For a New Legacy

Homeland Security Investigations
Evidence Processing
HSI Special Agent Training
ICE Academy
Terminal Performance Objective

Given a search warrant execution scenario, a set of case-related facts, and the presence of potential evidence, collect and process evidence in accordance with the Homeland Security Investigations Evidence Handbook HSI HB 15-05 / November 9, 2015, and in manner which qualifies that evidence to be admitted in future criminal justice proceedings under the Federal Rules of Evidence.
Enabling Performance Objectives

• Discuss the main objective in processing evidence
  Provide an overview of terminology, seizure authority, forms used, and roles and responsibilities involved in the seizure process
  Explain the process for evidence recovery and seizure from the pre-search planning phase to the post-search activities
  Discuss procedures for storing evidence
  Discuss procedures for the disposition of evidence
Review of the Past

CITP: Conducting Searches and Documenting Evidence Recovery

LEGAL: Reasons for Evidence Recovery and Handling Procedures

AUTHORITY: FRCP Rule 41 and HSI Related Seizure Authorities
Homeland Security Investigations (HSI)

Agenda
Main Objective of Processing Evidence

Establishing the Provenance of the Evidence
Providing for Evidentiary Foundation
Providing for Authenticity

COLLECT EVIDENCE FOR USE IN PROSECUTION
Evidence: Need to Establish Admissibility

• Foundation – Provenance of Evidence, Authenticity, and Relevance
SA must be able to testify to foundational/authenticity questions
Can only be done by the Finder – first discovered evidence item
Must be able to “recognize” item of evidence
Must be able to testify as to how they recognize the item
Must be able to testify in detail as to where the item was located and in what condition
Must be able to testify that item as it is presented during the prosecution is “in substantially the same condition” it was when it was first discovered
Terminology

**Abandonment** – Abandoned property for which owner has voluntarily relinquished rights and ownership

**Detention** – Delaying the release of property pending a review of admissibility or importation/exportation

**FP&F** – Number generated by SEACATS for tracking seized and forfeited property

**Forfeitable Evidence** – Seized property, subject to forfeiture and needed as evidence

**Forfeiture** – Legal transfer of property ownership from owner to the U.S. government
<table>
<thead>
<tr>
<th><strong>Government-Generated Evidence</strong></th>
<th>Evidence obtained via investigative means</th>
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<tbody>
<tr>
<td><strong>High-Risk Evidence</strong></td>
<td>Controlled substances, weapons, and monetary instruments</td>
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<tr>
<td><strong>Incident Number</strong></td>
<td>Number generated by SEACATS for tracking and enforcement action type</td>
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<tr>
<td><strong>Non-Forfeitable Evidence</strong></td>
<td>Seized property that is not subject to forfeiture</td>
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<tr>
<td><strong>Purchase of Evidence (POE)</strong></td>
<td>Tangible items purchased with government funds during an investigation</td>
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Terminology (cont’d)

**Real Property** – Land and anything growing on, attached to, or erected on it

**SEACATS SAS** – Records statistical and enforcement information related to searches, arrests, and seizures

**SEACATS** – System of records for tracking seized and forfeited property

**Seizure** – Taking possession of property by legal right

**TECS** – System through which Case Management can be accessed

*TECS has been replaced with ICM*
DHS Evidence Forms – Evidence Custody Docs

- 6051S, Custody Receipt for Seized Property/Evidence – Documents property seized
- 6051A, Custody Receipt for Detained or Seized Property/Evidence – Continuation sheet and attachment for additional seized items
- 6051R, Receipt for Property – Documents and tracks return of property not identified on SEACATS SAS report
- 6051WT – Identifies weapons
- 6051D, Detention Notice and Custody Receipt for Detained Property – Documents property pending review for admissibility or importation/exportation
Homeland Security Investigations (HSI)

Roles and Responsibilities

Seized Property Manager (SPM)
Accountable for the security, handling, and inventory of seized and forfeited property

HSI Seized Property Specialist (SPS)
Ensure the preservation, safeguarding, and disposition of all seized property/evidence released to their custody

Evidence Custodians Responsible for the management of seized property/evidence rooms
Roles and Responsibilities (cont’d)

