acquitted regardless, so my sloppy notetaking did not have the consequence of sending an innocent person to prison—but after that unpleasant experience, I always pay attention to every detail, including punctuation marks.

As my firm grew and we began hiring investigators, I passed my knowledge of documentation along to my partners and associates, and this too was often a matter of trial and error. I quickly learned that great investigators are not always great writers. I had to figure out ways to make sure the reports my investigators produced met the same high standards I had for my own reports. I also needed to help my investigators avoid some of my same, earlier mistakes.

Most of the chapters in the first edition were the result of finally writing down everything I came to expect from my investigators as far as notetaking, keeping running resumes, writing reports, and document retention. I also did

extensive research on investigative documentation in general before I chose to write this book. I thoroughly reviewed the documentation guidelines used by the FBI to look for ways our firm's guidelines could be improved, and I solicited feedback from attorneys and other seasoned colleagues to gather their input about these topics.

However, the seed for the first edition of this book was planted as a short style guide prepared by one of my staff investigators, Scott Krischke, who eventually moved to New York to become an attorney, but who remained with our firm as a contract editor while in law school. Scott's style guide included things like when to capitalize titles and how to properly write numbers in reports. Before joining our firm, Scott worked as a journalist, so much of the information in these guidelines came from the Associated Press style. When it came time to write this book, it seemed only natural to invite Scott to be my co-author and to add some of the things he learned about documenting investigations from his work with our firm, in law, and in his positions in journalism. I included Scott's original style guide in the first edition. Most of it remains in the second edition, along with some updates. You can find it in Appendix A.

For the second edition, I broke the book up into three parts. Part I includes an overview of the Five Principles of Investigative Documentation and a discussion of several misconceptions pertaining to documentation. Society changed a great deal in the decade-plus since we first wrote this book. One example is how we write about race and gender, an area of much debate and flux. I came to understand that, because language constantly evolves, lists and other supposedly immutable rules risk becoming obsolete before we have time to write a new edition. In the second edition, I included a chapter on race and gender to address these issues. The rationale for how and why we choose to write things the way we do has largely been lost over the years, so I decided we must periodically reassess, to ensure we keep in step with the prevailing norms.

In Part II: Legal Issues, I added some new legal and other concepts Scott gleaned from his experience as a public defender and that Alexandra Becnel, our new co-author (and my wife), picked up from law school. These new topics include Chapter 4: Real Evidence and Chapter 5: Hearsay.

These chapters set the stage for the information that follows in Part III: Documenting in Practice, where I delve into notetaking, running resumes, reports, statements, and document retention. These chapters will be familiar to readers of the first edition, as they form the practical application of the *Principles of Investigative Documentation*. As before, every chapter is broken down into four or five sections detailing the methods used to complete each documentary endeavor. In the second edition, I added anecdotes from my real-world cases to illustrate the points in each chapter.

It is worth drawing special attention to Chapters 10 and 11. Chapter 10: Statements, was taken largely from my first book, *Introduction to Conducting Private Investigations*. I first learned how to take verbatim written statements from one of my business partners, Brendan Wells, who has since moved on to become a senior investigator at the Federal Public Defender for the Eastern District of Missouri in St. Louis, where (by complete coincidence) he and Scott now work together. I honed my skills obtaining declarations and affidavits over the years from work done both in civil litigation, insurance fraud, and criminal defense cases. As my caseload shifted more toward insurance cases in the past several years, my statements are now increasingly more likely to be audio recordings. We reworked Chapter 10 to fit in with the format of this book and to add information about audio-recorded statements.

Of all the chapters in the second edition, Chapter 11: Document Retention got the most revision. This was always a tricky chapter to write because the rules for document retention vary widely from one jurisdiction to the next—and because they depend on the outcome and status of a case. In the first edition, I outlined a system of maintaining records for a minimum of five years with a few major caveats, the most significant of which were detailed in a section entitled, “Be Mindful of Special Ethical Concerns in Retaining Criminal Defense Records.” Shortly before we published the first edition of *Principles of Investigative Documentation*, a capital defendant, on whose initial case I was the lead fact investigator, was sentenced to death. Almost 10 years later, the man’s sentence was reversed on appeal. My notes, running resume updates, reports, and the statements I generated over a decade ago became central to his new, non-lethal sentence.² Of course, I maintained every scrap of it, which was integral given the seriousness of the case. In good conscience, Scott, Alexandra, and I decided that, to avoid even the possibility of confusion, we would make the exception the rule. Chapter 11, therefore, is written from the standpoint of criminal defense, but allows for more lenient document retention policies for certain other investigations.

