Aftermath of a Shooting – Arrest to the Start of Trial[1]

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This article discusses the long journey from arrest to a plea agreement or the start of a jury trial. The legal process for criminal cases is called "criminal procedure"; it is governed by a series of rules, statutes, constitutional provisions, and customs. This article only covers the basic elements. Not every case will go through each of these steps --- look at them as channel markers, rather than mandatory way points.

The Defendant's Role

If you are the defendant in a criminal case, you should have already hired an attorney. (If you can't afford one, a public defender will be appointed at the arraignment). Once you have done so, you and your attorney can find a balance of things that you can and should do, and work that you can and should leave to your attorney. The defense attorney's role is to be your advisor --- he or she will try to make tactical decisions that will reach your goals.

Even if you have no interest in the minutia of your case, you should keep a permanent record of all of the key documents you receive from your attorney and from the court. These documents may become important later, particular if a subsequent change in the law means that you have to prove that a record about the disposition of your case is inaccurate or incomplete. Also, make sure you mark court dates on your calendar. Failing to appear in court can trigger serious consequences.

The Defense Attorney's Role

Your attorney's job is to zealously represent you within the bounds of the law. As discussed in an earlier essay, he or she also has ethical duties to communicate with you, and help you make informed decisions about your case. If you have retained private counsel, he or she also has specific duties about handling client funds.

One of the early decisions you and your attorney will need to make is whether to assert a self-defense claim. For purposes of these essays, the author has assumed that the defendant used force in what he or she believed was lawful self-defense. In the real world, however, there may be other valid, often contradictory, defenses like mistaken identity, alibi, mental illness (insanity), or claims to reduce the severity of the assault or homicide like extreme emotional disturbance/heat of passion or battered women's syndrome. State case law varies about whether a defendant has an absolute right to decide what defenses to raise, or whether this is a tactical decision made by defense counsel after

discussing the matter with the defendant. If you are hiring private counsel, you should discuss how these decisions will be made with the attorney before hiring him or her.

The Prosecutor's Role

The prosecutor's job, in theory, is not to win the case. As the United States Supreme Court wrote, "The United States Attorney is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer. He may prosecute with earnestness and vigor-- indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one." *Berger v. United States*, 295 U.S. 78, 88 (1935). This does not mean that an appeal to the prosecutor's conscience asserting that it would be unjust to prosecute you in this case is likely to succeed. However, it is worth keeping the larger picture of the prosecutor's obligations in mind.

This is an ideal. Michael Nifong, the now-disbarred prosecutor in the Duke University lacrosse sexual assault case is, sadly, the latest example of a prosecutor who has misused his authority, failed to provide exculpatory information to the defense, and otherwise failed to meet his duties. In Massachusetts, the Federal District Court has criticized the U.S. Attorneys' withholding exculpatory evidence in organized crime cases. Every year, state and federal appellate courts consider claims about prosecutorial misconduct; in a few cases they reverse convictions and order new trials. Most prosecutors the author has encountered are ethical people trying to do their job properly, but be aware that you may encounter an exception.

Prosecutors often have policy concerns about vigorously prosecuting all cases involving firearms that may affect their decision to prosecute a case and/or to offer a plea agreement. Your attorney may be able to tell you more about a particular prosecutor's office's typical response in a self-defense case.

In Massachusetts, the District Attorney for each county is an elected official who hires and fires his or her staff. In Connecticut, the Chief State's Attorney and the thirteen regional State's Attorneys are appointed by the Criminal Justice Commission for renewable multi-year terms. Their staff are state employees. If you live in an area where prosecutors are elected, you may want to ask candidates about their views on self-defense and firearms law during elections. If you live in an area where prosecutors are appointed, you may want to discuss any concerns about interpretation and enforcement of self-defense and firearms laws with the appointing agency or official.

The Victim's Role

Regardless of what happened in the incident, if you are being charged with assaulting or killing a person, that person is considered the victim. He or she may have statutory and/or state constitutional rights to be notified about court proceedings, to attend them, and to speak to the court at sentencing. The victim may have the right to be

consulted about a proposed plea agreement and to object to it in court. Many courts have a victim advocate, who will help the victim keep track of the case.

