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A Best Practice Flowchart for UBC Deaths

1 Many UBCs are found in this state
 2 Currently, it is not possible for medical examiner to enter this information in NAMUS
 3 Cremation is a practice to avoid
 4 These criteria are enumerated in this manual
 5 Currently, there is no means of counting found UBC deaths as there is no standardized process for recording them

Figure 1: An infographic depicting best practice in terms of the section names. A version of this will appear at the top of each section, with the eponymous section title highlighted. This will allow the reader to visualize the stage of the process that the given section occupies.

Section 1: Protocol Development for the Standardization of Post Mortem Examination and Identification of UBC bodies along the U.S.-Mexico Border: A Best Practices Manual

INTRODUCTION

The Binational Migration Institute (BMI) proposes the use of the best practices contained in this manual in order to standardize the counting, postmortem examination, and identification of deceased undocumented border crossers (UBCs) in U.S.-Mexico border counties. Using an applied approach, this manual is the result of a project that examined established methods used to regulate the examination and identification of human remains in these counties, and used survey research and focused interview methods to gather data from medical examiners, coroners, and other pertinent officials. This data that was gathered was the basis for discussion among these professionals and the creation of this “best practices” manual that can be used in the expert training of those who struggle with the challenges of identifying human remains along the border.

CHALLENGES FACED ON THE BORDER

For almost a decade now, there has been an unprecedented increase in the numbers of known UBC deaths in the deserts and mountains of southern Arizona, primarily due to heat exposure [1][2]. The bodies of well over 2,000 men, women, and children who have been found in Arizona’s inhospitable terrain bordering Mexico have been examined at the Pima County Office of the Medical Examiner (PCOME) in ground-breaking work [3][4]. According to a 2006 U.S. Governmental Accountability Office (GAO) audit (No. GAO-06-770), border crossing deaths associated with people entering the United States without authorization have doubled since 1995. Although border deaths are attributed to a range of reasons, such as automobile collision fatalities [5], between 1999 and 2003, more than three quarters of the rise in migrant border crossing deaths along the southern border have been due to exposure to the elements, especially extreme heat. Among other things, the GAO report recommends that the Commissioner of Customs and Border Protection (CBP) ensure that Border Security Initiative (BSI) sector coordinators follow consistent protocols for collecting migrant death data from local authorities.

Nonetheless, primarily due to methodological and organizational limitations, previous research and government-generated data do not provide accurate counts of UBC recovered bodies in the United States, nor are they based on reliable, standardized criteria for identifying UBC bodies. Additionally, earlier investigations of changes in known migrant death rates in the United States over the past 15-20 years were not designed to test the now accepted correlation between immigration control policies and the rise in the UBC death toll, identified as the “funnel effect” [6][7][8].

Updating the 2006 study to include UBC bodies examined by PCOME through 2012, Martinez and colleagues [9] demonstrate that in spite of diminishing numbers of apprehended migrants attempting to cross the border through the Arizona-Sonora migrant corridor, the death rates have actually increased. Also important to note that while there is a percentage of migrants for whom a border state is their final destination, the majority are traveling through the border en route to interior areas of the United States.

BORDER STATES AND BORDER COUNTIES

For this manual, BMI looked to the counties that lie within 100 kilometers from the legal U.S.-Mexico boundary demarcation. However, geographic formations, transportation routes, and economic, social, and cultural practices demonstrate that border activities are in play in non-border counties that nevertheless lie within known migration routes. Therefore, for the purposes of this project, counties within well-known migration corridors, such as Maricopa County and Pinal Counties (in Arizona) and Brooks County (in Texas) were included. In Brooks County, Texas, in late 2012, 129 bodies of presumed UBCs were found. Of the 49 jurisdictions identified for this project, it was possible to interview officials in 35 of them. As such, the manual presented here captures data from approximately three-quarters of the counties targeted for the research. A list of jurisdictions that participated is presented in Appendix E.

CLASSIFICATION ACCORDING MEDICAL EXAMINERS AND CORONER SYSTEMS

Given the highly variable contexts in terms of the socio-political organizations across counties (see Appendix B), it is not surprising that the protocols for counting, examining and identifying the dead revealed variations.