Beyond the book’s three main parts, the second edition maintains an exhaustive set of appendices designed for easy reference. We have included several examples of my firm’s own reports—with names and other information changed to protect confidentiality. Investigators may use these reports as templates for their own reports or modify them to fit their own styles. Appendix B includes an alphabetic investigator’s uniform stylebook, based on principles established at my firm and incorporating styles utilized by the Associated Press and federal law enforcement agencies that many investigators will find useful.

² Alexandra was a mitigation specialist investigator, and I was a fact investigator on his new sentencing. He was spared from execution and sentenced to life without the possibility of parole.

This stylebook provides a quick tool to look up commonly referenced style guidelines, like abbreviations, names, capitalization, and numbers. Finally, we have included several sample statements and declarations in Appendix C and D to show what these documents are supposed to look like.

Some of our decisions on word choices and other issues have admittedly boiled down to aesthetics or how other investigative entities have opted to dictate their style, but primarily, we made these types of decisions based on a desire to avoid confusion and maintain consistency, professionalism, and sensitivity in our reports. This is not to claim that ours is the best or only way of doing things—but I do believe strongly that the guidelines in this book are the best way of doing things at my company—and that other private investigation firms and public defender offices will learn a lot by the great importance we place on perfecting our documentation practices.

One final note before we move on: this is not a book about how to do an investigation. There are better resources for that elsewhere. This is an advanced book on investigative documentation for people who already have the skills necessary to do a professional investigation. I have assumed that readers will already know how to do an interview, search for witnesses, and develop investigative strategies. For this reason, it is possible I may have left out or glossed over some things that would paint the “complete picture” of how notes, running resumes, reports, and statements fit into a larger investigation. People not experienced enough to recognize the importance of documentation may not be able to immediately connect the dots. Those who do, however, will see the quality of their investigations improve markedly and will become more successful investigators, whether in the private sector or working for a public defender agency.

It is through attentive, meticulous, and thorough documentation, and preparation for in-court testimony, that you demonstrate your professionalism and value to your clients. It is my objective to help you develop and understand the best, tried-and-true practices for documentation and ultimately help you serve your clients better.

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We extend the warmest appreciation to Scott's wife, Miranda Kuzma-Krischke, who despite holding down a full-time job while working alongside Scott to raise their two chaotic toddlers during the writing of this second edition, always served as an enthusiastic source of support.

A heartfelt thank you to the employees of Dinolt Becnel & Wells Investigative Group LLC for shouldering a bigger caseload while Philip and Alexandra worked on this book.

Also, we remain perpetually grateful to the currently and formerly incarcerated clients who taught us as about perseverance, kindness, and self-actualization, even amid a criminal legal system designed for retribution and harm. Your stories and resilience have been the inspiration to zealously investigate on behalf of every accused person, no matter how heinous the charges against them.

This book would not have been possible without you all!

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PRINCIPLES OF INVESTIGATIVE DOCUMENTATION

Part I

OVERVIEW

INTRODUCTION

[On Cross]

Gov’t Counsel: Could you give me a summary of what you remember about the investigation of the Anthony [D.] murder?

Def. Investigator Becnel: I don’t recall the specifics of it. I’m sorry. I just don’t remember how it progressed. I don’t recall what I was told initially about it. I don’t remember the details of the crime itself. I don’t remember any of that stuff right now.³

Decades ago, I worked for defense counsel on a federal drug trafficking and racketeering case. The defendant’s name was Calvin S. Prosecutors charged that a criminal enterprise, to which Calvin allegedly belonged, committed thirty-one murders and many other acts of violence. Calvin was alleged to have personally participated in three murders, including the killing of a man named Anthony D. on October 9, 1990, when Calvin was sixteen years old. On January 9, 2003, after a nearly eight-month trial at the U.S. District Court for the District of Columbia, a jury convicted Calvin on all charges, including two counts related to Anthony’s murder. This was my first “big” case.