Try to avoid contact with the victim and/or the victim's family. If you are being harassed by the victim and/or the victim's family, make sure your attorney is aware of the problem. You may be able to seek a protective order.

A Guide to Pre-Trial Criminal Procedure

Starting a Criminal Case

A criminal case starts with either a complaint (filed by a prosecutor) or an indictment (from a grand jury). Massachusetts uses both --- serious cases generally begin with an indictment; less serious cases with a complaint. Connecticut, conversely, no longer uses a grand jury – all criminal cases begin with a complaint.

The complaint or indictment is a formal document listing the crimes involved. It usually includes the defendant's name, the date and place of the offense(s), the specific offense(s), and names the victim(s).

Arraignment

If you are arrested, you may be offered bail by a bail offical at the police station. If you are released, you will be told to appear in court for an arraignment on the next court day. If you are not released, you must be brough to court within 72 hours – generally you will come to court on the morning of the next business day after your arrest. Do not miss this, or any other court date – failure to appear can result in a warrant for your arrest and can have serious implications for your future bail prospects.

From the defendant's perspective, an arraignment is a confusing procedure. You will be handcuffed and shackled, then taken to court with all the other recently-arrested defendants. You will be led into the courtroom and told to sit. A clerk will call the various cases, eventually reaching your case and formally read the charges to you. You will be advised of your rights to a trial, and may be asked if you want to enter a plea. If you do not have an attorney, a not guilty plea will normally be entered for you. If you cannot afford an attorney, a public defender or public counsel will be appointed for you at this hearing.

Prior to the arraignment hearing, you will likely meet briefly with a bail official (a court officer) who will ask you about your prior record and your finances in order to determine whether you qualify for a public defender and to make a recommendation about bail. You should not discuss the substance of your case with the bail officer – things you say to him or her are not privileged and can be used against you later. If you have an attorney, he or she may be present for your meeting with the bail official and may direct you to limit your answers to things like your name, date of birth, social security number, and your parents' names (these are used to see if you have a prior criminal record).

At this stage, the prosecutor probably does not know a great deal about the case. He or she likely received the file that morning, along with a few police reports, and has many other cases that day. Thus, the prosecutor is unlikely to be able to meaningfully talk with you or your attorney about the case. Similarly, your attorney will know what you

have told him or her, and may be able to get some of the police reports, but may not be able to give you many answers at this point.

Bail

You may be offered bail at the police station. At the arraignment, the judge can set bail or release you on your personal recognizance (a promise to appear in court later). In rare cases, a judge can refuse to set bail. Bail is a pledge of money or property to secure your appearance in court --- if you do not appear for a court date, the court can order the money forfeited and issue a warrant for your arrest. If you appear for all of your court dates, your bail will be returned at the end of the case. Again, show up for your court dates --- if an emergency arises, call your attorney as soon as possible so that he or she can explain things to the court.

If you cannot afford your bail, in some states, you may be able to raise the money through a bail bond. A bond is a contract between you and a bondsman who promises to pay the full amount of the bond if you do not appear in court. The contract will give the bondsman the right to then have someone locate you and return you to court (colloquially referred to as a bounty hunter).

Some prosecutors, as a matter of policy, will try to prevent defendants charged with firearms-related crimes from getting bail. The Bristol County District Attorney, for example, seeks a "dangerousness" hearing whenever a defendant is arrested on firearms-related charges [See Globe Story]. In such a hearing, the prosecutor must prove by clear and convincing evidence that personal recognizance will not reasonably assure the appearance of the defendant or will endanger the safety of another person in the community, and that no conditions of release will reasonably assure the safety of another person or the community. See Mass. General Laws ch. 276 § 58A. The Commonwealth may move, based on dangerousness, for an order of Pre-Trial Detention or release subject to conditions. If the trial court finds that the defendant is "dangerous", than he or she can be held without bail for 90 days.

If you are released on bail, there may be terms and conditions to your release. Make sure that you understand them. In general, you cannot commit any crimes while on bail. You may have to report to a court officer periodically, either in person or by telephone. You can't leave the country without prior approval; there may be restrictions on your leaving the state without prior notice and approval. You may be ordered to avoid contact with the victim and/or his family.