For setting the legal and procedural foundations it is important to begin with the classification of surveyed counties according to the typology of medical examiner and coroner systems developed by Hanzlick and Combs [10]:

1. *New Mexico is type 1:* A state Medical Examiner system with no autonomous county medical examiners or coroners.
2. *Arizona is type 5:* A state with no state medical examiner, but rather, medical examiners in every county. However, in Arizona some counties with no medical examiners contract out to others for these services.
3. *California and Texas are type 7:* States with no state medical examiner, some county medical examiner systems, and some counties with county coroners. In Texas numerous counties contract out their autopsies to pathologists, medical examiners, mortuaries and at times to forensic anthropologists. The Texas system also relies on the use of the Office of the Justice of Peace as the authority that decides on the need for an autopsy.

BORDER DEATHS

A closer examination of county level interviews reveals a variety of ways in which counties, in different circumstances respond to increased migrant deaths. A factor is the high number of persons, who are strangers to the region, traveling alone. Another is that present patterns in manner and cause of death while in transit do not fit the typical scenarios of unattended deaths. For many migrants, unattended death means dying far from family, far from friends and community, who, in most circumstances would be relied upon by authorities in their efforts to confirm the identity of the deceased and investigate the circumstances of death. Absent these witnesses, dying alone in isolated and harsh physical environments often translates into multiple undiscovered remains left in circumstances of prolonged element exposure, leading to unimpeded decomposition and skeletonization. These circumstances greatly complicate identification. These conditions and other similar situations call for dedicated implementation of all procedures that will lead to identification (see Criteria for Counting UBCs info box, below).

Criteria for Counting UBCs

The ground-breaking 2006 study demonstrated that under conditions along the border, a best practices approach to the collection and recording of data was possible by way of autopsy reports that expanded the criteria used for classifying UBC recovered bodies. In this way, a more accurate accounting of border-crosser deaths was provided to medico-legal officers for gathering significant circumstantial evidence to identify UBCs. It includes the following:

1. The decedent lacks a U.S. Social Security Number, permanent U.S. residency card, or evidence of lawful U.S. immigration status.
2. The decedent is of Hispanic ethnicity.
3. The decedent is foreign-born, of a foreign nationality, foreign residency, foreign next-of-kin, and died while in transit from Mexico to a U.S. destination.
4. The body was discovered in a well-known migration corridor, or
5. Was found with or reported by other UBCs;
6. The decedent possessed personal effects or documents typical of UBCs.
 - water jugs
 - extra clothing
 - addresses of contacts in a foreign country
 - U.S. and foreign currency
 - phone cards
 - hygiene products
 - phone numbers
 - a backpack

Finally, surveys revealed that counties facing financial or other constraints can consistently follow requirements by seeking alternate solutions that include the help of grants, the utilization of research universities that take on examination of remains using their own funding, and other services that can undertake certain procedures for zero to minimal fees.

As a result of examining the deaths of UBCs on the Arizona border, the 2006 report by Rubio-Goldsmith and colleagues [6] first made clear the need for pertinent government agencies to provide certain procedures to ensure that policies comply with national and international commitments to identify the highest number of dead, monitor deaths due to physical violence, document the manner of these deaths, and treat bodies with respect and dignity as per established national and international protocols for the treatment of remains in a variety of contexts.

Secondly, the same report made clear the need for systematic collection of data required to develop appropriate public health policies for the border region. In general, local jurisdictions provide rules and standards for the examination of human remains and for the recording of deaths to generate important vital statistics. However, until now there is no uniform way of counting the persons who lose their lives in attempts to cross the border without authorization. Where national security concerns presuppose knowing as much as possible about who and how many persons enter the United States, the process of identifying the remains of those who have crossed into the nation's territorial space and perished is among some of the measures that are consistent with local, state, and national interests.