Following his convictions, Calvin appealed. In 2011, the U.S. Court of Appeals for the District of Columbia Circuit remanded one of the murder convictions for an evidentiary hearing over what they determined was Calvin’s “colorable claim” of ineffective assistance of counsel. At issue was whether Calvin’s trial attorney, for whom I had worked on Calvin’s behalf 10 years prior, was ineffective when he failed to call an exculpatory witness

³ Transcript of Evidentiary Hearing at 53–54, *United States v. Smith*, 2023 U.S. Dist. LEXIS 109869 (2023) (No. 1:00-CR-157-RCL-14).

named Leo B. To find a colorable claim of ineffective assistance, the court must hold that, (1) the lawyer’s performance was below an “objective standard of reasonableness,” and (2) there is a reasonable probability that, but for the attorney’s errors, the result would have been different.⁴ For inexplicable reasons, Calvin’s appeal languished for more than another decade, before the court finally held the hearing, at which I testified over the course of two days.

Here is another snippet of my testimony under direct examination by Calvin’s appellate counsel, Libby Van Pelt, that took place more than 30 years after the murder and more than 20 years after my investigation in Calvin’s case:

Def. Counsel: What do you recall about Leo [B.]?

Def. Investigator Becnel: I recall that he was a witness in the case.

Q: All right. I would like to show you what has been marked as Defense Exhibit 3. The first page is labeled witness statement, and there are four pages of a photo lineup. Do you recognize this document, Mr. Becnel?

A: Yes.

Q: What is it?

A: It is a statement I took from Leo [B].⁵

Before my testimony, I had almost no memory of my investigation in this case. I recalled Leo’s name but not the details of Anthony’s murder or why Leo’s testimony may have been relevant to it. Worse, I long ago surrendered my own files to Calvin’s trial attorney, so I had nothing with which to refresh my memory. It was only when Ms. Van Pelt showed me my own documents, which she obtained from trial counsel, that I remembered: I had located Leo, I interviewed him, and I took a sworn declaration from him with a photo array, in which he explicitly told me Calvin (whose photo was included in the array) was not present when Anthony was killed. I also subpoenaed Leo to trial.

As to why the trial attorney chose not to have Leo testify, I cannot say, but clearly my testimony at Calvin’s hearing was relevant to whether this choice amounted to ineffective assistance—and ultimately whether he should be granted a new trial. The judge overturned Calvin’s convictions related to Anthony’s murder, in part based on my testimony.

This case demonstrates why thoroughly documenting investigations and maintaining our records is so vital. Sometimes, the things we investigate

⁴ Strickland v. Washington, 466 U.S. 668 (1984).

⁵ Transcript of Evidentiary Hearing at 48–49, *United States v. Smith*, 2023 U.S. Dist. LEXIS 109869 (2023) (No. 1:00-CR-157-RCL-14).

resurface, even decades later. This case also illustrates a series of horrifying what-ifs. What if I never wrote a report about my interview of Leo? What if I never took a statement from him? What if my documentation was sloppy or unclear? What if the trial attorney had failed to maintain my records? Without my reports and the statement, there would have been nothing to refresh my memory as to Leo's likely testimony or the fact that I had subpoenaed him to trial.

In the two chapters that follow, we will introduce the Five Principles of Investigative Documentation, the building blocks for how all investigations, like Calvin's case, should be documented, and we will debunk some misconceptions held by novice investigators. Calvin's case is just one high-stakes example of why correct documentation is so important, but the principles herein apply to all investigations, large and small.

Chapter 1

FIVE PRINCIPLES OF INVESTIGATIVE DOCUMENTATION

A fundamental tenet of investigative documentation: document everything. But that is not to say that everything needs to be documented in the same way. There are instances when a notation in the running resume is sufficient and when a report is not required. There are instances when there is no need to add anything to the running resume and when a report is more appropriate. There are instances when something must be documented in the running resume, in a report, and with a statement. The only consistently required form of documentation is notes; you should take notes about everything. However, even with notes, there are instances when you must maintain notes, and there are instances when you may destroy working notes. Before I teach you about the specific methods of documentation, it is important to understand under which circumstances you must generate a document and when certain types of documentation are not required.

In making choices about how to document a particular task, what form the documentation should take, and how long to preserve those records, you should be guided by the Five Principles of Investigative Documentation. Do not fret: we will discuss *how* to apply these principles in Part III. The present chapter deals only with when to apply each principle. They are listed in the order they would generally come up during an investigation.

1. Take notes about everything.

The only consistently required form of documentation is notes. However, “notes” do not necessarily mean paper notes. During background checks, notes may be a working Word or other electronic document you use to copy and paste pertinent information before it goes into a report. During surveillance or an audio-recorded interview, notes may be the media file that captures those digital images or sounds. You may use technology, such as a digital