Your firearms permit will likely be revoked or suspended during the court proceedings – even if it is not, you may be precluded from owning or carrying weapons by the terms of your bail bond. Make certain you understand those terms before handling any weapon, even at a firing range or training course.

If you violate your bond, it will be revoked at a hearing. The bail amount can be forfeited (paid to the court). You may be sent to jail during the remainder of the period until your case ends. If the violation is minor, you may be fined or the amount of the bail may be increased.

Determining Probable Cause

At an early point in your case, there must be a determination that probable cause exists to try you on the charges. Probable cause "requires more than mere suspicion but something less than evidence sufficient to warrant a conviction." *Com. v. Roman*, 414 Mass. 642, 609 N.E.2d 1217 (1993). In most cases, this will not be difficult for the prosecutor to establish and the hearing may be waived or a brief formality.

Probable Cause Hearings before a Judge

Some states hold a probable cause hearing before a judge. Often these are very brief, almost pro forma hearings at which the prosecutor presents a witness or two (often the victim and one or more police officers) and possibly some reports. Your attorney may take this opportunity to cross-examine the witnesses and get a sense of whether they will be strong trial witnesses.

The trial judge will then determine whether the prosecutor has demonstrated probable cause to (1) believe that a crime has been committed (2) by you. Probable cause hearings are usually public hearings. There will be a transcript, and your attorney can cross-examine witnesses, and argue to the judge whether or not the prosecutor has met his or her burden of proving probable cause.

Cross-Complaints

It may be appropriate in a self-defense case for you to ask the trial court to issue a complaint against the aggressor. However, even if the cross-complaint issues, you can't prevent the prosecutor from delaying the aggressor/victim's trial until after your trial. It also means that you give up your self-incrimination rights – you may have to testify against the aggressor at a probable cause hearing, and that testimony can be used against you in your trial.

Grand Jury Proceedings

In Massachusetts and some other states, serious criminal matters are sent to a grand jury either before, or shortly after an arrest. Grand jurors are selected from the public like regular jurors. Generally, they sit in a group of 13 to 23 for a few days each month over the course of three months, hearing evidence in many cases.

In some cases, prosecutors present just a few witnesses and/or reports and physical evidence to the jurors. In others, it becomes almost a mini-trial. Normally, the proceedings are short, but in very complex cases they can take months or even years. The defendant is not present for this testimony and cannot cross-examine witnesses.

You may be called by the prosecutor to testify at the grand jury – if so, you need to discuss your testimony with your attorney. Your attorney may be with you in the hearing room, but, if so, he or she can't object, argue, or otherwise address the prosecutor or the grand jurors. Remember that you can invoke your constitutional right against self-incrimination at the grand jury proceeding.

The grand jury only hears the prosecutor's side of the case. The prosecutor has an obligation to present important exculpatory evidence which is likely to affect the grand jury's decision or greatly undermines the testimony of an important witness. He or she is not obliged to present all possibly exculpatory evidence.

At the end of the presentation of evidence, the prosecutor summarizes the evidence, describes the legal elements of the charge, and asks the jurors if they have any

questions. "The evidence before the grand jury must consist of reasonably trustworthy information sufficient to warrant a reasonable or prudent person in believing that the defendant has committed the offense." *Com. v. Roman*, 414 Mass. 642, 609 N.E.2d 1217 (1993). The jurors then vote yes or no on the indictment drafted by the prosecutor. A majority vote of 12 grand jurors is sufficient to approve the indictment and issue a "true bill". If the jury does not approve the indictment, it issues a "no bill", which is normally then sealed. Gen. Laws ch. 276, § 100C.

Grand jury proceedings are generally secret, but witnesses can often disclose that they were subpoenaed, the contents of the subpoena, and the substance of their testimony. If a true bill has issued, the defendant's attorney can get a copy of the recorded testimony after the defendant's arraignment.

Speedy Trial Rights

You have a right under both the federal and state constitutions to a speedy trial. Typically, this means that you have to be brought to trial within 8 to12 months of your arraignment if you are incarcerated. If you have been given bail, then there may be no specific deadline. This does not mean calendar months – the deadline can be suspended (tolled) for various reasons, including for any delay that you request, agree to, or benefit from. Generally, speedy trial is not automatic – you or your attorney has to file a motion requesting a speedy trial when the deadline is approaching, or after a suitable length of time if there is no established deadline. Your attorney may also decide not to invoke your speedy trial rights if he or she needs more time to investigate your case.