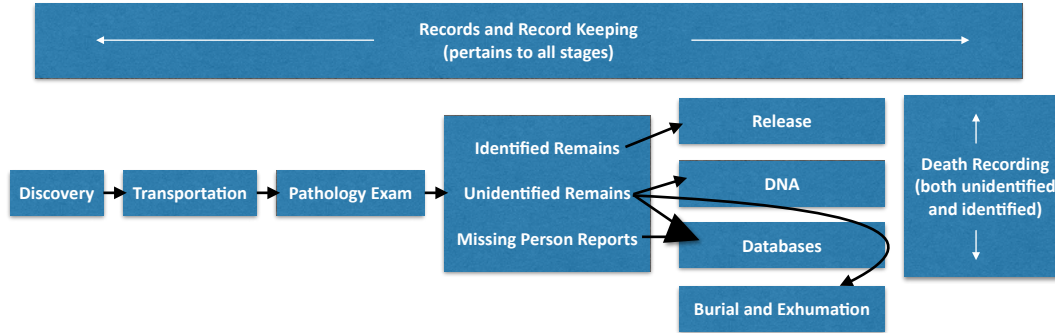


Figure 2: An infographic depicting best practice in terms of the section names. A version of this will appear at the top of each section, with the eponymous section title highlighted. This will allow the reader to visualize the stage of the process that the given section occupies.

THE ROLE OF THOSE ENGAGED IN THE COUNTING, EXAMINATION, AND IDENTIFICATION OF THE DEAD

The imperative for finding solutions to preventable misfortune continues to grow with constant migration to the United States, as former commissioner of the then-called U.S. Immigration and Naturalization Services (INS), Doris Meissner, notes in an interview in *Foreign Policy* [11]:

Migration has always been a part of the human experience, and it has been enormously positive and, at times, terribly tragic and harmful. What's new is that it is clearly occurring at a faster rate. The world is a much less fluid place in terms of nation-states and corridors and the consequences of moving.

The tragic side of the human experience has, in part, been addressed by BMI's 2006 report, *"The Funnel Effect" and Recovered Bodies of Unauthorized Migrants Processed by the Pima County Office of the Medical Examiner, 1990-2005* [6][3]. More recently the conclusions in this report were reaffirmed with the follow-up study, *A Continued Humanitarian Crisis at the Border: Undocumented Border Crosser Deaths Recorded by the Pima County Office of the Medical Examiner, 1990-2012* [9]. The resultant policy recommendations presented in these reports provide Arizona's Pima County government with a more accurate assessment and analysis of both the nature of these deaths, and their impact on this county's medical examiner's office.

STRUCTURE OF THE MANUAL

This manual is meant as a guide to address inconsistencies in basic procedures to count, identify and examine the remains of presumed UBCs. Its organization follows the general flow of activities involved in achieving the ultimate goal of returning human remains to families. A flowchart (Figure 1) of best practices at each stage of death investigation is provided. The manual is not meant to rewrite other best practice manuals, but rather, to draw attention to practices and methods involved at each step of a body's itinerary, and cumulatively, increase the probability that remains will be identified.

The manual has been divided into 11 sections. The flowchart shown in Figure 2 mirrors the organization of the manual, showing how each manual section fits into the overall itinerary of human remains as they are discovered, examined, identified, recorded, and released.

Each section of the manual will summarize the inherent issues at the stage of the process. The issues are limited to those pertinent to the border region context. This will be followed by an exposition of a set of proposed best practices that may aid in responding to the issues and provide recommendations where appropriate. Lack of local infrastructure and resources has meant that officials must exert many more good faith attempts to comply with all legal requirements.

In general, this manual includes best practices that respond to:

1. Laws regulating unattended deaths are fundamentally local in nature. With exceptions for federal intervention, the general principles guiding best practices that can be applied all relevant jurisdictions. While local authorities demonstrate good faith compliance with state and federal regulations and in keeping with norms for providing dignity and respect for the deceased, with the prolonged crisis of migrant deaths, localized interventions and academic studies have called for the reexamination of procedures. In some cases, these studies have reaffirmed established practices, while in others they have called for changed and recommended new procedures.

The research revealed that counties facing financial or other constraints to implementing new or additional methods or procedures can follow legal requirements by seeking assistance. Such assistance can come in the form of grants, services provided by research universities able to conduct postmortem examinations using their own resources, and/or other state or federal services available at little or no cost.¹