Seizing Special Agents Ensure the timely and accurate completion of the SEACATS SAS report and case initiator forms

Case Agents Ensure accurate inventory, storage, and disposition of seized property; input data into SEACATS and complete Form 6051
Search Warrant Planning Considerations

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Search Warrant Planning Considerations

- (b)(7)(E)
Pre-Search Planning
Search Warrant Procedure

-
Evidence Collection/Preservation

(b)(6); (b)(7)(C); (b)(7)(E)
Laboratory Resources

- HSI Forensic Laboratory Quest Documents
  - Latent Print Section
  - Digital Evidence
  - ICE Form 73-003

- Polygraph Program

- CBP and HSI personnel conducting
  various field laboratory tests and
  examinations of seized property/evidence

- DEA Laboratories – For seized controlled substances

- USSS Laboratories – Multi-Faceted; Great Secondary Option
Evidence Identification

• Evidence includes Instrumentalities and FruitsCovered in Attachment B of WarrantFoundation/Authenticity Preserved (use of “Finder’s Note” – Index Cards) No ComminglingPackaging/Labeling Evidence: containers must have evidence labels, DHS Form 366A.
Classroom Exercise

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<table>
<thead>
<tr>
<th>Case Agent</th>
<th>Evidence Custodian</th>
<th>Search Date / Time / Location</th>
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<tbody>
<tr>
<td>Seized/Detained From:</td>
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<tr>
<th>Item No.</th>
<th>Description</th>
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Demonstration 1 – Part 1
Types of Evidence

- Documentary
- Contraband/Counterfeit
- Weapons and Ammunition
- Currency and Negotiable Instruments
- Controlled Substances
- Latent Trace
- Biological Tool Markings
- Impression
- Electronic/Digital
Documentary Evidence

Documentary Evidence includes indicia, notes, journals, commercial paperwork, and financial records.

Travel and Identification Documents

Genuine Documents used in Fraud or by Impostor

Review ASAP: Return seized documents not required as evidence to Owner.
Contraband/Counterfeit

- Fraudulent Travel/ID Documents “Fraud Docs”
- Counterfeit Documents
- Fictitious Documents
- Altered Documents
- CBP Document Lab
- Other Types
- IPR Infringement Items
- Child Pornography
High Risk Evidence – 3 Types

- Controlled Substances
- Money
- Firearms

**Prohibited by Policy from holding High Risk Evidence for more than 72 hours**
Controlled Substances

- Seized Asset Management and Enforcement Procedures Handbook (SAMEPH) Chapter 11 – ICE Related Seizures

11.9.6 – Controlled Substances

with 6051 28 CFR 50.21 Procedure Policy vs. Reality
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Bulk Marijuana

Bulk Marijuana 1 KG – Threshold Amount. Representative Sample/Exemplar for testing. Threshold and Aggregates = Sufficient. Current Criminal Evidentiary Practice SAMEPH – 11.9.6 (References SAMEPH 4.1.18)
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Monetary and Negotiable Instruments

- Money is the ONLY Fungible evidence.
Currency Seizures - Considerations

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Weapons and Ammunition

- Forfeit if: USED in violation of federal law, or commission of a crime, PURCHASED with crime derived funds/proceeds.
- Notify FP&F of Intent to Forfeit.
- Administrative Forfeit – 30 Days.
- Return to legal owner if not forfeited or needed as evidence.
- If Encountered at Scene – Conduct...
Weapons and Ammunition - Considerations

- ATF – E-Trace
  18 USC §922(g)(5)
  Disposal via Abandonment = Method of Last Resort
  If not legally owned, must be stored as non-forfeitable until federal or state prosecution determined
Electronic Devices and Digital Media


General Rule: b)(E)
Special Categories: Purchased Evidence (POE)

• Forfeiture UNNECESSARY
  Title of Purchased Evidence Transferred with Payment
  Schedule I and II Controlled Substances
  ONLY POE items that MUST be entered into SEACAT
  Turned over to CBP SPS
Special Categories: Government Generated Evidence