In Massachusetts, a set of time standards affects how quickly your case proceeds in the Superior and District Court. There is some controversy about whether the time standards are being applied too rigidly, which may affect both parties abilities to adequately investigate their cases.

Discovery

While you are waiting for your trial, your attorney and the prosecutor will continue to investigate the case. The prosecution's experts may continue to analyze evidence from your case – despite what you may have seen on CSI or other crime shows, it can take months to obtain results from DNA, firearms identification, or other crime scene analysis. Your attorney may hire one or more experts to investigate the evidence in your case. Both sides will often interview witnesses and take statements.

Generally, you are entitled to discover, inspect, and copy relevant evidence, documents, statements, and reports possessed by the prosecutor and/or the police. You will be told the names of the prosecutor's prospective witnesses and receive their criminal records (if any).

The federal constitution requires the prosecutor to provide the defense with any potentially exculpatory information in its possession or in the possession of its agents (the police, crime labs, etc.). In practice, this rule can become complicated – the prosecutor or its agents may not recognize that some piece of evidence is exculpatory and may fail to disclose it. The prosecution is also allowed, under some circumstances to, destroy evidence or allow it to be destroyed, so long as it isn't done in bad faith. If, for example, you want to preserve the 911 calls about the incident, your attorney will need to request

that those materials be saved very early in the case, otherwise, the police department can recycle the audiotapes according to its pre-established policies.

Both sides are required to turn over any reports made by experts who are expected to testify in the case. Under some circumstances, your attorney may have to turn over statements made by witnesses if your attorney expects that witness to testify at trial or if he or she expects to use that statement to cross-examine a prosecution witness.

In most cases, your attorney will share any discovery he or she receives with you. There are some exceptions, generally to protect otherwise-privileged records in sexual assault cases, and to protect a witness' safety.

Forensic and Other Evidence

When the police received a report about a crime, they likely visited the crime scene to look for evidence. The amount of work done varies. Normally, police will search the scene for relevant evidence (weapons, spent cartridge casings, blood stains, etc.). They often take photographs and measurements of the location of evidence. If someone has been injured, officers may go to the hospital to photograph wounds and collect any evidence (bullets or bullet fragments, clothing, etc.) removed from victims. If someone has been killed, a medical examiner will perform an autopsy. Police may collect gunshot residue evidence from the hands or clothing of suspects and victims.

In the days and months following the incident, collected evidence may go through various analyses. Samples from suspicious reddish stains may be analyzed to determine if they are human blood, and may be DNA tested to determine whose blood was found. Recovered bullets and spent shell casings may be analyzed in an attempt to match them to a recovered firearm, or to determine what kind of firearm was used. They may also be examined for fingerprints, blood spatters, or other evidence connecting them to the incident. Crime scene reconstruction experts may examine blood spatter patterns and other information to try to determine how the crime occurred. Your attorney may hire an expert to review the prosecution's experts' conclusions.

If there are witnesses at the scene, police will generally take statements. They should separate the witnesses so that each tells his or her own story, and is not affected by others' recollections. Ideally, statements should be taken before the witnesses have a chance to see or hear any media reports about the incident.

In reading police reports and witness statements, you will often find that the witness' version of events may not match your recollections, and may conflict with itself, with other statements by that witness, with statements by other witnesses, and with forensic evidence. This is normal. The eye is not a camera; the mind is not a videotape. People can honestly see and recall things in very different ways. You and your attorney should talk about these discrepancies and discuss how you may want to address them at trial.

If you do want to try to make sense of a large number of witness statements, you may wish to consider a table that summarizes the key observations in the case. This may make it easier to see agreement and discrepancies, and to cross-examine witnesses later.