2. The numbers, nature and variety of places where border deaths that have occurred during the last 12 years have challenged established procedures for postmortem examination. In this regard, three principles emerged as the basis for determining best practices:
 - There is a need for procedures and systems that result in the accurate identification and counting of the human remains of UBCs in each jurisdiction.
 - There is a need for procedures and systems that promote the best possible methods for data collection and improve the accuracy of records that can be used for vital statistics data to inform a wide range of public policy areas, including public health.
 - The discovery of undocumented human remains may contain evidence of, or provide leads to evidence that may aid legal professionals and law enforcement officials in a range of human criminal investigations including, but not limited to:
 - c. Human smuggling, including organized crime related offenses such as extortion, corruption, racketeering, and participating in or assisting a criminal syndicate.
 - d. Homicide, including (1) premeditated murder, (2) felony murder, (3) intentional killing without premeditation, (4) causing death by conduct showing extreme indifference to life, (5) reckless manslaughter, (6) negligent manslaughter. To the extent that planned crimes on the receiving end of human smuggling do not become completed due to the death of the person being smuggled, evidence may be sufficient to prove preparatory crimes of (1) conspiracy, (2) attempt, (3) facilitation and/or (4) solicitation.

¹ The legal information in this manual is general. Laws change frequently and vary from state to state. Therefore, this manual is not intended as a substitute for identifying current legal responsibilities. The Binational Migration Institute accepts no responsibility for those who rely on this manual as a substitute for identifying legal responsibilities.

- e. Kidnapping
- f. Rape
- g. Various forms of forced labor crimes
- h. Dangerous crimes against children, if minor children are the victims, including crimes-against-children enhancements for which greater punishments apply.

Additional state and local crimes may be occurring that involve recruitment, transportation, and transfer or harboring of smuggled persons that ends in death. These may include threat or use of force, coercion, abduction, fraud, deception, abuse of power or vulnerability, or giving payments or benefits to a person in control of the victim. There may also be elements of criminal exploitation, which includes exploiting for prostitution, sexual exploitation, forced labor, slavery or similar practices that include the sale/removal of organs. The development of more localized laws has been uneven across border states, with many of the laws enacted by states facing legal challenges. Notable amidst this trend is the state of Arizona, where a range of criminal laws have been developed or modified in response to the rising number of undocumented immigrant deaths and organized human smuggling syndicates.

Successful prosecution of the above-stated criminal activities requires rigorous collection of evidence. This manual proposes practices that will allow for the best collection of evidence throughout each step of the examination process of the remains of UBCs discovered in the border region. In following the practices outlined in this manual, there is sufficient guidance to comply with the legal nexus between practices and the collection of evidence for the prosecution of the aforementioned crimes. Therefore, we recommend that officials be properly trained in these practices.

3. Considering that forensic experts from both national and international organizations have already created excellent manuals for forensic best practices, this proposed manual builds on these in order to concentrate on the empirical evidence that points to needs specific to the examination and identification of remains of migrants in the border region.
4. Considering that the formulation of adequate procedures and accurate data depend on accurately classifying which remains are those of UBCs and which are not, a standard criteria for recognizing UBCs is essential (see Criteria for Counting UBCs box). PCOME has tackled this issue and it is this particular development that has allowed government and NGOs to gain a clearer picture of the crisis the border faces. Previous methods such as autopsy reports by the PCOME and the U.S. Border Patrol's Border Safety Initiative Tracking System (BSITS) for reporting overlooked or excluded classes of UBC deaths from published counts. The 2006 study based on the autopsy reports from Pima County [6] recommended adding further characteristics to the criteria used to identify UBC deaths.

The manual addresses the issues that arise from the expanded use of DNA and DNA databases in law enforcement, designed to aid law enforcement in their investigation of possible criminal activity (see section on DNA). There are no federal limits on the use of DNA database information and only eight states explicitly prohibit the use of database information to obtain information on physical traits, predisposition to disease or medical or genetic disorders. This raises numerous concerns, not the least of which is the ability of practitioners and officials to use such databases

in the context of identifying UBC remains while complying with norms for obtaining informed consent and privacy rights of persons and families of the deceased (see section on Databases). Given the aforementioned, relatives of missing persons may be reluctant to provide their DNA with full knowledge that it can be used by law enforcement for other law enforcement purposes. Thus, in the effort to aid in the identification of human remains of missing persons, efforts should be made to provide procedures that (1) allow for unique pseudonym submission of relative DNA to permit comparison search on a missing person while protecting the privacy rights of relatives, or (2) develop a procedure to require missing person databases to remove - after search and comparison - the DNA sample and DNA profile of relative DNA submitted for this purpose.