- Should not be entered on a SEACATS SAS report
- Includes Evidence Obtained Pursuant to ECPA Search Warrants and Orders
- Accountability: Record on DHS Form 6051S
- Segregate from seized property
- Document and label electronic evidence and surveillance
- Consider “Best Evidence” Rules: Do not erase original electronic media
- Preserve original notes, media, or transcripts
- Store original recordings with the DTA or Evidence Custodian (per SAC Intra-office Policy).
Packaging and Sealing Considerations

- Evidence Preservation
  - Biological/Liability
  - Protect if possible
  - Seal bag with Evidence in inner bag, outer bag.
  - Identify flammable, volatile, or explosive evidence.
  - Minimize number of LEOs with custody of evidence.
  - Maintain original bags
Chain of Custody

• In offering “Real Evidence” at trial the Government is required to account for the custody of the evidence from the moment it reaches its custody until the moment it is offered in Evidence. COC goes to weight; not admissibility. Original 6051S stays with evidence. Notate 6051S Number in all reports.
Chain of Custody (cont’d)

• Separate 6051S for forfeitable and non-forfeitable evidence. Separate 6051S for all evidence with different routes or locations. Use separate 6051S for property line items that have different category and property type codes. Line item numbers and property descriptions on 6051S must match those in the SEACATS SAS report. Seizing SAs may use a separate original DHS Form 6051S for each line item.
Wrapping Up Search Warrant
Search Warrant ROI
Search Warrant ROI (Cont).
Search Warrant ROI (Cont’d)
Storing Evidence

- Includes “EV” Items (Non-Forfeitable) Turned Over to HSI SPS/Evidence Custodian Immediately Stored
Storing – High Risk Evidence

• Do not store beyond 72 Hours. Turn over to the CBP SPS
Storing Evidence – Forfeitable

- “EN” Items Transferred to the CBP SPS by close of business within five business days of the date of seizure. Exceptions are allowed with a written waiver from the AFU.
Storing Evidence – Government-Generated

- Store IAW Field Office Policy: TEOs or HSI Evidence Room Segregate from any SEACATS Evidence Document using DHS Form 6051S (Tracking) Annotate: “Not in SEACATS” in Remarks Section
Disposing of Evidence

• Dependent on Prosecution and Appellate Concerns
  Should be returned as soon as possible when no longer required as evidence
  10 working days guideline
  All Evidence needs to be disposed of prior to case closure
  SEACATS must be updated immediately
  All property records must be updated within three business days.
Disposing of Evidence – Forfeitable

- Criminal Forfeiture – USG General Forfeiture Fund
- Administrative Forfeiture – CBP Process
  - Coordinate with AUSA and Local FP&F
  - Consult OPLA
  - AFP&F Approve:

- Disposition
  - DHS Form 7605 – Disposition
- Order
  - DHS Form 4613 – Destruction
Disposing of Evidence – Non-Forfeitable

- Return to Party from Whom Seized:
  Use 6051R (Receipt for Property) Destruction Order Signed by Group Supervisor
  Destruction Order provided to Evidence Custodian/SPS
  Executed by Case Agent with 2 Witnesses
Disposing of Evidence – Abandoned Property

- Abandonment – Relinquishment of Ownership InterestDisposed of via Destruction
- Can be Retained IAW Management Regulations (148/102-41)
Disposition of POE Items

- Firearms/Ammunition acquired through POE – Dispose according to OTTP AOBPOE Items for Government Use\AW 41 C.F.R. §102-36
Disposing of Evidence – Government-Generated

• Per SAMEPH: Recordings must be maintained for minimum of 5 years. Recording entered into Evidence at Trial/Hearing. Destruction requires court order. Destruction Order for Media. Media must be Unusable. Data must be Unrecoverable.
Demonstration 1 – Part 2
Demonstration #1 – Part 3
Demonstration 2 – Part 1
Demonstration 2 – Part 2
Summary

- Main Goal of Evidence Processing/Collection/Search Activities – Support Evidence Collection Process
- Different Types of Evidence
- 3 High Risk Evidentiary Types
- Post Search – Reports
- Chain of Custody
- Evidence Disposition
Protecting the Borders Against Illicit Trade, Travel, and Finance