Sample Grid

	Witness 1 Statement	Witness 2 Statement	Witness 2 (2nd stmt)
Statement Details	Midnight, to Officer Jones	12:20 to Officer Jones	Two days after incident to Officer Smith
Where Located	On corner	Across street	Across street
First noticed	Gunshot	Gunshot	Loud voices arguing
Aggressor's Actions	Running when shot	Running when shot	Turned to run with hand in pocket
Defendant's Actions	Fired 3 shots at victim's back	Fired 2 shots at victim's back	Told victim to drop knife, then shot x2 when victim moved suddenly

You may also want to keep copies of any media coverage about your case. Make sure that your clipping includes the newspaper's name, publication date of the story, and the page where it was found, in case your attorney needs to track down the story later. You could also record broadcast news accounts. Media accounts may contain quoted remarks that might be useful to your attorney at trial. Your attorney may wish to ask media sources for their photographs and raw videotape in case there is some evidence overlooked by police in their investigation. In some cases, there may be sufficient media bias for your attorney to ask that the case be moved elsewhere to find an unbiased jury.

You may want to offer to help your trial attorney to keep track of physical evidence and pending forensic tests. The author was involved in one case in which a report mentioned a fingerprint found on a box of ammunition discarded at the crime scene which was apparently never sent to a fingerprint expert for examination, was overlooked by trial counsel, and only discovered belated by a subsequent attorney when the defendant moved for a new trial after his conviction. At the time the author became involved in the case, it was still unclear whether the original evidence had been preserved and whether the fingerprint would support the defendant's claim that another person had shot the victim and that the defendant had been mistakenly identified as the shooter.

Suppression Hearings

Your attorney may try to suppress the prosecution's evidence because it was obtained in violation of your constitutional rights or is unreliable. Typical suppression hearings include attempts to suppress evidence seized without a search warrant, statements or confessions made in violation of your *Miranda* rights, unreliable eyewitness identification testimony, and/or results of forensic testing that may be scientifically unreliable. Suppression hearings depend on the specific facts of your case, and are often governed by a complex body of case law.

Plea Bargaining and Agreements

1The relationship of the accused to his lawyer provides a critical factual context here. As he stands before the bar of justice, the indicted defendant often has few friends. The one person in the world, upon whose judgment and advice, skill and experience, loyalty and integrity that defendant must be able to rely, is his lawyer. This is as it should be. Any rational defendant is going to rely heavily upon his lawyer's advice as to how he

should respond to the trial judge's questions at the plea hearing. He may also rationally rely on his lawyer's advice what the outcome of the plea hearing will be.

Yet it is the defendant, not the lawyer, who enters the plea. It is the defendant, not the lawyer, who is going to serve the time. It is the defendant, not the lawyer, whose constitutional rights are being waived at the plea hearing. It is the defendant's plea and accompanying waiver of rights which under established law must be voluntarily and intelligently given, with full appreciation of the consequences to follow.

-- 1*Sanders v. State*, 440 So. 2d 278 (Miss.1983).

At some point, your attorney and the prosecutor will meet to discuss your case. The prosecutor will generally make an offer to accept a guilty plea to lesser charges, or for an agreed-to sentence in exchange for your waiving your right to trial. The vast majority of criminal cases are resolved by a plea agreement. Relatively few cases actually go to trial. Time pressures, stress, depression, and doubts are all a normal part of the plea bargaining process. Your attorney is required by the ethics rules to tell you about any plea offer and will make a recommendation about whether to accept the plea. The decision about whether to do so is yours. It is your attorney's job to give you a realistic, even pessimistic, portrayal of the likelihood of success at trial based on the likely evidence.

From the defendant's point of view, a plea to lesser charges and an agreement for a lesser sentence can reduce the risk of a conviction on greater charges, which carry a greater maximum sentence. From the state's point of view, a plea bargain represents a certain conviction, avoiding the risk of acquittal and the expense of a criminal trial. While you may feel confident that you acted lawfully in a self-defense situation, you should talk with your attorney about the strength of your case, particularly if you are charged with homicide. The vast majority of homicide defendants are convicted of some portion of the charges --- relatively few walk out of the courtroom and go home.

When your attorney is negotiating a plea, make certain you understand whether there is any agreement about whether statements you make during the negotiations can be used against you if you ultimately decide not to accept the plea, or the trial court does not accept it, or if you withdraw the plea because the trial court intends to sentence you outside the agreed-upon term.

