

## Crime Scene Investigators

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Forensic planners are often tasked to create order from the confusion that arises in the life of construction projects that have not been completed on time. To them falls the responsibility of sifting through the crime scene paperwork generated as the project unfolded. Often they find misleading clues and conflicting records (facts) and almost always there are differences of opinion in the initial speculation on how much time was lost and whose fault it was.

The best crime scene investigators usually start by attempting to capture as many facts (as-built details) as possible before attempting to piece together what really happened and being able to say why this was different from the original plan of work.

### Facts

A search on the web garners quite a few quotes on facts:

*"Get your facts first, and then you can distort them as much as you please"* - Mark Twain.

*"The trouble with facts is that there are so many of them"* - Samuel McChord Crothers

*"Now, what I want is Facts."* - Charles Dickens

Although my favourite quote on facts comes from Albert Einstein:

*"if the facts don't fit the theory, change the facts."*

### Finding the clues

The concept that someone can establish the facts of what happened on site, months or years after a project is completed by picking through a veritable mountain of documents to determine what or who was behind and by how much might seem impossible to some. However, the evidence is usually there, it just takes knowledge of what to look for, where to look, a logical mind, coupled with an attention to detail and the ability to be dexterous in the presentation of those facts.

Most of the *"time evidence"* comes from site daily records, programmes that have recorded as-built progress and mandatory records (such as piling records). Other sources like minutes of meetings, letters and photographs can also be used. Bringing up the rear, in terms of containing reliable facts, are earlier claims material where facts quite often get *"manipulated"* or are given a low priority. Early claims often have to anticipate the effect of a change and may have few facts.

### Audit Trail

The planner should attempt to deal with all the facts, and if there are competing actual dates for the same piece of

work, then the forensic planner needs to keep an audit trail to explain why he favours one date in preference to another. I often think of the above quote from Albert Einstein at this point in my work.

Indeed in the fairly recent case of Skanska Construction v Egger (Barony) Limited, TCC 30 July 2004, Judge Wilcox was clearly irritated that Eggers' expert had selected facts, and interpreted those facts, and despite being prompted to look at other *"facts"* had failed to do so. The selective nature of the expert's approach had meant that a balanced view on concurrency issues was unlikely and the Judge largely held in favour of Skanska.

### The Analysis of the Facts

The forensic planner will be able to check whether the original programme was a sound piece of work. Some site planners merely attend a P3 course and know how to programme but can they plan? I have seen plenty of examples where planners have a total lack of understanding of the contractual implications of their work, and the damage their programmes can do to a claim. Did the programme meet the contract phasing requirements and completion periods? Was the programme broken down into sufficient or too much detail? Were the activity durations adequate to allow work to meet the schedule and was there the *"stacking"* of trades? Did the original programme and method statement indicate what resources were to be employed to meet its programme intentions and were these resources sufficient? Did the programme allow enough time for the work of others such as utility diversions or work to be undertaken by the Employers direct contractors? Lastly, the forensic planner should check that all the activities have been logically linked together, and check that the resultant critical path was sound.

With the knowledge gained from understanding the strengths and weaknesses of the Contractor's original programming, the forensic planner will be best placed to recognise the true effect of changes, increases in work quantities, the late issue of information, poor Contractor Performance, and the implications of the contractor's reprogramming efforts.

Basically, the planner's work should assist in measuring the real effects of changes for extension of time purposes and to assist in the assessment of subcontractor and Main Contractor prolongation.

Forensic planners can investigate and determine which party made what mistake and the impact each mistake made to the project.

When most of the *"time evidence"* has been gathered, the relevant data is then analysed and reduced to its key components. It is most important to complement this factual information gathering process by interviewing key personnel that were involved with the project. With this knowledge of what happened and why key decisions were made, the forensic planner is able to describe delays against a

background of knowledge of what was originally planned to happen and what actually happened and why. This process can be broken down to a day-by-day reconstruction of what happened; the precise effect that delays had on the project; who was responsible for that delay and provide linkage to the financial effects.

An experienced planner will assist by suggesting how to best demonstrate the effect of the delays, according to the facts that are available. The usual methods used include: *impacted as-planned*, *time-slice / windows* and *collapsed as-built*. It is important to realise that each method may give a slightly different answer for the same basic set of facts.