If you decide to accept a plea, make sure that you understand the terms of the plea and any ancillary consequences. Unfortunately, your attorney may not be able to anticipate future changes in the law --- when the 1998 changes to the Massachusetts firearms law took affect, a number of people found that old criminal cases now precluded them from obtaining or renewing a firearms permit. If your attorney mis-advises you about the effects of your plea on your firearms rights, that bad advice is not sufficient grounds to reopen your plea. (See *Commonwealth v. Indelicato*, 40 Mass. App. 944 (1996)) When asking your attorney specifically about the effect of the plea on activities that are important to you, such as your firearms rights, make certain that he or she has considered both state and federal law in this area.

There are three basic pleas that can be entered as part of a plea agreement:

Guilty – the defendant admits his or her guilt, generally to a lesser change, often with an agreed-upon recommendation regarding the sentence. Generally, the defendant has the right to withdraw the plea if the trial court intends to impose a greater sentence than the one agreed upon.

Guilty under *North Carolina v. Alford* – effectively a guilty plea, the defendant states, in effect, that he or she believes the prosecutor's evidence strongly indicates guilt and that his or her interests are best served by this guilty plea. Again, there is generally an agreed-upon recommendation regarding the sentence, and the right to withdraw the plea if the trial judge intends to sentence beyond the agreement. A "facts sufficient" plea is similar in effect, and often is part of an agreement that the trial court continues the case without a finding of guilt (CWOF). (If a CWOF is entered, the defendant is then placed under the supervision of the probation department. If he or she successfully completes the terms and conditions of the order, then the case is dismissed. If the defendant fails to complete the conditions, a finding of guilty is entered.)

No Contest (Nolo contendere) – effectively a guilty plea for most purposes, however, the defendant does not actually admit guilt. Generally, this means that you can deny the charges in a civil case based on the same acts.

If there are viable appellate issues in your case, such as an unfavorable ruling on a suppression motion, you may want to talk with your attorney about whether you can enter a plea and still reserve your right to appeal. If you are successful in the appeal, your plea may be vacated and the case set back for new trial.

Once an agreement is made, it will be presented to a judge at a formal hearing. Normally, if a judge intends to sentence you to a term outside the scope of the agreement you will have the option to withdraw the plea if the sentence will be higher. The prosecutor may have the option to withdraw the plea if the sentence will be lower.

Pleas are, for the most part, final. It is very difficult to overturn a plea later, even if you decide that you made a mistake or were given bad advice by your attorney.

The Pre-Trial Conference

At some point, the case will be called for a formal pre-trial conference. Here, the prosecutor and defense attorney discuss pending pretrial motions, possible plea agreements, defenses like alibi and insanity, possible trial dates, and potential witnesses and evidence. The attorneys then file a written report describing their agreements and disagreements.

Further Reading:

Massachusetts:
Massachusetts Rules of Criminal Procedure
Overview of Mass. Criminal Procedure
Chart Showing Criminal Procedure by Bristol County DA's Office
Overview of Criminal Procedure by a Mass Attorney (1)
Overview of Criminal Procedure by a Mass Attorney (2)

Time Standards:
District Court
Superior Court
Article on Controversy

Massachusetts District Attorneys Association

A Mass. Grand Juror's View

Reciprocal Discovery (Comm.. v. Durham opinion, discussion)

Massachusetts Victim Bill of Rights

Connecticut:
Connecticut Practice Book (contains criminal procedure rules)
Overview of Conn. Criminal Procedure

Conn. Office of Victim Services
Conn. Victim's Rights Statutes

State v. Rivers, 283 Conn. 713, 931 A.2d 185 (2007) contains an example of a plea and cooperation agreement in footnote 7.

General:
Steve Bogira , COURTROOM 302: A YEAR BEHIND THE SCENES IN AN AMERICAN CRIMINAL COURTHOUSE (2005) – a very good overview of criminal procedures in a Chicago court room.
Discussion of plea bargaining

Crime Scene:
DOJ: Violent Encounters: A Study of Felonious Assaults on Our Nation's Law Enforcement Officers (Washington, DC, 2006) [Available from the UCR Program Office, FBI Complex, 1000 Custer Hollow Road, Clarksburg, WV 26306-0150 or by calling 888-827-6427]
DOJ, Crime Scene Investigation: A Guide for Law Enforcement